AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO



FEDERAL REGISTER

Vol. 89 Wednesday,

No. 224 November 20, 2024

Pages 91525–92022

OFFICE OF THE FEDERAL REGISTER

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

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

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

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

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

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

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

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

How To Cite This Publication: Use the volume number and the page number. Example: 89 FR 12345.

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

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

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

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

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

Printed on recycled paper.

Contents

Federal Register

Vol. 89, No. 224

Wednesday, November 20, 2024

Agency for Healthcare Research and Quality
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 91753–91755

Agriculture Department
See Forest Service
RULES
Implementation of HAVANA Act, 91529–91532

Centers for Medicare & Medicaid Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 91755–91756

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Sexual Risk Avoidance Education Program Performance Analysis Study, 91756–91757

Coast Guard
RULES
Safety Zone:
Delaware River Dredging, Marcus Hook, PA, 91569–91571
San Pedro Bay, Los Angeles, CA, 91565–91567
Security Zone:
Corpus Christi Ship Channel, Corpus Christi, TX, 91567–91569
Special Local Regulation:
Lake Havasu, Lake Havasu City, AZ, 91563–91565

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Consumer Product Safety Commission
RULES
Safety Standard:
Soft Infant and Toddler Carriers, 91545–91551
PROPOSED RULES
Safety Standard:
Requirements for Neck Floats, 91586–91617

Defense Department
NOTICES
Arms Sales, 91695–91707

Education Department
NOTICES
Applications for New Awards:
Gaining Early Awareness and Readiness for Undergraduate Programs (Partnership Grants), 91708–91715
Gaining Early Awareness and Readiness for Undergraduate Programs (State Grants), 91715–91722
Hearings, Meetings, Proceedings, etc.:
President's Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics, 91707–91708

Employee Benefits Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Retirement Savings Lost and Found, 91787–91802

Energy Department
See Energy Information Administration
See Western Area Power Administration
NOTICES
Hearings, Meetings, Proceedings, etc.:
Secretary of Energy Advisory Board, 91722–91723

Energy Information Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 91723

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Tennessee; Shelby County; Revisions to Startup, Shutdown, and Malfunction Rules, 91572–91574
Final Authorization of State Hazardous Waste Management Program Revisions:
Tennessee, 91574–91578
PROPOSED RULES
Final Authorization of State Hazardous Waste Management Program Revisions:
Tennessee, 91635–91636
NOTICES
Final Designation of Stormwater Discharges:
Watersheds in Los Angeles County, CA under the National Pollutant Discharge Elimination System of the Clean Water Act, 91740–91741
Guidance:
Pesticides; Evaluating the Efficacy of Pre-Saturated/Impregnated Antimicrobial Towelettes for Disinfection Claims, 91741–91742
Hearings, Meetings, Proceedings, etc.:
National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation, 91742
Risk Management under the Toxic Substances Control Act:
Certain Per- and Polyfluoroalkyl Substances, 91739–91740

Federal Accounting Standards Advisory Board
NOTICES
Annual Report for Fiscal Year 2024 and Three-Year Plan, 91742

Federal Aviation Administration
RULES
Airworthiness Directives:
Embraer S.A. Airplanes, 91541–91543

Construction-Related Scheduling Relief:
Newark Liberty International Airport, Chicago O'Hare International Airport, Los Angeles International Airport, San Francisco International Airport, and Ronald Reagan Washington National Airport, 91544–91545
Special Conditions:
Pratt and Whitney Canada Model PW220A Engine; 30-Minute All Engine Operating Power Rating, 91539–91541
NOTICES
Airport Property:
Hillsboro Airport, Hillsboro, OR, 91872
Melbourne Orlando International Airport, Melbourne, FL, 91872

Federal Communications Commission
RULES
Improving Public Safety Communications in the 4.9 GHz Band, 91578–91585
PROPOSED RULES
Implementation of the National Suicide Hotline Act, 91636–91648
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 91742–91748
Hearings, Meetings, Proceedings, etc.:
Open Commission Meeting, 91747–91748

Federal Deposit Insurance Corporation
PROPOSED RULES
Recordkeeping for Custodial Accounts, 91586
NOTICES
Meetings; Sunshine Act; Correction, 91748

Federal Financial Institutions Examination Council
NOTICES
Hearings, Meetings, Proceedings, etc.:
Appraisal Subcommittee, 91749

Federal Maritime Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Marine Terminal Operators; Service Contracts, Non-Vessel Operating Common Carriers, 91749–91750

Federal Motor Carrier Safety Administration
PROPOSED RULES
Transparency in Property Broker Transactions, 91648–91670
NOTICES
Enhanced Carrier Safety Measurement System, 91874–91880
Exemption Renewal:
Parts and Accessories Necessary for Safe Operation; Groendyke Transport, Inc., 91872–91873

Federal Railroad Administration
NOTICES
Petition for Extension of Waiver of Compliance, 91882, 91884
Petition for Special Approval, 91882–91883
Petition for Special Approval and Waiver of Compliance, 91881–91882
Petition for Waiver of Compliance, 91881, 91883–91884

Federal Reserve System
RULES
Regulation A: Extensions of Credit by Federal Reserve Banks, 91532–91533
Regulation D: Reserve Requirements of Depository Institutions, 91533–91534
Reserve Requirements of Depository Institutions, 91534–91536
NOTICES
Change in Bank Control:
Acquisitions of Shares of a Savings and Loan Holding Company, 91751–91752
Study and Report to Congress on the Impact on Consumers and Markets in the United States of a Final International Insurance Capital Standard, 91750–91751

Food and Drug Administration
NOTICES
Drug Products not Withdrawn from Sale for Reasons of Safety or Effectiveness:
Fortesta (Testosterone) Gel, 10 Milligrams/0.5 Gram Actuation, 91770–91771
IC-Green (Indocyanine Green), 91758
Noxafil (Posaconazole) Delayed-Release Tablets, 100 Grams; Correction, 91757
Emergency Use Authorization:
In Vitro Diagnostic Device for Detection and/or Diagnosis of COVID–19; Revocation, 91760–91763
Final Debarment Order:
Miguel Angel Montalvo Villa, 91758–91760
Product-Specific Guidance, 91763–91765
Request for Information:
Per- and Polyfluoroalkyl Substances in Seafood, 91765–91769
Statement of Organization, Functions, and Delegations of Authority, 91769–91770

Foreign Assets Control Office
NOTICES
Sanctions Action, 91889–91894

Foreign-Trade Zones Board
NOTICES
Approval of Subzone Status:
Permco FTZ LLC, Montville and Streetsboro, OH, 91674

Forest Service
NOTICES
Hearings, Meetings, Proceedings, etc.:
Alpine County Resource Advisory Committee, 91672
Requests for Nominations:
Secure Rural Schools Resource Advisory Committees, 91673–91674

General Services Administration
NOTICES
Hearings, Meetings, Proceedings, etc.:
Acquisition Policy Federal Advisory Committee, 91752

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

NOTICES
Hearings, Meetings, Proceedings, etc.:
National Committee on Vital and Health Statistics, 91772–91773

Health Resources and Services Administration
NOTICES
Supplemental Funding:
National Rural Health Information Clearinghouse Program, 91771
National Rural Health Policy, Community, and Collaboration Program, 91772
Rural Health and Economic Development Analysis Program, 91771–91772

Homeland Security Department
See Coast Guard

Interior Department
See Land Management Bureau
See National Park Service

Internal Revenue Service
RULES
Election to Exclude Certain Unincorporated Organizations Owned by Applicable Entities from Application of the Rules on Partners and Partnerships, 91552–91563
PROPOSED RULES
Administrative Requirements for an Election to Exclude Applicable Unincorporated Organizations from the Application of Subchapter K, 91617–91624

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations Orders or Reviews:
Alloy and Certain Carbon Steel Threaded Rod and Carbon and Alloy Steel Threaded Rod from the People's Republic of China, 91676–91680
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Aluminum Extrusion from the People's Republic of China; Correction, 91674–91675
Hard Empty Capsules from Brazil, the People's Republic of China, India, and the Socialist Republic of Vietnam, 91680–91684
Sales at Less Than Fair Value; Determinations, Investigations, etc.:
Certain Brake Drums from the Republic of Turkiye and the People's Republic of China, 91675–91676
Hard Empty Capsules from Brazil, the People's Republic of China, India, and the Socialist Republic of Vietnam, 91684–91690

International Trade Commission
NOTICES
Complaint, 91783–91786
Investigations; Determinations, Modifications, and Rulings, etc.:
Hexamine (Hexamethylenetetramine) from China, Germany, India, and Saudi Arabia, 91786
Laminated Woven Sacks from Vietnam, 91784–91785

Justice Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Suspension of Deportation, 91786–91787

Labor Department
See Employee Benefits Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Financial Report Form, 91804
Strengthening Community Colleges Training Grant Program Round 4 Evaluation, 91802–91804

Land Management Bureau
NOTICES
Segregation of Public Land:
Esmeralda Solar Projects, Esmeralda County, NV, 91776–91777

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 91804

National Highway Traffic Safety Administration
PROPOSED RULES
Federal Motor Vehicle Safety Standards:
Pedestrian Head Protection, Global Technical Regulation Number 9, 91670–91671
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Roadside Survey of Alcohol and Drug Prevalence of Road Users, 2025, 91884–91887

National Institutes of Health
NOTICES
Hearings, Meetings, Proceedings, etc.:
Center for Scientific Review, 91773
National Center for Advancing Translational Sciences, 91774
National Institute of Neurological Disorders and Stroke, 91773–91775
Licenses; Exemptions, Applications, Amendments, etc.:
Inter-Institutional Agreement-Institution Lead; Peptides and Peptide Microarrays for Detection and Differentiation of Antibody Responses to Ebola Virus and Other Pathogens, 91773–91774

National Oceanic and Atmospheric Administration
NOTICES
Charter Amendments, Establishments, Renewals and Terminations:
Climate Services Advisory Committee, 91694–91695
Hearings, Meetings, Proceedings, etc.:
Caribbean Fishery Management Council, 91690–91694
Taking or Importing of Marine Mammals:
BNSF Railway Bridge Heavy Maintenance Project in King County, WA, 91692–91693

National Park Service
NOTICES
Inventory Completion:
Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, 91777–91783
National Register of Historic Places:
Pending Nominations and Related Actions, 91780

National Science Foundation
NOTICES
Hearings, Meetings, Proceedings, etc.:
Advisory Committee for Computer and Information Science and Engineering, 91804

Advisory Committee for Technology, Innovation and Partnerships, 91805

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 91805

Patent and Trademark Office
RULES
Setting and Adjusting Patent Fees During Fiscal Year 2025, 91898–92011

Pipeline and Hazardous Materials Safety Administration
NOTICES
Pipeline Safety:
Random Drug Testing Rate; Multi-Factor Authentication; and Operator and Contractor Management Information System Reporting, 91887–91889

Postal Regulatory Commission
NOTICES
New Postal Products, 91805–91809

Presidential Documents
PROCLAMATIONS
Fine Denier Polyester Staple Fiber; Positive Adjustments to Competition From Imports Into U.S. (Proc. 10857), Republication, 92013–92022
Special Observances:
American Education Week (Proc. 10859), 91525–91526
National Apprenticeship Week (Proc. 10860), 91527–91528

Railroad Retirement Board
NOTICES
2025 Railroad Experience Rating Proclamations, Monthly Compensation Base and Other Determinations, 91809–91811

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 91824–91825, 91852–91853
Application:
Diamond Hill Securitized Credit Fund and Diamond Hill Capital Management, Inc., 91852
Precidian ETF Trust II, et al., 91822–91824
Self-Regulatory Organizations; Proposed Rule Changes:
Cboe Exchange, Inc., 91811–91815
New York Stock Exchange, LLC, 91817–91822, 91843–91852
NYSE American, LLC, 91831–91843, 91864–91866
NYSE Arca, Inc., 91815–91817
NYSE Chicago, Inc., 91862–91864
The Nasdaq Stock Market, LLC, 91853–91862
The Options Clearing Corp., 91825–91831

Small Business Administration
RULES
Disaster Assistance Loan Program Updates, 91536–91539
NOTICES
Disaster Declaration:
Alaska; Public Assistance Only, 91866
Pennsylvania; Public Assistance Only, 91867
Wyoming; Public Assistance Only, 91867
Hearings, Meetings, Proceedings, etc.:
National Small Business Development Center Advisory Board, 91866

State Department
NOTICES
Charter Amendments, Establishments, Renewals and Terminations:
Advisory Committee on Historical Diplomatic Documentation, 91867
Hearings, Meetings, Proceedings, etc.:
Advisory Committee on Historical Diplomatic Documentation, 91868

Substance Abuse and Mental Health Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 91775–91776

Surface Transportation Board
NOTICES
Exemption:
Abandonment; Norfolk Southern Railway Co., Baltimore, MD, 91869–91870
Abandonment; Norfolk Southern Railway Co., Mingo County, WV, 91868–91869
Abandonment; Northern Southern Railway Co., Pitt County, NC, 91871–91872
Abandonment; Northern Southern Railway Co.; Henderson and Polk Counties, NC, and Greenville and Spartanburg Counties, SC, 91870–91871
Abandonment; Southwest Pennsylvania Railroad Company; Fayette County, PA, 91870

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
See Pipeline and Hazardous Materials Safety Administration

Treasury Department
See Foreign Assets Control Office
See Internal Revenue Service
NOTICES
Hearings, Meetings, Proceedings, etc.:
Federal Advisory Committee on Insurance, 91894–91895
Study and Report to Congress on the Impact on Consumers and Markets in the United States of a Final International Insurance Capital Standard, 91750–91751

Veterans Affairs Department
PROPOSED RULES
Loan Guaranty:
Loan Reporting and Partial or Total Loss of Guaranty or Insurance, 91624–91635

Western Area Power Administration
NOTICES
Rate Order:
Loveland Area Projects, 91723–91731
Pick-Sloan Missouri Basin Program, Eastern Division, 91731–91739

Separate Parts In This Issue

Part II
Commerce Department, Patent and Trademark Office, 91898–92011

Part III
Presidential Documents, 92013–92022

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

10857.....92015
10859.....91525
10860.....91527

7 CFR

1.....91529

12 CFR

201.....91532
204 (2 documents) 91533, 91534

Proposed Rules:

375.....91586

13 CFR

123.....91536

14 CFR

33.....91539
39.....91541
93.....91544

16 CFR

1226.....91545

Proposed Rules:

1112.....91586
1250.....91586

26 CFR

1.....91552

Proposed Rules:

1.....91617

33 CFR

100.....91563
165 (3 documents) 91565, 91567, 91569

37 CFR

1.....91898
41.....91898
42.....91898

38 CFR

Proposed Rules:

36.....91624

40 CFR

52.....91572
271.....91574

Proposed Rules:

271.....91635

47 CFR

0.....91578
90.....91578

Proposed Rules:

52.....91636

49 CFR

Proposed Rules:

371.....91648
571.....91670

Federal Register
Vol. 89, No. 224
Wednesday, November 20, 2024

Presidential Documents

Title 3—

The President

Proclamation 10859 of November 15, 2024

American Education Week, 2024

By the President of the United States of America

A Proclamation

During American Education Week, we celebrate the power and promise of our Nation's public education system, which has empowered so many students to realize their full potential regardless of their zip code. We show gratitude for educators and staff, who ensure that our schools are filled with hope and possibilities. And we recommit to ensuring each student, educator, and school has the resources and opportunities they need to thrive.

America's public education system helps define who we are: a Nation of possibilities, where everyone gets a fair shot to pursue their talents and ambitions. Some of our Nation's greatest scholars and scientists, artists and humanitarians, and dreamers and doers got their start at a public school. Many have further honed their skills in our colleges, universities, Registered Apprenticeships, and career and technical education programs. An education gives you something no one can take away—that is why we must remain committed to supporting our schools, which open the doors of opportunity wider for everyone.

I am proud that my Administration secured a historic $130 billion in funding for our Nation's K–12 schools through my American Rescue Plan. That law put more teachers in classrooms and put more counselors, social workers, and other supportive staff in our schools. It also invested in high-quality tutoring and made historic expansions in summer and after-school programs while upgrading the physical school buildings, including making aging buildings more secure and improving air quality.

My Administration also remains committed to ensuring students have the resources they need to succeed. My American Rescue Plan led to our country's biggest-ever investment in mental health and substance use programs, providing critical funding to increase the number of mental health providers in our schools. Furthermore, my Bipartisan Safer Communities Act—the first major Federal gun safety legislation passed in nearly 30 years—made important steps toward ending the threat of gun violence, which brings terror to far too many schools. The Bipartisan Safer Communities Act also included $2 billion in funding to create safe, inclusive learning environments for all students and to train and hire more mental health professionals for schools. My Administration also made it easier for schools to bill Medicaid so that they could deliver critical health services, including mental health services to students. And through my national strategy to end hunger and reduce diet-related diseases in America by 2030, we are working toward a future where every kid has access to free, healthy school meals.

Setting students up for success also means improving our Nation's early childhood education. Children who go to preschool are nearly 50 percent more likely to finish high school and go on to earn a 2- or 4-year degree no matter their background. My Administration has fought to make preschool universal for every 3- and 4-year-old in America.

To support our Nation's higher education system, my Administration secured nearly $40 billion for colleges and universities through my American Rescue Plan. That includes billions of dollars in funding for Minority-Serving Institutions and Historically Black Colleges and Universities. I have always believed

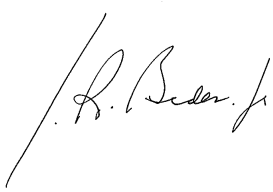
that higher education should be a pathway to the middle class—but we have to make it more affordable. That is why my Administration provided the largest increases to the maximum Pell Grant award in over a decade, making college more affordable for over six million students. We also canceled student loan debt for over one million public service workers, including teachers, by fixing the Public Service Loan Forgiveness (PSLF) Program. Before I took office, only 7,000 public service workers had ever received the forgiveness they were entitled to through PSLF. In total, we have approved debt cancellation for nearly five million Americans across all our various debt relief actions, including fixing Income-Driven Repayment so borrowers get the relief they earned and holding the colleges that take advantage of students and families accountable.

Everyone deserves a fair shot at the American Dream, so my Administration has invested more in Registered Apprenticeships and career and technical training programs than any other administration in history, empowering workers to earn while they learn and opening up new pathways to secure good-paying jobs. We are also working to expand Registered Apprenticeships for educators and increase access to high-quality teacher preparation programs, including by making them more affordable.

During American Education Week, we show our gratitude to the educators and school staff across our Nation, who are the kite strings that keep our national ambitions aloft. And together, we will work to ensure our Nation's students have every opportunity to succeed.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 17 through November 23, 2024, as American Education Week. I call upon all Americans to mark this week with appropriate programs, ceremonies, and activities honoring those who devote their talents and energies to helping our children reach their full potential and to building school communities where all students feel they belong.

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



[FR Doc. 2024–27304

Filed 11–19–24; 8:45 am]

Billing code 3395–F4–P

Presidential Documents

Proclamation 10860 of November 15, 2024

National Apprenticeship Week, 2024

By the President of the United States of America

A Proclamation

America's workers are the best in the world—and that is in no small part due to our exceptional Registered Apprenticeship programs. During National Apprenticeship Week, we recommit to supporting these programs, which put so many Americans on a path to securing good-paying jobs and helping build the industries of the future.

I have often said that the middle class built America and unions built the middle class, and Registered Apprenticeship programs—including the hundreds of union-run programs—have produced some of our Nation's most skilled workers for generations. Registered Apprenticeships empower workers to hone their skills or gain new ones by allowing them to earn while they learn and connecting them to good-paying jobs. These apprenticeships have given so many of our workers the opportunity to work with dignity and care for their families all while training our workforce to build the industries of our future, like clean energy or cybersecurity.

My Administration made the largest Federal investment in our Nation's history in Registered Apprenticeships. Since taking office, we have invested more than $730 million to expand Registered Apprenticeships, leading to the hiring of more than one million apprentices across the country. More than $80 billion has been committed from my American Rescue Plan to strengthen and expand the workforce, including to expand Registered Apprenticeship and pre-apprenticeship programs. We are also creating opportunities for apprentices through our Bipartisan Infrastructure Law and our Inflation Reduction Act, which provides strong incentives for employers to hire Registered Apprentices in their clean energy projects.

Further, my Administration is making sure that Registered Apprentices are helping build the industries of the future and fulfill needs in critical industries. Our Advanced Manufacturing Sprint and Investing in America Workforce Hubs launched intensive drives to build a diverse, skilled pipeline of workers for advanced manufacturing jobs, including union jobs—many of which do not require a 4-year college degree. To do that, we have been bringing together unions, local governments, employers, training providers, K–12 schools, community colleges, and other stakeholders to train and connect workers to jobs in high-demand sectors. For teachers, my Administration has helped expand teacher Registered Apprenticeship programs to 46 States, to help train the next generation of educators. For construction workers, the Department of Labor's Scaling Apprenticeship Readiness Across the Building Trades Initiative is enrolling thousands of Americans to help rebuild our Nation's roads, bridges, and highways. For truck drivers, we held a 90-Day Trucking Apprenticeship Challenge, which helped get more drivers on the road. And for cybersecurity professionals, we completed a 120-Day Cybersecurity Apprenticeship Sprint, which has helped thousands get hired in industries that protect Americans from cyberthreats.

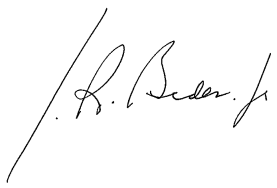
My Administration is also ensuring our Registered Apprentices reflect the diversity of America. Our Apprenticeship Ambassador Initiative is working with more than 200 organizations committed to hiring 10,000 new apprentices and recruiting people from historically underrepresented communities

for apprenticeship programs. And through the Department of Labor's Women in Apprenticeship and Nontraditional Occupations grant program, we are continuing to invest in women in the skilled trades, who are too often underrepresented. Thanks to these efforts, the number of women in apprenticeships will soon surpass 100,000 for the first time ever.

Supporting Registered Apprenticeships is about doing what our Nation does best—investing in America and America's workers. This week, we celebrate apprentices nationwide, whose hard work has contributed so much to our Nation's economy and prosperity. May we continue to support these programs, which have created endless possibilities for Americans.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 17 through November 23, 2024, as National Apprenticeship Week. I urge the Congress, State and local governments, educational institutions, industry and labor leaders, apprentices, and all Americans to support Registered Apprenticeship programs in the United States of America and to raise awareness of their importance in building a diverse and robust workforce to strengthen our national economy.

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



[FR Doc. 2024–27307
Filed 11–19–24; 8:45 am]
Billing code 3395–F4–P

Rules and Regulations

Federal Register
Vol. 89, No. 224
Wednesday, November 20, 2024

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

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

[Docket No. USDA–2024–0007]

RIN 0503–AA80

Implementation of HAVANA Act of 2021

AGENCY: Office of the Secretary, USDA.

ACTION: Interim final rule and request for comments.

SUMMARY: This rule implements the HAVANA Act of 2021 (the Act) for the U.S. Department of Agriculture (USDA). The Act provides the authority for the Secretary of Agriculture and other agency heads to provide payments to certain individuals who have incurred qualifying injuries to the brain. The rule covers current and former USDA employees and dependents of current or former employees.

DATES: Effective November 20, 2024. We will consider all comments that we receive on or before January 21, 2025.

ADDRESSES: You may submit comments by going to *http://www.regulations.gov* and searching for Docket ID: USDA–2024–0007. Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. John Decato, Office of Human Resources Management,1400 Independence Avenue SW, Washington, DC 20250; email *John.Decato@usda.gov,* phone (202) 720–6706.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 2019, Congress gave authority (Pub. L. 116–94, division J, title IX, section 901) to the Department of State to pay benefits to certain individuals for injuries suffered after January 1, 2016, in the Republic of Cuba, the People's Republic of China, or another foreign country designated by the Department of State, in connection with certain injuries designated by the Secretary of State. These benefits were limited to Department of State employees, their dependents and other individuals affiliated with the Department of State.

On January 1, 2021, Congress amended that law (Pub. L. 116–283, div. A, title XI, section 1110), authorizing other Federal Government agencies (such as the U.S. Department of Agriculture [USDA]) to provide similar benefits to their own employees for those injuries. Those provisions are codified at 22 U.S.C. 2680b.

On October 8, 2021, the ''Helping American Victims Afflicted by Neurological Attacks'' (HAVANA) Act of 2021 became law (Pub. L. 117–46). In that Act, Congress authorized Federal Government agencies to compensate affected current employees, former employees, and their dependents for qualifying injuries to the brain. Section 3 of the HAVANA Act of 2021 removed the requirement in Public Law 116–94, division J, title IX, section 901, that the qualifying injury occur in ''the Republic of Cuba, People's Republic of China, or other foreign country designated by the Secretary of State'' for the purpose of making a payment under the HAVANA Act. The Act also requires the Department (and other agencies) to ''prescribe regulations'' implementing the HAVANA Act not later than 180 days after the effective date of the Act. This interim final rule implements the HAVANA Act of 2021 for USDA.

The regulation herein applies only to current and former employees of USDA, and dependents of current or former employees, as defined in § 1.901 of this rule.

Definitions

This rule follows the definitional template provided in the HAVANA Act and its predecessors. The rule defines certain categories of individuals as employees, as well as those who are not considered employees.

The term ''covered employee'' captures Department Foreign Service and Civil Service employees (regardless of the nature of their appointment) who, on or after January 1, 2016, became injured by a qualifying injury to the brain while they were an employee of the Department.

The term ''covered individual'' captures any former employee of the Department (including retired or separated employees) who, on or after January 1, 2016, became injured by a qualifying injury to the brain while they were an employee of the Department.

The term ''covered dependent'' captures a family member of a current or former Department employee who, on or after January 1, 2016, became injured by reason of a qualifying injury to the brain while the dependent's sponsor was an employee of the Department. For purposes of determining whether an individual is a covered dependent, the term ''family members'' includes unmarried children under 21 years of age (or certain other children) at the time of injury; parents; sisters and brothers; and spouses. Stepparents and stepsiblings are included in the definition.

The definition of ''qualifying injury to the brain'' is based on current medical practices related to brain injuries. Further, the injury must have occurred in connection with certain hostile acts, including war, terrorist activity, or other incidents designated by the Secretary of State or the Secretary of Agriculture, as permitted by law, and must not have been the result of the willful misconduct of the individual. The individual must have: an acute injury to the brain such as, but not limited to, a concussion, penetrating injury, or as the consequence of an event that leads to permanent alterations in brain function as demonstrated by confirming correlative findings on imaging studies (to include computed tomography scan (CT), or magnetic resonance imaging scan (MRI)), or electroencephalogram (EEG); or a medical diagnosis of a traumatic brain injury (TBI) that required active medical treatment for 12 months or more; or acute onset of new persistent, disabling neurologic symptoms as demonstrated by confirming correlative findings on imaging studies (to include CT, MRI), EEG, physical exam, or other appropriate testing, and that required active medical treatment for 12 months or more.

In implementing this definition of ''qualifying injury to the brain,'' the Department adopts the standard set forth by the Department of State in its January 25, 2023, regulations implementing the HAVANA Act (see 88 FR 4722). With regard to these standards, this definition accounts for a variety of observable impacts to an

individual, including either a concussion, a penetrating injury, or absent either of those, the ability of an appropriately certified physician to review one of a variety of forms of medical imaging evidence indicating permanent alterations in brain function. This will ensure there is some documented evidence of impact to the brain, while minimally circumscribing what that impact entails. The definition of ''qualifying injury to the brain'' will provide multiple avenues for demonstrating sustained, long-term impact to the individual. Establishing a 12-month threshold of active medical treatment is indicative of a long-term injury which the Department believes must be demonstrated prior to the awarding of benefits. For example, the Centers for Disease Control and Prevention (CDC) broadly defines chronic diseases ''as conditions that last 1 year or more and require ongoing medical attention or limit activities of daily living or both.''

The definition of ''other incident'' is a new onset of physical manifestations that cannot otherwise be explained.

Eligibility for Payments

The Department will communicate with its entire workforce to inform them of the rule, regulations, and process for requesting payment. The Department will work together with potential recipients to provide the necessary documentation to qualify for payment. The Department believes these efforts will ensure all potential requestors will be able to identify themselves to the Department and begin the process of requesting a payment. However, Form CD–350, the form associated with developing the necessary evidence to submit a claim, will also be publicly hosted on the Department's public-facing website with instructions on how to contact the Department if a requestor believes they are eligible for a HAVANA Act payment.

Section 1.902 states the conditions required before the Department will consider payments to current or former employees and dependents of current or former employees: the qualifying injury to the brain for a former employee must have occurred on or after January 1, 2016, and while the former employee was an employee of the Department; and for a dependent, the injury must have occurred on or after January 1, 2016, and while the dependent's sponsor was an employee of the Department. The Director, Office of Human Resources Management, must approve any HAVANA Act payment.

Payments will be a one-time, non-taxable, lump sum payment, based on the annual salary of an Executive Schedule III employee (see 5 U.S.C. 5311 *et seq.*). The payment is non-taxable pursuant to 22 U.S.C. 2680b(g). As indicated in § 1.902, in determining the amount of the payment, the Department will consider (1) the responses on Form CD–350 and (2) whether the Department of Labor, Office of Workers' Compensation Programs (DOL) has determined that the requestor has no reemployment potential, or the Social Security Administration (SSA) has approved the requestor for Social Security Disability Insurance or Supplemental Security Insurance, or the requestor's board-certified physician has certified that the individual requires a full-time caregiver for activities of daily living, as defined by the Katz Index of Independence in Activities of Daily Living.

The award thresholds are based on the annual rate of basic pay for Level III of the Executive Schedule (ES). A Base payment will be 75 percent of Level III pay and a Base Plus payment will be 100 percent of Level III pay. If the requestor meets any of the criteria listed in (2) in the paragraph immediately above, the requestor will be eligible to receive a Base Plus payment. Requestors with a documented ''qualifying injury to the brain'' but who do not meet any of the criteria listed in (2) in the paragraph immediately above will be eligible to receive a Base payment. The criteria established in (2) in the paragraph immediately above are reflective of the Department's objective of ensuring that the individuals most severely affected by anomalous health incidents (AHIs) (as indicated by a lack of reemployment potential, an inability to engage in substantial gainful activity, or the need for a full-time caregiver) receive additional payment. The specific use of the DOL or the SSA determinations is to ensure that both current and former Federal employees as well as covered dependents have access to a mechanism for this determination. The Department recognizes that criteria DOL and SSA use in their disability determinations are distinct, as well as the fact that the procedural timelines for seeking and receiving approval may be different between these agencies. The third option, that a board-certified physician certifies that the individual requires a full-time caregiver for activities of daily living (as defined by the Katz Index of Independence in Activities of Daily Living), provides an alternative mechanism for all individuals. Finally, the Department notes that if a requestor who received a Base payment later meets any of the criteria listed in (2) above, the requestor may apply for an additional payment that will be the difference between the Base and Base Plus payment. As the payments are tied to the Executive Schedule, the amounts may change over time based on increases to that Schedule.

The Department may consult with the appropriate officials in other Federal agencies to identify their current and former covered employees, and current and former dependents who reported an anomalous health incident. The Department will not process payment for employees, former employees, or dependents of current or former employees of other agencies. While payments under the HAVANA Act may be on top of other leave, disability, or workers' compensation payments the requestor is receiving or may be entitled to receive that also help augment any loss of income, the Department believes this is an appropriate additional payment. The Department also believes this amount is the most it can reasonably compensate each requestor while ensuring available funds for all expected payments. The Department also notes that, because payments are contingent on appropriated funds, all payments will be paid out on a first come, first served basis. This is also in accordance with compensation awarded by the Department of State under the HAVANA Act.

Immediate Action

Immediate action is necessary in order to ensure expeditious payments are made to injured persons. Under these circumstances, prior notice and opportunity for public comment are contrary to the public interest and there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Orders 12866 and 13563

The Office of Management and Budget has determined that this regulatory action does not meet the criteria for significant regulatory action pursuant to Executive Order 12866, Regulatory Planning and Review.

Potential causes of AHI are being investigated but remain unknown. Given the nature of the incidents, it is difficult to accurately estimate future

incidents and numbers of individuals affected.

The Department has reviewed the rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and finds that the benefits of the rule (in providing mechanisms for individuals to obtain compensation for certain injuries) outweigh any costs to the public. The Department has also considered this rulemaking in light of Executive Order 13563 and affirms that this regulation is consistent with the guidance therein.

Regulatory Flexibility Act

This rule applies only to certain individuals who are current or former Department employees and family members who are eligible for payments as a result of certain injuries. Therefore, the rule will provide for payments to certain individuals, and is therefore not expected to impact any small entities. As a result, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq*.).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*.), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 1405–0250.

List of Subjects in 7 CFR Part 1

Administrative practice and procedure, Antitrust, Claims, Cooperatives, Courts, Equal access to justice, Fraud, Freedom of information, Government employees, Indemnity payments, Lawyers, Motion pictures, Penalties, Privacy.

Accordingly, we are amending 7 CFR part 1 as follows:

PART 1—ADMINISTRATIVE REGULATIONS

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

Authority: 5 U.S.C. 301, unless otherwise noted.

■ 2. Add subpart Q to read as follows:

Subpart Q—Implementation of the HAVANA Act of 2021

Sec.

1.900 Authority.
1.901 Definitions.
1.902 Eligibility for payments by the Department of Agriculture.
1.903 Consultation with other agencies.

Authority: 22 U.S.C. 2680b.

Subpart Q—Implementation of the HAVANA Act of 2021

§ 1.900 Authority.

(a) Under section 3 of the HAVANA Act of 2021 (22 U.S.C. 2680b), the Secretary of Agriculture or other agency heads may provide a payment for a qualifying injury to the brain to a covered employee or covered dependent who incurred a qualifying injury to the brain on or after January 1, 2016. The authority to provide such payments is at the sole discretion of the Secretary or the Secretary's designee.

(b) The regulations in this part are issued in accordance with 22 U.S.C. 2680b(i)(4) and also apply to former covered employees of the Department of Agriculture and their covered dependents.

§ 1.901 Definitions.

(a) *Covered employee.* (1) An employee of the Department of Agriculture who, on or after January 1, 2016, becomes injured by reason of a qualifying injury to the brain.

(2) The following are considered employees of the Department of Agriculture for the purposes of this part: Department of Agriculture employees in the Foreign Service and Department of Agriculture employees who meet the definition of ''employee'' set forth in 5 U.S.C. 2105(a), including students providing volunteer service under 5 U.S.C. 3111.

(3) The following are not considered employees of the Department of Agriculture for purposes of this part: Employees or retired employees of other agencies.

(b) *Covered dependent.* A family member of a Department of Agriculture current or former employee who, on or after January 1, 2016, becomes injured by reason of a qualifying injury to the brain while the dependent's sponsor was an employee of the Department of Agriculture as specified in paragraph (a)(2) of this section.

(c) *Covered individual.* A former employee of the Department of Agriculture who, on or after January 1, 2016, becomes injured by reason of a qualifying injury to the brain while they were an employee of the Department of Agriculture as specified in paragraph (a)(2) of this section.

(d) *Family member.* For purposes of determining ''covered dependent,'' a family member is defined as follows:

(1) Children who are unmarried and under 21 years of age at the time of the qualifying injury or, regardless of age, are unmarried and due to mental and/or physical limitations are incapable of self-support. The term ''children'' must include natural offspring, step-children, adopted children, and those under permanent legal guardianship (at least until age 18), or comparable permanent custody arrangement, of the employee or spouse or domestic partner when dependent upon and normally residing with the guardian or custodial party, and U.S. citizen children placed for adoption if a U.S. court grants temporary guardianship of the child to the employee and specifically authorizes the child to reside with the employee in the country of assignment before the adoption is finalized;

(2) Parents (including stepparents and legally adoptive parents) of the employee, or of the spouse or of the domestic partner, as these terms are defined in 5 CFR 875.101;

(3) Sisters and brothers (including stepsisters or stepbrothers, or adoptive sisters or brothers) of the employee, or of the spouse when such sisters and brothers are at least 51 percent dependent on the employee for support, unmarried and under 21 years of age, or regardless of age, are physically and/or mentally incapable of self-support; and

(4) Spouse or domestic partner at the time of injury.

(e) *Qualifying injury to the brain.* (1) The injury must have occurred in connection with war, insurgency, hostile act, terrorist activity, or other incidents designated by the Secretary of State or the Secretary of Agriculture, as permitted by law, and was not the result of the willful misconduct of the individual; and

(2) The individual must have:

(i) An acute injury to the brain such as, but not limited to, a concussion, penetrating injury, or as the consequence of an event that leads to permanent alterations in brain function as demonstrated by confirming correlative findings on imaging studies (to include computed tomography scan (CT), or magnetic resonance imaging scan (MRI)), or electroencephalogram (EEG); or

(ii) A medical diagnosis of a traumatic brain injury (TBI) that required active medical treatment for 12 months or more; or

(iii) Acute onset of new persistent, disabling neurologic symptoms as demonstrated by confirming correlative findings on imaging studies (to include CT or MRI), or EEG, or physical exam, or other appropriate testing, and that required active medical treatment for 12 months or more.

(f) *Other incident.* A new onset of physical manifestations that cannot otherwise be readily explained.

(g) *Requestor.* A requestor is a covered employee, a covered individual, or a

covered dependent who applies for payment under this subpart.

§ 1.902 Eligibility for payments by the Department of Agriculture.

(a) The Department of Agriculture may provide a payment to covered individuals, as defined in this § 1.901, if the qualifying injury to the brain was assessed and diagnosed in person by a currently board-certified physician from the American Board of Psychiatry and Neurology (ABPN), the American Osteopathic Board of Neurology and Psychiatry (AOBNP), the American Board of Physical Medicine and Rehabilitation (ABPMR), or the American Board of Physical Medicine and Rehabilitation (AOBPMR); and occurred on or after January 1, 2016, and while the individual was a covered employee of the Department of Agriculture.

(b) The Department of Agriculture may provide a payment to covered employees, as defined in this section, if the qualifying injury to the brain was assessed and diagnosed in person by a currently board-certified physician from ABPN, AOBNP, ABPMR, or AOBPMR; and occurred on or after January 1, 2016, and while the employee was a covered employee of the Department.

(c) The Department of Agriculture may provide a payment to a covered dependent, if the qualifying injury to the brain was assessed and diagnosed in person by a currently board-certified physician from the ABPN, AOBNP, ABPMR, or AOBMR; and occurred on or after January 1, 2016, and while the dependent was a family member of the covered employee of the Department.

(d) Payment for a qualifying injury to the brain will be a non-taxable, one-time lump sum payment.

(e) The Department will determine the amount paid to each eligible person based on the following factors:

(1) The responses on Form CD–350, ''Eligibility Questionnaire for HAVANA Act Payments''; and

(2) Whether the Department of Labor has determined that the requestor has no reemployment potential, or the Social Security Administration has approved the requestor for Social Security Disability Insurance or Supplemental Security Insurance (SSI) benefits; or the requestor's ABPN, AOBPN, ABPMR, or AOBPMR-certified physician has certified that the individual requires a full-time caregiver for activities of daily living, as defined by the Katz Index of Independence of Daily Living.

(3) The award thresholds are based on the Level III of the Executive Schedule: Base payment will be 75 percent of Level III pay, and Base Plus payment will be 100 percent of Level III pay. If the requestor meets any of the criteria listed in paragraph (e)(2) of this section, the requestor will be eligible to receive a Base Plus payment. Requestors who are otherwise eligible for payment for a qualifying injury to the brain (defined in § 3.2(e)) but do not meet any of the criteria listed in paragraph (e)(2) of this section will be eligible to receive a Base payment. If a requestor who received a Base payment later meets any of the criteria listed in paragraph (e)(2) of this section, the requestor may apply for an additional payment that will be the difference between the Base and Base Plus payment.

(f) The Director, Office of Human Resources Management may approve payments under this section. The Office of Human Resources Management will notify individuals of the decision in writing.

(g) An appeal of a decision made by the Director, Office of Human Resources Management may be directed to the Deputy Assistant Secretary for Administration in writing. The Deputy Assistant Secretary for Administration is the final appeal authority. The Office of Human Resources Management will notify individuals of the decision in writing.

§ 3.4 Consultation with other agencies.

The Department may consult with the appropriate officials in other Federal agencies to identify their current and former covered employees, and current and former dependents who reported an anomalous health incident. The Department will not process payment for employees, former employees, or dependents of current or former employees of other agencies.

Xochitl Torres Small,

Deputy Secretary, U.S. Department of Agriculture.

[FR Doc. 2024–27112 Filed 11–19–24; 8:45 am]

BILLING CODE 3410–90–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Docket No. R–1846]

RIN 7100 AG 86

Regulation A: Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (''Board'') has adopted final amendments to its Regulation A to reflect the Board's approval of a decrease in the rate for primary credit at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically decreased by formula as a result of the Board's primary credit rate action.

DATES: *Effective date:* This rule is effective November 20, 2024.

Applicability date: The rate changes for primary and secondary credit were applicable on November 8, 2024.

FOR FURTHER INFORMATION CONTACT: M. Benjamin Snodgrass, Senior Counsel (202–263–4877), Legal Division, or Nicole Trachman, Financial Institution & Policy Analyst (202–973–5055), Division of Monetary Affairs; for users of telephone systems via text telephone (TTY) or any TTY-based Telecommunications Relay Services, please call 711 from any telephone, anywhere in the United States; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to review and determination of the Board.

On November 7, 2024, the Board voted to approve a 0.25 percentage point decrease in the primary credit rate, thereby decreasing the primary credit rate from 5.00 percent to 4.75 percent. In addition, the Board had previously approved the renewal of the secondary credit rate formula, the primary credit rate plus 50 basis points. Under the formula, the secondary credit rate decreased by 0.25 percentage points as a result of the Board's primary credit rate action, thereby decreasing the secondary credit rate from 5.50 percent to 5.25 percent. The amendments to Regulation A reflect these rate changes.

The 0.25 percentage point decrease in the primary credit rate was associated with a 0.25 percentage point decrease in the target range for the federal funds rate (from a target range of 4¾ percent to 5 percent to a target range of 4½ percent to 4¾ percent) announced by the Federal Open Market Committee on November 7, 2024, as described in the Board's amendment of its Regulation D

published elsewhere in today's **Federal Register**.

Administrative Procedure Act

In general, the Administrative Procedure Act (''APA'') [1] imposes three principal requirements when an agency promulgates legislative rules (rules made pursuant to Congressionally delegated authority): (1) publication with adequate notice of a proposed rule; (2) followed by a meaningful opportunity for the public to comment on the rule's content; and (3) publication of the final rule not less than 30 days before its effective date. The APA provides that notice and comment procedures do not apply if the agency for good cause finds them to be ''unnecessary, impracticable, or contrary to the public interest.'' [2] Section 553(d) of the APA also provides that publication at least 30 days prior to a rule's effective date is not required for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) a rule for which the agency finds good cause for shortened notice and publishes its reasoning with the rule.[3] The APA further provides that the notice, public comment, and delayed effective date requirements of 5 U.S.C. 553 do not apply ''to the extent that there is involved . . . a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.'' [4]

Regulation A establishes the interest rates that the twelve Reserve Banks charge for extensions of primary credit and secondary credit. The Board has determined that the notice, public comment, and delayed effective date requirements of the APA do not apply to these final amendments to Regulation A. The amendments involve a matter relating to loans and are therefore exempt under the terms of the APA. Furthermore, because delay would undermine the Board's action in responding to economic data and conditions, the Board has determined that ''good cause'' exists within the meaning of the APA to dispense with the notice, public comment, and delayed effective date procedures of the APA with respect to the final amendments to Regulation A.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[5] As noted previously, a general notice of proposed rulemaking is not required if the final rule involves a matter relating to loans. Furthermore, the Board has determined that it is unnecessary and contrary to the public interest to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (''PRA'') of 1995,[6] the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no requirements subject to the PRA.

List of Subjects in 12 CFR Part 201

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

Authority and Issuance

For the reasons set forth in the preamble, the Board is amending 12 CFR chapter II as follows:

PART 201 EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.,* 347a, 347b, 347c, 348 *et seq.,* 357, 374, 374a, and 461.

■ 2. In § 201.51, paragraphs (a) and (b) are revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.[3]

(a) *Primary credit.* The interest rate at each Federal Reserve Bank for primary credit provided to depository institutions under § 201.4(a) is 4.75 percent.

(b) *Secondary credit.* The interest rate at each Federal Reserve Bank for secondary credit provided to depository institutions under § 201.4(b) is 5.25 percent.

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2024–26990 Filed 11–19–24; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Docket No. R–1847]

RIN 7100 AG 87

Regulation D: Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (''Board'') has adopted final amendments to its Regulation D to revise the rate of interest paid on balances (''IORB'') maintained at Federal Reserve Banks by or on behalf of eligible institutions. The final amendments specify that IORB is 4.65 percent, a 0.25 percentage point decrease from its prior level. The amendment is intended to enhance the role of IORB in maintaining the federal funds rate in the target range established by the Federal Open Market Committee (''FOMC'' or ''Committee'').

DATES:

Effective date: This rule is effective November 20, 2024.

Applicability date: The IORB rate change was applicable on November 8, 2024.

FOR FURTHER INFORMATION CONTACT: M. Benjamin Snodgrass, Senior Counsel (202–263–4877), Legal Division, or Nicole Trachman, Financial Institution & Policy Analyst (202–973–5055); for users of telephone systems via text telephone (TTY) or any TTY-based Telecommunications Relay Services, please call 711 from any telephone, anywhere in the United States; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

For monetary policy purposes, section 19 of the Federal Reserve Act (''Act'') imposes reserve requirements on certain types of deposits and other liabilities of depository institutions.[1] Regulation D,

[1] 5 U.S.C. 551 *et seq.*

[2] 5 U.S.C. 553(b)(3)(A).

[3] 5 U.S.C. 553(d).

[4] 5 U.S.C. 553(a)(2).

[5] 5 U.S.C. 603, 604.

[6] 44 U.S.C. 3506; *see* 5 CFR part 1320, appendix A.1.

[3] The primary, secondary, and seasonal credit rates described in this section apply to both advances and discounts made under the primary, secondary, and seasonal credit programs, respectively.

[1] 12 U.S.C. 461(b). In March 2020, the Board set all reserve requirement ratios to zero percent. See Interim Final Rule, 85 FR 16525 (Mar. 24, 2020); Final Rule, 86 FR 8853 (Feb. 10, 2021).

which implements section 19 of the Act, requires that a depository institution meet reserve requirements by holding cash in its vault, or if vault cash is insufficient, by maintaining a balance in an account at a Federal Reserve Bank (''Reserve Bank'').[2] Section 19 also provides that balances maintained by or on behalf of certain institutions in an account at a Reserve Bank may receive earnings to be paid by the Reserve Bank at least once each quarter, at a rate or rates not to exceed the general level of short-term interest rates.[3] Institutions that are eligible to receive earnings on their balances held at Reserve Banks (''eligible institutions'') include depository institutions and certain other institutions.[4] Section 19 also provides that the Board may prescribe regulations concerning the payment of earnings on balances at a Reserve Bank.[5] Prior to these amendments, Regulation D established IORB at 4.9 percent.[6]

II. Amendment to IORB

The Board is amending § 204.10(b)(1) of Regulation D to establish IORB at 4.65 percent. The amendment represents a 0.25 percentage point decrease in IORB. This decision was announced on November 7, 2024, with an effective date of November 8, 2024, in the Federal Reserve Implementation Note that accompanied the FOMC's statement on November 7, 2024. The FOMC statement stated that the Committee decided to lower the target range for the federal funds rate to 4½ to 4¾ percent.

The Federal Reserve Implementation Note stated:

> The Board of Governors of the Federal Reserve System voted unanimously to lower the interest rate paid on reserve balances to 4.65 percent, effective November 8, 2024.

As a result, the Board is amending § 204.10(b)(1) of Regulation D to establish IORB at 4.65 percent.

III. Administrative Procedure Act

In general, the Administrative Procedure Act (''APA'')[7] imposes three principal requirements when an agency promulgates legislative rules (rules made pursuant to Congressionally-delegated authority): (1) publication with adequate notice of a proposed rule; (2) followed by a meaningful opportunity for the public to comment on the rule's content; and (3) publication of the final rule not less than 30 days before its effective date. The APA provides that notice and comment procedures do not apply if the agency for good cause finds them to be ''unnecessary, impracticable, or contrary to the public interest.''[8] Section 553(d) of the APA also provides that publication at least 30 days prior to a rule's effective date is not required for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) a rule for which the agency finds good cause for shortened notice and publishes its reasoning with the rule.[9]

The Board has determined that good cause exists for finding that the notice, public comment, and delayed effective date provisions of the APA are unnecessary, impracticable, or contrary to the public interest with respect to these final amendments to Regulation D. The rate change for IORB that is reflected in the final amendment to Regulation D was made with a view towards accommodating commerce and business and with regard to their bearing upon the general credit situation of the country. Notice and public comment would prevent the Board's action from being effective as promptly as necessary in the public interest and would not otherwise serve any useful purpose. Notice, public comment, and a delayed effective date would create uncertainty about the finality and effectiveness of the Board's action and undermine the effectiveness of that action. Accordingly, the Board has determined that good cause exists to dispense with the notice, public comment, and delayed effective date procedures of the APA with respect to this final amendment to Regulation D.

IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[10] As noted previously, the Board has determined that it is unnecessary and contrary to the public interest to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (''PRA'') of 1995,[11] the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no requirements subject to the PRA.

List of Subjects in 12 CFR Part 204

Banks, Banking, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 461, 601, 611, and 3105.

■ 2. Section 204.10 is amended by revising paragraph (b)(1) to read as follows:

§ 204.10 Payment of interest on balances.

* * * * *

(b) * * *

(1) For balances maintained in an eligible institution's master account, interest is the amount equal to the interest on reserve balances rate (''IORB rate'') on a day multiplied by the total balances maintained on that day. The IORB rate is 4.65 percent.

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2024–26991 Filed 11–19–24; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1848]

RIN 7100–AG 88

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to reflect the annual indexing of the reserve requirement exemption amount and the low reserve tranche for 2025. The annual indexation of these amounts is required notwithstanding the Board's action in March 2020 of setting all

[2] 12 CFR 204.5(a)(1).

[3] 12 U.S.C. 461(b)(1)(A) and (b)(12)(A).

[4] See 12 U.S.C. 461(b)(1)(A) & (b)(12)(C); *see* also 12 CFR 204.2(y).

[5] See 12 U.S.C. 461(b)(12)(B).

[6] See 12 CFR 204.10(b)(1).

[7] 5 U.S.C. 551 *et seq.*

[8] 5 U.S.C. 553(b)(3)(A).

[9] 5 U.S.C. 553(d).

[10] 5 U.S.C. 603, 604.

[11] 44 U.S.C. 3506; *see* 5 CFR part 1320 Appendix A.1.

reserve requirement ratios to zero. The Board is amending Regulation D to set the reserve requirement exemption amount at $37.8 million (increased from $36.1 million in 2024) and the amount of the low reserve tranche at $645.8 million (increased from $644.0 million in 2024). The adjustments to both of these amounts are derived using statutory formulas specified in the Federal Reserve Act (the ''Act''). The annual indexation of the reserve requirement exemption amount and low reserve tranche is required by statute but will not affect depository institutions' reserve requirements, which will remain zero.

DATES:

Effective date: December 20, 2024.

Compliance date: The new exemption amount and low reserve tranche will apply beginning January 1, 2025.

FOR FURTHER INFORMATION CONTACT: Benjamin Snodgrass, Senior Counsel (202/263–4877), Legal Division; Kristen Payne, Lead Financial Institution and Policy Analyst (202/306–9573), Division of Monetary Affairs; for users of TTY/TRS, please call 711 from any telephone, anywhere in the United States, or (202/263–4869); Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations, for the purpose of implementing monetary policy. The Board's actions with respect to this provision are discussed below.

I. Reserve Requirements

Section 19(b) of the Act authorizes different ranges of reserve requirement ratios depending on the amount of transaction account balances at a depository institution. Section 19(b)(11)(A) of the Act (12 U.S.C. 461(b)(11)(A)) provides that a zero percent reserve requirement ratio shall apply at each depository institution to total reservable liabilities that do not exceed a certain amount, known as the reserve requirement exemption amount. Section 19(b)(11)(B) provides that, before December 31 of each year, the Board shall issue a regulation adjusting the reserve requirement exemption amount for the next calendar year if total reservable liabilities held at all depository institutions increase from one year to the next. The Act requires the percentage increase in the reserve requirement exemption amount to be 80 percent of the percentage increase in total reservable liabilities of all depository institutions over the one-year period that ends on the June 30 prior to the adjustment. No adjustment is made to the reserve requirement exemption amount if total reservable liabilities held at all depository institutions should decrease during the applicable time period.

Total reservable liabilities of all depository institutions increased by 5.7 percent, from $19,079 billion to $20,172 billion, between June 30, 2023, and June 30, 2024.[1] Accordingly, the Board is amending Regulation D to set the reserve requirement exemption amount for 2025 at $37.8 million, an increase of $1.7 million from its level in 2024.[2]

Pursuant to Section 19(b)(2) of the Act (12 U.S.C. 461(b)(2)), transaction account balances maintained at each depository institution over the reserve requirement exemption amount and up to a certain amount, known as the low reserve tranche, may be subject to a reserve requirement ratio of not more than 3 percent (and which may be zero). Transaction account balances over the low reserve tranche may be subject to a reserve requirement ratio of not more than 14 percent (and which may be zero). Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting the low reserve tranche for the next calendar year. The Act requires the adjustment in the low reserve tranche to be 80 percent of the percentage increase or decrease in total transaction accounts of all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Net transaction accounts of all depository institutions increased 0.3 percent, from $16,048 billion to $16,102 billion, between June 30, 2023, and June 30, 2024.[3] Accordingly, the Board is amending Regulation D to set the low reserve tranche for net transaction accounts for 2025 at $645.8 million, an increase of $1.8 million from 2024.

The new reserve requirement exemption amount and low reserve tranche will be effective for all depository institutions beginning January 1, 2025.

[1] The June 30th value for 2023 may differ from the value used in the previous year's calculation because depository institutions may revise their deposit data to correct for inaccuracies.

[2] Consistent with Board practice, the low reserve tranche and reserve requirement exemption amounts have been rounded to the nearest $0.1 million.

[3] The June 30th value for 2023 may differ from the value used in the previous year's calculation because depository institutions may revise their deposit data to correct for inaccuracies.

Effective March 26, 2020, the Board reduced reserve requirement ratios on all net transaction accounts to zero percent, eliminating reserve requirements for all depository institutions. The annual indexation of the reserve requirement exemption amount and the low reserve tranche for 2025 is required by statute but will not affect depository institutions' reserve requirements, which will remain zero.

II. Regulatory Analysis

Administrative Procedure Act

The provisions of 5 U.S.C. 553(b) relating to notice of proposed rulemaking have not been followed in connection with the adoption of these amendments. The amendments involve expected, ministerial adjustments prescribed by statute and by the Board's policy concerning reporting practices. The adjustments in the reserve requirement exemption amount and the low reserve tranche serve to reduce regulatory burdens on depository institutions. Accordingly, the Board finds good cause for determining, and so determines, that notice in accordance with 5 U.S.C. 553(b) is unnecessary.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[4] As noted previously, the Board has determined that it is unnecessary to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[5] the Board reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 204

Banks, Banking, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

[4] 5 U.S.C. 603 and 604.

[5] 44 U.S.C. 3506; 5 CFR 1320.

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 461, 601, 611, and 3105.

■ 2. Section 204.4 is amended by revising paragraph (f) to read as follows:

§ 204.4 Computation of required reserves.

* * * * *

(f) For all depository institutions, Edge and Agreement corporations, and United States branches and agencies of foreign banks, required reserves are computed by applying the reserve requirement ratios in table 1 to this paragraph (f) to net transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities of the institution during the computation period.

TABLE 1 TO PARAGRAPH (f)

Reservable liability	Reserve requirement
Net Transaction Accounts:	
$0 to reserve requirement exemption amount ($37.8 million)	0 percent of amount.
Over reserve requirement exemption amount ($37.8 million) and up to low reserve tranche ($645.8 million).	0 percent of amount.
Over low reserve tranche ($645.8 million)	$0 plus 0 percent of amount over $645.8 million.
Nonpersonal time deposits	0 percent.
Eurocurrency liabilities	0 percent.

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Monetary Affairs under delegated authority, November 12, 2024.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2024–26981 Filed 11–19–24; 8:45 am]

BILLING CODE 6210–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

RIN 3245–AI20

Disaster Assistance Loan Program Updates

AGENCY: U.S. Small Business Administration.

ACTION: Direct final rule.

SUMMARY: This direct final rule amends the U.S. Small Business Administration's (SBA or Agency) regulations governing the SBA Disaster Loan Program by revising the definition of contiguous counties, clarifying the timeline for a governor's request to be delivered to an SBA Disaster Assistance Field Operations Center, and modernizing language for clarity and consistency.

DATES:

Effective date: This final rule is effective January 21, 2025 without further action. If significant adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

Applicability date: This rule is applicable for disasters declared on or after January 21, 2025.

Comment date: Comments must be received on or before December 20, 2024.

ADDRESSES: You may submit comments, identified by docket number SBA–2024–0015 through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please send an email to Eric Wall at *eric.wall@sba.gov* and highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. All other comments must be submitted through the Federal eRulemaking Portal described above. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Eric Wall, Office of Disaster Recovery and Resilience, 409 3rd St. SW, Washington, DC 20416, (202) 205–6739.

SUPPLEMENTARY INFORMATION:

I. Background

The SBA's Disaster Loan Program provides critical assistance to communities after a disaster. Pursuant to Section 7(b) of the Small Business Act, 15 U.S.C. 636(b) (the Act), the SBA is authorized to make direct loans to homeowners, renters, businesses, and non-profit organizations that have been adversely affected by a disaster. Also pursuant to the Act, the SBA may declare an Agency disaster in areas demonstrating substantial physical or economic damage because of natural or other disasters.

With natural disasters increasing in size, severity, and frequency across the United States and its territories, SBA is expanding the definition of contiguous counties, clarifying certain aspects of disaster declaration requests, and simplifying language to ensure consistency.

SBA believes these changes are necessary to:

- Increase efficiencies in the administration and delivery of the disaster loan program to better achieve mission and improve outcomes for economic recovery,
- Recognize the unique economic circumstances of island chains,
- Clarify the timeline for Governor submissions of disaster requests, and
- Ensure consistency and clarity of language within SBA guidance documents.

II. Description of Regulatory Changes

SBA is amending the language in 13 CFR 123.2 (What are disaster loans and disaster declarations?), 123.3 (How are disaster declarations made?), and 123.4 (What is a disaster area and why is it important?) to update the language from ''disaster victims'' to ''disaster survivors.'' This update will modernize the language in the CFR to reflect the strength of those who have survived a disaster. The change will also align the regulations with the terminology currently used by the SBA Disaster Loan Program.

SBA is amending 13 CFR 123.2 to subdivide the paragraph into two separate paragraphs. This technical change separates the definition of disaster loans and disaster declarations into a format easier to comprehend.

SBA is amending the first sentence in 13 CFR 123.3(a)(3)(i), How are disaster declarations made?, to replace the word U.S. possession with ''territory'' to

ensure the language is updated with current use and meaning. SBA is also eliminating the word possession in § 123.2(a)(6).

SBA is amending 13 CFR 123.3(a)(3)(iii), How are disaster declarations made?, to include the Chief Executive of an Indian tribal government as an authority that can request an SBA physical disaster declaration. This change clarifies what is already permitted, correcting the previous oversight and aligning with current practice.

SBA is amending the regulatory language in 13 CFR 123.3(a)(5), How are disaster declarations made?, to ensure the language is consistent with the current language in 13 CFR 123.3(a)(3)(iii). This change grants SBA the flexibility to extend the timeframe for submitting declaration requests to the Field Operations Center serving the jurisdiction.

SBA is amending the regulatory definition of ''contiguous counties'' in 13 CFR 123.4, What is a disaster area and why is it important?, to increase the mileage between counties geographically separated by a minor body of water from one mile to five miles. The geographic separation between counties is being extended to encompass those counties that are separated by minor bodies of water but that have physical and economic connections and commerce needs with the primary county. SBA reviewed disaster areas separated by water and determined that the current one-mile limit is too restrictive. Increasing the geographic separation between counties to 5 miles will enable disaster assistance to reach a broader area. The additional mileage removes the barriers created by wide rivers, such as the Arkansas, Colorado, Columbia, Mississippi, Missouri, Neuse, Ohio, Platte, Red, St. Lawrence, Susquehanna, Tennessee, and Yellowstone rivers. This increase also removes the barriers created by other bodies of water such as smaller lakes and bays.

This rule also revises the definition of ''contiguous'' to state that individual islands of geographically isolated island chains are contiguous to each other. These islands are unique, because they are isolated from the mainland and other direct commerce hubs. The revised definition states that contiguous island chains include, but are not limited to, Hawai'i, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. Under the current regulation, these islands are not considered contiguous to each other because the separation between them is more than one mile. However, all of the counties within these island chains are economically reliant on each other for trade and commerce and all are affected by a disaster that impacts one particular island/county.

III. Justification for Direct Final Rule

In general, SBA publishes a rule for public comment before issuing a final rule in accordance with the Administrative Procedure Act. 5 U.S.C. 553. The Administrative Procedure Act provides an exception to this standard rulemaking process, however, where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Agencies typically utilize direct final rulemakings for routine, non-controversial regulatory actions that are unlikely to receive adverse comments. In direct final rulemaking, an agency publishes a final rule with a statement that the rule will go into effect unless the agency receives significant adverse comment within a specified period. Significant adverse comments are comments that provide strong justifications why the rule should not be adopted or for changing the rule. If the agency receives no significant adverse comment in response to the direct final rule, the rule will go into effect without further action. If the agency receives significant adverse comment, the agency will withdraw the direct final rule and may instead issue a proposed rulemaking. SBA has determined that the regulatory changes addressed in this direct final rulemaking are routine, non-controversial, and not likely to result in significant adverse comments.

Compliance With Executive Orders 12866, 12988, 13132, 13175, 13563, 14094 the Congressional Review Act (5 U.S.C. 801–808), Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Orders 12866, 13563 and 14094

SBA is issuing this direct final rulemaking in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. The Office of Management and Budget has determined that this rule does not constitute a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. SBA has developed this rule in a manner consistent with these requirements and thoroughly examined the costs and benefits as well as availability of regulatory alternatives associated with its implementation.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have preemptive effect or retroactive effect.

Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. As such it does not warrant the preparation of a federalism assessment.

Executive Order 13175

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, on the distribution of power and responsibilities between the Federal Government and Indian Tribes and no substantial direct compliance costs on Indian Tribal governments nor any rules with Tribal implications that preempts Tribal law.

Congressional Review Act

This rule has been determined not to meet the criteria set forth in 5 U.S.C. 804(2). SBA will submit the rule to Congress and the Government Accountability Office consistent with

the Congressional Review Act's requirements.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

SBA has determined that this rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

Regulatory Flexibility Act, 5 U.S.C. 601

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, such as when—among other exceptions—the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. SBA Office of Advocacy Guide: How to Comply with the Regulatory Flexibility Act, Ch.1. p.9. Since this rule is exempt from notice and comment, SBA is not required to conduct a regulatory flexibility analysis.

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan mitigation, Loan programs—physical disaster (home, business) and economic injury disaster (business).

For the reasons set forth in the preamble, the SBA amends 13 CFR part 123 as follows:

PART 123—DISASTER LOAN PROGRAM

■ 1. The authority citation for part 123 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 636(d), 657n, and 9009.

■ 2. Revise § 123.2 to read as follows:

§ 123.2 What are disaster loans and disaster declarations?

(a) SBA offers low interest, fixed rate loans to disaster survivors, enabling them to repair or replace property damaged or destroyed in declared disasters. It also offers such loans to affected small businesses to help them recover from economic injury caused by such disasters. SBA also offers interim guaranteed disaster loans, in participation with financial institutions, to affected small businesses (''IDAP loans'').

(b) Disaster declarations are official notices recognizing that specific geographic areas have been damaged by floods and other acts of nature, riots, civil disorders, or industrial accidents such as oil spills. These disasters are sudden events which cause severe physical damage, and do not include slower physical occurrences such as shoreline erosion or gradual land settling. However, for purposes of economic injury disaster loans only, they do include droughts and below average water levels in the Great Lakes or on any body of water in the United States that supports commerce by small businesses. Sudden events that cause substantial economic injury may be disasters even if they do not cause physical damage to a survivor's property. Past examples include ocean conditions causing significant displacement (major ocean currents) or closure (toxic algae blooms) of customary fishing waters, as well as contamination of food or other products for human consumption from unforeseeable and unintended events beyond the control of the survivors.

■ 3. Amend § 123.3 by revising (a)(3)(i) and (iii), (a)(5), (a)(6) introductory text, and (b) to read as follows:

§ 123.3 How are disaster declarations made?

(a) * * *

(3) * * *

(i) In any county or other smaller political subdivision of a State or U.S. territory, at least 25 homes or 25 businesses, or a combination of at least 25 homes, businesses, or other eligible institutions, each sustain uninsured losses of 40 percent or more of the estimated fair replacement value or pre-disaster fair market value of the damaged property, whichever is lower; or

* * * * *

(iii) The Governor of the State or the Chief Executive of the Indian Tribal government in which the disaster occurred submits a written request to SBA for a physical disaster declaration by SBA. This request should be delivered to the Disaster Assistance Field Operations Center serving the jurisdiction within 60 days of the date of the disaster.

* * * * *

(5) SBA makes an economic injury declaration in reliance on a state certification that at least five small business concerns in a disaster area have suffered substantial economic injury as a result of the disaster and are in need of financial assistance not otherwise available on reasonable terms. The state certification must be signed by the Governor, must specify the county or counties or other political subdivision in which the disaster occurred, and should be delivered (with supporting documentation) to the Disaster Assistance Field Operations Center serving the jurisdiction within 120 days of the disaster occurrence. When a Governor certifies with respect to a drought or to below average water levels, the supporting documentation must include findings which show that conditions during the incident period meet or exceed the U.S. Drought Monitor (USDM) standard of ''severe'' (Intensity level D–2 to D–4). The USDM may be found at *https://droughtmonitor.unl.edu/*. With respect to below average water levels, the supplementary information accompanying the certification must include findings which establish long-term average water levels based on recorded historical data, show that current water levels are below long-term average levels, and demonstrate that economic injury has occurred as a direct result of the low water levels. Not later than 30 days after SBA receives a certification by a Governor, it shall respond in writing with its decision and its reasons.

(6) SBA makes a physical disaster declaration in a rural area (rural disaster declaration) upon request from the Governor of the State or the Chief Executive of the Indian Tribal government in which the rural area is located. Rural area means any county or other political subdivision of a State, the District of Columbia, or a territory of the United States that is designated as a rural area by the Bureau of the Census. The following conditions must be met:

* * * * *

(b) SBA publishes notice of any disaster declaration in the **Federal Register**. The published notice will identify the kinds of assistance available, the date and nature of the disaster, and the deadline and location for filing loan applications. Additionally, SBA will use the local media to inform potential loan applicants where to obtain loan applications and otherwise to assist disaster survivors in applying for disaster loans. SBA will accept applications after the announced deadline only when SBA determines that the late filing resulted from substantial causes beyond the control of the applicant.

■ 4. Revise § 123.4 to read as follows:

§ 123.4 What is a disaster area and why is it important?

Each disaster declaration defines the geographical areas affected by the

disaster. Only those survivors located in the declared disaster area are eligible to apply for SBA disaster loans. When the President declares a major disaster, the Federal Emergency Management Agency defines the disaster area. In major disasters, economic injury disaster loans and IDAP loans may be made for survivors in contiguous counties or other political subdivisions, provided, however that with respect to major disasters which authorize public assistance only, SBA shall not make economic injury disaster or IDAP loans in counties contiguous to the disaster area. Except for rural disaster declarations (as defined in § 123.3), disaster declarations issued by SBA include contiguous counties for both physical, economic injury and, in some cases IDAP assistance. Rural disaster declarations do not include assistance for contiguous counties. Contiguous counties or other political subdivisions are those land areas which abut the land area of the declared disaster area without geographic separation other than by a minor body of water, not to exceed five miles between the land areas of such counties. The individual islands of geographically isolated island chains, including Hawai'i, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands, are also designated as contiguous to each other. When SBA issues an economic injury disaster declaration in response to a determination of an emergency involving Federal primary responsibility by the President, the disaster area shall include each State or subdivision thereof (including counties) included in the President's emergency determination.

■ 5. Revise § 123.503 to read as follows:

§ 123.503 When can you apply for a Military Reservist EIDL?

Your small business can apply for a Military Reservist EIDL any time beginning on the date the essential employee receives notice of expected call-up and ending one year after the date the essential employee is discharged or released from active service. The Associate Administrator for the Office of Disaster Recovery and Resilience (AA/ODR&R) or designee may extend the one-year limit by no more than one additional year after finding extraordinary or unforeseeable circumstances.

Isabella Casillas Guzman,

Administrator.

[FR Doc. 2024–27028 Filed 11–19–24; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. FAA–2024–2164; Special Conditions No. 33–025–SC]

Special Conditions: Pratt and Whitney Canada Model PW220A Engine; 30-Minute All Engine Operating Power Rating

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Pratt and Whitney Canada (P&WC) Model PW220A engine. This engine will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for aircraft engines. This design feature is a 30-minute all engine operating (AEO) power rating. This rating will be used for hovering at increased power for search and rescue missions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on P&WC on November 20, 2024. Send comments on or before January 6, 2025.

ADDRESSES: Send comments identified by Docket No. FAA–2024–2164 using any of the following methods:

- *Federal eRegulations Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

FOR FURTHER INFORMATION CONTACT: Alberto Hernandez, Engine and Propulsion Section, AIR–625, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 107 Charles W. Grant Parkway, Atlanta, GA 30354; telephone (781) 238–7329; email *alberto.j.hernandez@faa.gov.*

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA finds, pursuant to title 14, Code of Federal Regulations (14 CFR) 11.38(b), that new comments are unlikely, and notice and comment prior to this publication are unnecessary.

Privacy

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

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to these special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and the indicated comments will not be placed in the public docket of these special conditions. Send submissions containing CBI to the individual listed in the For Further Information Contact section above. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the

public docket for these special conditions.

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

Background

On November 16, 2021, P&WC applied for a type certificate for its new Model PW220A engine. The Model PW220A engine is a new centerline free-turbine turboshaft engine design intended to be used on transport category twin-engine helicopters. The engine architecture is a split compression system that incorporates the latest generation design methodology of a high-pressure ratio compressor, providing significant improvements in specific fuel consumption (SFC) and power.

A single low pressure compressor (LPC) is driven by a two-stage uncooled power turbine, which also provides mechanical power through an output shaft to the helicopter rotor system. The high pressure compressor (HPC) is a two-stage compressor system driven by a single-stage cooled high pressure turbine (HPT).

Type Certification Basis

Under the provisions of 14 CFR 21.17, P&WC must show that the Model PW220A engine meets the applicable provisions of part 33, dated February 1, 1965, as amended by amendments 33–1 through 33–34.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 33) do not contain adequate or appropriate safety standards for the P&WC Model PW220A engine because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

The FAA issues special conditions, as defined in § 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Feature

The P&WC Model PW220A engine will incorporate the following novel or unusual design feature:

A 30-minute all engine operating (AEO) power rating.

Discussion

The type certification basis for the Model PW220A engine does not contain adequate or appropriate airworthiness standards to address a 30-minute AEO power rating. Therefore, special conditions are necessary to provide additional requirements for rating definition, instructions for continued airworthiness (ICA), and endurance testing.

The 30-minute time limit applies to each instance the rating is used; however, there is no limit to the number of times the rating can be used during any one flight, and there is no cumulative time limitation. The ICA requirement in these special conditions is intended to address the unknown nature of actual usage of the 30-minute AEO power rating and any associated engine deterioration. The applicant is expected to make an assessment of the expected usage and publish ICA's and airworthiness limitations section (ALS) limits in accordance with those assumptions, such that engine deterioration is not excessive. The endurance test requirement of 25 hours of operation at a 30-minute AEO rating is similar to several special conditions issued over the past 20 years addressing the same subject. Because the PWC Model PW220A turboshaft engine has a continuous one engine inoperative (OEI) rating and limits equal to or higher than the 30-minute AEO rating, the test time performed at the continuous OEI rating may be credited toward the 25-hour requirement. However, test time spent at other rating elements of the § 33.87 endurance test, such as takeoff or other OEI ratings (that may be equal to or higher values), may not be counted toward the 25 hours of required running. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the P&WC Model PW220A engine. Should PW&C apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one engine model. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 33

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, and 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Pratt and Whitney Canada Model PW220A engine.

In addition to the general definitions in 14 CFR 1.1, the following definition applies to these special conditions: ''Rated 30-Minute All Engine Operating (AEO) Power,'' means the approved shaft horsepower developed under static conditions at the specified altitude and temperature, and within the operating limitations established under part 33, and limited in use to periods not exceeding 30-minutes each.

In addition to the airworthiness standards in part 33, the following special conditions apply:

(a) Sections 33.1 Applicability and 33.3 General: As applicable, all documentation, testing, and analysis required to comply with the part 33 certification basis, must account for the 30-minute AEO rating, limits, and usage.

(b) Section 33.4, Instructions for Continued Airworthiness (ICA). In addition to the requirements of § 33.4, the ICA must:

(1) Include instructions to ensure that in-service engine deterioration due to rated 30-minute AEO power usage will not be excessive, meaning that all other approved ratings are available within associated limits and assumed usage, for successive flights; and that deterioration will not exceed that assumed for declaring a time between overhaul (TBO) period.

(i) The applicant must validate the adequacy of the maintenance actions required under paragraph (b)(1) above.

(2) Include in the airworthiness limitations section (ALS), any mandatory inspections and serviceability limits related to the use of the 30-minute AEO rating.

(c) Section 33.87, Endurance Test. In addition to the requirements of §§ 33.87(a) and 33.87(d), the overall test run must include a minimum of 25 hours of operation at 30-minute AEO power and limits, divided into periods of 30-minutes AEO power with alternate periods at maximum continuous power or less.

(1) Modification of the § 33.87 test requirements to include the 25 hours of operation at 30-minute AEO power rating must be proposed by the Applicant and accepted by the FAA.

(2) Each § 33.87(d) continuous one-engine-inoperative (OEI) rating test period of 30-minutes or longer, run at power and limits equal to or higher than the 30-minutes AEO rating, may be credited toward this requirement. Note that the test time required for the takeoff or other OEI ratings may not be counted toward the 25 hours of operation required at the 30-minute AEO rating.

Issued in Seattle, Washington, on November 13, 2024.

Paul R. Siegmund,

Acting Manager, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2024–27041 Filed 11–19–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–2426; Project Identifier MCAI–2024–00625–T; Amendment 39–22886; AD 2024–23–07]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Embraer S.A. Model EMB–545 and EMB–550 airplanes. This AD was prompted by reports of corrosion, damage, and rupture on the down lock spring assemblies of the main landing gear (MLG) and nose landing gear (NLG). This AD requires inspecting for affected MLG and NLG down lock springs and replacing affected down lock springs, and prohibits the installation of affected parts, as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 20, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 20, 2024.

The FAA must receive comments on this AD by January 6, 2025.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–2426; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For ANAC material identified in this AD, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br;* website *anac.gov.br/en/.* You may find this material on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2024–2426.

FOR FURTHER INFORMATION CONTACT: Hassan Ibrahim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3653; email *Hassan.M.Ibrahim@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2024–2426; Project Identifier MCAI–2024–00625–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Hassan Ibrahim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3653; email *Hassan.M.Ibrahim@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

ANAC, which is the aviation authority for Brazil, has issued ANAC Emergency AD 2024–10–02, effective October 21, 2024 (ANAC Emergency AD

2024–10–02) (also referred to as the MCAI), to correct an unsafe condition for certain Model Embraer S.A. Model EMB–545 and EMB–550 airplanes. The MCAI states that corrosion, damage, and rupture have been found on down lock spring assemblies of the MLG and NLG, which, under specific load conditions on the ground, may compromise the locking and holding of the MLG and NLG in their correct kinematics positions. Failure of these down lock springs could cause a non-annunciated loss of down locking capability, which may collapse the MLG and the NLG structure during takeoff or landing.

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

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–2426.

Material Incorporated by Reference Under 1 CFR Part 51

ANAC Emergency AD 2024–10–02 specifies procedures for a general visual inspection for affected MLG and NLG down lock springs, and replacement of affected down lock springs. ANAC Emergency AD 2024–10–02 also prohibits the installation of affected down lock springs. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in ANAC Emergency AD 2024–10–02 described previously, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, ANAC Emergency AD 2024–10–02 is incorporated by reference in this AD. This AD requires compliance with ANAC Emergency AD 2024–10–02 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Material required by ANAC Emergency AD 2024–10–02 for compliance will be available at *regulations.gov* under Docket No. FAA–2024–2426 after this AD is published.

Interim Action

The FAA considers that this AD is an interim action. If final action is later identified, the FAA might consider further rulemaking then.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than 30 days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because failure of the MLG and NLG down lock spring assemblies could cause a non-annunciated loss of down locking capability, which may collapse the MLG and the NLG structure during takeoff or landing. The compliance time in this AD is shorter than the time necessary for the public to comment and for publication of the final rule. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

Regulatory Flexibility Act (RFA)

The requirements of the RFA do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 55 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 17 work-hours × $85 per hour = $1,445	Up to $4,379	Up to $5,824	Up to $320,320.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–23–07 Embraer S.A.: Amendment 39–22886; Docket No. FAA–2024–2426; Project Identifier MCAI–2024–00625–T.

(a) Effective Date

This airworthiness directive (AD) is effective November 20, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Embraer S.A. Model EMB–545 and EMB–550 airplanes, certificated in any category, as identified in Agência Nacional de Aviação Civil (ANAC) Emergency AD 2024–10–02, effective October 21, 2024 (ANAC Emergency AD 2024–10–02).

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Unsafe Condition

This AD was prompted by reports of corrosion, damage, and rupture on the down lock spring assemblies of the main landing gear (MLG) and nose landing gear (NLG), which, under specific load conditions on the ground, may compromise the locking and holding of the MLG and NLG in their correct kinematics positions. The FAA is issuing this AD to prevent failure of these down lock springs, which could cause a non-annunciated loss of down locking capability and result in collapse of the MLG and the NLG structure during takeoff or landing.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, ANAC Emergency AD 2024–10–02.

(h) Exceptions to ANAC Emergency AD 2024–10–02

(1) Where ANAC Emergency AD 2024–10–02 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where Note 1 of ANAC Emergency AD 2024–10–02 defines a non-affected part 1 as ''an airworthy part according to the applicable requirements and is not an affected part according to the (a)(1) paragraph of this EAD,'' for this AD replace that text with ''an airworthy part that is not an affected part according to paragraph (a)(1) of this EAD.''

(3) Where Note 2 of ANAC Emergency AD 2024–10–02 defines a non-affected part 2 as ''an airworthy part according to the applicable requirements and is not an affected part according to the (a)(2) paragraph of this EAD,'' for this AD replace that text with ''an airworthy part that is not an affected part according to paragraph (a)(2) of this EAD.''

(4) This AD does not adopt paragraph (g) of ANAC Emergency AD 2024–10–02.

(i) Returning Parts Not Required

Although the material referenced in ANAC Emergency AD 2024–10–02 specifies to send removed parts to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or ANAC; or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(k) Additional Information

For more information about this AD, contact Hassan Ibrahim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3653; email *Hassan.M.Ibrahim@faa.gov.*

(l) Material Incorporated by Reference

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

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

(3) The following material was approved for IBR on November 20, 2024.

(i) Agência Nacional de Aviação Civil (ANAC) Emergency AD 2024–10–02, effective October 21, 2024.

(ii) [Reserved]

(4) For ANAC material identified in this AD, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email: *pac@anac.gov.br;* website *anac.gov.br/en/.* You may find this material on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp.*

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

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

Issued on November 12, 2024.

Victor Wicklund,

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

[FR Doc. 2024–27254 Filed 11–18–24; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

Construction-Related Scheduling Relief Concerning Operations at Newark Liberty International Airport, Chicago O'Hare International Airport, Los Angeles International Airport, San Francisco International Airport, and Ronald Reagan Washington National Airport, March 1, 2025 Through June 15, 2025, and September 1, 2025, Through December 31, 2025

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Notification of limited waiver of slot usage requirement and limited scheduling relief.

SUMMARY: This notification announces a limited, conditional policy for prioritizing returned operations at Newark Liberty International Airport (EWR) due to a construction-related runway closure at EWR for purposes of establishing a carrier's operational baseline in the next corresponding scheduling seasons. A ''returned operation'' is any planned operation included in the initially approved schedules that a carrier moved or will not operate due to the effort to reach the targeted reduced schedule throughout the construction period at EWR. In addition, the FAA will provide similar limited, conditional relief at Chicago O'Hare International Airport (ORD), Los Angeles International Airport (LAX), and San Francisco International Airport (SFO) under the FAA's Level 2 schedule facilitation process as well as a limited, conditional waiver of minimum usage requirements at Ronald Reagan Washington National Airport (DCA), for impacted flights between EWR and the listed airports.

DATES: This action is effective November 20, 2024.

ADDRESSES: Requests may be submitted by mail to the Slot Administration Office, System Operations Services, AJR–0, Room 300W, 800 Independence Avenue SW, Washington, DC 20591, or by email to: *7-awa-slotadmin@faa.gov.*

FOR FURTHER INFORMATION CONTACT: For questions concerning this notice contact: Al Meilus, Capacity and Slot Analysis, FAA ATO System Operations Services, AJR–G5, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone 202–267–2822; email *al.meilus@faa.gov.*

SUPPLEMENTARY INFORMATION: This notification provides relief that will enable carriers to reduce operations at EWR without unduly impacting schedules in subsequent seasons during the following runway closure periods:

(1) Weekend closures from March 1, 2025, to April 14, 2025, and September 1, 2025, to December 31, 2025, from Friday at 11:00 p.m. through 5:00 a.m. on Sunday; and

(2) Daily closures from April 15, 2025, to June 15, 2025, for all hours.

Reducing operations will help prevent delays, optimize the efficient use of the airport's available resources, and deliver passengers to their destinations more reliably and on time.

Background

EWR will undergo airside construction projects conducted in several stages from 2024 through 2026 with varying impacts on airport capacity.

Weekend closures of Runway 4L–22R will be scheduled from March 1, 2025, to April 14, 2025, and September 1, 2025, to December 31, 2025, from Friday at 11:00 p.m. through 5:00 a.m. on Sunday.[1]

On April 15, 2025, EWR is scheduled to begin rehabilitation of Runway 4L–22R. This work will cause the continuous closure of Runway 4L–22R for 60 days, to June 15, 2025. Runways 4R–22L and 11–29 will remain operational during this period.

The FAA has designated EWR, ORD, LAX, and SFO, as Level 2 airports under the Worldwide Slot Guidelines (WSG).[2] The FAA does not allocate slots, apply historic precedence, or impose minimum usage requirements at EWR. Level 2 schedule facilitation depends upon close and continuous discussions and voluntary agreement between airlines and the FAA to reduce congestion. At Level 2 airports, the FAA generally provides priority consideration for flights approved by the FAA and operated by the carrier in those approved times in the prior scheduling season when the FAA reviews proposed flights for facilitation in the next corresponding scheduling season. Only those flights that were actually operated as approved in the prior scheduling season would generally receive priority for the next corresponding scheduling season. However, the FAA notes that the usual Level 2 processes include flexibility for the facilitator to prioritize planned flights, which are canceled in advance or on the day of the scheduled operation due to operational impacts that are beyond the control of the carrier.

At DCA, each slot must be used a minimum of 80 percent of the time. At DCA, the FAA will recall any slot not used at least 80 percent of the time over a two-month period. The FAA may waive the 80 percent minimum usage requirement if a highly unusual and unpredictable condition beyond the control of the slot-holding air carrier affects carrier operations for a period of nine consecutive days or more at DCA.[3]

FAA Analysis

The current targeted scheduling limit at EWR is 77 operations per hour with 42 operations per half hour. The targeted maximum number of scheduled arrivals and departures, respectively, is 42 per hour and 23 per half hour daily from 6:00 a.m. to 11:59 p.m. ET.

Due to the volume of flights arriving and departing EWR, the weekend closures from March 1, 2025, to April 14, 2025, and Sepmber 1, 2025, to December 31, 2025, and the daily closure of Runway 4L–22R from April 15, 2025, to June 15, 2025, will significantly affect carriers' ability to operate reliably and on time. Absent increased scheduling flexibility during the construction period, the FAA anticipates a high likelihood of congestion, delays, and cancellations at EWR, with related impact at ORD, LAX, SFO, and DCA. The runway closure is expected to impact carrier operations at EWR in two phases throughout the day for both arrivals and departures. For arrivals, demand is higher from 6:00 a.m. through 2:00 p.m., and lowers slightly from 3:00 p.m. through the end of the day. For departures, demand is higher from 6:00 a.m. through 4:00 p.m., and lowers slightly from 7:00 p.m. through the end of the day.

The FAA modeled two scenarios of the expected delays at EWR for these two phases of the day for arrival and departures respectively: one scenario

[1] Times included in this notice are local time.

[2] The FAA generally applies the WSG to the extent there is no conflict with U.S. law or regulation. The FAA recognizes the WSG has been replaced by the Worldwide Airports Slot Guidelines (WASG) edition 1, effective June 1, 2020, and subsequently WASG edition 2, effective July 1, 2022. The WASG is published jointly by Airports Council International-World, IATA, and the Worldwide Airport Coordinators Group (WWACG). While the FAA is considering whether to implement certain changes to the Guidelines in the United States, it will continue to apply WSG edition 9.

[3] 33 FR 17896 (Dec. 3, 1968). The FAA codified the rules for operating at high-density traffic airports in 14 CFR part 93, subpart K. The HDR requires carriers to hold a reservation, known as a ''slot,'' for each takeoff or landing under instrument flight rules at the high-density traffic airports. Currently, only operations at DCA are limited by the HDR.

without any mitigation measures, and one scenario with arrival limit mitigation measures in place. The mitigation measures incorporate Air Traffic Control (ATC) data used to assess capacity at EWR throughout the construction period. These mitigation measures align with the number of operations that ATC finds to be sustainable during the runway closure, while accounting for the differing demand profiles.

For the scenario without any mitigation measures, the FAA estimates approximately 65% of total arrivals would be delayed by an average of 55.8 minutes per arrival, and 92% of total departures would be delayed by an average of 86.6 minutes per departure. These arrival delays would be unrecoverable throughout the day.

The FAA then modeled a scenario that limited operations to no more than 35 arrivals per hour through 2:00 p.m., and no more than 31 arrivals per hour from 3:00 p.m. to the end of the day. The FAA also modeled operations with no more than 35 departures per hour through 4:00 p.m., and no more than 31 departures per hour from 5:00 p.m. through the end of the day. The FAA arrived at these arrival and departure limits based on analysis of historical data from the previous closure of Runway 4L–22R due to construction in 2014. These numbers reflect the median rates that EWR was able to sustain under the constraint of a runway closure.

With these mitigation measures in place, the FAA estimates that approximately 21% of total arrivals would experience an average delay of about 38 minutes per delayed arrival, or an average of 7.9 minutes of delay per arrival, and approximately 44% of total departures would experience an average delay of about 39.9 minutes per delayed departure, or an average of 17.5 minutes of delay per departure.

The FAA determined that the mitigation measures will balance efficient and timely operations at EWR during the construction period and limit the impact on carrier's scheduled operations for the convenience of the flying public. Although the potential for some delays may still occur in the evening hours, a more stringent hourly targeted limit would result in some airport capacity being under-utilized.

Decision

The FAA has determined that the runway closures at EWR warrant limited, conditional schedule relief because the impacts to operations are beyond the carriers' control and extend throughout 2025. The targeted schedule reductions detailed below apply to both the weekend closures March 1, 2025, to April 14, 2025, and September 1, 2025, to December 31, 2025, and the daily closures from April 15, 2025, through June 15, 2025.

For arrivals, the FAA requests that carriers reduce operations to no more than 35 arrivals per hour from 6:00 a.m. through 2:00 p.m., and no more than 31 arrivals per hour from 3:00 p.m. through the end of the day, without moving operations into the adjacent hours. For departures, the FAA requests that carriers reduce operations to no more than 35 departures per hour from 6:00 a.m. through 4:00 p.m., and no more than 31 departures per hour from 5:00 p.m. through the end of the day. The FAA will not approve any new requested timings during the runway closure period. These targeted scheduling limits are effective from Friday at 11:00 p.m. through 5:00 a.m. on Sunday from March 1, 2025, to April 14, 2025, and September 1, 2025, to December 31, 2025, and continuously from April 15, 2025, through June 15, 2025.

Recognizing that the Summer 2025 Scheduling Season begins on March 30, 2025, the FAA will work with carriers to reduce schedules, if needed, through the transition from the Winter 2024/2025 Scheduling Season to the Summer 2025 Scheduling Season where the runway closures overlap with 2024/2025 Winter schedules.

The FAA is also extending a limited, conditional waiver from minimum usage requirements at DCA for service to and from EWR, and providing similar relief at ORD, LAX and SFO under the Level 2 process for approved schedules to and from EWR. Carriers may also choose to use those slots at DCA, or the approved runway times at ORD, LAX and SFO, for operations to airports other than EWR. If carriers choose to reduce their schedules between EWR–DCA or EWR and other Level 2 airports, the FAA encourages, to the extent practicable, carriers to utilize their slots or approved schedules to operate to other destinations.

Additionally, the FAA understands that terminal-related construction projects and shortened runways are planned at EWR between September 1, 2024, and December 31, 2025. The FAA will continue to work with the Port Authority of New York and New Jersey (PANYNJ) and other stakeholders throughout the various phases of this project. The FAA requests that carriers submit requests for relief associated with the terminal construction separate from this policy on an individual, as-needed basis, for the FAA's consideration. If needed, based on future analyses, the FAA may establish additional schedule reduction periods to accommodate these phases of the construction project.

Finally, the FAA notes that the Staffing-Related Relief is in place from October 27, 2024, through October 25, 2025.[4] This relief cannot be combined with the Staffing-Related Relief.

For the weekend runway closures from March 1, 2025, to April 14, 2025, and September 1, 2025, to December 31, 2025, and the daily runway closures from April 15, 2025, through June 15, 2025, the FAA will recognize priority of approved schedules or the historical precedence of related slots, subject to the following conditions:

(1) Slots or approved schedules for initial use in the Summer 2025 and Winter 2025/2026 scheduling seasons are not eligible for relief.

(2) Slots granted historic precedence for subsequent seasons based on this relief are not eligible for transfer if the slot holder ceases all operations at the airport.

Issued in Washington, DC, on November 13, 2024.

Daniel J. Murphy,

Acting Vice President, System Operations Services.

[FR Doc. 2024–26820 Filed 11–18–24; 11:15 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1226

[Docket No. CPSC–2013–0014]

Safety Standard for Soft Infant and Toddler Carriers

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In March 2014, the U.S. Consumer Product Safety Commission (CPSC or Commission) published a safety standard for soft infant and toddler carriers under section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The standard incorporated by reference ASTM F2236–14, *Standard Consumer Safety Specification for Soft Infant and Toddler Carriers,* the voluntary standard

[4] *Staffing-Related Relief Concerning Operations at Ronald Reagan Washington National Airport, John F. Kennedy International Airport, LaGuardia Airport, and Newark Liberty International Airport, October 27, 2024, through March 29, 2025 (Winter 2024/2025) and March 30, 2025, through October 25, 2025 (Summer 2025).* 89 FR 49256 (June 11, 2024).

for soft infant and toddler carriers that was in effect at the time. ASTM has now issued a revised standard, ASTM F2236–24. Consistent with the CPSIA, this direct final rule updates the mandatory standard to incorporate by reference ASTM's 2024 version of the voluntary standard.

DATES: The rule is effective on February 22, 2025, unless CPSC receives a significant adverse comment by December 20, 2024. If CPSC receives such a comment, it will publish a document in the **Federal Register**, withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of February 22, 2025.

ADDRESSES: You can submit comments, identified by Docket No. CPSC–2013–0014, by any of the following methods:

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

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

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

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2013–0014, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Will Cusey, Small Business Ombudsman, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7945 or (888) 531–9070; email: *sbo@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Authority

Section 104(b)(1) of the CPSIA requires the Commission to assess the effectiveness of voluntary standards for durable infant or toddler products and adopt mandatory standards for these products. 15 U.S.C. 2056a(b)(1). The mandatory standard must be ''substantially the same as'' the voluntary standard, or ''more stringent than'' the voluntary standard if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the product. *Id.*

Section 104(b)(4)(B) of the CPSIA specifies the process for updating the Commission's rules when a voluntary standards organization revises a standard that the Commission incorporated by reference under section 104(b)(1). First, the voluntary standards organization must notify the Commission of the revision. Once the Commission receives this notification, the Commission may reject or accept the revised standard. The Commission may reject the revised standard by notifying the voluntary standards organization, within 90 days of receiving notice of the revision, that it has determined that the revised standard does not improve the safety of the consumer product and that it is retaining the existing standard. If the Commission does not take this action to reject the revised standard, then the revised voluntary standard will be considered a consumer product safety standard issued under section 9 of the Consumer Product Safety Act (CPSA; 15 U.S.C. 2058), effective 180 days after the Commission received notification of the revision or on a later date specified by the Commission in the **Federal Register**. 15 U.S.C. 2056a(b)(4)(B).

B. Safety Standard for Soft Infant and Toddler Carriers

Under section 104(b)(1) of the CPSIA, the Commission published a mandatory standard for soft infant and toddler carriers, codified in 16 CFR part 1226, ''Safety Standard for Soft Infant and Toddler Carriers.'' The rule incorporated by reference the then-current voluntary standard, ASTM F2236–14, *Standard Consumer Safety Specification for Soft Infant and Toddler Carriers,* without alteration. 79 FR 17422 (Mar. 28, 2014). ASTM F2236 applies to soft infant and toddler carriers, defined as ''a product, normally of sewn fabric construction, which is designed to contain a full term infant to a toddler, generally in an upright position, in close proximity to the caregiver.'' The mandatory standard includes performance requirements and test methods, as well as requirements for warning labels and instructions, to address hazards associated with soft infant and toddler carriers.

After the Commission adopted the mandatory standard in 2014, ASTM approved two more revisions: ASTM F2236–16 and ASTM F2236–16a. However, ASTM did not notify CPSC of these revisions under CPSIA section 104(b)(4)(B). Consequently, the Commission did not update its mandatory standard to incorporate by reference either of these revised ASTM standards.

In July 2024, ASTM approved another revision to the voluntary standard for soft infant and toddler carriers, ASTM F2236–24. On August 26, 2024, ASTM notified CPSC of the revision. On September 10, 2024, the Commission published in the **Federal Register** a notice of availability of the revised voluntary standard and sought comments on the effect of the revisions. 89 FR 73320. CPSC received no comments on the notice of availability.

As discussed below, based on staff's review of ASTM F2236–24, the Commission will allow the revised voluntary standard to become the mandatory standard for soft infant and toddler carriers because the revised requirements in the voluntary standard improve the safety of soft infant and toddler carriers overall; and none of the revised requirements reduce safety.[1] Accordingly, by operation of law under section 104(b)(4)(B) of the CPSIA, ASTM F2236–24 will become the mandatory consumer product safety standard for soft infant and toddler carriers on February 22, 2025. 15 U.S.C. 2056a(b)(4)(B). This direct final rule updates part 1226 to incorporate by reference the revised voluntary standard, ASTM F2236–24.

II. Revisions to ASTM F2236

ASTM has revised the voluntary standard for soft infant and toddler carriers three times since its adoption of

[1] On November 13, 2024, the Commission voted (5–0) to approve this rule.

ASTM F2236–14, which is the current mandatory standard. This section describes the changes in these three versions of the standard—ASTM F2236–16, ASTM F2236–16a, and ASTM F2236–24. The newly revised 2024 version includes the revisions that ASTM made in the two 2016 versions of the standard.

A. ASTM F2236–16 and ASTM F2236–16a

On May 1, 2016, ASTM approved a revised version of the standard, ASTM F2236–16. On September 1, 2016, ASTM approved another revised version of the standard, ASTM F2236–16a. ASTM F2236–16 and ASTM F2236–16a included several substantive and clarifying additions and revisions, as well as editorial revisions that did not alter substantive requirements in the standard or affect safety.

1. Substantive and Clarifying Revisions

ASTM F2236–14 only provided a general definition for ''fastener'' in section 3.1.6.[2] ASTM F2236–16 included additions and revisions to the definition of ''fastener'' to clarify which type of fastener, primary load bearing, secondary load bearing, or non-load bearing, is subject to each performance requirement. First, the Terminology section of ASTM F2236–16 added definitions for ''primary load bearing fastener'' (section 3.1.12) and ''secondary load bearing fastener'' (section 3.1.14).[3] ASTM F2236–16a slightly modified these definitions for clarity.[4]

ASTM F2236–16 also included revisions to the performance requirements regarding fastener strength and strap retention (section 6.4) to clarify that primary load bearing fasteners are the type of fasteners that are subject to the performance requirements in section 6.4.1, which require an 80-pound load on the strap in accordance with sections 7.7.1 and 7.7.2; secondary load bearing fasteners are the type of fasteners that are subject to the performance requirements in section 6.4.2, which require a 45-pound load on the strap in accordance with sections 7.7.1 and 7.7.3; and non-load bearing fasteners intended to retain accessory items or fasteners which do not provide support or securement of the child's torso within the carrier are exempt from the requirements in section 6.4.

ASTM was made aware of questions and varying interpretations of ASTM F2236–14 that could result in straps not being tested to their proper test method, which would make the testing less stringent in some cases (specifically, if a fastener that is meant to be tested to section 7.7.2 is instead tested to the less stringent 7.7.3). In response, ASTM made these revisions to ensure that fasteners are tested using the proper test method. These revisions do not change which fasteners should be subject to each performance requirement. However, the revisions improve the clarity of the standard and better ensure that third party laboratories consistently test fasteners using the proper test method. As a result, these revisions will improve the safety of soft infant and toddler carriers.

ASTM F2236–16a included further clarifying additions and revisions to test methods. ASTM F2236–14 included a Dynamic Load Test in which products are tested by repeatedly dropping a mass into the product in each of its carrying positions/configurations. This test is performed to evaluate the structural integrity of the product as it relates to occupant retention, as well as the slippage of the product's adjustable support/shoulder straps. This test is meant to ensure that products do not create a hazardous condition as defined by Section 5 (examples: sharp edges and small parts), do not fail structurally, and do not fall off the wearer during normal use. Section 7.2.1.1 specified that the test must be performed with either a 25 lb mass or a mass equal to the manufacturer's recommended maximum weight for the specific carrying position of the product, whichever is greater. ASTM F2236–16a, however, added the word ''occupant'' before ''weight'' to clarify that that the weight being referred to in this section is the maximum occupant weight. ASTM explained in the Rationale section (section X1.2.1) that the ''occupant'' weight clarification was made to be consistent with the terminology used in the Static Load Test in section 7.2.2.3. ASTM also explained that the maximum weight for load tests was always intended to be the recommended maximum occupant weight, and that any additional weight from accessory items that come with the product or are sold specifically for use with the product and stored in pockets or pouches is negligible and need not be considered in the recommended carry weight of the product. While these revisions improve the clarity of the test method and ensure that the test is applied consistently, they do not increase the stringency of the test method or impact the outcome of performance testing because the accessory items generally consist of hoods, straps and similar components of the carrier that are stored in pockets or pouches and are not heavy enough to make a meaningful difference. Additionally, since neither version of the test specifies evaluating a product's pockets/pouches, this revision does not affect the structural integrity of pockets/pouches (which are not spaces that contain a child). Therefore, they are neutral regarding the safety of soft infant and toddler carriers.

In addition, ASTM F2236–16a included revisions to the Unbounded Leg Opening Test (section 7.6.2). This test involves securing a product to a test torso, placing a 17 lb shot bag, meant to represent the weight/size of an occupant into the product, placing the truncated test cone[5] into a leg opening of the product, and applying a 5 lb force to the test cone for a minute to try to push the test cone through the leg opening. To meet the performance requirements, products shall not allow the truncated test cone to pass through any of the leg openings. This test is meant to evaluate the product's leg openings and ensure that occupants cannot slip through the leg openings. Section 7.6.2 of ASTM F2236–14 only instructed that adjustable leg openings should be adjusted to their ''smallest size'' as described in the manufacturer's literature or instructions. ASTM F2236–16a clarified that adjustable leg openings should be adjusted to ''the size recommended for the smallest suitable occupant'' as described in the manufacturer's literature or instructions. ASTM made this clarification to address products for which, when the seat width

[2] ASTM F2236–14 and ASTM F2236–16 defined ''fastener'' as a ''mechanical means of attachment that may also allow for adjustments of the product fit to wearer and occupant including, but not limited to, buckles, snaps, rings, D-rings, hook-and-loop, etc., and excluding fabric-only means of attachment and fit adjustment such as, but not limited to, consumer-tied knots.''

[3] ASTM F2236–16, in section 3.1.12, defined ''primary load bearing fastener'' as ''any fastener used in the attachment of the product to the caregiver which provides support for the child or is used to attach that support of the child to the caregiver, or both, that is subject to the direct force of the occupant load, including those fasteners associated with positioning or supporting the child's torso within the carrier.'' Section 3.1.14 defined ''secondary load bearing fastener'' as ''any fastener used in the attachment of the product to the caregiver which provides aid to the wearer for positioning primary load bearing components (for example, sternum strap fasteners). Such fasteners are subject to forces less than those exhibited by the direct occupant load in intended/foreseeable use.''

[4] ASTM F2236–16a deleted ''used in the attachment of the product to the caregiver'' because it was not relevant to the definition of load bearing fasteners and could cause confusion.

[5] The truncated test cone is 4.7 inches long, 4.7 inches in diameter at one end, and 3.0 inches in diameter at the other end. The 4.7-inch diameter is meant to simulate the 50th percentile hip circumference of the smallest child likely to use the carrier (*i.e.,* 7 to 8 lbs).

is configured to accommodate the smallest suitable occupant, the leg openings are not in their smallest possible configuration. In these instances, staff assesses that it is appropriate to test the leg openings based on the product configuration most appropriate for the smallest occupant, rather than the configuration that produces the smallest leg opening. Specifically, the smallest occupant could have a larger leg size than the smallest possible opening. As large leg openings are more likely than small leg openings to fail the Unbounded Leg Opening Test by allowing the test cone to pass through, this revision makes the test more stringent for products where a larger leg opening is appropriate for the smallest suitable occupant. Therefore, this revision is an improvement to safety.

2. Non-Substantive Revisions

ASTM F2236–16 and ASTM F2236–16a also included several minor additions and revisions that were editorial in nature and did not alter any substantive requirements in the standard. For example, ASTM F2236–16 updated section and figure numbers to reflect the substantive and clarifying revisions. ASTM also updated the Rationale sections of both standards to provide explanatory information about the 2016 revisions. Because these revisions did not change any substantive requirements, they are neutral regarding the safety of soft infant and toddler carriers.

B. ASTM F2236–24

On July 1, 2024, ASTM approved a revised version of the standard, ASTM F2236–24. ASTM F2236–24 includes several substantive additions and revisions, revisions to clarify existing requirements, and editorial revisions that do not alter substantive requirements in the standard or affect safety. All the revisions in both 2016 ASTM versions of the standard are included in the newly revised version, ASTM F2236–24. Many of the changes in ASTM F2236–24 are intended to align with ASTM's Ad Hoc Wording Task Group (Ad Hoc TG) recommendations for durable infant and toddler product standards. In December 2013, ASTM convened the Ad Hoc TG, consisting of members of the various durable nursery products voluntary standards committees, including CPSC staff. The purpose of the Ad Hoc TG is to harmonize the wording, as well as the warning format, across durable infant and toddler product voluntary standards. This latest revision to the Ad Hoc TG recommendations is in a reference document titled ''Recommended Language Approved by Ad Hoc Task Group Revision H,'' and is a part of the ASTM's F15 Committee Documents.

1. Substantive and Clarifying Revisions

a. Terminology

In the Terminology section of ASTM F2236–24, the definition of ''static load'' is revised. ASTM F2236–14 defined the term as ''vertically downward force applied by a calibrated force gage or by dead weights.'' ASTM F2236–24 revises the term by replacing the word ''force'' with ''load'' and replacing ''a calibrated force gage or by dead weights'' with ''weights or other means,'' so that the definition is revised to state ''vertically downward load applied by weights or other means.'' These changes were made to align with Ad Hoc TG recommendations. Because these revisions simply modify wording and do not change the substantive meaning of the terms or change the stringency of the standard, they are neutral regarding the safety of soft infant and toddler carriers.

b. Flammability

ASTM F2236–24 makes revisions to section 5.7 regarding flammability, which include renaming the section to ''Flammability of Soft Infant and Toddler Carriers'' from ''Flammability of Textile Products.'' ASTM F2236–24 also replaces the word ''product'' with ''fabrics'' in section 5.7.1 to clarify that fabrics, rather than products, are subject to the flammability requirements in 16 CFR part 1610—Standard for the Flammability of Clothing Textiles. In addition, section 5.7.2 of ASTM F2236–14 stated that ''[i]f a soft infant and toddler carrier is incapable of being evaluated to the requirements of 16 CFR 1610 due to construction characteristics, the product shall not be flammable as defined under 16 CFR 1500.3(c)(6)(vi) [''Flammable solid'' definition] when tested in accordance with Consumer Safety Specification F963, Annex 5.'' ASTM F2236–24 revises section 5.7.2 to clarify that ''[c]omponents of the product that contain padding material(s) shall not be flammable as defined under 16 CFR 1500.3(c)(6)(vi) when tested in accordance with Consumer Safety Specification F963, Annex A5.'' ASTM made these revisions in response to reports that several testing laboratories were not evaluating fabrics to 16 CFR 1610 and were instead evaluating them to 16 CFR 1500.3(c)(6)(vi). These revisions improve the clarity of the standard by specifying that all fabrics are subject to 16 CFR 1610, with the exception of padding components that are to be tested to 16 CFR 1500.3(c)(6)(vi) using the test method in Consumer Safety Specification F963, Annex A5. These revisions also ensure that fabrics and padding materials are consistently being tested to the flammability requirements/test method best suited for their characteristics. (Fabrics are generally not well-suited for testing to the F963, Annex A5 test method.) Therefore, these changes constitute an improvement to safety.

Also, the revised ASTM standard adds a note that the exemptions for flammability testing listed in 16 CFR 1610.1(d) and 1610.6(a)(1)(vi) apply when a fabric is subject to the requirements of 16 CFR part 1610. The exemptions include the following fabrics: plain surface fabrics, regardless of fiber content, weighing 2.6 ounces per square yard or more; all fabrics, both plain surface and raised-fiber surface textiles, regardless of weight, made entirely from any of the following fibers or entirely from combination of the following fibers: acrylic, modacrylic, nylon, olefin, polyester, and wool; and narrow fabrics and loose fibrous materials manufactured less than 50 mm (2 in) in width in either direction. Although only indirectly stated, these exemptions under 16 CFR 1610.1(d) and 1610.6(a)(1)(vi) previously were recognized as part of the standard and applied by test laboratories assessing products to ASTM F2236–14. Because the additional note does not provide for any new exemptions that were not already in existence at the time of ASTM F2236–14, it is neutral regarding the safety of soft infant and toddler carriers.

Additionally, per the recommendation of the Ad Hoc TG, ASTM F2236–24 adds a requirement that non-toy accessories that are sold with and are intended to be attached to the product are also subject to the flammability requirements of section 5.7. ASTM made this new requirement to ensure that non-toy accessory products such as hoods and bibs that are commonly included with and attached to soft infant and toddler carriers are subject to flammability requirements as well. Because these accessory products attach to the soft infant and toddler carriers, they pose a foreseeable flammability hazard. Therefore, this change introducing a new requirement for non-toy accessories improves safety because it ensures that these accessory products are also subject to the flammability requirements of section 5.7.

c. Marking and Labeling

ASTM F2236–24 introduces an additional required warning statement for carriers that allow for nursing. This warning applies to all carriers except those that possess characteristics which render it impossible for the caregiver to nurse their baby while the baby is in the carrier. This warning instructs caregivers to reposition their baby after nursing so that the baby's face is not pressed against the caregiver's body. The new warning statement informs that if a baby's face is pressed against the caregiver's body while in the carrier, the baby could suffocate. The additional warning statement is an improvement to safety because it addresses a suffocation hazard pattern observed in soft infant and toddler carriers. There is no warning statement that addresses this suffocation hazard pattern in the 2014 version of the standard incorporated in 16 CFR part 1226.

In addition, section 8 of ASTM F2236–24 includes several revisions to the marking and labeling requirements to bring the standard into alignment with current Ad Hoc TG recommendations. These revisions include:

- requiring that the warnings be easy to read and understand and be in the English language at a minimum (section 8.4.1);
- requiring that any marking or labeling provided in addition to those required not contradict the meaning of the required information (section 8.4.2);
- requiring that the warnings conform to ANSI Z535.4–2011 and other sections of the standard, which provide guidance on formatting (font size, layout, use of signal words, colors, and etc.) of warning labels (section 8.4.4);
- adding a note that typefaces with large height-to-width ratios (*i.e.,* condensed, compressed, or narrow) should be avoided (Note 4);
- requiring that the message panel text layout be left-aligned, ragged-right for all but one-line text messages, which can be left-aligned or centered (section 8.4.6.1);
- adding Figure X1.1 in Appendix X1 to show examples of left-aligned text as described in section 8.4.6.1 (Note 5);
- updating Figure 5 to illustrate changes to section 8 and explaining that it is presented as an example for the display of the required warnings (section 8.5.3); and
- adding a note to section 8.5 explaining that verbiage other than what is shown can be used as long as the meaning is the same or information that is product-specific is presented (Note 6).

Because these revisions provide a consistent format for manufacturers to follow and improve messaging so that it is more conspicuous, clear, noticeable, easily readable, and understandable to the consumer, they are an improvement to safety. Other revisions include requiring that the marking and labeling on the product and its retail package include both the place of business and telephone number of the manufacturer, distributor, or seller (section 8.1.1); and requiring that the marking and labeling on the product be permanent (section 8.2). The revision in section 8.1.1 is an improvement to safety because it provides more information to the consumer, so that the consumer has more than one way of contacting the manufacturer, distributor, or seller if they have any safety-related questions or concerns. The revision in section 8.2 is also an improvement to safety because it ensures that marking and labeling will not fall off of the product, so that marking and labeling would better be able to withstand normal wear and tear and remain visible to the consumer.

Also, in some places for warnings on the product, use of the words ''infant,'' ''infants,'' ''child,'' and ''children'' have been replaced with ''baby'' or ''babies'' (sections 8.5 and 8.6). Because these revisions don't affect the substance of the messaging, they are neutral regarding the safety of soft infant and toddler carriers.

d. Instructional Literature

ASTM F2236–24 includes several revisions to the instructional literature requirements in section 9 for consistency with the current Ad Hoc TG recommendations and the revised warning label requirements in section 8. These revisions to the instructional literature requirements include adding requirements that instructions be in the English language at a minimum; that warnings in the instructions meet certain requirements specified in section 8 with regard to contrast with the background; and that any instructions provided in addition to those required shall not contradict or confuse the meaning of the required information or be otherwise misleading to the consumer. These revisions also include a note referencing ANSI Z535.6 for additional guidance on the design of warnings for instructional literature. These revisions improve the safety of soft infant and toddler carriers by providing a consistent format for manufacturers to follow and providing messaging that is clear, noticeable, and consistent with the corresponding marking and labeling requirements to the consumer.

In addition, in some places, in the instructional literature, use of the words ''infant,'' ''infants,'' ''child,'' and ''children'' have been replaced with ''baby'' or ''babies'' (sections 9.2 and 9.3). Because these revisions don't affect the substance of the messaging, they are neutral regarding the safety of soft infant and toddler carriers.

2. Non-Substantive Revisions

ASTM F2236–24 also includes several minor additions and revisions that are editorial in nature and do not alter any substantive requirements in the standard. These revisions include formatting changes to align with ASTM form and style guidelines, and adjustments to section and figure numbers to reflect revised and new sections and figures. ASTM also updated the Rationale section in the standard to provide explanatory information about the revisions. Because these revisions do not change any substantive requirements, they are neutral regarding the safety of soft infant and toddler carriers.

III. Incorporation by Reference

Section 1226.2 of the direct final rule incorporates by reference ASTM F2236–24. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble of the final rule, ways in which the material the agency incorporates by reference is reasonably available to interested parties, and how interested parties can obtain the material. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR regulations, section II of this preamble summarizes the material in ASTM F2236–24 that the Commission incorporates by reference into 16 CFR part 1226. The standard is reasonably available to interested parties in several ways. Until the direct final rule takes effect, a read-only copy of ASTM F2236–24 is available for viewing on ASTM's website at: *www.astm.org/CPSC.htm.* Once the rule takes effect, a read-only copy of the standard will be available for viewing on the ASTM website at: *www.astm.org/READINGLIBRARY/.* Additionally, interested parties can purchase a copy of ASTM F2236–24 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; telephone: (610) 832–9500; *www.astm.org.* Finally, interested parties can schedule an appointment to inspect a copy of the standard at CPSC's Office of the Secretary, U.S. Consumer

Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7479; email: *cpsc-os@cpsc.gov.* Interested parties can also schedule an appointment to inspect a copy of the standard at the National Archives and Records Administration by emailing *fr.inspection@nara.gov,* or going to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

IV. Certification

Section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, including importers, of products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, to certify that the products comply with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program, or, for children's products, on tests of a sufficient number of samples by a CPSC-accepted third party conformity assessment body accredited to test according to the applicable requirements. As noted, standards issued under section 104(b)(1)(B) of the CPSIA are ''consumer product safety standards.'' Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Because soft infant and toddler carriers are children's products, a CPSC-accepted third party conformity assessment body must test samples of the products. Products subject to part 1226 must also comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA,[6] the phthalates prohibitions in section 108 of the CPSIA [7] and 16 CFR part 1307, the tracking label requirements in section 14(a)(5) of the CPSA,[8] and the consumer registration form requirements in 16 CFR part 1130. ASTM F2236–24 makes no changes that would impact any of these existing requirements.

V. Notice of Requirements

In accordance with section 14(a)(3)(B)(vi) of the CPSA (15 U.S.C. 2063(a)(3)(B)(vi)), the Commission previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies (third party labs) for testing soft infant and toddler carriers. 79 FR 17433 (Mar. 28, 2014). The NOR provided the criteria and process for CPSC to accept accreditation of third party conformity assessment bodies for testing soft infant and toddler carriers to 16 CFR part 1226. The NORs for all mandatory standards for durable infant or toddler products are listed in the Commission's rule, ''Requirements Pertaining to Third Party Conformity Assessment Bodies,'' codified in 16 CFR part 1112. The NOR for accreditation of third party labs for testing soft infant and toddler carriers is codified at 16 CFR 1112.15(b)(37).

ASTM F2236–24 did not change the testing requirements, testing equipment, or testing protocols for soft infant and toddler carriers. Although ASTM F2236–16 and ASTM F2236–16a contained revisions relating to the testing requirements, these revisions served only to clarify previously existing requirements and did not require additional equipment or test protocols beyond those that already exist in the standard. Accordingly, the revisions in these versions of the standard have not changed the way that third party conformity assessment bodies test these products for compliance with the safety standard for soft infant and toddler carriers. Testing laboratories that have demonstrated competence for testing in accordance with ASTM F2236–14 will have the competence to test in accordance with the revised standard ASTM F2236–24. Therefore, the Commission considers the existing CPSC-accepted laboratories for testing to ASTM F2236–14 to be capable of testing to ASTM F2236–24 as well. Accordingly, the existing NOR for this standard will remain in place, and CPSC-accepted third party conformity assessment bodies are expected to update the scope of the testing laboratories' accreditations to reflect the revised standard in the normal course of renewing their accreditations.

VI. Direct Final Rule Process

On September 10, 2024, the Commission published in the **Federal Register** a notice of availability regarding the 2024 revision to ASTM F2236 and requested comment on whether the revision improves the safety of soft infant and toddler carriers covered by the standard. 89 FR 73320. CPSC received no comments. The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5 U.S.C. 551–559) generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, section 553 of the APA provides an exception when the agency ''for good cause finds'' that notice and comment are ''impracticable, unnecessary, or contrary to the public interest.'' *Id.* 553(b)(B). The Commission concludes that when it updates a reference to an ASTM standard that the Commission previously incorporated by reference under section 104(b) of the CPSIA, notice and comment are not necessary.

The purpose of this direct final rule is to update the reference in the Code of Federal Regulations (CFR) so that it reflects the version of the standard that takes effect by statute. This rule updates the reference in the CFR, but under the terms of the CPSIA, ASTM F2236–24 would take effect as the new CPSC standard for soft infant and toddler carriers in the absence of any action by the Commission. Thus, public comments would not lead to substantive changes to the standard or to the effect of the revised standard as a consumer product safety rule under section 104(b) of the CPSIA. Under these circumstances, notice and comment are unnecessary.

In Recommendation 95–4, the Administrative Conference of the United States (ACUS) endorses direct final rulemaking as an appropriate procedure to expedite rules that are noncontroversial and that are not expected to generate significant adverse comments. *See* 60 FR 43108 (Aug. 18, 1995). ACUS recommends that agencies use the direct final rule process when they act under the ''unnecessary'' prong of the good cause exemption in 5 U.S.C. 553(b)(B). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule, because CPSC does not expect any significant adverse comments. CPSC did not receive any adverse comments about the requirements in this update in response to the notice of availability published on September 10, 2024.

Unless CPSC receives a significant adverse comment within 30 days of this notification, the rule will become effective on February 22, 2025. In accordance with ACUS's recommendation, the Commission considers a significant adverse comment to be ''one where the commenter explains why the rule would be inappropriate,'' including an assertion that undermines ''the rule's underlying premise or approach,'' or a showing that the rule ''would be ineffective or unacceptable without change.'' 60 FR 43108, 43111. As noted, this rule updates a reference in the CFR to reflect a change that occurs by statute.

If the Commission receives a significant adverse comment, the Commission will withdraw this direct final rule. Depending on the comment and other circumstances, the Commission may then incorporate the adverse comment into a subsequent

[6] 15 U.S.C. 1278a.

[7] 15 U.S.C. 2057c.

[8] 15 U.S.C. 2063(a)(5).

direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612) generally requires agencies to review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As discussed in section VI of this preamble, the Commission has determined that further notice and the opportunity to comment are unnecessary for this rule. Therefore, the RFA does not apply. CPSC also notes the limited nature of this document, which merely updates the incorporation by reference to reflect the mandatory CPSC standard that takes effect under section 104 of the CPSIA.

VIII. Paperwork Reduction Act

The current mandatory standard includes requirements for marking, labeling, and instructional literature that constitute a ''collection of information,'' as defined in the Paperwork Reduction Act (PRA; 44 U.S.C. 3501–3521). While the revised mandatory standard adds marking, labeling, and instructional literature requirements for soft infant and toddler carriers, the new requirements would not materially add to the burden hours because the products already require marking, labeling, and instructional literature. The new requirements merely require revisions to the labeling language in addition to that already required by the standard. The Commission took the steps required by the PRA for information collections when it promulgated 16 CFR part 1226, and the marking, labeling, and instructional literature for soft infant and toddler carriers are currently approved under OMB Control Number 3041–0159. The agency will consider whether OMB Control Number 3041–0159 should be revised for soft infant and toddler carriers in the next scheduled update.

IX. Environmental Considerations

The Commission's regulations provide for a categorical exclusion from any requirement to prepare an environmental assessment or an environmental impact statement where they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

X. Preemption

Section 26(a) of the CPSA provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the Federal standard. 15 U.S.C. 2075(a). Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to CPSC for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA deems rules issued under that provision ''consumer product safety standards.'' Therefore, once a rule issued under section 104 of the CPSIA takes effect, it will preempt in accordance with section 26(a) of the CPSA.

XI. Effective Date

Under the procedure set forth in section 104(b)(4)(B) of the CPSIA, when a voluntary standards organization revises a standard that the Commission adopted as a mandatory standard, the revision becomes the CPSC standard 180 days after notification to the Commission, unless the Commission determines that the revision does not improve the safety of the product, or the Commission sets a later date in the **Federal Register**. 15 U.S.C. 2056a(b)(4)(B). The Commission is taking neither of those actions with respect to the revised standard for soft infant and toddler carriers. Therefore, ASTM F2236–24 automatically will take effect as the new mandatory standard for soft infant and toddler carriers on February 22, 2025, 180 days after the Commission received notice of the revision. As a direct final rule, unless the Commission receives a significant adverse comment within 30 days of this document, the rule will become effective on February 22, 2025.

XII. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The CRA submission must indicate whether the rule is a ''major rule.'' The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a ''major rule.''

Pursuant to the CRA, OIRA has determined that this rule does not qualify as a ''major rule,'' as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects in 16 CFR Part 1226

Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement, Safety, Toys.

For the reasons discussed in the preamble, the Commission amends 16 CFR chapter II as follows:

PART 1226—SAFETY STANDARD FOR SOFT INFANT AND TODDLER CARRIERS

■ 1. The authority citation for part 1226 is revised to read as follows:

Authority: 15 U.S.C. 2056a.

■ 2. Revise § 1226.2 to read as follows:

§ 1226.2 Requirements for soft infant and toddler carriers.

Each soft infant and toddler carrier must comply with all applicable provisions of ASTM F2236–24, *Standard Consumer Safety Specification for Soft Infant and Toddler Carriers,* approved on July 1, 2024. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the U.S. Consumer Product Safety Commission and at the National Archives and Records Administration (NARA). Contact the U.S. Consumer Product Safety Commission at: the Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, telephone: (301) 504–7479, email: *cpsc-os@cpsc.gov.* For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* A read-only copy of the standard is available for viewing on the ASTM website at *www.astm.org/READINGLIBRARY/.* You may also obtain a copy from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; telephone: (610) 832–9500; *www.astm.org.*

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2024–27042 Filed 11–19–24; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 10012]

RIN 1545–BR09

Election To Exclude Certain Unincorporated Organizations Owned by Applicable Entities From Application of the Rules on Partners and Partnerships

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document sets forth final regulations that modify existing regulations to allow certain unincorporated organizations that are owned in whole or in part by applicable entities to be excluded from the application of partnership tax rules. These regulations affect unincorporated organizations and their members, including tax-exempt organizations, the District of Columbia, State and local governments, Indian Tribal governments, Alaska Native Corporations, the Tennessee Valley Authority, rural electric cooperatives, and certain agencies and instrumentalities. The final regulations also update certain outdated language in the existing regulations.

DATES:

Effective date: These regulations are effective on January 19, 2025.

Applicability date: For the date of applicability, see § 1.761–2(f).

FOR FURTHER INFORMATION CONTACT: Concerning these final regulations, contact Cameron Williamson at (202) 317–6684 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Authority

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 761(a) of the Internal Revenue Code (Code) issued by the Secretary of the Treasury (Secretary) pursuant to the authority granted under sections 761(a), 6031(a), 6417(d) and (h), and 7805(a) of the Code (final regulations).

Section 761(a) provides, in part, an express grant of regulatory authority for section 761(a) stating, ''[u]nder regulations the Secretary may, at the election of all the members of an unincorporated organization, exclude such organization from the application of all or a part of this subchapter.''

Section 6031(a) provides an express grant of regulatory authority for the Secretary to prescribe in forms or regulations partnership reporting information required ''for the purpose of carrying out the provisions of subtitle A.''

Section 6417(d) provides several express delegations of authority to the Secretary to enforce requirements for elective payments of applicable credits under section 6417 and recapture excessive payments. Section 6417(h) provides an express delegation of authority with respect to elective payments under section 6417, stating, in part, that ''[t]he Secretary shall issue such regulations or other guidance as may be necessary to carry out the purposes of this section.''

Finally, section 7805(a) authorizes the Secretary to ''prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.''

Background

I. Elective Payment of Applicable Credits

Section 6417 was added to the Code by section 13801(a) of Public Law 117–169, 136 Stat. 1818, 2003 (August 16, 2022), commonly referred to as the Inflation Reduction Act of 2022 (IRA). Section 6417 allows an ''applicable entity'' (including tax-exempt organizations, the District of Columbia, State and local governments, Indian Tribal governments, Alaska Native Corporations, the Tennessee Valley Authority, rural electric cooperatives, and certain agencies and instrumentalities) to make an election to treat an ''applicable credit'' (as defined in section 6417(b)) determined with respect to such entity as making a payment by such entity against the tax imposed by subtitle A of the Code, for the taxable year with respect to which such credit is determined, equal to the amount of such credit. Section 6417 also provides special rules relating to partnerships and directs the Secretary to provide rules for making elections under section 6417. Section 13801(g) of the IRA provides that section 6417 applies to taxable years beginning after December 31, 2022.

On March 11, 2024, the Department of the Treasury (Treasury Department) and the IRS published in the **Federal Register** (88 FR 40528) final regulations (TD 9988) providing guidance on the section 6417 elective payment election (section 6417 regulations). Section 1.6417–2(a)(1)(iv) provides that partnerships are not applicable entities described in section 6417(d)(1)(A) or § 1.6417–1(c), regardless of how many of their partners are themselves applicable entities. Accordingly, any partnership making an elective payment election must be an electing taxpayer (as defined in § 1.6417–1(g)), and, as such, the only applicable credits with respect to which the partnership could make an elective payment election would be credits determined under sections 45Q, 45V, and 45X for the time periods allowed in section 6417(d). However, § 1.6417–2(a)(1)(iii) provides that if an applicable entity is a co-owner in an applicable credit property (as defined in § 1.6417–1(e)), through an organization that has made a valid election under section 761(a) (section 761(a) election) to be excluded from the application of the partnership tax rules of subchapter K of chapter 1 of the Code (subchapter K), then the applicable entity's undivided ownership share of the applicable credit property is treated as a separate applicable credit property owned by such applicable entity. As a result, the applicable entity may make an elective payment election for the applicable credit(s) determined with respect to such applicable credit property.

Also on March 11, 2024, the Treasury Department and the IRS published in the **Federal Register** (89 FR 17613) proposed amendments (REG–101552–24) to the regulations under section 761(a) to carry out the purposes of section 6417 (proposed regulations). Generally, the proposed regulations would have amended certain provisions of § 1.761–2 as in effect and contained in 26 CFR part 1 to provide that unincorporated organizations meeting certain requirements (applicable unincorporated organizations) are eligible for certain modifications (referred to in the proposed regulations as ''exceptions'') to the existing requirements for making a section 761(a) election. The provisions of the proposed regulations are explained in greater detail in the preamble to the proposed regulations.

Concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing in the Proposed Rules section of this edition of the **Federal Register** a notice of proposed rulemaking (REG–116017–24) proposing to further add to and revise the provisions of § 1.761–2 (November 2024 proposed regulations). The proposed revisions to the provisions of § 1.761–2 by the November 2024 proposed regulations are explained in greater detail in the preamble to the November 2024 proposed regulations.

II. Overview of Section 761(a) and Prior § 1.761–2(a)(3)

Section 761(a) provides, in part, that under regulations the Secretary may, at the election of all of the members of an unincorporated organization, exclude such organization from the application of all or part of subchapter K if the organization is availed of: (1) for investment purposes only and not for the active conduct of a business, (2) for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted, or (3) by dealers in securities for a short period for the purpose of underwriting, selling, or distributing a particular issue of securities, provided that the income of the members of the organization may be adequately determined without the computation of partnership taxable income.

As discussed in the preamble to the proposed regulations, unincorporated organizations seeking to be excluded from the application of subchapter K so that one or more of their members can make an election under section 6417 are likely to be availed of for the purposes listed in section 761(a)(2), that is, for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted. Pursuant to the authority in section 761(a), prior § 1.761–2(a)(3) provides additional requirements for an unincorporated organization to elect to be excluded from the application of subchapter K under section 761(a)(2). Specifically, prior § 1.761–2(a)(3) requires that the participants in the joint production, extraction, or use of property: (i) own the property as co-owners, either in fee or under lease or other form of contract granting exclusive operating rights (co-ownership requirement), (ii) reserve the right separately to take in kind or dispose of their shares of any property produced, extracted, or used (severance requirement), and (iii) do not jointly sell services or the property produced or extracted (joint marketing requirement), although each separate participant may delegate authority to sell the participant's share of the property produced or extracted for the time being for the participant's account, but not for a period of time in excess of the minimum needs of the industry, and in no event for more than one year (one-year exception). These additional regulatory requirements are hereinafter referred to as the ''existing regulatory requirements'' and, along with the previously discussed statutory requirements, are referred to herein as the ''existing requirements'' to be eligible to elect out of the application of subchapter K.

As discussed in the Summary of Comments and Explanation of Revisions, the proposed regulations would have modified some of the existing regulatory requirements for unincorporated organizations that meet certain requirements.

Summary of Comments and Explanation of Revisions

The Treasury Department and the IRS received 11 written comments in response to the proposed regulations. The comments are available for public inspection at *www.regulations.gov* or upon request. A public hearing on the proposed regulations was scheduled for May 20, 2024. There were no requests to speak at the scheduled public hearing. Consequently, the public hearing was cancelled. *See Election To Exclude Certain Unincorporated Organizations Owned by Applicable Entities From Application of the Rules on Partners and Partnerships; Hearing Cancellation,* 89 FR 43349 (May 17, 2024). After full consideration of the comments received, these final regulations adopt the proposed regulations with modifications in response to the comments described in this Summary of Comments and Explanation of Revisions. The provisions of § 1.761–2 as amended by the final regulations are referred to as ''revised § 1.761–2'' in this Summary of Comments and Explanation of Revisions.

Comments merely summarizing the statute or proposed regulations, recommending statutory revisions to section 761 or other statutes, addressing unrelated issues, or recommending changes to IRS forms or procedures are generally not addressed in this Summary of Comments and Explanation of Revisions or adopted in these final regulations. These comments included recommendations and questions regarding fact patterns specific to section 6417, the domestic content rules of section 45(b)(10), the credit for qualified commercial clean vehicles of section 45W, and the credit for alternative fuel vehicle refueling property of section 30C. While the Treasury Department and the IRS are studying some of those issues and intend to issue future guidance on those provisions, those recommendations and questions are unrelated to the purpose of these final regulations. Unless otherwise indicated in this Summary of Comments and Explanation of Revisions, provisions of the proposed regulations with respect to which no comments were received are adopted without substantive change.

I. Overview

Proposed § 1.761–2(a)(4)(ii) would have defined ''applicable unincorporated organizations'' as unincorporated organizations that meet several requirements. Proposed § 1.761–2(a)(4)(iii) would have modified the regulatory requirements in prior § 1.761–2(a)(3)(i) and (iii) for an applicable unincorporated organization that also met the regulatory requirements of prior § 1.761–2(b) and (e).

Part II of this Summary of Comments and Explanation of Revisions discusses comments received concerning the general effects of a section 761(a) election. Part III of this Summary of Comments and Explanation of Revisions discusses the comments received on the definition of an applicable unincorporated organization. Part IV of this Summary of Comments and Explanation of Revisions discusses the comments received on the modifications to the existing regulatory requirements. Part V of this Summary of Comments and Explanation of Revisions discusses the applicability date of these final regulations, the elimination of certain obsolete language, and certain administrative requirements that are under consideration for organizations taking advantage of the modifications to the existing regulatory requirements. Part VI of this Summary of Comments and Explanation of Revisions summarizes two comments not addressed in these final regulations.

II. Effects of an Election Under Section 761(a)

A. General

Subchapter K provides rules governing the taxation of partners and partnerships. When an unincorporated organization makes a valid section 761(a) election out of subchapter K, the rules of subchapter K no longer apply to that organization. As a result, for purposes of subchapter K, the unincorporated organization ceases to be a partnership and each member of the unincorporated organization is generally treated as a co-owner, that is, as directly owning its proportionate share of the organization's assets.

For example, an unincorporated organization that has made a valid section 761(a) election is not subject to section 704, which provides the rules for determining a partner's distributive share of a partnership's tax items. Instead, each member of an unincorporated organization that has

made a valid section 761(a) election takes into account directly its ownership share of the organization's tax items. Accordingly, if an unincorporated organization with a valid section 761(a) election purchases depreciable property, an owner of a 30 percent interest in the organization may claim depreciation deductions as if it owned an undivided 30 percent interest in the organization's property (provided the owner is otherwise eligible for such deductions). That member cannot claim depreciation deductions beyond that member's ownership interest in the organization's property. Thus, any agreement among the members to specially allocate one member's depreciation deductions to another member would make the organization ineligible for a section 761(a) election.

One commenter asked for clarification of whether the following fact pattern is compatible with an election under section 761(a). A church (an applicable entity) forms a partnership with a nonprofit investor and a for-profit developer. The church contributes a site for energy property, which generates electricity and reduces the church's energy bill. The nonprofit investor makes grants and loans to the organization and is repaid by virtue of renewable energy credits or net metering from the clean energy property. The for-profit developer enters into a contract to maintain the system in exchange for a fee.

The facts described in the comment letter do not provide sufficient information to determine whether this situation is compatible with a section 761(a) election. If the investor receives all payments in its capacity as a lender and the for-profit developer receives its profits in its capacity as a third-party service provider, there might not be an unincorporated organization at all. If there is an unincorporated organization and it intends to make a section 761(a) election, each of its members must reserve the right separately to take in kind or dispose of their shares of any property produced, extracted, or used. If the investor or developer receives payments in excess of its pro rata ownership interests, this requirement will not be met. Moreover, if the contributions mentioned in this situation are intended to be non-recognition transfers for Federal income tax purposes, the contributing members would generally need to make such contributions under section 721(a), which is part of subchapter K. However, if a section 761(a) election is made, the organization is not subject to subchapter K, and thus, section 721(a) is inapplicable to transfers to the organization. Without section 721(a), the transfers would generally be taxable events.

One commenter asked how certain capital stacking combinations (including loans, forgivable loans, and grants) affect an organization's eligibility to make a section 761(a) election. To make a valid section 761(a) election, an unincorporated organization must comply with the requirements of section 761(a) and revised § 1.761–2. Provided that those requirements are met, the structure of an organization's capital stack would not appear to preclude it from making a valid section 761(a) election. Federal income tax law governs the treatment of these arrangements for purposes of determining whether an arrangement violates the requirements of section 761(a). For example, loans between members of the organization will be treated as debt to the extent they are treated as debt under Federal income tax law. Likewise, loans by a member to an organization would not be treated as a partnership liability under section 752, but a loan to each member of the organization in proportion to the member's ownership interest.

One commenter asked that applicable entities who are members in an applicable unincorporated organization that makes a 761(a) election be permitted to claim all applicable tax credit bonuses and adders. Bonus credit amounts, such as amounts for applicable credit properties located in energy communities, apply to property co-owned through an applicable unincorporated organization. The Treasury Department and the IRS have determined that no change to the final regulations is required to clarify this issue.

B. Effect of a Section 761(a) Election on Sections of the Code Outside of Subchapter K

One commenter requested a discussion of the effects of a section 761(a) election on provisions of the Code outside of subchapter K that reference partnerships, including section 6417. A detailed discussion of the effects of a section 761(a) election on provisions of the Code outside of subchapter K would require a careful examination of numerous provisions of the Code apart from those relevant to these final regulations and is not necessary for purposes of these final regulations. However, the application of a section 761(a) election to section 6417 is fundamental to the purpose of these final regulations, which is to carry out the purposes of section 6417 and thus, is addressed herein.

An organization with a valid section 761(a) election may be treated as a partnership for purposes of sections of the Code outside of subchapter K. In *Bryant* v. *Commissioner,* 46 T.C. 848 (1966), *aff'd,* 399 F.2d 800 (5th Cir. 1968), the Tax Court concluded that an organization that made a section 761(a) election was still a partnership for purposes of other parts of the Code, including the $50,000 investment tax credit limit on partnership assets provided by then section 48(c)(2)(D) of the Code. *See also Cokes* v. *Commissioner,* 91 T.C. 222 (1988) (section 761 election did not affect partnership status under the self-employment tax provisions of section 1402(a) of the Code); *Madison Gas and Electric Company* v. *Commissioner,* 72 T.C. 521 (1979), *aff'd,* 633 F.2d 512 (7th Cir. 1980) (notwithstanding a section 761 election, the startup costs of a joint venture were attributable to the partnership business and were not deductible under section 162(a) of the Code as the ordinary and necessary business expenses of the individual partners).

Though section 6417 is not in subchapter K, a section 761(a) election affects whether an entity is treated as a partnership for purposes of section 6417. Section 6417(h) provides that the Secretary shall issue such regulations or other guidance as may be necessary to carry out the purposes of section 6417. Pursuant to this broad authority, the Treasury Department and the IRS published § 1.6417–2(a)(1)(iii), which provides that if an applicable entity is a co-owner in an applicable credit property through an organization that has made a valid section 761(a) election, then the applicable entity's undivided ownership share of the applicable credit property will be treated as a separate applicable credit property owned by such applicable entity, and the applicable entity may make an elective payment election for the applicable credits determined with respect to such applicable credit property. This means that a section 761(a) election effectively causes an unincorporated organization not to be treated as a partnership for purposes of section 6417, including section 6417(c). Thus, the effect of a valid section 761(a) election for purposes of section 6417 is that each member of the organization is treated as directly owning its proportionate share of the applicable credit property. As a result, each applicable entity member of the organization may make an elective payment election (or, if not an applicable entity member, a transfer election under section 6418) with

respect to its proportionate share of the applicable credit property.

Another commenter requested confirmation that a Tribal Energy Development Organization that makes a section 761(a) election is not a partnership for purposes of sections 168(h)(5) and (6) and 50(b)(3).

Section 168(h) describes tax-exempt use property (generally, certain property leased to a tax-exempt entity), the cost recovery of which is subject to special rules. Section 168(h)(5) generally provides that the determination of whether property leased to a partnership is tax-exempt use property shall be made by treating each tax-exempt entity partner's proportionate share as being leased to such partner. Section 168(h)(6) generally provides that, if any property which is not tax-exempt use property is owned by a partnership that has as partners both a tax-exempt entity and a person who is not a tax-exempt entity, an amount equal to such tax-exempt entity's proportionate share of such property is treated as tax-exempt use property. This rule applies only if any allocation to the tax-exempt entity of partnership items is not a ''qualified allocation,'' which (i) is consistent with such entity's being allocated the same distributive share of each item of income, gain, loss, deduction, credit, and basis and such share remains the same during the entire period the entity is a partner in the partnership, and (ii) has substantial economic effect within the meaning of section 704(b)(2). *See* section 168(h)(6)(B). Section 50(b)(3) and (4) preclude certain property used by tax-exempt organizations, governmental entities, and foreign persons from qualifying for an investment tax credit. For these purposes, section 50(b)(4)(D) provides that rules similar to those in section 168(h)(5) and (6) apply.

The existence of a partnership for purposes of these sections does not change the amount of depreciation deductions attributable to each member of an unincorporated organization that has validly made a section 761(a) election. A valid section 761(a) election requires the shares of property leased to or owned by an organization to be treated as leased to or owned by the members of the organization in proportion to their shares of the organization. This is how partnership property would be treated under section 168(h)(5) and would cause all allocations to the partners to be treated as ''qualified allocations'' for purposes of section 168(h)(6). Similarly, the IRS has determined in other areas of the law that co-owners of property may make independent elections with respect to deductions affecting their taxable income. *See* Rev. Rul. 83–129, 1983–2 C.B. 105, in which the IRS ruled that the co-owners of mineral leases that make a section 761(a) election may independently elect to deduct or capitalize their shares of mining development costs under section 616 of the Code; *see also* Rev. Rul. 81–261, 1981–2 C.B. 60, where the IRS noted that if a partnership makes a section 761(a) election, each partner is deemed to own directly its proportionate share of the partnership property for purposes of computing depreciation. Moreover, in the case of an applicable entity that makes an election under section 6417(a), section 6417(d)(2)(A) provides that applicable credits are determined without regard to section 50(b)(3) and (4)(A)(i).

III. Applicable Unincorporated Organizations

A. Applicable Entity Owner

Proposed § 1.761–2(a)(4)(ii)(A) would have required an applicable unincorporated organization to be owned, in whole or in part, by one or more applicable entities, as defined in section 6417(d)(1)(A) and § 1.6417–1(c). The Treasury Department and the IRS received no comments related to this section and adopt the proposed language without changes.

B. Joint Operating Agreements

Proposed § 1.761–2(a)(4)(ii)(B) would have provided that an applicable unincorporated organization must be an organization the members of which enter into a joint operating agreement (JOA) in which the members reserve the right separately to take in kind or dispose of their pro rata shares of the electricity produced, extracted, or used, and any associated renewable energy credits or similar credits. Proposed § 1.761–2(a)(4)(ii)(C) would also have provided, in part, that an applicable unincorporated organization must be organized pursuant to a JOA.

1. General

Commenters requested more information about the types of JOAs required by these provisions. Some commenters requested examples of permissible JOAs, and another commenter requested identification of any JOA provisions that would ''create issues'' for a JOA. One commenter asked whether JOAs that satisfy the requirements of § 1.761–2(a)(3) would also satisfy the requirements of proposed § 1.761–2(a)(4)(ii)(B) and (C) and requested that any specific rules applicable to JOAs solely for purposes of the proposed regulations apply prospectively so as to avoid any uncertainty with respect to existing JOAs.

As used in the proposed regulations, the term ''joint operating agreement'' is intended to refer to agreements similar to those used by organizations that made an election under section 761(a) prior to the proposed regulations. Such agreements typically provide the terms by which the members of the unincorporated organization will meet the existing requirements to make a section 761(a) election. JOAs should continue to serve this purpose under the final regulations, regardless of whether an applicable unincorporated organization holds its property in an entity organized under local law. Accordingly, as a general matter, a JOA that satisfies the requirements of revised § 1.761–2(a)(1) and (3) will satisfy the requirements in revised § 1.761–2(a)(4)(ii)(B) and (C), provided that the organization to which that JOA applies satisfies the existing regulatory requirements, as modified by revised § 1.761–2(a)(4)(iii), if applicable. Because the final regulations do not change the rules currently applicable to JOAs, these final regulations do not need to make such rules apply prospectively. For the same reason, further clarification of the JOA requirements is unnecessary.

2. Right to Pro Rata Share

Commenters requested clarification of how credits and ownership interests would be allocated when members of an unincorporated organization reserve the right separately to take in kind or dispose of their pro rata shares of the electricity produced, extracted, or used, and any associated renewable energy credits or similar credits.

Pursuant to proposed § 1.761–2(a)(4)(ii)(B), each member of an applicable unincorporated organization would have been required to reserve the right separately to take in kind or dispose of their pro rata shares of any property produced, extracted, or used, and any associated renewable energy credits or similar credits. The determination of each member's ownership interest of an unincorporated organization (and, accordingly, each member's proportionate share of property produced, extracted, or used) must be made by the members and based on their ownership interests in the same manner as if they were co-owners in the underlying properties.

To illustrate, a co-owner of 40 percent of an unincorporated organization that has made a section 761(a) election must reserve the right separately to take in

kind or dispose of its 40 percent pro rata share of the property produced, extracted, or used by the co-owners. This is true even when the members of an applicable unincorporated organization own property through an entity, as permitted by revised § 1.761–2(a)(4)(iii)(A). Example 1 has been added in revised § 1.761–2(a)(5)(i) to illustrate the general rule.

One commenter requested clarification that renewable energy certificates (RECs) produced through the generation of clean energy qualify as ''similar credits'' for these purposes. The Treasury Department and the IRS clarify that RECs are included as ''renewable energy credits or similar credits'' pursuant to revised § 1.761–2(a)(4)(ii)(B) and thus, each member of an unincorporated organization must reserve the right separately to take in kind or dispose of their pro rata shares of any RECs generated as a result of the organization's activities.

3. Joint Marketing

Some commenters asked whether specific JOA provisions or activities would violate requirements that apply to applicable unincorporated organizations, including that the organization's members do not jointly sell services or property produced or extracted. One commenter asked whether appointing a manager, creating an ownership committee, having expense-sharing agreements or incurring project-level debt would violate the existing requirements to make a section 761(a) election. Another commenter requested clarification that a managing member or general partner-equivalent (presumably, if the unincorporated organization takes advantage of the modification in proposed § 1.761–2(a)(4)(iii)(A)) can conduct normal project management functions for an unincorporated organization without violating the joint marketing requirement. That commenter requested, in the alternative, a ''roadmap'' setting forth how a managing member or general partner can comply with the joint marketing requirement in a practical manner. The same commenter also requested allowing representatives of an unincorporated organization to perform pre-filing and other ministerial services on behalf of the entities jointly owning applicable credit property.

An applicable unincorporated organization must meet all applicable requirements, including the existing requirements with the modifications contained in these final regulations, to elect out of subchapter K under section 761(a) and to maintain a section 761(a) election. Generally, the members of an unincorporated organization are permitted to have a representative handle management and ministerial duties typical of a managing member of a limited liability company (LLC) or general partner of a limited partnership without violating these requirements. The Treasury Department and the IRS understand that representatives with such duties may be required by local law for entities that may hold the organization's property under § 1.761–2(a)(4)(iii)(A) of these final regulations. These final regulations, however, do not provide a ''roadmap'' for permissible arrangements or rights and duties of such representatives as the list would not be exhaustive and could cause unintentional inferences to be drawn.

One commenter proposed allowing an applicable entity to direct some or all of its elective payments of applicable credit amounts under section 6417 to a separate account jointly owned by the applicable entity and other members of an applicable unincorporated organization to pay expenses directly related to the underlying applicable credit property's co-ownership. The commenter suggested applying rules similar to those applicable to assignments of payments under section 1603 (regarding grants for specified energy properties in lieu of tax credits) of the American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115 (2009), including that each payment be assigned to a bank or other financing institution, that the assignment cover all amounts payable and not be subject to further assignment (except that any assignment may be made to one party acting as an agent or trustee for the co-owners), and that the assignee file a Notice of Assignment.

As already discussed, § 1.6417–2(a)(1)(iii) provides that if an applicable entity is a co-owner in an applicable credit property through an organization that has made a valid section 761(a) election, then the applicable entity's undivided ownership share of the applicable credit property will be treated as a separate applicable credit property owned by such applicable entity, and the applicable entity may make an election under section 6417(a) for the applicable credits determined with respect to such applicable credit property. When an applicable entity makes an election under section 6417(a), such entity is treated as making a payment against the tax imposed by subtitle A of the Code. If this payment causes the entity to have an ''overpayment'' of tax in a taxable year, section 6402(a) generally provides that the entity may receive a refund equal to the amount of the overpayment over the entity's tax liability. This refund must be made to the person who made the overpayment (*i.e.,* the applicable entity). If that applicable member is a partnership or S corporation, section 6417(c)(1)(A) specifies that the payment for such election is made to the partnership or S corporation that made the section 6417(a) election. Accordingly, similar to the general rule under section 6417(a), refunds or payments under section 6417(c) generally cannot be paid to accounts in the name of someone other than the entity making the election. A valid section 761(a) election does not affect the application of this general rule and, therefore, these final regulations do not adopt the commenter's proposal.

C. Purpose of Organization

Proposed § 1.761–2(a)(4)(ii)(C) would have provided that an organization is an applicable unincorporated organization if it ''is organized exclusively to produce electricity from its applicable credit property (as defined in § 1.6417–1(e)) and with respect to which one or more applicable credits listed in section 6417(b)(2), (4), (8), (10), and (12) is determined.'' The scope of this rule was intended to remove certain impediments for these types of applicable unincorporated organizations that would otherwise comply with existing requirements. The Treasury Department and the IRS sought comments on the scope and requirements of the proposed regulations, including whether modifications similar to those in proposed § 1.761–2(a)(4)(iii) are needed for applicable entities that own applicable credit properties that do not produce electricity.

Commenters generally recommended that the modifications in proposed § 1.761–2(a)(4)(iii) are also needed for organizations organized to own applicable credit property with respect to which any other applicable credit listed in section 6417(b) is determined. Some commenters requested clarity that certain facilities, especially battery storage facilities, ''produce electricity'' for purposes of the definition of an applicable unincorporated organization. One commenter asserted that the ''non-generative'' credits from section 6417(b) that were not included in proposed § 1.761–2(a)(4)(ii)(C) could be claimed by organizations ''availed of . . . for the joint . . . use of property'' and that such organizations should therefore be permitted to make a section 761(a) election if other existing requirements are met. The same commenter requested clarification that certain activities with

respect to applicable credits, including time-limited delegations of relevant powers, would not violate the existing requirements to make a section 761(a) election. Another commenter asked for clarification that common, non-electricity revenue streams related to jointly owned projects, such as revenues from the sale of capacity and ancillary services, do not violate the requirement that an organization must be organized exclusively to produce electricity.

The Treasury Department and the IRS agree that organizations formed to own applicable credit property with respect to which any applicable credits (including non-generative credits) are determined should be permitted to apply the modifications to the existing section 761(a) rules contained in the proposed regulations. Section 761(a)(2) refers to organizations availed of ''for the joint production, extraction, or use of property,'' which is not limited to activities that produce electricity. Accordingly, pursuant to the authority in sections 761(a) and 6417(h), the final regulations revise the definition of an applicable unincorporated organization to include organizations organized exclusively to own and operate applicable credit property (as defined in § 1.6417–1(e)). The adoption in the final regulations of this definition of applicable unincorporated organization should not be read to imply that any particular factual arrangement permits a valid section 761(a) election. To make a valid section 761(a) election, an unincorporated organization, including an applicable unincorporated organization, must meet all the requirements of section 761(a) and the regulations thereunder.

D. Section 6417 Election

Proposed § 1.761–2(a)(4)(ii)(D) would have provided that an unincorporated organization is an applicable unincorporated organization only if one or more of its applicable entity members will make an elective payment election under section 6417(a) for the applicable credits determined with respect to its share of the applicable credit property.

One commenter recommended extending the modifications in proposed § 1.761–2(a)(4)(iii) to organizations for which no applicable entity member will make an election under section 6417. These final regulations are of limited scope and are promulgated, in part, pursuant to the authority in section 6417(h) to carry out the purposes of section 6417 by facilitating joint-ownership arrangements of applicable credit property by applicable entities. These final regulations do not adopt this commenter's recommendation because it is not necessary for purposes of these final regulations.

E. Other Requirements

Proposed § 1.761–2(a)(4)(ii) would have provided that an applicable unincorporated organization is an unincorporated organization described in prior § 1.761–2(a)(1) that meets the requirements of proposed § 1.761–2(a)(4)(ii)(A) through (D). The reference to prior § 1.761–2(a)(1) was intended to emphasize the statutory requirements under section 761(a) and prior § 1.761–2(a)(1) that: (1) the members of the unincorporated organization must be able to compute their income without the necessity of computing partnership income, and (2) the unincorporated organization must not be a syndicate, group, pool, or joint venture which is classifiable as an association, or operate under an agreement which creates an organization classifiable as an association. For clarity, the final regulations remove the reference to prior § 1.761–2(a)(1) in proposed § 1.761–2(a)(4)(ii) and include the requirements of prior § 1.761–2(a)(1) as revised § 1.761–2(a)(4)(ii)(E) and (F). In the final regulations, therefore, an applicable unincorporated organization is an unincorporated organization that meets the requirements of revised § 1.761–2(a)(4)(ii)(A) through (F).

One commenter requested that a Tribal Energy Development Organization (TEDO) be permitted to make an elective payment election regardless of its partnership status and be permitted to make special allocations. A TEDO that is formed as a partnership and meets the requirements may make a 761(a) election. Section 761 does not apply, however, to entities formed as corporations. In addition, special allocations are inconsistent with a section 761(a) election, which is available under the statute only to organizations that satisfy the severance requirement and the members of which can compute their income without the necessity of computing partnership taxable income. Accordingly, the final regulations do not adopt these requested changes.

Another commenter requested clarity about the eligibility of a ''partnership flip'' structure to make a section 761(a) election. Generally, these structures involve allocations of income, gains, losses, deductions, or credits that change at some point after the partnership has been formed. In the commenter's proposed structure, a taxable member of an unincorporated organization does not control the organization but owns a profits interest in the organization that allows the member to earn preferred returns over the course of its investment. The commenter suggested that this type of member should be permitted to individually elect out of partnership tax treatment under subchapter K, and then elect back into partnership treatment under subchapter K after it has recouped its investment.

Partnership flip structures, such as the one described by the commenter, violate the existing statutory requirements for electing out of subchapter K, even as modified by proposed § 1.761–2(a)(4)(iii). This is because such structures provide members with disproportionate amounts of income, gains, losses, deductions, or credits and thereby require an unincorporated organization to compute partnership taxable income to determine each member's share of the organization's income. These arrangements are also incompatible with the severance requirement, under which members must reserve the right separately to take in kind or dispose of their shares of any property produced, extracted, or used because members do not have a determinate ''share'' of the applicable credit property. For these reasons, the Treasury Department and the IRS clarify that partnership flip structures are not eligible to make a section 761(a) election.

IV. Specified Modifications for Applicable Unincorporated Organizations

A. Modified Co-Ownership Requirement

For applicable unincorporated organizations, proposed § 1.761–2(a)(4)(iii)(A) would have modified the co-ownership requirement such that the participants in the applicable unincorporated organization would be permitted to own applicable credit property through an unincorporated organization that is a legal entity, other than one treated as a corporation under any provision of the Code (modified co-ownership requirement).

One commenter requested confirmation whether the following situation is compatible with an election under section 761(a). A tax-exempt entity forms an LLC to raise money and serve as a special purpose vehicle to own and operate a clean energy project. The tax-exempt entity then sells equity securities in the LLC to investors. Prior to submitting the pre-filing registration with the IRS, the LLC makes an election under section 761(a). The tax-exempt entity or operator then decides if, and when, investors should be paid dividends based on their fractional ownership.

This situation is inconsistent with the modified co-ownership requirement. Organizations that have made a section 761(a) election do not pay dividends for Federal income tax purposes. Because each member of such organization is generally treated as directly owning its proportionate share of the organization's assets, each member is entitled to payments or credits with respect to the member's share of property produced, extracted, or used, regardless of whether any other member would have approved the distribution of such amounts.

B. Joint Marketing Modification and Agent Delegation Rule

For applicable unincorporated organizations, proposed § 1.761–2(a)(4)(iii)(B) would have modified the joint marketing requirement in prior § 1.761–2(a)(3)(iii) to provide that a delegation of authority to sell the participant's share of the property produced may allow the delegee to enter into contracts the duration of which exceeds the minimum needs of the industry and may be for longer than one year (the joint marketing modification), provided that the delegation of authority to act on behalf of the participant may not be for a period of time that exceeds the minimum needs of the industry, and in no event for more than one year (the agent delegation rule). Proposed § 1.761–2(a)(4)(vi) would have provided an example illustrating this modification to the existing regulatory requirements, in which each member of an unincorporated organization grants to the same agent a one-year delegation (not exceeding the minimum needs of the industry) of the member's authority to sell the member's share of electricity produced by the organization. The agent commits each member to a 15-year power purchase agreement (PPA). Because the delegation of authority is for a period no longer than one year, the requirements of proposed § 1.761–2(a)(4)(iii)(B) are met.

Commenters requested clarification on several issues relating to the joint marketing modification. Some commenters asked whether two or more members of an applicable unincorporated organization that has made a section 761(a) election may sell their share of the organization's output in the same contract. Some commenters also asked whether the 15-year period for the contract in the example is intended to serve as a safe harbor or limitation on the duration of such agreements.

Provided that the agent delegation rule and all other requirements under section 761(a) are satisfied, the joint marketing modification allows members of an applicable unincorporated organization to enter into contracts of any duration. Multiple members of the same applicable unincorporated organization may be party to the same contract. Members can also choose to sell their shares without a multi-year contract. The example merely illustrates the joint marketing modification and is not intended to be a safe harbor. No clarification is required to the joint marketing modification in the final regulations.

Commenters also requested clarification of the agent delegation rule. One commenter asked whether an agent would be subject to the rule if it was an Indian Tribal government or other applicable entity. Some commenters suggested eliminating the one-year limitation on agent delegations or allowing agent delegations to automatically renew after each year. One commenter suggested that certain organizations would need to sell their output into an organized market rather than pursuant to a fixed PPA. In this situation, according to the commenter, authority to sell the output for each applicable entity may need to be pursuant to an agreement that automatically renews annually. Another commenter suggested that the one-year limitation on agent delegations will harm applicable entities without technical expertise because non-applicable entities with their own expertise will not require an agent and could be able to take advantage of an applicable entity that is only able to use an agent for one year. Another commenter asked for clarification that a member of an unincorporated organization may delegate powers to an agent without limitation as long as no other member makes such a delegation.

The purpose of the agent delegation rule is to fulfill the statutory requirement in section 761(a)(2) that no organization making a section 761(a) election is formed ''for the purpose of selling services or property produced or extracted.'' This is a prohibition on joint marketing; accordingly, any member of an unincorporated organization may have an agent for any duration of time, provided that the agent does not represent more than one member of the applicable unincorporated organization. The agent delegation rule applies to any person or group of people acting on behalf of more than one member of an unincorporated organization, regardless of their status as an applicable entity.

The longstanding one-year exception to the joint marketing requirement in the existing regulations reflects a balancing of the statutory language with commercial necessities, and the proposed regulations reflected a similar balancing. Section 761(a)(2) does not permit an electing organization to conduct sales through an agent with indefinite authority on behalf of multiple members. Such a structure is necessarily ''availed of . . . for the purpose of selling services or property produced or extracted'' and is not eligible to elect out of subchapter K. These final regulations, therefore, do not adopt the suggestions to eliminate the agent delegation rule or allow agent delegations to automatically renew. However, in any given year, an agent may be delegated authority on terms identical to those in a past year, provided that the delegation of authority to act is not for a period of time that exceeds the minimum needs of the industry and each member delegating authority to that agent consents to those terms in writing at least once per year. Example 3 has been added in revised § 1.761–2(a)(5)(iii) to illustrate this rule.

One commenter requested that the phrase ''minimum needs of the industry'' be either clarified or deleted. That phrase is intended to be fact-sensitive; like the rest of the joint marketing requirement, the phrase is intended to balance statutory requirements with commercial necessities. These final regulations, therefore, do not adopt the commenter's request to clarify or eliminate it.

C. Specific Examples

Several commenters generally asked for more examples showing applications of the proposed regulations. In response, the Treasury Department and the IRS have added two examples to the final regulations.

V. Additional Information

A. Applicability Date

Except as provided in § 1.761–2(d), these final regulations apply to taxable years ending on or after March 11, 2024, the date on which the proposed regulations were published in the **Federal Register**. An applicable unincorporated organization that validly made a section 761(a) election meeting the requirements of these final regulations for a taxable year ending on or after March 11, 2024, will be treated as having made a valid section 761(a) election even if the election was made prior to the publication of these final regulations in the **Federal Register**.

B. Administrative Requirements

The preamble to the proposed regulations noted that the Treasury Department and the IRS were considering certain rules to prevent

abuse of the modifications in proposed § 1.761–2(a)(4)(iii). One rule described in the preamble to the proposed regulations would have prevented the deemed election rules in prior § 1.761–2(b)(2)(ii) from applying to any unincorporated organization relying on a modification in proposed § 1.761–2(a)(4)(iii). One commenter recommended against adopting such a rule, which the commenter believed would be inconsistent with the goals of the proposed regulations and increase the likelihood of inadvertent disallowances of section 761(a) elections in non-abusive situations.

Although these final regulations do not adopt any rules regarding deemed elections, more administrative guidance is needed under section 761(a) to fulfill the purposes of section 6417. As a result, concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing in the Proposed Rules section of this edition of the **Federal Register** the November 2024 proposed regulations under section 761(a) (REG–116017–24), which would provide rules affecting the validity of elections under section 761(a) by applicable unincorporated organizations whose elections would not have been valid without the application of revised § 1.761–2(a)(4)(iii).

C. Obsolete Language

Section 1.761–2(b)(3)(i) provides, in part, that an application for permission to revoke a section 761(a) election must be submitted to the Commissioner of Internal Revenue, Attention: T:I, Washington, DC 20224, no later than 30 days after the beginning of the first taxable year to which the revocation is to apply. This language no longer reflects the correct procedure for obtaining permission to revoke a section 761(a) election and is therefore eliminated by these final regulations. The November 2024 proposed regulations would instead provide that such an application must be made by submitting a letter ruling request that complies with the requirements of Rev. Proc. 2024–1 or successor guidance. Section 1.761–2(b)(3)(i) also provides, in part, that a section 761(a) will be effective unless a member of the organization sends proper notice to the Commissioner ''within 90 days after the formation of the organization (or by October 15, 1956, whichever is later) . . .''. The final regulations would strike the parenthetical language to update and streamline the paragraph.

VI. Comments That Are Not Addressed in These Final Regulations

Two comments received were related to section 761 but outside the scope of these final regulations. These comments are summarized in this Part VI.

A. Implementation

One commenter asked for clarification of how audits of joint structures would take place, including by identifying the specific parts of Treasury and the IRS involved in such audits and the standard of review for such audits. Another commenter requested the development of educational materials, ''office hours,'' and other guidance to improve understanding of the regulations and uptake of applicable credits. Another commenter requested that the Treasury Department and the IRS provide clear rules for the pre-registration filing process for applicable credit property co-owned by taxpayers making transferability elections. These final regulations do not provide information about audit procedures or the development of further guidance, but the Treasury Department and the IRS will continue to monitor the elective payment process to determine whether there are areas in which more efficiencies can be created.

B. Tribal Organizations

One commenter noted that wholly owned Tribal corporations appear to be incapable of making an election under section 761(a) because such entities are corporations for Federal tax purposes. The treatment of entities wholly owned by Tribal governments is addressed by a separate rulemaking and is therefore outside the scope of these final regulations. For information on how to provide comments in response to that separate rulemaking, see the notice of proposed rulemaking (REG–113628–21), *Entities Wholly Owned by Indian Tribal Governments,* published in the **Federal Register** (89 FR 81871) on October 9, 2024.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) generally requires that a federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. 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 control number.

These final regulations mention reporting and recordkeeping requirements that must be satisfied for unincorporated organizations to elect out of subchapter K. These collections of information are generally used by the IRS for tax compliance purposes and by taxpayers to facilitate proper reporting and recordkeeping. The likely respondents to these collections are businesses and tax-exempt organizations.

Unincorporated entities meeting the requirements outlined in § 1.761–2(a)(4) of these final regulations satisfy relevant reporting requirements by submitting a statement attached to, or incorporated in, a properly executed partnership return, Form 1065, *U.S. Return of Partnership Income,* containing, in lieu of the information required by Form 1065 and by the instructions relating thereto, only the name or other identification and the address of the organization together with information on the return, or in the statement attached to the return, showing the names, addresses, and identification numbers of all the members of the organization; a statement that the organization qualifies under § 1.761–2(a)(1) and either § 1.761–2(a)(2) or (3); a statement that all of the members of the organization elect that it be excluded from all of subchapter K; and a statement indicating where a copy of the agreement under which the organization operates is available (or if the agreement is oral, from whom the provisions of the agreement may be obtained). These requirements and associated forms are already approved by OMB under 1545–0123 for business filers. These final regulations are not changing or creating new collection requirements not already approved by OMB.

The recordkeeping requirements mentioned in these final regulations are considered general tax records under § 1.6001–1(e). These records are required for the IRS to validate that electing taxpayers have consistently met the regulatory requirements outlined in § 1.761–2. For PRA purposes, general tax records are already approved by OMB under 1545–0123 for business

filers and 1545–0047 for tax-exempt organizations.

III. Regulatory Flexibility Act

The Secretary of the Treasury hereby certifies that the final regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

These final regulations would affect unincorporated organizations that elect out of subchapter K in connection with an election under section 6417, as well as the members of such organizations.

Data is not readily available about these organizations. Such organizations could not have made an election out of subchapter K under the preexisting regulations, so information about existing organizations that have made section 761(a) elections is not instructive.

Even if these final regulations affect a substantial number of small entities, such impact will not be significant. The final regulations do not make it more costly to make or maintain an election under section 761(a).

These final regulations do not change the procedural requirements under § 1.761–2(b) for making an election under section 761(a). Other than to conform to modern formatting conventions, the final regulations would amend § 1.761–2(b) only by adding a parenthetical to clarify that in making a valid section 761 election, which requires attaching certain statements to a Form 1065 as required in accordance with the preexisting regulations, § 1.761–2(a)(4) should be taken into account, as applicable, with regard to the required statement that the organization qualifies under § 1.761–2(a)(1) and either § 1.761–2(a)(2) or (3) ''(taking into account § 1.761–2(a)(4), as applicable)''. Otherwise, an unincorporated organization making an election under these final regulations would not be required to submit anything additional or different than required under the preexisting version of § 1.761–2(b).

These final regulations impose no new ongoing compliance costs. Though any unincorporated organization that has made an election under section 761(a) should ensure that it remains qualified under § 1.761–2(a)(1) and either § 1.761–2(a)(2) or (3) (taking into account § 1.761–2(a)(4), as applicable), the final regulations do not add to this obligation. In fact, these final regulations could make it simpler for certain unincorporated organizations to stay qualified, given their joint operating agreements that satisfy the modified co-ownership and severance requirements and multi-year contracts that satisfy the modified joint marketing requirement.

For the reasons stated, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Pursuant to section 7805(f), the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandate Reform Act of 1995 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 (updated annually for inflation). These final regulations do 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.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) 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 Executive order. These final regulations do not have federalism implications and do not impose substantial, direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

VI. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments) prohibits an agency from publishing any rule that has Tribal implications if the rule either imposes substantial direct compliance costs on Indian Tribal governments, and is not required by statute, or preempts Tribal law, unless the agency meets the consultation and funding requirements of section 5 of the Executive order. These final rules do not have substantial direct effects on one or more federally recognized Indian tribes and do not impose substantial direct compliance costs on Indian Tribal governments within the meaning of the Executive order.

Nevertheless, on April 5, 2024, the Treasury Department and the IRS held a consultation with Tribal leaders requesting assistance in addressing questions related to the section 761(a) proposed rules published on March 11, 2024, which informed the development of these final regulations.

VII. Executive Order 14112: Reforming Federal Funding and Support for Tribal Nations To Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination

Executive Order 14112 (Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination) reaffirms the executive branch's support for Tribal self-determination as the most effective policy for the economic growth of Tribal Nations and the economic well-being of Tribal citizens. Executive Order 14112 requires agency heads to take certain actions, consistent with applicable law and to the extent practicable, to increase access to ''Federal funding and support programs for Tribal Nations''; provide Tribal Nations with the flexibility to improve economic growth and address the specific needs of their communities; and reduce administrative burdens. Section 2(b) of the Executive order defines ''Federal funding and support programs for Tribal Nations'' as including ''funding, programs, technical assistance, loans, grants, or other financial support or direct services that the Federal Government provides to Tribal Nations or Indians because of their status as Indians.'' As section 1 of the Executive order explains, ''As we continue to support Tribal Nations, we must respect their sovereignty by better ensuring that they are able to make their own decisions about where and how to meet the needs of their communities. No less than for any other sovereign, Tribal self-governance is about the fundamental right of a people to determine their own destiny and to prosper and flourish on their own terms.'' These commitments build on a recognition of principles of sovereignty, sovereign immunity, and self-governance that have been repeatedly reaffirmed by the Supreme Court. *See, e.g., Three Affiliated Tribes of the Fort Berthold Reservation* v. *Wold Engineering, P.C., et al.,* 476 U.S. 877, 890–91 (1986); *Oklahoma Tax Comm'n* v. *Citizen Band Potawatomi Indian Tribe of Oklahoma,* 498 U.S. 505, 510 (1991). The Treasury Tribal Advisory Committee has advised that Tribes

consider ''financial support'' in Executive Order 14112 to include tax matters that range from tax credits to Federal tax rules that regulate Tribal revenue.

Consistent with Executive Order 14112, the Treasury Department and the IRS recognize the importance of protecting and supporting Tribal sovereignty and self-determination. These final regulations would further Tribal self-determination and self-governance and reduce administrative burdens by providing Tribes the ability to directly make section 6417 elections for applicable credit property held through applicable unincorporated organizations provided all applicable statutory and regulatory requirements are satisfied.

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs has designated this rule as a ''major rule,'' as defined by 5 U.S.C. 804(2).

Statement of Availability of IRS Documents

IRS notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Drafting Information

The principal author of these final regulations is Cameron Williamson. However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, the Treasury Department and the IRS amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by revising the entry for § 1.761–2 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Section 1.761–2 also issued under 26 U.S.C. 446(b), 761(a), 6031(a), 6417(d), and 6417(h).

* * * * *

■ **Par. 2.** Section 1.761–2 is amended by:

■ a. Revising and republishing paragraphs (a)(1), (a)(2)(i), and (a)(3)(i);
■ b. Adding paragraphs (a)(4) and (5);
■ c. Revising and republishing paragraphs (b)(1) and (2), (b)(3)(i), (c), and (e); and
■ d. Adding paragraph (f).

The revisions and additions read as follows:

§ 1.761–2 Exclusion of certain unincorporated organizations from the application of all or part of subchapter K of chapter 1 of the Internal Revenue Code.

(a) * * *

(1) *In general.* Under the conditions set forth in this section, an unincorporated organization described in paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable) may be excluded from the application of all or a part of the provisions of subchapter K of chapter 1 of the Internal Revenue Code (subchapter K). Such organization must be availed of for investment purposes only and not for the active conduct of a business, or for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted. The members of such organization must be able to compute their income without the necessity of computing partnership taxable income. Any syndicate, group, pool, or joint venture which is treated as a corporation for Federal tax purposes does not fall within the provisions in this paragraph (a)(1).

(2) * * *

(i) Own the property as co-owners;

* * * * *

(3) * * *

(i) Own the property as co-owners, either in fee or under lease or other form of contract granting exclusive operating rights; and

* * * * *

(4) *Modifications for certain joint ownership arrangements of applicable credit property*—(i) *Scope.* Paragraph (a)(4)(iii) of this section provides certain modifications to specified rules in paragraph (a)(3) of this section in the case of an applicable unincorporated organization meeting the requirements of paragraph (a)(4)(ii) of this section.

(ii) *Applicable unincorporated organization.* For purposes of this section, an *applicable unincorporated organization* is an unincorporated organization:

(A) That is owned, in whole or in part, by one or more applicable entities, as defined in section 6417(d)(1)(A) and § 1.6417–1(c);

(B) The members of which enter into a joint operating agreement in which the members reserve the right separately to take in kind or dispose of their pro rata shares of any property produced, extracted, or used, and any associated renewable energy credits or similar credits;

(C) That, pursuant to the joint operating agreement, is organized exclusively to own and operate applicable credit property (as defined in § 1.6417–1(e));

(D) For which one or more of the applicable entities will make an elective payment election under section 6417(a) for the applicable credits determined with respect to its share of the applicable credit property;

(E) The members of which are able to compute their income without the necessity of computing partnership taxable income; and

(F) Which is not a syndicate, group, pool, or joint venture which is classifiable as an association, or any group operating under an agreement which creates an organization classifiable as an association.

(iii) *Specified modifications for applicable unincorporated organizations.* Solely for purposes of an election under section 761(a) by an applicable unincorporated organization that meets the requirements of paragraphs (b) and (e) of this section:

(A) The requirement in paragraph (a)(3)(i) of this section is modified such that the participants are permitted to own the applicable credit property through an unincorporated organization that is an entity, other than one that is treated as a corporation for Federal tax purposes; and

(B) The requirement in paragraph (a)(3)(iii) of this section is modified such that the delegation of authority to sell the participant's share of the property produced or used may allow the delegee to enter into contracts the duration of which exceeds the minimum needs of the industry and may be for more than one year, provided that the delegation of authority to act on behalf of the participant may not be for a period of time that exceeds the minimum needs of the industry, and in no event for more than one year.

(5) *Examples.* The following examples are intended to illustrate the principles of this section.

(i) *Example 1*—(A) *Facts.* G and H enter into a joint operating agreement to own and operate a facility that will produce solar energy. G, an applicable entity, is entitled under the joint operating agreement to take in kind or dispose of 40% of the energy produced by the unincorporated organization and H, which is not an applicable entity, is entitled to the remaining 60%. G and H

form LLC, a limited liability company, to hold the solar energy property that G and H intend to operate pursuant to the joint operating agreement. In accordance with the joint operating agreement, G owns a 40% ownership interest in LLC and H owns the remaining 60% ownership interest. G will sell its share of energy produced by the facility in a manner designed to generate applicable credits under section 45(a) and will make an election under section 6417(a) with respect thereto. LLC makes a valid election under section 761(a) to be excluded from subchapter K.

(B) *Analysis.* G will be entitled to any credits under section 45(a) generated by its sale of energy produced by LLC that G has the right to take in kind or dispose of (which, under the joint operating agreement, is 40% of the energy produced by LLC). Assuming all other requirements are met, G will be able to make an elective payment election under section 6417 for the applicable credits determined with respect to its ownership share of the solar energy property.

(ii) *Example 2*—(A) *Facts.* T is an Indian Tribal government as defined in § 1.6417–1(c) and an applicable entity. Through a limited liability company organized under T's Tribal law (TLLC), T and Y own and operate applicable credit property that will generate electricity the sale of which will generate applicable credits under section 45(a). TLLC is not treated as an association taxable as a corporation for Federal tax purposes and no election under § 301.7701–3 of this chapter has been made to treat TLLC as such. T and Y enter into a joint operating agreement with respect to the ownership and operation of the applicable credit property in which each of T and Y reserve the right separately to take in kind or dispose of their pro rata shares of property produced, extracted, or used and any associated renewable energy credits or similar credits. TLLC is formed exclusively to own and operate an applicable credit property with respect to which section 45(a) credits will be determined. On January 1st of year 1, T and Y enter into delegation agreements with Q that delegate T's and Y's authority to Q to sell the electricity generated by T's and Y's shares of the applicable credit property. The term of the delegation agreements is one year, which does not exceed the minimum needs of the industry. On June 1st of year 1, Q enters into a power purchase agreement with Utility on T's and Y's behalf that commits T and Y to sell the electricity produced from their shares of the applicable credit property to Utility for a term of 15 years. At the end of the day on December 31st of year 1, the delegation agreements terminate.

(B) *Analysis.* Because T and Y did not delegate authority for a period of more than one year to sell the output from their shares of the applicable credit property, the requirements of paragraph (a)(3)(iii) of this section (as modified by paragraph (a)(4)(iii)(B) of this section) are met. Assuming that TLLC otherwise qualifies as an applicable unincorporated organization, TLLC is an organization described in paragraph (a)(4)(iii)(A) of this section and can make an election under paragraphs (b) and (e) of this section to be excluded from the application of all of subchapter K under section 761(a). As such, T can make an elective payment election for the applicable credits determined with respect to its share of the applicable credit property held by TLLC, assuming the requirements of section 6417 are otherwise met. The analysis in this example would be the same whether Y is also an Indian Tribal government, another applicable entity, or some other person.

(iii) *Example 3*—(A) *Facts.* The facts are the same as in paragraph (a)(5)(ii)(A) of this section (*Example 2*), except that at the end of the day on December 31, T and Y each agree, in writing, to a new agent delegation agreement with Q with substantively identical terms as the agent delegation agreement in effect during year 1.

(B) *Analysis.* Because each of T and Y have agreed, in writing, to engage Q in an agency relationship lasting no longer than one year, the results are the same as in paragraph (a)(5)(ii)(B) of this section (*Example 2*). In contrast, if the agent delegation agreement renewed automatically, T and Y have effectively entered into an agent delegation agreement lasting longer than one year and have violated the requirements of paragraph (a)(4)(iii)(B) of this section. In that case, TLLC would not be eligible to make or maintain an election under section 761(a). As such, T could not make an elective payment election for the applicable credits determined with respect to its share of the applicable credit property held through TLLC.

(b) * * *

(1) *Time for making election for exclusion.* Any unincorporated organization described in paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable) that wishes to be excluded from all of subchapter K must make the election provided in section 761(a) not later than the time prescribed by § 1.6031(a)–1(e) (including extensions thereof) for filing the partnership return for the first taxable year for which exclusion from subchapter K is desired. Notwithstanding the prior sentence, such organization may be deemed to have made the election in the manner prescribed in paragraph (b)(2)(ii) of this section.

(2) *Method of making election*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, any unincorporated organization described in paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable) which wishes to be excluded from all of subchapter K must make the election provided in section 761(a) in a statement attached to, or incorporated in, a properly executed partnership return, Form 1065, *U.S. Return of Partnership Income,* which must contain the information required in this paragraph (b)(2)(i). Such return must be filed with the Internal Revenue Service Center where the partnership return, Form 1065, would be required to be filed if no election were made. To determine the appropriate Internal Revenue Service Center, the principal office or place of business of the person filing the return will be considered the principal office or place of business of the organization. The partnership return must be filed not later than the time prescribed § 1.6031(a)–1(e) (including extensions thereof) for filing the partnership return with respect to the first taxable year for which exclusion from subchapter K is desired. Such partnership return must contain, in lieu of the information required by Form 1065 and by the instructions relating thereto, only the name or other identification and the address of the organization together with information on the return, or in the statement attached to the return, showing the names, addresses, and taxpayer identification numbers of all the members of the organization; a statement that the organization qualifies under paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable); a statement that all of the members of the organization elect that it be excluded from all of subchapter K; and a statement indicating where a copy of the agreement under which the organization operates is available (or if the agreement is oral, from whom the provisions of the agreement may be obtained).

(ii) *Deemed election rule.* If an unincorporated organization described in paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this

section (taking into account paragraph (a)(4) of this section, as applicable) does not make the election provided in section 761(a) in the manner prescribed by paragraph (b)(2)(i) of this section, it will nevertheless be deemed to have made the election if it can be shown from all the surrounding facts and circumstances that it was the intention of the members of such organization at the time of its formation to secure exclusion from all of subchapter K beginning with the first taxable year of the organization. Although the following facts are not exclusive, either one of such facts may indicate the requisite intent:

(A) At the time of the formation of the organization there is an agreement among the members that the organization be excluded from subchapter K beginning with the first taxable year of the organization; or

(B) The members of the organization owning substantially all of the capital interests report their respective shares of the items of income, deductions, and credits of the organization on their respective returns (making such elections as to individual items as may be appropriate) in a manner consistent with the exclusion of the organization from subchapter K beginning with the first taxable year of the organization.

(3) * * *

(i) *In general.* An election under this section to be excluded will be effective unless within 90 days after the formation of the organization any member of the organization notifies the Commissioner that the member desires subchapter K to apply to such organization, and also advises the Commissioner that the member has so notified all other members of the organization by registered or certified mail. Such election is irrevocable as long as the organization remains qualified under paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable), or unless approval of revocation of the election is secured from the Commissioner.

* * * * *

(c) *Partial exclusion from subchapter K.* An unincorporated organization which wishes to be excluded from only certain sections of subchapter K must submit to the Commissioner, no later than 90 days after the beginning of the first taxable year for which partial exclusion is desired, a request for permission to be excluded from certain provisions of subchapter K. The request must set forth the sections of subchapter K from which exclusion is sought and must state that such organization qualifies under paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable), and that the members of the organization elect to be excluded to the extent indicated. Such exclusion will be effective only upon approval of the election by the Commissioner and subject to the conditions the Commissioner may impose.

* * * * *

(e) *Cross reference.* For requirements with respect to the filing of a return on Form 1065 by a partnership, see § 1.6031(a)–1.

(f) *Applicability date.* Except as provided in paragraph (d) of this section, this section applies to taxable years ending on or after March 11, 2024.

Heather C. Maloy,

Acting Deputy Commissioner.

Approved: November 6, 2024.

Aviva R. Aron-Dine,

Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2024–26944 Filed 11–19–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2024–0869]

RIN 1625–AA08

Special Local Regulation; Lake Havasu, Lake Havasu City, AZ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation for the 2024 Lake Havasu City Christmas Parade of Lights that will be held on the navigable waters of Lake Havasu, AZ. This action is necessary to provide for the safety of life on these navigable waters of Lake Havasu during a vessel parade. This rule would prohibit spectators from anchoring, blocking, loitering, or transiting through the area of a predetermined parade route unless authorized by the Captain of the Port San Diego or a designated representative.

DATES: This rule is effective from 4 p.m. through 9 p.m. on December 14, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0869 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Shelley Turner, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7656, email *MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under the authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because we must establish this special local regulation by December 14, 2024. The Coast Guard did not receive sufficient notice of the parade in time to publish an NPRM. As such, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. This regulation is necessary to ensure the safety of life on the navigable waters of Lake Havasu during the marine event.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to ensure the safety of life on the navigable waters of Lake Havasu during the marine event on December 14, 2024.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Sector San Diego (COTP) has determined that the large presence of vessels in Lake Havasu associated with the 2024 Lake Havasu City Christmas Parade of Lights on December 14, 2024, poses a potential

safety concern. This rule is needed to protect persons, vessels, and the marine environment in the navigable waters within Lake Havasu while the event is occurring.

IV. Discussion of the Rule

This rule establishes a special local regulation from 4 p.m. until 9 p.m. on December 14, 2024. The special local regulation will cover all navigable waters encompassing the parade route on a pre-determined course through North Lake Havasu, Bridgewater Channel, and Thompson Bay. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the parade. No vessel or person will be permitted to enter the special local regulation area without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the regulated area. The affected portion of Lake Havasu will be of very limited duration, during evening hours when vessel traffic is typically low, and is necessary for safety of life to participants in the event. Moreover, the Coast Guard would make a post in the Local Notice to Mariners with details on the regulated area.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting only 4 hours that will prohibit entry into a pre-determined course for a vessel parade. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T1199–0137 to read as follows:

§ 100.T1199–0137 2024 Lake Havasu City Christmas Parade of Lights, Lake Havasu, Arizona.

(a) *Regulated area.* The regulations in this section apply to the following area: All waters of Lake Havasu, from surface to bottom, on a predetermined parade route starting in Thompson Bay, proceeding north through the Bridgewater Channel, turning around in North Lake Havasu, proceeding south back through the Bridgewater Channel, and returning to the starting point of the parade in Thompson Bay.

(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector San Diego (COTP) in the enforcement of the regulations in this section.

Participant means all persons and vessels registered with the event sponsor as participants in the parade.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the Captain of the Port Sector San Diego or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling (619) 278–7033. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via local notice to mariners.

(d) *Enforcement period.* This section will be enforced from 4 p.m. to 9 p.m. on December 14, 2024.

P.C. Dill,

Captain, U.S. Coast Guard, Captain of the Port Sector San Diego.

[FR Doc. 2024–27092 Filed 11–19–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–1019]

RIN 1625–AA00

Safety Zone; San Pedro Bay, Los Angeles, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone around the M/V ZHEN HUA 26 while it transits through San Pedro Bay to and from APM Terminal Berth LA 401. This safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards associated with oversized cargo transfer operations of three ship-to-shore gantry cranes, which will extend more than 200 feet out from the transiting vessels. Entry of persons or vessels into this safety zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Los Angeles-Long Beach, or their designated representative.

DATES: This rule is effective without actual notice from November 20, 2024 through December 25, 2024. For the purposes of enforcement, actual notice will be used from November 12, 2024, until November 20, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–1019 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact LCDR Kevin Kinsella, Waterways Management, U.S. Coast Guard Sector Los Angeles-Long Beach; telephone (310) 357–1603, email *D11-SMB-SectorLALB-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the COTP was notified of the impending arrival of the M/V ZHEN HUA 26 less than 30 days in advance and immediate action is needed to respond to the potential safety hazards associated with the transfer of large gantry cranes within the Port of Los Angeles. It is impracticable to publish an NPRM because we must establish this safety zone by November 12, 2024.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to ensure the safety of persons, vessels, and the marine environment in the vicinity of the M/V ZHEN HUA 26 while the vessel is underway to and from APM Terminal, Pier LA 401, in the Port of Los Angeles.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 and 70011(b)(3). The COTP has determined that potential hazards associated with large-scale gantry crane transfer operations will be a safety concern for anyone within a 500-foot radius of the M/V ZHEN HUA 26 while the vessel is in San Pedro Bay within three nautical miles from the Federal breakwaters and in the Port of Los Angeles, respectively. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the vessel transits.

IV. Discussion of the Rule

This rule establishes a safety zone from November 12, 2024, through December 25, 2024, during the transit of the M/V ZHEN HUA 26. While the M/V ZHEN HUA 26 is in San Pedro Bay within three nautical miles from the Federal breakwaters and in the Port of Los Angeles, respectively, the safety zone will encompass the navigable waters around and under the vessel, from surface to bottom, within a circle formed by connecting all points 500-feet out from the vessel. The safety zone is

needed to protect personnel, mariners, and vessels from hazards associated with ship-to shore gantry crane arms which will extend more than 200 feet out from the transiting vessel. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the vessel transits to and from its destination.

No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. Sector Los Angeles-Long Beach may be contacted on VHF–FM Channel 16 or (310) 521–3801. The marine public will be notified of the safety zone via Broadcast Notice to Mariners.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. This safety zone impacts a 500-foot radius area in San Pedro Bay within three nautical miles from the Federal breakwaters and in the Port of Los Angeles, respectively, for a short duration. While the safety zone encompasses a 43-day period to account for uncertain transit delays of the M/V ZHEN HUA 26, the safety zone will only be enforced for the duration of the vessel's inbound and outbound transits. Each transit is expected to last less than 24 hours, and that period will be announced via Broadcast Notice to Mariners. Vessel traffic will be able to safely transit around this safety zone, which will impact a small, designated area of San Pedro Bay, Los Angeles, CA.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone encompassing an area extending 500-feet out from a cargo vessel in the vicinity of the Port of Los Angeles and will last only while the vessel is making inbound and outbound transits. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–189 to read as follows:

§ 165.T11–189 Safety Zone; San Pedro Bay, Los Angeles, CA.

(a) *Location.* The following area is a safety zone: all navigable waters, from surface to bottom, within a circle formed by connecting all points 500-feet out from the vessel M/V ZHEN HUA 26, during the vessel's transits in San Pedro Bay within three nautical miles from the Federal breakwaters and in the Port of Los Angeles, respectively.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel designated by or assisting the Captain of the Port Los Angeles-Long Beach (COTP) in the enforcement of the safety zone.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by hailing Coast Guard Sector Los Angeles-Long Beach on VHF–FM Channel 16 or calling at (310) 521–3801. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This temporary safety zone will be enforced from November 12, 2024, through December 25, 2024, during the M/V ZHEN HUA 26's inbound and outbound transits, or as announced via Broadcast Notice to Mariners.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public of the enforcement date and times for this safety zone via Local Notices to Mariners.

Dated: November 7, 2024.

S.L. Crecy,

Captain, U.S. Coast Guard, Captain of the Port Los Angeles-Long Beach.

[FR Doc. 2024–27106 Filed 11–19–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–1024]

RIN 1625–AA87

Security Zone; Corpus Christi Ship Channel, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving security zone for navigable waters within a 500-yard radius of certain vessels carrying cargo requiring an elevated level of security in the Corpus Christi Ship Channel and the La Quinta Channel. The temporary security zone is needed to protect the vessels, the cargo, and the surrounding waterway from terrorist acts, sabotage, or other subversive acts, accidents, or events of a similar nature. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Corpus Christi or a designated representative.

DATES: For the purposes of enforcement, actual notice will be used from November 15, 2024, until November 20, 2024. This rule is effective without actual notice from November 20, 2024 until November 30, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–1024 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant Tim Cardenas, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5130, email *Timothy.J.Cardenas@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port, Sector Corpus Christi
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under the authority in 5 U.S.C. 553(b)(B). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard was notified of these vessels' transit and cargo on November 6, 2024. There is insufficient time to publish an NPRM before this operation because the security zone must be established by November 15, 2024, to ensure security of this vessel and the surrounding area and there is insufficient time to provide a reasonable comment period and to consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because quick action is needed to provide for the security of this vessel and its surroundings while it is in transit.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this security zone regulation under the authority in 46 U.S.C. 70051 and 70124. The Captain of the Port, Sector Corpus Christi (COTP) has determined that potential hazards are associated with the transit of the Motor Vessels (M/V) WOODSIDE CHANEY, CLEAN CAJUN, and CLEAN RESOLUTION. There is a security concern within a 500-yard radius of these vessels when they are loaded and are transiting while loaded. This rule is needed to provide for the safety and security of the vessels, their cargo, and the surrounding waterway from terrorist acts, sabotage, or other subversive acts, accidents, or other events of a similar nature while the vessel is transiting within Corpus Christi, TX.

IV. Discussion of the Rule

The Coast Guard is establishing a 500-yard radius, temporary, moving security zone around M/Vs WOODSIDE

CHANEY, CLEAN CAJUN, and CLEAN RESOLUTION. Other mariners and vessels will be able to identify the security zone because of the M/Vs WOODSIDE CHANEY, CLEAN CAJUN, and CLEAN RESOLUTION's names clearly marked on their stern, and port and starboard sides. The zone for the vessels will be effective from November 15, 2024, through November 30, 2024, and will be enforced when the vessels are cargo loaded and transiting the Corpus Christi Ship Channel and La Quinta Ship Channel to protect the vessels, their cargo, and the surrounding waterways from terrorist acts, sabotage, or other subversive acts, accidents, or other events of a similar nature while the vessel is traveling within the Corpus Christi Ship Channel and La Quinta Ship Channel.

No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative. As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port, USCG Sector Corpus Christi (COTP) in the enforcement of the security zone. Persons or vessels desiring to enter or pass through each zone must request permission from the COTP or a designated representative on VHF–FM channel 16 or by telephone at 361–939–0450. If permission is granted, all persons and vessels must comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners and Marine Safety Information Bulletins (MSIBs) as appropriate for the enforcement times and dates for the security zone.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, duration, and location of the security zone. This rule will impact a small, designated area of 500-yards around the moving vessel in the Corpus Christi Ship Channel and La Quinta Ship Channel as the vessel transits these channels over a period of approximately six hours or less. Most vessels will be able to move around the security zone and therefore the impediment to the movement of other vessels will be minimal. Moreover, the rule allows other vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. If you believe this rule has implications for federalism or Indian Tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f) and have determined that this action is one of a

category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a moving security zone lasting for the duration of time that the M/V WOODSIDE CHANEY, CLEAN CAJUN, and CLEAN RESOLUTION is within the Corpus Christi Ship Channel and La Quinta Channel while loaded with cargo. It will prohibit entry within a 500-yard radius of the M/V WOODSIDE CHANEY, CLEAN CAJUN, and CLEAN RESOLUTION while the vessel is transiting loaded within Corpus Christi Ship Channel and La Quinta Ship Channel. It is categorically excluded from further review under L60(a) in Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–1024 to read as follows:

§ 165.T08–1024 Security Zones; Corpus Christi Ship Channel. Corpus Christi, TX.

(a) *Location.* The following area is a moving security zone: All navigable waters encompassing a 500-yard radius around the M/V WOODSIDE CHANEY, CLEAN CAJUN, and CLEAN RESOLUTION while the vessel loaded with cargo and is in the Corpus Christi Ship Channel and the La Quinta Ship Channel.

(b) *Enforcement period.* This section will be enforced during the times each ship is loaded and underway.

(c) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, you may not enter the security zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. A designated representative is a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port, USCG Sector Corpus Christi (COTP) in the enforcement of the security zone.

(2) Persons or vessels desiring to enter or pass through the zones must request permission from the COTP Sector Corpus Christi on VHF–FM channel 16 or by telephone at 361–939–0450.

(3) If permission is granted, all persons and vessels must comply with all lawful orders and directions of the COTP or the COTP's designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs) and Marine Safety Information Bulletins (MSIBs) of the enforcement times and dates for this security zone.

Dated: November 14, 2024.

J.J. Andrew,

Captain, U.S. Coast Guard, Captain of the Port (Acting), Sector Corpus Christi.

[FR Doc. 2024–27067 Filed 11–19–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–1007]

RIN 1625–AA00

Safety Zones; Delaware River Dredging, Marcus Hook, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones on the waters of the Delaware River, in portions of Marcus Hook Range and Anchorage 7, off Marcus Hook, PA. The safety zones temporarily restrict vessel traffic from transiting or anchoring in portions of the Delaware River while maintenance dredging is being conducted within the Delaware River. The safety zones are needed to protect personnel, vessels, and the marine environment from hazards created by dredging operations. Entry of vessels or persons into these zones is prohibited unless specifically authorized by the COTP or his designated representatives.

DATES: This rule is effective without actual notice from November 20, 2024 through March 31, 2025. For the purposes of enforcement, actual notice will be used from November 12, 2024, until November 20, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–1007 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Petty Officer Jonathan Lougheed, Waterways Management Branch, U.S. Coast Guard Sector Delaware Bay; telephone (215) 271–4814, email *SecDelBayWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under the authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. There is insufficient time to allow for a reasonable comment period prior to the start date for dredging operations. The rule must be in force by November 12, 2024, to serve its purpose of ensuring the safety of the public from hazards associated with dredging operations, such as submerged and floating pipeline, booster pumps, head sections and vessels with a restricted ability to maneuver.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than

30 days after publication in the **Federal Register** for the same reasons discussed above.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP has determined that there are potential hazards associated with dredging operations. The purpose of this rulemaking is to ensure the safety of personnel, vessels, and the marine environment within a 250-yard radius of dredging operations and all associated pipeline and equipment.

IV. Discussion of the Rule

This rule establishes two safety zones from November 12, 2024, through March 31, 2025. The safety zones are necessary to facilitate maintenance dredging of the Delaware River in the vicinity of Marcus Hook Range and Anchorage 7 off Marcus Hook. Anchorage 7 is described in 33 CFR 110.157(a)(8). Dredging will most likely be conducted with the dredge LEXINGTON, though other dredges may be used, along with associated dredge pipeline and boosters. The pipeline consists of a combination of floating hoses immediately behind the dredge and submerged pipeline leading to upland disposal areas. Due to the hazards related to dredging operations, the associated pipeline and the location of submerged pipeline, safety zones are being established in the following areas:

(1) Safety Zone One includes all navigable waters within 250 yards of the dredge, and all related dredge equipment when the dredge is operating in Marcus Hook Range, and Anchorage 7. The dredge will be displaying lights and shapes for vessels restricted in ability to maneuver, as described in our Inland Navigation Rules at 33 CFR 83.27. This safety zone is being established for the duration of the maintenance project. Vessels requesting to transit the safety zone must contact the dredge on VHF channel 13 or 16 at least 1 hour prior to arrival to arrange safe passage. At least one side of the main navigational channel will be kept clear for safe passage of vessels in the vicinity of the safety zone. At no time will the entire main navigational channel be closed to vessel traffic. Vessels should avoid meeting in these areas where one side of the main navigational channel is open and proceed per this rule and the Rules of the Road (33 CFR subchapter E).

(2) Safety Zone Two includes all the waters of Anchorage 7 off Marcus Hook Range, as described in 33 CFR 110.157(a)(8). Vessels wishing to anchor in Anchorage 7 off Marcus Hook Range while this rule is in effect must obtain permission from the COTP at least 24 hours in advance by calling (215) 271–4807. Vessels requesting permission to anchor within Anchorage 7 off Marcus Hook must be at least 650 feet in overall length. The COTP will permit, at maximum, only one vessel to anchor at a time, on a ''first-come, first-served'' basis. Vessels will only be allowed to anchor for a 12-hour period. Vessels that require an examination by the Public Health Service, Customs, or Immigration authorities will be directed to an anchorage by the COTP for the required inspection. Vessels are encouraged to use Anchorage 9 near the entrance to Mantua Creek, Anchorage 10 at Naval Base, Philadelphia, and Anchorage 6 off Deepwater Point Range as alternative anchorages.

Vessels must be at least 650 feet in length to use Anchorage 7 while this rule is in effect. We are instituting this restriction because vessels of this size are limited in their ability to utilize other anchorages due to draft. Smaller vessels maintain a host of other options to include, but are not limited to, Anchorage 9 and 10, as recommended above.

Entry into, transiting, or anchoring within safety zone one is prohibited unless vessels obtain permission from the COTP or make satisfactory passing arrangements with the operating dredge per this rule and the Rules of the Road (33 CFR subchapter E). The COTP may issue updates regarding the vessel and equipment being utilized for these dredging operations via Marine Safety Information Bulletin and Broadcast Notice to Mariners.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on size, location, duration, and traffic management of the safety zones. The safety zones will be enforced in an area and in a manner that does not conflict with transiting commercial and recreational traffic. At least one side of the main navigational channel will be open for vessels to transit at all times. Moreover, the Coast Guard will work in coordination with the pilots to ensure vessel traffic can transit the area safely.

Although this regulation will restrict access to regulated areas, the effect of this rule will not be significant because there are several alternate anchorages available for vessels to anchor. Furthermore, vessels may transit through the safety zones with the permission of the COTP or make satisfactory passing arrangements with the dredge LEXINGTON, or other dredge(s) that may be used in accordance with this rule and the Rules of the Road (33 CFR subchapter E). The Coast Guard will notify the maritime public about the safety zones through maritime advisories, allowing mariners to alter their plans accordingly.

B. Impact on Small Entities

The regulatory flexibility analysis provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to rules not subject to notice and comment. As the Coast Guard has, for good cause, waived notice and comment requirement that would otherwise apply to this rulemaking, the Regulatory Flexibility Act's provisions do not apply here. Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves two safety zones to protect waterway users that would prohibit entry within 250 yards of dredging operations and will close only one side of the main navigation channel. Vessels can request permission to pass through the chan. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–1007, to read as follows.

§ 165.T05–1007 Safety Zones, Delaware River Dredging; Marcus Hook, PA.

(a) *Location.* The following areas are safety zones:

(1) Safety Zone One includes all waters within 250 yards of the dredge displaying lights and shapes for vessels restricted in ability to maneuver as described in 33 CFR 83.27, as well as all related dredge equipment, while the dredge is operating in Marcus Hook Range. For enforcement purposes Marcus Hook Range includes all navigable waters of the Delaware River shoreline to shoreline, bound by a line drawn perpendicular to the center line of the channel at the farthest upriver point of the range to a line drawn perpendicular to the center line of the channel at the farthest downriver point of the range.

(2) Safety zone two includes all the waters of Anchorage 7 off Marcus Hook Range, as described in 33 CFR 110.157(a)(8) and depicted on U.S. Nautical Chart 12312.

(b) *Definitions.* As used in this section—

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to assist with enforcement of the safety zone described in paragraph (a) of this section.

(c) *Regulations.* (1) Entry into or transiting within the safety zone one described in paragraph (a) of this section is prohibited unless vessels obtain permission from the Captain of the Port via VHF–FM channel 16 or 215–271–4807 or make satisfactory passing arrangements via VHF–FM channel 13 or 16 with the operating dredge per this section and the rules of the Road (33 CFR subchapter E). Vessels requesting to transit shall contact the operating dredge via VHF–FM channel 13 or 16 at least 1 hour prior to arrival.

(2) Vessels desiring to anchor in safety zone two, Anchorage 7 off Marcus Hook Range, must obtain permission from the COTP at least 24 hours in advance by calling (215) 271–4807. The COTP will permit, at maximum, one vessel at a time to anchor on a ''first-come, first-served'' basis. Vessels will only be allowed to anchor for a 12-hour period. Vessels that require an examination by the Public Health Service, Customs, or Immigration authorities will be directed to an anchorage for the required inspection by the COTP.

(3) Vessels desiring to anchor in Safety Zone Two, Anchorage 7 off Marcus Hook Range, must be at least 650 feet in length overall.

(4) This section applies to all vessels except those engaged in the following operations: enforcement of laws, service of aids to navigation, and emergency response.

(d) *Enforcement.* The U.S. Coast Guard may be assisted by federal, state, and local agencies in the patrol and enforcement of the zone.

(e) *Enforcement period.* This rule will be enforced from November 12, 2024, through March 31, 2025, unless cancelled earlier by the Captain of the Port.

Dated: November 12, 2024.

Kate F. Higgins-Bloom,

Captain, U.S. Coast Guard, Captain of the Port, Sector Delaware Bay.

[FR Doc. 2024–26945 Filed 11–19–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2023–0361; FRL–12238–02–R4]

Air Plan Approval; Shelby County, Tennessee; Revisions to Startup, Shutdown, and Malfunction Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a portion of a State Implementation Plan (SIP) revision submitted by the Tennessee Department of Environment and Conservation (TDEC) on behalf of Shelby County Health Department (SCHD) Pollution Control Section on March 2, 2022. This revision was submitted in response to a finding of substantial inadequacy and SIP call published on June 12, 2015, concerning excess emissions during startup, shutdown, and malfunction (SSM) events. The revision contains amended air codes of Shelby County and the following municipalities within Shelby County: Town of Arlington, City of Bartlett, Town of Collierville, City of Germantown, City of Lakeland, City of Memphis, and Town of Millington (referred to hereinafter as the ''included municipalities''). EPA is also approving the SIP revision's other changes to the affected Chapter, which are unrelated to the SIP call but of which Shelby County and the included municipalities are also requesting incorporation into the Shelby County portion of the Tennessee SIP. EPA is approving the portions of the SIP revision that correct certain deficiencies identified in the June 12, 2015, SSM SIP call and that are in accordance with the requirements for SIP provisions under the Clean Air Act (CAA or Act).

DATES: This rule is effective December 20, 2024.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R4–OAR–2023–0361. All documents in the docket are listed on the *regulations.gov* website. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that you contact the person 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 Federal holidays.

FOR FURTHER INFORMATION CONTACT: Estelle Bae, Air Permitting Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9143. Ms. Bae can also be reached via electronic mail at *bae.estelle@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 2, 2022, Tennessee transmitted a SIP revision from SCHD in response to the SIP call issued in the June 12, 2015, action titled ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction'' (''2015 SSM SIP Action'') [1] and requested revisions to the Shelby County portion of the Tennessee SIP.[2] In a notice of proposed rulemaking (NPRM) published on September 12, 2024, EPA proposed to approve the March 2, 2022, SIP revision with certain exceptions. Specifically, EPA proposed in the NPRM to incorporate by reference, with certain exceptions, revisions to the City of Memphis Air Code Section 9–12–24, locally effective on February 22, 2022, which itself adopts by reference Tennessee Air Pollution Control Regulations (TAPCR) Chapter 1200–3–20, titled ''Limits on Emissions due to Malfunctions, Startups, and Shutdowns,'' as effective on December 5, 2018, into City of Memphis Air Code Section 9–12–24 (formerly Section 16–87).[3] [4] [5] SCHD has excluded certain parts of the adoption by reference of TAPCR Chapter 1200–3–20 from its request for EPA approval of City of Memphis Air Code Section 9–12–24 into the SIP. Specifically, in the March 2, 2022, SIP revision, SCHD requests that Section 1200–3–20–.06(5) not be incorporated into the Shelby County portion of the Tennessee SIP. In addition, on June 30, 2023, EPA received a request submitted

[1] *See* 80 FR 33839 (June 12, 2015).

[2] *See* 54 FR 25456 (June 15, 1989). EPA had initially approved the City of Memphis Code into the Tennessee SIP under ''Memphis and Shelby County.'' *See id.* Included in ''Memphis and Shelby County'' are Shelby County and the following municipalities: Town of Arlington, City of Bartlett, Town of Collierville, City of Germantown, City of Lakeland, City of Memphis, and Town of Millington. Shelby County Health Department's Air Pollution Control Branch recommends to the aforementioned municipalities regulatory revisions, which, with this approval adopts by Shelby County and these included municipalities, which implement and enforce the regulations within their respective jurisdictions. As the air pollution control regulations/ordinances adopted by those jurisdictions are substantively identical, EPA had selected just one to represent the SIP compilations for Shelby County and the included municipalities: the City of Memphis Air Code. Thus, the SIP-called provision from the Shelby County portion of the Tennessee SIP that was identified in the 2015 SSM SIP Action was City of Memphis Air Code (although it was referred to as ''Shelby County Code'') Section 16–87. For simplicity and brevity, since the jurisdictions' regulations/ordinances remain substantively identical, EPA will continue to refer to the City of Memphis Air Code throughout this rulemaking action to represent the regulations/ordinances of Shelby County and the included municipalities.

[3] One of the intervening changes that EPA is approving as part of this rulemaking action is changing the relevant City of Memphis Air Code reference in the SIP from Section 16–87 to Section 9–12–24. The title of this section remains ''Malfunctions, Startups and Shutdowns.''

[4] EPA is finalizing the incorporation by reference—with certain exceptions—into the Shelby County portion of the Tennessee SIP, the City of Memphis Air Code Section 9–12–24 (formerly Section 16–87), locally effective on February 22, 2022, which adopts by reference the December 5, 2018, State-effective version of TAPCR Chapter 1200–3–20, ''Limits on Emissions Due to Malfunctions, Startups, and Shutdowns.'' EPA is also incorporating by reference the following sections that contain substantively identical changes: Shelby County—Section 3–9 (locally effective on January 13, 2020); Town of Arlington—Section 20–101 (locally effective on November 2, 2020); City of Bartlett—Section 20–101 (locally effective on December 8, 2020); Town of Collierville—Section 96.02 (locally effective on November 23, 2020); City of Germantown—Section 9–21(24) (locally effective on July 12, 2021); City of Lakeland—Section 20–101 (locally effective on February 10, 2022); Town of Millington—Section 20–101 (locally effective on October 12, 2020). See the cover letter of the SIP revision dated March 1, 2022, with the subject line ''Request to Incorporate Revisions into the Shelby County and Included Municipalities Ordinance into the SIP for Tennessee as Response to EPA's SIP Call'' in the docket for this rulemaking action for evidence of adoption into the air codes of Shelby County and the included municipalities.

[5] The State-effective dates for the rules within TAPCR Chapter 1200–3–20 that were in effect on December 5, 2018, are: 1200–3–20–.01, ''Purpose''—September 26, 1994; 1200–3–20–.02, ''Reasonable Measures Required''—November 11, 1997; 1200–3–20–.04, ''Logs and Reports''—June 19, 2013; 1200–3–20–.05, ''Copies of Log Required''—September 26, 1994; 1200–3–20–.06, ''Report Required Upon The Issuance of a Notice of Violation''—November 16, 2016; 1200–3–20–.07, ''Special Reports Required''—September 26, 1994; 1200–3–20–.08, ''Rights Reserved''—September 26, 1994; and 1200–3–20–.09, ''Additional Sources Covered''—September 26, 1994. 1200–3–20–.03 was withdrawn from Shelby County's submission. There were no substantive changes to 1200–3–20–.05.

by TDEC, on behalf of SCHD, to withdraw the portion of its submission making changes to TAPCR Section 1200–3–20–.03, new TAPCR Section 1200–3–20–.06(1), and new TAPCR Section 1200–3–20–.06(4), as submitted in the March 2, 2022, SIP revision.[6] EPA's rationale for the approval is explained in the September 12, 2024, NPRM. *See* 89 FR 74165. Comments on the September 12, 2024, NPRM were due on or before October 3, 2024. EPA did not receive any comments on the September 12, 2024, NPRM.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference.[7] In accordance with the requirements of 1 CFR 51.5, and as discussed in Section I of this preamble, EPA is finalizing the incorporation by reference, with certain exceptions, of City of Memphis Air Code Section 9–12–24 (formerly Section 16–87), locally effective on February 22, 2022, which itself adopts by reference TAPCR Chapter 1200–3–20, as State effective on December 5, 2018, with the following exceptions: EPA is not incorporating TAPCR Section 1200–3–20–.03, 1200–3–20–.06(1), 1200–3–20–.06(4), and 1200–.03–20–.06(5).[8] These revisions are intended, in part, to conform Shelby County's regulations with the State of Tennessee's SIP-approved regulations. EPA has made and will continue to make these materials generally available through *https://www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the ''for further information contact'' section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[9]

III. Final Action

EPA is approving the portion of Tennessee's March 2, 2022, SIP revision that makes changes to the Shelby County portion of the Tennessee SIP under City of Memphis Air Code Section 9–12–24 (formerly Section 16–87), which adopts by reference portions of TAPCR Chapter 1200–3–20 as effective on December 5, 2018. Specifically, EPA is approving the changes to the adoption by reference of Section 1200–3–20–.01, ''Purpose''; Section 1200–3–20–.02, ''Reasonable Measures Required''; Section 1200–3–20–.04, ''Logs and Reports''; Section 1200–3–20–.06, ''Report Required Upon the Issuance of Notice of Violation,'' renumbered from 1200–3–20–.07, except for 1200–3–20–.06(1), 1200–3–20–.06(4), and 1200–3–20–.06(5); Section 1200–3–20–.07, ''Special Reports Required,'' renumbered from 1200–3–20–.08; and Section 1200–3–20–.09, ''Additional Source Covered,'' renumbered from 1200–3–20–10. EPA is also approving the addition of Section 1200–3–20–.08, ''Rights Reserved.'' EPA is also approving the removal of Section 1200–3–20–.06, ''Scheduled Maintenance.''

IV. Statutory and Executive Order Reviews

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

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

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

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

SCHD did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air

[6] The June 30, 2023, letter from TDEC is included in the docket for this action, as is SCHD's June 29, 2023, letter regarding withdrawal of certain provisions.

[7] EPA's approval of the changes to and incorporation by reference of City of Memphis Air Code Section 9–12–24 also includes the approval of substantively identical changes to regulations/ordinances submitted for Shelby County and the other included municipalities and the incorporation by reference of those impacted sections in these jurisdictions. See footnote 4, above.

[8] EPA is not incorporating by reference into the Shelby County portion of the Tennessee SIP the adoption by reference of TAPCR Section 1200–3–20–.03, 1200–03–20–.06(1), 1200–3–20–.06(4), and 1200–03–20–.06(5).

[9] 62 FR 27968 (May 22, 1997).

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 EJ for communities with EJ concerns.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 21, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 12, 2024.

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart RR—Tennessee

■ 2. In § 52.2220(c), amend Table 2 under the heading ''Division IV—Emission Standards'' by:

■ a. Adding ''Section 9–12–24 Limits on Emissions due to Malfunctions, Startups, and Shutdowns'' to be in numerical order; and

■ b. Revising ''Section 16–87 Limits on Emissions due to Malfunctions, Startups, and Shutdowns.''

The addition and revision read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

TABLE 2—EPA APPROVED MEMPHIS-SHELBY COUNTY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
	Division IV Source Emissions Standards			
Section 9–12–24	Limits on Emissions due to Malfunctions, Startups & Shutdowns.	2/22/22	11/20/2024, [Insert first page of **Federal Register** citation].	With the exception of TAPCR Section 1200–3–20–.03, .06(1), (4) and (5). With the same exceptions, EPA's approval includes the corresponding sections of the Air Pollution Control Regulations/Ordinances for the remaining jurisdictions within Shelby County: Shelby County—Section 3–9 (locally effective on January 13, 2020); Town of Arlington—Section 20–101 (locally effective on November 2, 2020); City of Bartlett—Section 20–101 (locally effective on December 8, 2020); Town of Collierville—Section 96.02 (locally effective on November 23, 2020); City of Germantown—Section 9–21(24) (locally effective on July 12, 2021); City of Lakeland—Section 20–101 (locally effective on February 10, 2022); and Town of Millington—Section 20–101 (locally effective on October 12, 2020).
*	*	*	*	*
Section 16–87	Limits on Emissions due to Malfunctions, Startups & Shutdowns.	8/14/89	11/20/2024, [Insert first page of **Federal Register** citation].	Only TAPCR Section 1200–3–20–.03 with a State effective date of March 21, 1979, and the first sentence of TAPCR Section 1200–3–20–.07(1) with a State effective date of December 14, 1981.

[FR Doc. 2024–26928 Filed 11–19–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2024–0451; FRL–12278–01–R4]

Tennessee: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action on the authorization of changes to Tennessee's hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. These changes were outlined in a December 8, 2023, application to the EPA. We have determined that these changes satisfy all requirements needed for final authorization.

DATES: This authorization is effective on January 21, 2025 without further notice unless the EPA receives adverse comment by December 20, 2024. If the EPA receives adverse comment, we will either publish a timely withdrawal of this direct final action in the **Federal Register** informing the public that the authorization will not take effect, or we will publish a notification containing a response to comments that either reverses the decision or affirms that the final action will take effect. In the event that the final action is withdrawn, we would address all public comments and make a final decision on authorization in a subsequent final action.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2024–0451, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The EPA encourages electronic submittals and lists all publicly available docket materials electronically at *www.regulations.gov.* If you are unable to make electronic submittals or require alternative access to docket materials, please notify Robin Billings through the provided contacts in the **FOR FURTHER INFORMATION CONTACT** section. Please also contact Robin Billings if you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you.

FOR FURTHER INFORMATION CONTACT: Robin Billings; RCRA Programs and Cleanup Branch; Land, Chemicals and Redevelopment Division; U.S. Environmental Protection Agency; Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960; telephone number: (404) 562–8515; fax number: (404) 562–9964; email address: *billings.robin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Why is the EPA using a direct final action?

The EPA is publishing this action without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. This action is a routine program change. However, in the ''Proposed Rules'' section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule allowing the public an opportunity to comment. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this action, see the **ADDRESSES** section of this document.

If the EPA receives adverse comments, we will either withdraw this action by publishing a document in the **Federal Register** before the action becomes effective, or we will publish a notification containing a response to comments that either reverses the decision or affirms that the final action will take effect. In the event that the final action is withdrawn, the EPA would base any further decision on the authorization of the State's program changes on the proposal mentioned in the previous paragraph and after consideration of all comments received during the comment period. We would address all public comments and make a final decision on authorization in a subsequent final action.

II. Why are revisions to State programs necessary?

States that have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask the EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in title 40 of the Code of Federal Regulations (CFR), parts 124, 260 through 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time they take effect in unauthorized States. Thus, the EPA will implement those requirements and prohibitions in Tennessee, including the issuance of new permits implementing those requirements, until the State is granted authorization to do so.

III. What decisions has the EPA made in this action?

Tennessee submitted a complete program revision application (PRA), dated December 8, 2023, seeking authorization of changes to its hazardous waste program corresponding to certain Federal rules promulgated between December 1, 1987, and June 30, 2022 (including HSWA Cluster II [1] (Checklist [2] 44C only) and RCRA Clusters XXVII (Checklist 241 only) and XXX). Additionally, Tennessee included, in its PRA, amendments to provisions that had been excluded from previously authorized checklists in parts of Clusters XVI, XVII, XXIII, XXIV, and XXV. The EPA concludes that Tennessee's application to revise its authorized program meets all of the statutory and regulatory requirements established under RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, the EPA grants Tennessee final authorization to operate its hazardous waste program with the changes described in the PRA and as outlined below in section VI of this document.

Tennessee has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its PRA, subject to the limitations of HSWA, as discussed above.

IV. What is the effect of this authorization decision?

The effect of this decision is that the changes described in Tennessee's PRA as outlined below and in section VI of this document will become part of the authorized State hazardous waste program and will therefore be federally enforceable. Tennessee will continue to have primary enforcement authority and responsibility for its State hazardous waste program. The EPA will maintain

[1] A ''Cluster'' is a grouping of hazardous waste rules that the EPA promulgates from July 1st of one year to June 30th of the following year.

[2] A ''checklist'' is developed by the EPA for each Federal rule amending the RCRA regulations. The checklists document the changes made by each Federal rule and are presented and numbered in chronological order by date of promulgation.

its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses, and reports;
- Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which the EPA is authorizing Tennessee are already effective under State law and are not changed by this action.

V. What has Tennessee previously been authorized for?

Tennessee initially received final authorization on January 22, 1985, effective February 5, 1985 (50 FR 2820), to implement the RCRA hazardous waste management program. The EPA granted authorization for changes to Tennessee 's program on the following dates: June 12, 1987, effective August 11, 1987 (52 FR 22443); June 1, 1992, effective July 31, 1992 (57 FR 23063); May 8, 1995, effective July 7, 1995 (60 FR 22524); August 24, 1995, effective October 23, 1995 (60 FR 43979); May 23, 1996, effective July 22, 1996 (61 FR 25796); January 30, 1998, effective March 31, 1998 (63 FR 4587); September 15, 1999, effective November 15, 1999 (64 FR 49998); October 26, 2000, effective December 26, 2000 (65 FR 64161); December 26, 2001, effective February 25, 2002 (66 FR 66342); April 11, 2003, effective June 10, 2003 (68 FR 17748); March 14, 2005, effective May 13, 2005 (70 FR 12416); May 11, 2006, effective July 10, 2006 (71 FR 27405); October 5, 2012, effective December 4, 2012 (77 FR 60919); March 20, 2015, effective May 19, 2015 (80 FR 14847); and July 13, 2022, effective September 12, 2022 (87 FR 41610).

VI. What changes is the EPA authorizing with this action?

Tennessee submitted a complete PRA, dated December 8, 2023, seeking authorization of changes to its hazardous waste management program in accordance with 40 CFR 271.21. This application included changes associated with Checklists 44C, 241, and 244 from HSWA Cluster II and RCRA Clusters XXVII and XXX. The EPA is authorizing all of these changes.

The PRA also included revisions to Checklists 212, 214, 231, 233B, 233D2, 233E, and 237. Tennessee was previously authorized for these Checklists in the September 12, 2022, Final Authorization (87 FR 41610); however, certain provisions of the Tennessee regulations associated with these Checklists included omissions or errors that required correction. Tennessee has corrected these omissions and errors and has submitted the corrected provisions for authorization. The EPA is authorizing all but two [3] of these revised provisions.

The EPA has determined, subject to receipt of written comments that oppose this action, that Tennessee's hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. Therefore, the EPA grants final authorization to Tennessee for the following program changes:

A. Newly Submitted Checklists

Description of Federal requirement	**Federal Register** date and page	Analogous state authority [1]
Checklist 44C, Corrective Action for Injection Wells.	52 FR 45788, 12/1/1987	0400–12–01–.05(1)(b)2(ix) [reserved]; and 0400–12–01–.07(1)(c)1(ii)(III)I and II.
Checklist 241, Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine.	84 FR 5816, 02/22/2019	0400–12–01–.02(1)(d)1(i)(II) and (1)(g)3; 0400–12–01–.02(4)(d)3, (4)(d)3 Comment, and (4)(d)5 Table; 0400–12–01–.03(1)(a)2(xii), (1)(a)2(xiii)(I) through (III), (1)(d)3(x), (1)(e)1(v)(IX), and (1)(e)1(v)(X); 0400–12–01–.06(1)(b)2(xi); 0400–12–01–.05(1)(b)2(xiii); 0400–12–01–.09(16); 0400–12–01–.10(1)(g), (1)(g)1, and (4)(a)1(iv) and (v); 0400–12–01–.07(1)(b)4(x); and 0400–12–01–.12(7)(a)1 and (7)(a)4.
Checklist 244, Canada Import Export Recovery and Disposal Code Changes.	86 FR 54381, 10/01/2021	0400–12–01–.03(9)(b), (9)(d)2(iii), (9)(d)6(vi), (9)(d)6(vi)(I) and (II), (9)(e)2(ii), (9)(e)6(v), (9)(e)7(ii), and (9)(e)8(ii)(III); 0400–12–01–.06(2)(c)1(iv)(II); and 0400–12–01–.05(2)(c)1(iv)(II).

[1] The Tennessee regulatory citations are from the Tennessee Rules of the Division of Solid Waste Management (Hazardous Waste Program), Chapter 0400–12–01. Citations to Rules .02, .03, .05–.07, .09, and .10 within this Chapter refer to the regulatory text revised as of September 2022. Citations to Rule .12 within this Chapter refer to the regulatory text revised as of April 2022.

B. Revisions to Previously Authorized Checklists

Tennessee was authorized for each of the Checklists in the table below as a part of the Final Authorization effective September 12, 2022 (87 FR 41610), although certain provisions contained omissions or errors that required correction. Tennessee is submitting its revisions to these previously authorized provisions, and the EPA is authorizing them here.

Description of Federal requirement	**Federal Register** date and page	Analogous state authority [1]
Checklist 212, National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II).	70 FR 59402, 10/12/2005	0400–12–01–.06(15)(a)2(i) and (iii); 0400–12–01–.05(15)(a)2(i); 0400–12–01–.09(8)(a)2(i); 0400–12–01–.07(2)(h), (2)(h)1, (2)(h)1(i) through (ix),[2] and (2)(h)2 (removed); 0400–12–01–.07(5)(b)5(v), (5)(b)8, (5)(b)10(iv)(III), and (5)(b)11(v)(III); 0400–12–01–.07(8)(b)2(iii); 0400–12–01–.07(9)(c)5(x)(I) through (III), (9)(c)5(xi)(I), (9)(c)5(xi)(I) I and II, (9)(c)5(xi)(I) IV, and (9)(c)5(xi)(II), and (9)(c)5(xi)(II) I; 0400–12–01–.07(10)(l)10; 0400–12–01–.07(1)(e) and (1)(j); and 0400–12–01–.07(12)(a)1(i)–(ii), (12)(a)2(i), and (12)(a)3.

[3] The changes to both Rule 0400–12–01.09(8)(a)2(iii) from Checklist 212, and Rule 0400–12–01–.02 (29)(a)1, from Checklist 233E, are not being authorized due to inaccuracies in the state regulatory text. The prior versions of each of these provisions were authorized in the September 12, 2022, Final Authorization (87 FR 41610). Tennessee will correct these inaccuracies in a future rulemaking.

Description of Federal requirement	Federal Register date and page	Analogous state authority [1]
Checklist 214, Corrections to Errors in the Code of Federal Regulations.	71 FR 40254, 7/14/2006	0400–12–01–.05(14)(b)4(i); [3] and 0400–12–01–.10(3)(f) table 1.
Checklist 231, Hazardous Waste Electronic Manifest System; Final Rule.	79 FR 7518, 2/7/2014	0400–12–01–.01(7)(a)1(i)(II).
Checklist 233B, Legitimacy-related provisions, including prohibition of sham recycling, definition of legitimacy, definition of contained.	80 FR 1694, 1/13/2015	0400–12–01–.01(5)(d)2 and (5)(d)2(ii).[4]
Checklist 233D2, 2008 DSW exclusions and non-waste determinations, including revisions from 2015 DSW final rule and 2018 DSW final rule.	80 FR 1694, 1/13/2015; 83 FR 24664, 5/30/2018.	0400–12–01–.01(2)(a) Definition of ''Facility''; and 0400–12–01–.02(13)(b)5, (13)(b)6(i), (13)(b)6(ii), (13)(c), (13)(c)2, (13)(c)3, (13)(c)4(iii), (13)(d), (13)(d)1(i), (13)(d)2(ii), and (13)(d)6(viii)(II).[5]
Checklist 233E, Remanufacturing exclusion.	80 FR 1694, 1/13/2015	0400–12–01–.02(1)(d)1(xxvii)(VI) II E and (1)(d)1(xxvii)(VI) V; 0400–12–01–.02(10)(d)1 Note and (10)(g) Notes; 0400–12–01–.02(27)(a), (27)(d)14(i)(II),[6] and (27)(d)14(i)(III); 0400–12–01–.02(28)(a)1; and 0400–12–01–.02(29)(b).
Checklist 237, Hazardous Waste Generator Improvements Rule.	81 FR 85732, 11/28/2016	0400–12–01–.03(1)(a)2(i)(II); 0400–12–01–.03(12)(j)4 (removed).[7]

[1] The Tennessee regulatory citations are from the Tennessee Rules of the Division of Solid Waste Management (Hazardous Waste Program), Chapter 0400–12–01. Citations to Rules .01–.03, .05–.07, .09, and .10 within this Chapter refer to the regulatory text revised as of September 2023.

[2] The subparts of 0400–12–01–.07(2)(h)1 were also renumbered by the State, but the contents of the Part did not change as a result of the renumbering.

[3] Rule 0400–12–01.05(14)(b)4(i) was noted in the 2022 Final Authorization to have an incorrect cross-reference to Rule 0400–12–01–.02(3)(d). It has now been corrected to properly refer to Rule 0400–12–01–.02(3)(e).

[4] In the 2022 Final Authorization, these two provisions were authorized, but it was noted that the parenthetical notes about legitimate recycling that accompanied each provision at that time were unclear and would be removed or clarified by Tennessee in a subsequent rulemaking. Both parenthetical notes have now been removed, and the EPA is re-authorizing both provisions without them.

[5] Several subsections throughout Paragraph 13 of Rule 0400–12–01–.02 that were noted in the 2022 Final Authorization have been clarified with respect to the management of hazardous secondary materials.

[6] Tennessee Rule 0400–12–01–.02(27)(d)14(i)(II) was noted in the 2022 Final Authorization to have incorrect cross-references to Paragraphs (30) and (32) of Rule 0400–12–01–.06. They have now been corrected to properly refer to Rules 0400–12–01–.02(27) and (29).

[7] Tennessee Rule 0400–12–01–.03(12)(j)4 was noted in the 2022 Final Authorization as containing an incorrect waiver that would need to be excluded in a subsequent rulemaking. Tennessee has now properly removed it from its regulations.

VII. Where are the revised State rules different than the Federal rules?

When revised State rules differ from the Federal rules in the RCRA state authorization process, the EPA determines whether the State rules are equivalent to, more stringent than, or broader in scope than the Federal program. Pursuant to RCRA section 3009, 42 U.S.C. 6929, State programs may contain requirements that are more stringent than the Federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable. Although the statute does not prevent States from adopting regulations that are broader in scope than the Federal program, states cannot receive Federal authorization for such regulations, and they are not federally enforceable. There are no State requirements in the program revisions listed in the tables above that are considered to be broader in scope than the Federal requirements. The EPA has determined that certain regulations included in Tennessee's program revisions listed in the first table above are more stringent than the Federal program. These more stringent requirements will become part of the federally enforceable RCRA program in Tennessee when authorized.

Tennessee's program is more stringent than the Federal program at 0400–12–01–.09(16)(c)1(i)(I); 0400–12–01–.09(16)(c)9(i); 0400–12–01–.09(16)(d)4; and 0400–12–01–.09(16)(k)3(ix)(I)—in each case because the Tennessee program requires annual reporting instead of biennial reporting.

It should be noted that States cannot receive authorization for certain Federal regulatory functions involving international shipments (*i.e.,* import and export provisions) such as those associated with the Canada Import Export Recovery and Disposal Code Changes Rule (Checklist 244). Although Tennessee has adopted these rules to maintain its equivalency with the Federal program, it has appropriately maintained the Federal references.

VIII. Who handles permits after the authorization takes effect?

When final authorization takes effect, Tennessee will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits that the EPA issued prior to the effective date of authorization until they expire or are terminated. The EPA will not issue any new permits or new portions of permits for the provisions listed in the table above after the effective date of the final authorization. The EPA will continue to implement and issue permits for HSWA requirements for which Tennessee is not yet authorized. The EPA has the authority to enforce State-issued permits after the State is authorized.

IX. What is codification and is the EPA codifying Tennessee's hazardous waste program as authorized in this action?

Codification is the process of placing citations and references to the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. The EPA does this by adding those citations and references to the authorized State rules in 40 CFR part 272. The EPA is not codifying the authorization of Tennessee's revisions at this time. However, the EPA reserves the ability to amend 40 CFR part 272, subpart RR, for the authorization of Tennessee's program changes at a later date.

X. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action authorizes State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 14094 (88 FR 21879, April 11, 2023) regulatory action because actions such as the authorization of Tennessee's revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988), by examining the takings implications of this action in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). ''Burden'' is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this action authorizes pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this rule is not subject to Executive Order 12898.

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. The EPA will submit a report containing this document 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 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). This final action will be effective January 21, 2025.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: November 6, 2024.

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

[FR Doc. 2024–26922 Filed 11–19–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 90

[PS Docket No. 07–100; FCC 24–114; FR ID 258077]

Improving Public Safety Communications in the 4.9 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) takes another major step towards ensuring that the 4940–4990 MHz band (4.9 GHz band) is efficiently and intensely utilized in support of public safety missions nationwide. To that end, the Commission bolsters the coordinated nationwide approach to the band that it established in its *Seventh Report and Order,* FCC 23–3, in which it adopted a nationwide Band Manager framework to coordinate operations in the 4.9 GHz band, optimize public safety use, and facilitate the integration of the latest commercially available technologies, including 5G, for the benefit of public safety users. To further these goals—and ensure that the 4.9 GHz band is put to more robust use nationwide in the near term—the 4.9 GHz Band Manager, once selected, will be eligible to apply for a nationwide

overlay license and authorized to enter into a sharing agreement with the First Responder Network Authority (FirstNet). Pursuant to this sharing agreement, FirstNet may be permitted to use unassigned spectrum in the 4.9 GHz band as part of its nationwide public safety broadband network (NPSBN) in a manner that protects incumbent operations. In addition to expanding the Band Manager's responsibilities to include entering into a sharing agreement with FirstNet and establishing rules governing the nationwide Band Manager overlay license, the Commission also reaffirms its commitment to the nationwide Band Manager framework and clarifies the Band Manager's responsibilities to address the new rules we adopt herein.

DATES: Effective December 20, 2024.

ADDRESSES: Federal Communications Commission, 45 L St. NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Paul Powell of the Wireless Telecommunications Bureau, Mobility Division, at 202–418–1613 or *Paul.Powell@fcc.gov,* or Brian Marenco of the Public Safety and Homeland Security Bureau at 202–418–0838 or *Brian.Marenco@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Eighth Report and Order in WP Docket No. 07–100; FCC 24–114, adopted on October 18, 2024, and released on October 22, 2024. The full text of this document is available for public inspection online at *https://www.fcc.gov/document/fcc-adopts-new-rules-public-safety-49-ghz-band.*

Synopsis

1. In the *Eighth Report and Order,* the Commission finds that its topline goals of preserving and expanding use to a variety of primary public safety operations would be best served by assigning a nationwide overlay license to the Band Manager. Rather than directly operating in the band, the Band Manager, once selected, will be authorized to enter into a sharing agreement with FirstNet to enable use of unassigned portions of the 4.9 GHz band as part of FirstNet's NPSBN in a manner that protects incumbent operations. The Commission also clarifies that FirstNet remains free to enter into additional sharing agreements with incumbent licensees to operate within their service areas consistent with § 90.1203(b) of the Commission's rules. After review of the record, the Commission concludes that allowing the Band Manager to enter into a sharing agreement with FirstNet to enable broader access into the band by FirstNet's NPSBN, while also working with public safety licensees to coordinate and rationalize their use of the band, can enable greater public safety use, including for 5G, and has the potential to free up new opportunities for expanded use of the band in the near term. In addition, after review of the record, the Commission also finds that public safety entities would be better served by clarifying the Band Manager's primary responsibilities and revise § 90.1217 of our rules accordingly.

2. *Nationwide Overlay License.* Based on the Commission's review of this record, it is persuaded that expanding the Band Manager's role and responsibilities to encompass a nationwide overlay license and a sharing agreement with FirstNet for any unassigned spectrum is the best approach to ensure that 4.9 GHz band spectrum is more fully utilized in the near term, while at the same time protecting existing incumbent licensee usage. The Band Manager, once it has applied for and receives an overlay licensee, will obtain the rights to a nationwide geographic area license across the entire 50 megahertz of the band that is ''overlaid'' on top of the existing incumbent licenses and includes areas where spectrum is unassigned. The Commission finds that this licensing structure, combined with authorizing the Band Manager to enter into a sharing agreement enabling FirstNet to operate where white spaces exist, is the best mechanism for increasing public safety operations in this band in the near term.

3. The Band Manager will also carry with it important responsibilities in conjunction with its overlay licensee role, paramount among them being the obligation to oversee use of the spectrum pursuant to the sharing agreement to ensure that FirstNet's operations on these frequencies do not interfere with incumbent operations. The Band Manager will be authorized to enable FirstNet to operate anywhere within the geographic area of the overlay license, subject to the parameters of the sharing agreement and protection of incumbent licensees. If an incumbent licensee cancels or terminates its license, the Band Manager will be authorized to amend its sharing agreement with FirstNet, if necessary, to include the rights to operate in the geographic (or site-based) area and on the channel(s) of the cancelled license. For these reasons, the Commission believes that this mechanism is the best method to make certain that the 4.9 GHz band remains a public safety band which is more fully utilized, including by existing incumbent licensees. The Band Manager will ensure that incumbent licensees can continue their existing operations to suit their unique spectrum needs while simultaneously and separately authorizing FirstNet's operations in areas of the band where there are no incumbent operations. The Commission clarifies that FirstNet remains free to enter into additional sharing agreements with incumbent licensees to allow it to operate within the service areas of incumbent licensees consistent with § 90.1203(b) of the Commission's rules.

4. The Commission also concludes that the future issuance of the Band Manager overlay license is consistent with our statutory authority under section 309(j) of the Communications Act. The Commission finds that this exemption applies to the 4.9 GHz band because the Commission specifically designated this band for services intended to protect the safety of life, health, or property. In the *Third Report and Order,* FCC 11–6, published at 76 FR 54977, September 6, 2011, the Commission concluded that eligibility for entrance into and operations in the 4.9 GHz band are primarily limited to the provision of public safety services as defined in § 90.523 of the Commission's rules. The Commission finds that because a majority of users licensed in the 4.9 GHz band are qualified to obtain auction-exempt spectrum, assigning a nationwide overlay license to the Band Manager is also exempt from auction. As explained in the *Eighth Report and Order,* the primary use of the band—protecting the safety of life, health, or property—will not change by assigning an overlay license to the Band Manager and authorizing it to enter into a sharing agreement with FirstNet. Thus, the Commission finds that it is appropriate and in the public interest to apply the public safety radio services exemption to this band to assign a nationwide overlay license to the 4.9 GHz Band Manager, once it is selected and has successfully applied for such a license.

5. *Spectrum Sharing Agreement with FirstNet.* In conjunction with issuance of a nationwide overlay license to the Band Manager, once selected, the Band Manager will be authorized to enter into a sharing agreement with FirstNet for use of the unassigned 4.9 GHz band spectrum that will be covered by the Band Manager's license. In furtherance of this model, the Commission clarifies that § 2.103(b) of the Commission's rules may enable any federal stations used by FirstNet to operate in the band pursuant to its anticipated sharing agreement with the Band Manager. Similarly, the Commission also clarifies that this

section may enable any federal stations used by FirstNet to operate in the band pursuant to a sharing agreement with incumbent licensees where that agreement is also consistent with § 90.1203(b) of our rules. While federal entities generally are not authorized by the Commission to use non-federal frequencies, limited exceptions exist where the Commission finds that doing so would be in the public interest, as codified in § 2.103. The Commission has found that both federal and non-federal public safety entities ''could benefit from the same broadband communications technologies contemplated for this band.'' Thus, the Commission agrees that the current structure of § 2.103 permits federal stations meeting certain conditions to operate on non-Federal spectrum and may in the instant scenario permit federal stations used by FirstNet to access the Band Manager's licensed spectrum pursuant to the anticipated sharing agreement.

6. *Band Manager Responsibilities.* Based on the record in response to the *Ninth Further Notice* and the Commission's decision in the *Eighth Report and Order,* the Commission clarifies that the Band Manager will continue to be tasked with the responsibilities that the Commission assigned to it in the *Seventh Report and Order,* published at 88 FR 12565, February 28, 2023. The Commission also amends its rules to give the Band Manager additional responsibilities to effectively implement the licensing and sharing regime described above. Thus, the Band Manager's primary responsibilities will now include: (1) frequency coordination and interference protection for the operations of existing incumbent public safety licensees; (2) managing a spectrum sharing agreement with FirstNet; (3) incentivizing the use of the latest commercially available technologies; (4) facilitating non-public safety access through leasing; and (5) submitting an annual report to the Commission. The Commission also declines to make a determination as it pertains to allowing non-public safety operations in the band through a Band Manager-facilitated leasing model as this is not the best method of increasing utilization of the band at this time.

7. Prior to entering into its sharing agreement with FirstNet, the Band Manager will be required to make a filing associated with its license in ULS certifying to the Commission that the sharing agreement will be consistent with §§ 2.103(b) and 90.1207(h) of the Commission's rules, and operations undertaken per the sharing agreement will not cause harmful interference to incumbent licensees. If such interference occurs, the Band Manager must require FirstNet to immediately cease operations. The Commission will also require the Band Manager to certify that FirstNet has placed stations into operation within twelve months from the execution date of the sharing agreement. The Commission believes that this decision is consistent with our decision in the *Seventh Report and Order* to harmonize the construction deadlines for the 4.9 GHz band with the deadlines of § 90.155, which is the analogous rule for the majority of part 90 radio services. The Commission delegates authority and directs the Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau (collectively, the Bureaus) to establish the form and process for the submission of the required certifications detailed in the *Eighth Report and Order.* Finally, the Commission finds that the existing renewal standards and requirements that apply to our part 90 licenses will apply to the nationwide overlay license.

8. *Selection of the Band Manager.* In the *Seventh Report and Order,* the Commission concluded that the Band Manager would be identified by a selection committee to be named by the Commission and it sought comment on the nature of that committee and its processes in the *Ninth Further Notice.* In particular, the Commission sought comment on whether it should ''direct specific organizations to designate a representative to serve on the selection committee'' and whether the committee should include representatives of non-public safety users of the band in addition to public safety representatives. The Commission also tentatively concluded in the *Ninth Further Notice* that the selection committee should be ''composed of an odd number of representatives to prevent deadlock.'' As part of the Commission's oversight of the selection committee, it proposed that the committee establish selection criterial based on the functions of the Band Manager.

9. Because the Commission's decision in the *Eighth Report and Order* is geared towards maintaining the public safety nature of the band, we give deference to the views expressed by that community. The Commission concludes, however, that it is unnecessary to resolve the issues raised in the comments at this time. Instead, the Commission delegates broad authority to the Bureaus to establish the procedures by which a selection committee will be chosen, identify representatives to sit on the selection committee, determine the requisite number of selection committee members, identify the applicable selection criteria, and establish the appropriate procedures and appropriate oversight for the selection process as part of choosing the Band Manager. The Commission instructs the Bureaus to consider the record in this proceeding in exercising their delegated authority.

10. *4.9 GHz Band Freeze.* Under the current freeze on applications for new licenses in the 4.9 GHz band, no new licensees may enter the band, but incumbents may file to modify their licenses or to license new sites in a fixed system. In the *Ninth Further Notice,* the Commission sought comment on whether to lift the freeze. We note that a freeze on new entrants has been in effect since 2020. We also continue to believe that issuing licenses to new entrants before the Commission has collected granular data from incumbent licensees would further complicate the spectrum environment and undermine the Band Manager's flexibility to provide for efficient use of this spectrum.

11. While this process is ongoing, the Commission finds that freezing expansions, additions to, or modification of other technical parameters applicable to incumbent licensees is also necessary in light of our decision here to enable expanded public safety access to the band through the Band Manager's nationwide overlay license and sharing agreement with FirstNet. The Commission is cognizant that some incumbent licensees, in reliance on the existing state of the freeze prior to the decision in the *Eighth Report and Order,* may have invested in systems that they hoped to use to modify or expand current operations. However, the Commission believes that a stable spectrum landscape reflecting the current state of operations in the band will better facilitate analysis of the upcoming granular data collection of licensed operations by the Commission, the Band Manager, and other interested parties. The Commission also reminds applicants and current licensees facing special circumstances that they may seek a waiver of the freeze pursuant to § 1.925 of the Commission's rules.

12. Accordingly, until further notice, the Commission retains the freeze for all applicants who are not already 4.9 GHz licensees, and we reinstate the freeze as it applies to incumbent licensees that was lifted pursuant to the *2021 Order on Reconsideration,* FCC 21–106, published at 86 FR 59868, October 29, 2021, and the *Freeze Modification Public Notice.* Specifically, the Commission reinstates the freeze that was lifted on incumbents adding new

licenses or modifying existing licenses unless otherwise excepted, and unless incumbents are filing certain types of applications to comply with the granular data collection. The Commission directs the Bureaus to implement this change to the freeze via public notice within 30 days of the adoption of the *Eighth Report and Order.* The Bureaus will retain jurisdiction to manage and implement the freeze in the future, and we clarify that this freeze shall not apply to any necessary filings associated with issuance of the Band Manager's nationwide overlay license.

13. *Future Licensing of the Band.* In the *Seventh Report and Order* the Commission adopted its proposal to collect additional technical data on public safety operations stating that the submission of this data will improve interference protection and give public safety licensees more confidence in the band. The Commission also determined it would require incumbent licensees to supply complete microwave path data for fixed links, and to obtain a license for base stations (currently authorized under the geographic license scheme) on a site-by-site basis. The Bureaus will issue a Public Notice that will give incumbent licensees 6 months to make the appropriate filings in our Universal Licensing System. In connection with this decision, the Commission sought comment in the *Ninth Further Notice* on whether incumbent licensees should be allowed to retain their geographic-area licenses after they have been issued site-based licenses. The Commission also sought general comment on the future licensing of the band, noting our decision in the *Seventh Report and Order* to adopt a Band Manager regime and taking into consideration the questions regarding implementation.

14. We note that geographic licenses permit the licensee to use any channel in the band, while site-based licenses are frequency-specific. The results of the collection of granular technical data that the Commission initiated in the *Seventh Report and Order* will require the incumbent licensees to complete a thorough review of their current operations under their active PA licenses. The incumbents will then use ULS to create new licenses (with granular data) in newly created radio service codes PB (public safety licensees performing base/mobile, mobile-only or temporary fixed operations) and PF (public safety licensees operating fixed links). The Commission finds that the incumbent licensees' current PA licenses will be cancelled once the incumbents apply for and are authorized under the newly created radio service codes. The Commission reminds incumbents that this decision to cancel the former licenses once the new licenses have been created does not modify or alter incumbents' rights to operate their existing networks. Instead, the Commission believes that this decision aligns with the intent of our decision in the *Seventh Report and Order* to collect more granular data such that it will ''improve interference mitigation efforts and bolster public safety confidence in the band'' and is the best approach to ensure that ULS does not contain duplicative or inaccurate licenses once the incumbents have received their new radio service codes.

15. The Commission likewise believes that the collection of this granular technical data will help the Band Manager identify specific frequency usage across all deployments in the band, and thus potentially unused channels within areas covered by certain geographic licenses. While PSSA's and AT&T's proposals to require that incumbent licensees surrender to the Band Manager or share with FirstNet any unused spectrum could potentially make more spectrum available to FirstNet and increase overall spectrum efficiency in the band, the Commission defers any consideration of those proposals until after the Commission has completed its collection and analysis of granular technical data on incumbent licensed public safety operations in the band.

Procedural Matters

Paperwork Reduction Act

16. The *Eighth Report and Order* may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. All such requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on any new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

17. In this present document, the Commission has assessed the effects of our creation of a new Band Manager overlay license, and find that it will have a small impact on small governmental entities which are currently 4.9 GHz licensees, mainly related to the collection of data about existing 4.9 GHz deployments.

Final Regulatory Flexibility Analysis

18. The Regulatory Flexibility Act of 1980, as amended (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in the *Eighth Report and Order* on small entities. The FRFA is set forth in appendix B of the *Eighth Report and Order.*

Congressional Review Act

19. The Commission will submit the *Eighth Report and Order* to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for concurrence as to whether this rule is ''major'' or ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the *Eighth Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Final Regulatory Flexibility Analysis

20. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Eighth Further Notice of Proposed Rulemaking (Eighth Further Notice)* released in October 2021, published at 86 FR 59934, October 29, 2021, and *Ninth Further Notice of Proposed Rulemaking (Ninth Further Notice)* released in January 2023, published at 88 FR 12637, February 28, 2023. The Federal Communications Commission (Commission) sought written public comment on the proposals in the *Eighth* and *Ninth Further Notices,* including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

21. In the *Eighth Report and Order,* the Commission seeks to meet its objectives of ensuring efficient and effective utilization of the 4940–4990 MHz band (4.9 GHz band) in support of public safety missions nationwide. To

achieve these objectives, the *Eighth Report and Order* bolsters the coordinated nationwide approach to the band that the Commission established in its *Seventh Report and Order,* in which it adopted a nationwide Band Manager framework to coordinate operations in the 4.9 GHz band, optimize public safety use, and facilitate the integration of the latest commercially available technologies, including 5G, for the benefit of public safety users. To further these goals and to ensure efficient use of the 4.9 GHz band nationwide, the 4.9 GHz Band Manager, once selected, will be eligible to apply for a nationwide overlay license and authorized to enter into a sharing agreement with the First Responder Network Authority (FirstNet). Pursuant to this sharing agreement, FirstNet may be permitted to use unassigned spectrum in the 4.9 GHz band as part of its nationwide public safety broadband network (NPSBN) in a manner that fully protects incumbent operations. In addition to expanding the Band Manager's responsibilities to include entering into a sharing agreement with FirstNet and establishing rules governing the nationwide Band Manager overlay license, the adopted rules in the *Eighth Report and Order* also reaffirm the Commission's commitment to the nationwide Band Manager framework and clarify the Band Manager's responsibilities.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

22. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

23. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules or policies in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

24. The RFA directs agencies to provide a description of, and where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

25. *Small Businesses, Small Organizations, Small Government Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, with translates to 33.2 million businesses.

26. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenue of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

27. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2022 Census of Governments indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,845 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts) with enrollment populations of less than 50,000. Accordingly, based on the 2022 U.S. Census of Government data, we estimate that at least 48,724 entities fall into the category of ''small government jurisdictions.''

28. *Frequency Coordinators.* Frequency coordinators are entities or organizations certified by the Commission to recommend frequencies for use by licensees in the Private Land Mobile Radio (PLMR) Services that will most effectively meet the applicant's needs while minimizing interference to licensees already operating within a given frequency band. Neither the Commission nor the SBA have developed a small business size standard specifically applicable to spectrum frequency coordinators. Business Associations, which comprises establishments primarily engaged in promoting the business interests of their members, is the closest applicable industry with a SBA small business size standard.

29. The SBA small business size standard for Business Associations classifies firms with annual receipts of $8 million or less as small. For this industry, U.S. Census Bureau data for 2017 show that there were 14,540 firms that operated for the entire year. Of these firms, 11,215 had revenue of less than $5 million. Based on this data, the majority of firms in the Business Associations industry can be considered small. However, the Business Associations industry is very broad and does not include specific figures for firms that are engaged in frequency coordination. Thus, the Commission is unable to ascertain exactly how many of the frequency coordinators are classified as small entities under the SBA size standard. According to Commission data, there are 13 entities certified to perform frequency coordination functions under part 90 of the Commission's rules. For purposes of this FRFA, the Commission estimates that a majority of the 13 FCC-certified frequency coordinators are small.

30. *Private Land Mobile Radio Licensees.* PLMR systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. Companies of all sizes operating in all U.S. business categories use these radios. Wireless Telecommunications Carriers (*except* Satellite) which encompasses business entities engaged *in radiotelephone communications,* is the closest industry with an SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S.

Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates licensees in this industry can be considered small.

31. Based on Commission data as of December 14, 2021, there are approximately 387,370 active PLMR licenses. Active PLMR licenses include 3,577 licenses in the 4.9 GHz band; 19,011 licenses in the 800 MHz band; and 2,716 licenses in the 900 MHz band. Since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard. Nevertheless, the Commission believes that a substantial number of PLMR licensees are small entities.

32. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small. U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year. Of this number, 624 firms had fewer than 250 employees. Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

33. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

34. The Commission anticipates that the rule changes adopted in the *Eighth Report and Order* will create *de minimis* new compliance requirements for small entities. The adopted rules will cause the 4.9 GHz Band Manager, once selected, to become eligible to apply for a nationwide overlay license and will authorize the Band Manager to enter into a sharing agreement with FirstNet. Pursuant to this sharing agreement, FirstNet may be permitted to use unassigned spectrum in the 4.9 GHz band as part of its NPSBN. Once selected, the Band Manager's primary responsibilities will include: (1) frequency coordination and interference protection for incumbent public safety licensees; (2) managing a spectrum sharing agreement with FirstNet; (3) incentivization of the use of the latest commercially available technologies; (4) facilitating non-public safety access through leasing; and (5) submitting an annual report to the Commission. The Commission notes that the rules adopted in the *Eighth Report and Order* do not create any significant additional compliance requirements for small entities. However, in assessing the cost of compliance for small entities, at this time the Commission is not in a position to determine whether these actions will require small entities to hire professionals to comply, and cannot quantify the cost of compliance with the rule changes that were adopted. Nevertheless, the Commission believes the benefits gained from the adopted rules by 4.9 GHz licensees and more optimized use of the band outweigh potential compliance costs incurred.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

35. The RFA requires an agency to provide, ''a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . 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.''

36. In the *Eighth Report and Order,* the Commission adopts measures to further promote use of the 4.9 GHz band for a variety of primary public safety operations. In doing so, it makes the 4.9 GHz Band Manager eligible to apply for a nationwide overlay license and authorizes the Band Manager to enter into a sharing agreement with FirstNet to enable use of the 4.9 GHz band as part of its NPSBN in a manner that fully protects incumbent operations. In this context, the Band Manager will be required to work with public safety licensees to rationalize their use. The Commission's actions do not alter any of the actions that the Commission adopted in the *Seventh Report and Order* as they pertain to requiring small and other public safety incumbents and future applicants for the 4.9 GHz band to submit data on FCC Form 601. As we noted in the *Seventh Report and Order,* collecting the additional technical data on public safety operations will benefit public safety licensees operating in the band because it will improve interference protection and give public safety licensees more confidence in the band without adding a significant economic or administrative burden on licensees or applicants to submit the data. The Commission considered alternative approaches, however, the record reflects support from commenters, some of which include or represent small entities, that agree our adopted approach in the *Eighth Report and Order* could have the effect of increasing band usage for first responders and other public safety missions, while preserving incumbent operations.

37. While small and other public safety applicants seeking to license facilities in the 4.9 GHz band will be subject to formal frequency coordination procedures, the economic impact will be minimized through the *Eighth Report and Order*'s adoption of a frequency coordination process with which public safety licensees operating PLMR facilities in other frequency bands are familiar. Once in place, the formal frequency coordination process will ensure the efficient assignment and use of spectrum while minimizing interference to incumbents. Consequently, the frequency coordination process will improve interference protection and give public safety licensees more confidence in the

band without adding a significant economic burden on applicants.

38. Finally, all other Commission actions related to the Band Manager in the *Eighth Report and Order,* such as the Band Manager's responsibility to identify unused spectrum access opportunities, do not create a significant economic impact on small entities.

G. Report to Congress

39. The Commission will send a copy of the *Eighth Report and Order,* including this FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Eighth Report and Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Eighth Report and Order,* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

40. Accordingly, *it is ordered* that, pursuant to the authority found in sections 4(i), 4(j), 302, 303(b), 303(f), 303(g), 303(r), 309(j) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 302a, 303(b), 303(f), 303(g), 303(r), 309(j), and 405, as well as § 1.429 of the Commission's rules, 47 CFR 1.429, that this *Eighth Report and Order is hereby adopted.*

41. *It is further ordered* that this *Eighth Report and Order shall be effective* 30 days after publication in the **Federal Register**.

42. *It is further ordered* that the Commission's Office of the Secretary, *shall send* a copy of this *Eighth Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

43. *It is further ordered* that the Commission *shall send* a copy of this *Eighth Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 0

Authority delegations (Government agencies).

47 CFR Part 90

Administrative practice and procedure, Common carriers, Communications, Communications common carriers, Communications equipment, Emergency medical services, Organization and functions (Government agencies), Radio, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

Final Rules

For the reasons discussed in the document above, the Federal Communications Commission amends 47 CFR parts 0 and 90 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 409, and 1754, unless otherwise noted.

■ 2. Section 0.331 is amended by adding paragraph (i) to read as follows:

§ 0.331 Authority delegated.

* * * * *

(i) The Chief of the Wireless Telecommunications Bureau is delegated authority jointly with the Chief of the Public Safety and Homeland Security Bureau to administer provisions of §§ 90.1203, 90.1207, 90.1209, and 90.1217 of this chapter. The Chief of the Wireless Telecommunications Bureau is also delegated authority to establish the procedures by which a Band Manager selection committee will be chosen; identify representatives to sit on the selection committee; determine the requisite number of selection committee members; identify the applicable selection criteria; confirm that the Band Manager selectee meets the selection criteria; and establish the appropriate procedures and oversight for the selection process as part of choosing the Band Manager. The Chief of the Wireless Telecommunications Bureau is also delegated authority to develop the form and procedures pursuant to which the Band Manager will submit certifications required by §§ 90.1207(h)(3) and 90.1209(e) of this chapter to the Commission; to manage the process of determining the appropriate Band Manager funding mechanisms; and to perform oversight and any other functions for the administration of the Band Manager and its responsibilities.

■ 3. Section 0.392 is amended by adding paragraph (k) to read as follows:

§ 0.392 Authority delegated.

* * * * *

(k) The Chief of the Public Safety and Homeland Security Bureau is delegated authority jointly with the Chief of the Wireless Telecommunications Bureau to administer provisions of §§ 90.1203, 90.1207, 90.1209, and 90.1217 of this chapter. The Chief of the Public Safety and Homeland Security Bureau is also delegated authority to establish the procedures by which a Band Manager selection committee will be chosen; identify representatives to sit on the selection committee; determine the requisite number of selection committee members; identify the applicable selection criteria; confirm that the Band Manager selectee meets the selection criteria; and establish the appropriate procedures and oversight for the selection process as part of choosing the Band Manager. The Chief of the Public Safety and Homeland Security Bureau is also delegated authority to develop the form and procedures pursuant to which the Band Manager will submit certifications required by §§ 90.1207(h)(3) and 90.1209(e) of this chapter to the Commission; to manage the process of determining the appropriate Band Manager funding mechanisms; and to perform oversight and any other functions for the administration of the Band Manager and its responsibilities.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 4. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

■ 5. Section 90.175 is amended by revising paragraph (g)(2) to read as follows:

§ 90.175 Frequency coordinator requirements.

* * * * *

(g) * * *

(2) *For frequencies between 4940–4990 MHz:* A statement is required from the nationwide band manager recommending the most appropriate channel(s), bandwidth, operating power, and any other technical parameter which promotes robust and efficient use of the band while minimizing interference.

* * * * *

■ 6. Section 90.1203 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 90.1203 Eligibility.

* * * * *

(b) 4.9 GHz band licensees eligible pursuant to paragraph (a) of this section may enter into sharing agreements or other arrangements for use of the spectrum with entities that do not meet the eligibility requirements in this

section. However, all applications in the band are limited to operations in support of public safety.

(c) The 4.9 GHz Band Manager is eligible to hold a nationwide overlay license in the 4940–4990 MHz band consistent with the requirements of § 90.1207(h).

■ 7. Section 90.1207 is amended by revising paragraphs (a), (b) introductory text, (c), and (e) introductory text and adding paragraph (h) to read as follows:

§ 90.1207 Licensing.

(a) A 4940–4990 MHz band license held by an entity eligible under § 90.1203(a) gives the licensee authority to operate on any authorized channel in this band within its licensed area of operation. See § 90.1213. A 4940–4990 MHz band license will be issued for the geographic area encompassing the legal jurisdiction of the licensee or, in case of a nongovernmental organization, the legal jurisdiction of the State or local governmental entity supporting the nongovernmental organization.

(b) Subject to § 90.1209, a 4940–4990 MHz band license held by an entity eligible under § 90.1203(a) gives the licensee authority to construct and operate any number of base stations anywhere within the area authorized by the license, except as follows:

* * * * *

(c) A 4940–4990 MHz band license held by an entity eligible under § 90.1203(a) gives the licensee authority to operate base and mobile units (including portable and handheld units) and operate temporary (1 year or less) fixed stations anywhere within the area authorized by the license. Such licensees may operate base and mobile units and/or temporary fixed stations outside their authorized area to assist public safety operations with the permission of the jurisdiction in which the radio station is to be operated. Base and temporary fixed stations are subject to the requirements of paragraph (b) of this section.

* * * * *

(e) Applications for license in the 4940–4990 MHz band by an entity eligible under § 90.1203(a) must include the following technical information.

* * * * *

(h) The 4.9 GHz Band Manager is eligible under § 90.1203(c) to hold a nationwide overlay license for the 4940–4990 MHz band, subject to the exclusion of licensed geographic areas and frequencies held by an incumbent entity eligible under § 90.1203(a). The 4.9 GHz Band Manager:

(1) Shall not be eligible to independently operate stations in the 4940–4990 MHz band;

(2) Consistent with §§ 90.1217(a), (d) and 2.103(b) of this chapter, may allow the First Responder Network Authority, pursuant to a sharing agreement, to construct and operate stations at any geographic site within the Band Manager's licensed area and on any channel for which the Band Manager is licensed, subject to the exclusions in this paragraph (h) and provided such stations do not cause harmful interference to incumbent licensees and otherwise comply with Commission rules and coordination requirements;

(3) Shall certify to the Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau prior to entering into any sharing agreement with the First Responder Network Authority that such agreement meets the requirements of § 2.103(b) of this chapter and this paragraph (h);

(4) Shall certify to the Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau when stations have been placed in operation pursuant to § 90.1209(e); and

(5) shall ensure that stations operating pursuant to a sharing agreement in this subpart comply with the relevant technical and licensing rules governing operations in the 4940–4990 MHz band in §§ 90.1205, 90.1209(b) through (c), (e), 90.1213, and 90.1215.

■ 8. Section 90.1209 is amended by revising paragraphs (a) and (d) and adding paragraph (e) to read as follows:

§ 90.1209 Policies governing the use of the 4940–4990 MHz band.

(a) Channels in this band licensed to any entity eligible under § 90.1203(a) are available on a shared basis only and will not be assigned for the exclusive use of any licensee.

* * * * *

(d) Stations used by an entity eligible under § 90.1203(a) must be placed into operation within twelve (12) months from the date of grant in accordance with § 90.155. Licensees of temporary fixed stations must place at least one such station in operation within twelve months of license grant.

(e) Stations used by an entity eligible under § 90.1203(h) must be placed into operation within twelve (12) months from the date that the Band Manager and the First Responder Network Authority execute a sharing agreement pursuant to §§ 90.1207(h) and 2.103(b) of this chapter.

■ 9. Section 90.1217 is amended by:

■ a. Revising the introductory text;

■ b. Revising paragraphs (a) and (b); and

■ c. Adding paragraphs (d) and (e).

The revisions and addition read as follows:

§ 90.1217 4.9 GHz Band Manager.

The 4.9 GHz Band Manager will have the following primary responsibilities:

(a) Frequency coordination and interference protection for 4.9 GHz band incumbent public safety operations;

(b) Incentivizing the use of the latest commercially available technologies, including 5G;

* * * * *

(d) Managing a sharing agreement with the First Responders Network Authority pursuant to §§ 90.1207(h) and 2.103(b) of this chapter; and

(e) Filing an annual report with the Commission.

[FR Doc. 2024–26794 Filed 11–19–24; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 89, No. 224
Wednesday, November 20, 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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 375

RIN 3064–AG07

Recordkeeping for Custodial Accounts; Extension of Comment Period

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On October 2, 2024, the FDIC published in the **Federal Register** a proposed rule that would strengthen FDIC-insured depository institutions' (IDI) recordkeeping for custodial deposit accounts with transactional features and preserve beneficial owners' and depositors' entitlement to the protections afforded by Federal deposit insurance. The proposed rule provided for a 60-day comment period, which closes on December 2, 2024. The FDIC has determined that an extension of the comment period until January 16, 2025, is appropriate. This action will allow interested parties additional time to analyze the proposal and prepare comments.

DATES: The comment period for the proposed rule that published at 89 FR 80135 (October 2, 2024) is extended. Comments must be received on or before January 16, 2025.

ADDRESSES: You may submit comments on this document using any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.* Follow the instructions for submitting comments on the agency website.
- *Email: comments@FDIC.gov.* Include RIN 3064–AG07 in the subject line of the message.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments—RIN 3064–AG07, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street NW Building (located on F Street) on business days between 7 a.m. and 5 p.m.
- *Public Inspection:* Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/.* Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of the notice will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Division of Resolutions and Receiverships: Shivali Nangia, Assistant Director, 972–761–2945, *SNangia@FDIC.gov;* Cathy K. Davis, Chief, Claims, 972–761–2336, *CDavis@FDIC.gov.* Division of Depositor and Consumer Protection: Luke H. Brown, Associate Director, Supervisory Policy, 202–898–3842, *LuBrown@FDIC.gov;* Meron Wondwosen, Assistant Director, Supervisory Policy, 202–898–7211, *MeWondwosen@FDIC.gov;* Edward J. Hof, Senior Policy Analyst, 202–898–7213, *EdwHof@FDIC.gov.* Legal Division: Vivek V. Khare, Senior Counsel, 202–898–6847, *VKhare@FDIC.gov;* James S. Watts, Counsel, 202–898–6678, *JWatts@FDIC.gov.*

SUPPLEMENTARY INFORMATION: On October 2, 2024, the FDIC published in the **Federal Register** (89 FR 80135) a document proposing requirements to strengthen IDI recordkeeping for custodial deposit accounts with transactional features. The proposed rule stated that the comment period would close on December 2, 2024. The FDIC has received requests to extend the comment period. After reviewing the requests, the agency finds it appropriate to grant the requests and extend the comment period by an additional 45 days. An extension of the comment period will provide additional opportunity for the public to prepare comments to address the matters raised by the proposed rule. Therefore, the FDIC is extending the comment period for the recordkeeping-related proposed rule from December 2, 2024, to January 16, 2025.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on November 15, 2024.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–27097 Filed 11–19–24; 8:45 am]

BILLING CODE 6714–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112 and 1250

[CPSC Docket No. CPSC–2024–0039]

Mandatory Toy Safety Standards: Requirements for Neck Floats

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Improvement Act of 2008 (CPSIA) mandates that ASTM F963 shall be a mandatory toy safety standard. This toy safety standard sets forth only minimal labeling requirements for aquatic toys such as neck floats. The U.S. Consumer Product Safety Commission (CPSC or Commission) proposes to establish new performance and revised labeling requirements to address potentially deadly hazards associated with neck floats. The Commission also proposes to amend CPSC's list of notice of requirements (NORs) to include neck floats.

DATES: Submit comments by January 21, 2025. Submit comments related to the Paperwork Reduction Act aspects of the marking, labeling, and instructional literature requirements by January 21, 2025

ADDRESSES: Submit all comments, identified by Docket No. CPSC–2024-0039, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. CPSC typically does not accept comments submitted by email, except as described below.

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

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

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2024–0039, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Zachary Goldstein, Project Manager, Division of Mechanical Engineering, Directorate for Laboratory Sciences, Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone 301–987–2472; email: *zgoldstein@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

Section 106(a) of the Consumer Product Safety Improvement Act of 2008 (CPSIA) made ASTM International's (ASTM) voluntary standard for toys, ASTM F963–07, *Standard Consumer Safety Specification for Toy Safety* (except sections 4.2 and Annex 4), a mandatory safety standard for toys beginning 180 days after the enactment date of the CPSIA. 15 U.S.C. 2056b(a). The CPSIA states that ASTM F963 shall be considered a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (CPSA; 15 U.S.C. 2058). Since 2009, CPSC has enforced ASTM F963 as a mandatory standard for toys.[1] [2] In 2017, the Commission codified the mandatory toy standard in 16 CFR part 1250, Safety Standard Mandating ASTM F963 for Toys, and incorporated by reference the newly revised ASTM standard at that time, ASTM F963–16. 82 FR 8989 (Feb. 2, 2017). Most recently, on January 18, 2024, the Commission updated part 1250 to incorporate by reference a 2023 revision, ASTM F963–23. 89 FR 3344.

ASTM F963–23 and 16 CFR part 1250 contain requirements for a category of toys known as ''aquatic toys.'' Section 3.1.4 of ASTM F963–23 defines an aquatic toy as an ''an article, whether inflatable or not, intended to bear the mass of a child and used as an instrument of play in shallow water. This does not include bath toys, beach balls, and United States Coast Guard-approved life saving devices.'' 16 CFR part 1250.

Section 5.4 of ASTM F963–23 (which is an element of the mandatory standard pursuant to CPSIA section 106 and 16 CFR part 1250) contains labeling requirements for ''aquatic toys,'' which include neck floats. The ASTM requirements are intended to communicate to the consumer that an aquatic toy is not a lifesaving device and to warn against leaving a child unattended while using the flotation device. However, as discussed in section IV of this preamble, ASTM F963–23 does not establish adequate requirements specific to neck floats because it does not include any performance requirements for these toys. Incident data, described in section III of this preamble, demonstrate that children have suffered drowning injuries and deaths associated with the use of neck floats. Accordingly, as described in section IV of this preamble, neck floats that comply with the labeling requirements in ASTM F963–23 still pose safety hazards.

This notice of proposed rulemaking (NPR) under section 106 of the CPSIA proposes additional requirements in part 1250 to establish a mandatory standard for neck floats which includes performance requirements and improved warning labels. CPSC proposes to define a ''neck float'' as ''an article, whether inflatable or not, that encircles the neck, supports the weight of the child by being secured around the neck (such as by fastening, tightening, or other methods), and is used as an instrument of play in water environments including sinks, baths, paddling pools, and swimming pools, and is intended for use by children up to and including 4 years of age.'' Further, this NPR proposes revising the title of part 1250 from ''Safety Standard Mandating ASTM F963 for Toys'' to ''Safety Standards for Toys,'' to reflect the inclusion of additional proposed requirements that are not included in the existing requirements in ASTM F963.[3] [4]

The Commission is authorized to issue this NPR pursuant to both sections 106(c) and (d) of the CPSIA, 15 U.S.C. 2056b(c) and (d). Section 106(c) requires the Commission to periodically review and revise its mandatory toy safety standards to ensure that such standards provide the highest level of safety for toys that is feasible. Section 106(d) further requires the Commission to examine and assess the effectiveness of its mandatory toy safety standards in protecting children from safety hazards, and then to promulgate consumer product safety standards that are more stringent than existing the existing standards if the Commission determines that more stringent standards would further reduce the risk of injury associated with such toys. Consistent with the consultation requirement in section 106(d)(1) of the CPSIA, staff has worked with the ASTM F15.22 subcommittee task group since 2009 to update the toy standard. In addition, since August 2021, CPSC staff has been corresponding with the relevant ASTM Subcommittee and task group to discuss hazards associated with neck floats, including by sharing incident data

[1] Since the CPSIA's enactment in 2008, ASTM revised F963 five times: ASTM F963–08, ASTM F963–11, ASTM F963–16, ASTM F963–17, and ASTM F963–23 (approved August 1, 2023).

[2] Section 3.1.92 of ASTM F963–23 defines a toy as: ''Any object designed, manufactured, or marketed as a plaything for children under 14 years of age.''

[3] On October 23, 2024, the Commission voted (5–0) to publish this NPR.

[4] On September 9, 2024, the Commission published an NPR to establish a mandatory standard for water beads, under Section 106(a) of the Consumer Product Safety Improvement Act of 2008 (CPSIA). *Safety Standard for Toys: Requirements for Water Beads,* 89 FR 73024. This NPR also proposed to revise the title of part 1250 from ''Safety Standard Mandating ASTM F963 for Toys'' to ''Safety Standards for Toys.''

associated with neck floats as well as staff's recommendation to develop performance requirements to address the hazards identified in the incident data.

Building on staff's continued collaboration with ASTM and in consideration of the incident data, the Commission is issuing this NPR to address four identified hazard patterns associated with neck floats that are not adequately addressed by the current mandatory standard provision addressing aquatic toys. Specifically, the Commission proposes to address the following known hazards: (1) children slipping through the product due to deflation or underinflation; (2) children slipping through the product for reasons other than deflation or underinflation; (3) children slipping through the product due to a restraint system failure; and (4) children submerging in water without slipping through the product. Each of these hazard patterns presents a risk of drowning. The Commission proposes adding performance requirements to part 1250 to address these risks. The NPR also proposes revising labeling requirements for neck floats under part 1250, including mandating warnings on products and instructional literature. Lastly, the Commission is proposing a stockpiling prohibition under part 1250 for neck floats pursuant to section 9(g)(2) of the CPSA. 15 U.S.C. 2058(9)(g)(2).

This NPR provides an overview of staff's assessment and analysis, and it includes the Commission's basis for issuing the proposed rule. For the reasons explained here, the Commission preliminarily determines that the proposed neck float requirements comply with section 106 of the CPSIA because they are more stringent than the current requirements in ASTM F963–23, would further reduce the risk of injury associated with neck floats and would achieve the highest level of safety that is feasible for such products. The Commission seeks comments on these issues.

II. Description of Toys Within the Scope of the Rule

Neck floats are aquatic toys that are typically ring-shaped tubes with discontinuous ends that wrap around a child's neck. This placement is intended to allow the child's head to float above the water while supporting their body. As is the case with other aquatic toys,[5] this design is intended to allow the child to float and play in water when a child is incapable of floating on their own.

Neck floats are available as both inflatable and non-inflatable products. Inflatable variants rely on air to provide buoyancy and are generally packaged and distributed while deflated. Caregivers must inflate the neck float prior to their initial use and are generally advised to check and re-inflate the neck float prior to subsequent uses as well. Inflatable neck floats have not typically been sold with an air pump and are generally intended to be inflated by mouth. In contrast, an inherently buoyant neck float likely does not require any additional efforts from the caregiver to ensure that it floats.

Market research indicates that inflatable neck floats are primarily composed of plastic sheeting, typically polyvinyl chloride (PVC) plastic, held together through a process known as PVC welding. This manufacturing process fuses the plastic sheeting together by applying heat that melts the individual sheets (Foreman, 2024). The restraint systems of these neck floats also appear to be joined to the product using PVC welding. Non-inflatable or inherently buoyant neck floats are generally composed of two components, a buoyant internal ring made of open- or closed-cell foam that provides the neck float's shape and flotation, and a fabric cover that encases the foam, typically secured with a zipper, where the restraint systems are stitched into the fabric cover.

Neck floats are advertised for use by infants and toddlers based on minimum/maximum weight and suggested age ranges to identify appropriate product sizes. Most retailers advertise the products for children 0 to 6 months for small sizes, 6 to 18 months for medium sizes, and 2 to 5 years for large sizes. The products generally are marketed for use in bathtubs and pools with direct parental supervision. Retail prices for neck float products intended for children typically range from $10 to $60 depending on material type and art design, with inherently buoyant products being more expensive than inflatable products.

Section 3.1.92 of ASTM F963–23 defines a ''toy'' as ''any object designed, manufactured, or marketed as a plaything for children under 14 years of age.'' Section 3.1.4 ASTM F963–23 defines an ''aquatic toy'' as ''an article, whether inflatable or not, intended to bear the mass of a child and used as an instrument of play in shallow water. This does not include bath toys, beach balls, and United States Coast Guard-approved life saving devices.'' Neck floats are subject to the mandatory toy standard as an aquatic toy because they are instruments of play that are designed to allow a child to play in water, including shallow water. In this NPR's proposed rule, the Commission defines a ''neck float'' as ''an article, whether inflatable or not, that encircles the neck, supports the weight of the child by being secured around the neck (such as by fastening, tightening, or other methods), is used as an instrument of play in water environments including sinks, baths, paddling pools and swimming pools, and is intended for use by children up to and including 4 years of age.''

Neck floats include: (1) inflatable neck floats; (2) inherently buoyant (non-inflatable) neck floats; and (3) neck floats that use a combination of inflatable and inherently buoyant components. All other products that are not neck floats, under the proposed definition of ''neck float'' in § 1250.5(b), are outside the scope of this rule. Life-saving flotation devices regulated by the Coast Guard, including those that attach to the neck of a user, are also outside the scope of this rule.

III. Incident Data and Hazard Patterns

The incidents and hazard patterns associated with neck floats are based on CPSC's Consumer Product Safety Risk Management System (CPSRMS). CPSRMS includes data primarily from three groups of sources: incident reports, death certificates, and in-depth follow-up investigation reports (IDIs). A large portion of CPSRMS consists of incident reports from consumer complaints, media reports, medical examiner or coroner reports, retailer or manufacturer reports (incident reports received from a retailer or manufacturer involving a product they sell or make), safety advocacy groups, law firms, and federal, state, or local authorities, among others. It also contains death certificates that CPSC purchases from all 50 states, based on selected external cause of death codes (ICD–10). The third major component of CPSRMS is the collection of in-depth follow-up investigation reports. The CPSRMS incidents identified for neck floats occurred from January 1, 2019, through January 25, 2024; however, the National Electronic Injury Surveillance System (NEISS) database contained no incident reports during that time period referencing neck floats.

From January 2019 through January 2024, staff identified 115 incidents in CPSRMS associated with the use of neck floats. Two of these incidents resulted in a fatality, two incidents led to hospitalization, five incidents led to

[5] Section 3.1.4, in the definition of ''Latex balloon,'' of ASTM F963–23 includes a list of toys that are used in aquatic activities such as rafts, water wings, swim rings, or other similar items.

emergency department (ED) treatment, and one incident led to care by a medical professional. The remaining 105 incidents identified in CPSRMS noted home care, possible but uncertain medical treatment, or the level of care was not reported. In many of the non-fatal incidents, drowning appears to have been averted only due to quick action by a caregiver to rescue the infant. Of the reported incidents that indicate a child's age, children's ages range from 17 days to 12 months old. Where specified, most incidents occurred in home bathtubs, though some reports indicated use in pools.

A. Overview of Neck Float Hazards

Based on staff's assessment of the incident data reported in CPSRMS and publicly available consumer-uploaded pictures and videos of the product in use, the Commission determines that neck floats pose a risk of drowning that can result in severe injury or death because of slipping through a neck float or being submerged in the water while using a neck float.

Drowning is a multiphase process of pathophysiological changes (*e.g.,* asphyxia, electrolyte imbalance, blood volume changes, alterations in respiration) that results in death if not interrupted. In most drowning incidents, consciousness is lost after approximately two minutes, and irreversible brain damage occurs within four to six minutes. Survival without neurological impairment after five minutes is highly unlikely. Rapid initiation of CPR, which helps increase ventilation and oxygen delivery to the brain, will increase the chance for survival and/or optimal medical outcomes (Fields, 1992), such as in CPSC's IDI 230317CCC3554. Victims who survive anoxic episodes, such as in IDI 210114HCC1250, may need prolonged specialized care, including occupational and physical therapy, and can face lifelong disabilities (*e.g.,* learning, language, and memory) that impact their life and those who care for them. Victims who cannot be resuscitated at the scene, are resuscitated with weak breathing and heart rhythm, or are transported in critical condition, will most likely suffer severe neurological impairment that may lead to organ failure and death as described in IDIs 200915HFE0001 and 190711CCC2487. Prolonged submersion in water for more than five to ten minutes usually leads to poorer prognosis or a fatal drowning.

During the drowning process, a victim experiences respiratory distress impairment because of submersion or immersion in liquid in the victim's airway (Van Beeck et al., 2005). The drowning process begins either when the child's mouth and/or nose goes below the surface of the water (submersion) or when water splashes over the face (immersion). In most of the incidents, neck floats posed a risk of drowning because of a child's head slipping through the product with submersion of the mouth and nose. Seventy-seven incidents reported submersion of a child's airway (nose and/or mouth) in water either full (76 incidents) or partial (one incident), after slipping through the product. Additionally, 87 incidents reported a child's head slipping through the neck hole of the product. Three incidents report turning, rotating, or flipping in the product, leading to the submersion of the nose and mouth. Because infants generally cannot self-rescue, every slip through or submersion incident has the potential to be a drowning, resulting in injury or death, if caregivers do not intervene to quickly pull the infant from the water.

When water enters the airway of the drowning victim, the victim will attempt to spit out, cough up as a reflex response, or swallow the water, often inhaling more water involuntarily (Szpilman et al., 2012; Orlowski et al, 1989; Grmec et al., 2009). Incident reports describe choking, coughing, water ingestion, vomiting, and spitting up water. The risk of injury is dependent on the duration of submersion and amount of water that enters the lungs, as well as the immediacy of rescue and resuscitation efforts. Submersion durations were reported ranging from immediate rescue, where caregivers immediately pulled the child out of the water before the victim suffered any apparent injuries, to several minutes where the caregiver was not nearby or in the same room as the child. Water aspiration to the lungs and water ingestion can happen with very brief submersions. If the child is not rescued, the aspiration of water continues.

When large amounts of fluid are aspirated into the lungs, there is drastic mechanical impairment of gaseous exchange and lung function when the aspirated water destroys the pulmonary surfactant and disrupts the alveolar-capillary membranes. This injury to the lung leads to pulmonary edema, decreased lung compliance, and decreased exchange of oxygen and carbon dioxide. Incidents in which a victim is minimally symptomatic typically resolve without sustaining serious injuries or requiring continued medical treatment, but swallowing or aspirating significant amounts of water can require medical attention or observation, especially for very young infants because of the risk of lung injury, hyponatremia,[6] hypokalemia,[7] or other types of electrolyte imbalance.

In four incidents, caregivers performed medical treatment at home (IDIs 220714CCC1021, 230629CAA1660, 210826CCC3606, 220714CCC3164). In two of those four incidents, caregivers intervened to resuscitate an infant that was not breathing after being pulled from the water (one report of CPR, IDI 220714CCC1021, and one report of back thumps, I2360082A). In nine incidents, caregivers sought medical attention by going to an emergency department (IDIs 230720CCC1766, 210826CCC1826, 210901CCC3625, and reports Y227C309G and Y2170991A), calling 911 (IDI 210910CCC1030), calling a nurse/medical helpline (IDIs 230317CCC3555 and 210901CCC1904), or by visiting an urgent care (IDI 210910CCC1029)). The two incidents reporting injuries that required hospital admission (IDIs 230317CCC3554 and 210114HCC1250) and the two fatalities (IDIs 200915HFE0001 and 190711CCC2487) occurred in a home bathtub with the infant being submerged for an unknown length of time.

B. Incident Data Hazard Patterns

A neck float's ability to keep the child's mouth and/or nose above the water depends on the product's capability to remain buoyant and upright during use, and its ability to fit the child for the duration of use such that the child does not slip through the product's center opening to the extent that their mouth and nose become submerged in water.[8] Staff examined the available incident data, incident and exemplar samples of inflatable and inherently buoyant child neck floats, and publicly available consumer-uploaded photos and videos demonstrating use of neck floats. Based on this information staff identified four hazard patterns associated with the risk of drowning: (1) slip-through not associated with inflation; (2) slip-through associated with inflation; (3) slip-through associated with restraint

[6] Hyponatremia is a low concentration of sodium in the blood, which can cause neurological and metabolic problems.

[7] Hypokalemia is a low concentration of potassium in the blood, which can cause neurological and metabolic problems.

[8] The risk for partial slip-through poses the risk of aspiration of water through the mouth even if the nose is not submerged.

system failure; and (4) submersion without slip-through.[9]

1. Slip-Through Not Associated With Inflation

Fifty-two reported incidents involved an infant slipping through the product despite the neck float showing no signs of deflation, underinflation, or any other reported product issues. Forty-four of these incidents reported a child's mouth and/or nose submerging under the water, posing a risk of drowning or otherwise aspirating water. The other seven incidents involved a caregiver's immediate rescue which prevented submersion. Where reported, victims ranged in age from 17 days old to 8 months old. One fatal incident, IDI 200915HFE0001, involved the drowning of a 6-month-old female child using a neck float, who was unattended for an unknown amount of time in a bathtub. Upon returning, the mother found the neck float on the surface of the water, and the child was submerged in the tub, unresponsive. Subsequently, the child was hospitalized in critical condition and succumbed to her injuries six days later.

It is common for neck floats to rely solely on the size of the center opening being smaller than the size of a child's head to prevent the child's mouth and/or nose from submerging in water. Neck floats are typically marketed for a wide range of ages and weights. Anthropometric data provided by the World Health Organization (WHO),[10] [11] Centers for Disease Control and Prevention (CDC),[12] and other researchers (*e.g.,* Schneider et al., 1986), demonstrate a large variability in weight, head, and neck dimensions for children, particularly head dimensions for children between the ages of 0 and 12 months. In addition, children's head weight data in the voluntary standard for childcare articles, CEN/TR 13387–1, *Child care articles—General safety guidelines—Part 1: Safety philosophy and safety assessment,* shows appreciable growth over the years, particularly between 0 and 12 months.[13] This variability in sizes and weights increases the possibility of an ill-fitting neck float and increases the risk of a child slipping through the neck float.

Furthermore, a child's body weight and head mass will not necessarily correspond to their head, face, and neck dimensions. For instance, infants who have especially smaller dimensions, such as those who were born pre-term or those with developmental delays or other conditions that affect head size or shape, may have typical weights for their ages but their smaller cephalometry [14] predisposes them to a higher risk of slip-through.[15] Additionally, children's heads and faces are not uniformly spherical and are somewhat malleable. This can contribute to the risk of the child's head slipping through the neck float and will vary from child to child. In evaluating the incident data, staff observed that for incidents with known victim information and known product age and weight labeling, all victims had ages and weights consistent with the manufacturer-recommended guidance. Therefore, it is reasonably foreseeable that caregivers are likely to select and use neck floats marketed as appropriately sized for their child that may nonetheless be too large or too loose for their child.

Even if a neck float appears to fit a child securely, that is, around a child's neck with little to no extra space, the child's position and activity can cause them to slip through the product. Incident data and publicly available consumer-uploaded content of children in neck floats demonstrate that children will use neck floats on their back, on their chest, on their side, and while sitting or standing, and are likely to tilt their head forward and rearward, tuck their chin, bite the chin rest, twist their head in the product, wiggle their bodies, kick their legs, flail their arms, and even push up on the front underside of their product. These and other actions can separate the discontinuous ends, deform the center opening, or otherwise alter the fit of the neck float on the child, resulting in the child's mouth and nose sliding into the water. Figure 1 exemplifies children wearing neck floats and kicking off the tub floor, leaning back to the point that the tops of their heads are submerged, and pushing up on the front underside of the neck floats, as captured in a consumer's online video of twins wearing neck floats in a bathtub.

[8] The risk for partial slip-through poses the risk of aspiration of water through the mouth even if the nose is not submerged.

[9] There is not enough information in reports for four incidents to associate them with one of the four hazard patterns.

[10] See WHO growth charts for girls and boys ages 0 to 24 months: *https://www.cdc.gov/growthcharts/who/girls_length_weight.htm* and *https://www.cdc.gov/growthcharts/who/boys_length_weight.htm.*

[11] See ''WHO child growth standards: head circumference-for-age, arm circumference-for-age, triceps skinfold-for-age and subscapular skinfold-for-age: methods and development''; *https://www.who.int/publications/i/item/9789241547185.*

[12] See ''Anthropometric Reference Data for Children and Adults: United States, 2015–2018,'' U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, *https://www.cdc.gov/nchs/data/series/sr_03/sr03-046-508.pdf.*

[13] See CEN/TR 13387–1:2018, *Child care articles—General safety guidelines—Part 1: Safety philosophy and safety assessment: https://standards.iteh.ai/catalog/standards/cen/586a9a9d-14b2-4626-bae4-4e13a80ce111/cen-tr-13387-1-2018.*

[14] The measurement and study of the proportions of the head and face, especially during development and growth.

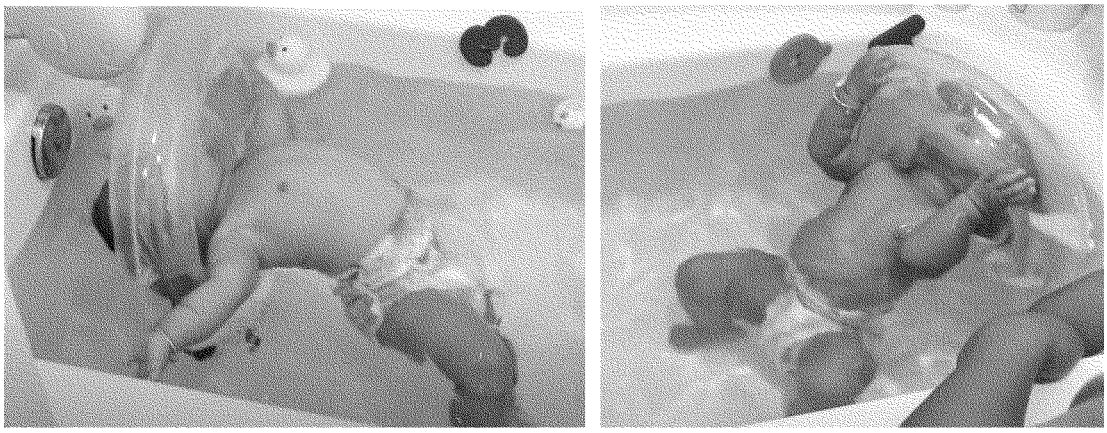


Figure 1: Children pushing up on the front underside of the neck float and leaning rearward into the discontinuous ends (partially blurred for privacy).

Neck float designs may include features intended to reduce the likelihood of slip-throughs. For example, some neck floats include a chin rest, which is intended to keep the child's mouth and nose from being submerged during use. However, many incidents involving submersions due-to slip-through involved neck floats designed with chin rests. Incident data and consumer videos of use show that children may lean and tilt their heads such that their chin bypasses the chin rest; they may twist their head in the product such that their chin is no longer supported by the chin rest; or their changes in direction or body position can cause the product to rotate during use. For example, IDI 210824HCC1797 indicates that the victim was using a neck float with a chin rest for approximately 10 minutes, when ''the victim turned his head to the right and suddenly the victim's head slipped through the neck opening.'' In addition, incident data, such as fatal case IDI 200915HFE0001, demonstrate that caregivers may put neck floats on their children backwards, or otherwise without placing the child's chin on the chin rest, resulting in the child slipping through the center opening. Therefore, as shown in the incident data, a chin rest does not adequately prevent the submersion hazard.

Incident reports show it is common for children to wear neck floats in water shallow enough for them to sit or lay in a reclined position, yet still deep enough to allow their mouth and/or nose submerge and pose a drowning hazard. For example, IDI 220714CCC3164 reports that the victim was in a bathtub with only approximately 5 inches of water when the victim was suddenly and fully submerged in the water. If children can push/kick off the floor or sides of the body of water, they are more likely to arch their heads back and separate the discontinuous ends of the neck float causing an expansion of the center opening, making it more likely for the child's mouth and/or nose to slip into the water. They may also have better leverage to lift the front underside of the product upward and over their face, as shown in Figure 1, resulting in the mouth and nose submerging in water. Where water depth was reported, most incidents (81 of 83) indicated the product was used in shallow water such as a bathtub or kiddie pool.

If there are obstacles such as tub walls, then it is easier for the product to be partially or fully held in place. If the product is immobilized and the child twists their head, then their chin may no longer be supported by a chin rest, making it more likely for their mouth and nose to slip into the water. If they twist enough that they face the discontinuous ends of the product, then the greater space and separation afforded by the discontinuous ends may make it easier for their mouth and nose to slip into the water. Additionally, if the product is immobilized and the child pushes off other surfaces into the discontinuous ends, they may generate force sufficient to expand the center opening and slip through the product. The University of Michigan Transportation Research Institute (UMTRI) conducted child strength research for CPSC, which demonstrated a wide range of two-foot seated push forces for children ages 6–47 months, such as children in the 6–8 month range at the 95th percentile generating up to 128.8 N (29 pound-force), and children in the 36–47 month range at the 95th percentile generating up to 547.3 N (123 pound-force).[16] Another study found that fetal kick force reached 47 N (10.6 pound-force) at between 20 and 30 weeks of gestation, demonstrating that newborns can generate at least this amount of force or greater (Verbruggen et al., 2018).

The neck float can also be held in place by pressing up against other children in close proximity. Numerous incident reports and publicly available consumer-uploaded photos demonstrate that some children wear neck floats in confined spaces with siblings, even with siblings who are also wearing neck floats. For example, IDI 210901CCC1899, which involved slip-through, indicates that triplets wore infant neck floats in the same bathtub at the same time when the victim suddenly slipped through the product and went underwater for 2 to 10 seconds. Cases like this can result in a very confined space with the floats bumping into each other and even overlapping.

Caregivers are unlikely to understand how these environmental variables, such as shallow water and confined spaces, can contribute to the risk of slip-through by enabling the child to twist their head in the product and exert forces that expand the center opening. It is reasonably foreseeable that they will mistake such environments as providing an increased level of safety, security, and comfort by making the water

[15] See ''Corrected Age for Preemies,'' American Academy of Pediatrics, *https://www.healthychildren.org/English/ages-stages/baby/preemie/Pages/Corrected-Age-For-Preemies.aspx;* ''NICU Family Information Packet, Appx. B, Growth,'' Agency for Healthcare Research and Quality, *https://www.ahrq.gov/patient-safety/settings/hospital/resource/nicu/packet/apb3.html;* Fenton Preterm Growth Charts *https://live-ucalgary.ucalgary.ca/resource/preterm-growth-chart/preterm-growth-chart.*

experience more controllable compared to a standard pool. As detailed further below, they may also underestimate the risk of drowning in shallow water, further affording them a false sense of security.

The slipperiness of the neck float's material, exposure of the neck float to lubricants, and motion can allow the product to slide more easily against the child's skin, increasing the likelihood of the child twisting and slipping through the product during use. Many neck floats are marketed for use when bathing children. Several reports describe the use of soap and shampoo with the product. For example, IDI 210901CCC1906 reports that the caregiver applied soap to the victim's head, and the soap made the victim's head and neck slippery, causing the victim's head to slip through the opening and submerge under the water. In reviewing products sold online and publicly available consumer-uploaded photos, staff observed that it is common for neck floats to be used in soapy environments (Figure 2).



Figure 2: Examples of publicly available consumer-uploaded photos of children wearing child neck floats in soapy environments. CPSC blurred and obscured portions of the photos for privacy.

2. Slip-Through Associated With Inflation

In 54 incidents, children slipped through or had the potential to slip through because the neck floats were more pliable or compressible at lower pressure levels or deflated during use. Thirty-three victims actually slipped through the product. The rest were at risk of slipping through the product because of issues pertaining to inflation (hole, tear, unknown deflation type, etc.). In one incident of a slip-through, it was intentionally underinflated.

Neck floats that are initially fully inflated also can deflate over time or during use, such as from air escaping through holes, tears, or open air valves. Neck floats can be underinflated at the time the child begins to use the product due to numerous reasons, such as the caregiver's perception that the product is uncomfortably snug or the caregiver not realizing that air escaped from the product since the last time it was inflated.

Where reported, victims ranged in age from 28 days old to 10 months old. Two drowning injuries (IDIs 230317CCC3554 and 210114HCC1250) and one drowning death (IDI 190711CCC2487) were reported in this category and involved leaks or deflation during use.

There are unique risks of submersion for inflatable neck floats because they can be compressible and deform unevenly during use, vary in the amount of inflation prior to use, and may lose air during use. Manufacturers typically recommend that neck floats are ''fully'' inflated when used; however, full inflation is difficult for consumers to estimate. Variability in inflation prior to and during use can impact product performance. The inflatable neck float's dependence on air to take shape means their dimensions vary by the amount of inflation and renders them compressible and unevenly deformable, especially if the product has discontinuous ends. Lower levels of inflation result in greater deformability and can allow the discontinuous ends to separate and expand the size of the center opening (Figure 3).

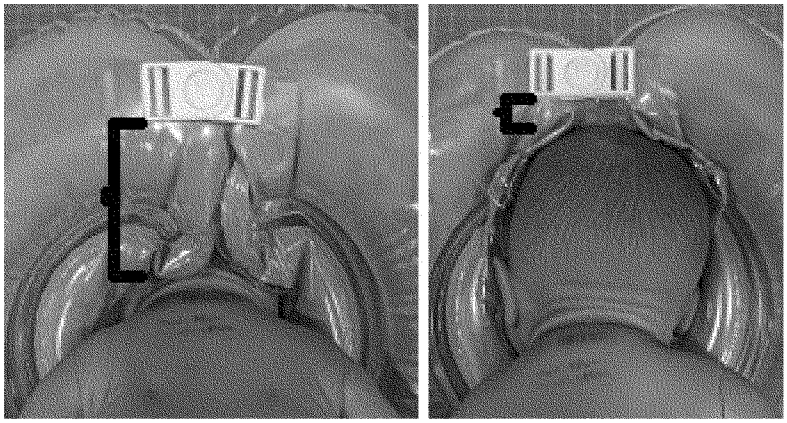


Figure 3: Images demonstrating how infant neck floats, particularly underinflated neck floats, can be compressed and unevenly deform during use. The image to the left shows the product is wrapped fully around the back of the doll's head. As shown in the image to the right, pulling the doll's head downward and rearward separates the discontinuous ends such that the head can pass through the center opening. Black brackets added to emphasize how the discontinuous ends are displaced, increasing the size of the center opening.

a. Deflation During Use

Fifty-two CPSRMS incidents involved holes, tears, or other leaks in neck floats at the time of the incident. For example, IDI 190711CCC2487 describes a fatal incident involving a 4-month-old male infant who was reportedly unattended for approximately 5 minutes in a bathtub wearing an inflatable neck float. He was found unresponsive floating face down without the neck float. The neck float was still secured in a closed position by both a Velcro strap and a buckle but appeared to be losing air. Another example, IDI 230317CCC3554, describes an injury to a 10-month-old male who was unattended for 5 minutes or less in a neck float in a bathtub. The child was found limp and cyanotic [17] with his face underwater, and the neck float was found to be partially deflated due to a leak in the seam.

Some incidents involved tears, as in IDI 210901CCC1899, which describes a 3-month-old infant slipping through the neck float that had a tear near the safety clip and IDI 210826CCC3605, which describes a 2-month-old male who slipped through a product after it began to deflate due to a leak directly under the chin strap portion of the product. Several incidents, such as IDI 160512CBB2587, involved neck floats deflating during use due to problems with the air valve, such as the valve either opening or not being fully closed.

[17] Cyanotic refers to a bluish discoloration of the skin resulting from poor circulation or inadequate oxygenation of the blood.

Manufacturers' instructions often direct caregivers to check the product for tears, holes, valve issues, and other sources of leaks prior to each use of inflatable neck floats. However, instructions to perform these checks can be unclear and ineffective and, as a result, leaks may go undetected or develop after an inspection. It can be particularly difficult to find small leaks or tears, especially along seams. For example, IDI 220714CCC3155 indicates that after the product deflated during use, the caregiver performed the manufacturer-instructed inspection for leaks and did not observe any air coming out of the product. The caregiver continued to use the product with a 6-month-old child and the product deflated further, resulting in the child going ''underwater [for] approximately 5 seconds.'' In another example, IDI 220714CCC1014 indicates that the caregiver tested the neck float for leaks and could not find any, yet the product deflated resulting in the child slipping through.

Incident data also show that caregivers are unlikely to perform a leak check prior to every use of the product. For example, IDI 230720CCC1767 indicates the caregiver performed the manufacturer-instructed leak test prior to the first use of the product, but not thereafter—contrary to the manufacturer's instructions—and the product deflated during use after being used ''at least 10 times before the incident occurred.'' Leak checks require time and effort, and studies have shown that even small inconveniences can have a substantial negative effect on behavioral compliance with safety measures (Riley, 2006). Further, the neck floats that staff observed in incident data and on the market are simple and familiar in assembly and use, and they are marketed to keep children, even newborns, afloat in bathtubs and other bodies of water. These factors make it likely that consumers will overestimate the capabilities of the product, underestimate the importance of the checks, and underappreciate the nature and likelihood of the submersion hazard (Inaba et al., 2004; Woodson et al., 1992). This underappreciation of risk is especially likely after the caregiver has seen their child and/or other children (*e.g.,* through online marketing and endorsements of neck floats) use the product safely without submersion (Godfrey & Allender, 1994; Vredenburgh & Zackowitz, 2006; Ayres et al., 1989). As shown in the incident reports, it is common for caregivers to leave the product inflated between uses, and neither reinflate the product nor perform leak checks, prior to each use of the product. For example, IDI 210908CCC1983 indicates the product was inflated once and never re-inflated, despite being used several times.

Some incident reports, moreover, demonstrate that caregivers have continued to use neck floats despite being aware of leaks because they believed the leak was slow and perceived no hazard in continued use.

For example, IDI 210908CCC1982 indicated that the consumer was aware of a leak and ''would simply re-inflate it and continue with the bath'' until the day her child slipped through the product. Caregivers delay or even forego replacing neck floats with slow leaks for a myriad of reasons, such as underestimating the risk of slip-through and avoiding the practical burdens (*e.g.,* expense and time) of finding a replacement.

b. Underinflation

Even without an air leak, neck floats are likely to be used at lower levels of inflation that compromise the products' fit and increase the likelihood of an infant slipping through. Neck float manufacturers often direct caregivers to ''fully'' inflate the products prior to use; however, as mentioned above, full inflation is likely to be interpreted differently from person-to-person. Consumers also vary in their capability to inflate neck floats and retain the air pressure as they switch from inflating it to closing the valve(s). Slip-through can occur at any level of inflation, but the risk is greater with lower inflation pressures. In examining neck float samples, staff observed that neck floats can take shape at as little as 0.1 pounds per square inch gauge (PSIG). Various factors (*e.g.,* motion) can cause the center opening to expand, and consumers are likely to underappreciate the risk posed by these factors. Staff observed in product samples and incident reports that neck floats can feel secure around a child's neck and appear as though the child's head cannot pass through the center opening, yet, during use, whether from deflation, the child's activity, or both, the child's head does slip through the product such that their mouth and nose become submerged. For example, IDI 210910CCC1030 indicates that the product felt ''quite tight,'' yet the victim still slipped through the product without observable deflation.

Additionally, some caregivers intentionally inflate neck floats to air pressures that leave space around a child's neck to address their perception of discomfort for their child, not appreciating that the likelihood of slip-through increases as the product's inflation level decreases. Intentional underinflation has been reported even for neck floats that have warnings against underinflation. For example, IDI 220714CCC3162 indicated that the caregiver intentionally underinflated the neck float because ''she was worried about the product being too tight around the victim's neck.'' Inflatable neck floats typically do not have other means for adjustability of the fit around the child's neck beyond the amount of inflation, so it is reasonably foreseeable that caregivers seeking to adjust the fit would intentionally underinflate the product.

3. Slip-Though Associated With Restraint System Failures

A restraint system is an interconnecting component, whether adjustable or not, that is integral to a neck float and is intended to hold the occupant in a fixed position relative to the neck float. Staff observed that latches, buckles, or Velcro straps are commonly used to bind the discontinuous ends of neck floats together during use, and keep the product wrapped securely and tightly around the child's neck. Failure of the restraint system is likely to result in the child's mouth and nose being submerged in water, whether from disconnecting entirely or simply loosening during use. According to report Y227Q815A, a 7-month-old infant slipped out of the product due to a latch/restraint failure: ''the strap needs to be glued to the other side otherwise it opens.'' The integrity of the fasteners, including their connection to each other and to the product, can be affected by user weights, sizes, and actions, such as children pushing up on the floats, kicking, and thrashing.

The locations of the latches may also be a significant factor, though repositioning the location of the latches alone is not enough to prevent slip-through. As shown in Figure 3, some neck floats with discontinuous ends have the latches located far from the child's neck, affording greater separation of the part of the discontinuous ends closer to the child, where separation is most dangerous for center opening expansion.

4. Submersion Without Slip-Through

Children can be submerged in water while wearing neck floats without slip-through or fastening and restraint system failures, putting them at risk of drowning. Where reported, victims ranged in age from 3 to 6 months old. In at least three incidents, children reportedly tilted, rotated, and/or flipped in the neck float such that their faces contacted the water. In IDI 220714CCC3166, the child tilted forward and ingested water; in IDI 220714CCC3156, the child was able to rotate his body such that his face was in contact with water; and in report Y217O989B, a child leaned back and flipped in the product. As discussed above, it is common for children wearing neck floats to exhibit a wide range of body positions and movements.

Additionally, at least one incident, IDI 220714CCC3158, involved an infant being pulled down into the water by an inflatable neck float that filled with water: ''The neck float made a popping sound and began to accumulate water, pulling the infant down into the water.'' This incident demonstrates another serious risk posed by inflatable neck floats, as numerous cases cite leaks in the products, and leaks can result in the product filling with water and weighing the child down. No injuries or deaths were reported in this category.

C. Availability of Incident Data

Upon publication of this NPR in the **Federal Register**, staff will make available for review and comment the CPSRMS incident reports relied upon and discussed in the NPR, to the extent allowed by applicable law, along with the associated IDIs. The data can be obtained by submitting a request to: *https://forms.office.com/g/10Cqtd8JP6.* You will then receive a website link to access the data at the email address you provided. If you do not receive a link within two business days, please contact *zgoldstein@cpsc.gov*.

D. Recalls

In July 2015, the Commission's Office of Compliance conducted one recall of a neck float product. Table 1 below summarizes the recall, notes the recall date, the firm involved, hazard, the approximate number of units affected, number of reported incidents/injuries, and the press release number.

Table 1 - Summary of Recalls Involving Neck Float Products

Recall Date	Firm	Hazard	Number of Recalled Units	Number of Incidents Reported (Injuries Reported)	Press Release Number
July 1, 2015	Otteroo	The seam on the flotation device can leak air and deflate, posing a risk of drowning.	About 3,000 units Baby Floats	No Injuries Reported	15-739[18]

IV. Review of Voluntary Standards

A. Standard Consumer Safety Specification for Toy Safety, ASTM F963–23

ASTM F963 includes performance requirements and test methods for toys, as well as requirements for warning labels and instructional literature, to reduce or prevent injury to children or death of children from mechanical, chemical, and other hazards associated with toy use. Toys must comply with this standard pursuant to 16 CFR part 1250. Similar to other ASTM standards, ASTM F963 contains the following sections: scope, terminology, referenced documents, safety requirements, labeling requirements, instructional literature, producer's markings, test methods, and additional sections appropriate for toys, such as age grading and flammability testing of certain types of toys. Since passage of the CPSIA in 2008, the voluntary standard has been revised five times: ASTM F963–08, ASTM F963–11, ASTM F963–16, ASTM F963–17, and ASTM F963–23. Pursuant to the update procedures in section 106 of the CPSIA, the Commission has accepted the sequential revisions as the mandatory standard. 15 U.S.C. 2056b(g); 16 CFR part 1250.

Neck floats are subject to the labeling requirements in section 5.4 of ASTM F963–23 for aquatic toys. This standard requires that aquatic toys and their packaging include a safety label that at minimum includes the following, or equivalent, text: ''*This is not a lifesaving device. Do not leave child unattended while device is in use.*'' It also requires ''no advertising copy or graphics shall state or imply that the child will be safe with such a toy if left unsupervised.'' As detailed in section V.B. of this preamble, for the proposed requirements for marking, labeling, and instructional literature in this NPR, staff assesses that the warning requirements specified in section 5.4 of ASTM F963–23 are inadequate for neck floats because they do not address the hidden hazards specifically associated with these products, such as the risk of center opening expansion during use, the risk of drowning in very shallow water, and the risk of death associated with partial slip-through. Many of the reported incidents involved neck floats compliant with the labeling requirements specified in ASTM F963–23, thereby demonstrating that the existing labeling requirements are insufficient to address the hazards.

ASTM F963–23 does not establish any performance requirements for aquatic toys, including neck floats. In August 2022, the ASTM F15.22 subcommittee developed a dedicated aquatic toy revision task group to develop a draft ballot with performance requirements for aquatic toys. There have been no balloted draft requirements to date, however.

Incident data described in section III of this preamble demonstrate weaknesses in the current ASTM toy standard. Therefore, the Commission preliminarily determines that ASTM F963 fails to adequately address children slipping through neck floats or being submerged into water and fails to provide the highest level of safety feasible. Accordingly, the Commission proposes more stringent performance and labeling requirements that further reduce the risk of injury associated with neck floats and provide the highest level of safety for such products that is feasible.

B. Other Relevant Standards

The U.S. Coast Guard uses ANSI/CAN/UL 12402–5, *Personal Flotation Devices—Part 5: Buoyancy Aids (Level 50)—Safety Requirements,* and ANSI/CAN/UL 12402–9, *Personal Flotation Devices—Part 9: Test Methods* to evaluate level 50 Personal Floatation Devices (PFD's) such as life vests. Some PFDs utilize flotation devices located around the user's collar, similar to neck floats. PFDs are classified into levels based on intended use conditions, including calm versus stormy water and relative closeness to possible rescue such as at the beach versus offshore, with level 50 being the least stringent. These factors are not comparable or relevant to the use of neck floats in a pool or bathtub environment. ANSI/CAN/UL 12402–5:2022 does classify possible PFD users into four categories based on weight, with ''Infant PFDs'' being intended for users weighing less than 15 kg (33 lbs). However, certain performance requirement metrics for level 50 PFDs are listed as ''not allowed'' for the infant class. For these reasons, ANSI/CAN/UL 12402–5 and ANSI/CAN/UL 12402–9 are not appropriate to apply to regulate neck floats, without sufficient modification to adapt its otherwise universal test methods with acceptance criteria suited for the infant class.

BS EN ISO 13138, *Buoyant aids for swimming instruction,* is a multi-part standards collection for the European Union's (EU) three swimming aid classifications. Class A swimming aids such as swim seats, covered by BS EN ISO 13138–3, are intended to be used by children up to 36 months as a ''passive'' user to introduce them to the in-water environment. Class B swimming aids, covered by BS EN ISO 13138–1, are intended to introduce an ''active'' user

[18] Otteroo Corp Recalls Inflatable Baby Floats | *CPSC.gov*.

to the range of swimming motions. Class C swimming aids, covered by BS EN 13138–2, are products held in the hands or by the body and are intended to aid ''active'' users with improving specific aspects of swimming strokes. Class C swimming aids are intended for use by advanced swimmers, or even adult beginners.

Class A devices as defined by BS EN ISO 13138 most closely align with the target users of neck float products within the scope of this NPR. However, BS EN ISO 13138 classifies floatation products that attach at the neck as Class B devices. Most of the general performance requirements in BS EN ISO 13138–1:2021 and 13138–3:2021 and the associated test methods across the two standards are largely identical, with some exceptions. Many of the unique tests for Class A devices in BS EN 13138–3:2021 do not apply to neck floats because Class A devices are swim seats. Tests for Class A products are not appropriate for neck floats because these flotation devices are placed and attached at the waistline versus at the neck for Class B flotation devices.

Additionally, test methods in BS EN ISO 13138–1 for Class B devices, including buoyancy testing, align with the test methods for their respective counterparts in ANSI/CAN/UL 12402 although the exact performance requirements differ. The risk management factors and tests of both ANSI/CAN/UL 12402 and BS EN ISO 13138–1 may address many of the hazards identified in section III of this preamble and are universal in application. However, to address the identified hazards associated with neck floats, the performance requirements and test methods will require modifications, discussed in more detail in section V of this preamble.

V. NPR Description of Proposed Provisions and Justifications

Based on incident data described in section III of this preamble and staff's engineering, health sciences, and human factors assessments, the NPR proposes creating a new § 1250.5 to 16 CFR part 1250, Safety Standard Mandating ASTM F963 for Toys, with more stringent requirements by adding performance and labeling requirements for neck floats to further reduce the risk of injury associated with neck floats and to provide the highest level of safety for such products that is feasible. Further, this NPR proposes revising the title of part 1250 from Safety Standard Mandating ASTM F963 for Toys to ''Safety Standard for Toys,'' to reflect the inclusion of proposed requirements that do not incorporate by reference existing requirements in the ASTM F963 voluntary standard.

To address the risk of injury described in section III of this preamble, this NPR proposes to add a definition for ''neck float'' discussed in section II of this preamble and to add new performance requirements and replace existing labeling requirements for neck float. The NPR proposes to add test requirements for conditioning, buoyancy, fastening systems, restraining systems, and neck opening and to update marking, labeling and literature requirements. The additional requirements are more stringent than the existing requirements in part 1250 to further reduce the risk of injury associated with neck floats and to provide the highest level of safety for such products that is feasible to address child drownings associated with neck floats. This section of the preamble describes the proposed additions in § 1250.5.

A. Performance Requirements To Address Drowning Hazards

Because ASTM F963–23 does not establish any performance requirements for aquatic toys, including neck floats, it fails to adequately address children slipping through neck floats or being submerged into water and does not provide the highest level of safety for such products that is feasible.

1. Conditioning Procedure

The NPR proposes conditioning requirements for neck floats prior to conducting any other tests under the proposed rule in § 1250.5(c)(1). The purpose of a conditioning procedure is to simulate the conditions in which the product may be stored or used. This helps to ensure that the product is tested under realistic circumstances. The proposed conditioning procedure involves subjecting the neck float to various stressors based on foreseeable use environments, which include exposure to cold, hot, and room temperature, exposure to chlorinated salt water, and exposure to ultraviolet (UV) light. All inflatable neck floats subject to the proposed rule should be deflated for the proposed testing requirements in the conditioning procedure.

a. Exposure to Varying Temperatures

Temperature changes can introduce both short- and long-term impacts on any material. For plastics and polymer chains, short-term effects can include expansion or contraction of objects' shape, as well as softening of the material. Long-term exposure may result in deformation, or thermal degradation leading to cracking or breaking.[19] These material changes are typically associated with exposure to high temperature, as can be expected when the neck float is used for bathing purposes or is stored outside with other swim toys; however, transitioning between cold storage to hot use may also exacerbate the mechanical degradation.

Section 5.5.4.1 of ANSI/CAN/UL 12402–9:2022 includes a ''Temperature cycling test'' for inflatable PFDs. The temperature cycling test requires alternate exposure to hot temperature at 60 ± 2 °C (140 ± 4 °F) for 8 hours, then to cold temperature at −30 ± 2 °C (−22 ± 4 °F) for 8 hours, repeated for two complete cycles.

The Commission proposes to incorporate this test method from section 5.5.4.1 of ANSI/CAN/UL 12402–9:2022, for both inflatable and inherently buoyant neck floats, with modifications, in the proposed rule under § 1250.5(c)(1). ANSI/CAN/UL 12401–9:2022 contains separate requirements for inherently buoyant PFDs that includes steps to fully open the devices to simulate donning and check for damage. However, as discussed in Section II of this preamble, the design of inherently buoyant neck floats does not typically include extraneous moving parts that require additional ''opening'' steps beyond being secured around the child's neck. Therefore, CPSC proposes to apply the thermal conditioning procedure in section 5.5.4.1 of ANSI/CAN/UL 12402–9:2022 to both inflatable and inherently buoyant neck floats.

BS EN ISO 13138–1 also recommends temperature conditioning for swimming aids, with a hot temperature set point of 60 ± 2 °C (140 ± 4 °F) and cold temperature set point of −10 ± 2 °C (14 ± 4 °F). Since it is not reasonable to expect that a neck float will be stored or operated in temperatures low enough to warrant conditioning to −30 ± 2 °C as recommended by section 5.5.4.1 of ANSI/CAN/UL 12409–9:2022, the NPR proposes to increase the temperature set point of the cold extreme from −30 ± 2 °C (−22 ± 4 °F) up to −10 ± 2 °C (14 ± 4 °F) based on the cold temperature recommended by BS EN ISO 13138–1 for comparable swimming devices.

Additionally, rather than repeat thermal conditioning for two, 8-hour alternating cycles, the NPR proposes to condition neck floats for a single 8-hour

[19] Shawn. ''Temperature Considerations in Plastic Thermoforming Material Selection.'' *Productive Plastics Inc,* 27 June. 2021, *www.productiveplastics.com/temperature-considerations-plastic-thermoforming-material-selection.*

period at both temperature extremes (60 ± 2 °C and − 30 ± 2 °C), followed by a 24-hour period at room temperature (20 ± 2 °C (68 ± 4 °F)). The NPR proposes to reduce the number of thermal cycles required in section 5.5.4.1 of ANSI/CAN/UL 12402–9:2022 to more accurately reflect the use and storage conditions of neck floats in comparison to those of PFDs. Unlike PFDs, neck floats are not expected to be stored nor operated within the same extreme conditions expected of a life-saving device. The 24-hour requirement to hold the neck float at room temperature is sufficient to ensure that the hot and cold temperature exposures do not interfere with the remaining two conditioning requirements for neck floats (*i.e.,* chlorinated salt water and UV exposure).

b. Exposure to Chlorinated Salt Water

Exposure to chlorine environments, as may be expected of a pool, can result in an adverse chemical reaction with a plastic or polymer chain if the material has not been carefully selected for, or prepared with, suitable chemical resistance.[20] To address this, the proposed rule requires conditioning for exposure to chlorinated salt water to simulate the use of a neck float in a pool.

To condition for exposure to chlorinated salt water, section 6.1 of BS EN ISO 13138–1:2021 requires the swimming aids to be submerged in a chlorinated saltwater solution. Staff recommends adopting similar procedures to account for exposure to various use locations of neck floats, which may include chemically treated bodies of water such as pools. Accordingly, the NPR proposes to require that a neck float should be submerged in a chlorinated saltwater solution. The solution should be prepared by dissolving 32 g [21] of sodium chloride (NaCl) in one liter of aqueous solution containing 2 ppm chlorine at pH 7.0–7.8.[22] The neck float should be submerged in the necessary volume of the prepared chlorinated saltwater solution, in darkness and at room temperature (20 ± 2 °C (68 ± 4 °F)) for 8 hours.

c. Exposure to Ultraviolet Light

UV light can cause degradation of plastics and polymer chains through a photochemical effect.[23] Over continued exposure, plastics may weaken, begin to look discolored, take on a chalky appearance, or become brittle to the touch.[24]

Section 4.2.1.1–4.2.1.4 of ANSI APSP ICC–16 (2017), *American National Standard for Suction Outlet Fitting Assemblies (SOFA) for Use in Pools, Spas and Hot Tubs,* includes the ''Ultraviolet Light Exposure Tests'' test method for exposure to ultraviolet light (UV). 16 CFR part 1450. Based on the test method requirements in section 4.2.1.1–4.2.1.4 of ANSI APSP ICC–16, a product is required to be exposed to UV light under one of the four UV exposure conditioning methods, selected per the discretion of the evaluator, incorporated here:

(a) 720 hours of twin enclosed carbon-arc (ASTM G153, Table X1.1 Cycle 1 except the Black Panel Temperature shall be 50 °C); or

(b) 720 hours of twin enclosed carbon-arc (ASTM G153, a programmed cycle of 20 minutes consisting of a 17-minute light exposure and a 3-minute exposure to water spray with light shall be used with a black-panel temperature of 63 ± 3 °C); or

(c) 1000 hours of xenon-arc (ASTM G155, Table X3.1 Cycle 1 except the Black Panel Temperature should be 50 °C); or

(d) 750 hours of fluorescent (ASTM G154, Table X 2.1 Cycle 1 except the 8-hour UV shall be at a Black Panel Temperature of 50 °C and the 4-hour condensation Black Panel Temperature shall be 40 °C).'' [25]

In § 1250.5(c)(1), the Commission proposes to incorporate sections 4.2.1.1–4.2.1.4 of ANSI APSP ICC–16 to simulate UV light exposure. This provision accounts for sun exposure during use of neck floats, which may include outdoor use and temporary or primary outdoor storage conditions.

2. Minimum Buoyancy Requirements

In § 1250.5(c)(2) the Commission proposes minimum buoyancy requirements to prevent unintentional submergence. Specifically, the Commission is proposing to require that all neck floats demonstrate a minimum upward buoyancy equal to or greater than 30 percent of the expected weight capacity of the neck float, which will ensure that a neck float is buoyant during use.[26] Additionally, the Commission proposes to require inherently buoyant neck floats to not lose more than 5 percent of their initial buoyancy after being submerged for a 24-hour period.

The expected weight capacity, as defined in § 1250.5(b), will be determined as the neck float's maximum recommended user weight, or the weight provided in Table 2 based on the neck float's maximum recommended user age, whichever is greater.

[20] *Chemical Resistance Chart for Plastics—an In-Depth Look at Chemical and Acid Resistant Plastics | a&C Plastics. www.acplasticsinc.com/informationcenter/r/a-chemical-resistance-guide-for-plastics.*

[21] Giovanisci, Matt. ''How Much Salt to Add to Your Pool (Easy Pool Salt Calculation).'' Swim University, 8 July 2024, *www.swimuniversity.com/how-much-pool-salt.*

[22] Home Pool and Hot Tub Water Treatment and Testing.'' Healthy Swimming, 10 May 2024, *www.cdc.gov/healthy-swimming/about/home-pool-and-hot-tub-water-treatment-and-testing.html?CDC_AAref_Val=https://www.cdc.gov/healthywater/swimming/residential/disinfection-testing.html.*

[23] *What Does UV Radiation Actually Do to Degrade Plastics? | U.S. Plastic Corp.* 11 Dec. 2009, *www.usplastic.com/knowledgebase/article.aspx?contentkey=858.*

[24] ''UV And Its Effect on Plastics: An Overview.'' *Essentra Components U.S.,* 23 Jan. 2019, *www.essentracomponents.com/en-us/news/manufacturing/injection-molding/uv-and-its-effect-on-plastics-an-overview.*

[25] American National Standards Institute (ANSI) and Association of Pool & Spa Professionals. *American National Standard for Suction Outlet Fitting Assemblies (SOFA) for Use in Pools, Spas, and Hot Tubs.* American National Standards Institute (ANSI), 18 Aug. 2017, *APSP.org.*

[26] Buoyancy is a property of the object's density, and for inflatables is achieved by increasing the float's volume by blowing it up, without substantially affecting the float's mass.

Table 2 – Child weight in kg and lbs. for ages 0 to 4 years representing the 95th percentile male.[27]

Age of Child	Weight in kg	Weight in lb
0-3 months	7.7	17.0
4-6 months	9.5	21.0
7-9 months	10.6	23.4
10-12 months	11.5	25.4
1 up to 2 years	17.6	38.8
2 up to 3 years	23.2	51.2
3 up to 4 years	23.7	52.3

Section 5.5.9.2 of ANSI/CAN/UL 12402–9:2022 requires the use of a weighted cage with a calibrated load cell [28] to submerge a swimming device in a tank of fresh water, with its upper surface at a depth of 100mm to 150mm below the water surface without touching any sides of the tank. In addition, the product must be secured within the cage such that both it and the cage always remain approximately horizontal and level. The test method requires the submerged weight of the cage be 1.1 times the expected buoyancy value of the swimming device to ensure there is sufficient load to fully submerge the weighted cage system when combined with the swimming device.

The procedure in section 5.5.9.3 of ANSI/CAN/UL 12402–9 directs that the cage should be suspended in the water tank at a temperature of (20 ± 5) °C. First, the weight of the immersed cage with the product should be recorded, as A. Next, the weighted cage and product should remain immersed for 24 hours, and the weight shall be re-recorded as B. Lastly, the product should be removed from the cage and the weight of the immersed cage alone, without the product, should be recorded as C. Section 5.5.9.4 of ANSI/CAN/UL 12402–9 explains that the initial buoyancy is determined by deducting A from C, and the final buoyancy is taken by deducting B from C. The buoyancy loss is taken by deducting the final buoyancy from the initial buoyancy.

The Commission proposes to incorporate this test method from sections 5.5.9.2–5.5.9.4 of ANSI/CAN/UL 12402–9:2022, with modifications, in the proposed rule to determine the minimum buoyancy for all neck floats, under § 1250.5(c)(2). Section 5.5.9.3 of ANSI/CAN/UL 12402–9:2022 requires a swimming device to be inflated to the pressure provided by its primary means of inflation, or to 4.0 ± 0.1 kPa (0.58 ± 0.016 PSIG), whichever is less, if it contains inflatable components. This NPR, however, proposes that any neck float utilizing inflatable components must be inflated to the lower internal air pressure of 0.1 ± 0.01 PSIG for the duration of this test. It is foreseeable that a consumer could use the neck float while inflated to only 0.1 PSIG—even if that is below the proper operating pressure—because the float may appear to be in the proper shape and functional at this inflation level. An internal pressure of 0.1 PSIG is the lowest foreseeable operating pressure for neck floats, and therefore performance requirements that depend on inflation pressure (such as buoyancy) should be evaluated at that lowest limit. During experimental testing, staff found at least four sample inflatable neck floats (representing two distinct make/models) met the requirements of this NPR's proposed buoyancy test when inflated to 0.1 PSIG internal pressure.

This NPR proposes to evaluate the minimum required buoyancy of the neck float as a function of its intended user weight. Requiring the upward buoyancy to be equal or greater than 30 percent of the expected weight capacity is based on applying a safety factor of three to 10 percent, which is the approximate body weight, on average, a human bears while submerged to their neck in water.[29] Using three as the safety factor is based on performance requirements in ASTM F963 for toys intending to bear the weight of a child, such as the overload testing of ride-on toys and toy seats in section 8.28 of ASTM F963, which requires the test load to be three times the weight indicated by Table 7 in ASTM F963 or three times the manufacturer's stated weight capacity, whichever is greater. In this instance, staff equates ASTM F963's requirement for ride-on-toys to bear three times the dry-land weight of a child to the proposed buoyancy requirement that neck floats bear three times the in-water weight of a child.

In addition, the Commission proposes that inherently buoyant neck floats must demonstrate no more than a 5 percent loss of buoyancy after being submerged for 24 hours to ensure that inherently buoyant materials do not absorb enough water such that the product's ability to float properly is adversely impacted. The 5 percent loss is based on the staff's analysis of other relevant standards. Both ANSI/CAN/UL 12402–9 and BS EN 13138–1 evaluate the buoyancy of flotation devices after a 24-hour submergence period to determine how much buoyancy is lost. BS EN 13138–1 requires inherently buoyant swimming aids to lose no more than 10 percent of their initial buoyancy, while ANSI/CAN/UL 12402–9 requires PFDs to lose no more than 5 percent. The Commission preliminarily determines that the 5 percent loss metric is the more stringent of those two standards and is more appropriate to achieve the highest level of safety that is feasible.

3. Restraint Systems

To reduce the likelihood of a restraint system failure on a neck float, which can result in a child slipping through the product, the Commission proposes in § 1250.5(c)(3) requirements for the release mode of the fastening mechanism, and overall mechanical integrity of restraint systems. A

[27] See CDC ''Data Table for Boys Length-for-age and Weight-for-age Charts'': *https://www.cdc.gov/growthcharts/who/boys_length_weight.htm,* for ages 0 to 12 months (weights by month). See CDC ''Anthropometric Reference Data for Children and Adults: United States, 2015–2018'': *https://www.cdc.gov/nchs/data/series/sr_03/sr03-046-508.pdf,* for ages 2 to 4 years (weight by years).

[28] The calibrated load cell is used to record the cage weight measurements, with and without the product.

[29] Water cancels about 90 percent of a human's body weight. DNP, Darcy Reber Aprn, C.N.P. ''Aquatic Exercise: Gentle on Your Bones, Joints, Muscles.'' *Mayo Clinic Health System,* 9 Apr. 2024, *https://www.mayoclinichealthsystem.org/hometown-health/speaking-of-health/aquatic-exercise-gentle-on-your-bones-joints-and-muscles.*

fastening mechanism, such as a buckle, on a neck float serve as a restraint system because it secures and holds the child in place during use. The requirements proposed are intended to reduce the likelihood of an unintentional release of a fastener mechanism during use, and to reduce the likelihood of component failures in a restraint system and detachment from the neck float as seen in Y227Q815A.

a. Fastening Mechanism

Section 5.4.2 of BS EN 13138–1:2021, *Fastening Systems,* requires parts of a swimming device used to attach the swimming device to the body or to connect any other functional components to have at least two simultaneous or sequential actions for release to prevent unintended opening. Alternatively, the standard allows for a single action release if it requires at least 50 N to open. The standard further directs that this testing must be performed in accordance with Annex C of BS EN 13138–1:2021, *Procedure for testing the security of the pressure release of buckles without double action (simultaneous/sequential) release.* Annex C specifies that the buckle used to secure a swimming device should be positioned and loaded with 5 N on a plain, rigid surface. For single release, mechanisms, a force of 50 N is required to be applied at point 3, perpendicular to the release mechanisms of the buckle.

Section 4.13.1.2 of ASTM F963–23 also includes requirements for latching and locking mechanisms, which require either a double-action locking device with two distinct and separate actions to release, or a single-action locking device that requires a minimum force of 45 N to open. There are similar provisions in other ASTM standards for children's products that incorporate restraint straps, such as section 6.4.7 of ASTM F833–21, *Standard Consumer Safety Performance Specification for Carriages and Strollers.* 16 CFR part 1227. Based on these comparable restraint system requirements, the Commission proposes to require the release mechanism of neck float fasteners to have either a double-action release system with two distinct, but simultaneous actions to release, or a single-action release system that requires a minimum of 50 N to release. A minimum of 50 N to release is the greatest minimum force requirement for single-action release mechanisms in the applicable standards, and therefore ensures the highest level of safety.

Unlike in ASTM F963–23, which allows the double-action release mechanism to use two separate actions to release, the NPR proposes to require two distinct, but simultaneous actions to release. Two simultaneous actions, such as depressing and twisting the cap of a medicine bottle open, are considered more difficult for a child in the age range considered by this NPR (0–4 years) to perform without assistance. Because there are no performance requirements for double-action release system, allowing the double-action release system to utilize sequential actions where each action can be performed one-at-a-time would be equivalent to allowing the neck float to rely on two unverified single-action release systems for fastening to the user.

b. Restraint System Mechanical Integrity

Section 6.4.4 of ASTM F833–21, requires that a restraint system and any closure mechanisms such as buckles must not part or slip more than 1 inch (25 mm) when tested in accordance with section 7.5 of ASTM F833–21. 16 CFR part 1227. Additionally, the standard requires that any anchorages must remain attached without separating from their attachment points during testing. The standard also requires that the restraint system may not move more than 2 inches (51 mm) when tested in accordance with section 7.5.2.8. Section 7.5.1, *Restraining System Integrity Test Method,* of ASTM F833–21 specifies the testing method for this requirement, which includes applying a force of 200 N (45 lbf) to a single attachment point on the restraining system. Specifically, the standard directs that force should be applied gradually within 5 seconds and maintained for an added 10 seconds, which should be repeated a total of 5 times with a 5 second maximum time interval between tests for each attachment point on the restraint system. The standard further requires that, after testing, the Civil Aeronautical Medical Institute (CAMI) dummy, required for this test, should not be fully released.

As noted in section III, the confined space of a bathtub environment provides the neck float occupant with possible surfaces to kick, pull, push, twist themselves off, or otherwise struggle against the surfaces of the bathtub. To account for this expected elevated force, the Commission proposes to incorporate section 6.4.4 and 7.5.1 of ASTM F833–21, with modifications to omit both the CAMI dummy evaluation following testing, and any evaluation to section 7.5.2 of ASTM F833–21, *Restraining System occupant Retention Test Method.* The CAMI dummy and section 7.5.2 testing have been omitted from the proposed restraint system requirements because the seat-based retention tests are incompatible with the neck float retention method. Instead, the NPR will address occupant retention through the proposed neck opening requirements in section V.A.4.

The Commission has considered a potential requirement for neck floats to incorporate a secondary attachment system as a backup in the event the primary neck opening securement fails. CPSC staff, however, have identified a risk that a child could partially slip through the neck opening and be supported by the secondary system with their mouth below the waterline, creating a drowning hazard without a notable visual change to alert the caregiver to the danger. The addition of the secondary attachment system also may convey to the caregiver the incorrect impression that there can be no possibility for the child to slip through the product. The Commission requests comments on a secondary attachment system for neck floats to address hazards associated with use the of neck floats.

4. Neck Opening Test Requirements

To address the hazard of a child slipping-through a neck float, the Commission proposes requirements for the neck opening on a neck float under § 1250.5(c)(4). To meet the proposed requirement, the neck opening of the neck float must not admit the passage of a specified head probe when subjected to a specified dynamic movement, in accordance with the proposed test method. Currently, there are no existing standards or test methods developed to ensure that an aquatic toy such as a neck float will not pose a risk of drowning because of slip-throughs during its use. As a result, staff developed a test and test method to accommodate this need.

Under the proposed neck opening test, first the neck opening of the neck float is saturated with a soapy solution to simulate use in a bathtub or with a slippery substance such as sunscreen. Second, the specified head probe is be weighted to a specific mass (M1) and positioned in the neck float. Next, a hanging weight of another specific mass (M2) is suspended below the head probe at a specified distance (L) of the specified head probe (see Table 3 for details on M1, M2 and L for various user-age categories). Finally, the hanging weight is brought up to a 90-degree displacement angle and released such that it is swung front-to-back relative to the neck float's user as shown in Figure 4. The hanging weight must be allowed to move freely for 30 seconds in this manner. After 30 seconds have

passed, the hanging weight is brought up again to a 90-degree displacement angle and then released so that it swings side-to-side relative to the neck float's user and allowed to move freely for 30 seconds in this manner. This alternating pattern is repeated for up to a total of ten swinging cycles, five front-to-back and five side-to-side.

BILLING CODE 6355–01–P

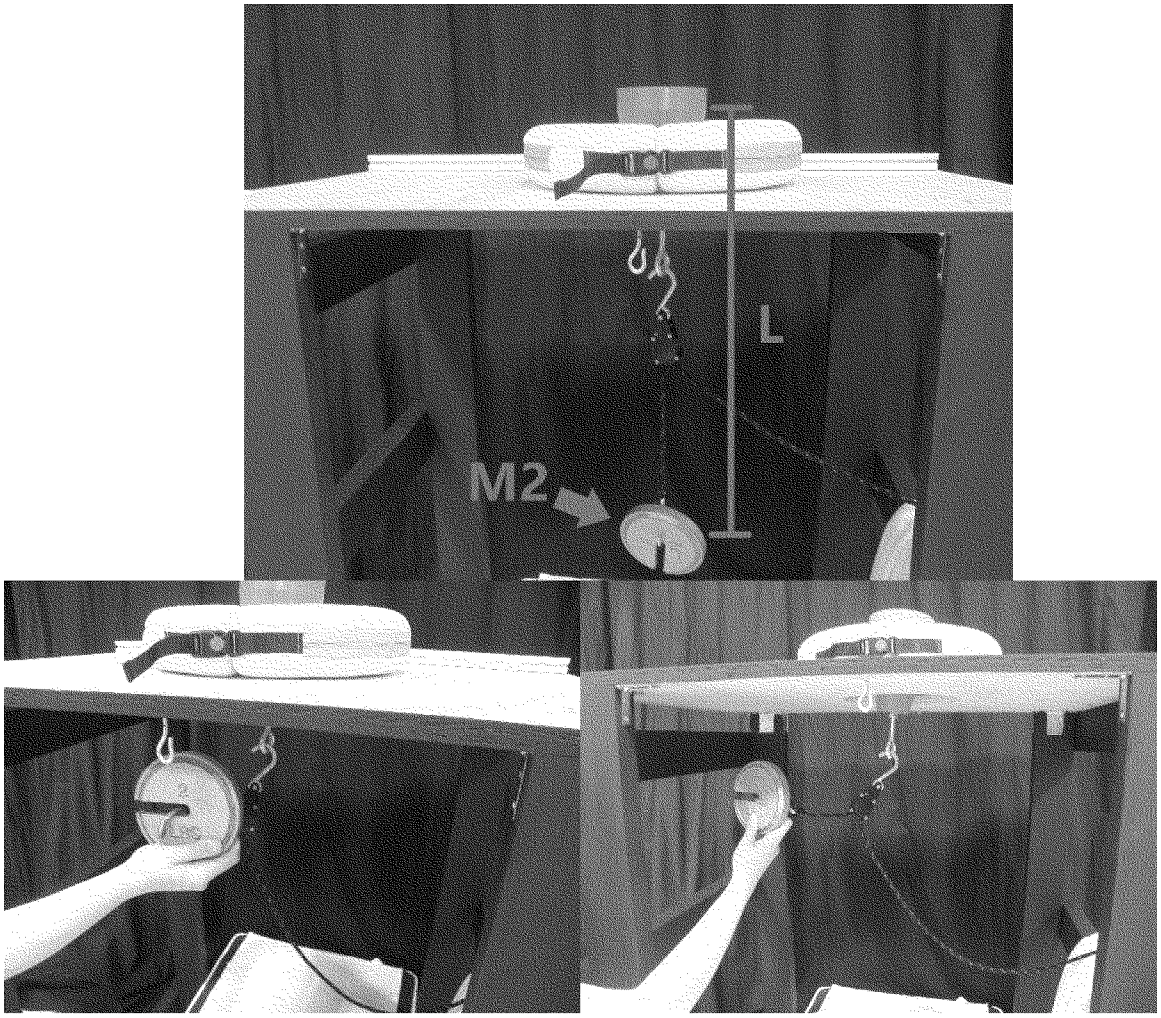


Figure 4: Illustrations of the proposed neck opening test. Top: the head probe is placed in the neck float, and the hanging mass M2 is positioned at distance L from the measuring point on the probe. Bottom, from left to right: the hanging mass is shown when raised to a 90-degree angle forward and to the side, in preparation for the release and swing.

BILLING CODE 6355–01–C

This dynamic test method was selected to account for the variety of movements children using this product have been reported to engage in, including kicking, back and belly floating, twisting, and pushing off of bathtub or pool walls and floors. The number of swing cycles, direction, and duration have been determined based on the CPSRMS incidents which contained many reported the incident occurring within 10 minutes of use. Based on this, the minimum number of dynamic swing cycles in the proposed test is set at ten swings and reflects the child shifting their body weight at least one time every minute. This approximation is considered a conservative estimate of a child's expected activity over the 10 minute duration. The proposal to alternate directions between front-to-back and side-to-side accounts for multi-direction movements. The 90 degree starting swing angle and 30 second swing cycle reflect the shift in body weight, from the child's transition from floating on their back or belly to one where their legs are positioned below them.

The proposed test for neck opening is required to be repeated for both the smallest and largest head probe in the neck float's recommended user range to ensure that the neck float adequately retains the occupant by preventing the occupant from slipping fully through the neck opening. Evaluating the neck float using the smallest specified head probe ensures the neck opening is not large enough, or cannot expand to become large enough during use, to allow the smallest foreseeable occupant to slip fully through it. Evaluating the neck float using the largest specified

head probe ensures the neck float can adequately support the forces generated by the largest foreseeable occupant such that they cannot fully slip through it, as well. If a neck float uses an adjustable fastening mechanism then the evaluation of both probes is performed at the largest, or loosest, possible size setting.

As discussed in section III, some reports indicated that caregivers loosened or intentionally deflated a neck float because they believed it was too tight around their child's neck (IDIs 220714CCC3162 and 180403CCC1583). To ensure that a neck float achieves the highest-possible level of safety, the proposed test therefore includes testing the smallest recommended child using a product at the loosest available setting. If the neck float utilizes inflatable components, those components must be inflated to an internal pressure of 0.1 ± 0.01 PSIG for the duration of this test. The internal air pressure specified by this test method has been discussed at length in the section V.A.2 of this preamble.

As part of this test, the Commission proposes including the soapy water solution as described in ''Baby Wash Test Solution'' from section 7.4.1.5 of ASTM F1967–19 *Standard Consumer Safety Specification for Infant Bath Seats* in the proposed rule for neck floats under § 1250.5. 16 CFR part 1215. ASTM F1967 requires the use of an established baby wash solution mix to evaluate the stability of infant bath seats under the same onerous soapy conditions. Incidents discussed in section III of this preamble support that neck floats may be used in soapy water solutions. Therefore, to achieve the highest-level of safety that is feasible, a test sample must be saturated with soap to simulate the most slippery foreseeable use condition to evaluate the neck float's ability to prevent the user from slipping through the neck float.

The choice of specified head probe, mass M1, mass M2, and length L is based on the manufacturer's recommended user age range, in conjunction with Table 3. If the recommended user age falls between two ranges, then the lower range shall be used to determine the smallest probe and associated testing conditions, and the higher range shall be used to determine the largest probe and associated testing conditions.

Table 3 – The values in this table are used to direct the testing parameters of the neck opening test based on one recommended user age. If the recommended user age falls between two ranges, then the lower range shall be used to determine the smallest probe and associated testing conditions, and the higher range shall be used to determine the largest probe and associated testing conditions.

Head Probe Designation	Age Range (months)	Head Probe Mass M1 (kg.)[30]	Hanging Weight M2 (lbs.)[31]	Distance L (in.)[32]
A	0-3	1.5	3.4	12.45
B	4-6	2	4.2	13.8
C	7-9	2.2	4.68	14.65
	10-12	2.4	5.08	15.6
	13-18	2.6	7.76	16.55
D	19-24	2.8	7.76	17.55
	25-30	3	10.24	18.75
	31-36	3	10.24	19.4
	37-42	3.2	10.46	20.45
	43-48	3.2	10.46	21.3

Dimensions of the four specified head probes, depicted in Figure 5, are based on available anthropometric data (Schneider et al., 1986). The narrowest end of the probe is an ellipse whose semi-major axis corresponds to the neck depth, and whose semi-minor axis corresponds to the neck breadth. The widest end of the probe is an ellipse whose semi-major axis corresponds to the head length, and whose semi-minor axis corresponds to the head breadth on the plane passing through the point of greatest protrusion on the forehead and the point of greatest protrusion on the back of the head. The distance between the narrowest and widest circumferences on the probe is equal to the height of the head.

BILLING CODE 6355–01–P

[30] See BSI Standards Publication. ''Child Care Articles—General Safety Guidelines—Part 1: Safety Philosophy and Safety Assessment.'' 2018. *BSI Standards Publication,* report, 2018.

[31] Values here are 20 percent of respective 95th percentile weights provided by CDC ''Data Table for Boys Length-for-age and Weight-for-age Charts'': *https://www.cdc.gov/growthcharts/who/boys_length_weight.htm,* for ages 0 to 12 months. See CDC ''Anthropometric Reference Data for Children and Adults: United States, 2015–2018'': *https://www.cdc.gov/nchs/data/series/sr_03/sr03-046-508.pdf,* for ages 2 to 4 years.

[32] See Schneider et al., 1986).

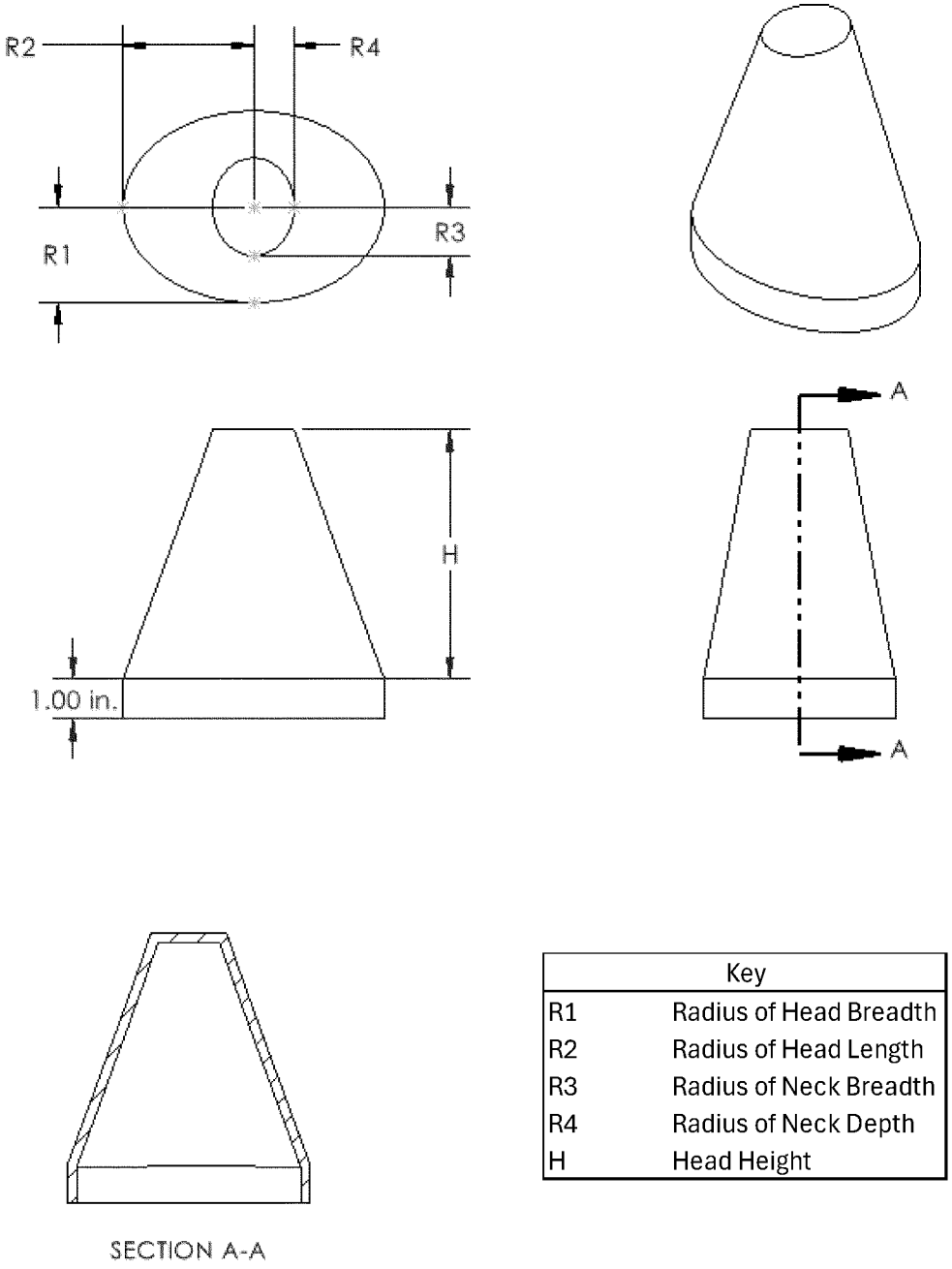


Figure 5: Drawing of the head probe design. Dimensions of the head probe shall comply with the values given in Table 4. Section A-A demonstrates that the head probe may be hollow for the purposes of adding mass M1, however it is not a requirement of the probe.

Table 4 – The dimensions used to construct the head probes based on anthropometric data (Schneider et al., 1986), given in inches.

Probe Designation	R1 (head breadth/2)	R2 (head length/2)	R3 (neck breadth/2)	R4 (neck depth/2)	H (head height)
A	1.85	2.5	0.9	0.85	4.6
B	2.05	2.8	0.95	0.8	4.9
C	2.2	2.95	1.1	1	5.2
D	2.35	3.2	1.2	1	6.1

BILLING CODE 6355–01–C

The four head probes represent children of various ages. Probe A is used to test products intended for children from 0 up to 3 months old, Probe B covers products for children up to 6 months old, Probe C covers products for children up to 18 months old, and Probe D covers products for children up to 48 months old. CPSC staff established these subsets based on the change in overall rate of growth of the head from 0–48 months, which generally develops and grows more rapidly until around 7–9 months. All dimensions used for the head probes represent the 5th percentile measurement of the specified age range for that probe. Where a probe is designated for use to evaluate multiple age ranges, the smallest 5th percentile measurement for that span has been selected.

Staff note that the maximum neck circumference of a 43–48-month-old (10.2 in.) is smaller than the minimum head circumference of a 0–3-month-old (14.6 in.). Based on these measurements, a neck float intended to accommodate the neck of a 48-month-old should still be expected to prevent the head of a 3-month-old from slipping through it. If the head probe can slip through the neck opening then that means the neck opening is either large enough, or can expand during use to be large enough, to allow that child's head to fully slip through the neck opening and submerge underwater. Staff assess this slip through metric to be a conservative representation of the slip through event.

To simulate foreseeable use stresses on neck floats during use, each head probe is weighted to mass M1 and using a hanging weight of mass M2 positioned at distance L during the evaluation. Mass M1 represents the 95th percentile weight of a child's head, alone, for the specified age range. Mass M2 has been selected as 20 percent of the 95th percentile weight of the user in the specified age range. As noted in section V.A.2, the average human bears 10 percent of their dry-land weight when submerged up to their necks. The hanging weight used in this assessment is double the expected amount, or 20 percent of the dry-land weight for that user, to incorporate an appropriate factor of safety. Distance L has been determined as half of the 95th percentile stature of the user in the specified age range. This choice is made to approximate the position of the hanging mass at roughly the user's center of mass. Distance L includes the length between the narrowest and widest circumferences of probe to account for that distance as being the length of the user's head, as described in the paragraphs above.

The four hazard patterns addressed in this NPR may not be exhaustive of the hazards associated with this product category. For example, the United States Food and Drug Administration (FDA) has warned about the risk of death due to suffocation, strain, and injury to a baby's neck.[33] Accordingly, the Commission is seeking comment on whether it should strengthen these performance requirements to address other hazards, or whether it should promulgate alternative performance requirements.

B. Marking, Labeling, and Instructional Literature Requirements

Section 5.4 of the ASTM F963–23 requires aquatic toys, such as neck floats, and their packaging to have a warning that states: ''*This is not a lifesaving device. Do not leave child unattended while device is in use.*'' The incidents discussed in section III of this preamble reflect that the existing safety messaging by way of marking, labeling, and instructional literature has had limited effectiveness for preventing the submersion hazard associated with neck floats. Indeed, it is reasonably foreseeable that caregivers will disregard warnings and instructions for neck floats and fail to adhere to them for each use. Many of the reported incidents involved products that not only met but exceeded the existing ASTM F963–23 requirements. Safety messaging has inherent weaknesses compared to designing the hazard out of a product or guarding consumers from the hazard (Laughery & Wogalter, 2011), and it cannot, alone, adequately address the specific identified hazards from neck floats. Drowning statistics and water safety campaigns have shown that caregiver supervision can be imperfect and insufficient to avoid drowning hazards, and many children drown every year.[34] [35] Further, warnings and instructional literature depend on persuading the consumer to change their behavior to avoid a hazard, and various factors can impede the effectiveness of these mediums. Conversely, the requirements for safety

[33] See U.S. Food & Drug Admin., *Do Not Use Baby Neck Floats Due to the Risk of Death or Injury: FDA Safety Communication* (June 28, 2022), *available at https://www.fda.gov/medical-devices/safety-communications/do-not-use-baby-neck-floats-due-risk-death-or-injury-fda-safety-communication.*

[34] See AAP on drowning: *https://www.aap.org/en/patient-care/early-childhood/early-childhood-health-and-development/safe-environments/drowning/;* accessed on March 20, 2024.

[35] See CDC on drowning facts: Drowning Facts | Drowning Prevention | CDC; accessed on March 20, 2024.

messaging can be improved to increase the likelihood of consumers seeing, reading, remembering, and heeding the warnings and instructions, and better support the Commission's proposed performance requirements. Accordingly, the Commission proposes in § 1250.5(d) to require the following marking, labeling, and instructional literature requirements for all products within the scope of the NPR and seeks comment on the format, location, and content requirements of the proposed warnings.

1. Product and Package Marking and Labeling

The primary U.S. voluntary consensus standard for product safety signs and labels, ANSI/NEMA Z535.4, *American National Standard for Product Safety Signs and Labels,*[36] recommends that on-product warnings include content that addresses the following three elements:

- a description of the hazard;
- information about the consequences of exposure to the hazard; and
- instructions regarding appropriate hazard-avoidance behaviors.

Providing more explicit or detailed information in a warning has been found to increase warning effectiveness (Laughery & Smith, 2006) by increasing the perception of injury severity and perceived hazard (DeJoy, 1999). Vividness of message content has been found to increase message salience by triggering motivation to act in consideration of the warning (Murray-Johnson & Witte, 2003). Accordingly, the Commission proposes, in § 1250.5(d)(1), that the products within scope of the rule, and their retail packaging, contain the warning message shown in Figure 6, including the use of bolding and the formatting of the text, the safety alert symbol, and the signal word, in the order presented.

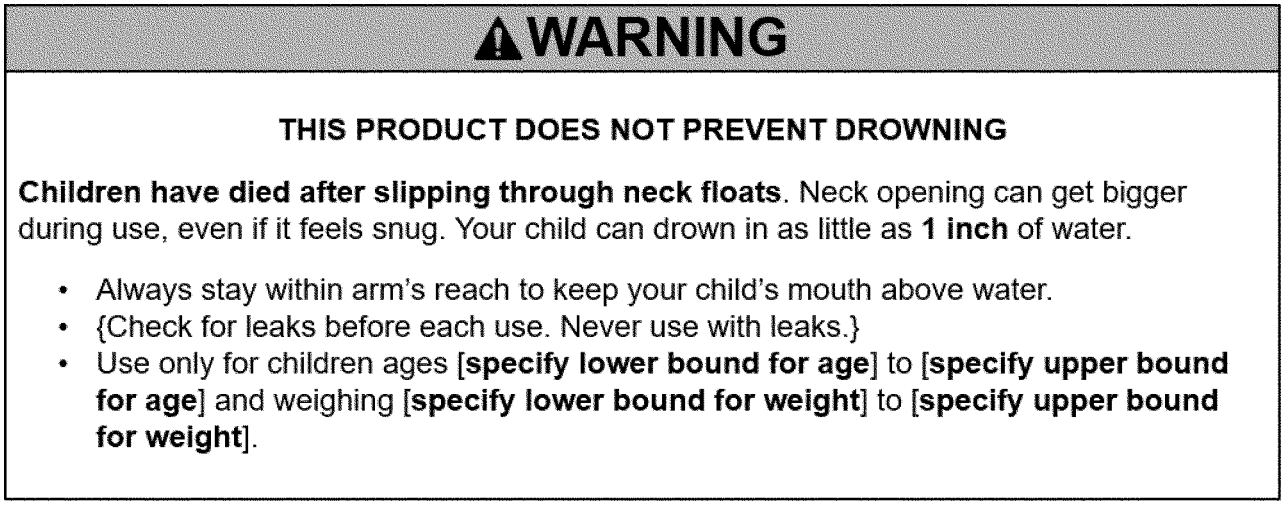


Figure 6: Warning for Child Neck Floats. Image not to scale.

The portion, ''[specify lower bound for age],'' is to be filled with the lowest age intended for use of the product and in bold font. The portion, ''[specify upper bound for age],'' is to be filled with the highest age intended for use of the product and in bold font. The portion, ''[specify lower bound for weight],'' is to be filled with the minimum intended weight in pounds for use of the product and in bold font. The portion, ''[specify upper bound for weight],'' is to be filled with the maximum intended weight in pounds for use of the product and in bold font. The portion, ''{Check for leaks before each use. Never use with leaks.},'' is only required and appropriate for child neck floats with inflatable components. The brackets are to be omitted from the label in each case above.

a. Content

In developing the proposed message panel, among other sources, staff considered the available incident data, reasonably foreseeable use, warnings required for ''Aquatic Toys'' per ASTM F963, warnings recommended and required by other standards and bodies, and recommendations and requirements specified in ANSI/NEMA Z535.4. Additionally, the Commission considers that consumers are less likely to read, heed, and remember safety messaging if they feel overwhelmed by the volume and/or depth of the information. The Commission encourages manufacturers to include additional product-specific warnings where necessary; however, such warnings shall neither contradict nor confuse the intended meaning of the required warnings.

The statement, ''THIS PRODUCT DOES NOT PREVENT DROWNING,'' begins the message panel by articulating clearly that children can still drown even though they use the product. Each letter in this statement shall be bold and capitalized to strengthen the statement and attract the consumer's attention to the warning label. If the consumer reads nothing else, this statement may challenge some consumers' perception that the product will necessarily keep the child's mouth and nose above the water. This perception of safety is dangerous because it may lead consumers to provide inadequate supervision of the child using the product in water. This language is required by the Australian Competition & Consumer Commission (ACCC) for floatation aids as specified in the Australian standard, AS/NZS 1900:2014, *Flotation aids for water*

[36] ANSI Z535.4, *American National Standard for Product Safety Signs and Labels* is the primary U.S. voluntary consensus standard for the design, application, use, and placement of on-product warning labels when developing or assessing the adequacy of warning labels.

familiarization and swimming tuition.[37] Similar language is required for Aquatic Toys per section 5.4 of ASTM F963–23 (*i.e.,* ''This is not a lifesaving device.'') and for infant bath seats per ASTM F1967 (*i.e.,* ''NOT A SAFETY DEVICE.'').[38] 16 CFR part 1215. However, the Commission preliminarily determines that the statement, ''This is not a lifesaving device,'' is not appropriate for the product because the proposed warnings better satisfy the intent to communicate that the product does not prevent drowning, and to include it in addition to the other warnings could dilute the warnings and increase the risk of warning exhaustion. Therefore, instead of complying with the warning text ''This is not a lifesaving device.'' in section 5.4 of ASTM F963–23, the Commission proposes to require the language in Figure 6.

The statement, ''Children have died after slipping through neck floats,'' may reduce the likelihood of consumers otherwise inferring that the life-threatening hazard is just an unlikely potential risk rather than a hazard that has occurred and may happen to their child. As detailed above in section III, at least 87 incidents involved a child's head slipping through, two of which resulted in the child dying as a result of drowning. In most cases, the caregiver immediately intervened such that the child either did not fully submerge or was only submerged briefly. Had the caregiver not been present, these incidents could have resulted in the child drowning. Similar language is used in numerous other standards, such as for infant bath seats per ASTM F1967, infant bathtubs per ASTM F2670, *Standard Consumer Safety Specification for Infant Bathtubs,* and Beach Umbrellas per ASTM F3681, *Standard Consumer Safety Specification for Beach Umbrellas and Anchor Devices.*[39] [40]

The statement, ''Neck opening can get bigger during use, even if it feels snug,'' addresses the critical and hidden hazard of center opening expansion, because consumers are likely to expect that the center opening will not permit the child's mouth to go underwater if the product is tightly fitted, even though this is possible and has occurred in reported incidents (*e.g.,* IDI 210910CCC1030 detailed above). Without dispelling this false assumption of safety, the consumer is more likely to discredit the warning messages and use the product without taking all necessary precautions, particularly if they have previously used the product without incident or seen others use the product without incident. Of the 21 incident reports that mentioned whether the neck float felt snug when placed on the victim at the time of the incident, 19 of the incident reports indicated the neck float did have a tight fit.

The statement, ''Your child can drown in as little as 1 inch of water,'' communicates an important point that may help maintain the consumer's attention and educate them, as they are unlikely to be familiar with this fact,[41] and they are likely to be caught off guard by it. It serves an important role by emphasizing that even very shallow water can be lethal, which may contradict the consumer's expectation of safety associated with using the product in shallow water, such as in bathtubs. The statement is also personalized to the reader by using the words: ''Your child,'' as opposed to ''a child,'' or similar language, which can more easily be disregarded by the consumer as not applying directly to the child for whom they are responsible.[42] Other standards, such as ASTM F3681 on beach umbrellas, also take the approach of personalized language regarding the risk of death.[43]

The message panel includes bulleted statements for important information about how to avoid the drowning hazard. The statement, ''Always stay within arm's reach to keep your child's mouth above water,'' emphasizes the importance of a caregiver's attentiveness to a child while using a neck float to be able to rescue the child immediately if their mouth and/or nose submerges. Unattended children using neck floats in bathtubs sustained injuries and two reportedly died (*e.g.,* IDIs 190711CCC2487 and 200915HFE0001). Again, caregivers may develop a false sense of security when using the neck float, relaxing their supervision of the child for numerous reasons, such as past incident-free experiences, the perception that the neck float is too tight for the child to slip through, and the presumption of safety associated with the neck float being a consumer product marketed to such young ages for the purpose of keeping their mouth and nose above the water (Woodson et al., 1992).

The American Academy of Pediatrics (AAP) has encouraged caregivers to use ''touch supervision'' that is, remaining within arm's reach of infants and toddlers swimming in pools.[44] Section 5.4 of ASTM F963—23 requires a warning statement that addresses the following: ''Do not leave child unattended while device is in use.'' Similar juvenile product standards, such as ASTM F1967 and ASTM F2670, also support the use of statements pertaining to supervision and proximity.[45] The proposed language is stronger for neck floats because it highlights the risk of partial slip-through, which is a small movement that requires a more attentive caregiver than simply monitoring for a large motion, such as the child fully submerging. Further, the personalization via ''your child'' may help encourage the consumer to see the warning as applying to the child for whom they are responsible and increase its impact.

The statements specific to inflatable products, ''Check for leaks before each use. Never use with leaks,'' are intended to motivate consumers using inflatable neck floats to check for leaks before each use and to never use neck floats with leaks. Detailed in section III of this preamble, numerous incidents involved products that had leaks. In many cases, the consumers did not report testing the product for leaks prior to every use, and some cases mentioned that the consumers were aware of slow leaks and continued to use the product anyway

[37] See ACCC web page on ''Swimming & flotation aids'': *https://www.productsafety.gov.au/product-safety-laws/safety-standards-bans/mandatory-standards/swimming-flotation-aids#:~:text=The%20mandatory%20standard%20contains%20requirements%20to%20minimise%20incidences,light%208%20buoyancy%20of%20cellular%20material%20More%20items;* accessed on March 27, 2024.

[38] See ASTM F1967, *Standard Consumer Safety Specification for Infant Bath Seats: https://compass.astm.org/document/?contentCode=ASTM%7CF1967-19%7Cen-US;* accessed on March 27, 2024.

[39] See ASTM F2670, *Standard Consumer Safety Specification for Infant Bath Tubs: https://www.astm.org/f2670-22.html;* accessed on March 27, 2024. ASTM F2670 on infant bath tubs and F1967 on infant bath seats specify that the warning label shall address that babies have drowned while using the respective products.

[40] See ASTM F3681, *Standard Consumer Safety Specification for Beach Umbrellas and Anchor Devices: https://www.astm.org/f3681-24.html;* accessed on June 12, 2024. ASTM F3681 on beach umbrellas specifies that the warning shall state that beach umbrellas have killed people.

[41] For example, see ''Water Safety for Parents'' from John Hopkins Medicine: *https://www.hopkinsmedicine.org/health/wellness-and-prevention/water-safety-for-parents;* accessed on June 13, 2024.

[42] ASTM F1967 on infant bath seats specifies the following warning regarding supervision using the word ''your'': ''Stay in arm's reach of your baby.''

[43] ASTM F3681 on beach umbrellas specifies the following warning regarding the risk of death, using the word ''you'': ''You can be killed too!''

[44] See AAP on drowning and touch supervision. ''A Parent's Guide to Water Safety.'' Pediatric Patient Education, 1 Jan. 2021, *https://doi.org/10.1542/peo_document110.*

[45] ASTM F1967 on infant bath seats and F2670 on infant bath tubs specify the following warning regarding supervision: ''Stay in arm's reach of your baby.''

due, in part, to past incident-free experiences and the costs associated with having to replace the product. The proposed instructional literature requirements, detailed below, complement this warning with specific instructions to help the consumer avoid the risks of underinflation. The Commission cautions that, while the proposed statements may help some consumers prevent submersion associated with leaks, most reported incidents involved products with warnings and instructions pertaining to leaks.

Lastly, the statements in brackets pertaining to the child's age and weight are intended to help and encourage the consumer to select and use the appropriate product for their child; though, as explained above, children can vary considerably in the key face, head, and neck measurements relevant to slip-through, regardless of their age and weight. Discussed below, the Commission proposes instructional literature requirements to further aid the consumer in accurately taking the necessary measurements. Providing the intended age and weight also serves to guide testing of the products to increase the safety of the products for the intended and foreseeable end users.

b. Format

CPSC commonly uses ANSI/NEMA Z535.4 as a reference for warning formatting requirements. Human factors experts and warnings literature regularly cite ANSI/NEMA Z535.4 when discussing the design and evaluation of on-product warning labels and generally consider the ANSI Z535 series of requirements as the benchmark and state of the art standards against which warning labels should be evaluated for adequacy (Vredenburgh & Zackowitz, 2005; Wogalter & Laughery, 2005). Furthermore, the scope of ANSI/NEMA Z535.4 is broad enough to encompass nearly all consumer products, including children's products and toys (Kalsher & Wogalter, 2008).

Signal words, colors, graphics, and placement all increase conspicuity. The salience of a visual warning can be enhanced using large and bold print, high contrast, color, borders, pictorial symbols, and special effects like flashing lights. Therefore, the NPR proposes that the warning label design requirements for children's neck floats adopt the current recommendations from ASTM's Ad Hoc Language Task Group (Ad Hoc Task Group).[46] Staff has worked closely with the Ad Hoc Task Group to develop warning recommendations that are based largely on the ANSI/NEMA Z535.4 requirements. The recommendations provide permanent, conspicuous, and consistently formatted warning labels across juvenile products. Warnings that meet the recommendations address numerous format issues related to capturing consumer attention, improving readability, and increasing hazard perception and avoidance behavior. Such recommendations include requiring that the proposed warnings conform to ANSI/NEMA Z535.4 sections 6.1–6.4, 7.2–7.6.3, and 8.1, with the following changes to the ANSI standard:

- For enforceability, in sections 6.2.2, 7.3, 7.5, and 8.1.2, replace the word ''should'' with ''shall;''
- Also, for enforceability, in section 7.6.3, replace the phrase ''should (when feasible)'' with the word ''shall;'' and
- To allow greater production flexibility without affecting the efficacy of the warnings, strike the word ''safety'' when used immediately before a color (*e.g.,* replace ''safety white'' with ''white'').

Further, certain text in the message panel must be in bold and in capital letters as shown in the example warning label in Figure 6, above, to provide emphasis and capture the reader's attention. The signal word ''WARNING'' must appear in sans serif letters in upper case only and be at least ⅛ inch (3.2 mm) in height and be center or left aligned. The height of the exclamation point inside the safety alert symbol, an exclamation mark in a triangle, as shown in the example warnings must be at least half the height of the triangle and be centered vertically inside the triangle. The message panel text capital letters cannot be less than 1⁄16″ (1.6 mm) and the message panel text shall be center or left aligned and appear in sans serif letters. The text in each column should be arranged in list or outline format, with precautionary (hazard avoidance) statements preceded by bullet points. Precautionary statements must be separated by bullet points if paragraph formatting is used.

c. Placement

Warning research indicates that warning labels with prominent placement increase the likelihood of being noticed (Rogers et al., 2000). Further, warnings that are placed directly on a product and/or the packaging have a higher noticeability rate (Wogalter et al., 1987; Frantz & Rhoades, 1993) because consumers are more likely to see such warnings when first examining the product prior to purchase. ANSI/NEMA Z535.4 provides general guidance on the placement of warnings, stating that warnings must be placed so they are ''readily visible to the intended viewer'' and will ''alert the viewer to the hazard in time to take appropriate action.''[47] Similarly, both the Ad Hoc Task Group and section 5.3.6 of ASTM F963–23 require warnings to be conspicuous. Accordingly, the Commission proposes that the warning label identified in Figure 6 is positioned conspicuously on the product, such that it is visible clearly and, in its entirety, when the product is placed on the child.

For the product's packaging, to ensure that the label is in an area of the packaging that stands out and is visible, the Commission proposes that the warning label in Figure 6 must be placed in the principal display panel, which is defined in ASTM F963 as ''the display panel for a retail package or container, bin, or vending machine that is most likely to be displayed, shown, presented, or examined under normal or customary conditions of display for retail sale.''

2. Instructional Literature

The Commission proposes to require that instructions are provided with all neck float products and that they must be easy to read and understand, and shall be in the English language, at a minimum, consistent with the Ad Hoc recommended language under § 1250.5(d)(2). These instructions must be printed on the product and provided separately, such as a user manual, and include information on assembly, installation, maintenance, cleaning, and use, where applicable. The instructions must explain how to check for adequate fit of the product to prevent the child from slipping through the center opening. Instructional literature provided with the product, but not printed on the product, must include all warnings specified above in section 1 on content. Any instructions provided in addition to those required in this section must neither contradict nor confuse the meaning of the required

[46] ASTM Ad Hoc Wording Task Group (Ad Hoc TG) consists of members of various durable nursery product voluntary standards committees, including CPSC staff. The Ad Hoc TG's purpose is to harmonize the wording of common sections (*e.g.,* introduction, scope, protective components) and warning label requirements across nursery product voluntary standards. The latest version of the Ad Hoc-approved recommended language is published in the ''Committee Documents'' section of the Committee F15 ASTM website.

[47] American National Standards Institute. (2011). *ANSI Z535.4. American national standard: Product safety signs and labels.* Rosslyn, VA: National Electrical Manufacturers Association, Section 9.1.

information, nor be otherwise misleading to the consumer.

For products with inflatable components, the Commission proposes that the instructional literature includes clear directions for testing the product for leaks. These directions are important for reducing the likelihood of the product losing air during use, as air loss may increase the amount deformation and center opening expansion. Absent these directions, caregivers are less likely to identify leaks in their products prior to the children being submerged in water.

The Commission assesses that these instructional literature requirements support the proposed performance requirements and may help some consumers to select, use, and maintain the products safely. Instructional literature, however, is likely to have limited effectiveness to address this hazard, as consumers using inflatable neck floats would need to remember and choose to follow the instructions every time they use the product, and it is reasonably foreseeable they will forego doing so for the reasons detailed above. Most neck floats involved in incidents provided instructional literature in the forms of user manuals and on-product labels, and many of the products were used contrary to the instructions, resulting in the children being submerged in water.

VI. Prohibited Stockpiling

The Commission is proposing in § 1250.5(e) an anti-stockpiling provision to prevent firms from manufacturing or importing large quantities of noncompliant neck floats before the rule takes effect and seeks comment on this provision. Under this proposal, firms could not manufacture or import noncompliant products in a given month more than a rate of 105 percent of the base period. The base period is the average monthly manufacturing or import volume within the last 13 months of production that immediately precedes the month of promulgation of the final rule.

Neck float products have characteristics that make them ideal for firms seeking to stockpile, such as low inventory costs due to their small size (particularly for inflatable products before sale), durability, and low costs of production. Additionally, the new requirements may cause some firms to exit the market. Exiting firms would have an incentive to sell stockpiled neck floats to support the costs of switching to manufacturing another product. These firms would be relatively unconstrained by reputational concerns surrounding their sale of stockpiled non-compliant neck floats after the effective date of a final rule. Further, because many neck floats are sold primarily or exclusively on manufacturers' or importers' own websites, the responsible business practices of retailers that refuse to take noncompliant toys into their inventory, even before the effective date of a new safety regulation, would have little constraining effect on stockpiling by manufacturers and importers themselves. These firms could expect to sell their stockpiled noncompliant products even as other sellers limit their sales to compliant products.

VII. Feasibility of Proposed Requirements

Pursuant to section 106(c) of the CPSIA, Congress directed the Commission to ''periodically review and revise the rules set forth under this section to ensure that such rules provide the highest level of safety for such products that is feasible.'' 15 U.S.C. 2056b(c). Based on the staff's analysis provided in this NPR, the Commission preliminarily determines that the NPR is technically and economically feasible, and requests comment on this determination.

A. Technological Feasibility

A proposed rule is technically feasible if it is capable of being done. For example, compliant products might already be on the market; or the technology to comply with the requirements might be commercially available; or existing products could be made compliant; or alternative practices, best practices, or operational changes would allow manufacturers to comply. See, *e.g.,* 15 U.S.C. 1278a(d) (discussing lead limits). The Commission preliminarily concludes that the NPR's proposals meet technical feasibility criteria. No new or even emerging technology is needed to manufacture a compliant product.

In addition, though testing laboratories may need to procure additional equipment to accommodate the conditioning, buoyancy, and neck opening requirements, the tools required for those test methods are not proprietary or exclusive items and may be reasonably sourced from commercial providers. Of the testing tools proposed by the NPR, only the specified head probes are unique; however, staff were able to fabricate those probes using commercially available resources. Additionally, many of the test methods proposed by the NPR are already either included in CPSC mandatory standards or come from other previously published external safety standards.

B. Economic Feasibility

The proposed rule is economically feasible because the cost of compliance would not threaten the viability of the industry. CPSC expects a significant economic effect on firms supplying inflatable neck floats and a de minimis impact on firms supplying inherently buoyant neck floats, which are more easily made compliant with the rule. The availability of inherently buoyant products that, CPSC staff assesses, are compliant or readily could be compliant with the proposed rule, demonstrates that the proposed rule is economically feasible.

VIII. Incorporation by Reference

Proposed section 1250.5 would incorporate by reference portions of ANSI/CAN/UL 12402–9, ANSI APSP ICC–16, ANSI/NEMA Z535.4–2023, ASTM F833–21 and ASTM F1967–19. The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. Under those regulations, agencies must discuss, in the preamble to a final rule, ways in which the material the agency incorporates by reference is reasonably available to interested parties and how interested parties can obtain the material. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b)(3).

In accordance with the OFR regulations, section V of this preamble summarizes the provisions of ANSI/CAN/UL 12402–9, ANSI APSP ICC–16, ASTM F833–21, ASTM F1967–19 and ANSI/NEMA Z535.4–2023 that the Commission proposes to incorporate by reference into proposed § 1250.5. The standards are reasonably available to interested parties by permission of the relevant standards developing organization (SDO) to be viewed as a read-only document during the comment period on this NPR, at:

- *https://www.surveymonkey.com/r/DQVJYMKforANSI/CAN/UL* 12402–9,
- *https://codes.iccsafe.org/content/ANSIAPSPICC162017/title-page* for ANSI APSP ICC–16,
- *https://www.surveymonkey.com/r/DQVJYMKforANSI/NEMA* Z535.4–2023,
- *https://www.astm.org/products-services/reading-room.html* for ASTM F833–21, and
- *https://www.astm.org/products-services/reading-room.html* for ASTM F1967–19.

Interested parties can also schedule an appointment to inspect a copy of the standards at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West

Highway, Bethesda, MD 20814, telephone: (301) 504–7479; email: *cpsc-os@cpsc.gov*. Alternatively, interested parties can purchase copies from the following sources:

(1) Pool and Hot Tub Alliance (PHTA), 1650 King Street, Suite 602, Alexandria, VA 22314; phone: (703) 838–0083; website: *www.phta.org*

(i) ANSI APSP ICC–16, *American National Standard for Suction Outlet Fitting Assemblies (SOFA) for Use in Pools, Spas, and Hot Tubs,* (approved August 18, 2017).

(2) Underwriters Laboratories (UL), 1250 Connecticut Avenue NW, Suite 520, Washington, DC 20036; phone: (202) 296–7840; website: *www.ul.com.*

(i) ANSI/CAN/UL 12402–9, *Standard for Personal Flotation Devices—Part 9: Test Methods,* (published February 11, 2021).

(3) National Electrical Manufacturers Association (NEMA), 1300 17th St. N, Arlington, VA 22209; phone: (703) 841–3200; website: *www.nema.org.*

(i) ANSI/NEMA Z535.4–23, *American National Standard for Product Safety Signs and Labels* (approved December 14, 2023).

(4) ASTM International (ASTM), 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; phone: (610) 832–9585; website: *www.astm.org*.

(i) ASTM F833–21, *Standard Consumer Safety Performance Specification for Carriages and Strollers,* (approved June 15, 2021).

(ii) ASTM F1967–19, *Standard Consumer Safety Specification for Infant Bath Seats,* (approved May 1, 2019)

IX. Effective Date

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). The Commission proposes a 180-day effective date for this rule. The rule would apply to all neck floats manufactured after the effective date. 15 U.S.C. 2058(g)(1).

Some neck floats may already comply with the proposed requirements; however, most neck floats would need to be redesigned, manufacturing equipment may need to be retooled, and all neck floats would require third-party testing to the new requirements. 15 U.S.C. 2063(a)(3).[48] Accordingly, to provide time to comply with the rule, to ensure adequate lab capacity to test and certify toys, and to spread the cost of compliance over a period of months, the Commission proposes to make this rule effective 180 days after publication of the final rule in the **Federal Register**.

The effective date of 180 days should be sufficient for firms to come into compliance, because the proposed tests are consistent with testing required in 16 CFR parts 1215, 1227, and 1450. For other proposed tests that are based on ANSI/CAN/UL 12402–9:2022, no unique tools will be required. For the neck opening testing, staff were able to fabricate head probes within a reasonable time using commercially available resources. Accordingly, CPSC expects that these laboratories are competent to conduct the required testing and obtain their International Organization for Standardization (ISO) accreditation and CPSC-acceptance updated in the normal course. The Commission invites comments, particularly from small businesses, regarding the proposed testing and the amount of time needed to come into compliance with a final rule.

X. Regulatory Flexibility Act (RFA)

The RFA requires that agencies review a proposed rule for the rule's potential economic impact on small entities, including small businesses. Section 603 of the RFA generally requires that agencies prepare an initial regulatory flexibility analysis (IRFA) and make the analysis available to the public for comment when the agency publishes an NPR, unless the rule would not have a significant economic impact on substantial number of small entities. 5 U.S.C. 603. The IRFA must describe the impact of the proposed rule on small entities and identify significant alternatives that accomplish the statutory objectives and minimize any significant economic impact of the proposed rule on small entities. The IRFA must also contain:

(1) a description of why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule; and

(5) an identification to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

This proposed rule would have a significant economic impact on a substantial number of small U.S. entities, primarily from redesign costs in the first year that the final rule would be effective. A significant impact would occur for small companies whose products do not meet the proposed requirements.

A. Reason for Agency Action, NPR Objectives and Legal Basis

Section I of this preamble explains why the Commission proposes to establish a mandatory rule for neck float and provides a statement of the objectives of, and legal basis for, the proposed rule. The proposed requirements in the NPR are more stringent than ASTM F963–23, which the Commission incorporated into the mandatory rule in 16 CFR part 1250, *Safety Standard Mandating ASTM F963 for Toys,* as described in sections IV and V of this preamble. The NPR addresses the known hazards presented by neck floats, discussed in section III of this preamble, that the current mandatory toy safety standard does not adequately address.

B. Small Entities to Which the Rule Will Apply

Section II of this preamble describes the products within the scope of the proposed rule, provides an overview of the market for neck floats and the use of these products in the U.S. This section provides additional details on the market for products within the scope of the rule.

The North American Industry Classification System (NAICS) defines product codes for U.S. firms. Firms that manufacture neck floats may be categorized under various NAICS product codes. Most of these firms likely fall under NAICS code such as 339930 Doll, Toy, and Game Manufacturing, 326190 Other Plastics Product Manufacturing, and 326199 All Other Plastic Product Manufacturing. Importers of these products could also vary among different NAICS codes, with a majority of the firms categorized under NAICS codes as wholesalers: 423920 Toy and Hobby Goods and Supplies Merchant Wholesalers, and 424610 Plastics Materials and Basic Forms and Shapes Merchant Wholesalers.

Currently, unlike inherently buoyant neck floats, the inflatable versions of these products are not available for purchase through larger retailers and retailers with physical store locations. Retailers of neck floats fall under NAICS codes 459120 Hobby, Toy, and Game Stores, 452210 Department Stores, 452310 General Merchandise Stores Including Warehouse Clubs and Supercenters, and 454390 Other Direct Selling establishments. Floatation products can be sold among varying

[48] Section 14(a)(3) specifies laboratories must have at least 90 days to implement new third-party testing requirements.

retail channels focused on swimming or toddler products. Therefore, the NAICS codes listed in this IRFA for retailers, importers, and manufacturers are unlikely to be exhaustive.

Under the U.S. Small Business Administration (SBA) guidelines, a manufacturer, importer, and retailer of neck float products is categorized as ''small'' based on the SBA's size thresholds associated with the NAICS code. SBA uses the number of employees to determine whether a manufacturer or importer is a small business while SBA uses annual revenues to consider retailers. Based on 2021 Statistics of U.S. Businesses (SUSB) data,[49] and a review of publicly available data on annual revenues, CPSC estimated the number of firms classified as small for the most relevant NAICS codes. Table 6 and Table 7 provide the estimated number of small firms by each NAICS code.[50] CPSC estimates that a total of 19 small U.S. manufacturers and importers, and 27,260 small U.S. retailers, deal in neck floats.

Table 6 – Estimate of Number of Small Manufacturers and Importers

NAICS Code	Description	SBA Size Standard for Firms (# of Employees)	Number of Firms that meet size standard (Based on SUSB data)
339930	Doll, Toy, and Game Manufacturing	700	3
326190	Other Plastics Product Manufacturing	750	1
326199	All Other Plastic Product Manufacturing	750	6
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers	175	3
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	150	6

Table 7 – Estimate of Number of Small Retailers

NAICS Code	Description	SBA Size Standard for Firms (Annual Revenue) Millions $	Number of Firms that meet size standard (Based on SUSB data)
452210	Department Stores	$40.0	15
451120	Hobby, Toy, and Game Stores	$35.0	4,660
452310	General Merchandise Stores, Including Warehouse Clubs and Supercenters	$47.0	8,006
454390	Other Direct Selling establishments	$11.5	14,579

The data indicated that all the manufacturers/importers of these products are considered to be small businesses. CPSC assesses that the total size of this market likely does not exceed $5 million in aggregate.

C. Compliance Reporting and Recordkeeping Requirements of the Proposed Rule

The NPR would require manufacturers and importers of neck floats to meet performance, warning label, and instructional material requirements, and to conduct third-party testing to demonstrate compliance. Section V of this preamble describes the performance, warning label and instructional material requirements.

Manufacturers must demonstrate that they have met the performance requirements of the rule by providing a children's product certificate. As specified in 16 CFR part 1109, suppliers who are not the original manufacturer, such as importers, may rely on the

[49] Census Bureau, 2023. Statistics of US Businesses (SUSB) 2021. Suitland, MD. Census Bureau.

[50] Some discrepancies exist between the published SBA size standard NAICS code and the SUSB code. Staff used the code description to match the size standard to the correct value. Retailer size determination is made using 2017 SUSB data by applying the ratio of firms that meet the standard to the 2021 data values.

testing or certification suppliers provide, as long as the requirements in part 1109 are met. Manufacturers and importers are required to furnish certificates to retailers and distributors (section 14(g)(3) of the CPSA). Retailers are not required to third-party test the children's products that they sell unless they are also the manufacturer or importer. Under section 14 of the CPSA, manufacturers, importers, and private labelers of neck float products would be required to certify, based on a test of each product by an ISO-accredited, CPSC-accepted third party conformity assessment body, that their products comply with the requirements of the proposed rule. Each children's product certificate of compliance must identify the third-party conformity assessment body that conducted the testing upon which the certificate depends.

D. Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

CPSC has not identified any other Federal rules that duplicate, overlap, or conflict with the proposed rule.

E. Potential Impact on Small Entities

The Commission expects small firms of inflatable products to incur a significant cost from redesign/retooling, and material changes as a result of the proposed rule. If the rule is finalized, small manufacturers would incur one-time costs related to redesign, retooling, testing, labeling/literature updates and ongoing certification costs to comply with the rule for product lines that currently do not meet the proposed requirements. Generally, CPSC considers an impact to be potentially significant if it exceeds 1 percent of a firm's revenue. Based on the aforementioned costs, CPSC expects approximately 19 small firms to incur a cost that exceeds 1 percent of the annual revenue of the firm. The Commission seeks comments from small firms stating their annual revenue and estimated compliance costs.

Staff assesses that a large majority of inflatable neck float products cannot, as currently constructed, meet the proposed requirements of the rule. These products will require redesign, retooling and additional components to comply with the proposed rule. Major design changes are needed to meet the performance requirements related to durability, buoyancy, and the neck opening. The Commission anticipates that design and/or material changes, which may include modifying the shape of the neck float or modifying the structure by transitioning between or combining inherently buoyant and inflatable flotation components, would be required to the entirety of the product. The potential product costs are therefore the incremental cost for the material change and the one-time labor cost to perform the redesign and retooling. Inherently buoyant neck floats are expected to incur significantly lower costs.

CPSC estimates that the incremental costs of the material change to be $6 per product based on a comparison of retail prices of inflatable neck floats with non-inflatable neck floats. This assumes that most inherently buoyant neck floats are likely to meet the proposed performance standards without costly modification, while inflatable neck floats are likely not to comply with the performance requirements. CPSC assumes the observed premium of 20 percent of retail price [51] for non-inflatables represents the incremental cost of material between the types. CPSC estimates a range of 3 to 4 months of labor by a material engineer would be required for neck float redesign. Data from the Bureau of Labor Statistics (BLS) indicates that the average full hourly compensation rate of a material engineer, which includes wages [52] and benefits,[53] is $79.64 per hour.[54] Because neck float designs are very similar across product models and firms, CPSC assesses that firms would be able to incorporate design changes across all products lines that the manufacturer offers without additional effort required for each product line. CPSC staff estimates a range of possible redesign costs of $38,227 to $50,970 per firm.[55]

Some additional costs might be incurred related to updating and/or adding labels/literature. Generally, the costs associated with modifying or adding warning labels or instructional literature are low on a per unit basis because manufacturers of these products are already required to provide labels with their product. Nearly every manufacturer also provides some literature with their product. A one-time update is expected to be less than $0.01 in cost per product sold. Therefore, CPSC expects the incremental cost related to the labeling and instructional literature provisions to be *de minimis.*

F. Third-Party Testing Costs

The NPR would require manufacturers and importers of neck floats to comply with performance requirements and demonstrate compliance by required third-party testing. As specified in 16 CFR part 1109, entities that are not manufacturers of children's products, such as importers, may rely on the certificate of compliance provided by others.

Neck float manufacturers could incur some additional costs for certifying compliance with the proposed rule. The certification of must be completed by a third party conformity assessment body. Based on quotes from testing laboratories for ASTM F963 testing services, the cost of certification testing would range from $130 to $250 per product sample. For neck floats, the average number of models per firm is two, based on manufacturer websites, which would equate to a testing and certification cost range of $260 to $500 per firm.

H. Efforts To Minimize Impact, Alternatives Considered

The Commission considered four alternatives to the proposed rule that could reduce the impact on small entities: (1) not establishing a mandatory standard for neck floats, (2) establishing an information and education campaign for neck floats, (3) incorporating existing international standards without modification, and (4) setting a later effective date.

1. Not Establishing a Mandatory Standard

Section 106 of the CPSIA requires CPSC to promulgate toy safety standards that are ''more stringent than'' the applicable voluntary standard if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the product, as well as to periodically review and revise the rules set forth under section 106 to ensure that such rules provide the highest level of safety for such products that is feasible. 15 U.S.C. 2056b(c), (d). Given CPSC's statutory mandate, and continuing incidents associated with neck float as described in section III of this preamble, the Commission has determined that it must address the safety of children using neck float to ensure that the risk of drowning is mitigated. While failing to promulgate a mandatory standard for neck floats would have no direct impact on U.S. small businesses, it would allow

[51] Non-inflatable neck floats were on average 20 percent more than the most popular inflatable neck float.

[52] The mean hourly wage of a material engineer is $53.09 per hour as of May 2023 according to BLS. *https://www.bls.gov/oes/current/oes172131.htm.*

[53] The ratio of full compensation to wages for someone in *Professional and related occupations* in the Manufacturing industry is 1.50 ($68.47 compensation per hour ÷ $45.60 wage per hour) as of December 2023. Table 4. Private industry workers by occupational and industry group—2023 Q04 Results (*bls.gov*).

[54] $79.64 per hour = $53.09 wage per hour × 1.50 compensation factor.

[55] $79.64 per hour × 480 hours (3 months) = $38,227, $79.64 × 640 hours (4 months) = $50,970.

unsafe products to remain on the market and ignore a known drowning hazard to children, with reported fatalities. After preliminarily determining that the existing requirements in ASTM F–963 are inadequate, in section IV, the Commission is moving forward with this rulemaking to comply with its statutory mandate and prioritize the safety of children by mitigating potential child slip-throughs and submergence in water associated with the use of neck floats.

2. Information and Education Campaign

CPSC could create an information and education campaign to better alert parents and caregivers regarding the drowning hazard associated with neck floats. This would require consumer outreach efforts like advertising and marketing related to the hazards. This alternative could be implemented independent of regulatory action. Although information campaigns may be helpful, there have been deaths associated with these products while CPSC was conducting extensive drowning prevention educational campaigns. This demonstrates that information and education alone are inadequate to address the drowning hazard associated with neck floats. Therefore, the Commission preliminary finds that while information campaigns might be helpful, performance standards would be more effective in preventing deaths associated with the use of neck floats.

3. Incorporate BS EN 13138–1:2021 Without Modifications

The Commission could adopt BS EN 13138–1:2021 without modifications, discussed above in section V, because it has similar requirements as the proposed rule. Some neck float products currently available in the U.S. are advertised as meeting these requirements and as a result these products would be unaffected by proposed requirements. Adopting this alternative would lower the number of firms affected by the proposed rule. However, the international standards do not include specifications for slip-through hazards associated with neck floats. Therefore, this alternative is unlikely to prevent drowning related injuries to children who may slip through neck floats.

4. Later Effective Date

To reduce burden on small businesses, the Commission could adopt an effective date later than 180 days after **Federal Register** publication, to spread the cost of compliance over a longer period. Although some neck floats already comply with most of the proposed requirements, most neck floats (primarily inflatable neck floats) would need to be redesigned, and all neck floats would require third-party testing to the new requirements. In this case, as described above, 180 days is reasonable for firms to comply with the rule, and many labs are already CPSC-accepted to conduct the same or similar testing and products expected to already be compliant are currently available for purchase.

XI. Environmental Considerations

The Commission's regulations address whether the agency is required to prepare an environmental assessment or an environmental impact statement. Under these regulations, certain categories of CPSC actions normally have ''little or no potential for affecting the human environment,'' and therefore do not require an environmental assessment or an environmental impact statement. Safety standards providing performance and labeling requirements for consumer products come under this categorical exclusion. 16 CFR 1021.5(c)(1). The NPR falls within the categorical exclusion.

XII. Paperwork Reduction Act

This proposed rule for neck floats contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). In this document, pursuant to 44 U.S.C. 3507(a)(1)(D), we set forth:

- Title for the collection of information;
- Summary of the collection of information;
- Brief description of the need for the information and the proposed use of the information;
- Description of the likely respondents and proposed frequency of response to the collection of information;
- Estimate of the burden that shall result from the collection of information; and
- Notice that comments may be submitted to the OMB.

Title: Safety Standard for Toys: Requirements for Neck Floats.

Description: As described in section V of this preamble, the proposed rule would require new labeling and instructions for neck floats toys. The NPR proposes that neck float meet the proposed requirements of § 1250.5, which are summarized in section V of this preamble.

Section 5 of ASTM F963–23 contains requirements for marking, labeling, and instructional literature of children's toys in general. These requirements fall within the definition of ''collection of information,'' as defined in 44 U.S.C. 3502(3). CPSC will request an OMB control number for the proposed collection.

Description of Respondents: Persons who manufacture or import neck floats.

Estimated Burden: We estimate the burden of this collection of information as follows:

Table 8 – Estimated Annual Reporting Burden

Burden Type	Number of Respondents	Frequency of Responses	Total Annual Responses	Hours per Response	Total Burden Hours
Labeling and instructions	20	1	20	2	40

This estimate is based on the following: CPSC estimates there are 20 suppliers that would respond to this collection annually, and that the majority of these entities would be considered small businesses. CPSC assumes that on average each respondent that reports annually would respond once, as product models for neck floats are brought to market and new labeling and instruction materials are created, for a total of 20 responses annually (20 respondents × 1 responses per year). CPSC assumes that on average it will take 1 hour for each respondent to create the required label and one hour for them to create the required instructions, for an average response burden of 2 hours per response. Therefore, the total burden hours for the collection are estimated to be 40 hours

annually (20 responses × 2 hours per response = 40 total burden hours).

CPSC estimates the hourly compensation for the time required to create and update labeling and instructions is $41.76.[56] Therefore, the estimated annual cost of the burden requirements is $1,670 ($41.76 per hour × 40 hours = $1,670.40). No operating, maintenance, or capital costs are associated with the collection. Based on this analysis, the proposed information collection would impose a burden to industry of 40 hours at a cost of $1,670 annually.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d), we will submit the information collection requirements of this proposed rule to the OMB for review. Interested persons are requested to submit comments regarding information collection by January 21, 2025, (see the **ADDRESSES** section at the beginning of this notice). Pursuant to 44 U.S.C. 3506(c)(2)(A), we invite comments on:

- Whether the collection of information is necessary for the proper performance of the CPSC's functions, including whether the information will have practical utility;
- The accuracy of the CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to reduce the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology; and
- The estimated burden hours associated with label modification, including any alternative estimates.

XIII. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), states that when a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a standard or regulation that prescribes requirements for the performance, composition, contents, design, finish, construction, packaging, or labeling of such product dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 106(f) of the CPSIA deems rules issued under that provision ''consumer product safety standards.'' Therefore, once a rule issued under section 106 of the CPSIA takes effect, it will preempt in accordance with section 26(a) of the CPSA.

XIV. Certification and Notice of Requirements

Section 14(a) of the CPSA imposes the requirement that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Section 14(a)(2) of the CPSA requires that certification of children's products subject to a children's product safety rule be based on testing conducted by a CPSC-accepted third party conformity assessment body. Section 14(a)(3) of the CPSA requires the Commission to publish an NOR for the accreditation of third-party conformity assessment bodies (or laboratories) to assess conformity with a children's product safety rule to which a children's product is subject. The proposed rule would create a new 16 CFR 1250.5 as part of 16 CFR part 1250. If issued as a final rule, the proposed rule would be a children's product safety rule that requires the issuance of a NOR.

16 CFR part 1112 establishes requirements for accreditation of third-party conformity assessment bodies to test for conformity with a children's product safety rule in accordance with section 14(a)(2) of the CPSA. Part 1112 also codifies all of the NORs issued previously by the Commission. To meet the requirement that the Commission issue an NOR for the proposed standard, the Commission proposes to add neck floats to the list of children's product safety rules for which CPSC has issued an NOR.

Testing laboratories applying for acceptance as a CPSC-accepted third party conformity assessment body to test to the standard for neck floats would be required to meet the third-party conformity assessment body accreditation requirements in part 1112. When a laboratory meets the requirements as a CPSC-accepted third party conformity assessment body, the laboratory can apply to CPSC to have 16 CFR 1250.5, Safety Standard or Toys: Requirements for Neck Floats, included within the laboratory's scope of accreditation of CPSC safety rules listed for the laboratory on the CPSC website at: *https://www.cpsc.gov/cgi-bin/labsearch/.*

Testing laboratories should not be adversely impacted as a result of this rule. CPSC expects that laboratories will be able to test to this proposed rule in a short time period. Furthermore, no laboratory is required to provide testing services. The only laboratories that are expected to provide such services are those that anticipate receiving sufficient revenue from the mandated testing to justify procuring the testing equipment and obtaining accreditation.

XV. Request for Comments

The Commission requests comments on the proposed rule to promulgate a mandatory standard for neck floats under section 106 of the CPSIA. During the comment period, ASTM F963–23 is available as a read-only document at: *http://www.astm.org/cpsc.htm.* Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this document.

CPSC requests comments on all aspects of this rulemaking and specifically comment on the following topics:

A. Neck Float Definition

1. The proposed rule defines a ''neck float'' as ''an article, whether inflatable or not, that encircles the neck, supports the weight of the child by securing around the neck (such as by fastening, tightening, or other methods), and is used as an instrument of play in water environments including sinks, baths, paddling pools and swimming pools, and is intended for use by children up to and including 4 years of age.'' Should the proposed rule use a different definition of neck floats?

B. NPR Scope

1. Are there any other products that should be included within the scope of this NPR as neck floats?

2. Based on FDA's warning about the risk of death due to suffocation, strain, and injury to a baby's neck, should the Commission strengthen the proposed performance requirements to address other hazards, or should the Commission promulgate alternative performance requirements?

C. Proposed Requirements To Address Slip-Through Due to Deflation

1. Are there any other performance requirements CPSC should consider to address the hazards associated with slipping through the product as a result of deflation?

[56] U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' March 2024, Table 4, total compensation for all sales and office workers in goods-producing private industries: *https://www.bls.gov/news.release/archives/ecec_06182024.htm.*

D. Proposed Requirements To Address Slip-Through Without Deflation

1. Are there any other performance requirements CPSC should consider to address the hazards associated with slipping through the product without deflation?

E. Proposed Requirements To Address Restraint System Failure

1. Are there any other performance requirements CPSC should consider to address the hazards associated with restraint system failures?

2. Should CPSC consider performance requirements to include secondary attachment systems? Please, provide details of any secondary attachment system that should be considered.

F. Proposed Requirements To Address Submergence Without Slip-Through

1. Are there any other performance requirements CPSC should consider to address the hazards associated with submergence during the use of the product without slipping through?

G. Proposed Test Methods

1. Does the proposed internal air pressure of 0.1 PSIG adequately simulate use conditions to address the hazard associated with deflation?

2. Are the proposed neck opening performance requirements adequate to address the hazards associated with slip-through?

H. Proposed Warning Label and Instructional Material Requirements for Neck Floats

1. Are the proposed warnings adequate to address the hazards associated with neck floats? Should CPSC consider additional warnings? Should other warning formats be considered?

2. Are the proposed instructional material requirements adequate to address the hazards associated with neck floats? Should CPSC consider requiring additional information to be provided?

I. Initial Regulatory Flexibility Analysis

1. *Significant impact.* Is CPSC's estimated cost of redesign to achieve compliance accurate? If not, please provide additional information and support for your proposed correction. Also, do the estimated costs represent more than one percent of annual revenue for individual small U.S. manufacturers and importers?

2. *Testing costs.* Will third party testing costs for neck floats increase as a result of this requirements in this NPR, and if so, by how much? Are test labs currently accredited to test for ASTM F963–23 equipped to test neck floats in accordance with this proposal?

3. *Effective date of 180 days.* How much time is required to come into compliance with a final rule (including product compliance and third-party testing)? Please provide supporting data with your comment, particularly from small businesses.

4. *Anti-Stockpiling Provision.* Should CPSC finalize with the anti-stockpiling provision as proposed, or is it not unnecessary for neck floats? If an anti-stockpiling provision is included, are there any changes that should be included? Please provide supporting data with your comment, particularly from small businesses.

5. *Alternatives to reduce the impact on small businesses.* Are there any alternatives to the rule that could reduce the impact on small businesses without reducing safety? Please provide supporting data with your comment, particularly addressing small businesses.

J. Feasibility

1. Are the proposed requirements in this NPR feasible, both technically and economically?

2. What would be the total cost to industry of implementing this rule? Please be specific about labor and/or materials costs to redesign products, and costs of third-party testing.

3. Will complying with this rule increase the costs of production or the retail price of neck floats? Why? By how much?

XVI. References

Thomas J. Ayres, Madeline M. Gross, Christine T. Wood, Donald P. Horst, Roman R. Beyer, & Neil J. Robinson, *What is a warning and when will it work?,* 33 Proceedings of the Human Factors Society Annual Meeting, 426–430 (1989).

Dave M. DeJoy, *Motivation, in* Warnings and Risk Communication 221–243. (Michael S. Wogalter, David M. Dejoy, & Kenneth R. Laughery eds, Philadelphia: Taylor & Francis 1999).

Alan I. Fields, *Near-drowning in the pediatric population.* 8 Crit. Care Clin., 113–129 (1992).

Foreman, Jim., ''How to Make Inflatables (With Vinyl Welding)—Vinyl Technology.'' *Vinyl Technology,* 12 June 2024, *www.vinyltechnology.com/blog/how-to-make-inflatable-products-vinyl-welding.*

J.P. Frantz & T.P. Rhoades, *A Task-Analytic Approach to the Temporal and Spatial Placement of Product Warnings.* 35 Human Factors: The Journal of the Human Factors and Ergonomics Society, 719–730 (1993).

Sandra S. Godfrey & Laurel Allender (1994). Warning Messages: Will the consumer bother to look? In *Human Factors Perspectives on Warnings* 53–57. (K.R., Wogalter, M.S. Young, S. Laughery, eds. 1994).

Stefek Grmec, Matej Strnad, & Dejan Podgorsek, *Comparison of the characteristics and outcome among patients suffering from out-of-hospital primary cardiac arrest and drowning victims in cardiac arrest,* 2 Int. J. Emerg. Med. 7–12 (2009).

Kay Inaba, Suart O. Parsons, & Robert J. Smillie. Guidelines for developing instructions, (Boca Raton, FL: CRC Press. 2004).

Kalsher, M.J., & Wogalter, M.S. (2008). Warnings: Hazard Control Methods for Caregivers and Children. In R. Lueder & V.J.B. Rice (Eds.), *Ergonomics for Children: Designing Products and Places for Toddlers to Teens* (pp. 509–539). New York: Taylor & Francis; Rice, V.J.B. (2012). Designing for Children. In G. Salvendy (Ed.), Handbook of Human Factors and Ergonomics (4th ed.) (pp. 1472—1483). Hoboken, NJ: Wiley.

Laughery, K.R., & Wogalter, M.S. (2011). The Hazard Control Hierarchy and its Utility in Safety Decisions about Consumer Products. In W. Karwowski, M.M. Soares, & N.A. Stanton (Eds.), Human Factors and Ergonomics in Consumer Product Design: Uses and Applications (pp. 33–39). Boca Raton, FL: CRC Press; Williams, D.J., & Noyes, J.M. (2011). Reducing the Risk to Consumers: Implications for Designing Safe Consumer Products. In W. Karwowski, M.M. Soares, & N.A. Stanton (Eds.), Human Factors and Ergonomics in Consumer Product Design: Uses and Applications (pp. 3–21). Boca Raton, FL: CRC Press; Vredenburgh, A.G., & Zackowitz, I.B. (2006). Expectations. In M.S. Wogalter (Ed.), Handbook of warnings (pp. 345–354). Mahwah, NJ: Lawrence Erlbaum Associates.

Kem Laughery Sr. & D.P. Smith, *Explicit Information in Warnings, In* Handbook of Warnings 419–428. (M.S. Wogalter Ed., Mahwah, NJ: Lawrence Erlbaum Associates 2006).

L. Murray-Johnson & K. Witte. *Looking Toward the Future: Health Message Design Strategies, in Handbook of Health Communication* 473–495, (T.L. Thompson, A. Dorsey, K.I. Miller, & R. Parrott Eds., New York: Routledge 2003).

J.P. Orlowski JP, M.M. Abulleil, & J.M. Phillips. The hemodynamic and cardiovascular effects of near-drowning in hypotonic, isotonic, or hypertonic solutions. 18 Ann Emerg Med 1044–9 (1989).

D.M. Riley (2006). *Beliefs, attitudes, and motivation, In* Handbook of Warnings 289–300. (M.S. Wogalter Ed., Mahwah, NJ: Lawrence Erlbaum Associates 2006).

W.A. Rogers, N. Lamson, & G.K. Rousseau, *Warning research: An integrative perspective,* 42 Human Factors 102–130 (2000).

L.W. Schneider et al., U.S. Consumer Prod. Safety Comm'n. Size and Shape of the Head and Neck from Birth to Four Years (Report No. UMTRI–86–2). (1986). *https://deepblue.lib.umich.edu/handle/2027.42/114.*

David Szpilman, Joost J.L. Bierens, Anothony J. Handley, & James P. Orlowski, *Drowning,* 22 N Engl. J. Med. 2101–10 (2012). doi: 10.1056/NEJMra1013317.

E.F. van Beeck, C.M. Branche, D. Szpilman D, J.H. Modell, J.J. Bierens. A new definition of drowning: towards documentation and prevention of a global public health problem. 11 Bull World Health Organ 853–6 (2005). PMID: 16302042 PMCID: PMC2626470.

Stefaan W. Verbruggen, Bernhard Kainz, Susan C. Shelmerdine, Joseph V. Hajnal, Mary A. Rutherford, Owen J. Arthurs, Andrew T.M. Phillips, & Niamh C. Nowlan, *Stresses and strains on the human fetal skeleton during development,* 15 Journal of The Royal Society Interface 138 (2018). *https://doi.org/10.1098/rsif.2017.0593.*

A.G. Vredenburgh, & I.B. Zackowitz, *Human Factors Issues to be Considered by Product Liability Experts, in* Handbook of Human Factors in Litigation (Y.I. Noy & W. Karwowski Eds., Boca Raton, FL: CRC Press 2005).

A.G. Vredenburgh & I.B. Zackowitz, *Expectations, In* Handbook of Warnings 345–354. (M.S. Wogalter Ed., Mahwah, NJ: Lawrence Erlbaum Associates 2006).

Michael S. Wogalter, Sandra S. Godfrey, Gail A. Fontenelle, David R. Desaulniers, Pamela R. Rothstein, & Kenneth R. Laughery. *Effectiveness of warnings.* 5 Human Factors 599–612 (1987).

Michael S. Wogalter & Kenneth R. Laughery, *Effectiveness of Consumer Product Warnings: Design and Forensic Considerations, in* Handbook of Human Factors in Litigation (Y.I. Noy & W. Karwowski Eds., Boca Raton, FL: CRC Press 2005).

List of Subjects

16 CFR Part 1112

Administrative practice and procedure, Audit, Consumer protection, Reporting and recordkeeping requirements, Third-party conformity assessment body.

16 CFR Part 1250

Consumer protection, Incorporation by reference, Infants and children, Labeling, Law enforcement, Toys.

For the reasons discussed in the preamble, the Commission proposes to amend 16 CFR parts 1112 and 1250 as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

■ 1. The authority citation for part 1112 is revised to read as follows:

Authority: 15 U.S.C. 2063.

■ 2. Amend § 1112.15 by adding paragraph (b)(32)(ii)(LL) to read as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule and/or test method?

* * * * *

(b) * * *

(32) * * *

(ii) * * *

(LL) 16 CFR part 1250.5, Requirements for Neck Floats.

* * * * *

■ 3. The title of part 1250 is revised to read as follows:

PART 1250—SAFETY STANDARD FOR TOYS

■ 4. Revise the heading to part 1250 to read as set forth above.

■ 5. The authority citation for part 1250 is revised to read as follows:

Authority: 15 U.S.C. 2056b.

■ 6. Revise § 1250.1 to read as follows:

§ 1250.1 Scope

This part establishes a consumer product safety standard for toys.

■ 7. Add § 1250.5 to read as follows:

§ 1250.5 Requirements for neck floats.

(a) *Scope and purpose.* This section establishes performance and labeling requirements for neck floats to reduce the risk of children drowning while using a neck float. The provisions of this part are intended to address the risk of injury and death to children from neck float hazards. This section adds requirements for neck float in addition to the requirements of § 1250.1 and § 1250.2.

(b) *Definitions.* In addition to the definitions incorporated by reference in § 1250.2(a), the following definitions apply for the purposes of this section:

Expected weight capacity means the maximum weight capacity the neck float is rated for, per the manufacturer's recommended use instructions.

Neck float means an article, whether inflatable or not, that encircles the neck, supports the weight of the child by being secured around the neck (such as by fastening, tightening, or other methods), is used as an instrument of play in water environments including sinks, baths, paddling pools and swimming pools, and is intended for use by children up to and including 4 years of age in water environments including sinks, baths, paddling pools and swimming pools.

Restraint system means interconnecting components, whether adjustable or not, that are integral to a neck float and are intended to hold the occupant in position relative to the neck float. A restraint system uses fastening mechanisms, such as buckles or Velcro straps, to secure together.

(c) *Performance requirements.* In addition to any general requirements from § 1250.1 or § 1250.2, all neck floats within the scope of the rule must meet the performance requirements in this section to reduce the risk of children drowning while using a neck float.

(1) *Conditioning procedure.* Neck floats shall undergo thermal conditioning in accordance with section 5.5.4.1 of ANSI/CAN/UL 12402–9:2022, with modifications provided in this section. Following thermal conditioning, a neck float shall undergo exposure conditioning in a chlorinated saltwater bath. The chlorinated saltwater bath shall be prepared by dissolving 32 grams of sodium chloride (NaCl) in 1 liter of aqueous solution containing 2 ppm chlorine at pH 7.0–7.8. The necessary volume of solution at those concentrations shall be prepared to fully submerge the neck float, in darkness and at room temperature (20 ± 2 °C (68 ± 4 °F)) for 8 hours. Lastly, the neck float shall undergo ultraviolet light exposure conditioning in accordance with sections 4.2.1.1–4.2.1.4 of ANSI APSP ICC–16 (2017), with the modifications provided in this section, prior to any testing in accordance with paragraphs (2)–(4) of this section. Any inflatable component(s), if applicable, of the neck float shall be deflated during the conditioning procedure.

(i) The words ''Inflatable PFDs'' shall be removed and replaced with ''Neck floats'' in section 5.5.4.1 of ANSI/CAN/UL 12402–9:2022.

(ii) The cold temperature ''−30 ± 2 °C'' shall be removed and replace with ''−10 ± 2 °C'' in section 5.5.4.1 of ANSI/CAN/UL 12402–9:2022.

(iii) The words ''for two complete cycles,'' and the paragraph after item b) ''Inflatable PFDs, shall be . . . inflated for (5,0±0.1) min.'' shall be removed from section 5.5.4.1 of ANSI/CAN/UL 12402–9:2022.

(iv) The words ''1. Twelve new cover/grates'' shall be removed and replaced with ''Neck floats'' in section 4.2.1 of ANSI APSP ICC–16.

(v) The words ''and 4.2.15 through 4.2.17'' shall be removed in section 4.2.1 of ANSI APSP ICC–16.

(2) *Minimum buoyancy requirements.* Neck floats shall demonstrate a minimum upward buoyancy equal to or greater than 30 percent the expected weight capacity of the neck float, and neck floats utilizing inherently buoyant components shall lose no more than 5 percent of their initial buoyancy, when tested in accordance with sections 5.5.9.2–5.5.9.4 of ANSI/CAN/UL 12402–9:2022 with the following additions and exclusions:

(i) The words ''PFD'' shall be removed and replaced with ''neck float.''

(ii) The weight of the cage shall be equal to 1.1 times the expected weight capacity of the neck float, which shall be determined based on either the maximum weight capacity according to the manufacturer's recommended user weight, or the weight given by Table 1 to paragraph (c)(2) according to the manufacturer's recommended user age, whichever is greater. If the manufacturer's recommended user age falls between two age range options, the older range shall be used.

TABLE 1 TO PARAGRAPH (c)(2)(i)—EXPECTED WEIGHT CAPACITY

Age of child	Weight in kg	Weight in lb
0–3 months	7.7	17.0
4–6 months	9.5	21.0
7–9 months	10.6	23.4
10–12 months	11.5	25.4
1 up to 2 years	17.6	38.8
2 up to 3 years	23.2	51.2
3 up to 4 years	23.7	52.3

(iii) The sentence ''If the PFD contains inflatable . . . whichever is less'' shall be removed from the first paragraph of section 5.5.9.3 of ANSI/CAN/UL 12402–9:2022. In its place, the following sentence shall be added to the beginning of that section: ''Any inflatable component(s), if applicable, of the neck float shall be inflated to an internal air pressure of 0.1 ± 0.01 PSIG.''

(iv) Add ''If the neck float contains inherently buoyant components'' to the beginning of the third paragraph (''The assembly shall remain . . . recorded as B'') of section 5.5.9.3 of ANSICAN/UL 12402–9.

(v) Remove the last two paragraphs ''The water temperature . . . immersion period'' from section 5.5.9.3 of ANSI/CAN/UL 12402–9.

(vi) Remove the last paragraph ''The water temperature . . . and pressure conditions'' from section 5.5.9.4 of ANSI/CAN/UL 12402–9.

(3) *Restraint system requirements.* All restraint systems used to attach the neck float to the body or to connect components of the neck float together shall require the release of the fastening mechanism to have either a double-action release system that requires two distinct, but simultaneous actions to release, or a single-action release system that requires a minimum of 50 N to release. The restraint system shall also comply with the requirements of section 6.4.4 when tested in accordance with section 7.5.1 of ASTM F833–21, with the following additions and exclusions:

(i) The sentence ''At the . . . 2 in. (51 mm).'' of section 6.4.4 of ASTM F833–21 shall be removed.

(4) *Neck opening test requirement.* The neck opening of the neck float shall not admit the passage of a specified head probe when tested in accordance with the following test procedure:

(i) *Test method.* The neck float shall be placed on an elevated platform and positioned directly above and centered about a circular opening in that platform large enough to allow the head probes to fall fully through it. The surfaces of the neck float shall be saturated with baby wash solution, prepared in accordance with section 7.4.1.5 of ASTM F1967–19.

(ii) If the neck float includes adjustable restraint straps, then all applicable head probes shall be evaluated at the loosest (largest) setting.

(iii) Any inflatable components of the neck float shall be inflated to an internal air pressure of 0.1 ± 0.01 PSIG.

(iv) A specified head probe shall then be weighted to mass M1 and positioned in the neck opening. A hanging weight of mass M2 shall then be suspended below the head probe at distance L, where L includes the length between the narrowest and widest circumference of the specified head probe. The choice of specified head probe, mass M1, mass M2, and distance L shall be determined using Table 2 to paragraph (c)(4) based on the manufacturer's recommended youngest and oldest user age. If the manufacturer's recommended user age falls between two age range options, the younger or older range shall be considered, as is appropriate.

TABLE 2 TO PARAGRAPH (c)(4)(ii)—NECK OPENING TEST

Head probe designation	Age range (months)	Head probe mass M1 (kg)	Hanging weight M2 (lbs)	Distance L (in)
A	0–3	1.5	3.4	12.45
B	4–6	2	4.2	13.8
C	7–9	2.2	4.68	14.65
	10–12	2.4	5.08	15.6
	13–18	2.6	7.76	16.55
D	19–24	2.8	7.76	17.55
	25–30	3	10.24	18.75
	31–36	3	10.24	19.4
	37–42	3.2	10.46	20.45
	43–48	3.2	10.46	21.3

(v) If the neck float's recommended age range could apply to two or more head probes this procedure will be conducted first using the smallest applicable head probe, then repeated using the largest applicable head probe.

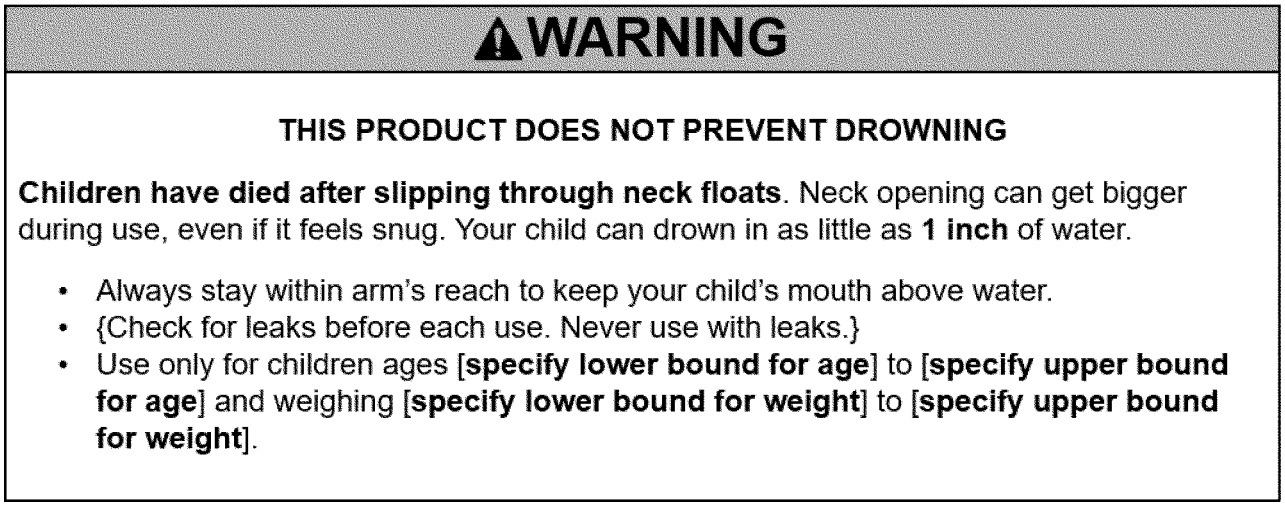
(vi) The hanging weight shall be swung for a total of ten 30-second cycles by raising the hanging weight to a 90-degree angle and releasing it. Alternate between a front-to-back swinging direction interval and side-to side interval, relative to the intended position of the neck float user. The 10

alternating swing cycles shall occur consecutively.

(d) *Labeling requirements.* All neck floats and the packaging of neck floats must meet the marking, labeling, and instructional literature requirements in this section to reduce the risk of children drowning while using a neck float.

(1) *Requirements for Marking and Labeling.* (i) Instead of complying with the warning text of section 5.4 of ASTM F963–23, neck floats and the packaging of neck floats must include the safety alert symbol, signal word, and word message as shown in Figure 1 to paragraph (d)(1)(i).

Figure 1 to Paragraph (d)(1)(i)—Warning for Neck Floats and Packaging



(ii) The warnings shall be in the English language at a minimum.

(iii) The warnings shall be conspicuous and permanent on the principal display panel as defined in section 3.1.62 of the version of ASTM F963 incorporated by reference in § 1250.2(a) and in a distinct color contrasting to the background on which it appears.

(iv) The warnings shall conform to ANSI/NEMA Z535.4–2023, sections 6.1–6.4, 7.2–7.6.3, and 8.1, with the following changes:

(A) In sections 6.2.2, 7.3, 7.5, and 8.1.2, of ANSI/NEMA Z535.4–2023 replace the word ''should'' with the word ''shall.''

(B) In section 7.6.3 of ANSI/NEMA Z535.4–2023, replace the phrase ''should (when feasible)'' with the word ''shall.''

(C) In section X of ANSI/NEMA Z535.4–2023, strike the word ''safety'' when used immediately before a color (for example, replace safety white'' with ''white'').

(v) Certain text in the message panel must be in bold and in capital letters as shown in the example warning labels in figures 3 and 4 to paragraph (d)(1)(ii). Text must use black lettering on a white background or white lettering on a black background.

(vi) The message panel text shall appear in sans serif letters and be center or left aligned. Text with precautionary (hazard avoidance) statements shall be preceded by bullet points.

(vii) Multiple precautionary statements shall be separated by bullet points if paragraph formatting is used.

(viii) The safety alert symbol ⚠ and the signal word ''WARNING'' shall appear in sans serif letters and be at least ⅛″ (3.2mm) high and be center or left aligned. The remainder of the text shall be in characters whose upper case shall be at least 1⁄16″ (1.6mm) high.

(ix) The safety alert symbol, an exclamation mark in a triangle, when used with the signal word, must precede the signal word. The base of the safety alert symbol must be on the same horizontal line as the base of the letters of the signal word. The height of the safety alert symbol must equal or exceed the signal word letter height. The exclamation mark must be at least half the size of the triangle centered vertically.

(x) The warning contained within { } ''Check for leaks before use. Never use with leaks.'' is only required for neck floats utilizing inflatable components.

(2) Requirements for Instructional Literature. Instructions shall have the same warning labels that must appear on the product and provided separately, as a user manual, with similar formatting requirements, but without the need to be in color. However, the signal word and safety alert symbol shall contrast with the background of the signal word panel, and the warnings shall contrast with the background of the instructional literature. The instructions shall include information on assembly, installation, maintenance, cleaning and use, where applicable. The instructions shall explain how to check for adequate fit of the neck float around the child's neck to prevent slipping through the center opening. For inflatable neck floats, the instructions shall include clear directions for testing the neck float for leaks. Any additional instructions provided, that are not required, shall neither contradict nor confuse the meaning of the requirements.

(e) Prohibited stockpiling.

(1) Prohibited acts. Manufacturers and importers of neck floats shall not manufacture or import neck floats that do not comply with the requirements of this part between [DATE OF PUBLICATION OF FINAL RULE] and [EFFECTIVE DATE OF FINAL RULE] at a rate that is greater than 105 percent of the rate at which they manufactured or imported neck floats during the base period for the manufacturer or importer.

(2) Base period. The base period for neck floats is the average monthly manufacturing or import volume within the last 13 months of production immediately preceding [DATE OF PUBLICATION OF THE FINAL RULE].

(f) Incorporation by reference. Certain material is incorporated by reference into this section with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference material is available for inspection at the Consumer Product

Safety Commission and at the National Archives and Records Administration (NARA). Contact the U.S. Consumer Product Safety Commission at: Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7479, email *cpsc-os@cpsc.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from the following sources:

(1) Pool and Hot Tub Alliance (PHTA), 1650 King Street, Suite 602, Alexandria, VA 22314; phone: (703) 838–0083; website: *www.phta.org.*

(i) ANSI APSP ICC–16, *American National Standard for Suction Outlet Fitting Assemblies (SOFA) for Use in Pools, Spas, and Hot Tubs,* (approved August 18, 2017).

(ii) [Reserved]

(2) Underwriters Laboratories (UL), 1250 Connecticut Avenue NW, Suite 520, Washington, DC 20036; phone: (202) 296–7840; website: *www.ul.com.*

(i) ANSI/CAN/UL 12402–9, *Standard for Personal Flotation Devices—Part 9: Test Methods,* (published February 11, 2021).

(ii) [Reserved]

(3) National Electrical Manufacturers Association (NEMA), 1300 17th St. N, Arlington, VA 22209; phone: (703) 841–3200; website: *www.nema.org.*

(i) ANSI/NEMA Z535.4–23, *American National Standard for Product Safety Signs and Labels* (approved December 14, 2023).

(ii) [Reserved]

(4) ASTM International (ASTM), *100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959;* phone: (610) 832–9585; website: *www.astm.org.*

(i) ASTM F833–21, *Standard Consumer Safety Performance Specification for Carriages and Strollers,* (approved June 15, 2021).

(ii) ASTM F1967–19, *Standard Consumer Safety Specification for Infant Bath Seats,* (approved May 1, 2019).

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2024–25446 Filed 11–19–24; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–116017–24]

RIN 1545–BR36

Administrative Requirements for an Election To Exclude Applicable Unincorporated Organizations From the Application of Subchapter K

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notice of public hearing.

SUMMARY: This document contains proposed regulations that would provide certain administrative requirements for unincorporated organizations taking advantage of modifications to the rules governing elections to be excluded from the application of partnership tax rules. These proposed regulations would affect unincorporated organizations and their members, including tax-exempt organizations, the District of Columbia, State and local governments, Indian Tribal governments, Alaska Native Corporations, the Tennessee Valley Authority, rural electric cooperatives, and certain agencies and instrumentalities. The proposed regulations would also update the procedure for obtaining permission to revoke a section 761(a) election.

DATES: Written or electronic comments must be received by January 21, 2025. A public hearing on these proposed regulations has been scheduled for February 7, 2025, at 10 a.m. Eastern Standard Time (EST). Requests to speak and outlines of topics to be discussed at the public hearing must be received by January 21, 2025. If no outlines are received by January 21, 2025, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. on February 5, 2025.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–116017–24) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Public Hearing'' section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket.

Send paper submissions to: CC:PA:01:PR (REG–116017–24), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, contact Cameron Williamson at (202) 317–6684; and concerning submissions of comments and requests for a public hearing, contact the Publications and Regulations Section at (202) 317–6901 (not toll-free numbers) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Authority

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 761(a) of the Internal Revenue Code (Code) issued by the Secretary of the Treasury or her delegate (Secretary) under the express authority granted under sections 761(a), 6031(a), 6417(d) and (h), and 7805(a) of the Code (proposed regulations).

Section 761(a) provides, in part, an express grant of regulatory authority for section 761(a) stating, ''[u]nder regulations the Secretary may, at the election of all the members of an unincorporated organization, exclude such organization from the application of all or a part of this subchapter.''

Section 6031(a) provides an express grant of a regulatory authority for the Secretary to prescribe in forms or regulations partnership reporting information required ''for the purpose of carrying out the provisions of subtitle A.''

Section 6417(d) provides several express delegations of authority to the Secretary to enforce requirements for elective payments of applicable credits under section 6417 and recapture excessive payments. Section 6417(h) requires the Secretary to issue regulations or other guidance as may be necessary to carry out the purposes of section 6417, including guidance to ensure that the amount of the payment or deemed payment made under this section is commensurate with the amount of the credit that would be otherwise allowable (determined without regard to section 38(c)).

Finally, section 7805(a) authorizes the Secretary to ''prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.''

Background

I. Elective Payment of Applicable Credits

Section 6417 was added to the Code by section 13801(a) of Public Law 117–169, 136 Stat. 1818, 2003 (August 16, 2022), commonly referred to as the Inflation Reduction Act of 2022 (IRA). Section 6417 allows an ''applicable entity'' (including tax-exempt organizations, the District of Columbia, State and local governments, Indian Tribal governments, Alaska Native Corporations, the Tennessee Valley Authority, rural electric cooperatives, and certain agencies and instrumentalities) to make an election to treat an ''applicable credit'' (as defined in section 6417(b)) determined with respect to such entity as making a payment by such entity against the tax imposed by subtitle A of the Code, for the taxable year with respect to which such credit is determined, equal to the amount of such credit. Section 6417 also provides special rules relating to partnerships and directs the Secretary to provide rules for making elections under section 6417. Section 13801(g) of the IRA provides that section 6417 applies to taxable years beginning after December 31, 2022.

On March 11, 2024, the Treasury Department and the IRS published in the **Federal Register** (88 FR 40528) final regulations (TD 9988) providing guidance on the section 6417 elective payment election (section 6417 regulations). Section 1.6417–2(a)(1)(iv) provides that partnerships are not applicable entities described in section 6417(d)(1)(A) or § 1.6417–1(c), regardless of how many of their partners are themselves applicable entities. Accordingly, any partnership making an elective payment election must be an electing taxpayer (as defined in § 1.6417–1(g)), and, as such, the only applicable credits with respect to which the partnership could make an elective payment election would be credits determined under sections 45Q, 45V, and 45X for the time periods allowed in section 6417(d). However, § 1.6417–2(a)(1)(iii) provides that if an applicable entity is a co-owner in an applicable credit property (as defined in § 1.6417–1(e)), through an organization that has made a valid election under section 761(a) (section 761(a) election) to be excluded from the application of the partnership tax rules of subchapter K of chapter 1 of the Code (subchapter K), then the applicable entity's undivided ownership share of the applicable credit property is treated as a separate applicable credit property owned by such applicable entity. As a result, the applicable entity may make an elective payment election for the applicable credit(s) determined with respect to such applicable credit property.

Also on March 11, 2024, the Treasury Department and the IRS published in the **Federal Register** (89 FR 17613) proposed amendments (REG–101552–24) to the regulations under section 761(a) to carry out the purposes of section 6417 (March 2024 proposed regulations). Generally, the March 2024 proposed regulations would have amended certain provisions of § 1.761–2 to provide that unincorporated organizations meeting certain requirements (applicable unincorporated organizations) are eligible for certain modifications to the existing requirements for making a section 761(a) election.

Concurrently with the publication of these proposed regulations, the Treasury Department and the IRS are publishing in the Rules and Regulations section of this edition of the **Federal Register** a Treasury decision (TD 10012, RIN 1545–BR09) adopting certain provisions of § 1.761–2 of the March 2024 proposed regulations as final regulations under section 761(a) (final regulations). The provisions of § 1.761–2 of the final regulations are explained in greater detail in the preamble to the final regulations. The provisions of § 1.761–2 in effect as of January 19, 2025, are referred to in this preamble as ''revised § 1.761–2.''

II. Overview of Section 761(a) and Revised § 1.761–2

Section 761(a) provides, in part, that under regulations the Secretary may, at the election of all of the members of an unincorporated organization, exclude such organization from the application of all or part of subchapter K if the organization is availed of: (1) for investment purposes only and not for the active conduct of a business, (2) for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted, or (3) by dealers in securities for a short period for the purpose of underwriting, selling, or distributing a particular issue of securities, provided that the income of the members of the organization may be adequately determined without the computation of partnership taxable income.

Unincorporated organizations seeking to make an election to be excluded from the application of subchapter K so that one or more of their members can make an election under section 6417 are likely to be availed of for the purposes listed in section 761(a)(2), that is, for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted. Pursuant to the authority in section 761(a), revised § 1.761–2(a)(3) provides additional requirements for an unincorporated organization to elect to be excluded from the application of subchapter K under section 761(a)(2). Specifically, revised § 1.761–2(a)(3) requires that the participants in the joint production, extraction, or use of property: (i) own the property as co-owners, either in fee or under lease or other form of contract granting exclusive operating rights (co-ownership requirement), (ii) reserve the right separately to take in kind or dispose of their shares of any property produced, extracted, or used, and (iii) do not jointly sell services or the property produced or extracted (joint marketing requirement), although each separate participant may delegate authority to sell the participant's share of the property produced or extracted for the time being for the participant's account, but not for a period of time in excess of the minimum needs of the industry, and in no event for more than one year.

The final regulations modify the co-ownership and joint marketing requirements for ''applicable unincorporated organizations.'' Under revised § 1.761–2(a)(4)(ii), an applicable unincorporated organization is defined as an unincorporated organization (1) that is owned, in whole or in part, by one or more applicable entities, as defined in section 6417(d)(1)(A) and § 1.6417–1(c), (2) the members of which enter into a joint operating agreement in which the members reserve the right separately to take in kind or dispose of their pro rata shares of any property produced, extracted, or used, and any associated renewable energy credits or similar credits, (3) that, pursuant to the joint operating agreement, is organized exclusively to own and operate applicable credit property (as defined in § 1.6417–1(e)), (4) for which one or more of the applicable entities will make an elective payment election under section 6417(a) for the applicable credits determined with respect to its share of the applicable credit property, (5) the members of which are able to compute their income without the necessity of computing partnership taxable income, and (6) which is not a syndicate, group, pool, or joint venture which is classifiable as an association, or any group operating under an agreement which creates an organization classifiable as an association.

Revised § 1.761–2(b) provides rules for making a section 761(a) election. Revised § 1.761–2(b)(2)(i) generally provides that a section 761(a) election

must be made in a statement attached to, or incorporated in, a properly executed partnership return, Form 1065, *U.S. Return of Partnership Income,* which must contain, in lieu of the information required by Form 1065 and the instructions relating thereto, the following information: the name or other identification and the address of the organization together with information on the return, or in the statement attached to the return, showing the names, addresses, and identification numbers of all the members of the organization; a statement that the organization qualifies under § 1.761–2(a)(1) and either § 1.761–2(a)(2) or (3) (taking into account revised § 1.761–2(a)(4), as applicable); a statement that all of the members of the organization elect to be excluded from all of subchapter K; and a statement indicating where a copy of the agreement under which the organization operates is available (or if the agreement is oral, from whom the provisions of the agreement may be obtained).

If an unincorporated organization does not make the section 761(a) election provided in this manner, revised § 1.761–2(b)(2)(ii) provides (as it provided before the final regulations) that the organization will nevertheless be deemed to have made the election if it can be shown from all the surrounding facts and circumstances that it was the intention of the members of such organization at the time of its formation to secure exclusion from all of subchapter K beginning with the first taxable year of the organization (deemed election rule). Although the following facts are not exclusive, the requisite intent may be indicated if (1) at the time of the formation of the organization there is an agreement among the members that the organization be excluded from the application of subchapter K beginning with the first taxable year of the organization, or (2) the members of the organization owning substantially all of the capital interests report their respective shares of the items of income, deductions, and credits of the organization on their respective returns (making such elections as to individual items as may be appropriate) in a manner consistent with the exclusion of the organization from subchapter K beginning with the first taxable year of the organization.

III. Reason for Proposed Regulations

Section 6417(d)(5) provides that as a condition of, and prior to, any amount being treated as a payment that is made by an applicable entity, the Secretary may require such information or registration as the Secretary deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments. Section 6417(h) requires the Secretary to issue regulations or other guidance to ensure that the amount of a payment or deemed payment made under section 6417 is commensurate with the amount of the credit that would be otherwise allowable.

The Treasury Department and the IRS have determined that additional guidance outlining certain administrative requirements is needed to comply with these statutory directives. After an unincorporated organization makes a section 761(a) election, each member may increase or reduce (even to zero) its interest in the unincorporated organization without affecting the validity of the section 761(a) election. As a result, the information submitted to the IRS in connection with an organization's section 761(a) election, as required under revised § 1.761–2(b), can become inaccurate at any time without notice to the IRS. This lack of reliable and accurate information about the applicable entity owners (if any) of an applicable unincorporated organization constrains the IRS's ability to ensure that the amount of payments or deemed payments made under section 6417 are commensurate with the amount of applicable credits that would otherwise be allowable, as directed under section 6417(h).

This problem is compounded by the deemed election rule in revised § 1.761–2(b)(2)(ii). A deemed election obscures any record of an organization's members (including any applicable entities) that are subject to a section 761(a) election and can be discovered by the IRS only upon examination. In contrast, a written election is a relatively simple and effective means of identifying any applicable entity owners of applicable credit property held through an applicable unincorporated organization with a valid section 761(a) election. Moreover, members of an organization who form an entity or enter into long-term contracts together are especially likely to know that their activities could create a partnership subject to subchapter K. The Treasury Department and the IRS have concerns that deemed elections are not appropriate in such situations, especially when (as is anticipated to be typical) applicable entities intend to make section 6417 elections with respect to applicable credit property owned by an unincorporated organization, as such elections are generally permitted only when the organization has a valid section 761(a) election.

Explanation of Provisions

The proposed regulations would impose new requirements on applicable unincorporated organizations whose section 761(a) elections would not be valid without the application of revised § 1.761–2(a)(4)(iii) (specified modifications for applicable unincorporated organizations). Proposed § 1.761–2(a)(4)(iv)(A) would provide that a specified applicable unincorporated organization's section 761(a) election will terminate as a result of a ''terminating transaction.'' A terminating transaction is the acquisition or disposition of an interest in a specified applicable unincorporated organization, other than as the result of a transfer between a disregarded entity (as defined in § 1.6417–1(f)) and its owner since such transfer does not change the identity of the applicable entity for purposes of section 6417. *See* § 1.6417–2(a)(1)(ii); *see also* proposed § 1.6417–1(f) contained in the notice of proposed rulemaking *Entities Wholly Owned by Indian Tribal Governments* (REG–113628–21) published in the **Federal Register** (89 FR 81871) on October 9, 2024, which alters the definition of disregarded entities for purposes of section 6417.

Terminating transactions will not terminate an applicable unincorporated organization's section 761(a) election if the organization meets the requirements to make a new section 761(a) election and makes such an election not later than the time prescribed by § 1.6031(a)–1(e) (including extensions thereof) for filing a partnership return with respect to the period of time that would have been the organization's taxable year if, after the taxable year with respect to which the organization first made the section 761(a) election, the organization continued to have taxable years and such taxable years were determined by reference to the taxable year in which the organization made the section 761(a) election (hypothetical partnership taxable year). Such election will protect the organization's section 761(a) election against all terminating transactions in a hypothetical year only if it contains, in addition to the information required by § 1.761–2(b), information about every terminating transaction that occurred in the hypothetical partnership taxable year, including the parties thereto and the interest(s) transferred. If a new election is not timely made, the section 761(a) election would terminate on the first day of the taxable year beginning after the hypothetical partnership taxable

year in which one or more terminating transactions occurred. Proposed § 1.761–2(a)(5)(iv) would add *Example 4* to illustrate this new rule. These provisions are inapplicable to an organization that is no longer eligible to elect to be excluded from the application of subchapter K. When an organization becomes ineligible to make a section 761(a) election, the organization's section 761(a) election automatically terminates, and the organization must begin complying with the requirements of subchapter K.

The proposed regulations would also clarify that the deemed election rule in § 1.761–2(b)(2)(ii) does not apply to specified applicable unincorporated organizations. This change is necessary to ensure that an unincorporated organization cannot benefit from the modifications in revised § 1.761–2(a)(4)(iii) without providing written information to the IRS about its members. The change also ensures that a specified applicable unincorporated organization that terminates as the result of a terminating transaction cannot have its election restored without making a new election in writing. However, if such an organization can make a valid section 761(a) election without the application of either of the specified modifications in revised § 1.761–2(a)(4)(iii), the organization may be deemed to make such an election under the deemed election rule.

In addition, the proposed regulations would clarify that an applicable unincorporated organization making a section 761(a) election must submit all information required by the instructions to Form 1065, *U.S. Return of Partnership Income,* for making a section 761(a) election. This requirement is intended to ensure that the organization making a section 761(a) election provides all of the information necessary for the IRS to properly administer section 6417 with respect to applicable unincorporated organizations making a section 761(a) election.

The proposed regulations would also update the procedure for obtaining permission to revoke a section 761(a) election. Prior to revision in the final regulations, § 1.761–2(b)(3) provided that taxpayers could revoke a section 761(a) election by submitting an application for permission to revoke a section 761(a) election to the Commissioner of Internal Revenue, Attention: T:I, Washington, DC 20224, no later than 30 days after the beginning of the first taxable year to which the revocation is to apply. Though this language did not define what the application would include, it historically has been interpreted to mean a private letter ruling request. However, the language in § 1.761–2(b)(3) was imprecise, lists an incorrect address, and was removed by the final regulations. The proposed regulations would clarify that such an application must be made by submitting a letter ruling request that complies with the requirements of Rev. Proc. 2024–1 or successor guidance. This language would ensure that the process for making this application is up-to-date and clear. Taxpayers may continue to submit applications for permission to revoke an election by requesting a private letter ruling and can rely on the process in Revenue Procedure 2024–1 or successor guidance prior to the date regulations finalizing these proposed regulations are published in the **Federal Register**.

Proposed Applicability Dates

These proposed regulations are proposed to apply to taxable years ending on or after November 20, 2024.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. 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 control number.

These proposed regulations mention reporting and recordkeeping requirements that must be satisfied for unincorporated organizations to make and maintain an election out of subchapter K. These collections of information are generally used by the IRS for tax compliance purposes and by taxpayers to facilitate proper reporting and recordkeeping. The likely respondents to these collections are businesses and tax-exempt organizations.

These proposed regulations would also require unincorporated organizations to provide all information required by the instructions to Form 1065 for making a section 761(a) election. This reporting requirement will be approved by OMB under 1545–0123 for business filers and 1545–0047 for tax-exempt organizations in accordance with the PRA procedures in 5 CFR 1320.10.

These proposed regulations would include recordkeeping requirements for certain unincorporated organizations to track changes in ownership of interests in each such organization. The organizations can maintain these records in any manner they deem appropriate. The recordkeeping is needed to determine whether a new written section 761(a) election must be filed with the IRS. IRS will seek OMB approval under a new OMB Control Number (1545–NEW) for the burden on business filers and tax-exempt organizations. The associated burden for the recordkeeping is estimated as follows:

Estimated number of respondents: 1,000.

Estimated average annual burden per response: 1 hour.

Estimated total annual reporting burden: 1,000 hours.

The recordkeeping in this proposed rulemaking has been submitted to OMB for review in accordance with the PRA under OMB Control Number 1545–NEW. Commenters are strongly encouraged to submit public comments electronically. Written comments and recommendations for the proposed information collection should be sent to *www.reginfo.gov/public/do/PRAMain,* with copies to the IRS. Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' then by using the search function. Submit electronic submissions for the proposed information collection to the IRS via email at *pra.comments@irs.gov* (indicate REG–116017–24 on the Subject line). Comments on the collection of information should be received by January 21, 2025. Comments are specifically requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility; the accuracy of the estimated burden associated with the proposed collection of information; how the quality, utility, and clarity of the information to be collected may be enhanced; how the burden of complying with the proposed collection of information may be minimized,

including through the application of automated collection techniques or other forms of information technology; and estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis (IRFA) of the proposed rule. The Treasury Department and the IRS have not determined whether the proposed rule, when finalized, will likely have a significant economic impact on a substantial number of small entities. This determination requires further study. However, because there is a possibility of significant economic impact on a substantial number of small entities, an IRFA is provided in these proposed regulations. The Treasury Department and the IRS invite comments on both the number of entities affected and the economic impact on small entities.

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel of for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

1. Need for and Objectives of the Proposed Rule

As discussed in this preamble, the proposed regulations are intended to ensure that each section 761(a) election by a specified applicable unincorporated organization provides all of the information necessary for the IRS to comply with the directives of section 6417(d) and (h).

2. Affected Small Entities

The RFA directs agencies to provide a description of, and where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted. The Small Business Administration's Office of Advocacy estimates in its 2024 Frequently Asked Questions that 99.9 percent of American businesses meet its definition of a small business. The applicability of these proposed regulations does not depend on the size of the business, as defined by the Small Business Administration. As described more fully in the preamble to these proposed regulations and in this IRFA, section 761(a) and these proposed regulations may affect a variety of different entities across several different industries as there are 12 different applicable credits for which an elective payment election under section 6417(a) may be made. There is uncertainty as to the exact number of small businesses within this group. The current estimated number of respondents to the section 6417 regulations is 20,000 taxpayers, and it is likely that a fraction of that number would be respondents to these proposed regulations.

The Treasury Department and the IRS expect to receive more information on the impact on small businesses through comments on this proposed rule and again when taxpayers start to make the section 761(a) election using the guidance and procedures provided in the final regulations and these proposed regulations.

3. Impact of the Proposed Rules

The proposed regulations would require certain applicable unincorporated organizations to submit section 761(a) elections in writing more frequently than they otherwise would have (though no more than once per year). In addition, a specified applicable unincorporated organization will be responsible for identifying any transactions involving ownership interests therein. Applicable unincorporated organizations that make a section 761(a) election will have administrative costs related to reading and understanding the rules as well as recordkeeping and reporting requirements. The costs will vary across different-sized entities and across the type of project(s) in which such entities are engaged.

Although the Treasury Department and the IRS do not have sufficient data to determine precisely the likely extent of the increased costs of compliance, the estimated burdens of complying with the recordkeeping and reporting requirements are described in the Paperwork Reduction Act section of the preamble.

4. Alternatives Considered

The Treasury Department and the IRS considered alternatives to the proposed regulations. For example, in adopting the terminating transaction rules, the Treasury Department and the IRS considered requiring only the parties to a transaction involving an interest in a specified applicable unincorporated organization to report such transaction. However, the Treasury Department and the IRS decided that such an option would increase the opportunity for duplication, fraud, improper payments, or excessive payments under section 6417. Section 6417(d)(5) specifically authorizes the IRS to require such information or registration as the Secretary deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments under section 6417 as a condition of, and prior to, any amount being treated as a payment which is made by an applicable entity under section 6417. As described in the preamble to these proposed regulations, these proposed rules carry out that congressional intent by ensuring that every member of a specified applicable unincorporated organization is informed about all transactions involving interests in the specified applicable unincorporated organization that could affect the amount or owner of any payments under section 6417.

Comments are requested on the requirements in the proposed regulations, including specifically whether there are less burdensome alternatives that do not increase the risk of duplication, fraud, improper payments, or excessive payments under section 6417.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandate Reform Act of 1995 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 (updated annually for inflation). These proposed regulations do 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.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) 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 Executive order. These proposed regulations do not have federalism implications and do not impose

substantial, direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

VI. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments) prohibits an agency from publishing any rule that has Tribal implications if the rule either imposes substantial, direct compliance costs on Indian Tribal governments, and is not required by statute, or preempts Tribal law, unless the agency meets the consultation and funding requirements of section 5 of the Executive order. This proposed rule does not have substantial direct effects on one or more federally recognized Indian tribes and does not impose substantial direct compliance costs on Indian Tribal governments within the meaning of the Executive order.

Nevertheless, on April 5, 2024, the Treasury Department and the IRS held a consultation with Tribal leaders requesting assistance in addressing questions related to the section 761(a) proposed rules published on March 11, 2024, which helped inform the development of these proposed regulations.

VII. Executive Order 14112: Reforming Federal Funding and Support for Tribal Nations To Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination

Executive Order 14112 (Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination) reaffirms the executive branch's support for Tribal self-determination as the most effective policy for the economic growth of Tribal Nations and the economic well-being of Tribal citizens. Executive Order 14112 requires agency heads to take certain actions, consistent with applicable law and to the extent practicable, to increase access to ''Federal funding and support programs for Tribal Nations''; provide Tribal Nations with the flexibility to improve economic growth and address the specific needs of their communities; and reduce administrative burdens. Section 2(b) of the Executive order defines ''Federal funding and support programs for Tribal Nations'' as including ''funding, programs, technical assistance, loans, grants, or other financial support or direct services that the Federal Government provides to Tribal Nations or Indians because of their status as Indians.'' As section 1 of the Executive order explains, ''As we continue to support Tribal Nations, we must respect their sovereignty by better ensuring that they are able to make their own decisions about where and how to meet the needs of their communities. No less than for any other sovereign, Tribal self-governance is about the fundamental right of a people to determine their own destiny and to prosper and flourish on their own terms.'' These commitments build on a recognition of principles of sovereignty, sovereign immunity, and self-governance that have been repeatedly reaffirmed by the Supreme Court. *See, e.g., Three Affiliated Tribes of the Fort Berthold Reservation* v. *Wold Engineering, P.C., et al.,* 476 U.S. 877, 890–91 (1986); *Oklahoma Tax Comm'n* v. *Citizen Band Potawatomi Indian Tribe of Oklahoma,* 498 U.S. 505, 510 (1991). The Treasury Tribal Advisory Committee has advised that Tribes consider ''financial support'' in Executive Order 14112 to include tax matters that range from tax credits to Federal tax rules that regulate Tribal revenue.

Consistent with Executive Order 14112, the Treasury Department and the IRS recognize the importance of protecting and supporting Tribal sovereignty and self-determination. These proposed regulations are necessary for compliance with sections 6417(d)(5) and (h) and do not impose undue burdens on Tribal sovereignty.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to comments regarding the notice of proposed rulemaking that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments will be made available at *https://www.regulations.gov.* Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing has been scheduled for February 7, 2025, beginning at 10 a.m. EST, in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by January 21, 2025. A period of ten minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be available free of charge at the hearing. If no outline of the topics to be discussed at the hearing is received by January 21, 2025, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–116017–24 and the language ''TESTIFY In Person.'' For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG–116017–24.

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–116017–24 and the language ''TESTIFY Telephonically.'' For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–116017–24.

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–116017–24 and the language ''ATTEND In Person.'' For example, the subject line may say: Request to ATTEND Hearing In Person for REG–116017–24. Requests to attend the public hearing must be received by 5 p.m. EST on February 5, 2025.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–116017–24 and the language ''ATTEND Hearing

Telephonically.'' For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–116017–24. Requests to attend the public hearing must be received by 5 p.m. EST on February 5, 2025.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–6901 (not a toll-free number) by 5 p.m. EST on February 4, 2025.

Statement of Availability of IRS Documents

IRS notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Drafting Information

The principal author of these proposed regulations is Cameron Williamson of the Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1, as amended in a final rule published elsewhere in this issue of the **Federal Register**, effective January 19, 2025, continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Section 1.761–2 also issued under 26 U.S.C. 446(b), 761(a), 6031(a), 6417(d), and 6417(h).

* * * * *

■ **Par. 2.** Section 1.761–2, as amended in a final rule published elsewhere in this issue of the **Federal Register**, effective January 19, 2025, is further amended by:

■ a. Adding paragraphs (a)(4)(iv) and (a)(5)(iv).
■ b. Revising the last sentence of paragraph (b)(2)(i).
■ c. Revising the first sentence of paragraph (b)(2)(ii).
■ d. Adding a sentence to the end of paragraph (b)(3)(i).
■ e. Revising paragraph (f).

The additions and revisions read as follows:

§ 1.761–2 Exclusion of certain unincorporated organizations from the application of all or part of subchapter K of chapter 1 of the Internal Revenue Code.

(a) * * *

(4) * * *

(iv) *Termination upon change in interest*—(A) *In general.* Except as provided in paragraph (a)(4)(iv)(E) of this section, an election under this paragraph (a) by a specified applicable unincorporated organization (as defined in paragraph (a)(4)(iv)(C) of this section) will terminate as the result of a terminating transaction (as defined in paragraph (a)(4)(iv)(D) of this section) involving an interest in that organization. Such termination will be effective beginning on the first day of the taxable year beginning after the hypothetical partnership taxable year (as defined in paragraph (a)(4)(iv)(B) of this section) in which the terminating transaction occurred.

(B) *Hypothetical partnership taxable year.* The term *hypothetical partnership taxable year* means, with respect to a specified applicable unincorporated organization, the period of time that would have been the organization's taxable year if, after the taxable year with respect to which the organization first made the election under this paragraph (a), the organization continued to have taxable years and such taxable years were determined by reference to the taxable year required to be used by the organization to make the election.

(C) *Specified applicable unincorporated organization.* The term *specified applicable unincorporated organization* means an applicable unincorporated organization that has made an election under this paragraph (a) and such election would not be valid without the application of either paragraph (a)(4)(iii)(A) or (B) of this section.

(D) *Terminating transaction.* The term *terminating transaction* means an acquisition or disposition of an interest in a specified applicable unincorporated organization (including transfers among members of the organization), other than as the result of a transfer between a disregarded entity (as defined in § 1.6417–1(f)) and its owner.

(E) *Exception.* If a specified applicable unincorporated organization meets the requirements to make a new election under this paragraph (a) and makes such an election no later than the time that would have been prescribed by § 1.6031(a)–1(e) (including extensions thereof) for filing a partnership return with respect to the hypothetical partnership taxable year in which one or more terminating transactions occurred, the organization's election will not terminate under paragraph (a)(4)(iv)(A) of this section as a result of any terminating transaction occurring during that hypothetical partnership taxable year. Such election must contain, in addition to the information required by paragraph (b) of this section, information about every terminating transaction that occurred in the hypothetical partnership taxable year, including the parties thereto and the interest(s) transferred.

(5) * * *

(iv) *Example 4*—(A) *Facts.* The facts are the same as in paragraph (a)(5)(ii)(A) of this section (*Example 2*), except that T owns a 60% interest in TLLC and Y owns a 40% interest in TLLC. TLLC's first taxable year ends on September 30th of year 1. On or before the 15th day of the third month following that date, TLLC makes a valid election under section 761(a) with respect to year 1. On August 31 of year 3, T sells all of T's interest in TLLC to Q.

(B) *Analysis.* TLLC is a specified applicable unincorporated organization. Accordingly, the sale of T's interest is a terminating transaction and will terminate TLLC's section 761(a) election unless TLLC makes a new section 761(a) election on or before the 15th day of the third month following September 30th of year 3. This analysis would not be different if, sometime between the end of TLLC's first taxable year and the hypothetical partnership taxable year ending on September 30th of year 3, TLLC's taxable year would have changed under the rules of subchapter K (for example, as a result of a change in T's taxable year).

(b) * * *

(2) * * *

(i) * * * Such partnership return must contain the following information: the name or other identification and the address of the organization together with information on the return, or in the statement attached to the return, showing the names, addresses, and taxpayer identification numbers of all the members of the organization; a statement that the organization qualifies under paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph

(a)(4) of this section, as applicable); a statement that all of the members of the organization elect that it be excluded from all of subchapter K; a statement indicating where a copy of the agreement under which the organization operates is available (or if the agreement is oral, from whom the provisions of the agreement may be obtained); and all information required by the form and instructions to the Form 1065 for an election under paragraph (a) of this section.

(ii) * * * If an unincorporated organization described in paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (but not a specified applicable unincorporated organization) does not make the election provided in section 761(a) in the manner prescribed by paragraph (b)(2)(i) of this section, it will nevertheless be deemed to have made the election if it can be shown from all the surrounding facts and circumstances that it was the intention of the members of such organization at the time of its formation to secure exclusion from all of subchapter K beginning with the first taxable year of the organization. * * *

(3) * * *

(i) * * * Application for permission to revoke the election must be made by submitting a letter ruling request that complies with the requirements of Rev. Proc. 2024–1 or successor guidance.

* * * * *

(f) *Applicability date*—(1) *In general.* Except as provided in paragraphs (d) and (f)(2) of this section, this section applies to taxable years ending on or after March 11, 2024.

(2) *Exceptions.* Paragraphs (a)(4)(iv) and (a)(5)(iv) of this section, the fifth sentence of paragraph (b)(2)(i) of this section, the first sentence of paragraph (b)(2)(ii) of this section, and the last sentence of paragraph (b)(3)(i) of this section, apply to taxable years ending on or after November 20, 2024.

Heather C. Maloy,

Acting Deputy Commissioner.

[FR Doc. 2024–26962 Filed 11–19–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AS16

Loan Guaranty: Loan Reporting and Partial or Total Loss of Guaranty or Insurance

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations governing loan reporting requirements for lenders that participate in the VA-guaranteed home loan program and circumstances when VA would assert a defense for partial or total loss of guaranty or insurance for lenders and holders. These proposed amendments would support VA's ongoing efforts to modernize and transform technology and processes within the guaranteed home loan program, capitalizing on industry standard datasets. In addition, the proposed regulatory changes would update and enhance the loan guaranty reporting requirements for lenders, providing veterans stronger protections against noncompliant loans through improved transparency and oversight of the program.

DATES: Comments must be received on or before January 21, 2025.

ADDRESSES: Comments must be submitted through *www.regulations.gov*. Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on *www.regulations.gov* as soon as possible after they have been received. VA will not post on *www.regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. VA encourages individuals not to submit duplicative comments; however, we will post comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking. In accordance with the Providing Accountability Through Transparency Act of 2023, a 100 word Plain-Language Summary of this proposed rule is available at *Regulations.gov*, under RIN 2900–AS16(P).

FOR FURTHER INFORMATION CONTACT: Stephanie Li, Assistant Director for Regulations, Legislation, Engagement, and Training; Terry Rouch, Assistant Director for Loan Policy and Valuation; and Colin Deaso, Assistant Director for Data and Technology Solutions, Loan Guaranty (26), Veterans Benefits Administration, Department of Veterans Affairs, 1800 G Street NW, Washington DC 20006, (202) 632–8862. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Purpose of This Rulemaking

VA proposes to amend its reporting regulation at 38 CFR 36.4303 and its partial or total loss of guaranty or insurance regulation at 38 CFR 36.4328 to support its ongoing efforts to modernize and transform technology and processes within its VA-guaranteed home loan program and to make the regulations more reader-friendly. VA is accomplishing the technological transformation by updating reporting requirements and connecting with lenders and holders through application programming interfaces (APIs). Utilizing APIs will more efficiently and effectively support veterans, lenders, servicers, and other stakeholders who participate in the VA-guaranteed home loan program. Specifically, VA would launch an API ecosystem in which VA and veterans would, through increased VA oversight capabilities, have stronger protections against noncompliant lenders and holders. Additionally, lenders and holders would have more assurance and confidence in using their authority to close VA-guaranteed loans on an automatic basis and in carrying out lending and servicing functions in VA's home loan program.

To help ensure success, updates to 38 CFR 36.4303 and 36.4328 are necessary. Amendments to § 36.4303 would expand loan reporting requirements by allowing VA, lenders, and holders to take advantage of technological improvements that APIs provide, resulting in more efficient and more effective program administration. Section 36.4328 amendments would clarify provisions addressing partial or total loss of the guaranty or insurance when VA identifies fraud, material misrepresentations, or other noncompliance with VA requirements.

II. Section-by-Section Analysis of the Proposed Regulatory Amendments

A. 38 CFR 36.4303—Reporting Requirements

1. Reporting Loans Closed on an Automatic Basis

VA proposes to revise § 36.4303(a) to add the heading, ''Automatically guaranteed loans'', and provide that, for loans automatically guaranteed under 38 U.S.C. 3703(a)(1), a lender of a class described under 38 U.S.C. 3702(d), would be required to report the loan, after loan closing, in an electronic

format using an API, as designated by the Secretary. The proposed rule would further require that such a lender must, not later than 15 days after the loan closing date, use the designated API to report a loan to VA. When reporting the loan, the lender must also use the designated API to submit the appropriate funding fee as prescribed by 38 U.S.C. 3729 and required information regarding the loan, including the loan application (*e.g.,* the Uniform Loan Application Dataset—ULAD), closing disclosures (*e.g.,* the Uniform Closing Dataset—UCD), and any other information required by the Secretary.

VA further proposes to explain that VA would announce in the **Federal Register** any designation of a new API at least 60 days before a lender would be required to use the API for reporting the loan and submitting the funding fee and loan information. The notice would provide the name of the newly designated API(s) and a link to VA's website where VA would maintain and update technical details about the operative API(s). At the expiration of the notice period, using the designated API(s) when reporting the loan, including submission of the funding fee and loan information to VA, would be a pre-condition to VA issuing a loan guaranty certificate (LGC).

The proposed amendments would be more consistent with standard industry practice for electronic reporting. Additionally, they would allow for more efficient loan oversight. For example, currently, if a funding fee is required, the lender collects the fee at closing and electronically remits the funds to VA within 15 days of closing via VA's electronic Funding Fee Payment System (FFPS). The lender also reports the loan using WebLGY, a different system. Thus, lenders have to submit documents and remittances to two VA systems, using manual processes. Due to the manual processes and separate systems necessary, VA currently allows the lender 60 days within which to submit the loan information. See 38 CFR 36.4313(e)(3) and (4). But under the new electronic reporting system, VA would retire FFPS and combine reporting the loan and remittance of the VA funding fee into one automated process. Furthermore, because of the simplification and automation, the 60-day submission process could be handled efficiently within 15 days.

VA is committed to a user-friendly API environment that improves the overall experience with VA—not launching technological improvements for their own sake. VA also understands that many lenders have already been working with other API environments. Accordingly, VA welcomes feedback, including technical, on how VA can maximize the efficiencies that come through reporting loans using APIs and how VA's proposed process might be further refined. To that end, VA has already published on VA's website the specifications for five APIs that are in various stages of development, including the API the Secretary plans to designate as the first API for reporting guaranteed loans.

The designated API would allow lenders to report loan information electronically utilizing their Loan Origination Software (LOS). This is another advantage to the API ecosystem, because the LOS is already widely accepted throughout the industry. Most lenders use the Mortgage Industry Standards Maintenance Organization (MISMO's) standards in the delivery of closing disclosure data to other federal, or federally sponsored, housing agencies such as Fannie Mae, Freddie Mac, and the Department of Housing and Urban Development (HUD). With VA's designated API for reporting the loan, lenders would be able to electronically report information in the UCD and ULAD via API directly from the lenders' LOS in accordance with MISMO standards. In the end, the designated API for loan reporting would allow for the full automation of the funding fee payment, loan reporting, and issuance of the LGC via lenders' LOS. Overall, based on industry data and widely held principles, VA assesses that the standardization of data reporting would lead to better accuracy, consistency, and clarity surrounding the loans VA guarantees and would promote a more consistent approach between VA and lenders.

Lenders would also make the required certifications related to the loan, using the API, including, for example, that the loan conforms with the applicable provisions of 38 U.S.C. chapter 37 and of the regulations concerning guaranty or insurance of loans to veterans.

The lender certifications are consistent with current regulations and approved information collections. See Office of Management and Budget (OMB) Control Number 2900–0909. The primary difference under the proposal is that the certifications would be submitted using the designated API(s), again saving resources and time for lenders and VA.

VA would also continue to require that a veteran make certain certifications at the time the loan is closed. Veterans would not notice any change. The primary change for lenders would be that, as with their own certifications, they would report a veteran's certifications using the designated API(s). One veteran certification would relate to past or present occupancy of the property. In the case of a loan for the purchase or construction of a residential property, or for a cash-out refinance, the veteran would be required to certify that the veteran intends to occupy such property as the veteran's home. See 38 U.S.C. 3704(c). In the case of a loan for the repair, alteration, or improvement of residential property, the veteran would be required to certify that the veteran occupies the property as the veteran's home. An exception to this is if the home improvement or refinancing loan is for extensive changes to the property that would prevent the veteran from occupying the property while the work is being completed. In such a case, the veteran would be required to certify that the veteran intends to occupy or reoccupy the property as the veteran's home upon completion of the substantial improvements or repairs. Another exception would be for an interest rate reduction refinance loan (commonly referred to as an IRRRL), where the veteran would be required to certify that the veteran either occupies the property as the veteran's home or had previously occupied it as the veteran's home. The certifications are required by statute, as are the differing occupancy requirements based on loan type. See 38 U.S.C. 3703(c), 3704(c), 3710(e).

In the event a veteran is in active-duty status as a member of the Armed Forces and is unable to occupy the property because of such status, VA would accept a certification from the spouse of the veteran that the veteran's spouse occupies or intends to occupy the property as his or her home or a certification from the veteran's attorney-in-fact or from the legal guardian of a dependent child of the veteran that the dependent child occupies or intends to occupy the property as the dependent child's home. See 38 U.S.C. 3704(c)(2).

In the case of an interest rate reduction refinancing loan, the veteran must certify as to meeting one of the occupancy requirements at 38 CFR 36.4307(a)(2). See U.S.C. 3710(e)(1)(F). The certifications required are consistent with current statutory and regulatory requirements. Id.

Lastly, VA would provide that upon VA's acceptance of the information, VA would issue the LGC, subject to provisions of proposed § 36.4328.

2. Reporting Loans That Require VA's Prior Approval

VA proposes to remove current paragraphs (b), (c), and (d) of 38 CFR 36.4303 and add a new paragraph (b).

Proposed paragraph (b) would include the heading, ''Prior-approval loans'', and provide that, in the case of any loan made by a lender without the authority to close loans on an automatic basis or any loan where the Secretary provides advance notice of the need for prior approval, the lender would be required to report the loan to the Secretary before the loan closing for the Secretary's review. Lenders would be required to report the loan in an electronic format and using an API, if an API is designated by the Secretary for this purpose. While VA anticipates releasing an API for lenders to submit loans that require prior approval by the Secretary, this API is not currently ready. As such, the Secretary would direct lenders under the proposed rule to continue using VA's current loan reporting system, WebLGY, to submit certain pre-closing and underwriting loan information for the Secretary's review. As with automatically guaranteed loans, VA would propose to include language in paragraph (b) that would require VA to announce in the **Federal Register** any designation of a new API at least 60 days before a lender would be required to use the API.

The loan information that must be submitted before loan closing would include the loan application (that is, the Uniform Residential Loan Application (URLA), credit reports obtained in connection with the loan application, certain VA forms as required by the Secretary, the occupancy certification as noted in proposed § 36.4303(a)(2)(iv) obtained at the time of loan application, and any other information the Secretary determines necessary for a determination.

Upon VA's review and approval of the above information, VA would issue a certificate of commitment, which would commit an LGC to the holder of the loan upon the payment of the full proceeds of the loan for the purposes described in the original report and provided the requirements in proposed § 36.4303(b)(4) are met. If VA does not approve the loan, VA would notify the lender that the loan cannot be closed as a VA-guaranteed loan; however, the lender may resubmit the loan to VA for prior approval after the lender corrects any issues identified by VA.

The lender would be required to report the loan to VA not later than 15 days after the loan closing date using the same API as when reporting loans closed on an automatic basis. The submission would also include the following items: the appropriate funding fee as prescribed by 38 U.S.C. 3729; the information prescribed in proposed § 36.4303(a)(2)(ii); evidence that any conditions identified by the Secretary in the certificate of commitment are satisfied in order for the Secretary to issue an LGC; evidence showing the property securing the loan is that for which the certificate of commitment was issued; evidence that all property purchased or acquired with the proceeds of the loan has been encumbered as required by VA; and lender and veteran certifications prescribed in proposed § 36.4303(a)(2)(iii) and (iv), respectively.

Lastly, VA would provide that upon VA's acceptance of the information, VA would issue the LGC, subject to provisions of proposed § 36.4328.

These reporting requirements for loans that require pre-approval from VA are generally not new. The change would be the method of transmission to VA, meaning that the lender would transmit the information using the designated API. VA notes, too, that prior-approval loans constitute less than one percent of VA's guaranty portfolio.

3. Failure To Close Prior-Approval Loans and Late Reporting of Loans

VA proposes to redesignate current paragraphs (e) and (f) of 38 CFR 36.4303 as new paragraphs (b)(6) and (c), respectively. VA would also revise newly redesignated paragraphs (b)(6) and (c).

Proposed paragraph (b)(6) would provide that if the lender does not close the loan on which prior approval was obtained, the certificate of commitment would have no further effect.

Proposed paragraph (c) would include a heading to be styled, ''Late reporting of closed loans'', and would provide that, for loans not reported in accordance with the timing requirements of this section, evidence of guaranty would be issued only if the loan report is accompanied by a statement from the lending institution that explains why the loan was reported late and whether, since origination, the loan was in default. VA would require the statement to identify the case or cases in issue and to set forth the specific reason or reasons why the loan was not submitted on time. Upon receipt of such a statement, VA would issue evidence of guaranty. A pattern of late reporting and the reasons therefore would be considered by VA in taking action under §§ 36.4336 and 36.4353. VA believes that this change, to include referencing existing authority to take action under § 36.4336, would serve as a deterrence for late reporting of loans to VA.

4. Evidence of Guaranty and Clarifying or Conforming Amendments

VA proposes to redesignate current paragraph (g) as new paragraph (d). The heading would be styled, ''Form of guaranty evidence.'' Substantively, proposed paragraph (d) would provide that, for guaranteed loans, evidence of a guaranty would be issued by the Secretary as an LGC and that, for insured loans, notice of credit to an insurance account would be given to the lender. This revision would be to improve clarity and readability.

VA would remove current paragraphs (h) and (j) and redesignate current paragraph (i) as new paragraph (e). VA would also revise new paragraph (e) by adding the heading, ''Exclusions from the guaranty or insurance amount'', and clarifying that the amounts referenced are those disbursed by a lender.

Lastly, VA would redesignate current paragraphs (k) and (l) as new paragraphs (f) and (g) and would revise new paragraphs (f) and (g) by adding the headings, ''Veteran's right to exit purchase contract'' and ''Processing and reporting a loan assumption'', respectively. VA also proposes to revise new paragraph (g) to conform any internal references to this new paragraph and correct the references in new paragraph (g)(1)(ii)(D), which currently references paragraphs (l)(1)(i), (l)(1)(i)(B), and (l)(1)(i)(A), rather than (g)(1)(i), (g)(1)(i)(B), and (g)(1)(i)(A), respectively.

5. Information Collections and Authority Citations

Section 36.4303 already contains collections of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that are approved by the Office of Management and Budget (OMB). The information collection associated with proposed § 36.4303(g), pertaining to assumptions, is currently approved under OMB control number 2900–0516. The information collection associated with proposed § 36.4303(a)(2)(iv), pertaining to the veteran's occupancy certification, is currently approved under OMB control number 2900–0521. VA is not proposing any substantive revisions to these provisions or the information collections but is proposing to add OMB control number 2900–0521 to the list of approved information collections at the end of the section.

Similarly, VA proposes to add OMB control number 2900–0909 to the list of approved information collections at the end of § 36.4303. This approved information collection pertains to existing lender reporting requirements

for both automatically guaranteed loans and prior-approval loans. This includes information and certifications required under current § 36.4303(a), (c), (d), and (f). With this proposed rule, VA is revising the information required by a lender to include additional loan origination information including but not limited to the loan application (*e.g.,* ULAD) and closing disclosures (*e.g.,* UCD). VA also proposes to amend the format (*i.e.,* collection instrument) lenders will use to submit this information to reflect the use of APIs. Accordingly, VA has outlined these changes in the below Paperwork Reduction Act section and any incremental burden costs or savings to the public.

VA notes that it currently has approval from OMB to collect loan application information and closing disclosures under the information collection associated with 38 CFR 36.4333. This rule, in part, pertains to lenders' requirement to maintain loan origination records and VA's authority to request an audit of such records as necessary for oversight and program management. Under the current approved information collection (OMB control number 2900–0515), VA requires lenders to upload the ULAD and UCD for any loan selected for audit (also known as Full File Loan Review). With this proposed rule, lenders will have already submitted this information when they report the loan to VA for an LGC. As such, separate from this rulemaking, VA intends to revise the information collection at 38 CFR 36.4333 to remove the duplicate information collection.

Finally, VA proposes to remove the paragraph-specific authority citations and amend the authority citation at the end of § 36.4303.

B. Partial or Total Loss of Guaranty or Insurance

VA proposes to rewrite § 36.4328, which addresses how lender or holder noncompliance with VA requirements can affect the guaranty and VA's payment of the guaranty. The rule has not been updated for some time, and VA believes modernizing the style would promote transparency, help stakeholders better understand VA's longstanding policy, and improve VA's oversight function. For example, VA would add headings at the paragraph level, as headings throughout the section would help VA employees and stakeholders better understand which provisions apply to a given situation, such as material misrepresentations in origination compared to servicing. The goal is to minimize legalese and arrange the section under a more orderly framework. In addition, VA would codify a requirement for indemnifying VA when a lender fails to comply with certain requirements.

1. Forgeries and Falsifications of Documents

Paragraph (a) of § 36.4328 would be revised under the heading ''No liability on the guaranty or insurance due to forgery or falsification of documents.'' The revision would explain that VA would have no liability on account of a guaranty or insurance of a loan, or any certificate or other evidence thereof, if—a signature to the note, the mortgage, or any other loan papers is a forgery; the application for guaranty or insurance is a forgery; or the certificate of discharge or the certificate of eligibility is counterfeited or falsified, or is not issued by the Government.

The current rule's phrase, ''Subject to the incontestable provisions,'' would be deleted. The deletion is because, for some readers, the phrase can perhaps give the wrong impression that VA has no enforcement authority over a guaranteed loan. It is VA's position that the introductory clause was inserted originally to emphasize what was, at the time, a newly enacted law providing more guaranty stability. VA has not intended the phrase to imply that VA has no way of addressing losses caused by forgeries, fraud, or material misrepresentations, nor has VA applied it that way.

Another historical reference that is not necessary anymore is the date, July 1, 1948. References in paragraph (a) to the date ''July 1, 1948'' would be deleted, because VA's guaranty portfolio no longer includes any loans made that long ago. Any substantive difference that may have applied at one point has been overtaken by time.

In short, the substance under which VA applies paragraph (a) today would not change under the proposed rule's paragraph (a). The proposal would instead eliminate outdated text for clearer intent.

2. Material Misrepresentation by a Lender

VA would replace current paragraph (b) of § 36.4328 by inserting the heading, ''Material misrepresentation by a lender'', and specifying the actions VA may take after learning of a material misrepresentation. Specifically, the rule would provide that if a lender knew or should have known of a material misrepresentation at the time of reporting the loan to VA under § 36.4303, VA may adjust the maximum guaranty amount on the LGC or demand indemnification from the lender. Paragraph (b)(1) would apply to instances where a material misrepresentation is identified before VA issues the LGC. Paragraph (b)(2) would apply to instances where a material misrepresentation is identified after VA issues the LGC. Paragraph (b)(3) would provide an opportunity for the lender to take corrective action, when the Secretary determines it appropriate, and either have the full guaranty amount restored or cancel the indemnification, as applicable.

Under paragraph (b)(1) of § 36.4328, which would include the heading, ''Material misrepresentation is identified before VA issues the loan guaranty certificate'', VA would notify the lender of VA's findings that the lender made a material misrepresentation when reporting the loan and would issue the loan guaranty certificate with a maximum guaranty amount of one dollar. For example, in a situation where a lender reported to VA a $400,000 loan but VA found an improper charge of $100, VA would, under paragraph (b)(1), notify the lender that the LGC is issued in the amount of $1 rather than the expected $100,000.

Under paragraph (b)(2), which would address, as the heading would indicate, instances where a ''Material misrepresentation is identified after VA issues the loan guaranty certificate,'' VA would notify the originating lender of VA's findings and that the maximum guaranty amount on the loan has been reduced to $1, if the originating lender is the current loan holder. Alternatively, if the originating lender is not the current loan holder, VA would require the originating lender to indemnify VA, as provided in paragraph (c).

Paragraph (b)(3) of § 36.4328 would be introduced with the heading, ''Corrective action by lender.'' Paragraph (b)(3)(i) would explain that, when notifying the lender of VA's findings under paragraph (b)(1) or (2), VA would also identify corrective action(s), if any, VA determines necessary to remediate the effects of the material misrepresentation. After VA receives evidence confirming the effects of the material misrepresentation have been remediated, VA would either restore the guaranty to the full amount or cancel the indemnification, as applicable. Paragraph (b)(3)(ii) would state that, if VA determines the effects of the material misrepresentation cannot be remediated, VA would not offer the originating lender the opportunity to take corrective action. VA would require the originating lender to indemnify VA, as provided in paragraph (c).

The proposed revisions would improve the readability of the regulation; not change the substantive way VA conducts oversight and works with lenders and holders to help ensure a fair outcome for VA, veterans, lenders, and holders. For example, consistent with current policy, VA would not limit the application of the regulation to commissions of fraud, as violations resulting from misrepresentations that were made without malintent can be just as damaging to veterans and the Government as an act of fraud. It is longstanding policy that, when VA finds a veteran has been wrongly charged a fee, for example, VA does not need a finding of fraud to instruct the lender to reimburse the veteran for the improper charge. VA instructs the lender that the charge must be reimbursed. VA notes, too, that the applicable statute does not, in authorizing VA to assert defenses, mention intent. See 38 U.S.C. 3721.

Similarly, VA has for some time offered lenders the opportunity to indemnify VA against any eventual loss when the lender violated one of VA's regulations. Although VA has not codified the procedure explicitly until now, the indemnification process has proven effective for all stakeholders. The veteran continues to receive all the advantages that accompany a VA-guaranteed loan. The holder continues to be able to rely on the guaranty. The market continues to consider the VA guaranty a premium certification. Importantly, too, VA continues to be able to protect the taxpayer against losses VA would not have incurred had VA known of a violation at the time of issuing the LGC, using a common risk-shifting mechanism in the financial industry.

VA would delete the term ''willful'' from the current rule, but again, VA does not expect that lenders or holders would notice a change in VA's approach. As with the illustration regarding the improper $100 charge, VA already considers the improper charge a material misrepresentation, even if just the lender's mistake. This is because the lender is responsible for ensuring its own compliance with VA's statutes and regulations. Yet, the lender submitted the loan for guaranty, requesting a higher guaranty amount than VA would have guaranteed had VA known of the improper charge. Plus, the veteran who obtained the guaranteed loan has been wrongly required to pay $100, and VA believes that, in such a circumstance, the veteran deserves to be made whole by the lender. VA also already works with the lender to ensure the veteran is reimbursed for the improper charge. Thus, the proposed rule would more specifically outline current procedures than the current rule does but would not change the expectations lenders and holders have come to rely on.

VA understands the importance of being able to rely on VA's guaranty, particularly given how critical it is to the secondary investment market, which supplies to many in the lending industry the liquidity necessary for making VA-guaranteed loans. VA believes the additional clarity under the proposed rule would help further that stability, rather than detract from it, as it would make clearer the policies and procedures VA has employed for some time in addressing noncompliance. Yet at the same time, the revision would serve as a clear reminder to lenders that in originating loans or servicing loans of veterans with VA-guaranteed loans, the lender must ensure the representations they make to VA align with the facts as represented.

3. Indemnification by the Lender

VA would, under the heading ''Indemnification after VA issues the loan guaranty certificate,'' replace paragraph (c) of § 36.4328 to codify the indemnification process applicable to a loan where fraud or a material misrepresentation is identified after VA has issued the LGC. One type of indemnification, applicable to noncompliance with underwriting requirements in § 36.4340, would have a 5-year term, including any subsequent interest rate reduction refinancing loans, under proposed paragraph (c)(1). The other type of indemnification would apply to noncompliance for reasons other than underwriting decisions under § 36.4340. Under proposed paragraph (c)(2), the duration of this latter type would last the life of the loan, including any subsequent interest rate reduction refinancing loans.

Proposed paragraph (c)(1) of § 36.4328 would include the heading of, ''Violations of underwriting requirements'', and state that, if VA determines the originating lender made a material misrepresentation relating to the credit underwriting of a loan pursuant to the provisions of § 36.4340, the originating lender must abstain from filing a guaranty or insurance claim in the event of a loan default and must indemnify VA for any and all losses arising from or related to a guaranty or insurance claim made on the loan within five years of the date of the loan guaranty certificate, including any subsequent interest rate reduction refinancing loans. A few examples of material misrepresentations related to the provisions of § 36.4340 are failures to (i) verify assets, employment, and credit reports (38 CFR 36.4340(j)); (ii) determine or accurately determine the veteran's acceptable debt-to-income ratio (38 CFR 36.4340(c)); or (iii) ensure residual income guidelines were met (38 CFR 36.4340(e)).

The proposed five-year indemnification for underwriting deficiencies would reflect VA's longstanding policy that underwriting is critical to a lender's assessment of a veteran's ability to repay, while also recognizing that as time passes any underwriting deficiencies are less likely to be responsible for a loan default by the veteran. VA believes that five years of stable payment history by the veteran provides enough time to assure VA that any default thereafter is likely due to factors unrelated to any underwriting deficiencies at origination. VA also believes a shorter period does not offer adequate protection against preventable defaults or deterrence against lenders who might otherwise adopt a pattern of noncompliance as a business model. A longer timeframe, however, may unduly damage lenders' interests and affect lender participation in helping to deliver the home loan benefit to veterans.

To further support VA's proposed five-year indemnification policy, VA reviewed the performance of 157 indemnified loans with five-year agreements signed on or after January 12, 2017. Historically, VA-guaranteed loans have maintained some of the lowest foreclosure rates in the industry, often below one percent. However, VA observed 12 foreclosures that occurred within the five-year indemnification period as opposed to only two foreclosures outside of the five-year indemnification period. Further, one-third of foreclosures occurring during the indemnification period (four out of 12 foreclosures) happened between years three and five. Based on this analysis, VA proposes to continue its current policy of requiring a five-year indemnification period for any underwriting deficiencies.

The proposed carryover to include interest rate reduction refinance loans likewise reflects VA's longstanding policy. Interest rate reduction refinance loans, unlike purchase loans and cash-out refinance loans, are guaranteed using the veteran's same entitlement from the loan being refinanced and do not require a new, full underwriting. See 38 U.S.C. 3710(e) and 38 CFR 36.4307. Because of this, the same risks associated with noncompliance in the original underwriting violations are associated with the interest rate reduction refinance loan. If VA were not to apply the indemnification,

unscrupulous lenders could avoid accountability because of a loophole (for example, through strategic noncompliance, then an interest rate reduction refinance loan, along with another origination fee to the lender, to thwart enforcement). Thus, VA believes it is necessary to close the loophole by ensuring the indemnification continues to cover interest rate reduction refinances, as well as the original loan, during the five-year indemnification period.

VA also proposes that recovery under the indemnification would be irrespective of whether the material misrepresentation in the loan underwriting directly leads to a loan default. VA's current standard practice for indemnification agreements is not based on VA having to establish a causal connection between the violation and the default, and VA believes establishing causation as a threshold would be inconsistent with proper risk management practices. Additionally, investigations necessary to establish the cause would be overly taxing on VA's limited resources, especially when viewed in light of the fact that, if VA had known of the underwriting violation, VA never would have guaranteed the loan in the first place.

Under proposed paragraph (c)(2) of § 36.4328, an originating lender would be required to indemnify VA for a longer period for the originating lender's fraud or for the originating lender's material misrepresentation related to non-underwriting violations. Specifically, paragraph (c)(2) would include the heading, ''Non-underwriting related violations'', and would state that if VA determines the originating lender committed fraud or made an uncorrectable material misrepresentation relating to noncompliance with requirements other than those prescribed in § 36.4340, the originating lender must abstain from filing a guaranty or insurance claim in the event of a loan default and must indemnify VA for any and all losses arising from or related to a guaranty or insurance claim, for the life of the loan, including any subsequent interest rate reduction refinancing loans.

Regarding fraud, VA believes there should not be a scenario where a lender can choose whether defrauding the Government is financially worth the risk. VA does not tolerate fraud. Indemnification for the life of the loan, as well as for any later interest rate reduction refinance loans, would protect the veteran by ensuring that the veteran receives all the loan servicing advantages that accompany a VA-guaranteed loan and would protect the government against any losses.

Even if made without fraudulent intent, a material misrepresentation that cannot be remediated or one that is not related to underwriting noncompliance can leave violations unresolved over the duration of the loan. The defects simply cannot be resolved. Accordingly, VA believes it is appropriate, and consistent with sound financial practice common among industry participants, to shift the risk from the entity harmed by the material misrepresentation (in this case, veterans, the integrity of VA's program, and taxpayers at-large) back to the originating lender that knew or should have known of an uncorrectable noncompliance. The indemnification would be irrespective of whether material misrepresentation is causally connected to a default and would apply to later interest rate reduction refinance loans, for the reasons explained above.

In proposed paragraph (c)(3), under the heading ''Notice of indemnification'', VA would specify that the Secretary would notify the lender when VA determines that a loan is subject to indemnification.

Procedurally, a paper agreement would no longer be used when completing an indemnification agreement. When VA discovers a fraud or material misrepresentation, VA and the originating lender would communicate via one or more of the designated APIs described under proposed § 36.4303. This would provide more efficiency, require fewer resources, and align with industry expectations of using technology to help ease administrative burden.

4. Guaranty Adjustments to Holders

VA proposes to add a new paragraph (d) to 38 CFR 36.4328, under the heading, ''Guaranty adjustments to holder'', to reduce possible confusion surrounding the current regulation's application to holders. VA proposes paragraph (d)(1), with the heading, ''Fraud in obtaining the guaranty or insurance'', to provide that VA would have no liability on account of a guaranty or insurance, or any loan guaranty certificate, with respect to a transaction in which VA determines the holder or holder's agent participated in fraud in obtaining the guaranty or insurance. In other words, the holder is not a holder in due course if the holder colluded with the originating lender in defrauding VA. So, the rule would mean that, even if a holder was not the originating lender, if the holder was directly involved or complicit in the fraud at origination, VA would not have liability on the guaranty.

In proposed paragraph (d)(2), VA would state, under the heading ''Holder fraud in obtaining a claim payment on the guaranty or insurance'', that VA would have no liability on a guaranty or insurance claim if the holder commits fraud in obtaining a claim payment from VA on the guaranty or insurance of a loan. As explained in the paragraphs related to fraud by lenders, VA believes a holder that commits fraud against the government forfeits the protections Congress wanted to provide the secondary market under 38 U.S.C. 3721.

Paragraph (d)(3) would include the heading ''Material misrepresentations related to the quantum or quality of title'', and would state that VA may adjust the amount of the guaranty or insurance, or any loan guaranty certificate, if VA determines the holder knew or should have known, at the time the holder reports the loan for guaranty claim, of a material misrepresentation as to the quantum or quality of, or title to, the property securing the loan such that the property would not have been acceptable to prudent lending institutions, investors, informed buyers, title companies, and attorneys, generally, in the community in which the property is situated. VA would not, however, adjust the guaranty or insurance amount for title exceptions enumerated as acceptable under § 36.4354(b), unless otherwise specified in subpart B.

The proposed phrasing is almost identical to the current rule. The changes are intended as clarifications. For instance, VA would replace ''limitations'' under § 36.4354(b) with ''title exceptions enumerated as acceptable,'' to eliminate some of the current ambiguity that may surround VA's intent. Similarly, VA would add the caveat ''unless otherwise specified'' in subpart B, to remind readers that the rule is part of a coherent and consistent framework and cannot be taken out of context. A good example of how this might apply can be found in § 36.4327, which addresses authorized and unauthorized releases of security. If a holder allowed a new oil and gas lease—a type of title exception that could generally be acceptable under § 36.4354(b)—but did so without following the steps prescribed in § 36.4327 for partial releases in interest, the unauthorized release could affect the amount of guaranty payable on an eventual default. This is the way VA applies the current rule, but VA believes the current rule's text may not express it clearly enough. Thus, VA believes that, as a part of this regulatory update, VA should specify the scope of the rule more explicitly.

Paragraph (d)(4) would include the heading ''Noncompliance with servicing requirements and material misrepresentation in reporting.'' Paragraph (d)(4)(i) would provide that VA may adjust amounts payable to the holder if VA determines the holder failed to comply with the statutory requirements under 38 U.S.C. chapter 37 or the implementing regulations concerning guaranty or insurance of loans to veterans at 38 CFR part 36 or if VA determines the holder knew or should have known of a material misrepresentation in reporting to the Secretary or in submitting a claim to VA for payment of the guaranty or insurance. Paragraph (d)(4)(ii) would specify that the burden of proof would be upon the holder to establish that no increase of ultimate liability is attributable to such failure or misrepresentation. Paragraph (d)(4)(iii) would explain that the amount of increased liability of the Secretary would be offset by deduction from the amount of the guaranty or insurance otherwise payable, or if based upon loss related to property that secured the guaranteed loan, would be offset by crediting to the indebtedness the amount of the impairment as proceeds of the sale of security in the final accounting to the Secretary. Paragraph (d)(4)(iv) would provide that, to the extent the loss resultant from the failure or misrepresentation prejudices the Secretary's right of subrogation, acceptance by the holder of the guaranty or insurance payment would subordinate the holder's right to those of the Secretary.

In revising the rule, VA would eliminate the list of potential reasons for adjustment found in current paragraphs (b)(1) through (9). Stakeholders should not misconstrue this change to mean that VA would no longer consider the failures outlined in the current rule as reasons to adjust the guaranty. Rather, VA simply believes that the new rewrite would eliminate the need to enumerate them in the current way. For instance, current paragraph (b)(1) of § 36.4328 reminds that one of the fundamental requirements for a VA-guaranteed loan is that it be obtained and retained as a superior lien. See 38 CFR 36.4328(b)(1). See also, for example, 38 U.S.C. 3703(d) and 38 CFR 36.4327. The proposed rule would omit the specific enumeration of this as an example of a failure that would result in an adjustment. But even so, VA would, under the proposed rule, still adjust the guaranty for such a failure, because proposed paragraph (d)(4)(i) would provide that VA may adjust the amount of the guaranty or insurance, or any loan guaranty certificate, if VA determines the holder failed to comply with the statutory requirements under 38 U.S.C. chapter 37 or the implementing regulations concerning guaranty or insurance of loans to veterans. VA welcomes comment on whether stakeholders would prefer to retain a more illustrative list as a way of providing stakeholders further understanding. VA does not intend for an attempt at simplification of the rule to result in holders being unsettled about the reliability of the guaranty; nor does VA want veterans, consumer advocates, or those concerned about the welfare of program solvency to be concerned about the scope of the change.

5. Liability After Payment of Guaranty or Insurance, or VA Purchase

VA would redesignate current paragraph (c) of 38 CFR 36.4328 as new paragraph (e). VA would revise new paragraph (e) to clarify the wording for readability, but the proposed change is not substantive.

6. Additional Remedies

In § 36.4328, VA would add a new paragraph (f), under the heading, ''Additional remedies'', to ensure full transparency related to VA's enforcement authorities. VA would provide that, any action VA takes under this section may be taken in addition to other remedies available to VA, such as debarment and suspension pursuant to 38 U.S.C. 3704 and 2 CFR parts 180 and 801 or loss of automatic processing authority pursuant to 38 U.S.C. 3702, or other actions by the Government under any other law including but not limited to title 18 U.S.C. and 31 U.S.C. 3732. Although the paragraph is not legally necessary to preserve VA's rights of enforcement, VA believes an intentional, explicit redundancy would be helpful in emphasizing the point that this section does not constitute the full range of potential action VA could or would take if VA discovered, for instance, a pattern of intentional material misrepresentations, seemingly incorporated into business practices after a monetary cost-benefit calculus.

Lastly, VA would revise the authority citation for § 36.4328 to note 38 U.S.C. 3703, 3704, 3710, 3720, 3721, and 3732.

Executive Orders 12866, 13563, and 14094

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

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). To assess whether the proposed rule could be expected to have a ''significant economic impact'' on a substantial number of small entities, VA considers the annual costs and transfer payments of the rule for and from small entities compared to their annual revenue. As described in the impact analysis, the estimated impacts of this rulemaking on lenders include transfers from lenders to VA associated with overcharge fees and guarantee claim amounts, the cost of rule familiarization and system updates to lenders, and cost savings associated with reduced burden associate with API utilization. A more detailed discussion of these impacts can be found in the impact analysis.

VA was able to estimate the size of 1,203 out of 1,450 active lenders that originated VA loans within the past three fiscal years using a combination of sources. VA relied on the size standards from the Small Business Administration (SBA) [1] and used data from Data Axle and Factiva (two business data providers) along with data from the

[1] U.S. Small Business Administration, *SBA Table of Size Standards,* Retrieved from: *https://www.sba.gov/document/support-table-size-standards.*

Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Administration (NCUA).[2] Of the 1,203 lenders with sufficient data for VA to estimate their size, 703 (58.4%) are considered small. The average annual revenue of these 640 lenders is estimated at $25.51 million.[3]

The costs of the one-time rule familiarization in the first year of the rule (fiscal year [FY] 2025) are estimated at approximately $240 for each lender, including the small lenders. VA estimates that the net cost savings to lenders from the reduction in reporting burdens and system updates ranges from $1,066 (FY 2025) to $1,110 (FY 2034) per small lender.[4] The estimated transfer payment from lenders in the form of overcharge fees and guarantee claim amounts ranges from $2,547 (FY 2025) to $9,373 (FY 2034) per small lender. Adding these impacts results in the average estimated annual burden of [$2,547 + $240 −$1,066 =] $1,721 to [$9,373 −$1,110 =] $8,263 per small lender from the first and final years of the analysis period (FY 2025 and FY 2034), respectively. VA considers a significant economic impact to equal or exceed 3 percent of annual revenue. The burden of the rule as a proportion of small lender revenue ranges from 0.007 percent to 0.032 percent for FY 2025 and FY 2034, respectively. On this basis, the Secretary certifies that adopting this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. Therefore, under 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

[2] VA uses data from Data Axle and Factiva to determine the industry (as identified by the primary North American Industry Classification System [NAICS] code) for the active VA home loan lenders. For industries where size standards are determined by annual revenue, VA compares the revenue of each lender in these industries as reported in Data Axle and Factiva to the SBA annual revenue threshold for small businesses. For industries where size standards are determined by assets, VA compares the relevant SBA threshold for small businesses to asset data from the FDIC for lenders with primary NAICS codes 522110 (Commercial Banking) and 522180 (Savings Institutions and Other Depository Credit Intermediation), and asset data from the NCUA for lenders with a primary NAICS code of 522130 (Credit Unions).

[3] VA averages the sales volumes from Data Axle and Factiva for all lenders considered small, including those primarily considered commercial banks, savings institutions, and credit unions.

[4] VA scales the costs/transfers by first dividing the total average annual volume of loans guaranteed by small lenders in the past three full fiscal years (319,924) by the total average annual loans guaranteed in the same period by all lenders with enough information to classify their size (1,004,465). Multiplying that ratio (31.85) by the total costs and transfers that vary depending on lender size gives VA the total costs and transfers that fall on small lenders. Dividing the total costs and transfers that fall on small lenders by the total estimated number of small lenders (703), which is the percent of small lenders from the classified population (58.4%) multiplied by all VA lenders (1,450)) provides the average annual cost and transfers for and from each small lender.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

As noted above, this proposed rule contains collections of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that are currently approved by OMB but do not require revision. These information collections have valid OMB control numbers of 2900–0516 and 2900–0521. Additionally, this proposed rule includes provisions constituting a revised collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that requires approval by OMB under existing OMB control number 2900–0909. Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval.

OMB assigns control numbers to collections of information it approves. VA 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. If OMB does not approve the collection of information as requested, VA will immediately remove the provisions containing the collection of information or take such other action as is directed by OMB.

Comments on the revised collection of information contained in this rulemaking should be submitted through *www.regulations.gov.* Comments should be sent within 60 days of publication of this rulemaking. The collection of information associated with this rulemaking can be viewed at: *www.reginfo.gov/public/do/PRAMain.*

OMB is required to make a decision concerning the collection of information contained in this rulemaking between 30 and 60 days after publication of this rulemaking in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the provisions of this rulemaking.

The Department considers comments by the public on a revised collection of information in—

- Evaluating whether the revised collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the revised collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The revised collection of information associated with this rulemaking contained in 38 CFR 36.4303 is described immediately following this paragraph, under its respective title.

Title: Guaranteed or Insured Loan Reporting Requirements.

OMB Control No: 2900–0909.

CFR Provision: 38 CFR 36.4303.

- *Summary of collection of information:* The revised collection of information would require all lenders that participate in the VA-guaranteed home loan program to submit the reporting and certification requirements as noted in proposed 38 CFR 36.4303 in an electronic format using an API, as designated by the Secretary. While VA currently requires lenders to report certain loan information and certifications as part of the existing loan guaranty certificate and reporting process, this proposed rule would require additional information including the loan application (*e.g.,* Uniform Loan Application Dataset), closing disclosures (*e.g.,* Uniform Closing Dataset), and other information necessary for VA evaluation and oversight purposes. Additionally, lenders would be required to submit information using an API rather than the current system, WebLGY.
- *Description of need for information and proposed use of information:* VA would use this information to ensure that veterans have stronger protections

against lenders closing nonconforming loans through increased VA oversight, as the Guaranty Remittance API would allow VA to review 100 percent of guaranteed loans for policy conformance with certain VA statutory and regulatory requirements that VA only currently evaluates on three percent of loans as part of its full file loan review and audit processes. Specifically, VA would be able to evaluate loan closing data on 100 percent of guaranteed loans for VA policy conformance with certain statutory, regulatory, or other requirements. As a result, VA would be able to cite defenses to paying the guaranty based on fraud or material misrepresentation and establish partial defenses to the amount payable on the guaranty or insurance. Lenders and holders would have a clear understanding of how failure to comply with VA's statutory and regulatory requirements affect the guaranty to be paid by VA.

- *Description of likely respondents:* Lenders.
- *Estimated number of respondents:*

Loans reported and certified: 484,019 annually.

Loans requiring VA prior approval: 1,815 annually.

Loans requiring Late Reporting Statements: 24,201 annually.

- *Estimated frequency of responses:* One time per transaction.
- *Estimated average burden per response:*

Loans reported and certified: 0.008 hours (about 30 seconds). This proposed rulemaking would result in an estimated reduction of 0.15 average burden hour per response (about 9 minutes) for this information collection.

Loans requiring VA prior approval: 0.008 hours (about 30 seconds). This proposed rulemaking would result in an estimated reduction of 0.04 average burden hour per response (about 2 minutes and 30 seconds) for this information collection.

Loans requiring Late Reporting Statements: 0.03 hours (about 2 minutes). VA does not estimate any incremental change to the average burden hour per response for this information collection.

- *Estimated total annual reporting and recordkeeping burden:* VA estimates a total annual reporting and recordkeeping burden of 4,612 hours for lenders. Using VA's revised estimate of total annual responses (loans) of 484,019 (down from 843,150 loans) loan estimate, this rulemaking would result in incremental annual burden hour savings of 72,675 burden hours.

Loans reported for Guaranty (including prior approval): 3,886 hours ((484,019+1,815) × 0.008 hours).

- *Estimated cost to respondents per year:* VA estimates the annual burden cost to lenders to be $187,339.[5] Using VA's revised estimate of total annual responses (loans) of 484,019, this rulemaking would result in incremental annual burden cost savings of $2,836,172 for FY 2025 (average of high/low estimated net cost savings) and incremental annual burden cost savings of $2,952,050 in the following outyears.
- VA also estimates this proposed rulemaking results in a one-time system alignment cost to lenders and LOS providers ranging from $88,288 to $143,468. More details about this estimate can be found in the impact analysis.

List of Subjects in 38 CFR Part 36

Condominiums, Housing, Individuals with disabilities, Loan programs—housing and community development, Loan programs—Indians, Loan programs—veterans, Manufactured homes, Mortgage insurance, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on November 12, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

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

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 36 as set forth below:

PART 36—LOAN GUARANTY

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501 and 3720.

Subpart B—Guaranty or Insurance of Loans to Veterans with Electronic Reporting

■ 2. Revise and republish § 36.4303 to read as follows:

§ 36.4303 Reporting requirements.

(a) *Automatically guaranteed loans.* (1) For loans automatically guaranteed under 38 U.S.C. 3703(a)(1), a lender of a class described under 38 U.S.C. 3702(d) shall report the loan in an electronic format using an application programming interface, as designated by the Secretary. VA will announce in the **Federal Register** any designation of a new application programming interface at least 60 days before a lender would be required to use the application programming interface for reporting the loan. The lender must also submit the information required under paragraph (a)(2) of this section using the application programming interface designated by the Secretary.

(2) The lender must submit the following not later than 15 days after the loan closing date:

(i) The appropriate funding fee as prescribed by 38 U.S.C. 3729;

(ii) Required information regarding the loan, including but not limited to the loan application (*e.g.,* Uniform Loan Application Dataset), closing disclosures (*e.g.,* Uniform Closing Dataset), and any other information required by the Secretary as necessary to issue a loan guaranty certificate;

(iii) Required lender certifications related to the loan; and

(iv) Certification of the veteran at the time the loan is closed as to their occupancy of the property.

(A) In the case of a loan for the purchase or construction of a residential property, the veteran shall certify that the veteran intends to occupy such property as the veteran's home.

(B) In the case of a loan for the repair, alteration, or improvement of residential property, the veteran shall certify that the veteran presently occupies the property as the veteran's home. An exception to this paragraph (a)(2)(iv)(B) is if the home improvement or refinancing loan is for extensive changes to the property that will prevent the veteran from occupying the property while the work is being completed. In such a case, the veteran shall certify that the veteran intends to occupy or reoccupy the property as the veteran's home upon completion of the substantial improvements or repairs.

(C) In the event a veteran is in active-duty status as a member of the Armed Forces and is unable to occupy the property because of such status, VA will accept:

(*1*) A certification from the spouse of the veteran that the veteran's spouse occupies or intends to occupy the property as their home as required by paragraphs (a)(2)(iv)(A) and (B) of this section; or

(*2*) A certification from the veteran's attorney-in-fact or from the legal guardian of a dependent child of the veteran that the dependent child

[5] Bureau of Labor Statistics. (2024). *May 2023–National Occupational Employment and Wage Estimates.* Retrieved from: *https://www.bls.gov/oes/current/oes_nat.htm;* Occupation code 13–2072.

occupies or intends to occupy the property as the dependent child's home as required by paragraphs (a)(2)(iv)(A) and (B) of this section.

(D) In the case of an interest rate reduction refinancing loan, the veteran shall certify as to meeting one of the occupancy requirements at § 36.4307(a)(2).

(3) Upon acceptance of the information prescribed in paragraph (a)(2) of this section, VA shall issue the loan guaranty certificate subject to the provisions of § 36.4328.

(b) *Prior-approval loans.* (1) In the case of a loan made by a lender without the authority to close loans on an automatic basis or any loan where the Secretary provides advance notice of the need for prior approval, the lender must report the loan to the Secretary before the loan closing for the Secretary's review. The lender must report the loan in an electronic format and, if designated by the Secretary, using an application programming interface. VA will announce in the **Federal Register** any designation of a new application programming interface at least 60 days before a lender would be required to use the application interface for reporting the loan for review prior to the loan closing. The lender must also submit the information required under paragraph (b)(2) of this section.

(2) The lender must submit certain pre-closing and underwriting loan documents, including but not limited to—

(i) The loan application (*e.g.,* Uniform Residential Loan Application);

(ii) Credit reports obtained in connection with the loan;

(iii) Certain VA forms as required by the Secretary;

(iv) The occupancy certification prescribed in paragraph (a)(2)(iv) of this section obtained at the time of loan application; and

(v) Any other information requested by the Secretary.

(3) Upon review and approval of the of the information prescribed by paragraph (b)(2) of this section, VA shall:

(i) Issue a certificate of commitment which shall commit a loan guaranty certificate to the holder of the loan upon the payment of the full proceeds of the loan for the purposes described in the original report and provided the requirements in paragraph (b)(4) of this section are met; or

(ii) Notify the lender that the loan cannot close as a VA-guaranteed loan; however, the lender may resubmit the loan to VA for prior approval after the lender corrects any issues identified by VA.

(4) The lender would be required to report the loan to VA not later than 15 days after the loan closing date using the same application programming interface (API) as when reporting loans closed on an automatic basis. The lender must also submit the following, using the designated API, not later than 15 days after the loan closing date:

(i) The appropriate funding fee as prescribed by 38 U.S.C. 3729;

(ii) The information prescribed in paragraph (a)(2)(ii) of this section;

(iii) Evidence that any conditions identified by the Secretary in the certificate of commitment are satisfied in order for the Secretary to issue a loan guaranty certificate;

(iv) Evidence showing the property securing the loan is that for which the certificate of commitment was issued;

(v) Evidence that all property purchased or acquired with the proceeds of the loan has been encumbered as required by VA;

(vi) Required lender certifications for the loan; and

(vii) The occupancy certification prescribed in paragraph (a)(2)(iv) of this section obtained at the time of loan closing.

(5) Upon acceptance of the information prescribed in paragraph (b)(4) of this section, VA shall issue the loan guaranty certificate subject to the provisions of § 36.4328.

(6) If the lender does not close the loan for which VA prior approval was obtained, the certificate of commitment shall have no further effect.

(c) *Late reporting of closed loans.* For loans not reported within the timing requirements of this section, evidence of guaranty will be issued only if the loan report is accompanied by a statement from the lending institution that explains why the loan was reported late and whether, since origination, the loan was in default. The statement must identify the case or cases in issue and set forth the specific reason or reasons why the loan was not submitted on time. Upon receipt of such a statement, evidence of guaranty will be issued. A pattern of late reporting and the reasons therefore will be considered by VA in taking action under §§ 36.4336 and 36.4353.

(d) *Form of guaranty evidence.* Evidence of a guaranty shall be issued by the Secretary as a loan guaranty certificate. For insured loans, notice of credit to an insurance account will be given to the lender.

(e) *Exclusions from the guaranty or insurance amount.* Any amounts that are disbursed by a lender for an ineligible purpose shall be excluded in computing the amount of guaranty or insurance credit.

(f) *Veteran's right to exit purchase contract.* No guaranty or insurance commitment or evidence of guaranty or insurance will be issuable in respect to any loan to finance a contract that:

(1) Is for the purchase, construction, repair, alteration, or improvement of a dwelling or farm residence;

(2) Is dated on or after June 4, 1969;

(3) Provides for a purchase price or cost to the veteran in excess of the reasonable value established by the Secretary; and

(4) Was signed by the veteran prior to the veteran's receipt of notice of such reasonable value; unless such contract includes, or is amended to include, a provision that reads substantially as follows:

Figure 1 to Paragraph (f)(4)

It is expressly agreed that, notwithstanding any other provisions of this contract, the purchaser shall not incur any penalty by forfeiture of earnest money or otherwise be obligated to complete the purchase of the property described herein, if the contract purchase price or cost exceeds the reasonable value of the property established by the Department of Veterans Affairs. The purchaser shall, however, have the privilege and option of proceeding with the consummation of this contract without regard to the amount of the reasonable value established by the Department of Veterans Affairs.

(g) *Processing and reporting a loan assumption.* With respect to any loan for which a commitment was made on or after March 1, 1988, the Secretary must be notified whenever the holder receives knowledge of disposition of the residential property securing a VA-guaranteed loan.

(1) If the seller applies for prior approval of the assumption of the loan, then:

(i) A holder (or its authorized servicing agent) who is an automatic lender must examine the creditworthiness of the purchaser and determine compliance with the provisions of 38 U.S.C. 3714. The creditworthiness review must be performed by the party that has automatic authority. If both the holder and its servicing agent are automatic lenders, then they must decide between themselves which one will make the determination of creditworthiness, whether the loan is current, and whether there is a contractual obligation to assume the loan, as required by 38 U.S.C. 3714. If the actual loan holder does not have automatic authority and

its servicing agent is an automatic lender, then the servicing agent must make the determinations required by 38 U.S.C. 3714 on behalf of the holder. The actual holder will remain ultimately responsible for any failure of its servicing agent to comply with the applicable law and VA regulations.

(A) If the assumption is approved and the transfer of the security is completed, then the notice required by this paragraph (g) shall consist of the credit package (unless previously provided in accordance with paragraph (g)(1)(i)(B) of this section) and a copy of the executed deed and/or assumption agreement as required by VA office of jurisdiction. The notice shall be submitted to the Department with the VA receipt for the funding fee provided for in § 36.4313(e)(2).

(B) If the application for assumption is disapproved, the holder shall notify the seller and the purchaser that the decision may be appealed to the VA office of jurisdiction within 30 days. The holder shall make available to that VA office all items used by the holder in making the holder's decision in case the decision is appealed to VA. If the application remains disapproved after 60 days (to allow time for appeal to and review by VA), then the holder must refund $50 of any fee previously collected under the provisions of § 36.4313(d)(8). If the application is subsequently approved and the sale is completed, then the holder (or its authorized servicing agent) shall provide the notice described in paragraph (g)(1)(i)(A) of this section.

(C) In performing the requirements of paragraph (g)(1)(i)(A) or (B) of this section, the holder must complete its examination of the creditworthiness of the prospective purchaser and advise the seller no later than 45 days after the date of receipt by the holder of a complete application package for the approval of the assumption. The 45-day period may be extended by an interval not to exceed the time caused by delays in processing of the application that are documented as beyond the control of the holder, such as employers or depositories not responding to requests for verifications, which were timely forwarded, or follow-ups on those requests.

(ii) If neither the holder nor its authorized servicing agent is an automatic lender, the notice to VA shall include:

(A) Advice regarding whether the loan is current or in default;

(B) A copy of the purchase contract; and

(C) A complete credit package developed by the holder which the Secretary may use for determining the creditworthiness of the purchaser.

(D) The notice and documents required by this section must be submitted to the VA office of jurisdiction no later than 35 days after the date of receipt by the holder of a complete application package for the approval of the assumption, subject to the same extensions as provided in paragraph (g)(1)(i) of this section. If the assumption is not automatically approved by the holder or its authorized agent, pursuant to the automatic authority provisions, $50 of any fee collected in accordance with § 36.4313(d)(8) must be refunded. If the Department of Veterans Affairs does not approve the assumption, the holder will be notified and an additional $50 of any fee collected under § 36.4313(d)(8) must be refunded following the expiration of the 30-day appeal period set out in paragraph (g)(1)(i)(B) of this section. If such an appeal is made to the Department of Veterans Affairs, then the review will be conducted at the Department of Veterans Affairs office of jurisdiction by an individual who was not involved in the original disapproval decision. If the application for assumption is approved and the transfer of security is completed, then the holder (or its authorized servicing agent) shall provide the notice required in paragraph (g)(1)(i)(A) of this section.

(2) If the seller fails to notify the holder before disposing of property securing the loan, the holder shall notify the Secretary within 60 days after learning of the transfer. Such notice shall advise whether or not the holder intends to exercise its option to immediately accelerate the loan and whether or not an opportunity will be extended to the transferor and transferee to apply for retroactive approval of the assumption under the terms of this paragraph (g).

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900–0516, 2900–0521, and 2900–0909).

(Authority: 38 U.S.C. 3702, 3703, 3704, 3710, 3714, and 3729)

■ 3. Revise and republish § 36.4328 to read as follows:

§ 36.4328 Partial or total loss of guaranty or insurance.

(a) *No liability on the guaranty or insurance due to forgery or falsification of documents.* VA will have no liability on account of a guaranty or insurance of a loan, or any certificate or other evidence thereof, if—

(1) A signature to the note, the mortgage, or any other loan papers is a forgery;

(2) The application for guaranty or insurance is a forgery; or

(3) The certificate of discharge or the certificate of eligibility is counterfeited or falsified or is not issued by the Government.

(b) *Material misrepresentation by a lender.* If a lender knew or should have known of a material misrepresentation at the time of the reporting of the loan to VA under § 36.4303, VA may adjust the maximum guaranty amount on the loan guaranty certificate or VA may demand indemnification from the lender, as provided in paragraph (c) of this section.

(1) *Material misrepresentation is identified before VA issues the loan guaranty certificate.* VA will notify the lender of VA's findings that the lender made a material misrepresentation when reporting the loan and VA will issue the loan guaranty certificate with a maximum guaranty amount of one dollar.

(2) *Material misrepresentation is identified after VA issues the loan guaranty certificate.* VA will notify the originating lender of VA's findings and that—

(i) If the originating lender is the current loan holder, the maximum guaranty amount on the loan has been reduced to one dollar; or

(ii) If the originating lender is not the current loan holder, VA is requiring the lender to indemnify VA for a guaranty or insurance claim for the life of the loan, including any subsequent interest rate reduction refinancing loans, as provided in paragraph (c) of this section.

(3) *Corrective action by lender.* (i) When notifying the lender of VA's findings under paragraph (b)(1) or (2) of this section, VA will also identify corrective action(s), if any, VA determines necessary to remediate the effects of the material misrepresentation. After VA receives evidence confirming the effects of the material misrepresentation have been remediated, VA may either restore the guaranty to the full amount or cancel the indemnification, as applicable.

(ii) If VA determines the effects of the material misrepresentation cannot be remediated, VA will require the originating lender to indemnify VA, as provided in paragraph (c) of this section.

(c) *Indemnification after VA issues the loan guaranty certificate.* Except as provided in paragraph (b) of this section, for loans closed on or after [EFFECTIVE DATE OF FINAL RULE], a

lender agrees to indemnify VA in accordance with the following:

(1) *Violations of underwriting requirements.* If VA determines the originating lender made a material misrepresentation relating to the credit underwriting of a loan pursuant to the provisions of § 36.4340, the originating lender must abstain from filing a guaranty or insurance claim in the event of a loan default and must indemnify VA for any and all losses arising from or related to a guaranty or insurance claim made on the loan within five years of the date of the loan guaranty certificate, including any subsequent interest rate reduction refinancing loans. Examples of a material misrepresentation related to the provisions of § 36.4340 include the lender's failure to—

(i) Verify assets, employment, and credit reports (§ 36.4340(j));

(ii) Determine or accurately determine the veteran's acceptable debt-to-income ratio (§ 36.4340(c)); or

(iii) Ensure residual income guidelines were met (§ 36.4340(e)).

(2) *Non-underwriting related violations.* If VA determines the originating lender committed fraud or made an uncorrectable material misrepresentation relating to noncompliance with requirements other than those prescribed in § 36.4340, the originating lender must abstain from filing a guaranty or insurance claim in the event of a loan default and must indemnify VA for any and all losses arising from or related to a guaranty or insurance claim, for the life of the loan, including any subsequent interest rate reduction refinancing loans.

(3) *Notice of indemnification.* The Secretary will notify the lender when VA determines that a loan is subject to indemnification.

(d) *Guaranty adjustments to holder*—(1) *Fraud in obtaining the guaranty or insurance.* There shall be no liability on account of a guaranty or insurance, or any loan guaranty certificate, with respect to a transaction in which VA determines the holder or holder's agent participated in fraud in procuring the guaranty or insurance.

(2) *Holder fraud in obtaining a claim payment on the guaranty or insurance.* There shall be no liability on a guaranty or insurance claim if the holder commits fraud in obtaining a claim payment from VA on the guaranty or insurance of a loan.

(3) *Material misrepresentations related to the quantum or quality of title.* VA may adjust the amount of the guaranty or insurance, or any loan guaranty certificate, if VA determines the holder knew or should have known, at the time the holder reports the loan for guaranty claim, of a material misrepresentation as to the quantum or quality of, or title to, the property securing the loan such that the property would not have been acceptable to prudent lending institutions, investors, informed buyers, title companies, and attorneys, generally, in the community in which the property is situated. VA will not, however, adjust the guaranty or insurance amount for title exceptions enumerated as acceptable under § 36.4354(b), unless otherwise specified in this subpart.

(4) *Noncompliance with servicing requirements and material misrepresentation in reporting.* (i) VA may adjust the amounts payable to the holder if VA determines—

(A) The holder failed to comply with the statutory requirements under 38 U.S.C. chapter 37 or the implementing regulations concerning guaranty or insurance of loans to veterans at 38 CFR part 36; or

(B) The holder knew or should have known of a material misrepresentation in reporting to the Secretary or in submitting a claim to VA for payment of the guaranty or insurance.

(ii) The burden of proof would be upon the holder to establish that no increase of ultimate liability is attributable to such failure or misrepresentation.

(iii) The amount of increased liability of the Secretary would be offset by deduction from the amount of the guaranty or insurance otherwise payable, or if based upon loss related to property that secured the guaranteed loan, would be offset by crediting to the indebtedness the amount of the impairment as proceeds of the sale of security in the final accounting to the Secretary.

(iv) To the extent the loss resultant from the failure or misrepresentation prejudices the Secretary's right of subrogation, acceptance by the holder of the guaranty or insurance payment would subordinate the holder's right to those of the Secretary.

(e) *Liability after payment of guaranty or insurance, or VA loan purchase.* If after the payment on a guaranty or an insurance loss, or after a loan is transferred pursuant to § 36.4320(a), the Secretary discovers any fraud, material misrepresentation, or failure to comply with the regulations at 38 CFR part 36 and determines that an increased loss to the Government resulted therefrom, then the transferor or person to whom such payment was made shall be liable to the Secretary for the amount of the loss caused by such fraud, material misrepresentation, or failure.

(f) *Additional remedies.* Any action VA takes under this section may be taken in addition to other remedies available to VA, such as debarment and suspension pursuant to 38 U.S.C. 3704 and 2 CFR parts 180 and 801 or loss of automatic processing authority pursuant to 38 U.S.C. 3702, or other actions by the Government under any other law including but not limited to title 18 U.S.C. and 31 U.S.C. 3732.

(Authority: 38 U.S.C. 3703, 3704, 3710, 3720, 3721, and 3732)

[FR Doc. 2024–26776 Filed 11–19–24; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2024–0451; FRL–12278–02–R4]

Tennessee: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Tennessee has applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The EPA has reviewed Tennessee's application and has determined, subject to public comment, that these changes satisfy all requirements needed to qualify for final authorization. Therefore, in the ''Rules and Regulations'' section of this **Federal Register**, we are authorizing Tennessee for these changes as a final action without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Comments must be received on or before December 20, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2024–0451, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written

comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The EPA encourages electronic submittals, but if you are unable to submit electronically or need other assistance, please contact Robin Billings, the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. Please also contact Robin Billings if you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you.

All documents in the docket are listed in the *www.regulations.gov* index. Publicly available docket materials are available electronically in *www.regulations.gov.* For alternative access to docket materials, please contact Robin Billings, the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Robin Billings; RCRA Programs and Cleanup Branch; Land, Chemicals and Redevelopment Division; U.S. Environmental Protection Agency; Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960; telephone number: (404) 562–8515; fax number: (404) 562–9964; email address: *billings.robin@epa.gov.*

SUPPLEMENTARY INFORMATION: This document proposes to take action on Tennessee's changes to its hazardous waste management program under the Resource Conservation and Recovery Act (RCRA), as amended. We have published a final action authorizing these changes in the ''Rules and Regulations'' section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the final action.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will either withdraw the final action, or issue a notice containing a response to comments that either reverses the decision or affirms that the final action will take effect. In the event that the final action is withdrawn, we would address all public comments in a subsequent final action and make any further decision on the authorization of the State program changes after considering all comments received during the comment period.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

Dated: November 6, 2024.

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

[FR Doc. 2024–26923 Filed 11–19–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[WC Docket No. 18–336; FCC 24–111; FR ID 260903]

Implementation of the National Suicide Hotline Act of 2018

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes and seeks comment on requiring covered text providers, including wireless providers, to support georouting to ensure that the 988 Suicide & Crisis Lifeline (988 Lifeline or Lifeline) may route covered 988 text messages to appropriate local crisis centers. Covered 988 text messages are currently routed to crisis centers using information conveyed by the number assigned to a help-seeker's device, such as an area code, which may not match the text user's physical location. To better connect 988 text users with critical local intervention services, the Commission proposes to require covered text providers to send georouting data to the 988 Lifeline to the same extent that they are required to send covered 988 text messages to the Lifeline.

DATES: Comments are due on or before December 20, 2024, and reply comments are due on or before January 9, 2025.

ADDRESSES: You may submit comments, identified by WC Docket No. 18–336, by any of the following methods:

■ *Federal Communications Commission's Website: http://apps.fcc.gov/ecfs/.* Follow the instructions for submitting comments.

■ *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Merry Wulff, Attorney Advisor, Competition Policy Division, Wireline Competition Bureau, at *Merry.Wulff@fcc.gov* or at (202) 418–1084. For additional information concerning the Paperwork Reduction Act proposed information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele, *Nicole.Ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Further Notice of Proposed Rulemaking* (*FNPRM*) in WC Docket No. 18–336, FCC 24–111, adopted October 17, 2024, and released October 18, 2024. The full text of this document is available for public inspection at the following internet address: *https://docs.fcc.gov/public/attachments/FCC-24-111A1.pdf.*

Paperwork Reduction Act

The *FNPRM* may contain proposed new and revised information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13). In addition, pursuant to the Small Business Paperwork Relief Act of 2002 (Pub. L. 107–198) *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Comment Filing Procedures

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

• *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://www.fcc.gov/ecfs/.*

• *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

• Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.

• Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8 a.m. and 4 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

• Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

• Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Confidentiality. Some information and materials requested by this *FNPRM* may be confidential and proprietary. Individuals and entities may request that confidential and proprietary information submitted to the Commission be withheld from public inspection consistent with § 0.459 of the Commission's rules.

Ex Parte Rules

This proceeding in this *FNPRM* shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Providing Accountability Through Transparency Act

The Providing Accountability Through Transparency Act (Pub. L. 118–9) requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. The required summary of this *FNPRM* is available at *https://www.fcc.gov/proposed-rulemakings.*

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, as amended (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of the potential rule and policy changes contained in the *FNPRM.* The Commission invites the general public, particularly small businesses, to comment on the IRFA. Comments must be filed by the deadlines for comments on the *FNPRM* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA and must be filed in WC Docket No. 18–336.

Synopsis

Third Further Notice of Proposed Rulemaking

1. Texting is an important mode of communication to the 988 Lifeline and is the preferred means of communicating among certain demographic groups, many of whom are at increased risk for mental health crises. In this *FNPRM,* we propose to require that covered text providers support georouting to ensure that the 988 Lifeline may route covered 988 text messages to the appropriate local crisis center to enhance the support and resources available to text users in crisis. We also tentatively conclude that, at a minimum, Commercial Mobile Radio Service providers must support georouting for Short Message Service (SMS) text messages to 988. In addition, we propose that covered text providers be subject to requirements to send georouting data to the 988 Lifeline to the same extent that they are currently required to send covered 988 texts to the 988 Lifeline. These proposed requirements will build on the implementation of georouting for wireless 988 voice calls and ensure parity between texts and voice calls to 988.

Background

2. In 2021, the Commission adopted requirements for covered text providers to route covered 988 text messages to the 988 Lifeline. The Commission defined ''covered text provider'' as including ''all CMRS providers as well as all providers of interconnected text messaging services that enable consumers to send text messages to and receive text messages from all or substantially all text-capable U.S. telephone numbers, including through the use of applications downloaded or otherwise installed on mobile phones.'' The Commission's goal in the 2021 *Text-to-988 Second Report and Order,* 87 FR 398 (Jan. 5, 2022), was to make text-to-988 rapidly available nationwide to improve access to mental health resources, while balancing the need for covered text providers to flexibly choose the most effective method of compliance. The Commission defined ''covered 988 text message'' as ''a 988 text message in SMS format and any other format that the Wireline Competition Bureau has determined must be supported by covered text providers.'' Currently, the Commission requires covered text providers to route covered 988 texts to the 988 Lifeline, but it does not require covered text providers to provide any additional information about the location of the

text user. Under the rules adopted in the *Third Report and Order* (FCC 24–111), published elsewhere in this issue of the **Federal Register**, texts to 988 must be delivered to the national suicide prevention and mental health crisis hotline system maintained by the Assistant Secretary for Mental Health and the Secretary of Veterans Affairs. In the *Implementation of the National Suicide Hotline Act of 2018, Second Further Notice of Proposed Rulemaking,* 89 FR 46340 (May 29, 2024), we sought comment on improving routing for 988 text messages.

3. The Commission's definition of ''988 text message'' sets the possible scope of text formats which covered text providers may be obligated to support for the delivery of 988. ''Covered 988 text messages'' are a subset of 988 text messages that are in SMS format or any other format that the Wireline Competition Bureau has determined must be supported by covered text providers. The Commission delegated to the Wireline Competition Bureau the authority to make future determinations to require covered text providers to support additional text formats in consultation with Federal partners and in consideration of what text formats the 988 Lifeline is capable of receiving. The Wireline Competition Bureau annually consults with the U.S. Department of Health and Human Services' (HHS) Substance Abuse and Mental Health Services Administration (SAMHSA) on the implementation of any new texting formats to 988 and issues a Public Notice either announcing that no new texting formats are required or seeking comment on implementation parameters for covered text providers to transmit any additional text message formats to 988. The Wireline Competition Bureau then may, under delegated authority, release a Public Notice requiring covered text providers to implement text-to-988 for these additional text message formats and setting implementation dates. As part of its annual consultation with SAMHSA, the Wireline Competition Bureau has only applied text-to-988 requirements to the text formats that the 988 Lifeline currently supports. At present, the Wireline Competition Bureau only requires covered text providers to route 988 text messages in SMS format.

Applicability of Georouting Proposed Rules to 988 Covered Text Providers

4. In this *FNPRM,* we propose to require that covered text providers implement the capability to provide georouting data with covered 988 text messages to the Lifeline Administrator and provide georouting data with covered 988 text messages to the Lifeline Administrator. We propose that the scope of this requirement be consistent with the scope of the existing requirement for covered text providers to deliver covered 988 text messages to the 988 Lifeline. As with the delivery requirement for covered 988 text messages, we also propose to limit the application of text-to-988 georouting requirements to the text formats that the 988 Lifeline supports. Given that the 988 Lifeline currently only accepts SMS text messages, this proposal would require covered text providers to implement georouting only for SMS text messages as an initial matter. Should the 988 Lifeline begin to accept other text formats in the future, we anticipate that there would be a similar need for georouting data for such additional text formats. Under our proposed approach, we would direct the Wireline Competition Bureau to consult with SAMHSA as to whether the 988 Lifeline can accept georouting data with any newly identified text formats as part of its annual consultation process and to seek comment on applying georouting requirements to any newly identified text formats in its annual Public Notice. We also propose to delegate authority to the Wireline Competition Bureau to require covered text providers to implement georouting for any new text formats and to set an implementation date that is as prompt as is reasonably practical. This flexible approach would allow the Commission to evaluate on an ongoing basis whether to apply georouting requirements to any new formats that the 988 Lifeline may become capable of receiving in the future.

5. Further, we tentatively conclude that at a minimum CMRS providers must support georouting for SMS text messages to 988. The record indicates that requiring CMRS providers to implement georouting for covered 988 text messages will support the 988 Lifeline's mission and save lives. In addition, we believe it is likely that CMRS providers originate a substantial majority of texts currently received by the 988 Lifeline. Georouting for SMS text messages originated by CMRS providers would represent a substantial improvement in the percentage of covered 988 texts arriving at the 988 Lifeline with georouting data. As discussed in the analysis of benefits and costs section, the benefits of implementing georouting for covered 988 text messages appear to significantly outweigh the anticipated costs to CMRS providers. These benefits include improved support for certain populations with an increased risk of suicide. The record also suggests that it is technically feasible for CMRS providers to provide georouting data with texts to 988. The ongoing use of coarse location routing for texts to 911 strongly suggests that CMRS providers have such location information available for routing SMS text messages to 988. In the 911 context, covered text providers are required to route texts to 911 using coarse location (cell ID and cell sector) or other equivalent means that allows the covered text provider to route a texts to the appropriate PSAP.

6. We seek comment on this approach and on our tentative conclusion. Should we instead limit the scope of the georouting rule language to one or more specific text formats, such as SMS, or to certain types of covered text providers, such as CMRS providers or covered text providers that have access to cellular networks? What are the benefits and drawbacks of each regulatory approach, and the impact to individuals that text the 988 Lifeline?

Definitions

7. In the text-to-988 georouting rules, we propose to include definitions of the terms ''commercial mobile radio service,'' ''georouting data,'' and ''Lifeline Administrator'' that were adopted in the *Third Report and Order* (FCC 24–111), published elsewhere in this issue of the **Federal Register**. Additionally, we also propose to correct the text of § 52.201(b) of Commission's rules to read ''Commercial Mobile Radio Service'' instead of ''Commercial Mobile Radio Services.'' We seek comment on our proposal. Are there any other terms that we should define or revise as they relate to the proposed georouting rules for covered text providers? We seek specific comment on how the proposed definition of ''georouting data'' impacts the text-to-988 georouting rules that we propose in this *FNPRM.* The definition specifically applies to ''location data generated from cell-based location technology.'' For which covered text providers, and in which circumstances, would georouting data so defined be available? Should we adopt a definition of ''georouting data'' for the text-to-988 georouting rules that differs from the definition of this term for the georouting rules for voice calls to 988?

Text-to-988 Georouting Data

8. We propose to adopt and seek comment on a two-part requirement for covered text providers to: (1) have the capability to provide georouting data with covered 988 text messages to the Lifeline Administrator in a format compatible with the Lifeline's routing

platform, to allow routing of the covered 988 text message by the Lifeline Administrator to the appropriate crisis center based on the geographic area where the handset is located at the time the covered 988 text is initiated; and (2) provide georouting data, when available, with covered 988 text messages to the Lifeline Administrator sufficient to allow routing of the covered 988 text message by the Lifeline Administrator to the appropriate crisis center based on the geographic area where the handset is located at the time the covered 988 text is initiated. Covered text providers would be required to comply with this requirement six months from the effective date of final rules. We seek comment on this proposal.

9. Several commenters support developing georouting capabilities for texts to the 988 Lifeline and indicate that parity for voice and text service to 988 is an important goal. Several commenters specifically support a georouting requirement for texts. Although some parties argue that a georouting solution for texts is not necessary at this time because most texts are handled at the national rather than local level, we note that SAMHSA is currently expanding local response to texts to 988. To the extent that texts to 988 are routed to local crisis centers as the result of SAMHSA's evolving service offering, we believe those texts should be routed as accurately as voice calls in order to provide the most responsive care to text users, and seek comment on this belief. Washington Department of Health states that a georouting solution for texts to 988 confers the same types of benefits as georouting for voice calls to 988. We seek comment on such benefits, and on any additional benefits specific to a georouting solution for texts to 988. Commenters emphasize that text messaging to the 988 Lifeline is a preferred communication method for certain groups, specifically young adults and LGBTQI+ individuals, as well as in certain situations in which greater privacy is needed or when cell reception is inadequate to complete a phone call. As a matter of equity, the benefits of georouting communications to 988 should extend to such groups and situations for which there is a preference or need to contact 988 via text messaging. Are there other specific communities or scenarios that would benefit from the implementation of georouting data for texts to 988? For example, does georouting for texts particularly benefit people who are deaf, deafblind, hard of hearing, speech disabled, or have other disabilities that impact communication?

10. Several telecommunications industry commenters and one national backup provider for 988 text and chat services urge the Commission to refrain from adopting regulations for georouting covered text messages to the 988 Lifeline. We specifically disagree with commenters who argue that existing routing mechanisms are adequate for purposes of the 988 Lifeline and seek comment on this position. Even if ''the first six digits of the phone number of people reaching out to the Crisis Text Line are accurate to their state location approximately 86% of the time,'' as reported by the Crisis Text Line, georouting texts to 988 based on cell location will ensure that an increased portion of users are quickly connected with local life-saving resources. We also believe that the benefits of georouting texts are not limited to instances in which the contact requires an emergency services intervention, as suggested by the Crisis Text Line. Instead, we consider that, as with voice, the benefits of georouting for text will extend to all text users connected to a local crisis center because such centers will be more familiar with the local area's resources, as well as possibly being more familiar with cultural issues or community stressors in the text user's area. While there are alternatives to automated georouting that can connect text users with local resources, the Commission remains committed to making it easier for those in crisis to get help. We seek comment on our analysis and this approach.

11. *The capability to provide georouting data.* We seek comment on our proposed rule that covered text providers must have the capability to provide georouting data with covered 988 text messages to the Lifeline Administrator in a format compatible with the Lifeline's routing platform. In particular, we seek comment on potential georouting solutions for texts to the 988 Lifeline and on any progress to identify and implement a georouting solution for texts to 988 and the steps to complete implementation. We propose this requirement in two parts, with a separate requirement for covered text providers to obtain the capability to provide georouting data, in order to ensure that covered text providers deploy this life-saving technology on their networks by the proposed deadline, regardless of the 988 traffic that a covered text provider has historically originated. Is a separate requirement for covered text providers to obtain the capability to provide georouting data needed, or should the only georouting requirement for covered text providers be the requirement to provide georouting data to the 988 Lifeline?

12. Commenters indicate that some progress has been made, including by CMRS providers, to identify a georouting solution for covered 988 texts, particularly for SMS. We are interested in hearing from CMRS providers and other involved parties on the details of such solutions and progress. We also seek information on any parties beyond the CMRS providers, other covered text providers, and the Lifeline Administrator and/or its vendors that would need to participate in a solution for georouting SMS texts that are currently sent to 988. For example, Intrado Life & Safety states that georouting to the 988 Lifeline is ''easily achievable . . . by applying the current routing infrastructure for text-to-911 and changing to support the digits '988' in the Text Control Centers that Intrado Life & Safety and Comtech maintain for text-to-911.'' We seek comment on the viability of this and any other solutions for providing georouting data to the 988 Lifeline with SMS texts, and the work that still needs to be done to timely deploy a solution on wireless networks. Consistent with our findings in the *Third Report and Order,* (FCC 24–111), published elsewhere in the **Federal Register***,* at this time we do not seek comment on georouting solutions for 988 covered texts that would bypass the initial direct and centralized routing system of the 988 Lifeline. In what ways are any proposed solutions for providing georouting data with covered 988 texts similar to or different from the solutions proposed for providing georouting data with wireless calls to 988? Can the work done by CMRS providers either to implement georouting for 988 voice calls or to deploy text-to-911 be leveraged for text-to-988? Are such solutions cost-effective and technologically feasible for both nationwide and non-nationwide CMRS providers and any other impacted covered text providers? What is the time frame for a pilot or testing any solutions, and what would be the anticipated time frame for moving from testing to operational deployment? We also seek data, documents, and other information that provide details about the current status of any proposed georouting solutions for covered 988 texts.

13. In addition, we seek comment on what technical challenges may arise in providing georouting data with covered 988 text messages, and specifically what challenges would arise for CMRS providers and any other impacted covered text providers that originate

SMS text messages to provide georouting data with SMS text messages to 988. Commenters disagree on the difficulty of implementing a georouting solution for texts to 988. Some commenters allude to technical challenges but fail to provide specific details as to the nature and scope of such challenges. We seek additional insights or comments on any such challenges.

14. We disagree with arguments that the Commission should not adopt georouting requirements for SMS text messages to 988 based on the same reasoning underlying our decision to defer consideration of 911 location-based routing requirements for SMS, namely, the absence of supporting standards and that not all local centers can receive texts. While we did consider such factors in the *Location-Based Routing Order,* 89 FR 18488 (Mar. 13, 2024), the record in that proceeding also indicated that implementing location-based routing for texts to 911 would require extensive retrofitting of legacy SMS networks. No similar record exists in this proceeding, and indeed, Intrado Life & Safety argues that implementing georouting for text-to-988 could be as simple as changes ''to support the digits '988' in the Text Control Centers that Intrado Life & Safety and Comtech maintain for text-to-911'' with no other provider-required changes for implementation. A Text Control Center (TCC) is a controlling functional element specified in a relevant standard for text-to-911. The TCC has the responsibility to ''(1) convert various protocols and act as a gateway; (2) request location that may be used for routing; (3) request routing instructions; and (4) initiate a dialogue with the PSAP through the appropriate interworking function of the TCC. When the TCC receives an initial text message, it obtains location from the [location server]. It then uses that location to obtain routing instructions from the [routing server]. Then, the TCC converts the text message to an appropriate protocol and initiates a dialogue with the [Public Safety Answering Point] (via the emergency services network) through the appropriate interworking function of the TCC.'' Even if there are no existing standards for the interface to transmit location information between the Short Message Service Center (SMSC) and the TCC for texts to 988, the TCC is likely able to retrieve the location of the text to 988 from the CMRS provider's Gateway Mobile Location Center (GMLC) using existing practices for texts to 911. A SMSC is a network element of a Commercial Mobile Service Provider network which distributes SMS messages. A GMLC is the point of interface between the GSM wireless network and the Emergency Services Network. The GMLC retrieves, forwards, stores and controls position data associated with wireless callers. We seek comment on this analysis. Further, 911 location-based routing and georouting for 988 use different granularity of data and different entities perform the routing function. 911 location-based routing uses precise data on the location of the device to route 911 calls to the appropriate destination, whereas georouting for 988 can be accomplished with less granular information, such as the Federal Information Processing Series (FIPS) code or wire center. For 911 calls and texts, covered text providers determine the destination for routing based on available location information; for 988 calls and texts, it remains the purview of the 988 Lifeline and its administrator to route 988 calls and texts based on location data provided by the provider. CTIA's argument that we should not extend georouting requirements to covered 988 text messages based on our actions in the 911 location-based routing proceeding are unpersuasive due to these technical differences between these routing methodologies and differences in the record thus far received. We seek comment on this analysis.

15. *Providing georouting data.* We seek comment on our proposed requirement for covered text providers to provide georouting data, when available, with covered 988 text messages to the Lifeline Administrator sufficient to allow routing of the covered 988 text message by the Lifeline Administrator to the appropriate crisis center based on the geographic area where the handset is located at the time the covered 988 text is initiated. As with voice calls, SAMHSA, the agency with oversight of the 988 Lifeline Administrator, must ultimately determine the routing data that it will deem acceptable and that it will require the 988 Lifeline to configure its systems to read. What georouting data should covered text providers be required to provide with covered 988 texts? Would georouting data for covered 988 texts differ from the data required for georouting voice calls to 988? In our proposed rule, we require that covered text providers provide georouting data with covered 988 texts ''when available.'' Is such a limitation necessary? Would it be preferable to require covered text providers to provide georouting data with texts to 988 ''when technically feasible''? Given that the Commission currently only requires covered text providers to send SMS text messages to the 988 Lifeline, are there any situations in which georouting data for SMS texts would not be available, and if so, what are such situations? Are there situations in which CMRS providers in particular do not have access to geolocation data for SMS text messages to the 988 Lifeline, and how frequently do such situations occur? Are there certain types of covered text providers that originate SMS texts for which it is technologically infeasible to obtain georouting data, and if so, what are those types of providers? We invite commenters to provide additional data in the record on the number and/or percentage of covered 988 texts originated by CMRS providers and other covered text providers. Do covered text providers besides CMRS providers have access to geolocation data, defined in this proceeding as ''cell-based''? Do they have access to other kinds of location data? If so, how is that location data generated and with what level of resolution?

16. What steps do the Lifeline Administrator and/or its vendors need to take to be ready to receive georouting data for texts? What specific functions would the Lifeline Administrator and/or its service providers need to perform to successfully route texts to geographically appropriate crisis centers, once received by the 988 Lifeline's centralized routing platform? How many crisis centers can currently accept texts to 988, and are there plans to expand availability of local text resources? How would the 988 Lifeline determine the availability of a local crisis center to accept texts? Would texts to 988 route to a backup crisis center if no local crisis center was available? As the availability of text capabilities at local crisis centers grows, will routing requirements change, and how would the Lifeline Administrator update its routing?

17. Currently, individuals can text ''pride'' to 988 to be directly connected to an LGBTQI+ trained counselor or ''ayuda'' to connect with a Spanish-speaking counselor, and veterans and service members who text 988 will be redirected to text 838255 to reach the Veterans Crisis Line. We seek comment on whether any georouting solutions for texts to 988 that are under development contemplate routing for such texts, and whether georouting solutions are needed when a text-to-988 user selects a specialized service.

18. *Implementation time frame.* We propose that covered text providers comply with the proposed text-to-988

georouting requirements by a uniform implementation deadline of six months from the effective date of final rules. We seek comment on this approach. A six-month time frame is consistent with the Commission's requirement in the 911 context that covered text providers route texts to 911 to the appropriate PSAP within six months. We believe that enabling georouting for texts to 988 should occur swiftly in order to provide improved service to text-to-988 users, and that rapid implementation will minimize confusion for both providers and individuals texting 988. Is six months an adequate amount of time for covered text providers to comply with the proposed requirements? If not, why? Should we adopt different compliance time frames for different kinds of covered text providers, such as nationwide or non-nationwide CMRS providers, or other interconnected text providers, as INCOMPAS suggests? We note that the Commission has previously provided uniform timelines for texting requirements across covered text providers and has declined to provide different timelines for different kinds of covered text providers. Is the situation different with georouting such that we should consider a different timeframe?

19. We ask that commenters identify any work to comply with the proposed requirements and the estimated time to complete that work. Further, we ask that commenters identify any technical, financial, operational, legal, or other factors that may influence the time frame for delivering georouting data with all covered 988 text messages. At this time, the Commission only requires covered text providers to transmit SMS text messages to 988. If the Commission determines that covered text providers must support formats besides SMS, when should covered text providers be required to come into compliance with georouting requirements for new covered 988 text message formats? When do the Lifeline Administrator and/or its vendors anticipate that it could receive and begin using georouting data? Should we make compliance with the proposed requirements conditional on the ability of the Lifeline Administrator and/or its vendors to receive and use georouting data? Should we make the georouting requirements for covered 988 text messages effective six months after the Lifeline Administrator indicates that it can receive and use georouting data with text messages? Alternatively, should we make compliance conditional on the development of resources at the local level to respond to texts to 988?

Legal Authority

20. We tentatively conclude that the Commission has authority under Title III of the Act and the 21st Century Communications and Video Accessibility Act of 2010 (CVAA) to adopt rules requiring covered text providers to deliver georouting data with covered 988 text messages, and we seek comment on this tentative conclusion. As discussed in the *Text-to-988 Second Report and Order,* 87 FR 398 (Jan. 5, 2022), Title III of the Act provides us a broad mandate to manage spectrum usage in the public interest. We believe Title III of the Act provides us sufficient authority to require CMRS providers to implement georouting for text-to-988 given the scope of the benefits we estimate will accrue as the result of these proposed rules. The CVAA grants us authority to adopt ''other regulations . . . as are necessary to achieve reliable, interoperable communication that ensures access by individuals with disabilities to an internet protocol-enabled emergency network.'' The Commission has previously concluded that the 988 Lifeline constitutes an emergency network and that text-to-988 service provides access to emergency services for people with disabilities, including those with hearing and speech disabilities. As a result, we believe the CVAA provides us authority to require interconnected text providers to implement georouting for text-to-988 service because such steps improve access for people with disabilities to the 988 network. We seek comment on our analysis and tentative conclusion.

Benefits and Costs of 988 Georouting for Texts to 988

21. In the *Third Report and Order* (FCC 24–111), published elsewhere in the **Federal Register**, we estimated benefits of $120 million from georouting wireless calls to the 988 Lifeline. We expect that layering on the capability to georoute texts to 988 and the data requirements entailed will add some incremental costs. We estimate five-year, text-to-988 georouting benefits of nearly $17 million. Wireless carriers have offered no specific, credible estimates of implementation costs. We seek comment on this analysis and encourage commenters to submit more granular data on costs and benefits.

Benefits

22. *Reduced Suicide Mortality.* Suicide elicits shock, anguish, grief, and guilt among survivors. Imitators often follow suit, creating clusters that compound communities' suffering. While we lack the tools to quantify and monetize this burden on communities, we can acknowledge its vastness. Similarly, we cannot measure the full benefit of suicide prevention. We can, however, estimate what communities might be willing to pay to prevent suicide, more formally the value of reduced mortality risk (VRMR). We tentatively conclude that the VRMR for the ability to send texts to 988 is large and seek comment on this tentative conclusion and analysis.

23. In estimating the benefits for implementing georouting for covered texts to 988, we focus on the benefits that specifically would accrue to youth and young adults that have been exposed to text-to-988 misroutes. We seek comment on this approach. The record in this proceeding indicates that young Americans, who are disproportionately at risk for mental health crises, prefer communicating by text rather than calls. Studies tell us that children, on average, get their first cellphones by 11.6 years of age. By the age of 13, 95% percent of teenagers have access to a smartphone, and 97% of teens 15–17 years old own a smartphone. The American Foundation for Suicide Prevention cites a 2022 study's finding that ''over three-quarters of the texts to the Crisis Text Line in one twelve-month period were initiated by individuals under the age of 25.'' More precisely, 76% of 988 texts are generated by youth and young adults 24 and younger. Because 988 texts are routed using cellphone numbers, like voice calls to 988, some fraction of texts to 988 are bound to be misrouted. Heavy reliance on texting renders youth the demographic group most vulnerable to 988 text misrouting. The fraction of youth and young adults at risk is large. The Crisis Text Line's comments tell us that ''[c]urrently, texts to 988 are routed utilizing cell phone area codes'' and ''the first six digits of the phone number of people reaching out to Crisis Text Line are accurate to their state location approximately 86% of the time.'' From that statistic, we infer that the remaining 14% of texts routed by the first six digits of the originating device are inaccurate to their state location, or geographically mismatched. In 2022, there were nearly 72.5 million youth and young adults 17 and under, of whom 791 committed suicide after that year's July 16 launch of 988. Whether we allocate by number of months (*i.e.,* 6/12 = 0.5) or by total suicides for July–December (*i.e.,* 24,742/49,746 = 0.500008085), half of any age cohort's suicides can be attributed to July–December 2022. We do not know what fraction of youth outreach to 988

would be by text; conservatively, we assume one half. This implies about 55.4 (= 791 * 14%/2) young persons would have been exposed to text-to-988 misroutes. We seek comment on this analysis and encourage commenters to submit additional data on the benefits to implementing georouting for texts to 988.

24. Georouting texts could have reduced suicide mortality. The Crisis Text Line points out that ''approximately less than 3% of all 988 contacts resulting (sic) in an emergency services intervention requiring local support,'' meaning emergency intervention could have benefited at minimum about 1.66 (= 3% * 791 * 14%/2) youth suicide victims annually whose dispatch might be subject to delays due to misrouting. The comment record suggests that misrouting causes customized, local crisis-intervention services to arrive late or not at all, delaying effective interventions. We examine the consequences for suicide mortality of a minimal, one-minute delay in the effectiveness of texts to 988. Commission staff have previously estimated that a one-minute reduction in emergency response time can reduce mortality by 17%. A 17% reduction in the total number of deaths attributable to suicide among youth 17 and under with possible geographic mismatch would amount to about 0.28 (= 17% * 3% * 791 * 14%/2) fewer annual death due to suicide, a mortality-reduction risk for which Americans would collectively be willing to pay $3.5 (= 0.28 * $12.5) million annually. The present value of a five-year stream of such payments is $16.5 million. We use a VRMR of $12.5 million. The present value of five equal annual payments using OMB Circular A–4's discount rate of 2% is ~$16,500,000. We seek comment on this analysis and additional data we should consider.

25. *Other Benefits and Possible Benefits Underestimation.* We suspect that our tally underestimates the benefits of georouting texts to 988 for several other reasons and seek comment on our analysis herein. First, along with suicide reduction, it is expected that text-to-988 georouting will reduce suicide attempts and their accompanying medical, lost-work, and lost-quality-of-life costs. We have not estimated these benefits but seek comment on their validity and impact. Second, our reliance on the Crisis Text Line's assertion that the first six digits of the phone number are accurate to the user's state location approximately 86% of the time is likely an overestimation of the accuracy rate of texts reaching the appropriate 988 crisis center. We consider, in particular, that in large, populous states such as California, Florida, New York, and Texas—the four states that are collectively home to more than one-third of U.S. population—there are vast economic, cultural, and language differences within their borders that could hinder effective suicide intervention if the text is not routed to the 988 crisis center serving the location of the text user. Even though we rely on the Crisis Text Line's estimation, our analysis likely overstates the percentage of texts that are currently routed to the appropriate 988 crisis center. As a result, the benefits of our proposed intervention are likely underestimated. We seek comment on this assumption and our rationale.

26. Another reason our tally may underestimate the benefits of georouting texts to 988 is that youths 17 and under are the age cohort losing the greatest number of productive years of life to suicide. In 2022 alone, the 1,582 suicides among youth 17 and under cost the U.S. 78,866 potential years of life before age 65, the typical retirement age. Our age-agnostic valuation of reduced mortality may not fully capture this loss. In addition, 24% of texts to 988 are generated by adults; therefore, by excluding adults we overlook the prevention a sizable fraction of the 47,891 suicides among those 18 and older, for whom we proffer no estimated benefits of mortality reduction. Further, we do include morbidity and property costs associated with unsuccessful suicide attempts. Finally, we have not reckoned at all with the vast, unquantifiable benefits of sparing victims' families, friends, and communities the emotional devastation of losing children to suicide. We seek comment on the magnitude of any benefits that we may have overlooked or underestimated. More generally, we seek comment on our benefits estimates and the methodology underlying them. In particular, we seek comment on the assumptions used to identify and estimate the number of text-to-988 misroutes among youth 17 and under. We seek comment on the number of 988 misroutes occurring among adults 18 and older. We also seek comment on the extent of text-to-988 misroutes that may be occurring among LGBTQI+ individuals, racial and ethnic minorities, veterans, and other communities at disproportionately greater risk of suicide.

Costs

27. AT&T, the Crisis Text Line, and CTIA warn of significant text-to-988 implementation challenges, both on the processing and receiving ends of 988 texts, and urge the Commission to either delay or altogether refrain from requiring text-to-988 capability. INCOMPAS advocates a four-year text-to-988 implementation timeline for non-nationwide wireless providers. According to Intrado Life & Safety, on the other hand, ''developing a text-to-988 solution for both the current 988 Lifeline network and state ESInets tells us the problem is easily addressable from a technical standpoint. Implementing text-to-988 is easily achievable through either the current 988 Lifeline or to a state's ESInet by applying the current routing infrastructure for text-to-911 and changing to support the digits '988' in the Text Control Centers that Intrado Life & Safety and Comtech maintain for text-to-911.'' Intrado Life & Safety continues, ''[p]roviders should not require any other changes for implementation. The only credible barrier to text-to-988 is that the 988 Lifeline network is likely not currently capable of georouting text-to-988 calls, but this potential barrier disappears if providers leverage the states' existing NG911 infrastructure.'' Given competing claims regarding implementation costs, we seek comment on credible, specific estimates of implementation costs and how such costs may vary by type or size of provider, network technology, or along any other relevant dimension. What are the key costs of setting up geolocation for covered 988 texts? What are the costs for covered text providers to have the capability to provide georouting data with covered 988 text messages? What are the costs for covered text providers to provide georouting data with covered 988 text messages, when available, to the 988 Lifeline? What aspects of implementation of georouting for 988 voice calls will transfer to geolocation for covered 988 texts at minimal additional cost? We seek comment on the cost to providers of directly implementing our proposed requirements, or alternatively of purchasing the required services from a third-party. What costs are associated with Text Control Centers, if such a solution is chosen by covered text providers? We also seek detailed descriptions of the technical barriers to implementing georouting for text-to-988 and specific, itemized estimates of the costs of overcoming those barriers, if possible. We seek detailed descriptions of the nature and costs of any proposed technically feasible solutions to implement text-to-988 and their accompanying timelines.

Other Efforts To Promote Digital Equity and Inclusion

28. *Digital Equity.* The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality, invites comments on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission's relevant legal authority.

Initial Regulatory Flexibility Analysis

29. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *Implementation of the National Suicide Hotline Improvement Act of 2018, Third Further Notice of Proposed Rulemaking* (*FNPRM*). Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in the *FNPRM.* The Commission will send a copy of the *FNPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

30. In the *FNPRM,* we propose to require 988 covered text providers to support georouting in order to ensure that the 988 Lifeline may route covered 988 text messages to the appropriate local crisis center and enhance the support and resources available to text users in crisis. Currently, covered 988 text messages are routed to local crisis centers using information conveyed by the number assigned to the device, such as the area code, which in many cases will not reflect the current location of the device user. Mental health and crisis counseling experts have opined that connecting callers in crisis with local crisis centers is important to connect life-saving services to those in need of public health and safety resources and enable them to speak with local counselors who may be more familiar with cultural issues or community stressors in the caller's area. To better connect 988 text users with local crisis resources, we propose to adopt and seek comment on a two-part requirement for covered text providers to: (1) have the capability to provide georouting data with covered 988 text messages to the Lifeline Administrator; and (2) provide georouting data, when available, with covered 988 text messages to the Lifeline Administrator. Covered text providers would be required to comply with this requirement six months from the effective date of final rules.

Legal Basis

31. The proposed action is authorized under §§ 1, 2, 4, 201, 218, 251(e), 301, 303, 307, 309(a), 316, 332, and 615c of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201, 218, 251(e), 301, 303, 307, 309(a), 316, 332, and 615c.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

32. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and by the rule revisions on which the Notice seeks comment, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

33. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

34. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

35. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2022 Census of Governments indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,845 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts) with enrollment populations of less than 50,000. Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of ''small governmental jurisdictions.''

36. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

37. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

38. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

39. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers. Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

40. *Competitive Local Exchange Carriers (CLECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local service providers. Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

41. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

42. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported they were engaged in the provision of local resale services. Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

43. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and

infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported they were engaged in the provision of toll services. Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

44. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services. Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

45. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 62 providers that reported they were engaged in the provision of prepaid card services. Of these providers, the Commission estimates that 61 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

46. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

47. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (*e.g.,* limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA small business size standard for this industry classifies firms with annual receipts less than $47 million as small. Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year. Of that number, 149 firms operated with revenue of less than $25 million a year and 44 firms operated with revenue of $25 million or more. Based on this data, the Commission estimates that a majority of firms in this industry are small.

48. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Based on industry data, there are about 420 cable companies in the U.S. Of these, only seven have more than 400,000 subscribers. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Based on industry data, there are about 4,139 cable systems (headends) in the U.S. Of these, about 639 have more than 15,000 subscribers. Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

49. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for a ''small cable operator,'' which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator. Based on industry data, only six cable system operators have more than 498,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.

Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

50. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (*e.g.* dial-up ISPs) or Voice over internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of $40 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. Based on this data, the Commission estimates that the majority of ''All Other Telecommunications'' firms can be considered small.

51. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small. U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year. Of this number, 624 firms had fewer than 250 employees. Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

52. *Semiconductor and Related Device Manufacturing.* This industry comprises establishments primarily engaged in manufacturing semiconductors and related solid state devices. Examples of products made by these establishments are integrated circuits, memory chips, microprocessors, diodes, transistors, solar cells and other optoelectronic devices. The SBA small business size standard for this industry classifies entities having 1,250 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 729 firms in this industry that operated for the entire year. Of this total, 673 firms operated with fewer than 250 employees. Thus under the SBA size standard, the majority of firms in this industry can be considered small.

53. *Software Publishers.* This industry comprises establishments primarily engaged in computer software publishing or publishing and reproduction. Establishments in this industry carry out operations necessary for producing and distributing computer software, such as designing, providing documentation, assisting in installation, and providing support services to software purchasers. These establishments may design, develop, and publish, or publish only. The SBA small business size standard for this industry classifies businesses having annual receipts of $47 million or less as small. U.S. Census Bureau data for 2017 indicate that 7,842 firms in this industry operated for the entire year. Of this number 7,226 firms had revenue of less than $25 million. Based on this data, we conclude that a majority of firms in this industry are small.

54. *Internet Service Providers (Non-Broadband).* Internet access service providers using client-supplied telecommunications connections (*e.g.,* dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications. The SBA small business size standard for this industry classifies firms with annual receipts of $40 million or less as small. For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

55. *Wired Broadband Internet Access Service Providers (Wired ISPs).* Providers of wired broadband internet access service include various types of providers except dial-up internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules. Wired broadband internet services fall in the Wired Telecommunications Carriers industry. The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees.

56. Additionally, according to Commission data on internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one direction using various wireline technologies. The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's *2022 Communications Marketplace Report,* we believe that the majority of wireline internet access service providers can be considered small entities.

57. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs).* Providers of wireless broadband internet access service include fixed and mobile wireless providers. The Commission defines a WISP as ''[a] company that provides end-users with wireless access to the internet[.]'' Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules. Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite). The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees.

58. Additionally, according to Commission data on internet access services as of June 30, 2019, nationwide

there were approximately 1,237 fixed wireless and 70 mobile wireless providers of connections over 200 kbps in at least one direction. The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's *2022 Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general, as well as on terrestrial fixed wireless broadband providers in general, we believe that the majority of wireless internet access service providers can be considered small entities.

59. *All Other Information Services.* This industry comprises establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, internet publishing and broadcasting, and Web search portals). The SBA small business size standard for this industry classifies firms with annual receipts of $47 million or less as small. U.S. Census Bureau data for 2017 show that there were 704 firms in this industry that operated for the entire year. Of those firms, 556 had revenue of less than $25 million. Consequently, we estimate that the majority of firms in this industry are small entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

60. The *FNPRM* proposes and seeks comment on implementing new georouting rules for covered 988 text messages, that if adopted, may impose new or modified compliance obligations on small entities. In particular, we propose to require covered text providers to have the capability to provide and to actually provide georouting data to the 988 Lifeline with covered texts, when such information is available. We also propose that covered text providers be subject to georouting requirements to the same extent that they are currently required to send covered 988 texts to the 988 Lifeline. Covered text providers would be required to comply with this requirement six months from the effective date of final rules. In addition, we tentatively conclude that, at a minimum, Commercial Mobile Radio Service (CMRS) providers must support georouting for Short Message Service (SMS) text formats to the Lifeline.

61. The record in the *FNPRM* indicates small providers may face various barriers to compliance, however it does not currently contain detailed information on the costs for covered text providers to implement georouting for covered 988 text messages. Therefore, at this time, the Commission is not in a position to determine whether implementation of georouting for covered 988 text messages would result in significant costs for covered text providers. To help the Commission more fully evaluate the cost of compliance, we seek additional detailed information on various cost issues implicated by our proposed rules. Specifically, we have requested information on technological challenges and the costs for covered text providers to implement georouting for covered 988 text messages. We expect the information that we receive in response to our requested cost inquiries will help the Commission identify and evaluate compliance costs and burdens for small entities that may result from the proposals and inquiries we make in the *FNPRM* to implement georouting for covered 988 text messages.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

62. The RFA requires an agency to describe any significant alternatives that could minimize impacts to small entities that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

63. In the *FNPRM,* the Commission seeks comment from all entities, including small entities, regarding the impact of the proposed rules on small entities. The Commission seeks comment on the impact, cost or otherwise, that requiring georouting for text-to-988 will impose on regional and rural carriers and small businesses. The Commission also seeks comment on whether to limit the scope of the georouting rule to one or more specific text formats, such as SMS, or to certain types of covered text providers, such as CMRS providers or covered text providers that have access to cellular networks. We will also consider whether the rule should require covered text providers provide georouting data with covered 988 texts ''when available'' as proposed, or instead provide georouting data with texts to 988 ''when technically feasible.'' Further, the Commission asks whether to extend compliance time frames for different kinds of covered text providers, such as nationwide or non-nationwide CMRS providers or other kinds of interconnected text providers.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

64. None.

List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 52 as follows:

PART 52—NUMBERING

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

Authority: 47 U.S.C. 151, 152, 153, 154, 155, 201–205, 207–209, 218, 225–227, 251–252, 271, 303, 332, unless otherwise noted.

■ 2. Amend § 52.201 by:
■ a. Revising paragraph (b);
■ b. Adding in alphabetical order definitions for ''Commercial mobile radio service (CMRS),'' ''Georouting data,'' and ''Lifeline Administrator'' in paragraph (c); and
■ c. Adding paragraph (d).

The revisions and additions read as follows:

§ 52.201 Texting to the National Suicide Prevention and Mental Health Crisis Hotline.

* * * * *

(b) *Access to SMS networks for 988 text messages.* To the extent that Commercial Mobile Radio Service (CMRS) providers offer Short Message Service (SMS), they shall allow access by any other covered text provider to the capabilities necessary for transmission of 988 text messages originating on such other covered text providers' application services.

(c) * * *

Commercial mobile radio service (CMRS) means a mobile service that is:

(i)(A) Provided for profit, *i.e.,* with the intent of receiving compensation or monetary gain;

(B) An interconnected service; and

(C) Available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or

(ii) The functional equivalent of such a mobile service described in paragraph (i)(A) of this definition.

(iii) A variety of factors may be evaluated to make a determination whether the mobile service in question is the functional equivalent of a commercial mobile radio service, including: Consumer demand for the service to determine whether the service is closely substitutable for a commercial mobile radio service; whether changes in price for the service under examination, or for the comparable commercial mobile radio service, would prompt customers to change from one service to the other; and market research information identifying the targeted market for the service under review.

(iv) Unlicensed radio frequency devices under part 15 of this chapter are excluded from this definition of Commercial mobile radio service.

* * * * *

Georouting data means location data generated from cell-based location technology that is aggregated to a level that will not identify the location of the cell site or base station receiving the 988 call or text or otherwise identify the precise location of the handset.

Lifeline Administrator is the entity that controls the 988 call routing platform pursuant to contract with the Substance Abuse Mental Health Services Administration.

* * * * *

(d) *Georouting.* By [DATE SIX MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE], all covered text providers must:

(1) Have the capability to provide georouting data with covered 988 text messages to the Lifeline Administrator in a format that is compatible with the Lifeline's routing platform, to allow routing of the covered 988 text message by the Lifeline Administrator to the appropriate crisis center based on the geographic area where the handset is located at the time the covered 988 text is initiated.

(2) Provide georouting data, when available, with covered 988 text messages to the Lifeline Administrator sufficient to allow routing of the covered 988 text message by the Lifeline Administrator to the appropriate crisis center based on the geographic area where the handset is located at the time the covered 988 text is initiated.

[FR Doc. 2024–26795 Filed 11–19–24; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 371

[Docket No. FMCSA–2023–0257]

RIN 2126–AC63

Transparency in Property Broker Transactions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FMCSA proposes amendments to its property broker rules in response to petitions for rulemaking from the Owner-Operator Independent Drivers Association (OOIDA) and the Small Business in Transportation Coalition (SBTC). Under current regulations, the parties to a brokered freight transaction have a right to review the broker's record of the transaction, which stakeholders often refer to as ''broker transparency.'' Contracts between brokers and motor carriers frequently contain waivers of this right. OOIDA requested that FMCSA promulgate a requirement that property brokers provide an electronic copy of each transaction record automatically within 48 hours after the contractual service has been completed, and explicitly prohibit brokers from including any provision in their contracts that requires a motor carrier to waive its rights to access the transaction records. SBTC requested that FMCSA prohibit brokers of property from coercing or requiring parties to brokers' transactions to waive their right to review the record of the transaction as a condition for doing business and prohibit the use of clause(s) exempting the broker from having to comply with this transparency requirement. Though the proposed rule is responsive to the petitions in reinforcing the broker transparency requirement, the proposed provisions differ from those requested by OOIDA and SBTC. The proposed rule would revise the regulatory text to make clear that brokers have a regulatory obligation to provide transaction records to the transacting parties on request. The proposal would also make changes to the format and content of the records.

DATES: Comments must be received on or before January 21, 2025.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2023–0257 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov/docket/FMCSA-2023-0257/document.* Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.
- *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Evans, Transportation Specialist, Commercial Enforcement Division, Office of Safety, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 568–0530; *michael.evans@dot.gov.* If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION: FMCSA organizes this NPRM as follows:

I. Public Participation and Request for Comments
A. Submitting Comments
B. Viewing Comments and Documents
C. Privacy
D. Comments on the Information Collection
II. Executive Summary
A. Purpose and Summary of the Regulatory Action
B. Summary of Major Provisions
C. Costs and Benefits
III. Abbreviations
IV. Legal Basis
V. Background
A. History of Property Broker Regulations
B. History of the Current Rulemaking
C. Related Actions
VI. Discussion of Proposed Rulemaking and Comments
A. Proposed Rulemaking
B. Comments and Agency Responses
C. Issues on Which the Agency Seeks Further Comment
VII. Section-by-Section Analysis
A. Section 371.2 Definitions.
B. Section 371.3 Records To Be Kept by Brokers
VIII. Regulatory Analyses
A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), E.O.

14094 (Modernizing Regulatory Review), and DOT Regulatory Policies and Procedures
B. Advance Notice of Proposed Rulemaking
C. Regulatory Flexibility Act
D. Assistance for Small Entities
E. Unfunded Mandates Reform Act of 1995
F. Paperwork Reduction Act
G. E.O. 13132 (Federalism)
H. Privacy
I. E.O. 13175 (Indian Tribal Governments)
J. National Environmental Policy Act of 1969
K. Rulemaking Summary

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this NPRM (FMCSA–2023-0257), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *https://www.regulations.gov/docket/FMCSA-2023-0257/document,* click on this NPRM, click ''Comment,'' and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

FMCSA will consider all comments and material received during the comment period.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 United States Code (U.S.C.) 552), CBI is exempt from public disclosure. If your comments responsive to the NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the NPRM. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or via email at *brian.g.dahlin@dot.gov.* At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2023-0257/document* and choose the document to review. To view comments, click this NPRM, then click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, including any personal information the commenter provides, to *www.regulations.gov* as described in the system of records notice DOT/ALL 14 (Federal Docket Management System (FDMS)), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices.* The comments are posted without edit and are searchable by the name of the submitter.

D. Comments on the Information Collection

Written comments and recommendations for the information collection discussed in this NPRM should be sent within 60 days of publication to *www.reginfo.gov/public/do/PRAMain.* Find this information collection by clicking the link that reads ''Currently under Review—Open for Public Comments.''

II. Executive Summary

A. Purpose and Summary of the Regulatory Action

Property brokers match motor carriers with shippers, which can create new business opportunities for motor carriers and transportation solutions for shippers. This business model can also lead to an asymmetry of information between parties, which in turn can affect the contracting process by limiting parties' ability to negotiate for their desired terms.[1] These risks can lead to market inefficiencies, such as decreased freight capacity or decreased market competition, which can arise when parties lack material information about the transaction. FMCSA and its predecessor agencies have attempted to address these problems by requiring property brokers to keep certain records of their transactions and make the records available to motor carriers and shippers involved in those transactions. Making the records available to the transacting parties, sometimes referred to as ''broker transparency,'' is meant to inform business decisions and enable self-policing of abuses that may arise.

The Agency has received rulemaking petitions and other input from the public, however, that indicate many motor carriers cannot review the brokers' transaction records as the broker recordkeeping regulation intends. Brokers often include provisions in their contracts with motor carriers that require motor carriers to waive their ability to review broker records. In addition, even without waiver clauses, motor carriers often face practical hurdles in accessing records that they should be able to review under the current regulations. As a result of the SBTC and OOIDA petitions, the Agency reviewed its property broker recordkeeping requirements and is proposing certain amendments to those requirements. The proposed amendments are intended to reinforce broker transparency for motor carriers and to better tailor the required contents of the records to the purpose of broker transparency.

The current and proposed regulations are based on the Agency's authority to regulate the procurement of interstate transportation, which includes authority over property brokers and their arrangement of transportation. The Agency has the authority to collect

[1] Asymmetric information exists when one party in a transaction has more information than the other, which can result in a market failure. Asymmetric information provides an advantage to one side of a market over the other when negotiating a transaction. OMB Circular No. A–4, p. 17 (Nov. 9, 2023).

information from brokers and require them to keep certain records. The Agency also has authority over the registration of property brokers, and when registering them, to determine whether the broker is willing and able to comply with all applicable regulations, including the recordkeeping regulations. In exercising its authority over brokers, the Agency is required to provide for the protection of motor carriers and shippers. The proposed rule would use and implement this authority by revising the broker recordkeeping requirements to further protect motor carriers and promote efficiency within the motor carrier transportation system.

B. Summary of Major Provisions

FMCSA proposes several amendments to 49 CFR 371.3, ''Records to be kept by brokers.'' The first proposed provision would require property brokers to keep their records in an electronic format. This provision would serve the purpose of broker transparency by making it easier for motor carriers and shippers to review broker records on request, and remotely, as compared to the current practice of some brokers who respond to transparency requests by making only physical records available at their principal place of business. The Agency believes that many brokers already maintain their records in an electronic format.

The second proposed provision would modernize and tailor the required contents of the records to better achieve broker transparency. The current requirement uses a distinction between brokerage and non-brokerage services, which is rooted in a previous regulatory approach. FMCSA proposes eliminating this distinction and instead requiring that the records contain, for each shipment in the transaction, all charges and payments connected to the shipment, including a description, amount, and date. This is substantially similar to the current requirement but removes the outdated distinction. The record would also be required to include any claims connected to the shipment, such as a shipper's claims for damage or delay. This amendment would ensure the parties have full visibility into the payments, fees, and charges associated with the transaction so they can resolve issues and disputes among themselves without resorting to costlier remedies.

The third proposed provision would clarify the obligation imposed on brokers to respond to requests for transaction records and the process parties must follow when requesting and supplying such records. The current regulation frames the broker transparency requirement as a right, given to the transacting parties, to review the records. The proposed amendment would reframe broker transparency as a regulatory duty imposed on brokers to provide records to the transacting parties.

The fourth proposed provision would require brokers to provide the records required to be maintained under § 371.3(a) within 48 hours when a party to the transaction requests those records. This provision is intended to ensure that the requesting party receives the records in a timely manner, to support the resolution of issues around service or payment.

C. Costs and Benefits

Broker transparency is intended to enable efficient outcomes in the transportation industry by providing the material information necessary for the transacting parties to make informed business decisions. Broker transparency also supports the efficient resolution of disputes between parties. Though the current regulations are meant to provide broker transparency, the Agency has heard through numerous listening sessions and comments from motor carriers that broker transparency is rare in practice. The Agency believes the revisions to the regulation will make it more likely that brokers will comply with their regulatory duty to provide information. The Agency analyzes these potential benefits qualitatively and seeks further information and data from the public to better analyze the benefits.

Some motor carriers believe that increased broker transparency would have a material effect on negotiated freight rates. The Agency believes that other market factors, rather than the availability of additional information through broker transparency, are likely dominant in setting freight rates. However, the Agency has not ruled out the possibility that motor carriers and shippers could negotiate for better rates over time using the broker transparency information. The Agency seeks further comment on this issue.

The Agency believes that the cost of the proposed rule would be minimal. Based upon its interactions with brokers, the Agency believes that most brokers already keep records electronically and that these records already contain the information that would be required by the proposed rule. The Agency believes that brokers already provide information and documents, *e.g.,* rate confirmation documents, to motor carriers. The Agency believes that these current practices can be adjusted, at relatively low cost, to provide broker transparency information within 48 hours of request. The Agency analyzes these potential costs qualitatively and seeks further information and data from the public to better analyze the costs. The Agency does not believe that this rule would be economically significant.

III. Abbreviations

API Application programming interface
BLS Bureau of Labor Statistics
COVID–19 Coronavirus disease 2019
DOJ Department of Justice
DOT Department of Transportation
DTSA Defend Trade Secrets Act of 2016
EDI Electronic data interchange
FHWA Federal Highway Administration
FMCSA Federal Motor Carrier Safety Administration
FR Federal Register
HHG Household goods
ICC Interstate Commerce Commission
IT Information technology
MATS Mid-America Trucking Show
NAICS North American Industry Classification System
NCCDB National Consumer Complaint Database
NPRM Notice of proposed rulemaking
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
OOIDA Owner-Operator Independent Drivers Association
PIA Privacy Impact Assessment
PII Personally identifiable information
PPP Paycheck Protection Program
PTA Privacy Threshold Assessment
SAS Service Annual Survey
SBA Small Business Administration
SBTC Small Business in Transportation Coalition
Secretary Secretary of Transportation
TIA Transportation Intermediaries Association
UMRA Unfunded Mandates Reform Act of 1995
U.S.C. United States Code

IV. Legal Basis

The Secretary of Transportation (Secretary) has general jurisdiction to establish regulations concerning the procurement by property brokers of for-hire transportation in interstate or foreign commerce (49 U.S.C. 13501). The Secretary is authorized to obtain information from motor carriers, brokers, and other related parties that the Secretary determines is necessary to ensure a transportation system that meets the needs of the United States (49 U.S.C. 13101 and 13301(b)).

The Secretary has broad authority to adopt regulations to carry out the requirements of the commercial statutes in Title 49 U.S.C., subtitle IV, part B (49 U.S.C. 13301(a)). Some of the needs articulated in the national transportation policy (49 U.S.C. 13101) include encouraging fair competition and reasonable rates for transportation by motor carriers of property; promoting

efficiency in the motor carrier transportation system; enabling efficient and well-managed motor carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions; and improving and maintaining a sound, safe, and competitive privately owned motor carrier system. The Secretary is also authorized to prescribe the form of any required records prepared or compiled by brokers, including those related to movement of traffic and receipts and expenditures of money, and the time period for preservation of such records (49 U.S.C. 14122). Furthermore, under 49 U.S.C. 13904(e), regulations applicable to brokers ''shall provide for the protection of motor carriers and shippers by motor vehicle.'' [2]

In recent years, many motor carriers, industry-wide, have expressed concern about their inability to access records pertaining to their transactions with brokers. The inability to obtain these records from brokers has led to financial harm, including but not limited to, an inability to present a proper defense when shippers or brokers allege problems with a shipment. Because FMCSA's mandate under 49 U.S.C. 13904 specifically includes providing for the protection of motor carriers with respect to broker regulations, and because a records-transmittal regulation would protect both motor carriers and shippers, FMCSA's promulgation of such a regulation is authorized by 49 U.S.C. 13904(e).

This rulemaking is intended to address an asymmetry of information between brokers, shippers, and motor carriers that affects the ability of all parties to participate effectively in a fair, efficient transportation system. FMCSA intends to modernize regulations applicable to broker recordkeeping and disclosure while complying with the requirement in 49 U.S.C. 13904(e) to ensure that the regulations provide for the protection of motor carriers and shippers. FMCSA relies on the statutory authorities cited above.

Authority to carry out the functions and exercise the authorities cited above is delegated to the FMCSA Administrator under 49 CFR 1.87(a)(1)–(3) and (5)–(6).

[2] The previous version of the statute (located at 49 U.S.C. 13904(c)) only required the Secretary to provide for the protection of shippers by motor vehicle in broker regulations. The Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141 (July 6, 2012), amended this provision to include the protection of motor carriers as a requirement for regulations applicable to brokers. Sec. 32916, Public Law 112–141, 126 Stat. 820 (July 6, 2012).

V. Background

FMCSA regulates property brokers, defined as persons who, for compensation, arrange or offer to arrange the transportation of property by an authorized motor carrier (49 CFR 371.2(a)). The property broker regulations include recordkeeping requirements, for each transaction, at 49 CFR 371.3 ''Records to be kept by brokers.'' A brokered transaction for transportation of property involves at least a shipper seeking to have the property transported, a carrier willing to transport the property, and a broker who arranges the transportation. There may be separate contracts between the broker and the shipper and between the broker and the carrier, but the broker, carrier, and shipper are all party to the same brokered transaction for the purpose of the broker recordkeeping regulation. The relationship between the parties is further explained in the Property Broker Practices NPRM (45 FR 31140, 31141, May 12, 1980). Under the broker recordkeeping regulation, FMCSA requires brokers to make certain transaction records available to the transacting parties, that is, the shipper, the motor carrier, and any other party to the brokered property transaction. The availability of this information is sometimes referred to as ''broker transparency.'' The term should not be misunderstood to mean public disclosure of the information, *i.e.,* ''public transparency.''

FMCSA proposes to amend the broker transparency requirement. FMCSA initiated the rulemaking based on the grant of two rulemaking petitions regarding broker transparency, and the Agency has also received input on the topic through several related actions. The petitions and related actions are summarized below. The broker transparency regulation has a long history, with several predecessor rules and regulations. The regulatory history is summarized below.

A. History of Property Broker Regulations

Congress tasked the Interstate Commerce Commission (ICC) with regulating the motor carrier industry in the Motor Carrier Act of 1935, which included regulating property brokers operating in the industry (Pub. L. 74–255). The ICC issued its initial rule regulating brokers in 1949 (14 FR 2833, May 28, 1949). The rule was based on an ICC report entitled Practices of Property Brokers (Ex Parte MC–39, 49 Motor Carrier Cases (MCC) 277 (May 16, 1949)). The report contemplated imposing a cap on broker commissions to address concerns over alleged excesses. The ICC postponed implementation of a cap because it lacked information to determine an appropriate upper limit. In the interim, the ICC believed that concerns over commissions could be addressed by having brokers maintain a public schedule of services with their maximum charges for brokerage services. The cap was not pursued further, and the interim solution persisted, as described in the follow-on report ''Practices of Property Brokers'' (Ex Parte MC–39, 53 MCC 633 (Dec. 27, 1951)).

The property broker regulations remained unmodified for several decades, except for a recodification that relocated them within Title 49, from part 167 to part 1045 (49 FR 20003, Dec. 20, 1967). On May 12, 1980, the ICC published an NPRM to revise the property broker regulations (45 FR 31140). This proposed rule sought to eliminate unnecessary regulations and to modify regulations that were unnecessarily restrictive. The intent generally aligned with the purpose of the Motor Carrier Act of 1980 (Pub. L. 96–296), which was not in force at the time, but which was enacted a few months later, on July 1, 1980. The ICC made this connection clear in the final rule published on October 17, 1980 (45 FR 68941). That rule explained that Congress had given the ICC the general mandate to open up the bargaining process between shippers and motor carriers, and it sought to remove unnecessary restrictions which might impede the free operation of the marketplace. The ICC viewed its revisions to the property broker regulations as consistent with those goals. The rulemaking put into place regulations that are substantially similar to FMCSA's current property broker regulations.

The final rule included a revised 49 CFR 1045.3, which had the same requirements as the current 49 CFR 371.3 in all significant respects, including the recordkeeping requirement placed on brokers and the right of each party to the transaction to review the record. In discussing the revisions to the required records in the NPRM, the ICC stated that the primary purpose of the recordkeeping requirements was to ascertain whether improper rebating activities were taking place, and it noted that the proposed rule also included revisions to the rebating rules (45 FR 31140). When the ICC issued the original property broker regulations, it was concerned with a form of indirect rebating where brokers would undercharge for services to

shippers as a means to secure and control the shippers' traffic and make up for the undercharging by charging motor carriers instead (49 MCC 277, 317–18). In the 1980 NPRM, the ICC stated that this concern over indirect rebating was no longer valid, and it revised the rebating regulations accordingly (45 FR 31140, 31141).

After explaining the revisions to the required record contents, the ICC then explained the addition of the right-to-review requirement as a replacement for more complex requirements in §§ 1045.5, 1045.6, and 1045.10 (45 FR 31140). The ICC explained that § 1045.5, which required brokers to make their maximum prices for brokerage services publicly available and to adhere to those prices, could be rendered ineffective by brokers giving a wide price range instead (45 FR 31140, 31141). The same was true of § 1045.6, which set forth similar restrictions on prices for non-brokerage services. In removing these regulations in favor of the new § 1045.3(c), the ICC explained that the new regulation would enable parties to determine what portion of their bill was related to the broker's services (45 FR 31140, 31141). Section 1045.10 prohibited brokers from charging both the shipper and the carrier for a service without first advising both parties of the details of the charges. The ICC stated that this requirement was unnecessary and potentially burdensome since proper notification could delay service, particularly when the broker was trying to arrange freight transportation on an expedited basis, and it was replaced by the right to review in § 1045.3(c) (45 FR 31140, 31141). The broker regulations remain substantially the same as when they were amended in 1980.

In 1996, pursuant to the ICC Termination Act (Pub. L. 104–88), responsibility for certain transportation regulations was transferred from the ICC to DOT and delegated by DOT to FHWA (61 FR 54706, Oct. 21, 1996). This transfer and redesignation included part 1045, which was moved to part 371. Part 371 was subject to a minor technical amendment in 1997 but has remained otherwise unchanged since that time (62 FR 15417, Apr. 1, 1997). FMCSA assumed responsibility for part 371 when the Agency was created by the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159), and the Secretary subsequently delegated authority to administer 49 U.S.C. chapters 131, 133, 135, and 139 to the FMCSA Administrator (65 FR 220, Jan. 4, 2000).

B. History of the Current Rulemaking

On May 6, 2020, the Small Business in Transportation Coalition (SBTC) petitioned the Department to initiate a rulemaking amending the broker transparency regulation. SBTC described § 371.3, the broker transparency regulation, as providing motor carriers with a ''right to know'' the rate offered by the broker as a proportion of the rate paid by the shipper to the broker. SBTC raised concerns about the widespread practice of brokers including clauses in their contracts that waive a carrier's rights under § 371.3(c). Transparency is necessary for a market to operate in an ethical and fair manner, SBTC argued, and the prevalence of waiver clauses undercuts that transparency. As a remedy, the petition proposed prohibiting brokers from requiring waiver of broker transparency as a condition of doing business. SBTC's petition referenced the economic impacts of the COVID–19 national emergency, impacts that were being acutely felt when the petition was filed in May 2020.

On May 19, 2020, the Owner-Operator Independent Drivers Association (OOIDA) petitioned the Department to initiate a rulemaking amending the broker transparency regulation. The petition sought two changes to § 371.3. First, the petition proposed adding a requirement that brokers provide a copy of the transaction record required under § 371.3(a), in an electronic format, within 48 hours of the service being completed. Second, the petition proposed prohibiting brokers from including clauses in their contracts that waive motor carriers' rights to access the transaction records required under 371.3. The petition argued that the prevalence of waiver clauses and instances of retaliation by brokers against motor carriers seeking to exercise their rights under § 371.3(c) undercut the transparency envisioned by § 371.3. As with the SBTC petition, the OOIDA petition referenced the economic conditions affecting truckers at the time. Both petitions for rulemaking are included in the docket for this rulemaking.

FMCSA published a notice in the **Federal Register** on August 19, 2020, requesting public comment on OOIDA's and SBTC's rulemaking petitions (85 FR 51145). On October 16, 2020, the Agency extended the comment period by 30 days (85 FR 65898). The Agency received 1,391 comments on OOIDA's and SBTC's rulemaking petitions by the end of the extended comment period. The public commented on the transparency of charges and payments, broker margins, freedom of contract, pricing confidentiality, and the history of the broker transparency regulation. These issues are discussed below in Section VI.B., Comments and Agency Responses. On March 16, 2023, FMCSA granted OOIDA's and SBTC's rulemaking petitions. In the letters granting the SBTC and OOIDA petitions, FMCSA made clear that, while the Agency found good cause to open a rulemaking to amend 49 CFR 371.3, the proposed rule would not necessarily include the changes SBTC or OOIDA sought. The letters granting the petitions are available in the docket for this rulemaking.

C. Related Actions

In the time between the filing and grant of these petitions several related actions have provided the Agency with further information about broker transparency and wider context of the rulemaking. The related actions also indicate that the concerns surrounding broker transparency have persisted beyond the specific economic conditions of the freight industry in 2020.

Shortly after the OOIDA and SBTC petitions were filed, the Transportation Intermediaries Association (TIA) filed a rulemaking petition on August 4, 2020, seeking the elimination of § 371.3(c) and requesting guidance on dispatch services. Only the portion directed towards the elimination of § 371.3(c) is relevant to this rulemaking.[3] The TIA petition argued that the regulation is outdated given the changes in the brokered freight industry since the regulation was introduced in 1980. The petition further argued that broker transparency jeopardizes the confidentiality of proprietary pricing, and that motor carriers have sufficient information about prevailing rates to make informed business decisions without needing the records required by § 371.3.

The Agency published a request for public comments regarding TIA's petition on November 25, 2020 (85 FR 75280) and received 179 comments in response. These comments were substantially similar to those filed in response to the OOIDA and SBTC petitions. FMCSA denied TIA's petition on March 17, 2023.[4] In denying the

[3] FMCSA issued guidance on the definitions of ''broker'' and ''bona fide agent,'' including guidance on the role dispatch services play in the transportation industry and clarification on when such entities must register as brokers, on November 16, 2023 (88 FR 39368).

[4] The petition for rulemaking and denial letters are available in the docket for this rulemaking.

petition, the Agency stated that TIA's proposal would be contrary to the stated transportation policy goals in 49 U.S.C. 13101, including promotion of fairness and efficiency in the transportation industry.

While the SBTC, OOIDA, and TIA petitions were pending, FMCSA held a public listening session on October 28, 2020, regarding the three petitions and property brokers in general (85 FR 64613, Oct. 13, 2020). FMCSA received 76 written comments in response to the **Federal Register** notice announcing the listening session. During the listening session, participants expressed concerns about freight rates, disclosure of confidential pricing information, motor carriers directly soliciting shippers, so-called ''double brokering,'' record-keeping costs, comparisons to other industries, charge backs, and detention time fees.

The Agency has received additional input from the public on the topic of broker transparency in several other contexts. In March 2023, the Agency held a listening session at the Mid-America Trucking Show (MATS) shortly after granting the SBTC and OOIDA petitions.[5] Despite the Agency's public statement that the listening session would focus on other broker matters, including financial responsibility, public commenters at MATS focused on broker transparency. Many of the transparency related concerns were consistent with those raised in the comments on the OOIDA and SBTC rulemaking petitions in 2020, suggesting that the issues raised at the time of the public comment period for those petitions had not subsided as of March 2023.

The topic of broker transparency has also appeared in the comments received on other proposed rules.[6] While comments are most useful to the Agency when directed towards the subject matter of the public notice to which they respond, the Agency acknowledges these ancillary comments as evidence of continuing concerns around broker transparency.

VI. Discussion of Proposed Rulemaking and Comments

FMCSA proposes this rulemaking in response to OOIDA's and SBTC's petitions. The NPRM differs in certain ways from the provisions sought by OOIDA and SBTC, as discussed below. The rulemaking is also informed by the comments received in response to the petitions, as well as in the related actions detailed elsewhere in this NPRM. The comments, input from related actions, and the Agency's responses are discussed after the provisions of the proposed rulemaking.

A. Proposed Rulemaking

To address the concerns over broker transparency raised in the rulemaking petitions and subsequent public comments, FMCSA proposes the following amendments to § 371.3, ''Records to be kept by brokers,'' presented in the order in which they would appear in the section. The Agency also proposes a conforming amendment to § 371.2, ''Definitions.''

Sections 371.2 and 371.3 apply to all property brokers FMCSA regulates, as would the proposed amendments. Property brokers are divided between household goods (HHG) brokers, who arrange the transportation of personal property between homes, and non-HHG (*i.e.,* general freight) brokers. FMCSA believes that the broker transparency regulation should continue to apply equally to HHG brokers and general freight brokers, and the Agency has not identified any rationale for imposing different transparency requirements on HHG brokers versus general freight brokers. The comments received to date do not raise any broker transparency concerns unique to HHG brokers, and the Agency seeks comment on this issue.

1. Brokers Must Keep Records in an Electronic Format

FMCSA proposes requiring that the records covered by § 371.3(a) be kept in an electronic format to promote compliance with the broker transparency requirement in § 371.3(c). The Agency is aware of brokers avoiding meaningful compliance with § 371.3(c) by making the required records available for inspection only at their principal place of business, which often makes inspection by the motor carrier difficult or impossible. By requiring that the records be kept in an electronic format, the Agency intends to remedy this issue. Because the Agency, based on its interactions with various brokers, believes that most freight brokers already keep their records in an electronic format, this requirement should not impose a significant burden on these brokers. FMCSA believes that electronic recordkeeping may not be as common among household goods brokers and seeks comment on what burden, if any, would be imposed upon those brokers if electronic recordkeeping were required.

2. Revisions to the Required Contents of Brokers' Records

Within the recordkeeping requirements of § 371.3, paragraph (a) specifies the details that the records must contain. The Agency proposes the following revisions to ensure that the records are tailored to the needs of the parties, therefore better addressing the concerns of motor carriers while not imposing unnecessary recordkeeping burdens on brokers.

Date of Payment

The Agency proposes adding the date of payment from both the shipper to the broker and from the broker to the carrier. Some brokers commented that they bear significant risk because they tender payment to motor carriers prior to receiving payment from shippers, for instance, in a situation where the carrier is paid within 3 days of delivering a load, but the shipper has 30 days to pay the broker. On the other hand, motor carriers have commented about not being paid by brokers in a timely manner, often in the context of a charge back or other contractual dispute over whether the carrier performed their duties adequately under the contract. Including the date of payment would provide transparency to all parties about the benefits and risks of the carrier's payment structure. It would also provide motor carriers with necessary information in the event they experience charge backs or other instances of nonpayment, because the carrier would be better able to understand any deductions the shipper may have made to the payment it remitted to the broker and to verify that those deductions correspond to the charge back against the carrier.

Elimination of Brokerage Service vs. Non-Brokerage Service Distinction

The Agency proposes eliminating the distinction between brokerage services and non-brokerage services in § 371.3(a) by removing current paragraph (5) and revising paragraph (4). This distinction was originally made by the ICC in its 1949 rule, which was based on the ''Practices of Property Brokers'' report. As explained in the report, the ICC was contemplating a cap on brokers' commissions. The ICC distinguished between brokerage and non-brokerage services to support implementation of the cap and to prevent brokers from circumventing it through charges for non-brokerage services. The

[5] The transcript of the listening session is available in the docket for this rulemaking.

[6] See, *e.g.,* Comment FMCSA–2023–0268–0026 (comment on ''Fees for the Unified Carrier Registration Plan and Agreement'') available at *https://www.regulations.gov/comment/FMCSA-2023-0268-0026;* comment FMCSA–2016–0102–0351 (comment on ''Broker and Freight Forwarder Financial Responsibility'') available at *https://www.regulations.gov/comment/FMCSA-2016-0102-0351.*

contemplated cap was deferred from the 1949 rule and ultimately never adopted. Despite this, the distinction between brokerage and non-brokerage services was included as part of the rule and has remained in the regulations ever since.

The Agency believes that the distinction between brokerage and non-brokerage services is unnecessary for the purposes of the broker transparency regulation and proposes removing the distinction in favor of a simpler itemization requirement described below. The term *non-brokerage service* is defined at § 371.2(d), and used only in § 371.3(a)(5), so the Agency also proposes removing the definition of *non-brokerage service,* which would no longer be used.

Itemization of Charges and Fees

The Agency proposes clarifying that the records must itemize all charges and fees associated with the brokerage service, to include an amount and description of each charge and fee. Brokers would also be required to itemize any penalties assessed in connection with the shipment, for example, a penalty for late delivery or cargo damage. This revision is intended to ensure the parties have visibility into the payments, fees, and charges associated with the transaction, and can resolve issues and disputes without resorting to costlier remedies.

3. Brokers Must Provide Records Upon Request

In their petitions, both OOIDA and SBTC sought an explicit ban on waivers of the requirements in 371.3(c). However, as a general principle, parties are permitted to waive any right unless Congress, by statute, specifically makes a right non-waivable. The Agency has not identified any statutory provision in which Congress expressly barred waivers in this context, and therefore the Agency has not included the requested language in the revised regulation. The petitions did, however, identify inconsistencies between this regulation and the rest of part 371, which the Agency intends to address through this rulemaking. To this end, the Agency proposes amending the language of § 371.3(c) to more accurately describe the regulatory obligation imposed on brokers and the process for requesting and supplying transaction records.

When the ICC issued the broker transparency regulation in 1980, it stated that it would enable the elimination of other, more complex regulations. One of the major provisions eliminated, former 49 CFR 1045.10, related to the duties and obligations of a broker, which included giving fair advice to shippers and not misrepresenting or making false promises about the services motor carriers would provide; not misrepresenting or giving false information to motor carriers about the commodities in the shipment; advising both the shipper and carrier of the amount and basis of any compensation being received from the other; exercising due diligence in carrying out the terms of its contracts with shippers and motor carriers and ensuring prompt payment; and paying any freight charges in full to the carrier or carriers without deduction for any amount due to the broker from such carrier or carriers. The ICC was clear that its intention was not to eliminate these duties and responsibilities entirely, but rather that providing shippers and carriers with the ability to review the transaction records would ensure that brokers were acting honestly and fairly.

By phrasing the requirement as a private ''right to review,'' the original regulation did not prohibit a broker from requiring a waiver of the private ''right to review'' as a condition of brokering a load to a motor carrier and did not contain an enforcement mechanism for the Agency to enforce the private ''right to review.'' However, FMCSA believes the original wording did not adequately capture the ICC's intent that brokers continue to comply with those duties and obligations, particularly disclosure of such records to shippers and motor carriers who find value in such information. To address these concerns, FMCSA has reframed the disclosure requirement as a regulatory obligation, as the Agency believes this more closely aligns with the original intent of the regulation. Moreover, a regulated entity must adhere to the regulations and cannot ''disguise its regulatory obligations as contractual ones.'' *Taylor Energy Co. LLC* v. *United States,* 975 F.3d 1303, 1306 (Fed. Cir. 2020). These changes would also ensure that the language in § 371.3(c) is consistent with the other broker requirements in part 371.

The proposed amendments to § 371.3(c) would clarify that brokers maintain a continuing duty to act fairly and honestly, and that visibility into the transaction records is the mechanism by which shippers and carriers can ensure that brokers are complying with this duty. The requirement to provide the records upon request would thus be made explicit as a regulatory obligation. The proposed rule would not, however, prohibit brokers from including confidentiality clauses in their contracts with motor carriers. As long as brokers are complying with the requirement to disclose records upon request, the parties may negotiate and reach agreements regarding non-disclosure of the information to non-parties.

4. Records Must Be Provided Within 48 Hours of Request

As discussed in the comments, the Agency is aware of brokers avoiding meaningful compliance with the regulation by delaying the availability of records for review, and by restricting access for review to their principal place of business. The Agency proposes amending § 371.3(c) to require that records must be provided within 48 hours. This amendment is intended to provide the requestor with the records in a timely fashion, which enables the use of the records to resolve any issues around service or payment. By requiring the broker to ''provide'' records electronically, this amendment is intended to prevent a broker from only making its records available for review at its principal place of business or another, potentially inconvenient, location. Instead, the amendment plainly places the responsibility of delivering the information to the requestor on the broker.

B. Comments and Agency Responses

In the notice requesting public comment on OOIDA's and SBTC's rulemaking petitions (85 FR 51145, Aug. 19, 2020), the Agency posed a series of questions regarding the rulemaking sought by the petitions. FMCSA received a large number of comments in response to the notice, and in subsequent related actions, many responsive to the questions posed and others raising additional issues for the Agency's consideration. The comments expressed a range of views from motor carriers, brokers, and other interested parties, and the Agency's proposed rulemaking is informed by this input.

1. The Agency's Authority Over Broker Transparency

The first question the Agency posed in the notice regarding the rulemaking petitions referenced FMCSA's existing authorities related to brokers (49 U.S.C. 13101–14916) and asked what statutory provisions, if any, would be carried out by the regulatory changes requested petitioners requested. Both successful petitioners, OOIDA and SBTC, indicated that FMCSA has existing authority to carry out the proposed changes in the petitions for rulemaking. OOIDA indicated Congress has required the Secretary, and hence FMCSA, to regulate brokers to protect motor carriers, including requiring brokers to

have a bond as found in 49 U.S.C. 13904(e) and (f), as detailed in OOIDA's petition. SBTC indicated FMCSA already has existing authority to act on these petitions for rulemaking under U.S.C. 13101 through 14916, and more specifically, 49 U.S.C. 14906, which addresses evasion of regulation by motor carriers and brokers.

Few commenters responded directly to the Agency's questions about authority. Of those who did, most indicated that FMCSA has a mission to promote safe operation of commercial motor vehicles, and any form of market regulation falls outside of this mission. Scopelitis, a national transportation law firm, for example, indicated there is no need for the existing regulations in a highly competitive industry, much less the proposed addition of even more regulatory burden.

FMCSA also asked how a rule restricting the rights of private parties (*e.g.,* brokers) from including certain terms in their agreements would align with the Agency's statutory authority. Few commenters directly addressed this question. TIA and MODE Transportation, for example, indicated that 49 U.S.C. 14101 provides brokers the option to include a waiver provision. The applicability of 49 U.S.C. 14101 is discussed in Section VI.B.8. The National Association of Small Trucking Companies did not cite a specific statute but indicated that dictating the terms of contracts between private parties was beyond FMCSA's authority. In contrast, OOIDA and SBTC commented that FMCSA has the authority to restrict private parties from including a waiver under FMCSA's existing authority. Overall, there was substantial disagreement on this question.

FMCSA response: As discussed in Section IV. Legal Basis, the Agency has the authority to establish certain regulations for property brokers. The Agency believes that the proposed rule, which revises the recordkeeping regulations for property brokers, falls squarely within this authority. Comments that characterize broker transparency as beyond the Agency's authority and unrelated to safety oversimplify both the Agency's authority and the purpose of broker transparency. FMCSA and its predecessor agencies have long been responsible for regulating certain commercial aspects of motor carrier transportation, including broker recordkeeping.

2. FMCSA Enforcement Role

Question two asked how a rulemaking expanding FMCSA's enforcement of a requirement that brokers automatically disclose financial details about each transaction to the motor carrier transporting the load, as requested in the OOIDA and SBTC petitions, would align with the statutes identified above (*i.e.,* 49 U.S.C. 13301 and 14122).

In its comments on the petitions, CR England Logistics stated that the rulemakings proposed by OOIDA and SBTC do not align with existing FMCSA statutes. TIA indicated that disclosure of financial details is in direct conflict with 49 U.S.C. 14101(b), in addition to Congressional intent. A small number of commenters, such as TIA, stated disclosure of commission, a violation of § 371.3, has not been an issue. TIA further stated there have been no complaints made to DOT's National Consumer Complaint Database (NCCDB) for a violation of a broker not disclosing its commission under § 371.3(c). OOIDA stated FMCSA would not experience additional burdens by adopting the changes proposed in the petitions and already has existing authority to do so under 49 U.S.C. 13904 and 14122.

FMCSA response: The Agency believes that the proposed rulemaking is an appropriate exercise of its authority that builds on the current recordkeeping requirements. Since the filing of these petitions, broker transparency has become a topic of intense interest in the transportation industry. According to Agency records, at least 32 complaints were received from 2018 through 2020. The Agency receives complaints through NCCDB and other sources. As detailed above, FMCSA believes the language of the original regulation does not accurately describe the transacting parties' rights and burdens, and that a broker's obligation to provide records is not premised on any inherent right of the carrier or shipper to receive those records, but rather on the Agency's statutory authority to protect motor carriers in connection with its broker recordkeeping regulations.

FMCSA has several options for enforcing these regulations. In order to register with FMCSA, brokers must agree to comply with all applicable regulations (49 U.S.C. 13904(a)(2)), and FMCSA has the authority to suspend or revoke a broker's operating authority for willful failure to comply with a condition of registration (49 U.S.C. 13905(d)(2)(A)(iii)). FMCSA may also decline to renew a broker's registration if the broker has demonstrated it is not willing or able to comply with the regulations.

The Agency has a further option to seek a civil penalty for regulatory violations. The penalty schedule in 49 CFR part 386 Appendix B already sets out penalties for violations of FMCSA's commercial regulations in paragraph (g), as well as penalties for evasion in paragraph (i). The existing penalties cover violations of this proposed rule, so FMCSA does not propose a new enforcement mechanism or alter the current penalty schedule as part of this rulemaking. FMCSA is aware that the Department of Justice (DOJ) must bring certain enforcement actions for civil penalties on behalf of FMCSA.[7] However, parties may still file complaints with FMCSA for the Agency to investigate, take enforcement action within its existing authorities, and refer to DOJ as appropriate.

The Agency's exercise of authority to regulate broker recordkeeping, including its issuance of broker transparency regulations, is not in conflict with 49 U.S.C. 14101(b). That statute permits shippers and carriers to waive certain rights and remedies by contract, but for reasons discussed in section VI.B.8. of this NPRM, the Agency believes brokers are not shippers within the meaning set out by 49 U.S.C. 14101(b). Because the statute does not relate to brokers, it does not conflict with the Agency's broker transparency regulations. Congress has also expressed its clear intent in 49 U.S.C. 13904(e) for the Agency to issue regulations applicable to brokers that provide protection for shippers and motor carriers, consistent with the Agency's responsibility to carry out the objectives of the national transportation policy and its general authority to regulate brokers of property.

3. Broker Size as Related to Transparency

The third question in the notice was whether the transparency issues raised by OOIDA and SBTC are limited to small brokers or large brokers (*e.g.,* brokers with revenues above a certain threshold, brokers with a certain number of transactions, etc.) or whether they are more widespread such that the rulemaking should cover all brokers, regardless of size. The fourth question assumed that transparency issues were primarily associated with large brokers and asked what revenue threshold FMCSA should consider for the applicability of any new requirements. It also asked how the Agency could

[7] See *In the Matter of Darlene Riojas, Manuel J. Riojas, Four Star Trucking, Inc., 7 Star Transport, LLC—Order Dismissing Three Charges for Lack of Subject Matter Jurisdiction, and Reserving Ruling on Other Summary Judgment Requests,* Docket No. FMCSA–2012–0174–0056 (May 8, 2019). This decision is available on the internet at *https://www.regulations.gov/document/FMCSA-2012-0174-0056.*

obtain accurate information about brokers' revenues.

Of the commenters that responded directly to the third question, the majority indicated that the proposed rule should apply equally to large and small brokers. These commenters included brokers and trade associations, such as England Logistics and OOIDA, and a large number of individuals involved in the trucking industry.

A smaller number of commenters responding to question four indicated that freight brokers, particularly large brokers, due to their size and resources, are taking advantage of the current situation. However, most commenters did not differentiate based on the size of the broker but rather stated that brokers as a whole were not transparent and were not treating motor carriers fairly.

FMCSA response: The Agency believes that the proposed broker transparency requirements should apply to all brokers, regardless of size, as is the case with the current regulation. The Agency believes that a lack of broker transparency causes problems whether the broker who arranged the transportation is large or small.

4. Cost of Providing Transaction Records

The fifth question posed related to the most efficient and effective means for brokers to provide information, automatically and electronically, to motor carriers. The Agency asked whether each broker should have, for example, a stand-alone system with motor carriers receiving an email from the broker after the contractual service has been completed, or whether the brokers should be allowed to satisfy the request with partnerships or networks through which registered brokers would upload transaction information which would then be automatically transmitted via the network to the registered carrier associated with the transaction. The sixth question, related to the fifth, was a request for cost estimates for implementing an information technology (IT) solution to accomplish OOIDA's request, either through stand-alone systems run by individual brokers, or systems operated by groups of brokers notifying the individual motor carriers utilizing any of the brokers within the group.

The majority of the commenters agreed that electronic transmission is the most efficient means for brokers to provide information. However, one commenter, MODE Transportation, indicated that implementing an electronic or IT solution is not required to solve the transparency issue and was never envisioned when § 371.3 was developed. Echo Global Logistics stated that much of the information sought through broker transparency is already publicly available, including rate information from aggregators like DAT.com and required financial reports from publicly-held brokers. Echo Global Logistics argued that, given the public availability of this information, the cost of developing and maintaining an electronic reporting system to comply with the petitioners' proposed regulations is not justifiable.

There was disagreement among commenters as to whether a proposed electronic system should be stand alone or a current electronic format(s) which the broker may already be using. Some commenters mentioned use of existing electronic formats, such as email, spreadsheets, faxes, which are in common use to meet a proposed electronic requirement. However, most brokers that commented indicated that dedicated stand-alone systems such as an electronic data interchange (EDI) or application programming interface (API) are just as likely to be already in use by many freight brokers, and these systems provide the necessary data privacy and security. England Logistics mentioned that the data transmitted could potentially be trade secrets and therefore would require more intensive IT systems to protect.

In terms of cost, most commenters indicated that, if the use of a standalone system such as EDI or API were required, it would have a cost impact on those brokers which do not have such systems in place already. Both Axle and Lange Logistics indicated this cost impact may affect small businesses more profoundly than others.

Five commenters directly responded to question six and provided a cost estimate for brokers to establish an electronic system to transmit records. Trinity Logistics and Tucker Worldwide estimated a cost of $2,500 to $10,000 per carrier setup. TIA further provided an estimated cost example of a broker that utilizes 5,000 motor carriers in their database, using their own existing IT system (presumably EDI- or API-based), would incur a cost of $12.5 million to $50 million for implementation. ArcBest indicated personnel and equipment required to implement the electronic information transfer would be $500,000 per broker.

FMCSA response: FMCSA is not proposing to prescribe a specific type of electronic system brokers must use, provided the system complies with 49 CFR 390.32, ''Electronic documents and signatures.'' The Agency finds that the requirements listed there are appropriate in the context of the broker recordkeeping requirements and sees a benefit in having a consistent standard for electronic documents. FMCSA's experience in reviewing brokers' records shows that most records covered by § 371.3(a), including bills of lading, are already kept in electronic format, though paper bills of lading may still be occasionally used. Thus, the burden on parties to keep and transmit transaction records electronically is expected to be minimal.

The proposed rule does not include an automatic disclosure provision. FMCSA believes that the cost estimates provided in response to question 6, which were related to developing an IT solution for automatic disclosure within 48 hours of the completion of contractual obligations, are overestimated. Since the rule does not include an automatic disclosure provision and records would only be provided upon request within 48 hours, the Agency expects that the costs would be significantly lower because brokers' existing systems, either as currently implemented or with minor modification, could be used to fulfill these requirements. However, the Agency lacks specific data to quantify these costs and is seeking public comments on the cost estimates for this proposal.

In response to the comment that much of the information brokers would have to provide is already publicly available, FMCSA notes that information found on publicly held brokers' financial reports is not transaction specific. While reviewing this information could give shippers and motor carriers a general sense of the state of the freight brokerage industry, it does not provide them with information about the loads they have consigned or hauled. Rate aggregation websites provide pricing information that carriers may find useful in deciding whether to accept an offer to haul a prospective load, but it is also not a substitute for broker transparency information. In particular, it would not provide shipper, carrier, or bill of lading information for a particular shipment, nor would it provide carriers with any information about chargebacks or other fees assessed against them in connection with a particular delivery. FMCSA therefore does not believe relying on publicly-available information is an adequate substitute for the information disclosure proposed in this rule.

5. Economic Benefits to Motor Carriers and Costs to Brokers

Both rulemaking petitions linked broker transparency to concerns over carrier revenue and broker margins, and the notice requesting public comment

sought input on these concerns. Margins, as discussed in this proposed rulemaking, refer to the division of a shipper's payment between the broker and the motor carrier, expressed as a percentage. SBTC stated that, in the context of the economic impact of the COVID–19 national emergency, freight rates had dropped drastically, yet brokers, in at least a few instances, were making large margins on freight. SBTC stated that it did not seek regulations limiting the amounts or percentages brokers earn, but it viewed broker transparency as essential to making sure market forces operate ethically and fairly. The OOIDA petition raised similar concerns. The notice asked for quantitative estimates of the economic benefits that would likely be achieved by motor carriers if FMCSA adopted the rules requested by OOIDA and SBTC, including how much additional revenue motor carriers might receive on a per-transaction basis. The notice also sought quantitative estimates of the economic costs to brokers or others, including how much profit reduction on a per-transaction basis brokers would experience and what percentage of the costs would be passed through to shippers or motor carriers.

Only a few commenters responded to these questions. OOIDA estimated that the additional revenue a carrier would earn in an individual transaction would be between tens to thousands of dollars, depending on the specifics of the transaction. This estimate was preceded by a discussion of increased convenience and a decrease in unfair billing practices, and it is unclear how OOIDA's estimated additional revenue was apportioned among the increase in convenience, the decrease in unfair billing practices, greater negotiating power for motor carriers, or other factors. Few of the comments from small motor carriers contained responsive estimates, and several motor carriers noted that the current lack of broker transparency meant that they do not have access to the transaction information necessary to provide an informed estimate. Brokers commented that motor carriers would not receive any economic benefit from the proposed transparency rulemaking. Brokers provided estimates of the cost to comply with OOIDA's proposal based on information technology and staffing costs but did not provide an estimate of the economic impact due to changes to freight rates, profit reduction on a per-transaction basis for brokers, or percentage of costs that would be passed through to shippers or motor carriers.

Although the Agency received few quantitative estimates of the economic benefits of broker transparency to motor carriers and the economic costs to brokers, many comments addressed carrier revenue and broker margins. Motor carriers commented on the prevailing low freight rates at the time and provided examples of offers of one dollar or less per mile. Motor carriers described the impact of these low rates. For example, some comments stated that the offered rates make it difficult to cover motor carriers' operating expenses, including maintaining equipment in safe working condition. Some comments also described low rates as a contributor to undue stress on drivers and unsafe operating practices. Many comments from motor carriers characterized the rates as inequitable given the difficulty of the work they do and value of the service they provide. Many of these comments identified brokers as responsible, at least in part, for low rates and many characterized the brokers' business practices as deceitful. Carriers also say they cannot operate a profitable business unless they haul brokered loads, and some have reported taking brokered loads at a loss, citing the need for revenue to service business debts. In addition, many motor carriers expressed concern that they lack negotiating power to exclude transparency waiver provisions from contracts and, if they exercise their right to view the transaction records, brokers will select other motor carriers to work with and refuse to do business with them in the future.

Many comments from motor carriers support the broker transparency proposals in the petitions as a remedy for the issues they raised. Some comments state that increased broker transparency would allow motor carriers to negotiate higher rates. Many comments simply supported broker transparency as a means for increasing carrier revenue, without describing how revenue would increase as a result of transparency. Other comments suggested modifying the rules requested by OOIDA and SBTC to address their concerns about low rates more directly, including several suggestions to provide the broker transparency information when the parties are negotiating a rate, before the service is provided. Some of these comments stated that the transparency information would not be useful to the carrier after the transportation service had been provided.

Some motor carriers did not support broker transparency and stated that the information is irrelevant to motor carriers because the only pricing information they need is the offered rate. Other commenters proposed a rule limiting broker margins to a certain percentage of the price paid by the shipper.

Many of the comments from brokers challenged the assertions made in the petitions and other comments regarding freight rates and broker margins. Broker commenters also argued that low freight rates are not a result of high broker margins but rather a result of broad market forces, particularly the short-term acute economic impact of the COVID–19 national emergency. They disputed claims about price gouging by identifying a variety of factors that influence the price a broker sets for a load. Brokers also explained that their contracts with shippers are typically for a set period, often one year, while their contracts with motor carriers are typically shorter, often on a load-by-load basis. As a result, the broker's margin for a load covered by the shipper contract will fluctuate based on the spot market, so that the broker may have a higher margin on some loads and a lower, sometimes negative, margin on other loads. Brokers also explained that their margins should not be equated with profitability and described the various expenses incurred to provide brokerage services to shippers. These expenses would not be reflected in the broker transparency information.

Many of the comments from brokers stated that the rulemaking the petitions sought would not have the claimed effect of increasing carrier revenue. These comments stated that broker transparency would not increase freight rates. They also stated that load boards and other commonly available services already provide motor carriers with enough information regarding freight availability, traffic lanes, market rate information, seasonality adjustments, and so on to make informed business decisions, rendering the records available under § 371.3 unnecessary. Some comments added that motor carriers can decline to take a load if the offered rate is too low to be profitable. In response, some comments explained that motor carriers with leased trucks may accept unprofitable loads to secure revenue, even as that revenue is not profitable.

Since the comment period closed, FMCSA has received further input regarding broker transparency. This input includes further expressions of concern regarding low prevailing freight rates, and of the belief that the low freight rates are caused, at least in part, by high broker margins. There is continued interest from motor carriers in broker transparency as a solution to low prevailing rates.

FMCSA response: The purpose of the proposed rule is not to provide an economic benefit to motor carriers, nor to impact broker margins. However, the Agency considers the economic impacts of the proposed rule as part of its mandated regulatory analysis. The comments received to date do not conclusively establish what the economic impact of the proposed rule would be. As with the current rule, the proposed rule would give shippers and carriers the option to access information about a brokered freight transaction after the parties have negotiated the terms of the contract and the transaction is complete but would not require disclosure prior to that time, nor would it require automatic disclosure. The information provided would allow the carrier to compare the amount that the shipper paid the broker to the amount that the broker paid the carrier but would not set or limit rates or brokers' margins. By clarifying the regulatory obligation for brokers to provide the transaction records, the proposed rule would make the information enumerated at § 371.3(a) available to all parties participating in a brokered freight transaction.

Although the Agency cannot determine, with the currently available information, what economic impact the proposed rule would have, two main theories can be derived from the comments. Under one theory, broker transparency would not provide an economic benefit to motor carriers even if such transparency was widespread. Motor carriers would not have access to the transparency information when determining whether to accept a brokered load at the broker's offered price or when negotiating the price of a load with a broker. The information, provided after the fact, would not change the price of the load. The information may not have an impact on the price of future loads for a variety of reasons. The carrier may not find the information from past transactions useful when negotiating prices for future loads offered by the same broker or loads offered by other brokers. If, based on the transparency information, the carrier chose not to accept future loads from that broker, the carrier might not be able to find higher-paying loads from other brokers. Relatedly, the broker in that scenario may be able to find other motor carriers willing to accept the load, even if one carrier refuses to work with them.

Under the second theory, broker transparency would provide an economic benefit to motor carriers if such transparency was more widely available. The broker transparency information might impact the price of future loads that the carrier accepts. Motor carriers may be able to negotiate a higher price if they can apply their knowledge from previous loads to negotiations for future loads from the same broker or future loads with similar characteristics. Brokers may have to accept the higher price if they cannot find other motor carriers. Although the transparency information would not be publicly available, a broker might develop a reputation among motor carriers for offering low rates relative to the price paid by the shipper. If that reputation deterred motor carriers from taking loads, the broker may have to offer higher rates to place their loads. At least one broker highlighted concerns that transparency information could result in motor carriers directly soliciting shippers, bypassing brokers for future loads. The ICC considered this issue when it adopted the current regulations in 1980, emphasizing that motor carriers and shippers are free to deal directly with each other and ''[o]nly where the shipper finds that it can get better service from the broker will it stay with the broker'' (45 FR 68941, Oct. 17, 1980).

There exists a possibility that transparency information could reduce the exclusive knowledge that brokers bring to a transaction if shippers and motor carriers collect transparency information over time. If the Agency were to assume that the broker's exclusive knowledge is considered value-added and therefore currently captured in broker margins, then increased transparency with this proposal could result in downward pricing pressure on broker margins from motor carriers, shippers, or both.

As discussed in section VI.B.4, above, FMCSA does not view the information available on load boards or through other publicly available sources to be an adequate substitute for the transaction-specific information set out in this proposed rule. Shippers and motor carriers have an interest in knowing details about their particular shipments, especially when problems with a shipment arise or the compensation received differs from the contractual amount. Broker transparency provides the retrospective transaction-specific detail on completed loads necessary to resolve these issues. By contrast, the prevailing rate information available on load boards for prospective loads is useful for making informed decisions about which offers to accept but is not useful in addressing issues with completed loads.

From the comments received, the Agency cannot determine whether either of these theories would prove correct under the proposed rule. The actual impact may be somewhere in between these theories, or both theories may be incorrect. If broker transparency remained rare under the proposed rule, there may not be any economic impact. The Agency seeks further comment to better estimate the economic impact of the proposed rule.

6. Transparency of Charge Backs, Accessorial Fees, and Surcharges

The broker transparency comments brought up several issues not raised in the petitions or in the notice. One issue was the transparency of charge backs. Several comments described questionable claims in situations where a carrier delivered a load, got a clean bill of lading from the receiver, and then later had a claim, or ''charge back,'' on the load from the broker despite the clean bill of lading. Motor carriers contend that these claims often lack sufficient explanation or description of the reason for the charge back, and the motor carriers find it difficult to contest them, particularly when their payment for transporting the load is withheld unless they accede to the claim. In situations where the contracts include cross-collateralization provisions, payment for other loads transported by the same carrier for the same broker may also be withheld unless the claim is accepted.

Other comments described issues with detention charges and fuel surcharges, where the rates and conditions of the fees that brokers charge shippers are different than the rates and conditions of payments remitted to the carrier, despite the fees being premised on the carrier's operating costs. As an example, fees for detention time are premised on the operating costs of keeping a truck idle while waiting to load or unload, costs that include the driver's time. One commenter described a situation where the broker charged the shipper for detention time after the first hour, at a rate of $50 per hour, but paid the carrier for detention only after 4 hours, and at a rate of $35 per hour. Comments from motor carriers expressed similar concerns regarding fuel surcharges.

FMCSA response: The practices identified in the comments are concerning because, depending on their prevalence, they may significantly disrupt the efficiencies and opportunities offered by brokered freight transactions. Broker transparency seems to be a useful tool in addressing these concerns, by providing parties to a brokered transaction visibility into the associated payments, fees, and charges,

enabling the parties to resolve issues and disputes among themselves without resorting to costlier remedies. If a claim is made against a shipment, the carrier should be able to understand the basis of the claim, not just to dispute questionable claims, and in instances of well-founded claims, to take precautions with future shipments and thereby avoid such claims. On the remittance of surcharges, there may be a reasonable justification for a broker to remit less than the full amount of a surcharge received from a shipper to a carrier, but the carrier should be able to see that difference, particularly when the surcharge is premised on the carrier's operating costs.

In addressing broker transparency, FMCSA cannot replace prudent business judgment and cannot guarantee the trustworthiness of every shipper, broker, and carrier. However, the brokered freight transportation industry requires a certain degree of trust to operate efficiently. Trust is eroded when motor carriers are prevented from seeing the charges and payments associated with the service they are providing. In addition to creating mistrust, unsubstantiated and specious charges levied on motor carriers divert resources to paying or litigating the charges, that could otherwise be spent providing safe and efficient transportation.

7. Confidentiality of Pricing

Brokers commenting on transparency raised concerns about the confidentiality of their pricing. Brokers stated that shippers require pricing confidentiality in their contracts with brokers, which is one reason why brokers require confidentiality in their agreements with motor carriers. In this regard, several motor carriers noted that the broker-carrier contracts typically have confidentiality clauses, which would serve to protect shipper pricing in the context of greater broker transparency.

Brokers also asserted that their pricing can constitute trade secrets, and broker transparency requirements would conflict with the Defend Trade Secrets Act (DTSA) (18 U.S.C. 1831 *et seq.*). Motor carriers commented that DTSA doesn't apply to this situation because motor carriers have a right to the transaction information under the current regulations and, consistent with DTSA, the information can still be protected from public disclosure without waiving the carrier's right to access. Motor carriers argued that a broker disclosing to a carrier the transactional information to which the carrier is authorized to access is not equivalent to theft of a trade secret.

FMCSA response: The Agency recognizes that shippers, motor carriers, and brokers in a brokered freight transaction likely have a compelling business interest in protecting information about that transaction. The broker transparency regulation does not require public disclosure, and the Agency believes that broker transparency is compatible with the prudent protection of business information. Section 371.3 does not require the broker to disclose to the carrier all details of the business relationship between the broker and shipper, but rather only the transaction-specific details enumerated in § 371.3(a). The Agency believes that the confidentiality provisions in broker-carrier contracts can provide protection consistent with broker transparency. The concerns around confidentiality must be balanced against the issues that broker transparency is meant to remedy, as described above.

Regarding trade secrets, the Agency does not believe that § 371.3 in its current form, or with the amendments proposed, conflicts with trade secret protections. The DTSA prohibits economic espionage and theft of trade secrets, defined as when a person steals, receives, buys, possesses, duplicates, transmits, or engages in other similar activities regarding proprietary economic information, or conspires with others to do so. Here, the information is required to be kept and handled in accordance with a Federal regulation. Therefore, a broker or carrier is legally in possession of such information and does not violate the DTSA when it handles such information pursuant to the regulation. Parties are also permitted to include confidentiality clauses in their contracts that limit further disclosure of such information.

Moreover, while a pricing formula could be a trade secret as a type of business information with independent economic value, the record of an individual transaction covered by § 371.3(a), without more, is not likely to be covered as a trade secret. Brokers are not required to disclose additional information or documentation beyond the scope of what is covered in § 371.3(a). Further, § 371.3(c) does not require the type of public disclosure that would be economically damaging to a party. Instead, it only requires that brokers give the parties to a transaction access to a limited amount of information pertaining to that transaction.

8. Applicability of Other Statutes

Several comments argued that any rule preventing the waiver of § 371.3(c) would be contrary to 49 U.S.C. 14101. Those commenters argue that 49 U.S.C. 14101 should be interpreted to cover brokers and therefore permits brokers to include waiver provisions in contracts with motor carriers that waive the broker's obligations to the motor carrier under § 371.3. In support of this claim, several commenters cited the *Dixie Midwest* [8] ICC decision for the proposition that a broker is a shipper in relation to a carrier.

FMCSA response: The language of 49 U.S.C. 14101 refers to shippers and motor carriers, not brokers. The Agency does not interpret that statute to apply to brokers, and the proposed rule therefore would not conflict with the statute. Motor carriers or shippers would not use 49 U.S.C. 14101 to contract out of their rights under § 371.3(c), because 49 U.S.C. 14101 is premised on a contract between a carrier and a shipper, not a brokered freight transaction, while § 371.3 is focused solely on a brokered freight transaction. It is unreasonable to say that a broker could rely on 49 U.S.C. 14101, which on its face does not apply to brokered freight transactions, in order to waive a right that applies only to brokered freight transactions.

Regarding the *Dixie Midwest* decision, in that case the ICC was determining whether a broker could be considered a shipper in the context of supporting an application for contract carrier authority. That situation has limited bearing on the interpretation of 49 U.S.C. 14101. Most federal courts that have addressed the issue of whether 49 U.S.C. 14101(b) applies to brokers in more recent years have held it does not.[9]

The Agency is aware that some courts have determined, after a fact-specific analysis, that a broker acted as a shipper under the particular conditions present in those transactions.[10] However, the Agency does not consider all brokers to be shippers in relation to motor carriers or for that to be the standard by which

[8] *Dixie Midwest Express, Inc., Extension—General Commodities,* No. MC–125038 (Sub-No. 24), 132 M.C.C. 794 (Feb. 3, 1982).

[9] See, *e.g., Exel, Inc.* v. *S. Refrigerated Transp., Inc.,* 807 F.3d 140, 148–49 (6th Cir. 2015); *Supreme Auto Transp., Inc.* v. *JBL Logistics, LLC,* 2017 WL 4334064, at *4 (D. Colo. Mar. 8, 2017); *United Rd. Logistics LLC* v. *Alpha Transportation Grp. LLC,* 2017 WL 1755825, at *2 (E.D. Mich. May 5, 2017). See also *TransCorr Nat'l Logistics,* 2008 WL 5272895 at *4 and *REI Transp., Inc.* v. *C.H. Robinson Worldwide, Inc.,* 519 F.3d 693, 694 (7th Cir. 2008) (both recognizing that brokers are not shippers, but allowing for the possibility that a broker could step into a shipper's shoes to assert claims against motor carriers).

[10] See, *e.g., Jackson Rapid Delivery Serv., Inc.* v. *Thomson Consumer Elecs., Inc.,* 210 F. Supp. 2d 949, 954 (N.D. Ill. 2001).

broadly applicable regulations are formulated. In circumstances where the broker does, in fact, act as the shipper, 49 U.S.C. 14101(b) limits the circumstances under which the Agency may prohibit waivers in contracts. However, the Agency believes that in most brokered transactions, the broker is not the shipper, and 49 U.S.C. 14101(b) does not apply.

The proposed amendments to § 371.3(c) would also render this objection largely moot by clarifying that access to records is not a right belonging to motor carriers or shippers that can be contracted away, but instead is a regulatory compliance requirement that brokers must meet in order to operate in the interstate transportation industry.

9. Context and Impact of the COVID–19 National Emergency

The SBTC rulemaking petition, which was filed in May 2020, referred to the COVID–19 national emergency and its negative impact on freight rates. The OOIDA petition, also filed in May 2020, noted that freight rates had reached historic lows but did not reference the COVID–19 national emergency specifically. SBTC's petition raised concerns that brokers were taking advantage of the situation to obtain high margins, and several comments on the petitions expressed similar concerns. These concerns were not based on systematic data, but on personal experiences, beliefs, and anecdotes about broker margins during that time; however, motor carriers also noted the difficulty in providing supporting data because they rarely obtain information about broker margins. Several motor carriers made the related point that they provided essential transportation services during the COVID–19 national emergency and should be compensated accordingly.

The comments received from brokers disagree with the motor carriers' claims. These comments state that the COVID–19 national emergency did not provide brokers with high margins; instead, brokers claim they experienced the same weak freight market and had difficulty finding loads to broker. Several brokers characterized the rulemaking proposed in the petitions as a reaction to short-term economic forces and opposed the petitions because they believed that such a reaction was inappropriate. These brokers noted that freight rates were already rebounding at the time they filed their comments, which was later in 2020. Some commenters referenced freight market indices to support this point.

Returning to the carrier point of view, the OOIDA petition did not directly tie its proposed rulemaking to COVID–19 and stated that ''OOIDA has long pushed for greater transparency in transactions with brokers.'' In 2021, at a time when the freight market was stronger than when the petitions were filed, SBTC submitted a letter to DOT expressing continued interest in a broker transparency rulemaking. As described previously, FMCSA held a listening session at MATS in March 2023 on the topic of property brokers. During this session the Agency heard from several motor carriers expressing their support for a broker transparency rulemaking.

FMCSA response: The COVID–19 national emergency had a drastic negative impact on the freight market in 2020, but the market began to recover later that year. Subsequently the market has continued to fluctuate, reaching notable highs in 2021 and 2022 but dropping off significantly in the last few years. Though the Agency is aware of economic conditions in the industry, the proposed rulemaking is not intended to address those conditions. The circumstances of the COVID–19 national emergency may have increased the interest in broker transparency regulation, but the Agency believes the proposed rulemaking serves a purpose beyond the context of that emergency, a conclusion supported by the continued engagement of motor carriers on the issue of broker transparency.

10. Automatic Disclosure and Retaliation

The OOIDA petition sought a provision making disclosure of the records automatic. OOIDA stated the automatic disclosure was necessary to prevent selective retaliation, *i.e.,* blacklisting, against motor carriers who exercise their option to review the transaction records. The SBTC petition did not seek an automatic disclosure provision. Many commenters expressed the same concern with retaliation as OOIDA.

FMCSA Response: The proposed rule does not include an automatic disclosure provision. Instead, as in the current regulation, parties to the transaction would have the ability to review the records upon request. The Agency believes that an automatic disclosure provision is unnecessary at this time and could be excessively burdensome to brokers. Though the concerns regarding retaliation appear plausible, the Agency cannot determine how frequently retaliation would take place or its potential effect on the motor carrier transportation industry. The Agency seeks further comment on this issue.

C. Issues on Which the Agency Seeks Further Comment

While the Agency invites comment on all aspects of the NPRM, we are particularly interested in comments that address the following issues. In addressing topics, FMCSA requests that commenters number their remarks to correspond with the list below:

1. What impact, if any, would the proposed rule have on freight rates? Please provide support for your position.

2. How common is electronic recordkeeping among household goods brokers? What burden, if any, would be imposed if electronic recordkeeping was required?

3. How much time would a broker spend creating an electronic record from paper documents for the record mandated by § 371.3? What would be the costs for a broker to create an electronic record per transaction?

4. Do you believe that the 48-hour timeframe proposed for § 371.3(c) would create a substantial burden for brokers? Why or why not? If you disagree with the proposed 48-hour timeframe, what timeframe would best balance the objectives of transparency while minimizing the burden on brokers?

5. If this proposal effectively reduced instances of illegal brokering, through carrier policing with transparency information, would the brokers engaged in illegal practices exit the market, resulting in the transfer of illicit profits to legally operating motor carriers and/or brokers?

6. Should freight brokers and household goods brokers be subject to the same recordkeeping requirements under § 371.3? If your answer is ''no,'' why should they be subject to different requirements?

7. Should parties requesting records under § 371.3(c) be required to submit their request in writing? Should parties requesting records under § 371.3(c) be required to submit their request electronically? Would requiring a specific format for submitted requests impose a cost on the parties or otherwise deter requests for transparency? Please provide support for your position.

8. Would the proposal that records be provided electronically under § 371.3(c) make broker transparency more likely, as compared to not specifying a method of provided the records? Should the Agency be more specific in requiring a particular format for records provided under § 371.3(c), and if so, what method and/or format is preferrable? Please provide support for your position.

VII. Section-by-Section Analysis

Part 371, entitled, ''Brokers of Property,'' provides requirements for entities or individuals brokering the transportation of property by authorized motor carriers. FMCSA proposes to amend §§ 371.2, ''Definitions,'' and 371.3, ''Records to be kept by brokers.''

A. Section 371.2 Definitions

Section 371.2 defines terms used in part 371 and includes a definition for ''non-brokerage service,'' which is used only in § 371.3. FMCSA's proposed amendments to § 371.3 would remove the term ''non-brokerage service'' from the section, and FMCSA therefore proposes a corresponding amendment to § 371.2 to remove the definition, which would no longer be used.

B. Section 371.3 Records To Be Kept by Brokers

In § 371.3 the Agency proposes modernizing the language of the regulation by replacing the word ''shall'' with the word ''must.'' These words have the same meaning in the FMCSRs, as explained in § 390.7(b). Further, the addition of the electronic format in accordance with § 390.32(d) has been proposed to align with FMCSA's electronic records requirements elsewhere in the FMCSRs and to make records readily available to all parties. Paragraph (a)(4) would be revised to include the amount of compensation received by the broker for each service performed in connection with each shipment, including, but not limited to, freight charges, surcharges, and accessorial fees; the date of payment; and the name of the payer, including any business aliases, if known. Paragraph (a)(5) would be revised to require broker records to include any penalties assessed in connection with each shipment and to delete reference to ''non-brokerage service.'' Paragraph (a)(6) would be removed, as FMCSA proposes incorporating its language into paragraph (a)(4). FMCSA proposes revising paragraph (b) to replace ''three'' with ''3,'' to align with the U.S. Government Publishing Office guidelines on numeral styling, and to add ''must'' to confirm that records are required to be kept for 3 years. Finally, FMCSA would revise paragraph (c) to include the requirement that brokers must provide records electronically within 48 hours of request to any party to the brokered transaction.

VIII. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), E.O. 14094 (Modernizing Regulatory Review), and DOT Regulatory Policies and Procedures

The Office of Information and Regulatory Affairs (OIRA) determined that this proposed rule is not a significant regulatory action under section 3(f) of E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and amended by E.O. 14094 (88 FR 21879, Apr. 11, 2023), Modernizing Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. This rule is also not significant within the meaning of DOT Order 2100.6A, ''Rulemaking and Guidance Procedures'' (June 7, 2021). Accordingly, OMB has not reviewed it under these Orders.

1. Need for the Regulation

This proposal would amend the requirements of § 371.3 to further improve transparency in brokered freight transactions between brokers, motor carriers, and shippers. The Agency seeks to increase transparency and reduce information asymmetry so that the freight brokerage market operates in a more ethical, fair, and efficient manner. Information asymmetry is a term describing a situation where one or more parties to a transaction have additional material information on a transaction not available to another party. Information asymmetry may give brokers a strategic advantage in contract negotiations, potentially enabling them to secure more favorable contractual terms. Information asymmetry is generally undesirable, and the Agency believes it creates inefficient outcomes in brokered freight transactions. Based on comments to the OOIDA and SBTC petition for rulemakings, the Agency understands that information asymmetry hinders motor carriers in their negotiations with brokers. Furthermore, motor carriers may not be able effectively to defend themselves against potential abuses, such as unfounded claims. The OOIDA petition argued that the prevalence of waiver clauses and instances of retaliation by brokers against motor carriers seeking to exercise their rights under § 371.3(c) undercut the transparency envisioned by § 371.3. The SBTC petition similarly highlighted the issue of waiver clauses and reported instances of ''profiteering, price gouging and low-balling tactics.''

2. Summary of the Requirements

As described above, the purpose of this NPRM is to reduce information asymmetry among parties to brokered freight transactions, *i.e.,* brokers, shippers, and motor carriers. The NPRM proposes to do so by improving transparency. To accomplish these goals, the Agency proposes the following substantive amendments to § 371.3:

1. Amend § 371.3(a) to require that brokers keep the required records in an electronic format;

2. Amend § 371.3(a) to revise the required contents of brokers' records;

3. Amend § 371.3(c) to clarify that brokers must provide records upon request; and

4. Amend § 371.3(c) to require that records must be provided electronically within 48 hours of request.

The following analysis provides a discussion and overview of the impacts likely to result from the proposed changes. The analysis discusses the effects of these proposed changes qualitatively due to the limitations of available data, which preclude the Agency from making quantitative estimates.

3. Costs

The Agency provides the following cost analysis for each change in the proposed rulemaking.

Brokers Must Keep Records in an Electronic Format

The Agency is aware of brokers avoiding meaningful compliance with § 371.3(c) by making the required records available for inspection only at their principal place of business. The Agency believes this behavior may allow brokers to avoid their duty to provide the § 371.3 transaction records to the transacting parties. Brokers are already required to maintain a record of each transaction under § 371.3. The Agency also believes that most, if not all, brokers are currently maintaining records of their transactions in an electronic format, as electronic recordkeeping is a standard practice in many business transactions. Electronic recordkeeping also offers several advantages over paper records:

1. Information can be easily searched and retrieved, eliminating the need to search through physical documents;

2. Electronic records are less susceptible to loss or damage, as data can be backed up to prevent permanent data loss; and

3. Electronic records offer a significant cost advantage over paper records. According to a study by MCC Innovations, creating and maintaining paper records can be up to 141 times more expensive compared to electronic records.[11]

Given the advantages of electronic recordkeeping, it is likely that brokers have already transitioned to electronic recordkeeping. Therefore, the Agency concludes that this requirement would not constitute a burden for most brokers. FMCSA recognizes that a small number of brokers may still maintain records solely in paper format. However, the Agency does not know how many brokers do not have records of their transactions in an electronic format, nor the number of transactions those brokers conduct relative to the overall number of broker transactions and is therefore unable to quantify a total cost for this proposal.

The Agency has instead attempted to quantify the cost of creating an electronic copy of a record on a per transaction basis. FMCSA believes that brokers who are not creating electronic versions of their transaction records currently have access to the technology needed to do so (*e.g.,* document scanners, digital cameras, document management software, etc.). FMCSA anticipates that these tasks can be completed by an office clerk in 5 minutes per transaction as these records are currently stored by transaction and should be easily accessible to the broker. The Agency is reinforced in this belief based on comments submitted in response to the OOIDA and SBTC petition for this rulemaking but requests further comment from the public on this assumption.

The burden hours associated with this task are monetized using an hourly wage for an office clerk adjusted for fringe benefits and broker overhead. The Bureau of Labor Statistics (BLS) median wage for an office clerk is $19.46 (SOC 43–9061). The hourly wage is increased by fringe benefits and broker overhead, which results in a $32.93 wage ($32.93 = $19.46 + ($19.46 × 48.2%) + ($19.46 × 21%)). The fringe benefits rate used was 48.2 percent[12] and relies on data published by BLS. Overhead costs are business expenses that are not directly tied to the production of goods or services. These may include rent for office space, payroll administration costs, and employee training costs. FMCSA relies on publicly available Service Annual Survey (SAS) data from the Census Bureau in the truck transportation industry (subsector 484) and transit and ground passenger transportation industry (subsector 485) to estimate a composite overhead rate.[13] After reviewing SAS data from 2013 through 2021, FMCSA found 2015 to be the most appropriate baseline from which to estimate industry overhead rates because it is the most complete year of pre-COVID data. FMCSA first summed the seven overhead expense categories most focused on firm fixed price expenses for both subsectors 485 and 484 including (1) expensed purchases of software, (2) data processing and other purchased computer services, (3) purchased repairs and maintenance to buildings, structures, and offices, (4) lease and rental payments for land, buildings, structures, store spaces, and offices, (5) purchased advertising and promotional services, (6) purchased professional and technical services, (7) cost of insurance, and then divided the sum of the overhead expense categories by gross annual payroll to calculate an average industry overhead rate of 21 percent (21 percent = $16 billion ÷ $75 billion) for use in this analysis.

FMCSA estimates a $2.75 cost per record to create an electronic copy of a transaction record. As stated above, FMCSA finds it is likely that brokers have already transitioned to electronic recordkeeping, which would mitigate the impact of the potential burden. The Agency has no data that would allow it to quantify the overall size of the additional burden.

TABLE 1—WAGE, TIME, AND LABOR COSTS

[In 2023]

Occupation	BLS occupation code	NAICS occupational designation	Median base wage	Fringe benefits rate (%)	Overhead rate (%)	Median base wage + fringe benefits + overhead
Office Clerks, General [1]	43–9061	Cross-industry	$19.46	48.2	21	$33

FMCSA estimates that an office clerk could spend up to 5 minutes per document to create an electronic copy of that transaction record, at an hourly wage rate of $33. Therefore, the cost to create an electronic copy of each document would be up to $2.75 (5 ÷ 60 × $33) per record.

Note: Industry wage with benefits and overhead is hourly and has been rounded to the nearest dollar.

[1] DOL, BLS. Occupational Employment and Wage Statistics (OEWS). National. May 2023. 43–9061 Office Clerks, General. Available at: *https://www.bls.gov/oes/current/oes439061.htm* (accessed Apr. 18, 2024).

Revisions to the Required Contents of Brokers' Records

The Agency proposes updating the content of records under § 371.3(a) to include the date of payment for brokered services. The Agency believes this proposal would impose a minimal burden as most brokers likely already retain payment dates for brokered services as part of their standard transaction and accounting processes. Under this proposal, brokers would be required to update the contents of records kept under § 371.3 to include dates of payment. While the Agency cannot quantify the cost impact to include payment dates in records kept under § 371.3, due to the limitations of available data, FMCSA expects it would be de minimis due to the minor adjustments that would be required to comply with this proposal, as discussed previously. FMCSA proposes this requirement in response to comments both to the OOIDA and SBTC petitions and to an FMCSA Broker Listening Session at MATS in March 2023, where

[11] MCCi. ''The Dollars and Cents of Paper vs. Digital.'' 2024. *https://mccinnovations.com/insights/blog/the-cost-of-paper-vs-digital/#:~:text=Comparing%20%240.0159%20to%20store%20a,storage%20costs%2057.6%20times%20more* (accessed Apr. 25, 2024).

[12] DOL, BLS, *Employer Costs for Employee Compensation.* Mar. 17, 2023. Available at: *https://www.bls.gov/news.release/archives/ecec_03132024.htm* (accessed Apr. 22. 2024). Rate is calculated by dividing ''wages and salaries'' by ''total benefits'' for the transportation and warehousing industry.

[13] U.S. Department of Commerce, U.S. Census Bureau. *Service Annual Survey Historical Data (NAICS-basis): 2015. SAS Table 5.* Jan. 28, 2016. Available at: *https://www.census.gov/programs-surveys/sas/data/tables.html* (accessed Apr. 22, 2024).

multiple commenters discussed charge backs and claims after loads were delivered. The Agency believes the inclusion of a date of payment would provide additional information to motor carriers that they may use to counter any inaccurate claims. For example, date of payment information may aid a carrier to establish a timeline of events, such as payments to the broker by the shipper, and possibly aid in rectifying discrepancies and spurious charge backs with brokered freight contracts. The Agency lacks data to quantify the amount of fraudulent or inaccurate charge backs imposed on motor carriers but concludes that there would be some cost savings for motor carriers if they are able more readily to contest these charges with the increased transparency information.

The Agency also proposes to eliminate the distinction between brokerage services and non-brokerage services in § 371.3(a) by removing paragraph (5) and revising paragraph (4). The rationale for the distinction was initially set out in the brokers of property rule promulgated by the ICC in 1949, as detailed earlier in this NPRM in section V.A. History of Property Broker Regulations. In the past, the ICC attempted to regulate broker fees by setting a cap, but this relied on differentiating between brokerage and non-brokerage services. However, the broker fee cap was never adopted. With the current focus on transparency in broker transactions, the distinction between these service types is no longer necessary. The Agency, therefore, proposes to require that the records contain all charges and payments connected to the shipment. This proposed change is consistent with the obligation imposed on federal agencies by the Plain Writing Act of 2010. This law requires that federal agencies use, ''clear Government communication that the public can understand and use.'' [14] As this proposed amendment does not change the contents of records under § 371.3, the Agency finds that there would be no economic impact associated with the modernization of this language.

Brokers Must Provide Records Upon Request

FMCSA is proposing to amend the language of § 371.3(c) to state that brokers have an obligation to disclose records within 48 hours of request. The prevalence of waivers may be reduced through the framing of this regulatory obligation. Broker transparency is intended as a mechanism to allow parties to a brokered freight transaction to self-police the performance of the transaction. A free market in the brokered freight industry would represent a scenario where the demand, supply, and prices of brokered transportation of property are determined by the parties to these brokered transactions, *i.e.,* shippers, brokers, and motor carriers. However, free markets require transparency to operate efficiently. When parties to a brokered transaction have unequal access to relevant information, known as information asymmetry, that could lead to an inefficient allocation of resources and therefore a sub-optimal outcome for society. Since waivers of § 371.3 inhibit the sharing of information in brokered freight transactions, these waivers may create some degree of market failure or inefficiency.

A party to a brokered transaction may seek records under § 371.3(c) for various reasons, including, but not limited to the following:

- Motor carriers may seek transaction records in furtherance of a remedy against potential charge back abuses or other erroneous charges on completed loads. For example, if the broker made a concession to the owner of a brokered load and attempted to recapture these funds from the carrier, this could be verified by the carrier through transaction records requested under § 371.3. It is evident from the comments received that some motor carriers believe spurious charge backs can be identified if motor carriers have access to transparency information.
- Shippers may use transaction records to verify that the services that they were billed for by the broker were provided. This can help to prevent fraud or errors in billing.
- Motor carriers and shippers may seek transparency on broker margins. Although a party to a brokered contract would have access to transaction records under § 371.3 only after the contractual service has been completed, carrier and shippers could use this information determine whether the margins are commensurate with the service provided, and potentially to negotiate for better rates or turn to other brokers for future loads. If many motor carriers and shippers were to make a similar decision, some brokers might find it difficult to contract out loads and therefore would face pressure to offer better rates and therefore improved margins for motor carriers.
- Motor carriers and shippers may use transaction information to identify instances where loads have been brokered without authority and to report such instances to FMCSA.
- Motor carriers believe less time would be spent resolving disputes if transaction information is readily available. Several reports submitted to FMCSA indicate that motor carriers have spent considerable time seeking such information or resolving issues stemming from its absence.

FMCSA does not regulate freight rates or broker margins. The proposed rule would reframe the existing regulation that requires the broker to provide a record of the transaction to the motor carrier on request after the transaction is complete, but it would not regulate rates or margins. The Agency believes that this transparency could have some impact on rates and margins, and the current prevalence of waivers suggests that brokers likely derive some benefit from not providing transaction records to motor carriers. However, the Agency also believes that the proposed rule may have only a minimal impact on rates and margins, and other factors may still predominate in the setting of rates and margins. The possibility of a minimal impact is supported by the wide availability of rate information and the fact that carriers would only receive the transparency information after a transaction is completed, *i.e.,* after the rate is negotiated. Due to the limitations of available data, FMCSA cannot judge the likely impact and the Agency seeks further information to determine the degree of impact.

To gain a clearer understanding of the impact of clarifying brokers' obligations to provide records under § 371.3, the Agency examined market conditions in the freight brokerage industry over the past few years. According to data from the U.S. Census Bureau, revenues for freight brokers increased, in aggregate, from 2019 to 2021.[15] While the Census Bureau data shows a decrease in motor carrier revenues from 2019 to 2020, it also shows a rebound in motor carrier's revenue in 2021. Truck driver wages also showed continuous growth during 2019 to 2021. A study conducted by the American Trucking Associations also shows average wage increased for truck drivers by 18% between 2019 and 2021.[16] The COVID–19 emergency also

[14] Plain Writing Act of 2020. *GovInfo.gov*. Oct. 2020. Available at: *https://www.govinfo.gov/content/pkg/PLAW-111publ274/html/PLAW-111publ274.htm* (accessed May 24, 2024).

[15] U.S. Census Bureau. *Impact of COVID–19 on Passenger and Freight Transportation* (*census.gov*). Sept. 2023. Available at: *https://www.census.gov/library/stories/2023/09/air-transportation-pandemic-impact.html* (accessed Apr. 18, 2024).

[16] Fisher, Josh. ''Truckload driver wages up 18% over past two years.'' *Fleet Owner*. Aug. 2022.

Continued

resulted in reduced costs for motor carriers. According to a report published by The Trucker, motor carriers benefitted from reduced costs in fuel and increased fuel economy due to lower traffic levels. Motor carriers' marginal operating costs per mile correspondingly decreased by approximately 5 cents.[17] These cost savings would have helped to offset the reduction in revenues for the industry during the COVID–19 national emergency.

The number of brokers with operating authority grew by 20.90 percent from 2020 to 2021. Similarly, the number of motor carriers with operating authority grew by 18.81 percent from 2020 to 2021. Public industry data shows that rates for brokered freight loads rebounded from their COVID–19 downturn in late 2020 and peaked in 2022.[18] Figure 1 provides a visual display of the relative change in brokered freight rates over time. The Agency finds that the rapid entry of new motor carriers into the market during 2022 was driven by a surge in freight demand beginning in 2021, with new brokers and motor carriers intending to capitalize on unprecedented market conditions. These conditions included government subsidies such as the COVID–19 economic impact payments, the Paycheck Protection Program (PPP), lower marginal costs and relatively high rates for trucking loads as seen in Figure 1.

By 2023, however, as a market correction emerged, brokers and motor carriers began leaving the market. As the initial pandemic response waned, demand began to normalize which led to an oversupply of capacity and subsequent broker and carrier exits. Freight rates also came down from their 2022 peak. Such rapid expansion, as seen in 2021, was unlikely to be sustainable, and a natural correction towards a new equilibrium was anticipated. However, the Agency finds that the average rate for a brokered load and the total number of motor carriers and brokers holding active authority remain at levels higher than their pre-pandemic numbers, indicative of a freight industry more robust than when OOIDA and SBTC submitted their petitions. This, combined with a study published in January 2024, indicating average broker margins of approximately 13.47 percent to 15.4 percent, depending on the configuration of the truck, suggests a period of favorable margins for both brokers and motor carriers.[19]

In conclusion, analysis of available data suggests that brokerage margins generally align with the self-reported industry averages of approximately 15 percent. The Agency posits that isolated instances of higher margins are not indicative of broader trends within the industry. Instead, the Agency maintains that pricing trends in the brokerage industry are tied to market factors.

BILLING CODE 4910–EX–P

Figure 1. Total Rates for Freight Loads[1]



[1] Truckstop.com and FTR Transportation Intelligence, Spot Market Insights Newsletter, April 1, 2024 (accessed April 9, 2024).

BILLING CODE 4910–EX–C

Available at: *https://www.fleetowner.com/operations/article/21248550/truckload-driver-wages-up-18-over-past-two-years* (accessed May 7, 2024).

[17] ''Study details COVID–19's impact on trucking industry.'' *The Trucker.* Dec. 2021. *https://www.thetrucker.com/trucking-news/the-nation/study-details-covid-19s-impact-on-trucking-industry* (accessed Apr. 18, 2024).

[18] *Spot Market Insights.* Truckstop. Available at: *https://truckstop.com/product/spot-market-insights/* (accessed Apr. 18, 2024).

[19] Lockie, Alex. ''How much money are brokers really making from owner-operator's hauls?'' *Overdrive Online.* Feb. 16, 2024. Available at: *https://www.overdriveonline.com/business/article/15661579/how-much-money-are-freight-brokers-really-making-from-truckers* (accessed Apr. 18, 2024).

TABLE 2—YEAR-OVER-YEAR CHANGES OF ACTIVE BROKERS AND MOTOR CARRIERS [1]

Year	Total brokers registered	Total brokers percentage change	Total motor carriers registered	Carrier percentage change
2015	16,745	.....	551,150	
2016	17,764	6.09	524,058	−4.92
2017	18,637	4.91	543,061	3.63
2018	20,154	8.14	586,720	8.04
2019	21,770	8.02	602,542	2.70
2020	24,138	10.88	637,721	5.84
2021	29,184	20.90	757,652	18.81
2022	31,885	9.26	813,844	7.42
2023	28,773	−9.76	787,189	−3.28

[1] Pocket Guide to Large Truck and Bus Statistics, FMCSA. Available at: *https://www.fmcsa.dot.gov/safety/data-and-statistics/commercial-motor-vehicle-facts* (accessed Jun. 10, 2024). Data for each year is captured at year end.

FMCSA understands that several factors influence freight brokerage pricing including, but not limited to:

1. Costs of fulfilling contractual obligations *e.g.,* fuel, labor, depreciation of equipment, licensing, insurance, taxes;
2. Market rate information;
3. Demand by motor carriers for brokered loads;
4. The supply of brokered load contracts on the market;
5. Seasonal demand, *i.e.,* the changes in demand for brokered loads depending on the time of year;
6. Type of commodity; and
7. Existing economic conditions, *e.g.,* COVID–19 national emergency, recession.

The Agency believes that these factors, rather than the availability of additional information concerning broker margins, are likely dominant for pricing brokered loads. Through comments submitted by industry stakeholders, FMCSA understands that broker records would be of limited utility in negotiating contracts due to the effect of the pricing factors listed above, as such records are provided only upon request and after the completion of the contractual obligations. Therefore, the records may only be useful for negotiating pricing for future loads. However, a broker may refuse such negotiations by claiming that all the pricing factors for the load are not the same.

Any shift in pricing in the brokered freight industry would take the form of transfers. A transfer in this context would be a shift in revenue from one party to another, specifically from brokers to motor carriers. FMCSA cannot predict the magnitude or frequency of any transfers between parties to brokered transactions but believes transfers could occur because of this proposed rule.

The Agency is unable to quantitatively estimate the magnitude or frequency of any transfers due to lack of data on:

1. How many transactions under § 371.3 are waived;
2. The number of transactions in the brokered freight industry;
3. The margins of brokers and motor carriers throughout the industry; and
4. The degree to which those margins are impacted by waivers to the current regulation.

The Agency believes transfers may occur based on the following factors:

1. A significant number of motor carriers have said they intend to use transparency information to negotiate for better rates. However, as discussed previously, FMCSA believes the content of records under § 371.3 would be of limited utility in negotiating rates;
2. Brokers who currently use § 371.3 waivers may relinquish some degree of competitive advantage if the proposed rule is effective at reducing the frequency at which these brokers use waivers to the regulation. If brokers currently price the value of this competitive advantage into their brokerage contracts, their ability to maintain current margins could be weakened; and
3. If this proposal were to effectively reduce the prevalence of waivers then carriers may be better able to detect unauthorized brokering by examining transparency data to identify the parties involved in the brokered transaction. Carriers could then report suspected unauthorized brokering to FMCSA for enforcement action. If these measures successfully reduce unauthorized brokering, then those profits could potentially be redirected to motor carriers and brokers with the appropriate authority.

FMCSA also acknowledges that transfers need not be large, as a percentage of total industry revenue, to meet the economically significant threshold of $200 million, under E.O. 14094. The Agency estimates the actual revenues specific to the broker entities subject to this regulation range from $11.6 billion [20] to $65 billion [21] per year. Additional revenue estimates for the entire industry also include $16.58 billion.[22] The Agency has no industry revenue information specific to brokers that would be impacted by this rulemaking. Due to limitations in available data, it is not possible to isolate revenue estimates specifically for brokers subject to this proposed rulemaking. Since these brokers represent a subset of the overall U.S. brokerage industry, their revenue is unlikely to be at the upper end of this range.

The maximum percentage of transfers that could occur in response to this rulemaking without reaching the economically significant threshold of $200 million of impacts in any 1 year ranges from 1.7 percent [23] to 0.3 percent.[24] As discussed, the Agency believes the economic threshold for significance is likely closer to 1.7 percent than to 0.3 percent, as the broker entities subject to this regulation represent a subset of the total number of transportation brokers operating in the United States. The Agency requests comment on the frequency and

[20] Freight Brokerage Market Size & Share, Growth Trends. Global Market Insights (GMI). Feb. 2024. Available at: *https://www.gminsights.com/industry-analysis/freight-brokerage-market* (accessed May 10, 2024).

[21] *2017 Economic Census.* Table *EC1700SIZEREVFIRM—Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017.* U.S. Census Bureau. Available at: *https://data.census.gov/table/ECNSIZE2017.EC1700SIZEREVFIRM?t=Receipt%20Size&n=488510* (accessed Apr. 18, 2024).

[22] Global News Wire. ''United States Freight Brokerage Market Revenues to Reach USD 24.75 billion by 2028.'' Mordor Intelligence. July 2023. Available at: *https://www.globenewswire.com/en/news-release/2023/07/06/2700461/0/en/United-States-Freight-Brokerage-Market-Revenues-to-Reach-USD-24-75-billion-by-2028-Market-Size-Share-Forecasts-Trends-Analysis-Report-by-Mordor-Intelligence.html* (accessed Apr. 18, 2024).

[23] $200 million ÷ $11.6 billion = 1.7%.

[24] $200 million ÷ $65 billion = 0.3%.

magnitude of transfers that may occur as a result of this rulemaking and invites all interested parties to submit relevant data and information.

It is important to note that any shift away from the current practice of including waivers of § 371.3(c) may present economic disadvantages to brokers. The Agency acknowledges England Logistics' comment that inappropriate solicitation of freight to owners of brokered loads presents a business risk to them. The Agency recognizes that a broker's role extends beyond matching shippers with motor carriers. Brokers act as an extension of the shipper's team, managing and overseeing cargo transportation with the carrier and handling varying documentation. The Agency does not believe that this proposal would materially alter the value proposition offered by brokers to shippers or make brokers less competitive as compared to working directly with motor carriers. Although the proposed rule clarifies that brokers have a regulatory obligation to disclose records upon request, it does not prevent them from including confidentiality clauses in their contracts with motor carriers or shippers.

The proposed amendments to paragraph (c) would not impose any duty on motor carriers. They clarify that the broker has a duty to provide records to the motor carrier upon request, as intended by the current regulation, but the motor carrier is not obligated to request the records. The Agency does not believe that the proposed amendments will impose a cost on motor carriers.

Records Must Be Provided Within 48 Hours of Request

The current regulation lacks a defined timeframe within which brokers must fulfill information requests. The Agency has received reports of motor carriers experiencing lengthy delays in obtaining required information from brokers. The Agency has heard from at least one carrier claiming that a broker asserted that § 371.3, ''does not state how long they have, to comply with that request and we can wait 10 years before we give you those records.'' [25] A defined 48-hour compliance period for brokers to respond to transparency requests under § 371.3 would directly address industry stakeholder concerns about excessive delays.

The Agency acknowledges that the requirement for broker records to be provided within 48 hours may present some costs for brokers. Brokers may need to restructure their processes, invest in IT systems, or develop new IT systems altogether to meet this requirement. Through comments to the OOIDA and SBTC petitions, the Agency understands that not every broker may have pertinent transaction records in the same database, filing system, or transport management system.

Under this proposal, brokers would not be required to produce or create new information. However, some brokers may need to increase total available staffing hours or invest in technology upgrades to meet the 48-hour timeframe. The Agency lacks data to estimate these costs.

The Agency believes that most, if not all, brokers are complying with the current regulation to maintain a record of each transaction in accordance with § 371.3. The Agency is unable to quantify the costs to brokers of providing transparency information within 48 hours due to limited available data on:

1. The total number of transactions processed by brokers that would be subject to the proposed regulation in any given time;
2. The anticipated volume of requests for transaction-specific information under § 371.3; and
3. The technological readiness of brokers to fulfill these requests within the proposed 48-hour timeframe.

However, the Agency believes that some of these costs could be minimally offset by cost savings from having to respond to repeated inquiries from motor carriers for the content of records under § 371.3. The Agency acknowledges that currently motor carriers may, in some instances, submit repeated requests for records under § 371.3, extending over long periods, potentially lasting months. A defined 48-hour compliance period for brokers to respond to transparency requests under § 371.3 would directly address delays in receiving transparency information and therefore mitigate the need for repeated inquiries.

4. Benefits

The primary purpose of this proposed rule is to modernize FMCSA's existing recordkeeping requirements and transparency provisions for brokers and clarify the obligation imposed on brokers to respond to requests for transaction records and the process parties must follow when requesting and supplying such records. The electronic recordkeeping requirement would offer several advantages over paper records. Information can be easily searched and retrieved, eliminating the need to search through physical documents. Electronic records are also less susceptible to loss or damage, as data can be backed up to prevent permanent data loss. A lack of transparency in freight brokerage contracts has been linked to excessive and inappropriate charge backs by brokers. Motor carriers argue that access to broker information mandated by § 371.3 is essential for them to effectively challenge or even verify the legitimacy of charge backs. Without this information, they claim their ability to defend themselves against potentially inaccurate charges is significantly hampered.

The Agency believes the inclusion of the date of payments with the contents of records would provide additional information a carrier may use to counter any inaccurate claims, or spurious charge backs. The intent of the current regulations in § 371.3 is, in part, to enable self-policing of freight-brokered contracts in the absence of more restrictive regulation. The proposed rule would help improve self-policing of freight-brokered contracts on issues such as charge back abuses and unauthorized brokering.

Some motor carriers allege that broker information would enable them to negotiate for better rates. The Agency has not been able to determine the frequency or magnitude of any possible transfers resulting from this rulemaking but acknowledges that motor carriers and shippers may be able to negotiate better rates over time using such information due to a decrease in the information asymmetry present in the brokerage industry. Any resulting shift in revenues between the entities that would be subject to this rulemaking would take the form of transfers. Transfers are not considered to be economic benefits or costs at the societal level.

The Agency believes that broker information would offer limited utility in securing more favorable rates. This belief is based on a few key considerations. First, the pricing of brokered contracts is primarily driven by prevailing market forces. Factors such as the overall economic climate, supply and demand dynamics within the brokerage industry, and other relevant market conditions, as discussed in Section VIII.A.3. Costs, exert a great influence on brokered contract pricing. Second, the information itself would become available only after the contractual obligations have been fulfilled. Because brokered contracts are highly specific, with variation in terms, length, and conditions, information on past contracts would be only minimally applicable for direct comparison in

[25] Complaint reported to FMCSA's National Consumer Complaint Database in January 2022.

future contract negotiations. However, the reduction in information asymmetry due to increased transparency should enable a more efficient market by reducing charge back abuses.

5. Alternatives Considered

The Agency explored alternative approaches, such as a phased implementation, automatic disclosure of the content of records under § 371.3, prohibiting waivers, and a longer timeframe for providing transparency information than the proposed 48 hours. FMCSA decided against these alternative approaches. The Agency finds that a phased implementation would not reduce potential burdens imposed by this proposed rule for the following reasons:

1. Brokers are already obligated to maintain records under § 371.3. Therefore, they possess the information necessary to comply with the proposed 48-hour turnaround for information requests;

2. The Agency believes that most brokers are maintaining a record of their transactions in an electronic format; and

3. Brokers likely capture the date of payment for brokered services as part of their standard transaction and accounting processes.

The OOIDA petition sought a provision making disclosure of the records automatic. OOIDA stated the automatic disclosure was necessary to prevent selective retaliation, *i.e.,* blacklisting, against motor carriers that exercise their right to review the transaction records. The proposed rule does not include an automatic disclosure provision; instead, parties to the transaction would continue to have the ability to review the records upon request. The Agency believes that an automatic disclosure provision would be excessively burdensome to brokers. Though the concerns regarding retaliation appear plausible, the Agency cannot determine how frequently that retaliation would take place. This is, in part, because motor carriers have frequently waived their right to review, which makes it difficult for the Agency to determine if retaliation would be a common problem if the proposed regulation is implemented.

Automatic disclosure would provide the content of records under § 371.3 to all motor carriers, but many motor carriers may choose not to utilize this information. A request-based system ensures that motor carriers who value access to the content of records under § 371.3 receive it, while minimizing the burden for brokers who, under an automatic disclosure requirement, would need to distribute the content of records to all parties, whether or not they wanted to receive it. The Agency is unable to develop quantitative cost estimate comparisons for this alternative due to lack of data on the number of transactions per broker, how many of these transactions include waiver clauses, and how many parties request access to the content of records under § 371.3.

As previously discussed, FMCSA considered whether to include an explicit ban on waivers, as suggested by SBTC and OOIDA, in the regulation and decided against it.

The proposed timeframe of 48 hours to provide requested records would benefit motor carriers by ensuring timely access to information and would produce cost savings for brokers by reducing the frequency at which brokers would need to respond to or consider repeated inquiries under § 371.3. A longer timeframe than 48 hours would diminish these cost savings. The Agency views 48 hours as a balanced approach, promoting both industry efficiency and manageable burdens for brokers. The Agency seeks comment on the 48-hour proposed timeframe to provide requested records.

B. Advance Notice of Proposed Rulemaking

Under 49 U.S.C. 31136(g), FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM) or proceed with a negotiated rulemaking if a proposed safety rule ''under this part'' is likely to lead to the promulgation of a major rule. ''This part'' is Part B of Subtitle VI of Title 49, United States Code, *i.e.,* 49 U.S.C. chapters 311–317. The statutory authority for this rule, however, is derived from the Agency's commercial authorities in Part B of Subtitle IV of Title 49, United States Code, *i.e.,* 49 U.S.C. chapters 131–149. Therefore, the Agency is not required to publish an ANPRM or proceed with a negotiated rulemaking.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,[26] requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term *small entities* comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

Affected Small Entities

This rule has the potential to impact shippers, brokers, and motor carriers. The Small Business Administration's (SBA) size standard for a small entity (13 CFR 121.201) differs by industry code. The entities affected by this rule fall into many different industry codes. In order to determine the number of affected small entities, FMCSA examined the 2012 and 2017 Economic Census data for two different North American Industry Classification System (NAICS) subsectors: Truck Transportation (subsector 484) and Transit and Ground Transportation (subsector 485).

As shown in Table 3 below, the SBA size standards for subsectors 484 and 485 range from $19.0 million to $43.0 million in revenue per year. To determine the percentage of firms that have revenue at or below SBA's thresholds within each of the NAICS national industries, FMCSA examined data from the 2017 Economic Census.[27] The Census Bureau will suppress (omit) data in Economic Census tables if the data, were it to be known, would allow one contributor's value to be too closely estimated. This can occur when there are very few contributors, or when there are one or two large contributors that dominate the aggregate statistic.[28] In instances where 2017 data were suppressed, the Agency imputed 2017 levels using data from the 2012 Economic Census.[29] Boundaries for the revenue categories used in the Economic Census do not exactly coincide with the SBA thresholds. Instead, the SBA threshold generally falls between two different revenue categories. However, FMCSA was able

[26] Public Law 104–121, 110 Stat. 857, (Mar. 29, 1996).

[27] U.S. Census Bureau. *2017 Economic Census.* Table *EC1700SIZEEMPFIRM—Selected Sectors: Employment Size of Firms for the U.S.: 2017.* Available at: *https://www.census.gov/data/tables/2017/econ/economic-census/naics-sector-48-49.html* (accessed Feb. 3, 2023).

[28] U.S. Census Bureau. *Disclosure: Cell Suppression.* Available at: *https://www.census.gov/programs-surveys/economic-census/technical-documentation/methodology/disclosure.html* (accessed Jun. 14, 2024).

[29] U.S. Census Bureau. *2012 Economic Census.* Table *EC1248SSSZ4—Transportation and Warehousing: Subject Series—Estab & Firm Size: Summary Statistics by Revenue Size of Firms for the U.S.: 2012.* Available at: *https://www.census.gov/data/tables/2012/econ/census/transportation-warehousing.html* (accessed Feb. 3, 2023).

to estimate the percentage of small entities within each NAICS code.

The percentages of entities with annual revenue less than the SBA's threshold, and therefore considered small, ranged from 93.1 percent to 99.5 percent. Specifically, approximately 93.1 percent of the firms in the category representing brokers, Freight Transportation Arrangement (national industry 488510), had annual revenue less than the SBA's revenue threshold of $20.0 million and would be considered small entities.[30] FMCSA estimates 99.5 percent of firms in the General Freight Trucking, Local (national industry 484110) had annual revenue less than the corresponding SBA's revenue threshold of $34.0 million and would be considered small entities.

The Agency believes that the burden to small brokers would be de minimis. The proposed rule would not impose any burdens on small motor carriers. Small brokers would be required to maintain transparency records electronically, include the date of payment for each service performed in connection with each shipment, and would be permitted to include confidentiality clauses in their contracts. The Agency believes that most, if not all, small brokers are currently maintaining records of their transactions in an electronic format. For brokers who are not maintaining their records electronically, the Agency estimates that these records can be made available electronically at a per transaction cost of $2.75, based on the assumption that it would take an office clerk approximately 5 minutes to create an electronic record of each transaction. The Agency also believes that small brokers likely already retain payment dates for brokered services as part of their standard transaction and accounting processes. The Agency finds that including date of payments with records requested under § 371.3 would constitute a minimal burden. Small brokers could incur some loss in revenues through transfers if the proposed regulation is effective in increasing transparency between brokers, shippers, and carriers. However, the Agency is unable to quantify the frequency and magnitude of possible transfers but believes it would be small based on the following factors:

1. Pricing for brokered contracts is nuanced, and the economic conditions affecting any given brokered contract are unlikely to be identical to those affecting any future brokered contracts. This limits and may possibly negate the effectiveness of using broker information to negotiate for better rates on future contracts;

2. The willingness of motor carriers to accept brokered freight contracts are based on several factors, such that increased transparency may have minimal to no impact on carrier preferences. These factors include costs of fulfilling the contractual obligations, market rate information, existing economic conditions, the type of commodity, and the time of year; and

3. Brokers may find that they can retain current margins due to the relatively strong demand for brokered freight contracts.

Table 3 below shows the complete estimates of the number of small entities within the industries that may be affected by this rule.

TABLE 3—ESTIMATES OF NUMBER OF SMALL ENTITIES

NAICS code	Description	SBA size standard (millions)	Total number of firms	Number of small entities	Percent of all firms
484110	General Freight Trucking, Local	$34.0	22,066	21,950	99.5
484121	General Freight Trucking, Long Distance, Truckload	34.0	23,557	23,045	97.8
484122	General Freight Trucking, Long Distance, Less Than Truckload.	43.0	3,138	3,050	97.2
484210	Used Household and Office Goods Moving	34.0	6,097	6,041	99.1
484220	Specialized Freight (except Used Goods) Trucking, Local.	34.0	22,797	22,631	99.3
484230	Specialized Freight (except Used Goods) Trucking, Long Distance.	34.0	7,310	7,042	96.3
488510	Freight Transportation Arrangement	20.0	13,252	12,332	93.1

Consequently, I certify that the proposed action would not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA wants to assist small entities in understanding this proposed rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman (Office of the National Ombudsman, see *https://www.sba.gov/about-sba/oversight-advocacy/office-national-ombudsman*) and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their discretionary regulatory actions. The Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the

[30] All national industries under this subsector have an SBA size threshold of $34 million with the exception of General Freight Trucking, Long Distance, Less Than Truckload (484122), which has a revenue threshold of $43 million.

aggregate, or by the private sector of $200 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2023 levels) or more in any one year. Though this NPRM would not result in such an expenditure, and the analytical requirements of UMRA do not apply as a result, the Agency discusses the effects of this rule elsewhere in this preamble.

F. Paperwork Reduction Act

This proposed rule contains information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), *collection of information* comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Property Broker Recordkeeping Requirements.

OMB Control Number: [2126–NEW].

Summary of the Information Collection: There are two information collections. The first covers brokered transaction recordkeeping, including the requirement for brokers to keep records of their transactions for three years and make those records available for inspection by FMCSA on demand. The second covers disclosure of records to parties involved in a brokered transaction. A broker is obligated to provide transaction records, upon request, to a shipper or motor carrier involved in the transaction.

Need for Information: The first collection of information is needed for determining whether a broker is complying with FMCSA's recordkeeping regulations. The second information collection is needed for resolving disputes between shippers, brokers, and motor carriers arising from brokered transactions.

Proposed Use of Information: In the first information collection, FMCSA would inspect and copy records of brokered transaction, to confirm whether the broker is complying with FMCSA's regulations. This would generally occur as part of an investigation following a complaint about a broker's practices. In the second information collection, shippers and motor carriers would use the records to verify transaction data, answer questions regarding charges and payments made, and provide supporting evidence in the event of disputes.

Description of the Respondents: The respondents are brokers of property, that is, persons who, for compensation, arrange, or offer to arrange, the transportation of property by an authorized motor carrier. The respondents include HHG and non-HHG brokers.

Number of Respondents: The estimated number of respondents is 32,362.

Frequency of Response: For the first information collection, the frequency of response as it pertains to a broker's obligation to make records available for inspection by FMCSA on demand will depend on how often the Agency inspects brokers' transaction records. The Agency believes that this will be a relatively rare occurrence compared to the total number of brokered transactions. For the second information collection, FMCSA finds no material difference in the anticipated frequency of requests for information from HHG brokers and non-HHG brokers. The Agency estimates that 5 percent of brokered property transactions will result in a request for transaction records. This would correspond to an average of 4 requests per year for each HHG property broker and 630 requests per year for each non-HHG property broker.

Burden of Response: The first information collection would impose no annual burden hours on brokers because it is an ordinary and customary business practice. The second information collection would impose an estimated burden of 2 minutes per request.

Estimate of Total Annual Burden: There is no annual burden for the first information collection. For the second information collection, the total annual burden is estimated at 670,000 hours, which corresponds to an estimated $22,110,000 of labor costs. There are no non-labor costs associated with the second information collection.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), FMCSA will submit a copy of this NPRM to OMB for review. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

G. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has ''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.'' FMCSA has determined that this rule would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. Privacy

The Consolidated Appropriations Act, 2005,[31] requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. This NPRM would not require the collection of personally identifiable information (PII).

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002,[32] requires Federal agencies to conduct a Privacy Impact Assessment (PIA) for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a PIA.

The Agency will complete a Privacy Threshold Assessment (PTA) to evaluate the risks and effects the proposed rulemaking might have on collecting, storing, and sharing personally identifiable information. The PTA will be submitted to FMCSA's Privacy Officer for review and preliminary adjudication and to DOT's Privacy Officer for review and final adjudication.

I. E.O. 13175 (Indian Tribal Governments)

This rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect

[31] Public Law 108–447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

[32] Public Law 107–347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

J. National Environmental Policy Act of 1969

FMCSA analyzed this proposed rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680), Appendix 2, paragraphs 6(k)(1) and (2). The categorical exclusions (CEs) in paragraphs 6(k)(1) and (2) cover requirements pertaining to the duties and obligations of a broker, and the records a broker must keep. The proposed requirements in this rule are covered by these CEs.

K. Rulemaking Summary

As required by 5 U.S.C. 553(b)(4), a summary of this rule can be found in the Abstract section of the Department's Unified Agenda entry for this rulemaking at *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=2126-AC63.*

List of Subjects in 49 CFR Part 371

Brokers, Motor carriers, Reporting and recordkeeping requirements.

Accordingly, FMCSA proposes to amend 49 CFR part 371 as follows:

PART 371—BROKERS OF PROPERTY

■ 1. The authority citation for part 371 is revised to read as follows:

Authority: 49 U.S.C. 13301, 13501, 13904, and 14122; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.87.

§ 371.2 [Amended]

■ 2. Amend § 371.2 by removing the definition of ''Non-brokerage service''.

■ 3. Revise and republish § 371.3 to read as follows:

§ 371.3 Records to be kept by brokers.

(a) A broker must keep a record of each transaction. Such records must be maintained in an electronic format as described in § 390.32(d). For purposes of this section, brokers may keep master lists of consignors and the address and registration number of the carrier, rather than repeating this information for each transaction. The record must show:

(1) The name and address of the consignor;

(2) The name, address, and registration number of the originating motor carrier;

(3) The bill of lading or freight bill number;

(4) The amount of compensation received by the broker for each service performed in connection with each shipment, including freight charges, surcharges, and accessorial fees; the date of payment; and the name of the payer, including any business aliases, if known; and

(5) Any penalties assessed in connection with each shipment.

(b) Brokers must keep the records required by this section for a period of 3 years.

(c) Brokers must provide, upon request by any party to a brokered transaction, a copy of the record of the transaction required to be kept by this section. Records must be provided electronically within 48 hours of the broker's receipt of the request.

Issued under authority delegated in 49 CFR 1.87.

Vincent G. White,

Deputy Administrator.

[FR Doc. 2024–27115 Filed 11–19–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2024–0057]

RIN 2127–AK98

Federal Motor Vehicle Safety Standards; Pedestrian Head Protection, Global Technical Regulation No. 9; Incorporation by Reference

AGENCY: National Highway Traffic Safety Administration (NHTSA); Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: NHTSA received a request to extend the comment period for the September 19, 2024, Notice of Proposed Rulemaking (NPRM) proposing a new Federal Motor Vehicle Safety Standard (FMVSS) to ensure passenger vehicles are designed to mitigate the risk of serious to fatal injury in pedestrian crashes. The NPRM is based on Global Technical Regulation (GTR) No. 9 on pedestrian safety, with focused enhancements to address safety problems. The comment period for the NPRM was scheduled to end on November 18, 2024. NHTSA is extending the comment period for the NPRM by 30 days.

DATES: The comment period for the NPRM published on September 19, 2024, at 89 FR 27502, is extended to December 18, 2024.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below. We will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: 202–366–9826.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its decision-making process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

Confidential Business Information: If you wish to submit any information

under a claim of confidentiality, you must submit your request directly to NHTSA's Office of the Chief Counsel. Requests for confidentiality are governed by 49 CFR part 512. NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under part 512. If you would like to submit a request for confidential treatment, you may email your submission to Dan Rabinovitz in the Office of the Chief Counsel at *Daniel.Rabinovitz@dot.gov* or you may contact him for a secure file transfer link. At this time, you should not send a duplicate hardcopy of your electronic CBI submissions to DOT headquarters. If you claim that any of the information or documents provided to the agency constitute confidential business information within the meaning of 5 U.S.C. 552(b)(4), or are protected from disclosure pursuant to 18 U.S.C. 1905, you must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with part 512, to the Office of the Chief Counsel. Your request must include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR 512.8) and a certificate, pursuant to § 512.4(b) and part 512, Appendix A. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket at the address given above.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Vincent Wu, Office of Crashworthiness Standards (telephone: (202) 366–1740, fax (202) 493–2990).

For legal issues: Matthew Filpi, Office of the Chief Counsel (telephone: 202–366–3179). The mailing address for these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On September 19, 2024, NHTSA published an NPRM proposing a new Federal Motor Vehicle Safety Standard (FMVSS) which would establish a head-to-hood impact test and performance requirements to minimize the risk of pedestrian head injury. The comment period for the NPRM was scheduled to end on November 18, 2024.

On October 17, 2024, NHTSA received a request for a 30-day extension of the comment period from the Alliance of Automotive Innovation (Auto Innovators). The requestor stated that additional time is necessary to conduct a detailed review of the NPRM and provide constructive feedback on the proposal. Auto Innovators also stated it would need to conduct a detailed review of the accompanying preliminary regulatory impact analysis (PRIA), which was published in the docket after the NPRM. Auto Innovators noted that the extension would be used to evaluate the practicability and complexity of the design changes (and corresponding lead time) needed to meet the proposed requirements, and more fully evaluate the regulatory impact and unanticipated costs.

Agency Decision

Pursuant to 49 CFR 553.19 and after thorough consideration of this request, NHTSA has determined that the requestor has provided sufficient justification for an extension, and that the extension is consistent with the public interest. NHTSA agrees that allowing additional time for the public and its stakeholders to provide robust and substantive comments on these complex issues will better inform NHTSA. The agency believes a 30-day extension will provide the public with sufficient time to review the docket and comment on the complex questions raised in the NPRM. Accordingly, NHTSA is granting the aforementioned request and extending the comment period by 30 days.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator, Rulemaking.

[FR Doc. 2024–26985 Filed 11–15–24; 4:15 pm]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 89, No. 224
Wednesday, November 20, 2024

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Alpine County Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Alpine County 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 Humboldt-Toiyabe National Forest within Alpine County, consistent with the Federal Lands Recreation Enhancement Act.

DATES: An in-person and virtual meeting will be held on December 5, 2024, 1 p.m. to 4 p.m. Pacific Standard Time.

Written and Oral Comments: Anyone wishing to provide in-person and/or virtual oral comments must pre-register by 11:59 p.m. Pacific Standard Time on November 27, 2024. Written public comments will be accepted by 11:59 p.m. Pacific Standard Time on November 27, 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 Turtle Rock Park Community Center, located at 17300 State Route 89/4, Markleeville, CA 96120. The public may also join the meeting virtually via Teams Meeting:

Meeting ID: 215 883 679 894 Passcode: EVxmDV

Committee information and meeting details can be found on the RAC website (*https://www.fs.usda.gov/main/htnf/workingtogether/advisorycommittees*) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to *matthew.dickinson@usda.gov* or via mail (postmarked) to Matthew Dickinson, 1536 S Carson St., Carson City, NV 89701. 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, November 27, 2024, and speakers can only register for one speaking slot. Oral comments must be sent by email to *matthew.dickinson@usda.gov* or via mail (postmarked) to Matthew Dickinson, 1536 S Carson St., Carson City, NV 89701.

FOR FURTHER INFORMATION CONTACT: Matthew Zumstein, Designated Federal Officer, by phone at (775) 884–8100 or email at *matthew.zumstein@usda.gov;* or Matthew Dickinson, RAC Coordinator, by phone at (775) 884–8154 or email at *matthew.dickinson@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review and approve projects proposed for funding under the Title II of the Secure Rural Schools legislation;
2. Allow for public comment; and
3. 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 7 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 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: November 7, 2024.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2024–26294 Filed 11–19–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Secure Rural Schools Resource Advisory Committees

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Solicitation for members.

SUMMARY: The United States Department of Agriculture (USDA), Forest Service, is seeking nominations for the Secure Rural School Resource Advisory Committees (SRS RACs) pursuant to the Secure Rural Schools and Community Self-Determination Act (the Act) and the Federal Advisory Committee Act (FACA). Additional information on the SRS RACs can be found by visiting the SRS RACs website at: *https://www.fs.usda.gov/working-with-us/secure-rural-schools*.

DATES: Written nominations must be received by January 31, 2025. A completed application packet includes the nominee's name, resume, and completed *AD–755 Form* (Advisory Committee or Research and Promotion Background Information). All completed application packets must be sent to one of the addresses below.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for the names and addresses of the SRS RAC Regional Coordinators accepting nominations.

FOR FURTHER INFORMATION CONTACT: Brianna Gallegos, National Partnership Coordinator, National Partnership Office, USDA Forest Service, Yates Building, 1400 Independence Avenue, Mailstop 1158, Washington, DC 20250; or by email to *SM.FS.SRSInbox@usda.gov* or phone 505–218–1535. Individuals who use telecommunications devices for the hearing impaired may call 711 to reach the Telecommunications Relay Service, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the provisions of FACA, the Secretary of Agriculture is seeking nominations for the purpose of improving collaborative relationships among people who use and care for national forests and provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II. The duties of SRS RACs include monitoring projects, advising the Secretary on the progress and results of monitoring efforts, and making recommendations to the Forest Service for any appropriate changes or adjustments to the projects being monitored by the SRS RACs.

SRS RACs Membership

The SRS RACs will be comprised of 15 members approved by the Secretary of Agriculture (or designee) where each will serve a 4-year term. SRS RACs memberships will be balanced in terms of the points of view represented and functions to be performed. The SRS RACs shall include representation from the following interest areas:

(1) Five persons who represent:

(a) Organized labor or non-timber forest product harvester groups;

(b) Developed outdoor recreation, off-highway vehicle users, or commercial recreation activities;

(c) Energy and mineral development, or commercial or recreational fishing groups;

(d) Commercial timber industry; and

(e) Federal grazing permit or other land use permit holders, or representative of non-industrial private forest land owners, within the area for which the committee is organized.

(2) Five persons who represent:

(a) Nationally or regionally recognized environmental organizations;

(b) Regionally or locally recognized environmental organizations;

(c) Dispersed recreational activities;

(d) Archaeology and history; and

(e) Nationally or regionally recognized wild horse and burro interest, wildlife hunting organizations, or watershed associations.

(3) Five persons who represent:

(a) State elected office holder;

(b) County or local elected office holder;

(c) American Indian Tribes within or adjacent to the area for which the committee is organized;

(d) Area school officials or teachers; and

(e) Affected public-at-large.

If a vacancy arises, the Designated Federal Officer (DFO) may consider recommending to the Secretary (or designee) to fill the vacancy as soon as it occurs with a candidate from the applicant pool provided an appropriate candidate is available. In accordance with the Act, members of the SRS RAC shall serve without compensation. SRS RAC members and replacements may be allowed travel expenses and per diem for attendance at committee meetings, subject to approval of the DFO responsible for administrative support to the SRS RAC.

Nomination and Application Information

The appointment of members to the SRS RACs will be made by the Secretary of Agriculture (or designee). The public is invited to submit nominations for membership on the SRS RACs, either as a self-nomination or a nomination of any qualified and interested person. Any individual or organization may nominate one or more qualified persons to represent the interest areas listed above.

To be considered for membership, nominees must:

1. Be a resident of the State in which the SRS RAC has jurisdiction,

2. Identify what interest group they would represent and how they are qualified to represent that interest group,

3. Provide a cover letter stating why they want to serve on the SRS RAC and what they can contribute,

4. Provide a resume showing their past experience in working successfully as part of a group working on forest management activities,

5. Complete Form AD–755, Advisory Committee or Research and Promotion Background Information. The Form AD–755 may be obtained from the Regional Coordinators listed below or from the following SRS RACs website *https://www.fs.usda.gov/working-with-us/secure-rural-schools/title-2.* All nominations will be vetted by the Forest Service.

Nominations and completed applications for SRS RACs should be sent to the appropriate Forest Service Regional Offices listed below:

Northern Regional Office—Region 1

Central Montana RAC, Flathead RAC, Gallatin RAC, Idaho Panhandle RAC, Lincoln RAC, Mineral County RAC, Missoula RAC, Missouri River RAC, North Central Idaho RAC, Ravalli RAC, Sanders RAC, Southern Montana RAC, Southwest Montana RAC, Tri-County RAC.

Jeffery Miller, Northern Regional Coordinator, Forest Service, 26 Fort Missoula Road, Missoula, Montana 59804, (406) 329–3576 or email *jeffrey.m.miller@usda.gov*.

Rocky Mountain Regional Office—Region 2

Black Hills RAC and Greater Rocky Mountain RAC.

Jace Ratzlaff, Rocky Mountain Regional Coordinator, Forest Service, 1617 Cole Blvd. Building 17, Lakewood, Colorado 80401, (719) 469–1254 or email *jace.ratzlaff@usda.gov*.

Southwestern Regional Office—Region 3

Coconino County RAC, Eastern Arizona RAC, Northern New Mexico RAC, Southern Arizona RAC, Southern New Mexico RAC, Yavapai RAC.

Erik Stemmerman, Southwestern Regional Coordinator, Forest Service, 333 Broadway SE, Albuquerque, New Mexico 87102, (575) 539–2481 or email *erick.stemmerman@usda.gov.*

Intermountain Regional Office—Region 4

Alpine RAC, Bridger-Teton RAC, Central Idaho RAC, Dixie RAC, Eastern Idaho RAC, Fishlake RAC, Lyon-Mineral RAC, Manti-La Sal RAC, Northern Utah, South Central Idaho RAC, Southwest Idaho RAC, Rural Nevada RAC.

Daren Turner, Intermountain Regional Coordinator (Idaho, Utah, Nevada), Forest Service, 355 North Vernal Avenue, Vernal, UT 84078 (801) 857–9029 or email *daren.turner@usda.gov.*

Pacific Southwest Regional Office—Region 5

Butte County RAC, Del Norte County RAC, El Dorado County RAC, Fresno County RAC, Glenn and Colusa Counties RAC, Humboldt County RAC, Kern and Tulare Counties RAC, Lassen County RAC, Mendo-Lake County RAC, Modoc County RAC, Nevada and Placer Counties RAC, Plumas County RAC, Shasta County RAC, Sierra County RAC, Siskiyou County RAC, Tehama RAC, Trinity County RAC, Tuolumne and Mariposa Counties RAC.

Paul Wade, Pacific Southwest Regional Coordinator, Forest Service, 1323 Club Drive, Vallejo, California 94592, (707) 562–9010 or email *paul.r.wade@usda.gov.*

Pacific Northwest Regional Office—6

Columbia County RAC, Colville RAC, Deschutes and Ochoco RAC, Fremont and Winema RAC, Hood and Willamette RAC, Gifford Pinchot RAC, North Mt. Baker-Snoqualmie RAC, Northeast Oregon Forests RAC, Olympic Peninsula RAC, Rogue and Umpqua RAC, Siskiyou (OR) RAC, Siuslaw RAC, Snohomish-South Mt. Baker Snoqualmie RAC, Southeast Washington Forest RAC, Wenatchee-Okanogan RAC.

Rebecca Ciciretti, Pacific Northwest Regional Office, Forest Service, 295142 Highway 101 South, Quilcene, Washington 98379, (202) 290–4748 or email *rebecca.ciciretti@usda.gov.*

Southern Regional Office—Region 8

Alabama RAC, Cherokee RAC, Daniel Boone RAC, Davy Crockett RAC, Florida National Forests RAC, Francis Marion-Sumter RAC, Kisatchie RAC, Ozark-Ouachita RAC, Sabine-Angelina RAC, National Forest in Mississippi RAC, Virginia RAC.

Danielle Knight, Southern Regional Coordinator, Forest Service, 1720 Peachtree Road, Northwest, Atlanta, Georgia 30309, (205) 517–9033 or *email danielle.knight@usda.gov.*

Eastern Regional Office—Region 9

Allegheny RAC, Chippewa National Forest RAC, Eleven Point RAC, Hiawatha RAC, Huron-Manistee RAC, North Wisconsin RAC, Ottawa, Superior RAC, West Virginia RAC.

Tiffany Benna, Eastern Regional Coordinator, Forest Service, 71 White Mountain Drive, Campton, New Hampshire 03223, (603) 348–0078 or email *tiffany.benna@usda.gov.*

Alaska Regional Office—Region 10

Kenai Peninsula-Anchorage Borough RAC, North Tongass RAC, Prince William Sound RAC, South Tongass RAC.

Carlos D La Torree, Alaska Regional Coordinator, Forest Service, 709 West 9th Street, Room 561C, Juneau, Alaska 99801–1807, (907) 586–7836 or email *carlos.delatorre@usda.gov.*

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 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.

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.

Dated: November 14, 2024.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2024–26978 Filed 11–19–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–172–2024]

Approval of Subzone Status; Permco FTZ LLC; Montville and Streetsboro, Ohio

On September 30, 2024, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Cleveland Cuyahoga County Port Authority, grantee of FTZ 40, requesting subzone status subject to the existing activation limit of FTZ 40, on behalf of Permco, Inc. (now Permco FTZ LLC), in Montville and Streetsboro, Ohio.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (89 FR 80857, October 4, 2024). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 40M was approved on November 14, 2024, subject to the FTZ Act and the Board's regulations, including section 400.13, and further subject to FTZ 40's 2,000-acre activation limit.

Dated: November 14, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–27010 Filed 11–19–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–968]

Aluminum Extrusion From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2013, Final Results of Countervailing Duty Administrative Review; 2013, and Amended Final Results of Countervailing Duty Administrative Review; 2013; Correction

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: The U.S. Department of Commerce (Commerce) published a notice in the **Federal Register** of June 9, 2015, in which Commerce announced the preliminary results of the 2013 administrative review of the

countervailing duty (CVD) order on aluminum extrusions from the People's Republic of China (China). Commerce also published a notice in the **Federal Register** of December 14, 2015, in which Commerce announced the final results of the 2013 administrative review of the CVD order on aluminum extrusions from China. Lastly, Commerce published notice in the **Federal Register** of March 22, 2016, in which Commerce amended its final results of the 2013 administrative review of the CVD order on aluminum extrusions from China. This notice addresses the applicable cash deposit and assessment rates for Guangzhou Mingcan Die-Casting Hardware Products Co., Ltd. (Guangzhou Mingcan), which was inadvertently omitted from the notices for this administrative review.

FOR FURTHER INFORMATION CONTACT: Amber Hodak, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8034.

SUPPLEMENTARY INFORMATION:

Background

On June 9, 2015, Commerce published in the **Federal Register** the *Preliminary Results* on the 2013 administrative review of the CVD *Order*[1] on aluminum extrusions from China.[2] On December 14, 2015, Commerce published in the **Federal Register** the *Final Results* on the 2013 administative review of the CVD *Order* on aluminum extrusions from China.[3] On March 22, 2016, Commerce published in the **Federal Register** the *Amended Final Results* on the 2013 administrative review of the CVD *Order* on aluminum extrusions from China.[4] In these three **Federal Register** notices, Commerce inadvertently omitted the company, Guangzhou Mingcan, from the cash deposit rate table and did not assign the company a subsidy rate. Guangzhou Mingcan was a company for which an administrative review was requested and initiated, and that Commerce did not select for individual examination. The administrative review of this company was not rescinded.[5]

Correction

In the **Federal Register** of June 9, 2015, in FR Doc 2015–14076, on pages 32530–32531 in the first, second, and third columns, correct the cash deposit rate table as follows: under ''Company,'' include the company name, ''Guangzhou Mingcan Die-Casting Hardware Products Co., Ltd.,'' and under ''2013 *Ad valorem* rate (percent),'' include the rate 1.81 percent. In addition, in the second column, under ''Preliminary Rate for Non-Selected Companies Under Review,'' correct the first sentence in the first paragraph to: ''There are 38 companies for which a review was requested and not rescinded, but were not selected as mandatory respondents.''

In the **Federal Register** of December 14, 2015, in FR Doc 2015–31425, on page 77327 in the first, second, and third columns, correct the cash deposit rate table as follows: under ''Company,'' include the company name, ''Guangzhou Mingcan Die-Casting Hardware Products Co., Ltd.,'' and under ''2013 *Ad valorem* rate (percent),'' include the rate 61.36 percent. In addition, in the third column, under ''Rate for Non-Selected Companies Under Review,'' correct the first sentence in the first paragraph to: ''There are 39 companies for which a review was requested and not rescinded, but were not selected as mandatory respondents.''

In the **Federal Register** of March 22, 2016, in FR Doc 2016–06425, on page 15239 in the third column, correct the cash deposit rate table as follows: under ''Company,'' include the company name, ''Guangzhou Mingcan Die-Casting Hardware Products Co., Ltd.,'' and under ''2013 *Ad valorem* rate (percent),'' include the rate 28.01 percent. Lastly, in the second column, under ''Amendment to Rates for Non-Selected Companies Under Review,'' correct the first sentence in the first paragraph to: ''In light of the above corrections, for the 39 companies for which a review was requested and not rescinded, but were not selected as mandatory respondents, we have recalculated the net subsidy rate which is based on the overall subsidy rates calculated for the mandatory respondents of this review.''

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.221(b)(5).

Dated: November 14, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–27060 Filed 11–19–24; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order,* 76 FR 30653 (May 26, 2011) (*Order*); *see also Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order,* 76 FR 30650 (May 26, 2011).

[2] *See Aluminum Extrusions from the People's Republic of China: Preliminary Results, Preliminary Intent To Rescind, in Part, and Partial Rescission of Countervailing Duty Administrative Review; 2013,* 80 FR 32528 (June 9, 2015) (*Preliminary Results*).

[3] *See Aluminum Extrusions from the People's Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review; 2013,* 80 FR 77325 (December 14, 2015) (*Final Results*).

[4] *See Aluminum Extrusions from the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2013,* 81 FR 15238 (March 22, 2016) (*Amended Final Results*).

[5] *See Initiation of Antidumping and Countervailing Duty Adminsitrative Reviews,* 79 FR 36462, 36467 (June 27, 2014); *see also Preliminary Results,* 80 FR at 32530–32531.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–853, A–570–174]

Certain Brake Drums From the Republic of Türkiye and the People's Republic of China: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable November 20, 2024.

FOR FURTHER INFORMATION CONTACT: Eric Hawkins (Republic of Türkiye (Türkiye)) or Samuel Frost (People's Republic of China (China)), AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–1988 or (202) 482–8180, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 2024, the U.S. Department of Commerce (Commerce) initiated less-than-fair-value (LTFV) investigations of certain brake drums (brake drums) from Türkiye and China.[1] On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.[2] The deadline for the preliminary determinations is now December 4, 2024.

Postponement of Preliminary Determinations

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires

[1] *See Certain Brake Drums from the Republic of Türkiye and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations,* 89 FR 58166 (July 17, 2024).

[2] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated July 22, 2024.

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) 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 7, 2024, Webb Wheel Products, Inc. (the petitioner) submitted a timely request that Commerce postpone the preliminary determinations in the LTFV investigations of brake drums from Türkiye and China.[3] The petitioner requested postponement of the preliminary determinations in these investigations so that Commerce can fully analyze the forthcoming questionnaire responses of the mandatory respondents and issue supplemental questionnaires, as necessary.[4]

For the reasons stated above, and because there are no compelling reasons to deny the request, in accordance with section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), Commerce is postponing the deadline for the preliminary determinations by 50 days. As a result, Commerce will issue its preliminary determinations no later than January 23, 2025. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations in these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed further.

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).

[3] *See* Petitioner's Letter, ''Request to Extend the Deadline for the Preliminary Determination,'' dated November 7, 2024.

[4] *Id.*

Dated: November 13, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–27006 Filed 11–19–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–104, C–570–105]

Antidumping Duty Order on Alloy and Certain Carbon Steel Threaded Rod and Countervailing Duty Order on Carbon and Alloy Steel Threaded Rod From the People's Republic of China: Final Results of Changed Circumstances Reviews, Revocation of the Antidumping and Countervailing Duty Orders, in Part, and Rescission of Scope Inquiry

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is issuing the final results of changed circumstances reviews (CCRs) of the antidumping duty (AD) order on alloy and certain carbon steel threaded rod from the People's Republic of China and the countervailing duty (CVD) order on carbon and alloy steel threaded rod from China (collectively, steel threaded rod from China) to revoke the orders, in part, with respect to certain wheel studs. Commerce is also rescinding the scope inquiry with respect to the same products.

DATES: Applicable November 20, 2024.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5760.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 2020, Commerce published the AD and CVD orders on steel threaded rod from China in the **Federal Register**.[1] On October 15, 2024, Commerce published its initiation and preliminary results of the CCRs of the *Orders*[2] in the **Federal Register**, in which Commerce found that changed circumstances warranted revocation of the *Orders* in part with respect to certain wheel studs. Commerce provided interested parties with the opportunity to comment and request a public hearing regarding the *Preliminary Results.* Commerce did not receive any comments or a request for a hearing from interested parties.

Final Results of CCRs and Revocation of the Orders, in Part

We conducted these CCRs based on a request from Logistical Resource Development Inc. (LRD), an importer of merchandise subject to these CCRs. LRD requested that Commerce retroactively revoke the *Orders,* in part, pursuant to section 751(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(b) with respect to certain wheels studs.[3] Because no party submitted comments opposing the *Preliminary Results* of these CCRs, and the record contains no other information or evidence that calls into question the *Preliminary Results,* Commerce determines, pursuant to sections 751(d)(1) and 782(h) of the Act, and 19 CFR 351.222(g), that there are changed circumstances that warrant revocation of the *Orders,* in part, with respect to certain wheel studs subject to LRD's request. Consequently, there is no decision memorandum accompanying this notice.

Specifically, because producers accounting for substantially all the production of the domestic like product to which the *Orders* pertain have not expressed interest in maintaining the relief provided by the *Orders* with respect to certain wheel studs, as described below, Commerce is revoking the *Orders,* in part, with respect to certain wheel studs with the following physical characteristics:

- A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 49mm long, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is also M12 diameter and 1.5RH thread spacing.

[1] *See Alloy and Certain Carbon Steel Threaded Rod from the People's Republic of China: Antidumping Duty Order,* 85 FR 19929 (April 9, 2020) (*AD Order*), and *Carbon and Alloy Steel Threaded Rod from India and the People's Republic of China: Countervailing Duty Orders,* 85 FR 19927 (April 9, 2020) (*CVD Order*) (collectively *Orders*).

[2] *See Antidumping Duty Order on Alloy and Certain Carbon Steel Threaded Rod and Countervailing Duty Order on Carbon and Alloy Steel Threaded Rod from the People's Republic of China: Initiation and Preliminary Results of Changed Circumstances Reviews and Intent to Revoke the Antidumping and Countervailing Duty Orders, in Part, and Preliminary Intent to Rescind Scope Inquiry,* 89 FR 82972 (October 15, 2024) (*Preliminary Results*).

[3] *See* LRD's Letter, ''Request for an Expedited Changed Circumstances Review to Amend the Scope of the Order,'' dated August 23, 2024 (CCR Request).

• A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 49mm long, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is also M12 diameter and 1.5RH thread spacing.
• A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 80mm, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is also M12 diameter and 1.5RH thread spacing.
• A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 95mm long, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is also M12 diameter and 1.5RH thread spacing.
• A wheel stud that has an M14 diameter and 1.25RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 75mm, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is also M14 diameter and 1.25RH thread spacing.
• A wheel stud that has an M14 diameter and 1.25RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 92mm, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is also M14 diameter and 1.25RH thread spacing.
• A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 49mm, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is M14 diameter and 1.5RH thread spacing.
• A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 49mm, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is M14x1.25.
• A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 44mm long, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is M14 diameter and 1.5 thread spacing.
• A wheel stud that has an M14 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 49mm long, part of the threaded length being divided by a 5mm unthreaded band which creates a 12.5mm threaded section for insertion that is also M14 diameter and 1.5RH thread spacing.
• A wheel stud that has an M14 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 64mm long, part of the threaded length being divided by a 5mm unthreaded band which creates and 21.5mm threaded section for insertion that is also M14 diameter and 1.5RH thread spacing.
• A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 61mm long, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion.
• A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 49mm long, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is M14 diameter and 1.5 thread spacing.

The revised scope of the *AD Order* and the *CVD Order* is below.

Scope of the AD Order

The scope of the AD order covers alloy and certain carbon steel threaded rod. Alloy and certain carbon steel threaded rod are certain threaded rod, bar, or studs, of carbon or alloy steel, having a solid, circular cross section of any diameter, in any straight length. Alloy and certain carbon steel threaded rod are normally drawn, cold rolled, threaded, and straightened, or it may be hot-rolled. In addition, the alloy and certain carbon steel threaded rod, bar, or studs subject to this order are non-headed and threaded along greater than 25 percent of their total actual length. A variety of finishes or coatings, such as plain oil finish as a temporary rust protectant, zinc coating (*i.e.,* galvanized, whether by electroplating or hot-dipping), paint, and other similar finishes and coatings, may be applied to the merchandise.

Alloy steel threaded rod is normally produced to American Society for Testing and Materials (ASTM) specifications A193 B7/B7m, A193 B16, A320 L7/L7m, A320 L43, A354 BC and BD, and F1554 Grade 105. Other specifications are Society of Automotive Engineers (SAE) specification 1429 grades 5 and 8, International Organization for Standardization (ISO) specification 898 class 8.8 and 10.9, and American Petroleum Institute (API) specification 20E. Certain carbon steel threaded rod is normally produced to ASTM specification A449. All steel threaded rod meeting the physical description set forth above is covered by the scope of this order, whether or not produced according to a particular standard.

Subject merchandise includes material matching the above description that has been finished, assembled, or packaged in a third country, including by cutting, chamfering, coating, or painting the threaded rod, by attaching the threaded rod to, or packaging it with, another product, or any other finishing, assembly, or packaging operation that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the threaded rod. Alloy and certain carbon steel threaded rod are also included in the scope of this order whether or not imported attached to, or in conjunction with, other parts and accessories such as nuts and washers. If carbon and alloy steel threaded rod are imported attached to, or in conjunction with, such non-subject merchandise, only the threaded rod is included in the scope.

Excluded from the scope of this order are: (1) threaded rod, bar, or studs which are threaded only on one or both ends and the threading covers 25 percent or less of the total actual length; and (2) stainless steel threaded rod, defined as steel threaded rod containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements.

Excluded from the scope of the AD order on steel threaded rod from China is any merchandise covered by the existing AD order on certain steel threaded rod from China. *See Certain Steel Threaded Rod from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 17154 (April 14, 2009).

Specifically excluded from the scope of this order is threaded rod that is imported as part of a package of hardware in conjunction with a ready-to-assemble piece of furniture.

Wheel studs with the following characteristics are excluded from the scope of this order:

• A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 49mm long, part of the threaded length being divided by a

5mm unthreaded band which creates an 11.5mm threaded section for insertion that is also M12 diameter and 1.5RH thread spacing.

- A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 49mm long, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is also M12 diameter and 1.5RH thread spacing.
- A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 80mm, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is also M12 diameter and 1.5RH thread spacing.
- A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 95mm long, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is also M12 diameter and 1.5RH thread spacing.
- A wheel stud that has an M14 diameter and 1.25RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 75mm, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is also M14 diameter and 1.25RH thread spacing.
- A wheel stud that has an M14 diameter and 1.25RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 92mm, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is also M14 diameter and 1.25RH thread spacing.
- A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 49mm, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is M14 diameter and 1.5RH thread spacing.
- A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 49mm, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is M14x1.25.
- A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 44mm long, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is M14 diameter and 1.5 thread spacing.
- A wheel stud that has an M14 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 49mm long, part of the threaded length being divided by a 5mm unthreaded band which creates a 12.5mm threaded section for insertion that is also M14 diameter and 1.5RH thread spacing.
- A wheel stud that has an M14 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 64mm long, part of the threaded length being divided by a 5mm unthreaded band which creates and 21.5mm threaded section for insertion that is also M14 diameter and 1.5RH thread spacing.
- A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 61mm long, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion.
- A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 49mm long, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is M14 diameter and 1.5 thread spacing.

Alloy and certain carbon steel threaded rod are currently classifiable under subheadings 7318.15.5051, 7318.15.5056, and 7318.15.5090 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under subheading 7318.15.2095 and 7318.19.0000 of the HTSUS. The HTSUS subheadings are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

Scope of the CVD Order

The scope of the CVD order covers carbon and alloy steel threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon or alloy steel, having a solid, circular cross section of any diameter, in any straight length. Steel threaded rod is normally drawn, cold-rolled, threaded, and straightened, or it may be hot-rolled. In addition, the steel threaded rod, bar, or studs subject to this order are non-headed and threaded along greater than 25 percent of their total actual length. A variety of finishes or coatings, such as plain oil finish as a temporary rust protectant, zinc coating (*i.e.,* galvanized, whether by electroplating or hot-dipping), paint, and other similar finishes and coatings, may be applied to the merchandise.

Steel threaded rod is normally produced to American Society for Testing and Materials (ASTM) specifications ASTM A36, ASTM A193 B7/B7m, ASTM A193 B16, ASTM A307, ASTM A320 L7/L7M, ASTM A320 L43, ASTM A354 BC and BD, ASTM A449, ASTM F1554–36, ASTM F1554–55, ASTM F1554 Grade 105, American Society of Mechanical Engineers (ASME) specification ASME B18.31.3, and American Petroleum Institute (API) specification API 20E. All steel threaded rod meeting the physical description set forth above is covered by the scope of this order, whether or not produced according to a particular standard.

Subject merchandise includes material matching the above description that has been finished, assembled, or packaged in a third country, including by cutting, chamfering, coating, or painting the threaded rod, by attaching the threaded rod to, or packaging it with, another product, or any other finishing, assembly, or packaging operation that would not otherwise remove the merchandise from the scope of this order if performed in the country of manufacture of the threaded rod.

Carbon and alloy steel threaded rod are also included in the scope of this order whether or not imported attached to, or in conjunction with, other parts and accessories such as nuts and washers. If carbon and alloy steel threaded rod are imported attached to, or in conjunction with, such non-subject merchandise, only the threaded rod is included in the scope.

Excluded from the scope of this order are: (1) threaded rod, bar, or studs which are threaded only on one or both ends and the threading covers 25 percent or less of the total actual length; and (2) stainless steel threaded rod, defined as steel threaded rod containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements.

Excluded from the scope of the AD order on steel threaded rod from China is any merchandise covered by the existing AD order on certain steel threaded rod from China. *See Certain Steel Threaded Rod from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 17154 (April 14, 2009).

Specifically excluded from the scope of this order is threaded rod that is imported as part of a package of

hardware in conjunction with a ready-to-assemble piece of furniture.

Wheel studs with the following characteristics are excluded from the scope of this order:

- A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 49mm long, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is also M12 diameter and 1.5RH thread spacing.
- A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 49mm long, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is also M12 diameter and 1.5RH thread spacing.
- A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 80mm, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is also M12 diameter and 1.5RH thread spacing.
- A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 95mm long, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is also M12 diameter and 1.5RH thread spacing.
- A wheel stud that has an M14 diameter and 1.25RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 75mm, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is also M14 diameter and 1.25RH thread spacing.
- A wheel stud that has an M14 diameter and 1.25RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 92mm, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is also M14 diameter and 1.25RH thread spacing.
- A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 49mm, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is M14 diameter and 1.5RH thread spacing.
- A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 49mm, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is M14x1.25.
- A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 44mm long, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is M14 diameter and 1.5 thread spacing.
- A wheel stud that has an M14 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 49mm long, part of the threaded length being divided by a 5mm unthreaded band which creates a 12.5mm threaded section for insertion that is also M14 diameter and 1.5RH thread spacing.
- A wheel stud that has an M14 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 64mm long, part of the threaded length being divided by a 5mm unthreaded band which creates and 21.5mm threaded section for insertion that is also M14 diameter and 1.5RH thread spacing.
- A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 61mm long, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion.
- A wheel stud that has an M12 diameter and 1.5RH thread spacing threaded stud with a 6mm-wide inset hex head measuring 49mm long, part of the threaded length being divided by a 5mm unthreaded band which creates an 11.5mm threaded section for insertion that is M14 diameter and 1.5 thread spacing.

Steel threaded rod is currently classifiable under subheadings 7318.15.5051, 7318.15.5056, and 7318.15.5090 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under subheading 7318.15.2095 and 7318.19.0000 of the HTSUS. The HTSUS subheadings are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

Application of the Final Results of Review

LRD requested that Commerce apply the final results of these CCRs retroactively, effective January 1, 2022.[4] Section 751(d)(3) of the Act provides that Commerce determines the date of application of the revocation of an order.[5] In the *Preliminary Results,* we stated our intent ''to apply the partial revocation to unliquidated entries of merchandise subject to the CCRs that were entered or withdrawn from warehouse, for consumption, as of January 1, 2022,'' and invited comments.[6] As explained above, we received no comments opposing the intended retroactive application of the partial revocation. Therefore, Commerce is applying the partial revocation to unliquidated entries of merchandise subject to the CCRs that were entered, or withdrawn from warehouse, for consumption, on or after January 1, 2022.

Instructions to U.S. Customs and Border Protection (CBP)

Because we determine there are changed circumstances that warrant the revocation of the *Orders,* in part, we will instruct CBP to liquidate without regard to antidumping or countervailing duties, and to refund any estimated antidumping and countervailing duties deposited on all unliquidated entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 2022, that are covered by the revocation of the *Orders,* in part.

Commerce intends to issue instructions to CBP no earlier than 35 days after the date of publication of these final results of CCRs in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Rescission of the Scope Inquiry

In the *Preliminary Results,* we stated our intent to rescind the concurrent scope inquiry of the *Orders* on steel threaded rod from China with respect to the same wheel studs for which we are revoking the *Orders* in part and invited comments.[7] We received no comments from interested parties. Because we are revoking the *Orders* in part with respect

[4] *See* CCR Request at 1.

[5] *See* section 751(d)(3) of the Act (''determination under this section to revoke an order or finding or terminate a suspended investigation shall apply with respect to unliquidated entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date determined by the administering authority.'').

[6] *See Preliminary Results,* 89 FR at 82974.

[7] *Id.; see also* Memorandum, ''Comments Deadlines for Intent to Rescind the Scope Inquiry on Wheel Studs,'' dated October 8, 2024.

to the same wheel studs that are subject to the concurrent scope inquiry, the concurrent scope inquiry is moot. Therefore, we are rescinding the concurrent scope inquiry in accordance with 19 CFR 351.225(f)(6).

Administrative Protective Order (APO)

This notice serves as a final reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Act, and 19 CFR 351.216, 351.221(c)(3), 351.222, and 351.225(f)(6).

Dated: November 13, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–27007 Filed 11–19–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–865, C–570–185, C–533–935, C–552–848]

Hard Empty Capsules From Brazil, the People's Republic of China, India, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Seth Brown at (202) 482–0029 (Brazil), Laura Delgado at (202) 482–1468 and John Conniff at (202) 482–1009 (the People's Republic of China (China)), Gorden Struck at (202) 482–8151 (India), and Jonathan Schueler at (202) 482–9175 (the Socialist Republic of Vietnam (Vietnam)), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On October 24, 2024, the U.S. Department of Commerce (Commerce) received countervailing duty (CVD) petitions concerning imports of hard empty capsules from Brazil, China, India, and Vietnam filed in proper form on behalf of Lonza Greenwood LLC (the petitioner), a U.S. producer of hard empty capsules.[1] The CVD Petitions were accompanied by antidumping duty (AD) petitions concerning imports of hard empty capsules from Brazil, China, India, and Vietnam.[2]

Between October 28 and November 5, 2024, Commerce requested supplemental information pertaining to certain aspects of the Petitions.[3] Between October 30 and November 6, 2024, the petitioner filed timely responses to these requests for additional information.[4]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of Brazil (GOB), Government of China (GOC), the Government of India (GOI), and the Government of Vietnam (GOV) (collectively, Governments) are providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of hard empty capsules from Brazil, China, India, and Vietnam and that such imports are materially injuring, or threatening material injury to, the domestic industry producing hard empty capsules in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating CVD investigations, the Petitions were accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigations.[5]

Periods of Investigation

Because the Petitions were filed on October 24, 2024, the periods of investigation for the Brazil, China, India, and Vietnam CVD investigations are January 1, 2023, through December 31, 2023.[6]

Scope of the Investigations

The products covered by these investigations are hard empty capsules from Brazil, China, India, and Vietnam. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

On November 5, 2024, Commerce requested information and clarification from the petitioner regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.[7] On November 6, 2024, the petitioner provided clarifications and revised the scope.[8] The description of merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[9] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information, all such factual information should be limited to public information.[10] To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on December 3, 2024, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include

[1] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties,'' dated October 24, 2024 (Petitions).

[2] *Id.*

[3] *See* Commerce's Letters, ''Supplemental Questions,'' dated October 28, 2024, *see also* Country-Specific CVD Supplemental Questionnaires: Brazil Supplemental, China Supplemental, India Supplemental, and Vietnam Supplemental, dated October 28, 29, and 30, 2024; and Memorandum, ''Phone Call,'' dated November 5, 2024 (November 5, 2024, Memorandum).

[4] *See* Petitioner's Letters, ''Petitioner's Response to the Department's General Issues Questionnaire,'' dated October 30, 2024 (General Issues Supplement); *see also* Country-Specific CVD Supplemental Responses: Brazil CVD Supplement, China CVD Supplement, India CVD Supplement, and Vietnam CVD Supplement, dated October 30, 2024, October 31, 2024, November 1, 2024, and November 4, 2024; and Petitioner's Letter, ''Petitioner's Response to the Department's General Issues Scope Questionnaire,'' dated November 6, 2024 (Scope Supplement).

[5] *See* section on ''Determination of Industry Support for the Petitions,'' *infra.*

[6] *See* 19 CFR 351.204(b)(2).

[7] *See* November 5, 2024, Memorandum.

[8] *See* Scope Supplement at 1–8 and Exhibit I–92.

[9] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[10] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

factual information, must be filed by 5:00 p.m. ET on December 13, 2024, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of the investigations be submitted during that time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party must contact Commerce and request permission to submit the additional information. All scope comments must be filed simultaneously on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[11] An electronically filed document must be received successfully in its entirety by the time and date it is due.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the Governments of the receipt of the Petitions and provided an opportunity for consultations with respect to the Petitions.[12] Commerce held consultations with the GOV on November 7, 2024,[13] the GOB on November 12, 2024,[14] and the GOI on November 13, 2024.[15] The GOC did not request consultations.[16]

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC apply the same statutory definition regarding the domestic like product,[17] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[18]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations.[19] Based on our analysis of the information submitted on the record, we have determined that hard empty capsules, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[20]

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the appendix to this notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2023 and compared this to the estimated total 2023 production of the domestic like product for the entire industry.[21] We relied on data provided by the petitioner for purposes of measuring industry support.[22]

Our review of the data provided in the Petitions, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions.[23] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[24] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act

[11] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[12] *See* Commerce's Letters, ''Invitation for Consultation to Discuss the Countervailing Duty Petition,'' dated October 25, 2024.

[13] *See* Memorandum, ''Consultations with the Government of the Socialist Republic of Vietnam,'' dated November 7, 2024; *see also* GOV's Letter, ''Comments on Countervailing Duty Petition,'' dated November 5, 2024.

[14] *See* Memorandum, ''Consultations with the Government of Brazil,'' dated November 13, 2024.

[15] *See* Memorandum, ''Consultations with the Government of India,'' dated November 13, 2024.

[16] The GOC submitted comments on the CVD petition from China. *See* GOC's Letter, ''Comments on Countervailing Duty Petition,'' dated November 8, 2024.

[17] *See* section 771(10) of the Act.

[18] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd Algoma Steel Corp., Ltd.* v. *United States,* 865 F.2d 240 (Fed. Cir. 1989)).

[19] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* Checklists, ''Countervailing Duty Investigation Initiation Checklists: Hard Empty Capsules from Brazil, the People's Republic of China, India, and the Socialist Republic of Vietnam,'' dated concurrently with, and hereby adopted by, this notice (Country-Specific CVD Initiation Checklists), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Hard Empty Capsules from Brazil, the People's Republic of China, India, and the Socialist Republic of Vietnam (Attachment II). These checklists are on file electronically via ACCESS.

[20] *See* Attachment II of the Country-Specific CVD Initiation Checklists.

[21] *Id.*

[22] For further discussion, *see* Attachment II of the Country-Specific CVD Initiation Checklists.

[23] For further discussion, *see* Attachment II of the Country-Specific CVD Initiation Checklists.

[24] *Id.; see also* section 702(c)(4)(D) of the Act.

because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[25] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[26] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.[27]

Injury Test

Because Brazil, China, India, and Vietnam are ''Subsidies Agreement Countries'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from Brazil, China, India, and/or Vietnam materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefiting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports from China, India, and Vietnam exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[28] With respect to Brazil, while the allegedly subsidized imports do not exceed the statutory requirements for negligibility,[29] the petitioner alleges and provides supporting evidence that: (1) there is a reasonable indication that the data obtained in the ITC's investigation will establish that imports exceed the negligibility threshold; [30] and (2) there is the potential that imports from Brazil will imminently exceed the negligibility threshold and, therefore, are not negligible for purposes of a threat determination.[31] The petitioner's arguments regarding the limitations of publicly available import data and the collection of scope-specific import data in the ITC's investigation are consistent with the SAA. Furthermore, the petitioner's arguments regarding the potential for imports from Brazil to imminently exceed the negligibility threshold are consistent with the statutory criteria for ''negligibility in threat analysis'' under section 771(24)(A)(iv) of the Act, which provides that imports shall not be treated as negligible if there is a potential that subject imports from a country will imminently exceed the statutory requirements for negligibility.

The petitioner contends that the industry's injured condition is illustrated by the significant and increasing volume of subject imports; reduced market share; underselling and price depression and/or suppression; lost sales and revenues; and decline in the domestic industry's production, U.S. shipments, net sales, and financial performance.[32] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, cumulation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[33]

Initiation of CVD Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 702 of the Act. Therefore, we are initiating CVD investigations to determine whether imports of hard empty capsules from Brazil, China, India, and Vietnam benefit from countervailable subsidies conferred by the GOB, GOC, GOI, and GOV, respectively. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 65 days after the date of these initiations.

Brazil

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on 18 of the 18 programs alleged by the petitioner. For a full discussion of the basis for our decision to initiate on each program, *see* the Brazil CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

China

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on 18 of the 19 programs alleged by the petitioner. For a full discussion of the basis for our decision to initiate on each program, *see* the China CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

India

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on 22 of the 23 programs alleged by the petitioner. For a full discussion of the basis for our decision to initiate on each program, *see* the India CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Vietnam

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on 26 of the 26 programs alleged by the petitioner. For a full discussion of the basis for our decision to initiate on each program, *see* the Vietnam CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Respondent Selection

Brazil and Vietnam

In the Petitions, the petitioner identified two companies in Brazil (*i.e.,* ACG do Brasil S.A. and Genix Industria Farmaceutica LTDA (Qualicaps Brazil)) and two companies in Vietnam (*i.e.,* Cuu Long Pharmaceutical Joint Stock Company (DCL) and Suheung Vietnam Co., Ltd.) as producers/exporters of hard empty capsules and provided independent third-party information as support.[34] We currently know of no

[25] *See* Attachment II of the Country-Specific CVD Initiation Checklists.

[26] *Id.*

[27] *Id.*

[28] For further information regarding negligibility and the injury allegation, *see* Country-Specific CVD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Hard Empty Capsules from Brazil, the People's Republic of China, India, and the Socialist Republic of Vietnam (Attachment III).

[29] *Id.*

[30] *Id.; see also Statement of Administrative Action Accompanying the Uruguay Round Agreements Act,* H.R. Doc 103–316, Vol. 1 (1994) (SAA).

[31] *See* Attachment III of the Country-Specific CVD Initiation Checklists; *see also* section 771(24)(A)(iv) of the Act.

[32] *See* Attachment III of the Country-Specific CVD Initiation Checklists.

[33] *Id.*

[34] *See* Petitions at Volume I (page 30 and Exhibits I–46, I–57, and I–60); *see also* General Issues Supplement at 1–2 and Exhibit I–46 (Revised).

additional producers/exporters of hard empty capsules from Brazil and Vietnam. Accordingly, Commerce intends to individually examine all known producers/exporters in the investigations for Brazil and Vietnam (*i.e.,* the companies cited above). We invite interested parties to comment on this issue. Such comments may include factual information within the meaning of 19 CFR 351.102(b)(21). Parties wishing to comment must do so within three business days of the publication of this notice in the **Federal Register**. Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline. Because we intend to examine all known producers/exporters in Brazil and Vietnam, if no comments are received, or if comments received further support the existence of only these producers/exporters in Brazil and Vietnam, respectively, we do not intend to conduct respondent selection and will proceed to issuing the initial CVD questionnaires to the companies identified. However, if comments are received which create a need for a respondent selection process, we intend to finalize our decision regarding respondent selection for Brazil and Vietnam within 20 days of publication of this notice.

China and India

In the Petitions, the petitioner identified 50 companies in China and 14 companies in India as producers/exporters of hard empty capsules.[35] Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in this investigation. Following standard practice in CVD investigations, in the event Commerce determines that the number of exporters or producers is large such that Commerce cannot individually examine each company based on its resources, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) entry data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheading(s) listed in the ''Scope of the Investigations,'' in the appendix.

On November 7 and 8, 2024, Commerce released CBP data on imports of hard empty capsules from China and India under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on CBP data and/or respondent selection must do so within three business days of the publication date of the notice of initiation of these investigations.[36] Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline. Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at *https://www.trade.gov/administrative-protective-orders.*

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petitions has been provided to the GOB, GOC, GOI, and GOV via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of hard empty capsules from Brazil, China, India, and/or Vietnam are materially injuring, or threatening material injury to, a U.S. industry.[37] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[38] Otherwise, these CVD investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors of production under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)-(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [39] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[40] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301, or as otherwise specified by Commerce.[41] For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits, where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to

[35] *See* Petitions at Volume I (page 30 and Exhibit I–46); *see also* General Issues Supplement at 1 and Exhibit I–46 (Revised).

[36] *See* Country-Specific Memoranda, ''Release of U.S. Customs and Border Protection Entry Data,'' dated November 7 and 8, 2024.

[37] *See* section 703(a)(1) of the Act.

[38] *Id.*

[39] *See* 19 CFR 351.301(b).

[40] *See* 19 CFR 351.301(b)(2).

[41] *See* 19 CFR 351.302.

submitting factual information in these investigations.[42]

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[43] Parties must use the certification formats provided in 19 CFR 351.303(g).[44] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing the required letters of appearance). Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[45]

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: November 13, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The merchandise subject to the scope of these investigations is hard empty capsules, which are comprised of two prefabricated, hollowed cylindrical sections (cap and body). The cap and body pieces each have one closed and rounded end and one open end, and are constructed with different or equal diameters at their open ends.

Hard empty capsules are unfilled cylindrical shells composed of at least 80 percent by weight of a water soluble polymer that is considered non-toxic and appropriate for human or animal consumption by the United States Pharmacopeia—National Formulary (USP–NF), Food Chemical Codex (FCC), or equivalent standards. The most common polymer materials in HECs are gelatin derived from animal collagen (including, but not limited to, pig, cow, or fish collagen), hydroxypropyl methylcellulose (HPMC), and pullulan.

Hard empty capsules may also contain water and additives, such as opacifiers, colorants, processing aids, controlled release agents, plasticizers, and preservatives. Hard empty capsules may also be imprinted or otherwise decorated with markings.

Hard empty capsules are covered by the scope of these investigations regardless of polymer material, additives, transparency, opacity, color, imprinting, or other markings.

Hard empty capsules are also covered by the scope of these investigations regardless of their size, weight, length, diameter, thickness, and filling capacity.

Cap and body pieces of hard empty capsules are covered by the scope of these investigations regardless of whether they are imported together or separately, and regardless of whether they are imported in attached or detached form.

Hard empty capsules covered by the scope of these investigations are those that disintegrate in water within 2 hours under tests specified in Chapter 701 of the USP–NF, or equivalent disintegration tests.

Hard empty capsules are classifiable under subheadings 9602.00.1040 and 9602.00.5010 of the Harmonized Tariff Schedule of the United States (HTSUS). In addition, hard empty capsules may be imported under HTSUS subheading 1905.90.9090; gelatin hard empty capsules may be imported under HTSUS subheading 3503.00.5510; HPMC hard empty capsules may be imported under HTSUS subheading 3923.90.0080; and pullulan hard empty capsules may be imported under HTSUS subheading 2106.90.9998. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise covered by these investigations is dispositive.

[FR Doc. 2024–27008 Filed 11–19–24; 8:45 am]

BILLING CODE 3510–DS–P

[42] *See* 19 CFR 351.301; *see also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[43] *See* section 782(b) of the Act.

[44] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[45] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069 (September 29, 2023).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–864, A–570–184, A–533–934, A–552–847]

Hard Empty Capsules From Brazil, the People's Republic of China, India, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Gemma Larsen at (202) 482–8125 (Brazil), Rebecca Janz at (202) 482–2972 (the People's Republic of China), Luke Caruso at (202) 482–2081 (India), and Jinny Ahn at (202) 482–0239 (the Socialist Republic of Vietnam (Vietnam)), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On October 24, 2024, the U.S. Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of hard empty capsules from Brazil, China, India, and Vietnam filed in proper form on behalf of Lonza Greenwood LLC (the petitioner), a U.S. producer of hard empty capsules.[1] The AD Petitions were accompanied by countervailing duty (CVD) petitions concerning imports of hard empty capsules from Brazil, China, India, and Vietnam.[2]

Between October 28 and November 5, 2024, Commerce requested supplemental information pertaining to certain aspects of the Petitions in supplemental questionnaires.[3] The petitioner responded to Commerce's supplemental questionnaires between October 30 and November 6, 2024.[4]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of hard empty capsules from Brazil, China, India, and Vietnam are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the hard empty capsules industry in the United States. Consistent with section 732(b)(1) of the Act, the Petitions were accompanied by information reasonably available to the petitioner supporting its allegations.

[1] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties,'' dated October 24, 2024 (Petitions).

[2] *Id.*

[3] *See* Commerce's Letters, ''Supplemental Questions,'' dated October 28, 2024; *see also* Country-Specific AD Supplemental Questionnaires: Brazil Supplemental, China Supplemental, India Supplemental, and Vietnam Supplemental, dated October 28, 2024; and Memorandum, ''Phone Call,'' dated November 5, 2024 (November 5, 2024, Memorandum).

[4] *See* Petitioner's Letters, ''Petitioner's Response to the Department's General Issues Questionnaire,'' dated October 30, 2024 (General Issues Supplement); *see also* Country-Specific AD Supplemental Responses: Brazil AD Supplement, China AD Supplement, India AD Supplement, and Vietnam AD Supplement, dated November 1 and 5, 2024; Petitioner's Letter, ''Petitioner's Response to the Department's General Issues Scope Questionnaire,'' dated November 6, 2024 (Scope Supplement); and Country-Specific Second AD Supplemental Responses: Second Brazil AD Supplement and Second India AD Supplement, dated November 6, 2024.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested LTFV investigations.[5]

Periods of Investigation

Because the Petitions were filed on October 24, 2024, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) for the Brazil and India LTFV investigations is October 1, 2023, through September 30, 2024. Because China and Vietnam are non-market economy (NME) countries, pursuant to 19 CFR 351.204(b)(1), the POI for the China and Vietnam LTFV investigations is April 1, 2024, through September 30, 2024.

Scope of the Investigations

The products covered by these investigations are hard empty capsules from Brazil, China, India, and Vietnam. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

On November 5, 2024, Commerce requested information and clarification from the petitioner regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.[6] On November 6, 2024, the petitioner provided clarifications and revised the scope.[7] The description of merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[8] Commerce will consider all scope comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[9] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on December 3, 2024, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, and should also be limited to public information, must be filed by 5:00 p.m. ET on December 13, 2024, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of these investigations be submitted during that period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party must contact Commerce and request permission to submit the additional information. All scope comments must be filed simultaneously on the records of the concurrent LTFV and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[10] An electronically filed document must be received successfully in its entirety by the time and date it is due.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of hard empty capsules to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors of production (FOP) or cost of production (COP) accurately, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) general product characteristics; and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe hard empty capsules, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on December 3, 2024, which is 20 calendar days from the signature date of this notice. Any rebuttal comments must be filed by 5:00 p.m. ET on December 13, 2024, which is 10 calendar days from the initial comment deadline. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the LTFV investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a

[5] *See* section on ''Determination of Industry Support for the Petitions,'' *infra.*

[6] *See* November 5, 2024, Memorandum.

[7] *See* Scope Supplement at 1–8 and Exhibit I–92.

[8] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*); *see also* 19 CFR 351.312.

[9] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[10] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance: Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC apply the same statutory definition regarding the domestic like product,[11] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[12]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations.[13] Based on our analysis of the information submitted on the record, we have determined that hard empty capsules, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[14]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the appendix to this notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2023 and compared this to the estimated total 2023 production of the domestic like product for the entire industry.[15] We relied on data provided by the petitioner for purposes of measuring industry support.[16]

Our review of the data provided in the Petitions, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions.[17] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[18] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[19] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[20] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[21]

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports from China, India, and Vietnam exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[22] With respect to Brazil, while the allegedly dumped imports do not exceed the statutory requirements for negligibility,[23] the petitioner alleges and provides supporting evidence that: (1) there is a reasonable indication that the data obtained in the ITC's investigation will establish that imports exceed the negligibility threshold; [24] and (2) there is the potential that imports from Brazil will imminently exceed the negligibility threshold and, therefore, are not negligible for purposes of a threat determination.[25] The petitioner's arguments regarding the limitations of publicly available import data and the collection of scope-specific import data in the ITC's investigation are consistent with the SAA. Furthermore, the petitioner's arguments regarding the potential for imports from Brazil to imminently exceed the negligibility threshold are consistent with the statutory criteria for ''negligibility in threat analysis'' under section 771(24)(A)(iv) of the Act, which provides that imports shall not be treated as negligible if there is a potential that subject imports from a country will imminently exceed the statutory requirements for negligibility.

The petitioner contends that the industry's injured condition is illustrated by the significant and increasing volume of subject imports; reduced market share; underselling and price depression and/or suppression; lost sales and revenues; and decline in the domestic industry's production, U.S. shipments, net sales, and financial performance.[26] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, cumulation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[27]

[11] *See* section 771(10) of the Act.

[12] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd Algoma Steel Corp., Ltd.* v. *United States,* 865 F.2d 240 (Fed. Cir. 1989)).

[13] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* Checklists, ''Antidumping Duty Investigation Initiation Checklists: Hard Empty Capsules from Brazil, the People's Republic of China, India, and the Socialist Republic of Vietnam,'' dated concurrently with, and hereby adopted by, this notice (Country-Specific AD Initiation Checklists), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Hard Empty Capsules from Brazil, the People's Republic of China, India, and the Socialist Republic of Vietnam (Attachment II). These checklists are on file electronically via ACCESS.

[14] *See* Attachment II of the Country-Specific AD Initiation Checklists.

[15] *Id.*

[16] For further discussion, *see* Attachment II of the Country-Specific AD Initiation Checklists.

[17] *Id.*

[18] *Id.; see also* section 732(c)(4)(D) of the Act.

[19] *See* Attachment II of the Country-Specific AD Initiation Checklists.

[20] *Id.*

[21] *Id.*

[22] For further information regarding negligibility and the injury allegation, *see* Country-Specific AD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Hard Empty Capsules from Brazil, the People's Republic of China, India, and the Socialist Republic of Vietnam (Attachment III).

[23] *Id.*

[24] *Id.; see also* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc 103–316, Vol. 1 (1994) (SAA).

[25] *See* Attachment III of the Country-Specific AD Initiation Checklists; *see also* section 771(24)(A)(iv) of the Act.

[26] *Id.*

[27] *Id.*

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate LTFV investigations of imports of hard empty capsules from Brazil, China, India, and Vietnam. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the Country-Specific AD Initiation Checklists.

U.S. Price

For Brazil, China, India, and Vietnam, the petitioner based export price (EP) on POI average unit values derived from official U.S. import statistics for imports of hard empty capsules produced in and exported from each country.[28] For each country, the petitioner made certain adjustments to U.S. price to calculate a net ex-factory U.S. price, where applicable.[29]

Normal Value [30]

For Brazil and India, the petitioner stated that it was unable to obtain home market or third country pricing information for hard empty capsules to use as a basis for NV.[31] Therefore, for Brazil and India, the petitioner calculated NV based on CV.[32] For further discussion of CV for Brazil and India, *see* the section ''Normal Value Based on Constructed Value,'' below.

Commerce considers China and Vietnam to be NME countries.[33] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China and Vietnam as NME countries for purposes of the initiation of the China and Vietnam LTFV investigations. Accordingly, we base NV on FOPs valued in a surrogate market economy country in accordance with section 773(c) of the Act.

The petitioner claims that the Republic of Türkiye (Türkiye) is an appropriate surrogate country for China because it is a market economy that is at a level of economic development comparable to that of China and is a significant producer of comparable merchandise.[34] The petitioner provided publicly available information from Türkiye to value all FOPs.[35] Based on the information provided by the petitioner, we believe it is appropriate to use Türkiye as a surrogate country for China to value all FOPs for initiation purposes.

The petitioner claims that Indonesia is an appropriate surrogate country for Vietnam because it is a market economy that is at a level of economic development comparable to that of Vietnam and is a significant producer of comparable merchandise.[36] The petitioner provided publicly available information from Indonesia to value all FOPs.[37] Based on the information provided by the petitioner, we believe it is appropriate to use Indonesia as a surrogate country for Vietnam to value all FOPs for initiation purposes.

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determinations.

Factors of Production

Because information regarding the volume of inputs consumed by Chinese and Vietnamese producers/exporters was not reasonably available, the petitioner used its own production experience and product-specific consumption rates as a surrogate to value Chinese and Vietnamese manufacturers' FOPs.[38] Additionally, the petitioner calculated factory overhead, selling, general, and administrative (SG&A) expenses, and profit based on the experience of Turkish and Indonesian producers of comparable merchandise, respectively.[39]

Normal Value Based on Constructed Value

As noted above for Brazil and India, the petitioner stated that it was unable to obtain home market or third-country prices for hard empty capsules to use as a basis for NV. Therefore, for Brazil and India, the petitioner calculated NV based on CV.[40]

Pursuant to section 773(e) of the Act, the petitioner calculated CV as the sum of the cost of manufacturing, SG&A expenses, financial expenses, and profit.[41] For Brazil and India, in calculating the cost of manufacturing, the petitioner relied on its own production experience and product-specific consumption rates, valued using publicly available information applicable to the respective countries, where applicable.[42] For Brazil and India, in calculating SG&A expenses, financial expenses, and profit ratios, the petitioner relied on the fiscal year 2023 financial statements of producers of comparable merchandise domiciled in the respective countries.[43]

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of hard empty capsules from Brazil, China, India, and Vietnam are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for hard empty capsules for each of the countries covered by this initiation are as follows: (1) Brazil—78.52 to 99.11 percent; (2) China—128.01 to 158.04 percent; (3) India—54.81 to 82.95 percent; (4) Vietnam—63.53 to 86.04 percent.[44]

Initiation of LTFV Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating LTFV investigations to determine whether imports of hard empty capsules from Brazil, China, India, and Vietnam are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no

[28] *See* Country-Specific AD Initiation Checklists.

[29] *Id.*

[30] In accordance with section 773(b)(2) of the Act, for the Brazil and India investigations, Commerce will request information necessary to calculate the constructed value (CV) and COP to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

[31] *See* Country-Specific AD Initiation Checklists.

[32] *Id.*

[33] *See, e.g., Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances,* 88 FR 15372 (March 13, 2023), and accompanying Preliminary Decision Memorandum at 5, unchanged in *Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China: Final Affirmative Determination of Sales at Less-Than-Fair Value and Final Affirmative Determination of Critical Circumstances,* 88 FR 34485 (May 30, 2023); *see also, e.g., Raw Honey from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Changed Circumstances Review,* 89 FR 64411 (August 7, 2024), and accompanying NME Analysis Memorandum at 5.

[34] *See* China AD Initiation Checklist.

[35] *Id.*

[36] *See* Vietnam AD Initiation Checklist.

[37] *Id.*

[38] *See* Country-Specific AD Initiation Checklists.

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.*

later than 140 days after the date of these initiations.

Respondent Selection

Brazil

In the Petitions, the petitioner identified two companies in Brazil (*i.e.,* ACG do Brasil S.A. and Genix Industria Farmaceutica LTDA (Qualicaps Brazil)) as producers/exporters of hard empty capsules and provided independent third-party information as support.[45] We currently know of no additional producers/exporters of hard empty capsules from Brazil. Accordingly, Commerce intends to individually examine all known producers/exporters in the investigation from Brazil (*i.e.,* the companies cited above). We invite interested parties to comment on this issue. Such comments may include factual information within the meaning of 19 CFR 351.102(b)(21). Parties wishing to comment must do so within three business days of the publication of this notice in the **Federal Register**. Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline. Because we intend to examine all known producers/exporters in Brazil, if no comments are received, or if comments received further support the existence of only these two producers/exporters, we do not intend to conduct respondent selection and will proceed to issuing the initial AD questionnaires to the companies identified. However, if comments are received which create a need for a respondent selection process, we intend to finalize our decision regarding respondent selection for Brazil within 20 days of publication of this notice.

India

In the Petitions, the petitioner identified 14 companies in India as producers/exporters of hard empty capsules.[46] Following standard practice in LTFV investigations involving market economy countries, in the event Commerce determines that the number of companies is large, and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheading(s) listed in the ''Scope of the Investigations,'' in the appendix.

On November 7, 2024, Commerce released CBP data on imports of hard empty capsules from India under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on CBP data and/or respondent selection must do so within three business days of the publication date of the notice of initiation of these investigations.[47] Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline. Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

China and Vietnam

In the Petitions, the petitioner identified 50 companies in China and two companies in Vietnam as producers and/or exporters of hard empty capsules.[48] Our standard practice for respondent selection in AD investigations involving NME countries is to select respondents based on quantity and value (Q&V) questionnaires in cases where Commerce has determined that the number of companies is large, and it cannot individually examine each company based upon its resources. Therefore, considering the number of producers and/or exporters identified in the Petitions, Commerce will solicit Q&V information that can serve as a basis for selecting exporters for individual examination in the event that Commerce determines that the number is large and decides to limit the number of respondents individually examined pursuant to section 777A(c)(2) of the Act. Because there are 50 Chinese producers and/or exporters identified in the Petitions, Commerce has determined that it will issue Q&V questionnaires to the largest producers and/or exporters in China that are identified in the CBP POI entry data for which there is complete address information on the record.[49] For Vietnam, because there are two producers and/or exporters identified in the Petitions, Commerce will issue a Q&V questionnaire to each potential respondent in Vietnam for which there is complete address information on the record.

Commerce will post the Q&V questionnaires along with filing instructions on Commerce's website at *https://www.trade.gov/ec-adcvd-case-announcements.* Producers/exporters of hard empty capsules from China and Vietnam that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Commerce's website. Responses to the Q&V questionnaire must be submitted by the relevant Chinese and Vietnamese producers/exporters no later than 5:00 p.m. ET on November 27, 2024, which is two weeks from the signature date of this notice. All Q&V questionnaire responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). As stated above, instructions for filing such applications may be found on Commerce's website at *https://www.trade.gov/administrative-protective-orders.*

Separate Rates

In order to obtain separate rate status in an NME investigation, exporters and producers must submit a separate rate application. The specific requirements for submitting a separate rate application in an NME investigation are outlined in detail in the application itself, which is available on Commerce's website at *https://access.trade.gov/Resources/nme/nme-sep-rate.html.* The separate rate application will be due 30 days after publication of this initiation notice. Exporters and producers must file a timely separate rate application if they want to be considered for individual examination. Exporters and producers who submit a separate rate application and have been selected as mandatory respondents will be eligible for consideration for separate rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from China and Vietnam submit a response both to the Q&V questionnaire and to the separate rate application by the respective deadlines to receive consideration for separate rate status. Companies not filing a timely Q&V questionnaire response will not receive separate rate consideration.

[45] *See* Petitions at Volume I (page 30 and Exhibits I–46 and I–57); *see also* General Issues Supplement at 1–2 and Exhibit I–46 (Revised).

[46] *See* Petitions at Volume I (pages 10–11 and Exhibit I–8); *see also* General Issues Supplement at 1–3 and Exhibit I–S1.

[47] *See* Country-Specific Memorandum, ''Release of U.S. Customs and Border Protection Entry Data,'' dated November 7, 2024.

[48] *See* Petitions at Volume I (page 30 and Exhibit I–46); *see also* General Issues Supplement at 1 and Exhibit I–46 (Revised).

[49] *See* Memorandum, ''Release of U.S. Customs and Border Protection Entry Data,'' dated November 7, 2024.

Use of Combination Rates

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that {Commerce} will now assign in its NME investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the {weighted average} of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[50]

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of Brazil, China, India, and Vietnam via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of hard empty capsules from Brazil, China, India, and/or Vietnam are materially injuring, or threatening material injury to, a U.S. industry.[51] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[52] Otherwise, these LTFV investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [53] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[54] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Particular Market Situation Allegation

Section 773(e) of the Act addresses the concept of particular market situation (PMS) for purposes of CV, stating that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act (*i.e.,* a cost-based PMS allegation), the submission must be filed in accordance with the requirements of 19 CFR 351.416(b), and Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a cost-based PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act, nor 19 CFR 351.301(c)(2)(v), sets a deadline for the submission of cost-based PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a cost-based PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent's initial section D questionnaire response.

We note that a PMS allegation filed pursuant to sections 773(a)(1)(B)(ii)(III) or 773(a)(1)(C)(iii) of the Act (*i.e.,* a sales-based PMS allegation) must be filed within 10 days of submission of a respondent's initial section B questionnaire response, in accordance with 19 CFR 351.301(c)(2)(i) and 19 CFR 351.404(c)(2).

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301, or as otherwise specified by Commerce.[55] For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits, where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in these investigations.[56]

[50] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving NME Countries,'' (April 5, 2005) at 6 (emphasis added), available on Commerce's website at *https://access.trade.gov/Resources/policy/bull05-1.pdf.*

[51] *See* section 733(a) of the Act.

[52] *Id.*

[53] *See* 19 CFR 351.301(b).

[54] *See* 19 CFR 351.301(b)(2).

[55] *See* 19 CFR 351.301; *see also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[56] *See* 19 CFR 351.302; *see also, e.g., Time Limits Final Rule.*

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[57] Parties must use the certification formats provided in 19 CFR 351.303(g).[58] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing the required letter of appearance). Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[59]

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: November 13, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The merchandise subject to the scope of these investigations is hard empty capsules, which are comprised of two prefabricated, hollowed cylindrical sections (cap and body). The cap and body pieces each have one closed and rounded end and one open end, and are constructed with different or equal diameters at their open ends.

Hard empty capsules are unfilled cylindrical shells composed of at least 80 percent by weight of a water soluble polymer that is considered non-toxic and appropriate for human or animal consumption by the United States Pharmacopeia—National Formulary (USP–NF), Food Chemical Codex (FCC), or equivalent standards. The most common polymer materials in hard empty capsules are gelatin derived from animal collagen (including, but not limited to, pig, cow, or fish collagen), hydroxypropyl methylcellulose (HPMC), and pullulan.

Hard empty capsules may also contain water and additives, such as opacifiers, colorants, processing aids, controlled release agents, plasticizers, and preservatives. Hard empty capsules may also be imprinted or otherwise decorated with markings.

Hard empty capsules are covered by the scope of these investigations regardless of polymer material, additives, transparency, opacity, color, imprinting, or other markings.

Hard empty capsules are also covered by the scope of these investigations regardless of their size, weight, length, diameter, thickness, and filling capacity.

Cap and body pieces of hard empty capsules are covered by the scope of these investigations regardless of whether they are imported together or separately, and regardless of whether they are imported in attached or detached form.

Hard empty capsules covered by the scope of these investigations are those that disintegrate in water within 2 hours under tests specified in Chapter 701 of the USP–NF, or equivalent disintegration tests.

Hard empty capsules are classifiable under subheadings 9602.00.1040 and 9602.00.5010 of the Harmonized Tariff Schedule of the United States (HTSUS). In addition, hard empty capsules may be imported under HTSUS subheading 1905.90.9090; gelatin hard empty capsules may be imported under HTSUS subheading 3503.00.5510; HPMC hard empty capsules may be imported under HTSUS subheading 3923.90.0080; and pullulan hard empty capsules may be imported under HTSUS subheading 2106.90.9998. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise covered by these investigations is dispositive.

[FR Doc. 2024–27009 Filed 11–19–24; 8:45 am]

BILLING CODE 3510–DS–P

[57] *See* section 782(b) of the Act.

[58] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Additional information regarding the *Final Rule* is available at *https://access.trade.gov/Resources/filing/index.html.*

[59] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069 (September 29, 2023).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE439]

Caribbean Fishery Management Council 185th Public Hybrid Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hybrid meeting (in-person/virtual).

SUMMARY: The Caribbean Fishery Management Council (CFMC) will hold the 185th public hybrid meeting to address the items contained in the tentative agenda included in the **SUPPLEMENTARY INFORMATION**.

DATES: The 185th CFMC public hybrid meeting will be held on December 4–5, 2024, from 9 a.m. to 4:30 p.m., AST. A closed session will be held on December 4, 2024, from 4:45 p.m. to 5:15 p.m., AST, to discuss personnel matters. The Council will reconvene on December 5, 2024, from 9 a.m. to 4:30 p.m., AST.

ADDRESSES: The meeting will be held at Embassy Suites Hotel, Tartak Street, Carolina, Puerto Rico.

You may join the 185th CFMC public hybrid meeting via Zoom, from a computer, tablet or smartphone by entering the following address:
Join Zoom Meeting: https://us02web.zoom.us/j//83060685915?pwd=VmVsc1orSUtKck8xYk1XOXN/DY1ErZz09
Meeting ID: 830 6068 5915
Passcode: 995658
One tap mobile: 17879451488,, 83060685915#,,,,,,0#,,995658# Puerto Rico, 17879667727,, 83060685915#,,,,,,0#,,995658# Puerto Rico
Dial by your location: 1 787 945 1488 Puerto Rico; 1 787 966 7727 Puerto Rico; 1 939 945 0244 Puerto Rico
Meeting ID: 830 6068 5915
Passcode: 995658

In case there are problems, and we cannot reconnect via Zoom, the meeting will continue using GoToMeeting.

You can join the meeting from your computer, tablet, or smartphone at *https://global.gotomeeting.com/join/971749317.* You can also dial in using your phone. United States: 1 (408) 650–3123 Access Code: 971–749–317.

FOR FURTHER INFORMATION CONTACT: Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903; telephone: (787) 398–3717.

SUPPLEMENTARY INFORMATION: The following items included in the tentative agenda will be discussed:

December 4, 2024

9 a.m.–9:30 a.m.

—Call to Order
—Roll Call
—Election of Officials
—Adoption of Agenda
—Consideration of 184th Council Meeting Verbatim Transcriptions
—Executive Director's Report

9:30 a.m.–10:15 a.m.

—Update NMFS/Council Actions and IBFMP Amendments—María López-Mercer, NOAA Fisheries/Southeast Regional Office (SERO)

10:15 a.m.–10:30 a.m.

—Break

10:30 a.m.–11:30 a.m.

—Review and Final Action for Framework Amendment 3 to USVI Queen Triggerfish Framework Action to Establish Management Reference Points Based on SEDAR 80—Sarah Stephenson, NOAA Fisheries/Southeast Regional Office (SERO)

11:30 a.m.–12 p.m.

—2024 Annual Catch Limits and Overfishing Monitoring—Puerto Rico Spiny Lobster Allowable Catch Limit (ACL) Overage and Overfishing Determination—NOAA Fisheries/Southeast Regional Office

12 p.m.–1:30 p.m.

—Lunch Break

1:30 p.m.–1:50 p.m.

—Community Climate Change Vulnerability Project for U.S. Caribbean—Tarsila Seara, NOAA Fisheries, Northeast Regional Office

1:50 p.m.–2:30 p.m.

—Review and Final action—Amendment 4 to the Puerto Rico FMP: Reclassification of the Rainbow Runner as a Pelagic Fish—María López-Mercer, NOAA Fisheries/Southeast Regional Office (SERO)

2:30 p.m.–2:50 p.m.

—Scientific and Statistical Committee Report—Vance Vicente

2:50 p.m.–3:20 p.m.

—Protected Resources Division Update—Jennifer Lee, NOAA Fisheries/Southeast Regional Office (SERO)

3:20 p.m. –3:30 p.m.

—Break

3:30 p.m.–4 p.m.

—Safe Fishing Zones—Carlos Farchette, CFMC Chair

4 p.m.–4:30 p.m.

—Public Comment Period

4:30 p.m.

—Adjourn for the Day

4:45 p.m.–5:15 p.m.

—Closed Session

December 5, 2024

9 a.m.–9:30 a.m.
—NOAA Fisheries Actions—Sam Rauch, Deputy Assistant Administrator for Regulatory Programs, NOAA Fisheries
—Confidentiality Rule Update
—Council on Environmental Quality NEPA Regulations
—America the Beautiful 30 x 30
—ESA/MSA Integration Policy Draft

9:30 a.m.–10 a.m.

—Southeast Fisheries Science Center Update—Kevin McCarthy, NOAA Fisheries
—Survey of Stakeholder Priorities for Caribbean Fisheries Management

10 a.m.–10:15 a.m.

—Outcomes from WECAFC Flying Fish Dolphinfish Working Group Meeting and WECAFC Spawning Aggregations Working Group Meeting—Laura Cimo, NOAA Fisheries, The Office of International Affairs, Trade, and Commerce

10:15 a.m.–10:30 a.m.

—Break

10:30 a.m.–11:15 a.m.

—Outreach and Education Report—Alida Ortiz
—Liaison Officers Descending Devices July Meeting Report—Wilson Santiago/Nicole Greaux
—Social Networks Report—Cristina Olán
—Chefs' Workshop on Underutilized Species—Jannette Ramos

11:15 a.m.–11:30 a.m.

—Lionfish Derby Report—Mike Funk

11:30 a.m.–12 p.m.

—Exempted Fishing Permit (EFP) Update—Sarah Stephenson, NOAA Fisheries/Southeast Regional Office (SERO)

12 p.m.–1:30 p.m.

—Lunch Break

1:30 p.m.–2 p.m.

—Aging of Spiny Lobster Study—Ana Medina, University of Puerto Rico at Mayagüez

2 p.m.–2:30 p.m.

—EBFM TAP Update—Sennai Habtes, EBFM TAP Chair and Liajay Rivera, CFMC Staff

2:30 p.m.–3:30 p.m.

—Enforcement Reports (15-minutes each)
—Puerto Rico—DNER
—USVI—DPNR
—NOAA Fisheries/OLE
—U.S. Coast Guard—CG Requirements for Caribbean Vessels

3:30 p.m.–3:40 p.m.

—Break

3:40 p.m.–3:50 p.m.

—Advisory Bodies Membership

3:50 p.m.–4 p.m.

—Other Business

4 p.m.–4:30 p.m.

—Public Comment Period (5-minute presentations)
—Next Meeting
—Adjourn

Note (1): Other than starting time and dates of the meetings, the established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. To further accommodate discussion and completion of all items on the agenda, the meeting may be extended from or completed before the date established in this notice. Changes in the agenda will be posted to the CFMC website, Facebook, Twitter and Instagram as practicable.

Note (2): Financial disclosure forms are available for inspection at this meeting, as per 50 CFR part 601.

The order of business may be adjusted as necessary to accommodate the completion of agenda items. The meeting will begin on December 4, 2024, at 9 a.m. AST, and will end on December 5, 2024, at 4:30 p.m., AST. Other than the start time on the first day of the meeting, interested parties should be aware that discussions may start earlier or later than indicated in the agenda, at the discretion of the Chair.

Special Accommodations

For any additional information on this public hybrid meeting, please contact Diana Martino, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone: (787) 226–8849.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 15, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–27100 Filed 11–19–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE425]

Caribbean Fishery Management Council; Virtual Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a virtual meeting.

SUMMARY: The Caribbean Fishery Management Council's (Council) Outreach and Education Advisory Panel (OEAP) will hold a virtual meeting on November 21, 2024, to discuss the items contained in the agenda in the **SUPPLEMENTARY INFORMATION**.

DATES: The OEAP virtual meeting will be held on November 21, 2024, from 9:30 a.m. to 3 p.m., AST.

ADDRESSES: You may join the OEAP virtual meeting (via Zoom) from a computer, tablet or smartphone by entering the following address:

OEAP Zoom Meeting

Topic: OEAP
Time: This is a recurring meeting meet anytime

Join Zoom Meeting

https://us02web.zoom.us/j/84039986774?pwd=SUhDc1hXeFloQWF3ajVtL2ZHRGN3Zz09
Meeting ID: 840 3998 6774
Passcode: 179728
One tap mobile:
+17879667727 ,,84039986774#,,,,*179728# Puerto Rico
+19399450244 ,,84039986774#,,,,*179728# Puerto Rico
Dial by your location:
+1 787 966 7727 Puerto Rico
+1 939 945 0244 Puerto Rico
+1 787 945 1488 Puerto Rico
+1 669 900 6833 US (San Jose)
+1 929 205 6099 US (New York)
+1 253 215 8782 US (Tacoma)
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)
+1 346 248 7799 US (Houston)
Meeting ID: 840 3998 6774
Passcode: 179728

FOR FURTHER INFORMATION CONTACT: Diana Martino; phone: (787) 226–8849, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903.

SUPPLEMENTARY INFORMATION:

November 21, 2024

9:30 a.m.–9:45 a.m.

—Call to Order
—Adoption of Agenda

9:45 a.m.–10:20 a.m.

—OEAP Chairperson's Report
—Updates:
—Meetings and Webinars Attended: CFMC 184th Meeting in San Juan, PR
—IRA Project: ''Understanding Climate Change and its Impact on the Fishery Ecosystem and the Fisher's Community in the U.S. Caribbean''
—Short Break

10:20 a.m.–11 a.m.

—Update on Status of the Fishery Ecosystem Plan (FEP)—Liajay Rivera

11 a.m.–12 p.m.

—Update of the Island-Based Fishery Management Plans
—Fact Sheets on IBFMP

12 p.m.–1 p.m.

—Lunch

1 p.m.–3 p.m.

—OEAP Recommendation of Outreach Strategies on IBFMPs for Puerto Rico, St. Thomas/St. John, and St. Croix, U.S.V.I.
—Liaisons Recommendations
—Liaisons Reports;
—Wilson Santiago—Puerto Rico
—Nicole Greaux/St. Thomas, U.S.V.I.
—St. Croix, U.S.V.I.
—CFMC Facebook, Instagram and YouTube Communications with Stakeholders—Cristina Olán
—Other Business

The order of business may be adjusted as necessary to accommodate the completion of agenda items. The virtual meeting will begin on November 21, 2024, at 9:30 a.m., and will end on November 21, 2024, at 3 p.m. Other than the starting time, interested parties should be aware that discussions may start earlier or later than indicated, if needed, at the discretion of the Chair.

Special Accommodations

For any additional information on this virtual meeting, please contact Diana Martino, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone: (787) 226–8849.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 14, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–27086 Filed 11–19–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE400]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to BNSF Railway Bridge Heavy Maintenance Project in King County, Washington

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of incidental harassment authorizations.

SUMMARY: NMFS has received a request from BNSF Railway (BNSF) for the reissuance of two consecutive previously issued incidental harassment authorizations (IHAs) with the only change being effective dates. The initial IHAs authorized take of seven species of marine mammals incidental to construction associated with the BNSF Railway Bridge Heavy Maintenance Project.

DATES: These authorizations are effective from July 16, 2025, to July 15, 2026, and from July 16, 2026, to July 15, 2027, respectively.

FOR FURTHER INFORMATION CONTACT: Rob Pauline, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, an IHA is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms used above are included in the relevant sections below and can be found in section 3 of the MMPA (16 U.S.C. 1362) and NMFS regulations at 50 CFR 216.103.

Summary of Request

On April 15, 2022, NMFS published a final notice of our issuance of two consecutive IHAs authorizing take of marine mammals incidental to the Bridge 6.3 Heavy Maintenance Project in King County, Washington (87 FR 22506, April 15, 2022). The effective dates of the IHAs were from July 16,

2022, to July 15, 2023, for year 1 and from July 16, 2023, to July 15, 2024, for year 2. On August 3, 2023, BNSF informed NMFS that the project would be delayed by one year and requested a reissuance of the initial IHAs. None of the work identified in the initial IHAs (*e.g.,* pile driving and removal) had occurred. Therefore, reissuance of the two consecutive IHAs was appropriate. The IHAs were effective from September 28, 2023, through July 15, 2024, for year 1 and from July 16, 2024, to July 15, 2025, for year 2 (88 FR 70932, October 13, 2023). On September 20, 2024, NMFS received a notice from BNSF indicating that work had been delayed and requesting the reissuance of identical IHAs to be effective from July 16, 2025, to July 15, 2026, for year 1 and from July 16, 2026, to July 15, 2027, for year 2. There is no new information that would affect the authorized take numbers or required mitigation, monitoring, and reporting requirements and, therefore, reissuance is appropriate. The only change is to the effective dates.

Summary of Specified Activity and Anticipated Impacts

The planned activities, mitigation, monitoring, and reporting requirements, authorized incidental take, and anticipated impacts on the affected stocks are the same as those analyzed for the previously issued IHAs.

The purpose of BNSF's Railway Bridge 6.3 Heavy Maintenance Project is to extend the service life of the existing structure by replacing several components of the existing movable span. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the initial IHAs. The mitigation and monitoring are also as prescribed in the initial IHAs.

Species that are expected to be taken by the planned activity include minke whale (*Balaenoptera acutorostrata*), common bottlenose dolphin (*Tursiops truncatus*), long-beaked common dolphin (*Delphinus capensis*), harbor porpoise (*Phocoena phocoena*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*) and harbor seal (*Phoca vitulina*). A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in the documents referenced below. The data inputs and methods of estimating take are identical to those used in the initial IHAs. NMFS has reviewed recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts or take estimate under the initial IHAs.

We refer to the documents related to the previously issued IHAs, which include the **Federal Register** notice of the issuance of the initial IHAs for BNSF's construction work (87 FR 22506, April 15, 2022), BNSF's application, the **Federal Register** notice of the proposed IHAs (87 FR 4844, January 31, 2022), and all associated references and documents. These documents may be obtained by visiting: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-bnsf-railway-railway-bridge-heavy-maintenance-project-king.*

Determinations

BNSF will conduct activities as analyzed in the initial IHAs. As described above, the number of authorized takes of the same species and stocks of marine mammals are identical to the numbers that were found to meet the negligible impact and small numbers standards and authorized under the initial IHA and no new information has emerged that would change those findings. The two consecutive, reissued IHAs include identical required mitigation, monitoring, and reporting measures as the initial IHAs, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) BNSF's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS determined at the time of issuance that the IHAs qualify to be categorically excluded from further NEPA review, and there is no new information that would affect this determination.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

However, no incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Authorization

NMFS has issued two consecutive IHAs to BNSF for in-water construction activities associated with the specified activity from July 16, 2025, to July 15, 2026, for year 1 and from July 16, 2026, to July 15, 2027, for year 2. All previously described mitigation, monitoring, and reporting requirements from the initial IHAs are incorporated.

Dated: November 15, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–27122 Filed 11–19–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE394]

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of virtual meeting.

SUMMARY: The Caribbean Fishery Management Council (CFMC) will hold an Administrative Committee Virtual Meeting to address the items contained in the tentative agenda included in the **SUPPLEMENTARY INFORMATION**.

DATES: The CFMC Administrative Committee Virtual Meeting will be held on November 25, 2024, from 10 a.m. to 12 noon, AST.

ADDRESSES: You may join the CFMC Administrative Committee Virtual Meeting via Zoom, from a computer, tablet or smartphone by entering the following address:

Join Zoom Meeting

https://us02web.zoom.us/j/83060685915?pwd=VmVsc1orSUtKck8xYk1XOXNDY1ErZz09
Meeting ID: 830 6068 5915
Passcode: 995658
One tap mobile:
+17879451488,,83060685915#,,,,,,0#,,995658# Puerto Rico
+17879667727,,83060685915#,,,,,,0#,,995658# Puerto Rico
Dial by your location:
+1 787 945 1488 Puerto Rico
+1 787 966 7727 Puerto Rico
+1 939 945 0244 Puerto Rico
Meeting ID: 830 6068 5915
Passcode: 995658

In case there are problems, and we cannot reconnect via Zoom, the meeting will continue using GoToMeeting.

You can join the meeting from your computer, tablet, or smartphone at *https://global.gotomeeting.com/join/971749317.* You can also dial in using your phone. United States: +1 (408) 650–3123 Access Code: 971–749–317.

FOR FURTHER INFORMATION CONTACT: Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone: (787) 398–3717.

SUPPLEMENTARY INFORMATION: The following items included in the tentative agenda will be discussed:

—Presentation on Approved IRA Funds Projects
—Budget Petition CFMC for 2025–2029
—Other Administrative Business
—Adjourn

NOTE (1): Other than starting time and dates of the meetings, the established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. To further accommodate discussion and completion of all items on the agenda, the meeting may be extended from or completed before the date established in this notice. Changes in the agenda will be posted to the CFMC website, Facebook, Twitter and Instagram as practicable.

NOTE (2): Financial disclosure forms are available for inspection at this meeting, as per 50 CFR part 601.

The order of business may be adjusted as necessary to accommodate the completion of agenda items. The meeting will begin on November 25, 2024, at 10 a.m. AST, and will end on November 25, 2024, at 12 noon, AST. Other than the start time on the first day of the meeting, interested parties should be aware that discussions may start earlier or later than indicated in the agenda, at the discretion of the Chair.

Special Accommodations

For any additional information on this virtual meeting, please contact Diana Martino, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone: (787) 226–8849.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 15, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–27084 Filed 11–19–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Climate Services Advisory Committee

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of establishment of the Climate Services Advisory Committee and Solicitation of Nominations for Membership.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended (FACA), the Under Secretary of Commerce for Oceans and Atmosphere (Under Secretary) announces the establishment of the Climate Services Advisory Committee (Committee or CSAC). The CSAC will advise the Under Secretary on the accessibility, effectiveness, and use of NOAA's climate services (data, information, science, tools, and decision support) in preparing our nation for the impacts of climate change, consistent with the National Science and Technology Council's *A Federal Framework and Action Plan for Climate Services* (*https://www.whitehouse.gov/wp-content/uploads/2023/03/ftac_report_03222023_508.pdf*), NOAA's *Equitable Climate Services Action Plan* (*https://www.noaa.gov/media/file/noaa-equitable-climate-service-delivery-action-plan-050124*), as well as other related subjects that may be requested by the Under Secretary. The CSAC will terminate two (2) years from the date of its charter's filing with the standing committees of the Senate and House of Representatives having legislative jurisdiction of the agency unless terminated earlier or renewed by the proper authority. Therefore, terms of appointment are contingent upon the Committee's continuation and the active participation of the members. This notice also requests nominations for membership on the CSAC (see ''Nominations and Applications'' below for more detail).

DATES: Nominations and applications should be sent to the web address specified below and must be received on or before December 20, 2024 *for initial consideration. This solicitation notice shall remain open for two years; NOAA will continue to accept applications after* December 20, 2024 *in case there are vacancies.*

ADDRESSES: Nominations and applications may be emailed to *amanda.mccarty@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Amanda McCarty, Oceanic and Atmospheric Research, NOAA, at *amanda.mccarty@noaa.gov* or (240)–234–0959.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The Climate Services Advisory Committee (CSAC) is governed by the FACA. The CSAC will be established as a discretionary Federal advisory committee (FAC) under the Secretary's authority pursuant to duties imposed on the Department by law, including 15 U.S.C. 1512, to advise the Under Secretary on the accessibility, effectiveness, and use of NOAA's climate services in preparing our nation for the impacts of climate change, consistent with the National Science and Technology Council's *Federal Framework and Action Plan for Climate Services,* NOAA's *Equitable Climate Services Action Plan,* as well as other related issues that may be requested by the Under Secretary.

The establishment of the CSAC is necessary and in the public interest. The Committee will advise the Under Secretary on the accessibility, effectiveness, and use of NOAA's climate services in support of climate action, including preparing our nation's historically underserved and Tribal and Indigenous communities for climate impacts.

II. Membership

The CSAC shall consist of up to 20 non-Federal voting members with diverse perspectives, as well as expertise. Membership shall include knowledgeable individuals that serve in a representative capacity for such perspectives as: underserved and highly impacted communities; community-based organizations; climate service users from a wide range of disciplines and backgrounds; subnational governments, such as State and Local Government, community and city planners, state climatologists, and emergency managers; Indigenous communities, such as representatives from Indian tribes, Alaska Native corporations, Alaska Native organizations, tribal organizations, and Native Hawaiian organizations; affected interest groups from sectors such as public health, affordable housing, food security, workforce and economic development, small businesses, and education; Indigenous communities; and non-profit, philanthropic, and other non-governmental organizations involved in climate issues. Members serve as Representatives of their respective group or viewpoint, and are not Special Government Employees as defined in 18 U.S.C. 202(a). As such, these Representative members are not subject to the ethics rules applicable to Government employees, except that they must not misuse Government resources or misuse their affiliation with the Committee to directly benefit themselves or another.

Members of the CSAC will be appointed by the Under Secretary. In order to provide for staggered membership to ensure continuity, half of the initial members shall be appointed to a two-year term (renewable once) and half shall be appointed to a four-year nonrenewable term, as selected by the Under Secretary. Thereafter, all members will generally serve one four-year nonrenewable term. The Under Secretary shall appoint a Chair and Vice Chair from among the Committee members. An appointment may be terminated if a member misses two consecutive meetings, unless excused for good cause by the Chair or Vice Chair.

The CSAC is anticipated to meet at least twice each year, which may be conducted in person or by teleconference, webinar, or other means. Members will not be compensated for their services but may, upon request and at the discretion of NOAA, be allowed travel and per diem expenses as allowed by 5 U.S.C. 5703. As a Federal advisory committee, the CSAC's membership is required to be balanced in terms of perspectives for the functions to be performed, and appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, or cultural, religious, or socioeconomic status. The diverse membership of the Committee assures perspectives reflecting the breadth of the Committee's responsibilities and, where possible, NOAA will also consider the ethnic, racial, gender, and geographic diversity and various abilities of the United States population.

III. Nominations and Applications

Interested persons may nominate themselves or third parties. An application is required to be considered for CSAC membership, regardless of whether a person is nominated by a third party or self-nominated. The application package must include: (1) the nominee's full name, title, institutional affiliation (if any), and contact information; (2) identification of the nominee's area(s) of representation; (3) a short description of their qualifications relative to the scope of the CSAC as described in this Notice; and (4) a current resume (maximum length four [4] pages). If nominated by a third party, the nomination should include a statement that the nominated individual agrees to be nominated. All nomination information should be provided in a single, complete package, and should be sent to the electronic address provided above. This collection is authorized under OMB Control Number 0690–0038.

Privacy Act Statement

Authority. The collection of this information is authorized under 5 U.S.C. 301, Departmental regulations which authorizes the operations of an executive agency, including the creation, custodianship, maintenance and distribution of records, and 15 U.S.C. 1512, Powers and duties of Department. The collection of names, contact information, resumes, professional information, and qualifications is required in order for the Under Secretary to appoint members to the CSAC.

Routine Uses. NOAA will use the nomination information for the purpose set forth above. The Privacy Act of 1974 authorizes disclosure of the information collected to NOAA staff for work-related purposes and for other purposes only as set forth in the Privacy Act and for routine uses published in the Privacy Act System of Records Notice COMMERCE/DEPT–11, Candidates for Membership, Members, and Former Members of Department of Commerce Advisory Committees, available at *https://www.commerce.gov/opog/privacy/SORN/SORN-DEPT-11* and the System of Records Notice COMMERCE/DEPT–18, Employees Personnel Files Not Covered by Notices of Other Agencies, available at *https://www.commerce.gov/opog/privacy/SORN/SORN-DEPT-18.*

Disclosure. Furnishing the nomination information is voluntary; however, if the information is not provided, the individual would not be considered for appointment as a member of the CSAC.

David Holst,

CFO/CAO.

[FR Doc. 2024–27064 Filed 11–19–24; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23–70]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young at (703) 953–6092, *pamela.a.young14.civ@mail.mil,* or *dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil*

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23–70, Policy Justification, and Sensitivity of Technology.

Dated: November 14, 2024.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE

DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800

October 24, 2023

Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-70, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Latvia for defense articles and services estimated to cost $220 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE

Transmittal No. 23–70

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of the Republic of Latvia

(ii) *Total Estimated Value:*

Major Defense Equipment *	$195 million
Other	$ 25 million
TOTAL	$220 million

Funding Source: National Funds and Foreign Military Financing

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Six (6) M142 High Mobility Artillery Rocket Systems (HIMARS)

Twelve (12) M30A2 Guided Multiple Launch Rocket System (GMLRS) Alternative Warhead (AW) Pods with Insensitive Munitions Propulsion System (IMPS)

Twelve (12) M31A2 GMLRS Unitary (GMLRS–U) High Explosive Pods with IMPS

Ten (10) M57 Army Tactical Missile System (ATACMS) Pods

Non-MDE:

Also included are Reduced Range Practice Rocket (RRPR) Pods; intercom systems to support the HIMARS Launcher; ruggedized laptops; training; training equipment; publications for HIMARS, munitions, and spares; services; other support equipment; and other related elements of program and logistic support.

(iv) *Military Department:* Army (LG–B–UEL)

(v) *Prior Related Cases, if any:* LG–B–PCA

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* October 24, 2023

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Latvia—M142 High Mobility Artillery Rocket Systems

The Government of the Republic of Latvia has requested to buy six (6) M142 High Mobility Artillery Rocket Systems (HIMARS); twelve (12) M30A2 Guided Multiple Launch Rocket System (GMLRS) Alternative Warhead (AW) Pods with Insensitive Munitions Propulsion System (IMPS); twelve (12) M31A2 GMLRS Unitary (GMLRS–U) High Explosive Pods with IMPS; and ten (10) M57 Army Tactical Missile System (ATACMS) Pods. Also included are Reduced Range Practice Rocket (RRPR) Pods; intercom systems to support the HIMARS Launcher; ruggedized laptops; training; training equipment; publications for HIMARS, munitions, and spares; services; other support equipment; and other related elements of program and logistic support. The estimated total program cost is $220 million.

This proposed sale will support the foreign policy goals and national security objectives of the United States (U.S.) by improving the security of a NATO Ally that is an important force for political stability and economic progress in Europe.

The proposed sale will improve Latvia's capability to meet current and future threats and will enhance its interoperability with U.S. and other allied forces. Latvia will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Lockheed Martin, Grand Prairie, TX. There are no known offset agreements in connection with this potential sale.

Implementation of this proposed sale will require the assignment of two (2) U.S. Government and five (5) contractor representatives to Latvia for a period of one year. Additional U.S. Government or contractor representative travel to Latvia will be required for program management reviews. This travel is expected to occur approximately twice a year or as needed to support equipment fielding and training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23–70

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The M142 High Mobility Artillery Rocket System (HIMARS) is a C–130 transportable wheeled launcher mounted on a 5-ton Family of Medium Tactical Vehicles truck chassis. HIMARS is the modern Army-fielded version of the Multiple Launch Rocket System (MLRS) M270 launcher and can fire all the MLRS Family of Munitions (FOM), including Guided Multiple Launch Rocket System (GMLRS) variants and the Army Tactical Missile System (ATACMS). Utilizing the MLRS FOM, the HIMARS can engage targets between 15 and 300 kilometers with GPS-aided precision accuracy.

2. The Guided Multiple Launch Rocket System (GMLRS) M31A2 Unitary is the Army's primary munition for units fielding the M142 HIMARS and M270Al Multiple Launcher Rocket System (MLRS) Launchers. The M31 Unitary is a solid propellant artillery rocket that uses Global Positioning System/Precise Positioning Service (GPS/PPS)-aided inertial guidance enabled by SAASM or M-Code to deliver a single high-explosive blast fragmentation warhead accurately and quickly to targets at ranges from 15–70 kilometers. The rockets are fired from a launch pod container that also serves as the storage and transportation container for the rockets. Each rocket pod holds six (6) total rockets.

3. The M30A2 GMLRS Alternative Warhead shares a greater than 90% commonality with the M31A1 Unitary. The primary difference between the GMLRS–U and GMLRS–AW is the replacement of the Unitary's high explosive warhead with a 200-pound fragmentation warhead of pre-formed tungsten penetrators which is optimized for effectiveness against large area and imprecisely located targets. The munitions otherwise share a common motor, GPS/PPS-aided inertial guidance enabled by SAASM or M-Code, control system, fusing mechanism, multi-option height of burst capability, and effective range of 15–70km.

4. The M57 Army Tactical Missile System (ATACMS)—Unitary is a conventional, semi-ballistic missile that utilizes a 500-pound high explosive warhead. It has an effective range of between 70 and 300 kilometers and has increased lethality and accuracy over previous versions of the ATACMS due to a GPS/Precise Position System (PPS) aided navigation system.

5. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

6. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

7. A determination has been made that Latvia can provide the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

8. All defense articles and services listed in this transmittal are authorized for release and export to Latvia.

[FR Doc. 2024–26987 Filed 11–19–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23–68]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young at (703) 953–6092, *pamela.a.young14.civ@mail.mil,* or *dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.*

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23–68, Policy Justification, and Sensitivity of Technology.

Dated: November 14, 2024.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 4120–01–P

DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800

October 24, 2023

The Honorable Kevin McCarthy
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-68, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Japan for defense articles and services estimated to cost $74.6 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 4120–01–C

Transmittal No. 23–68

Notice of Proposed Issuance of Letter of Offer, Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Japan

(ii) *Total Estimated Value:*

Major Defense Equipment *	$71.6 million
Other	$3.0 million
TOTAL	$74.6 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):
Up to sixty-three (63) Rolling Airframe Missiles (RAM) Block 2B Tactical Missiles, RIM 116E

Non-MDE:
Also included are RAM Guided Missile Round Pack Tri-Pack shipping and storage containers; training equipment; operator manuals and technical documentation; United States (U.S.) Government and contractor engineering; technical and logistics support services; support for establishment of an Intermediate Level Maintenance Facility (ILMF); and other related elements of logistics and program support.

(iv) *Military Department:* Navy (JA–P–AUU)

(v) *Prior Related Cases, if any:* JA–P–AUF, JA–P–AUN

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* October 24, 2023

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Japan—Rolling Airframe Missiles (RAM) Block 2B Tactical Missiles

The Government of Japan has requested to buy up to sixty-three (63) Rolling Airframe Missiles (RAM) Block 2B Tactical Missiles, RIM–116E. Also included are RAM Guided Missile Round Pack Tri-Pack shipping and storage containers; training equipment; operator manuals and technical documentation; U.S. Government and contractor engineering; technical and logistic support services; support for establishment of an Intermediate Level Maintenance Facility (ILMF); and other related elements of logistics and program support. The estimated total cost is $74.6 million.

This proposed sale will support the foreign policy goals and national security objectives of the U.S. by improving the security of a major ally that is a force for political stability and economic progress in the Indo-Pacific region.

The proposed sale will improve Japan's capability to meet current and future threats by providing significantly enhanced self-defense for surface units defending/transiting/patrolling critical air and sea lines of communication.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Raytheon Missiles and Defense Company, Tucson, AZ. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Japan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23–68

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The RIM–116E Rolling Airframe Missile (RAM) is an autonomous, lightweight, supersonic, surface-to-air tactical missile for ship self-defense against current and evolving anti-ship cruise missile threats. Advanced technology in the RIM–116E includes dual-mode (radio frequency/infrared) (RF/IR) guidance with IR all-the-way capability for non-emitting threats.

2. The highest level of classification of defense articles, components, and services included in this potential sale is CONFIDENTIAL.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Japan can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Japan.

[FR Doc. 2024–26983 Filed 11–19–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23–71]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young at (703) 953–6092, *pamela.a.young14.civ@mail.mil,* or *dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil*

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23–71, Policy Justification, and Sensitivity of Technology.

Dated: November 14, 2024.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–01–P

DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

November 9, 2023

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-71, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Romania for defense articles and services estimated to cost $2.53 billion. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001–01–C

Transmittal No. 23–71

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Romania

(ii) *Total Estimated Value:*

Major Defense Equipment *	$0.97 billion
Other	$1.56 billion
TOTAL	$2.53 billion

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):
- Fifty-four (54) M1A2 SEPv3 Abrams Main Battle Tanks
- Fifty-four (54) M1A1 Structures
- Four (4) M88A2 HERCULES Combat Recovery Vehicles
- Four (4) M1110 Joint Assault Bridges
- Four (4) M1150 Assault Breacher Vehicles
- Four (4) Heavy Assault Scissor Bridge (HASB)
- Fifty-four (54) M240C 7.62mm Machine Guns
- Ten (10) AGT1500 Gas Turbine Engines
- Five thousand nine hundred forty (5,940) 120mm M1147 High Explosive, Multipurpose, Tracer (HEMP–T) Cartridges
- Four thousand two hundred thirty (4,230) 120mm M1002 Target Practice Multipurpose, Tracer (TPMP–T) Cartridges

Non-MDE:

Also included are mine rollers;

Enhanced Heavy Equipment Transporter (EHET) M1300 tractors with M1302 trailer with B-Kit/Frag Kit; Heavy Expanded Mobility Tactical Truck (HEMTT) M978A4 with B-Kit/Frag Kit; Tank Rack Modules (TRM) M107A1 fuel trailer (2500 gal) with B-Kit/Frag Kit; HEMTT A4 M1120 Load Handling System (LHS) with B-Kit/Frag Kit; Ml076Al with flat rack and B-Kit/Frag Kit; Forward Repair Systems; trailer mounted generators; Common Remote Operated Weapons Station Low Profile (CROWS–LP); M2A1 .50 caliber machine guns; communications equipment; global positioning system (GPS) receivers; service and training ammunition; spare and repair parts; Special Tools and Test Equipment (STTE); technical manuals and publications; maintenance trainers; gunnery training systems; tank driver's trainers; new equipment training; U.S. Government and contractor technical, engineering, and logistics personnel services; concurrent spare parts; Field Service Representative (FSR) support; Contractor Logistics Support (CLS); Next Generation Automatic Test System (NGATS); logistics products; tank range upgrade; Intensive Management Office (IMO); Foreign Liaison Officer (FLO); Program Management Reviews (PMR); test measurement and diagnostic equipment; and other related elements of logistics and program support.

(iv) *Military Department:* Army (RO–B–UGI)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* November 9, 2023

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Romania—M1A2 Abrams Main Battle Tanks

The Government of Romania has requested to buy fifty-four (54) M1A2 SEPv3 Abrams Main Battle Tanks; fifty-four (54) M1A1 Structures; four (4) M88A2 HERCULES Combat Recovery Vehicles; four (4) M1110 Joint Assault Bridges; four (4) M1150 Assault Breacher Vehicles; four (4) Heavy Assault Scissor Bridges (HASB); fifty-four (54) M240C 7.62mm machine guns; ten (10) AGT1500 Gas Turbine engines; five thousand nine hundred forty (5,940) 120mm M1147 High Explosive, Multipurpose, Tracer (HEMP–T) cartridges; and four thousand two hundred thirty (4,230) 120mm M1002 Target Practice Multipurpose, Tracer (TPMP–T) cartridges. Also included are mine rollers; Enhanced Heavy Equipment Transporter (EHET) M1300 tractors with M1302 trailer with B-Kit/Frag Kit; Heavy Expanded Mobility Tactical Truck (HEMTT) M978A4 with B-Kit/Frag Kit; Tank Rack Modules (TRM) M107A1 fuel trailer (2500 gal) with B-Kit/Frag Kit; HEMTT A4 M1120 Load Handling System (LHS) with B-Kit/Frag Kit; Ml076Al with flat rack and B-Kit/Frag Kit; Forward Repair Systems; trailer mounted generators; Common Remote Operated Weapons Station Low Profile (CROWS–LP); M2A1 .50 caliber machine guns; communications equipment; global positioning system (GPS) receivers; service and training ammunition; spare and repair parts; Special Tools and Test Equipment (STTE); technical manuals and publications; maintenance trainers; gunnery training systems; tank driver's trainers; new equipment training; U.S. Government and contractor technical, engineering, and logistics personnel services; concurrent spare parts; Field Service Representative (FSR) support; Contractor Logistics Support (CLS); Next Generation Automatic Test System (NGATS); logistics products; tank range upgrade; Intensive Management Office (IMO); Foreign Liaison Officer (FLO); Program Management Reviews (PMR); test measurement and diagnostic equipment; and other related elements of logistics and program support. The estimated total program cost is $2.53 billion.

This proposed sale will support the foreign policy and national security objectives of the United States (U.S.) by helping to improve the security of a NATO Ally which is an important force for political and economic stability in Europe.

The proposed sale will improve Romania's capability to meet current and future threats by providing a credible force that is capable of deterring adversaries and participating in NATO operations. Romania will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be General Dynamics Land Systems, Sterling Heights, MI; BAE Systems, York, PA; Leonardo DRS, Arlington, VA; Honeywell Aerospace, Phoenix, AZ; Raytheon Company, McKinney, TX; Lockheed Martin, Orlando, FL; L3 Harris, Melbourne, FL; American Apex Corporation, Delaware, OH; Allison Transmissions, Indianapolis, IN; Pearson Engineering, New Castle, United Kingdom; Amentum, Chantilly, VA; CAE, Chantilly, VA; Palomar, Carlsbad, CA; Boeing Company, Arlington, VA; Fibrotex, Stearns, KY; and US Ordnance, McCarran, NV. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require approximately (22) U.S. Government and (52) U.S. contractor representatives to travel to Romania for a duration of up to five years to support equipment fielding and training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23–71

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. M1A2 SEPv3 Abrams Tank: The M1A2 Abrams is a third-generation American main battle tank, produced by General Dynamics Land Systems and named for General Creighton Abrams. The M1A2 SEPv3 (System Enhancement Package version 3) features include a multi-fuel turbine engine, composite armor, an advanced computer fire control system, separate ammunition storage in a blow-out compartment, and 120mm main gun. Extensive improvements have been integrated into the latest M1A2 SEPv3 configuration. These improvements include improved digital systems, increased electrical power margin to support demands of future technologies, line replaceable modules (LRM) to reduce operational support costs, ammunition data link to support new tank main gun rounds, and an auxiliary power unit (APU). M1A2 SEPv3 Abrams tank components include:

a. Export Thermal Imaging System (TIS) and Export Commander's Independent Thermal Viewer (CITV): The TIS and CITV constitutes a target acquisition system which, when operated with other tank systems, gives the tank crew a substantial advantage over the potential threat. The TIS provides the Abrams M1A2 crew with the ability to effectively aim and fire the tank main armament system under a broad range of adverse battlefield

conditions. The TIS can be operated and viewed by the tank gunner or tank commander and is the main sighting system for the tanks' main gun (cannon). The CITV provides the same target acquisition system as the TIS but provides the tank commander a separate system that can be controlled and operated independent of the TIS.

b. Special Armor (Foreign Military Sales-released version of special armor): Major components of special armor are fabricated in sealed modules and in serialized removable sub-assemblies.

c. 120mm Main Gun (Cannon) & M256 Gun Barrel: The Abrams 120mm main gun system is composed of: a 120 millimeter (mm) smoothbore gun (cannon), also referred to as the M256 gun barrel, manufactured at Watervliet Arsenal; armor-piercing, fin stabilized, discarded sabot (APFSDS) and other warheads; and combustible cartridge case ammunition.

d. AGT–1500 Gas Turbine Propulsion System: The use of AGT–1500 gas turbine propulsion system in the M1A2 is a unique application of armored vehicle power pack technology. The hardware is composed of the AGT–1500 engine and transmission.

e. Common Remotely Operated Weapon Station—Low Profile (CROWS–LP): The CROWS–LP (M153A2E1) is a commander's weapon station. It allows for operation of weapons—M2HB, M2A1, M240B and M240 machine guns. The CROWS–LP is an updated version of the M153A2 CROWS. The CROWS–LP M153A2E1 has improved performance over M1553A2.

f. Ammunition Data Link (ADL): The Ammunition Data Link (ADL) is a system consisting of hardware, electronics, software and an upgraded fire control system. The ADL is required to effectively fire the latest generation of ''smart'' 120mm main gun ammunition. The ADL offers the capability to supply data to the main gun ammunition to increase the capability and effectiveness of the smart round. The Advanced Multipurpose (AMP) smart round requires the ADL to function and is a future enhancement for use with the M1A2 Abrams.

g. Driver Vision Enhancer—Abrams (DVE–A) AN/VAS–5 and Rear-View Sensor System (RVSS): The DVE–A and M88 DVEs are thermal imaging systems developed for use while driving combat vehicles and tactical wheeled vehicles. The DVE provides night vision capability for the Abrams tank driver. RVSS provides a rear-view camera for the Abrams tank. DVE, DVE-Wide (JAB), DVE–A, and RVSS allow for tactical vehicle movement in support of operational missions in all environmental conditions (day/night and all weather) and provides enhanced driving capability during limited visibility conditions (darkness, smoke, dust, fog, etc.).

h. Militarized GPS Receiver Global Positioning System (GPS) AN/PSN–13 Defense Advanced GPS Receiver (DAGR): Militarized GPS capability is currently provided to military vehicles using the DAGR. The DAGR is a handheld GPS receiver which utilizes Selective Availability Anti-Spoofing Module (SAASM) security. It is used for the Abrams tank, the M88A2 HERCULES Recovery Vehicle, and the Joint Assault Bridge.

i. Communication Radio ''Falcon III RF–7850D: The Falcon III RF–7850D is a multi-channel radio. It is a portable, compact, tactical software-defined combat-net radio manufactured by L3 Harris Corporation. It is also referred to as the Falcon III RF–7850D Multi-Channel Manpack Radio System. It is used for the Abrams tank and M88A2 HERCULES Recovery Vehicle.

j. PVS–14 Night Vision Monocular: The PVS–14 Night Vision Monocular is a rugged, lightweight, multi-purpose night vision device that has repeatedly proven itself in combat. The PVS–14 design was originally commissioned by the U.S. military to enable nighttime operations. This monocular is used globally in some of the most challenging environments. The PVS–14 can be used as a handheld device or mounted on a head harness. The PVS–14 monocular conforms to 810G Military standards and demonstrates the highest quality form and function.

2. Battle Management System (BMS): The BMS SEPv3 tank will consist of a Data Distribution Unit—Expandable (DDUx), a transceiver, and a commercial software called BC2A platform software by Interactive. It equips soldiers with secure data encryption and advanced logistics. It includes an intuitive interface with features like touch-to-zoom maps and drag-and-drop icons. It is used for the Abrams tank, M88A2 Recovery Vehicle, Joint Assault Bridges (JAB), Assault Breacher Vehicles (ABV), EHET M1300, HEMTT M978A4, and MEMTTA4A M1120.

3. M88A2 HERCULES Recovery Vehicle: The primary role of the M88A2 Heavy Equipment Recovery Combat Utility Lifting Extraction System (HERCULES) Combat Recovery Vehicle is recovery of the Abrams M1 Main Battle Tank. The 70-ton M88A2 Recovery Combat Vehicle is standard equipment to de-process, recover, and sustain the Abrams M1 Tank. The vehicle's role is to extricate combat vehicles that have become bogged down or entangled and to repair or replace damaged parts in fighting vehicles while under fire. The M88A2 main winch is capable of 70-ton single line recovery and of 140-ton 2:1 recovery when used with a 140-ton pulley. The A-frame boom of the M88A2 can lift 35 tons when used in conjunction with the spade down. The spade can be used for light earth moving and to anchor the vehicle when using the main winch. The M88A2 employs an Auxiliary Power Unit (APU) to provide auxiliary electrical and hydraulic power when the main engine is not in operation; the APU can also be used to slave start other vehicles. The M88A2 recovery vehicle components considered to contain sensitive technology in the proposed case are as follows:

AVDS–1790–8CR Engine Propulsion System: The AVDS–1790–8CR is a unique modification to the standard piston engine family in the M60 series and is an upgrade from the engine in the base M88Al.

4. M1110 Joint Assault Bridge: The M1110 Joint Assault Bridge (JAB) is a fully tracked armor engineer vehicle specifically designed to replace the M48/M60 AVLB and M104 Wolverine HAB and to provide assault bridging capabilities to armored forces. The JAB System consists of an M1A1 Abrams chassis (with A2 heavy suspension) and a hydraulic bridge launch mechanism that will launch and retrieve the Heavy Assault Scissor Bridge MLC–115 Normal and MLC–124 Caution. The JAB contains:

a. Armor: Major components of the armor are fabricated and assembled into serialized removable subassemblies and installed in sealed modules.

b. AGT–1500 Gas Turbine Propulsion System: The use of AGT–1500 gas turbine propulsion system in the JAB is a unique application of armored vehicle power pack technology. The hardware is composed of the AGT–1500 engine and transmission.

5. M830A1 120mm High Explosive Anti-Tank (HEAT) TP–T Cartridges are a chemical energy, multi-purpose projectile with an anti-personnel capability. The round consists of a fin stabilized steel body which is loaded with Composition A3 Type II explosive. The fins are canted and impart spin to the projectile. A copper shaped charge liner and wave shaper are contained within the warhead.

6. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

7. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software

elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

8. A determination has been made that Romania will provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

9. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Romania.

[FR Doc. 2024–26984 Filed 11–19–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23–63]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young at (703) 953–6092, *pamela.a.young14.civ@mail.mil,* or *dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil*

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23–63, and Policy Justification.

Dated: November 14, 2024.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

NOV 2 2023

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-63, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Iraq for defense articles and services estimated to cost $300 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified document provided under separate cover)

BILLING CODE 6001–FR–C

Transmittal No. 23–63

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Iraq

(ii) *Total Estimated Value:*

Major Defense Equipment *	$ 0
Other	$300 million
TOTAL	$300 million

Funding Source: Foreign Military Financing

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* Foreign Military Sales (FMS) case IQ–B–AQJ was below the congressional notification threshold at $28 million ($0 in MDE) and included a Bell Contracted Logistics Support (CLS) and Field Service Representative (FSR) contract in support of the following types of Bell aircraft: three (3) 407 variants, 206B3, OH–58A/C Kiowa, and Huey II. The Government of Iraq has requested the case be amended to include additional option years on the current contract and to add contract support for Bell 505 aircraft as indicated below. This amendment will push the current case above the total case value notification threshold and thus requires notification of the entire case.

Major Defense Equipment (MDE):
None

Non-MDE:
Bell Contracted Logistics Support (CLS) and Field Service

Representative (FSR) maintenance in support of the following Bell aircraft: three (3) 407 variants, 206B3, OH–58A/C Kiowa, Huey II and 505. Also included is U.S. Government and contractor engineering, technical and logistics support services; studies and surveys; and other related elements of logistics and program support.

(iv) *Military Department:* Army (IQ–B–AQJ)

(v) *Prior Related Cases, if any:* IQ–B–UDZ, IQ–B–ADQ

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* November 2, 2023

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Iraq—Bell Helicopter Contracted Logistics Support (CLS)

The Government of Iraq has requested to buy additional services, as indicated below, that will be added to a previously implemented case whose value was under the congressional notification threshold. The original FMS case, valued at $28 million, included a Bell Contracted Logistics Support (CLS) and Field Service Representative (FSR) contract. This notification is for the combined CLS and FSR maintenance support for the following Bell aircraft: three (3) 407 variants, 206B3, OH–58A/C Kiowa, Huey II and 505. Also included is U.S. Government and contractor engineering, technical and logistics support services; studies and surveys; and other related elements of logistics and program support. The estimated total cost is $300 million.

This proposed sale will support the foreign policy and national security of the United States (U.S.) by helping to improve the security of a strategic partner.

The proposed sale will improve the Republic of Iraq's capability to meet current and future threats by enhancing the strength of its homeland defense. The Republic of Iraq will have no difficulty absorbing these services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Bell Helicopter Company, Fort Worth, TX. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of four (4) additional U.S. Government or contractor representatives to Iraq for a duration of one (1) year to support CLS for Bell 505 aircraft. There are currently seven (7) U.S. Government or contractor representatives in Iraq that will stay an additional two (2) years to provide support for the contract option years for CLS and FSR service support for the three (3) 407 variants, 206B3, OH–58A/C and Huey II aircraft.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2024–26988 Filed 11–19–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23–75]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young at (703) 953–6092, *pamela.a.young14.civ@mail.mil,* or *dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil*

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23–75, Policy Justification, and Sensitivity of Technology.

Dated: November 14, 2024.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P

DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

October 23, 2023

The Honorable Kevin McCarthy
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-75, concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Lithuania for defense articles and services estimated to cost $100 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001–FR–C

Transmittal No. 23–75

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Lithuania

(ii) *Total Estimated Value:*

Major Defense Equipment *	$ 75.9 million
Other	$ 24.1 million
TOTAL	$100.0 million

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):
Thirty-six (36) AIM–120C–8 Advanced Medium Range Air-to-Air Missiles (AMRAAM)
One (1) AIM–120C–8 AMRAAM Guidance Section

Non-MDE:
Also included are Common Munitions Built-In-Test (BIT)/Reprogramming Equipment (CMBRE); ADU–891/E adapter group computer test sets; AIM–120 spare control sections and containers; other spare parts, consumables, accessories, and repair/return support; munitions support and support equipment; classified software delivery and support; classified and unclassified publications and technical documentation; contractor logistics support (CLS); personnel training and training equipment; studies and surveys; transportation support; United States (U.S.) Government and contractor engineering, technical, and logistics support services; and other related elements

of logistics and program support.

(iv) *Military Department:* Air Force (LH–D–YAA)

(v) *Prior Related Cases, if any:* LH–D–QAD

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* October 23, 2023

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Lithuania—AIM–120C–8 Advanced Medium-Range Air-to-Air Missiles (AMRAAM)

The Government of Lithuania has requested to buy thirty-six (36) AIM–120C–8 Advanced Medium Range Air-to-Air Missiles (AMRAAM); and one (1) AIM–120C–8 AMRAAM Guidance Section. Also included are Common Munitions Built-In-Test (BIT)/Reprogramming Equipment (CMBRE); ADU–891/E adapter group computer test sets; AIM–120 spare control sections and containers; other spare parts, consumables, accessories, and repair/return support; munitions support and support equipment; classified software delivery and support; classified and unclassified publications and technical documentation; CLS; personnel training and training equipment; studies and surveys; transportation support; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support. The estimated total cost is $100 million.

This proposed sale will support the foreign policy and national security of the U.S. by helping to improve the security of a NATO Ally that is an important force for ensuring peace and stability in Europe.

This proposed sale will be for use with the National Advanced Surface-to-Air Missile System (NASAMS) and will improve Lithuania's capability to conduct self-defense and regional security missions while enhancing interoperability with the U.S. and other NATO members. Lithuania will have no difficulty absorbing these articles and services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Raytheon Missiles and Defense, Tucson, AZ. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Lithuania.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23–75

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AIM–120C–8 Advanced Medium Range Air-to-Air Missile (AMRAAM) is a supersonic, air-launched, aerial intercept guided missile featuring digital technology and micro-miniature solid-state electronics. AMRAAM capabilities include look-down/shoot-down, multiple launches against multiple targets, resistance to electronic countermeasures, and interception of high and low-flying and maneuvering targets. This potential sale will include a spare AMRAAM guidance section as well as spare control sections and containers.

2. The Common Munitions Built-In-Test (BIT)/Reprogramming Equipment (CMBRE) is supporting equipment used to interface with weapon systems to initiate and report BIT results, and upload/download flight software. CMBRE supports multiple munitions platforms with a range of applications that perform preflight checks, periodic maintenance checks, loading of Operational Flight Program (OFP) data, loading of munitions mission planning data, loading of Global Positioning System (GPS) cryptographic keys, and declassification of munitions memory.

3. The ADU–891 Adapter Group Test Set provides the physical and electrical interface between the CMBRE and the missile.

4. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

5. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

6. A determination has been made that Lithuania can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

7. All defense articles and services listed in this transmittal have been authorized for release and export to Lithuania.

[FR Doc. 2024–26986 Filed 11–19–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION

President's Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics

AGENCY: President's Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics, U.S. Department of Education.

ACTION: Announcement of an open meeting.

SUMMARY: This notice sets forth the agenda for the December 4, 2024, open meeting of the President's Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics (Commission), and how members of the public may attend the meeting and submit written comments pertaining to the work of the Commission.

DATES: The meeting of the Commission will be held on Wednesday, December 4, 2024, from 11 a.m. to 3 p.m. eastern standard time.

ADDRESSES: Eisenhower Executive Office Building, 1650 Pennsylvania Avenue, Washington, DC 20504. Members of the public may only attend the meeting virtually.

FOR FURTHER INFORMATION CONTACT: Emmanuel Caudillo, Designated Federal Official, President's Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics, U.S. Department of Education, 400 Maryland Avenue SW, Room 7E220, Washington, DC 20202, telephone: (202) 377–4988, or email: *Emmanuel.Caudillo@ed.gov.*

SUPPLEMENTARY INFORMATION:

The Commission's Statutory Authority and Function: The Commission is established by Executive Order 14045 (September 13, 2021) and continued by Executive Order 14109 (September 29, 2023). The Commission is also governed by the provisions of 5 U.S.C. chapter 10 (commonly known as the Federal Advisory Committee Act), which sets forth standards for the formation and use of advisory

committees. The Commission's duties are to advise the President, through the Secretary of Education, on matters pertaining to educational equity and economic opportunity for the Hispanic and Latino community in the following areas: (i) what is needed for the development, implementation, and coordination of educational programs and initiatives at the U.S. Department of Education (Department) and other agencies to improve educational opportunities and outcomes for Hispanics and Latinos; (ii) how to promote career pathways for in-demand jobs for Hispanic and Latino students, including registered apprenticeships, internships, fellowships, mentorships, and work-based learning initiatives; (iii) ways to strengthen the capacity of institutions, such as Hispanic-serving Institutions, to equitably serve Hispanic and Latino students and increase the participation of Hispanic and Latino students, Hispanic-serving school districts, and the Hispanic community in the programs of the Department and other agencies; (iv) how to increase public awareness of and generate solutions for the educational and training challenges and equity disparities that Hispanic and Latino students face and the causes of these challenges; and (v) approaches to establish local and national partnerships with public, private, philanthropic, and nonprofit stakeholders to advance the mission and objectives of this order, consistent with applicable law. Notice of this meeting is required by section 1009(a)(2) of 5 U.S.C. chapter 10.

Meeting Agenda: The agenda for the Commission meeting includes building upon conversations and information shared in the Commission's seven prior meetings and continuing their engagement on advancing educational equity and economic opportunity for Hispanics. Specifically, during the meeting, the Commission will (1) receive updates and discuss recommendations from the Commission's four subcommittees: Advancing PreK–12 Educational Equity; Advancing Higher Education and Hispanic Serving Institutions; Strengthening Economic Opportunity & Workforce Development; and Strengthening Public Partnerships and Public Awareness; and (2) hear presentations from federal and community leaders on topics related to Executive Order 14045.

Access to the Meeting: Members of the public may register to attend the meeting virtually by accessing the link at *https://sites.ed.gov/hispanic-initiative/* or emailing *WhiteHouseHispanicInitiative@ed.gov* by 5 p.m. EST on Tuesday, December 3, 2024. Instructions on how to access the meeting will be emailed to members of the public that register to attend and will be posted to *https://sites.ed.gov/hispanic-initiative* no later than Tuesday, December 3, 2024, by 6 p.m. EST.

Public Comment: Written comments pertaining to the work of the Commission may be submitted electronically to *WhiteHouseHispanicInitiative@ed.gov.* Written comments related to the December 4, 2024 Commission meeting should be submitted by 5 p.m. EST on Tuesday, December 3, 2024. When submitting a written comment, please use the subject line ''Written Comments: Public Comment'' and include in the email the name(s), title, organizations/affiliation, mailing address, email address, and telephone number of the person(s) making the comment. Comments should be submitted as a Microsoft Word document or in a medium compatible with Microsoft Word (not a PDF file) that is attached to the electronic mail message (email) or is provided in the body of an email message. Please do not send material directly to members of the Commission.

Reasonable Accommodations: The meeting platform and access code are accessible to individuals with disabilities. If you will need an auxiliary aid or service for the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least one week before the meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Access to Records of the Meeting: The Department will post the official report of the meeting on the Commission's website, at *https://sites.ed.gov/hispanic-initiative/presidential-advisory-commission* no later than 90 days after the meeting. Pursuant to 5 U.S.C. 1009(b), the public may request to inspect records of the meeting, and other Commission records, at 400 Maryland Avenue SW, Washington, DC, by emailing *Emmanuel.Caudillo@ed.gov* or by calling (202) 377–4988, to schedule an appointment.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You also may access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Executive Order 14045 (September 13, 2021) and continued by Executive Order 14109 (September 29, 2023).

Alexis Barrett,

Chief of Staff, Office of the Secretary.

[FR Doc. 2024–27089 Filed 11–19–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Gaining Early Awareness and Readiness for Undergraduate Programs (Partnership Grants)

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2025 for the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) Partnership Grants.

DATES:

Applications Available: November 20, 2024.

Deadline for Transmittal of Applications: February 3, 2025.

Deadline for Intergovernmental Review: April 4, 2025.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.*

FOR FURTHER INFORMATION CONTACT: Ben Witthoefft, U.S. Department of Education, 5th Floor, 400 Maryland Avenue SW, Washington, DC 20202–6450. Telephone: (202) 453–7576. Email: *Ben.Witthoefft@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:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The GEAR UP program is a discretionary grant program that encourages eligible entities to provide support, and maintain a commitment, to eligible students from low-income backgrounds, including students with disabilities, to assist the students in obtaining a secondary school diploma (or its recognized equivalent) and to prepare for and succeed in postsecondary education. Under the GEAR UP program, the Department awards grants to two types of entities: (1) States and (2) Partnerships consisting of at least one degree-granting institution of higher education (IHE) and at least one local educational agency (LEA).

Assistance Listing Number: 84.334A.

OMB Control Number: 1840–0821.

Background: In this notice, the Department invites applications for Partnership grants only. We will invite applications for State grants in another notice published in the **Federal Register**. Required services under the GEAR UP program are specified in section 404D(a) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1070a–24(a)), and permissible services under the GEAR UP program are specified in section 404D(b) of the HEA (20 U.S.C. 1070a–24(b)). For Partnership grantees, activities must include providing financial aid information for postsecondary education, encouraging enrollment in rigorous and challenging coursework in order to reduce the need for remediation at the postsecondary education level, and implementing activities to improve the number of participating students who obtain a secondary school diploma and who complete applications for and enroll in a program of postsecondary education. Activities may also include mentoring; tutoring; supporting dual or concurrent enrollment programs; providing special programs or tutoring in science, technology, engineering, or mathematics (STEM); academic and career counseling; financial and economic literacy education; exposure to college campuses; and providing scholarships as specified in section 404E of the HEA.

Priorities: This notice contains three competitive preference priorities. Competitive Preference Priorities 1 and 2 are from the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities). Competitive Preference Priority 3 is from 34 CFR 75.226(b).

Competitive Preference Priorities: For FY 2025 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 13 points to an application depending on how well the application meets the competitive preference priorities.

These priorities are:

Competitive Preference Priority 1—Increasing Postsecondary Education Access, Affordability, Completion, and Post-Enrollment Success (up to 5 points).

Projects that are designed to increase postsecondary access, affordability, completion, and success for underserved students by establishing a system of high-quality data collection and analysis, such as data on persistence, retention, completion, and post-college outcomes, for transparency, accountability, and institutional improvement.

Competitive Preference Priority 2—Meeting Student Social, Emotional, and Academic Needs (up to 5 points).

Projects that are designed to improve students' social, emotional, academic, and career development, with a focus on underserved students, through fostering partnerships, including across government agencies (*e.g.,* housing, human services, employment agencies), local educational agencies, community-based organizations, adult learning providers, and postsecondary education intuitions, to provide comprehensive services to students and families that support students' social, emotional, mental health, and academic needs, and that are inclusive with regard to race, ethnicity, culture, language, and disability status.

Competitive Preference Priority 3—Moderate Evidence (0 or 3 points).

Applications supported by evidence that meets the conditions in the definition of ''moderate evidence'' (as defined in this notice).

Note: To address the priority, an applicant may submit up to two study citations that it believes supports the implementation of a GEAR UP authorized activity proposed in the application and that meet the moderate evidence standard. For Partnership grantees, required GEAR UP services are specified in section 404D(a) of the HEA (20 U.S.C. 1070a–24(a)), and permissible services are specified in section 404D(b) of the HEA (20 U.S.C. 1070a–24(b)).

Applicants can cite What Works Clearinghouse (WWC) intervention reports, WWC practice guides, or individual studies—both those already listed in the Department's WWC Database of Individual Studies [1] and those that have not yet been reviewed by the WWC.

The proposed studies must be cited in the section of the application that addresses Competitive Preference Priority 3 as well as on the Evidence Form. Applicants should also describe (1) the project component(s) from the cited research they intend to implement in their GEAR UP project, (2) the relevant outcome(s) that are included in both the study (or WWC practice guide or intervention report) and in the proposed project, (3) the research findings suggesting a favorable relationship between the project component and the relevant outcome, and (4) how the population and/or settings in the cited research overlap with that of the proposed project. The Department will review the research cited by the applicant to determine if it meets the requirements for moderate evidence, as well as whether it is sufficiently aligned with the proposed project.

Definitions: The definitions of ''experimental study,'' ''logic model,'' ''moderate evidence,'' ''project component,'' ''quasi-experimental design study,'' ''relevant outcome,'' and ''What Works Clearinghouse (WWC) Handbooks (WWC Handbooks)'' are from 34 CFR 77.1(c). The definitions of ''children or students with disabilities,'' ''disconnected youth,'' ''English learner,'' and ''underserved student'' are from the Supplemental Priorities.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbooks:

(i) A randomized controlled trial employs random assignment of, for

[1] *https://ies.ed.gov/ncee/wwc/ReviewedStudies#.*

example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Note: In developing logic models, applicants may want to use resources such as the Regional Educational Laboratory Program's (REL Pacific) Education Logic Model Application, available at *https://ies.ed.gov/ncee/edlabs/regions/pacific/elm.asp,* to help design their logic models. Other sources include: *https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014025.pdf, https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014007.pdf,* and *https://ies.ed.gov/ncee/edlabs/regions/northeast/pdf/REL_2015057.pdf.*

Moderate evidence means that there is evidence of effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study or quasi-experimental design study reviewed and reported by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks, or otherwise assessed by the Department using version 4.1 of the WWC Handbooks, as appropriate, and that—

(A) Meets WWC standards with or without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy the requirement in this paragraph (iii)(D).

Note: The WWC Procedures and Standards Handbook (Version 4.1), as well as the more recent WWC Handbook released in August 2022 (Version 5.0), are available at *https://ies.ed.gov/ncee/wwc/Handbooks.*

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbooks.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Underserved student means a student in postsecondary education in one or more of the following subgroups:

(a) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(b) A student of color.

(c) A student who is a member of a federally recognized Indian Tribe.

(d) An English learner.

(e) A child or student with a disability.

(f) A disconnected youth.

(g) A migrant student.

(h) A student experiencing homelessness or housing insecurity.

(i) A lesbian, gay, bisexual, transgender, queer or questioning, or intersex (LGBTQI+) student.

(j) A student who is in foster care.

(k) A pregnant, parenting, or caregiving student.

(l) A student who is the first in their family to attend postsecondary education.

(m) A student who is enrolled in or is seeking to enroll in postsecondary education who is eligible for a Pell Grant.

For purposes of the definition of *underserved student* only—

Children or students with disabilities means children with disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401(3)) and 34 CFR 300.8, or students with disabilities, as defined in the Rehabilitation Act of 1973 (29 U.S.C. 705(37), 705(20)(B));

Disconnected youth means an individual, between the ages 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution; and

English learner means an individual who is an English learner as defined in section 8101(20) of the Elementary and Secondary Education Act of 1965, as amended, or an individual who is an English language learner as defined in section 203(7) of the Workforce Innovation and Opportunity Act.

What Works Clearinghouse (WWC) Handbooks (WWC Handbooks) means the standards and procedures set forth in the WWC Procedures and Standards Handbook, Version 5.0, or in the WWC Standards Handbook, Version 4.0 or 4.1, or in the WWC Procedures Handbook, Version 4.0 or 4.1, the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (all incorporated by reference, see § 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the WWC Handbooks documentation.

Note: The WWC Procedures Handbook (Version 4.0 or 4.1), the WWC Standards Handbook (Version 4.0 or 4.1), and the more recent WWC Procedures and Standards Handbook released in August 2022 (Version 5.0), are available at *https://ies.ed.gov/ncee/wwc/*Handbooks.

Program Authority: 20 U.S.C. 1070a–21–1070a–28.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Guidance for Federal Financial Assistance in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 694. (e) The Supplemental Priorities.

Note: As of October 1, 2024, grant applicants must follow the provisions stated in the OMB Guidance for Federal Financial Assistance (89 FR 30046, April 22, 2024) when preparing an application. For more information about these regulations please visit: *https://www.cfo.gov/resources-coffa/uniform-guidance/.*

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $398,000,000 for GEAR UP for FY 2025, of which we intend to use an estimated $35,000,000 for the Partnership competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $200,000–$5,000,000.

Estimated Average Size of Awards: $1,200,000.

Maximum Award: We will not fund any application for a Partnership grant above the maximum award of $800 per student for a single budget period of 12 months. Additionally, no funding will be awarded for increases in years two through seven.

Estimated Number of Awards: 29.

Note: The Department is not bound by any estimates in this notice.

Project Period: Either 72 months or 84 months.

Note: An applicant that wishes to seek funding for a seventh project year (*i.e.,* for a project period greater than 72 months), in order to provide project services to GEAR UP students through their first year of attendance at an IHE, must propose to do so in its application..

III. Eligibility Information

1. *Eligible Applicants:* Partnerships consisting of (a) at least one degree-granting IHE and (b) at least one LEA. Partnerships may include not less than two other community organizations or entities, such as businesses, professional organizations, State agencies, institutions or agencies sponsoring programs authorized under the Leveraging Educational Assistance Partnership Program authorized in part A, subpart 4, of title IV of the HEA (20 U.S.C. 1070c *et seq.*), or other public or private agencies or organizations (20 U.S.C. 1070a–21(c)(2)).

Note: A Partnership under this competition must follow the procedures under 34 CFR 75.127 through 75.129 in developing a group application. This includes developing an agreement that details the activities that each member of the group plans to perform and binds each member of the group to every statement and assurance made by the applicant in the application. This agreement must be submitted with the application.

2.a. *Cost Sharing or Matching:* Section 404C(b)(1) of the HEA requires grantees under this program to provide from State, local, institutional, or private funds, not less than 50 percent of the cost of the program (or one dollar of non-Federal funds for every one dollar of Federal funds awarded), which may be provided in cash or in-kind. The provision also specifies that the match may be accrued over the full duration of the grant award period, except that the grantee must make substantial progress towards meeting the matching requirement in each year of the grant award period.

Section 404C(c) of the HEA provides that in-kind contributions may include (1) the amount of the financial assistance obligated under GEAR UP to students from State, local, institutional, or private funds, (2) the amount of tuition, fees, room or board waived or reduced for recipients of financial assistance under GEAR UP, (3) the amount expended on documented, targeted, long-term mentoring and counseling provided by volunteers or paid staff of non-school organizations, including businesses, religious organizations, community groups, postsecondary educational institutions, nonprofit and philanthropic organizations, and other organizations, and (4) equipment and supplies, cash contributions from non-Federal sources, transportation expenses, in-kind or discounted program services, indirect costs, and facility usage.

Section 404C(b)(2) further provides that the Secretary may approve a Partnership's request for a reduced match percentage at the time of application if the Partnership demonstrates significant economic hardship that precludes the Partnership from meeting the matching requirement, or if the Partnership requests that contributions to the scholarship fund, if applicable, be matched on the basis of two non-Federal dollars for every one Federal dollar of GEAR UP funds. GEAR UP program regulations in 34 CFR 694.8(a)–(c) address the content of an applicant's request for such a reduced match, and the maximum percentage match that the Secretary may waive. In addition, under 34 CFR 694.8(d), the Secretary may approve a reduction in match of up to 70 percent upon request from a Partnership that (a) includes three or fewer IHEs as members, (b) has a fiscal agent identified in 34 CFR 694.8(d)(1), and (c) serves students in schools and LEAs that meet the poverty criteria identified in 34 CFR 694.8(d)(2) and (3).

Given the importance of matching funds to the long-term success of the project, eligible entities must describe how they will meet the matching requirement and sources of matching funds, as required by *General Application Requirements* paragraphs (b) and (j).

Grantees must include a budget detailing the source of the matching funds and must provide an outline of the types of matching contributions for at least the first year of the grant in their grant applications. Consistent with 2 CFR 200.306(b), any matching funds must be an allowable use of funds consistent with the GEAR UP program requirements and the cost principles detailed in subpart E of 2 CFR part 200, and not included as a contribution for any other Federal award.

b. *Supplement-Not-Supplant:* This competition involves supplement, not supplant funding requirements. Under section 404B(e) of the HEA (20 U.S.C. 1070a–22(e)), grant funds awarded

under this program must be used to supplement, and not supplant, other Federal, State, and local funds that would otherwise be expended to carry out activities assisted under this program.

c. *Indirect Cost Rate Information:* For projects that designate an LEA as the fiscal agent, the GEAR UP program regulations at 34 CFR 694.11 limit indirect cost reimbursement to the restricted rate established by the LEA's negotiated indirect cost rate agreement or eight percent of a modified total direct cost base, whichever amount is less. For projects that designate an IHE as the fiscal agent, the GEAR UP program uses a training indirect cost rate. This rate limits indirect cost reimbursement to an entity's actual indirect costs, as determined in its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. For more information regarding training indirect cost rates, see 34 CFR 75.562. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

d. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Guidance for Federal Financial Assistance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Other: General Application Requirements:* All applicants must meet the following application requirements in order to be considered for funding. The application requirements are from section 404C(a) of the HEA (20 U.S.C. 1070a–23(a)) and from 34 CFR 75.112.

In order for an eligible entity to qualify for a grant under the GEAR UP program, the eligible entity must submit to the Secretary an application for carrying out a GEAR UP program that—

(a) Describes the activities for which assistance under this program is sought, including how the eligible entity will carry out the required activities described in section 404D(a) of the HEA;

(b) Describes, in the case of an eligible entity described in section 404A(c)(2) of the HEA that chooses to provide scholarships, how the eligible entity will meet the requirements of section 404E of the HEA;

(c) Describes, in the case of an eligible entity described in section 404A(c)(2) of the HEA that requests a reduced match percentage under section 404C(b)(2) of the HEA, how such reduction will assist the entity to provide the scholarships described in section 404C(b)(2)(A)(ii) of the HEA;

(d) Provides assurances that adequate administrative and support staff will be responsible for coordinating the activities described in section 404D of the HEA;

(e) Provides assurances that activities assisted under this program will not displace an employee or eliminate a position at a school assisted under this program, including a partial displacement such as a reduction in hours, wages, or employment benefits;

(f) Describes, in the case of an eligible entity described in section 404A(c)(1) of the HEA that chooses to use a cohort approach, or an eligible entity described in section 404A(c)(2) of the HEA, how the eligible entity will define the cohorts of the students served by the eligible entity pursuant to section 404B(d) of the HEA, and how the eligible entity will serve the cohorts through grade 12, including—

(1) How vacancies in the program will be filled; and

(2) How the eligible entity will serve students attending different secondary schools;

(g) Describes how the eligible entity will coordinate programs under this program with other existing Federal, State, or local programs to avoid duplication and maximize the number of students served;

(h) Provides such additional assurances as the Secretary determines necessary to ensure compliance with the requirements of this program;

(i) Provides information about the activities that will be carried out by the eligible entity to support systemic changes from which future cohorts of students will benefit; and

(j) Describes the sources of matching funds that will enable the eligible entity to meet the matching requirement described in section 404C(b) of the HEA.

(k) Applicants must include a logic model (as defined in 34 CFR 77.1(c)) or other conceptual framework.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs,* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Content and Form of Application Submission:* You must include your complete response to the selection criteria and the competitive preference priorities in the application narrative. Other requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 65 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all the text in the application narrative, including titles, headings, footnotes, quotations, references, captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10-pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications or the one-page abstract. However, the recommended page limit does apply to all of the application narrative.

We recommend that any application addressing the competitive preference priorities include no more than three additional pages for each priority addressed. Applications that do not follow the page limit and formatting recommendations will not be penalized.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

(a) *Need for project.* (up to 10 points)

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers:

(i) The data presented (including a comparison to local, State, regional, national, or international data) that demonstrates the issue, challenge, or opportunity to be addressed by the proposed project (up to 4 points);

(ii) The extent to which the proposed project will focus on serving or otherwise addressing the needs of underserved populations; (up to 3 points) and

(iii) The extent to which the specific nature and magnitude of gaps or challenges are identified and the extent to which these gaps or challenges will be addressed by the services, supports, infrastructure, or opportunities described in the proposed project (up to 3 points).

(b) *Quality of the project design.* (up to 30 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified, measurable, and ambitious yet achievable within the project period, and aligned with the purposes of the grant program (up to 8 points);

(ii) The quality of the logic model or other conceptual framework underlying the proposed project, including how inputs are related to outcomes (up to 8 points);

(iii) How the applicant will ensure that a diversity of perspectives, including those from underserved populations, are brought to bear in the design, implementation, operation, evaluation, and improvement of the proposed project, including those of parents, educators, community-based organizations, civil rights organizations, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate (up to 7 points); and

(iv) The likelihood that the proposed project will result in systemic change that supports continuous, sustainable, and measurable improvement (up to 7 points).

(c) *Adequacy of resources.* (up to 15 points)

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers:

(i) The adequacy of support for the project, including facilities, equipment, supplies, and other resources, from the applicant or the lead applicant organization (up to 5 points);

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project (up to 5 points); and

(iii) The extent to which the budget is adequate to support the proposed project and the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project (up to 5 points).

(d) *Quality of project personnel.* (up to 20 points)

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant demonstrates that it has project personnel or a plan for hiring of personnel who are members of groups that have historically encountered barriers, or who have professional or personal experiences with barriers, based on one or more of the following: economic disadvantage; disability; living in a rural location; experiencing homelessness or housing insecurity (up to 5 points).

(3) In addition, the Secretary considers:

(i) The extent to which the project director or principal investigator, when hired, has the qualifications required for the project, including formal training or work experience in fields related to the objectives of the project and experience in designing, managing, or implementing similar projects for the target population to be served by the project (up to 5 points);

(ii) The extent to which the key personnel in the project, when hired, have the qualifications required for the proposed project, including formal training or work experience in fields related to the objectives of the project and represent or have lived experiences of the target population (up to 5 points); and

(iii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project (up to 5 points).

(e) *Quality of the project evaluation.* (up to 25 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the project evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation or other evidence-building include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quality data that are quantitative and qualitative (up to 10 points);

(ii) The extent to which the methods of evaluation or other evidence-building will provide performance feedback and provide formative, diagnostic, or interim data that is a periodic assessment of progress toward achieving intended outcomes (up to 10 points); and

(iii) The extent to which the methods of evaluation include an experimental study, a quasi-experimental design study, or a correlational study with statistical controls for selection bias (such as regression methods to account for differences between a treatment group and a comparison group) to assess the effectiveness of the project on relevant outcomes (up to 5 points).

Note: For the selection criterion ''Quality of personnel'' in paragraph (d), applicants are encouraged to include in their application that they are committed to paying their staff a living wage for the local area and providing benefits.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

As required by 20 U.S.C. 1070-a23(d), a panel of non-Federal reviewers will review each application in accordance with the procedures described in 34 CFR 75.217. The individual scores of the reviewers will be added and the sum divided by the number of reviewers to determine the peer review score received in the review process.

If there are insufficient funds for all applications with the same total scores, the Secretary will select applications serving LEA(s) with the highest poverty rate, using the most recent data available from the Small Area Income and Poverty Estimates Program (SAIPE) data (age range 5–17) or from the decennial census data for outlying areas, as appropriate. For applications that include multiple LEAs, the Department will aggregate data across LEAs to produce a simple poverty rate. For applications that include eligible charter schools as their LEA partners, the Department will use the State-derived equivalent of SAIPE data that the State uses to make allocations under Part A of Title I of the Elementary and Secondary Education Act of 1965, as amended.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN), or we may send you an email containing a link to access an electronic version of your GAN. We also may notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. See the standards in 2 CFR 170.105 to determine whether you are covered by 2 CFR part 170.

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* The performance measures for the GEAR UP Program are established for purposes of Department reporting under 34 CFR 75.110. The objectives of the GEAR UP program are (1) to increase the academic performance and preparation for postsecondary education of participating students; (2) to increase the rate of high school graduation and participation in postsecondary education of participating students; and (3) to increase educational expectations for participating students and increase student and family knowledge of postsecondary education options, preparation, and financing.

The effectiveness of this program depends on the rate at which program participants complete high school and enroll in and complete a postsecondary education. We developed the following performance measures to track progress toward achieving the program's goals:

1. The percentage of GEAR UP students who pass Algebra 1 or its equivalent by the end of ninth grade.

2. The percentage of GEAR UP students who graduate from high school.

3. The percentage of GEAR UP students who complete the Free Application for Federal Student Aid.

4. The percentage of GEAR UP students and former GEAR UP students who are enrolled at an IHE.

5. The percentage of current GEAR UP students and former GEAR UP students who enrolled at an IHE and persisted to the second year of postsecondary education at the initial or a subsequent IHE.

In addition, to assess the efficiency of the program, we track the average cost, in Federal funds, of achieving a successful outcome, where success is defined as enrollment in a program of undergraduate instruction at an IHE of GEAR UP students immediately after high school graduation. These performance measures constitute GEAR

UP's indicators of the success of the program. Accordingly, we request that applicants include these performance measures in conceptualizing the design, implementation, and evaluation of their proposed projects.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package 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, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Nasser H. Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2024–27054 Filed 11–19–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Gaining Early Awareness and Readiness for Undergraduate Programs (State Grants)

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2025 for Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) State Grants.

DATES:

Applications Available: November 20, 2024.

Deadline for Transmittal of Applications: February 3, 2025.

Deadline for Intergovernmental Review: April 4, 2025.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.*

FOR FURTHER INFORMATION CONTACT: Ben Witthoefft, U.S. Department of Education, 400 Maryland Avenue SW, 5th Floor, Washington, DC 20202–6450. Telephone: 202–453–7576. Email: *Ben.Witthoefft@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:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The GEAR UP program is a discretionary grant program that encourages eligible entities to provide support, and maintain a commitment, to eligible students from low-income backgrounds, including students with disabilities, to assist the students in obtaining a secondary school diploma (or its recognized equivalent) and to prepare for and succeed in postsecondary education. Under the GEAR UP program, the Department awards grants to two types of entities: (1) States and (2) Partnerships consisting of at least one degree-granting institution of higher education (IHE) and at least one local educational agency (LEA).

Assistance Listing Number: 84.334S.

OMB Control Number: 1840–0821.

Background: In this notice, the Department invites applications for State grants only. We will invite applications for Partnership grants in another notice published in the **Federal Register**. Required services under the GEAR UP program are specified in section 404D(a) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1070a–24(a)), and permissible services under the GEAR UP program are specified in section 404D(b) and (c) of the HEA (20 U.S.C. 1070a–24(b) and (c)). Grantee activities must include providing financial aid information for postsecondary education, encouraging enrollment in rigorous and challenging coursework in order to reduce the need for remediation at the postsecondary education level, implementing activities to improve the number of participating students who obtain a secondary school diploma and who complete applications for and enroll in a program of postsecondary education, and providing scholarships as specified in section 404E of the HEA. Activities may also include mentoring; tutoring; supporting dual or concurrent enrollment programs; providing special programs or tutoring in science, technology, engineering, or mathematics (STEM); academic and career counseling; financial and economic literacy education; and exposure to college campuses. Additional permissible activities for State grantees are specified in sections 404D(b) and (c) of the HEA.

Priorities: This notice contains four competitive preference priorities and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(ii) and (iv), Competitive Preference Priority 1 is from section 404A(b)(3) of the HEA (20 U.S.C. 1070a–21(b)(3)) and the GEAR UP program regulations (34 CFR 694.19). Competitive Preference Priorities 2 and 3 are from the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities). Competitive Preference Priority 4 is from 34 CFR 75.226(b).

Competitive Preference Priorities: For FY 2025 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 15 points to an application, depending on how well the application meets the competitive preference priorities.

These priorities are:

Competitive Preference Priority 1—Successful State GEAR UP grant prior to August 14, 2008 (0 or 2 points).

We give priority to an eligible applicant for a State GEAR UP grant that has both—

(a) Carried out a successful State GEAR UP grant prior to August 14, 2008, determined on the basis of data (including outcome data) submitted by the applicant as part of its annual and final performance reports, and the applicant's history of compliance with applicable statutory and regulatory requirements; and

(b) A prior demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies.

Competitive Preference Priority 2—Increasing Postsecondary Education Access, Affordability, Completion, and Post-Enrollment Success (up to 5 points).

Projects that are designed to increase postsecondary access, affordability, completion, and success for underserved students by establishing a system of high-quality data collection and analysis, such as data on persistence, retention, completion, and post-college outcomes, for transparency, accountability, and institutional improvement.

Competitive Preference Priority 3—Meeting Student Social, Emotional, and Academic Needs (up to 5 points).

Projects that are designed to improve students' social, emotional, academic, and career development, with a focus on underserved students, through fostering partnerships, including across government agencies (*e.g.,* housing, human services, employment agencies), local educational agencies, community-based organizations, adult learning providers, and postsecondary education intuitions, to provide comprehensive services to students and families that support students' social, emotional, mental health, and academic needs, and that are inclusive with regard to race, ethnicity, culture, language, and disability status.

Competitive Preference Priority 4—Moderate Evidence (0 or 3 points).

Applications supported by evidence that meets the conditions in the definition of ''moderate evidence'' (as defined in this notice).

Note: To address this priority, an applicant may submit up to two study citations that it believes support the implementation of a GEAR UP authorized activity proposed in the application and that meet the moderate evidence standard. For State grantees, required GEAR UP services are specified in section 404D(a) of the HEA (20 U.S.C. 1070a–24(a)), and permissible services are specified in section 404D(b) and (c) of the HEA (20 U.S.C. 1070a–24(b) and (c)).

Applicants can cite What Works Clearinghouse (WWC) intervention reports, WWC practice guides, or individual studies, including those already listed in the Department's WWC Database of Individual Studies [1] and those that have not yet been reviewed by the WWC.

The proposed studies must be cited in the application section for Competitive Preference Priority 4 as well as on the Evidence Form. Applicants must also describe: (1) the project component(s) from the cited research they intend to implement in their GEAR UP project, (2) the relevant outcome(s) that are included in both the study (or WWC practice guide or intervention report) and in the proposed project, (3) the research findings suggesting a favorable relationship between the project component and the relevant outcome, and (4) how the population and/or settings in the cited research overlap with that of the proposed project. The Department will review the research cited by the applicant to determine whether it meets the requirements for moderate evidence and whether it is sufficiently aligned with the proposed project.

Invitational Priority—Supporting Highly Mobile Youth.

Background: Compared to their peers, highly mobile youth, including youth who experience homelessness, foster care, and/or are disconnected from school and work, including students who are or have been involved in the criminal justice system, are less likely to graduate high school, enroll in college, or earn a degree.[2] Multiple school changes compounded by other life circumstances outside of their control result in many highly mobile youth being unable to access the financial resources, mentorship, support, stability, and guidance needed to complete postsecondary education or training programs.[3]

The Department believes that the GEAR UP State grant program, which allows States to identify and serve priority students as defined in section 404D(d), including students in foster care, students experiencing homelessness and other disconnected students, can play a key role in addressing gaps in high school graduation, college enrollment and college completion between highly mobile students and their peers. Through this invitational priority, we invite State applicants to propose projects that are designed to prioritize this student population.

For FY 2025 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Projects that propose to prioritize services to highly mobile students, including students experiencing (or who have experienced) foster care and homelessness, homeless students, and students disconnected from school and work, including students who are or have been involved in the criminal justice system. An applicant should describe in its application how it will use grant funding to reduce barriers to college enrollment and completion for these students both by (1) proactively identifying students who are GEAR UP-eligible by virtue of their status as homeless, foster care, and/or disconnected students, and (2) providing GEAR UP scholarships and support services that are targeted to the needs of these students.

Definitions: The definitions of ''experimental study,'' ''logic model,'' ''moderate evidence,'' ''project component,'' ''quasi-experimental design study,'' ''relevant outcome,'' and ''What Works Clearinghouse (WWC) Handbooks (WWC Handbooks)'' are from 34 CFR 77.1(c). The definitions of ''children or students with disabilities,'' ''disconnected youth,'' ''English learner,'' and ''underserved student'' are from the Supplemental Priorities.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise

[1] *https://ies.ed.gov/ncee/wwc/ReviewedStudies#.*

[2] Student Homelessness in America—School Years 2019–20 to 2021–22 *https://nche.ed.gov/wp-content/uploads/2023/12/SY-21-22-EHCY-Data-Summary_FINAL.pdf.*

[3] Missed Opportunities: Education Among Youth Experiencing Homelessness in America *https://schoolhouseconnection.org/wp-content/uploads/imported-files/ChapinHall_VoYC_Education-Brief.pdf.*

equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbooks:

(i) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Note: In developing logic models, applicants may want to use resources such as the Regional Educational Laboratory Program's (REL Pacific) Education Logic Model Application, available at *https://ies.ed.gov/ncee/edlabs/regions/pacific/elm.asp,* to help design their logic models. Other sources include: *https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014025.pdf, https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014007.pdf,* and *https://ies.ed.gov/ncee/edlabs/regions/northeast/pdf/REL_2015057.pdf.*

Moderate evidence means that there is evidence of effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study or quasi-experimental design study reviewed and reported by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks, or otherwise assessed by the Department using version 4.1 of the WWC Handbooks, as appropriate, and that—

(A) Meets WWC standards with or without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy the requirement in this paragraph (iii)(D).

Note: The WWC Procedures and Standards Handbook (Version 4.1), as well as the more recent WWC Handbook released in August 2022 (Version 5.0), are available at *https://ies.ed.gov/ncee/wwc/Handbooks.*

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbooks.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Underserved student means a student in postsecondary education in one or more of the following subgroups:

(a) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(b) A student of color.

(c) A student who is a member of a federally recognized Indian Tribe.

(d) An English learner.

(e) A child or student with a disability.

(f) A disconnected youth.

(g) A migrant student.

(h) A student experiencing homelessness or housing insecurity.

(i) A lesbian, gay, bisexual, transgender, queer or questioning, or intersex (LGBTQI+) student.

(j) A student who is in foster care.

(k) A pregnant, parenting, or caregiving student.

(l) A student who is the first in their family to attend postsecondary education.

(m) A student who is enrolled in or is seeking to enroll in postsecondary education who is eligible for a Pell Grant.

For purposes of the definition of *underserved student* only—

Children or students with disabilities means children with disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401(3)) and 34 CFR 300.8, or students with disabilities, as defined in the Rehabilitation Act of 1973 (29 U.S.C. 705(37), 705(20)(B));

Disconnected youth means an individual, between the ages 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution; and

English learner means an individual who is an English learner as defined in section 8101(20) of the Elementary and Secondary Education Act of 1965, as amended, or an individual who is an English language learner as defined in section 203(7) of the Workforce Innovation and Opportunity Act.

What Works Clearinghouse (WWC) Handbooks (WWC Handbooks) means

the standards and procedures set forth in the WWC Procedures and Standards Handbook, Version 5.0, or in the WWC Standards Handbook, Version 4.0 or 4.1, or in the WWC Procedures Handbook, Version 4.0 or 4.1, the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (all incorporated by reference, see § 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the WWC Handbooks documentation.

Note: The WWC Procedures Handbook (Version 4.0 or 4.1), the WWC Standards Handbook (Version 4.0 or 4.1), and the more recent WWC Procedures and Standards Handbook released in August 2022 (Version 5.0), are available at *https://ies.ed.gov/ncee/wwc/Handbooks.*

Program Authority: 20 U.S.C. 1070a–21–1070a–28.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Guidance for Federal Financial Assistance in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 694. (e) The Supplemental Priorities.

Note: As of October 1, 2024, grant applicants must follow the provisions stated in the OMB Guidance for Federal Financial Assistance (89 FR 30046, April 22, 2024) when preparing an application. For more information about these regulations please visit: *https://www.cfo.gov/resources-coffa/uniform-guidance/.*

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $398,000,000 for GEAR UP for FY 2025, of which we intend to use an estimated $35,000,000 for the State competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $3,000,000–$5,000,000.

Estimated Average Size of Awards: $4,000,000.

Maximum Award: We will not make an award for a State grant exceeding $5,000,000 for a single budget period of 12 months. Additionally, no funding will be awarded for increases in years 2 through 7.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Either 72 months or 84 months.

Note: An applicant that wishes to seek funding for a seventh project year (*i.e.,* for a project period greater than 72 months) in order to provide project services to GEAR UP students through their first year of attendance at an IHE must propose to do so in its application.

III. Eligibility Information

1. *Eligible Applicants:* States (as defined in section 103(20) of the HEA (20 U.S.C. 1003(20)), which includes the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States. Per congressional direction in Senate Report 118–84 (Pub. L. 118–47), only States without an active State GEAR UP grant, or States that have an active State GEAR UP grant that is scheduled to end prior to October 1, 2025, are eligible to receive a new State GEAR UP award in this competition. States with grants remaining open beyond October 1, 2025, for a no-cost extension period or for the sole purpose of data collection and analysis activities, are not considered active for purposes of implementing this directive.

2.a. *Cost Sharing or Matching:* Section 404C(b)(1) of the HEA (20 U.S.C. 1070a–23(b)(1)) requires grantees under this program to provide from State, local, institutional, or private funds, not less than 50 percent of the cost of the program (or one dollar of non-Federal funds for every one dollar of Federal funds awarded), which may be provided in cash or in-kind. The provision also specifies that the match may be accrued over the full duration of the grant award period, except that the grantee must make substantial progress toward meeting the matching requirement in each year of the grant award period.

Section 404C(c) of the HEA (20 U.S.C. 1070a–23(c)) provides that in-kind contributions may include (1) the amount of the financial assistance obligated under GEAR UP to students from State, local, institutional, or private funds, (2) the amount of tuition, fees, room or board waived or reduced for recipients of financial assistance under GEAR UP, (3) the amount expended on documented, targeted, long-term mentoring and counseling provided by volunteers or paid staff of non-school organizations, including businesses, religious organizations, community groups, postsecondary educational institutions, nonprofit and philanthropic organizations, and other organizations, and (4) equipment and supplies, cash contributions from non-Federal sources, transportation expenses, in-kind or discounted program services, indirect costs, and facility usage.

Grantees must include a budget detailing the source of the matching funds and must provide an outline of the types of matching contributions for at least the first year of the grant in their grant applications. Consistent with 2 CFR 200.306(b), any matching funds must be an allowable use of funds consistent with the GEAR UP program requirements and the cost principles described in subpart E of 2 CFR part 200, and not included as a contribution for any other Federal award.

b. *Supplement-Not-Supplant:* This competition involves supplement, not supplant funding requirements. Under section 404B(e) of the HEA (20 U.S.C. 1070a–22(e)), grant funds awarded under this program must be used to supplement, and not supplant, other Federal, State, and local funds that would otherwise be expended to carry out activities assisted under this program.

c. *Indirect Cost Rate Information:* For entities eligible to apply to this competition, the program regulations at 34 CFR 694.11 limit indirect cost reimbursement to the rate determined in the entity's negotiated indirect cost rate agreement, or 8 percent of a modified total direct cost base, whichever amount is less. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

d. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be

reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Guidance for Federal Financial Assistance.

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c), a grantee under this competition may award subgrants to the following types of entities: LEAs, State educational agencies, IHEs, and nonprofit organizations. The grantee may only award subgrants to entities it has identified in an approved application. Under 34 CFR 75.708(d), grantees must ensure that (1) subgrants are awarded on the basis of an approved budget that is consistent with the grantee's approved application and all applicable Federal statutory, regulatory, and other requirements; (2) every subgrant includes any conditions required by Federal statute and executive orders and their implementing regulations; and (3) subgrantees are aware of requirements imposed upon them by Federal statute and regulation, including the Federal anti-discrimination laws enforced by the Department.

4. *Other—General Application Requirements:* All applicants must meet the following application requirements in order to be considered for funding. The application requirements are from sections 404C(a) and 404E of the HEA (20 U.S.C. 1070a–23(a); 20 U.S.C. 1070a–25) and from 34 CFR 75.112.

In order for an eligible entity to qualify for a grant under the GEAR UP program, the eligible entity must submit to the Secretary an application for carrying out a GEAR UP program that—

(a) Describes the activities for which assistance under this program is sought, including how the eligible entity will carry out the required activities described in section 404D(a) of the HEA;

(b) Describes, in the case of an eligible entity described in section 404A(c)(1) of the HEA, how the eligible entity will meet the requirements of section 404E of the HEA;

(c) Provides assurances that adequate administrative and support staff will be responsible for coordinating the activities described in section 404D of the HEA;

(d) Provides assurances that activities assisted under this program will not displace an employee or eliminate a position at a school assisted under this program, including a partial displacement such as a reduction in hours, wages, or employment benefits;

(e) Describes, in the case of an eligible entity described in section 404A(c)(1) of the HEA that chooses to use a cohort approach, how the eligible entity will define the cohorts of the students served by the eligible entity pursuant to section 404B(d) of the HEA, and how the eligible entity will serve the cohorts through grade 12, including—

(1) How vacancies in the program will be filled; and

(2) How the eligible entity will serve students attending different secondary schools;

(f) Describes how the eligible entity will coordinate programs under this program with other existing Federal, State, or local programs to avoid duplication and maximize the number of students served;

(g) Provides such additional assurances as the Secretary determines necessary to ensure compliance with the requirements of this program;

(h) Provides information about the activities that will be carried out by the eligible entity to support systemic changes from which future cohorts of students will benefit;

(i) Describes the sources of matching funds that will enable the eligible entity to meet the matching requirement described in section 404C(b); and

(j) Demonstrates, in the case of an eligible entity that is requesting to use more than 50 percent of grant funds on GEAR UP early intervention activities and less than 50 percent of grant funds on scholarships, that the eligible entity has another means or multiple means of providing scholarships that meet the minimum Pell Grant requirements under 20 U.S.C. 1070a–25(d) to students eligible for a GEAR UP scholarship under 20 U.S.C. 1070a–25(g). A State requesting an exception from the requirement that it spend at least 50 percent of its grant dollars on scholarships must provide, in its application, documentation of the other means of providing scholarships to students eligible for a GEAR UP scholarship under 20 U.S.C. 1070a–25(g), such as a comprehensive list of other sources of aid that reduce or eliminate the need for the grantee to provide GEAR UP scholarships to eligible students out of its Federal funding; the projected number of students that the grantee expects to receive aid through those sources (*e.g.* based on past cohorts, if applicable); and, if any, an estimated number of students eligible for a GEAR UP scholarship that are not expected to receive aid through those other sources.

(k) Applicants must include a logic model (as defined in 34 CFR 77.1(c)) or other conceptual framework.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs,* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

3. *Funding Restrictions:* We specify unallowable costs in subpart E of 2 CFR part 200. We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

Under HEA section 404E(b)(1) (20 U.S.C. 1070a–25(b)(1)), a State must use not less than 25 percent and not more than 50 percent of the grant funds for GEAR UP project activities described in HEA section 404D,[4] with the remainder of grant funds spent on scholarships to eligible GEAR UP students described in HEA section 404E. However, HEA section 404E(b)(2) (20 U.S.C. 1070a–25(b)(2)) permits the Secretary to allow a State to use more than 50 percent of grant funds received under this program for GEAR UP project activities described in HEA section 404D if the State demonstrates that it has another means of providing the students eligible for a GEAR UP scholarship as defined under 20 U.S.C. 1070a–25(g) with the financial assistance described in HEA section 404E and describes such means in the State's application.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 65 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1'' margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, excluding titles, headings, footnotes, quotations, references, captions as well as all text in charts, tables, figures, and graphs.

[4] Excluding the provision of funds for postsecondary scholarships required by HEA section 404D(a)(4).

- Use a font that is either 12-point font or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; a scholarship waiver justification; or the one-page abstract. However, the recommended page limit does apply to all of the application narrative.

We recommend that any application addressing the competitive preference priorities and/or invitational priority include no more than three additional pages for each priority addressed.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

(a) *Need for project.* (up to 10 points)

(1) The Secretary considers the the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers:

(i) The data presented (including a comparison to local, State, regional, national, or international data) that demonstrates the issue, challenge, or opportunity to be addressed by the proposed project (up to 4 points);

(ii) The extent to which the proposed project will focus on serving or otherwise addressing the needs of underserved populations; (up to 3 points) and

(iii) The extent to which the specific nature and magnitude of gaps or challenges are identified and the extent to which these gaps or challenges will be addressed by the services, supports, infrastructure, or opportunities described in the proposed project (up to 3 points).

(b) *Quality of the project design.* (up to 30 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified, measurable, and ambitious yet achievable within the project period, and aligned with the purposes of the grant program (up to 8 points);

(ii) The quality of the logic model or other conceptual framework underlying the proposed project, including how inputs are related to outcomes (up to 8 points);

(iii) How the applicant will ensure that a diversity of perspectives, including those from underserved populations, are brought to bear in the design, implementation, operation, evaluation, and improvement of the proposed project, including those of parents, educators, community-based organizations, civil rights organizations, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate (up to 7 points); and

(iv) The likelihood that the proposed project will result in systemic change that supports continuous, sustainable, and measurable improvement (up to 7 points).

(c) *Adequacy of resources.* (up to 15 points)

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers:

(i) The adequacy of support for the project, including facilities, equipment, supplies, and other resources, from the applicant or the lead applicant organization (up to 5 points);

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project (up to 5 points); and

(iii) The extent to which the budget is adequate to support the proposed project and the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project (up to 5 points).

(d) *Quality of project personnel.* (up to 20 points)

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant demonstrates that it has project personnel or a plan for hiring of personnel who are members of groups that have historically encountered barriers, or who have professional or personal experiences with barriers, based on one or more of the following: economic disadvantage; disability; living in a rural location; experiencing homelessness or housing insecurity (up to 5 points).

(3) In addition, the Secretary considers:

(i) The extent to which the project director or principal investigator, when hired, has the qualifications required for the project, including formal training or work experience in fields related to the objectives of the project and experience in designing, managing, or implementing similar projects for the target population to be served by the project (up to 5 points);

(ii) The extent to which the key personnel in the project, when hired, have the qualifications required for the proposed project, including formal training or work experience in fields related to the objectives of the project, and represent or have lived experiences of the target population (up to 5 points); and

(iii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project (up to 5 points).

(e) *Quality of the project evaluation.* (up to 25 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the project evaluation, the Secretary considers:

(i) The extent to which the methods of evaluation or other evidence-building include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quality data that are quantitative and qualitative (up to 10 points);

(ii) The extent to which the methods of evaluation or other evidence-building will provide performance feedback and provide formative, diagnostic, or interim data that is a periodic assessment of progress toward achieving intended outcomes (up to 10 points); and

(iii) The extent to which the methods of evaluation include an experimental study, a quasi-experimental design study, or a correlational study with statistical controls for selection bias (such as regression methods to account for differences between a treatment group and a comparison group) to assess the effectiveness of the project on relevant outcomes (up to 5 points).

Note: For the selection criterion ''Quality of personnel'' in paragraph (d), applicants are encouraged to include in their application that they are committed to paying their staff a living wage for the local area and providing benefits.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project

objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

As required by 20 U.S.C. 1070a–23(d), a panel of non-Federal reviewers will review each application for this competition in accordance with the procedures described in 34 CFR 75.217. The individual scores of the reviewers will be added and the sum divided by the number of reviewers to determine the peer review score received in the review process.

If there are insufficient funds for all applications with the same total scores, the Secretary will select among tied applications according to the following procedures. The first tiebreaker criterion will be to select for funding the tied applicant(s) representing the State(s) that has gone longest since being funded under the GEAR UP State program. The second tiebreaker will be to fund, from the States tied after implementing the first tiebreaker, the States with the highest percentage of individuals living in poverty based on Small Area Income and Poverty Estimates Program (SAIPE) data (age range 5–17) or decennial census data, as appropriate.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN), or we may send you an email containing a link to access an electronic version of your GAN. We also may notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. See the standards in 2 CFR 170.105 to determine whether you are covered by 2 CFR part 170.

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case, the Secretary establishes a data collection period.

5. *Performance Measures:* The performance measures for the GEAR UP Program are established for purposes of Department reporting under 34 CFR 75.110. The objectives of the GEAR UP program are (1) to increase the academic performance and preparation for postsecondary education of participating students; (2) to increase the rate of high school graduation and participation in postsecondary education of participating students; and (3) to increase education expectations for participating students and increase student and family knowledge of postsecondary education options, preparation, and financing.

The effectiveness of this program depends on the rate at which program participants complete high school and enroll in and complete a postsecondary education. We developed the following performance measures to track progress toward achieving the program's goals:

1. The percentage of GEAR UP students who pass Algebra 1 or its equivalent by the end of ninth grade.

2. The percentage of GEAR UP students who graduate from high school.

3. The percentage of GEAR UP students who complete the Free Application for Federal Student Aid.

4. The percentage of GEAR UP students and former GEAR UP students who are enrolled at an IHE.

5. The percentage of current GEAR UP students and former GEAR UP students who enrolled at an IHE and persisted to the second year of postsecondary education at the initial or a subsequent IHE.

In addition, to assess the efficiency of the program, we track the average cost, in Federal funds, of achieving a successful outcome, where success is defined as enrollment in a program of undergraduate instruction at an IHE of GEAR UP students immediately after high school graduation. These performance measures constitute GEAR UP's indicators of the success of the program. Accordingly, we require that applicants include these performance measures in conceptualizing the design, implementation, and evaluation of their proposed projects.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package 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, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Nasser H. Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2024–27055 Filed 11–19–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board (SEAB). This meeting will be held virtually for members of the public, and both virtually and in-person for SEAB members. The Federal Advisory Committee Act (FACA) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, December 10, 2024; 10 a.m.–12:30 p.m. EDT.

ADDRESSES: This meeting is open to the public virtually. SEAB members will participate in-person at U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585. Registration is required by registering at the SEAB meeting page at: *www.energy.gov/seab/seab-meetings.*

FOR FURTHER INFORMATION CONTACT: David Borak, Designated Federal Officer; U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; Telephone: (202) 586–5216 or Email: *seab@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Board was established to provide advice and recommendations to the Secretary on the Administration's energy policies; the Department's basic and applied research and development activities; economic and national security policy; and other activities as directed by the Secretary.

Tentative Agenda: The meeting will start at 10 a.m. eastern time on December 10, 2024. The tentative meeting agenda includes: roll call, remarks from the SEAB chair, remarks from the Secretary, discussion of the SEAB report on artificial intelligence and permitting, public comment, and a presentation on SEAB's accomplishments. The meeting will conclude at approximately 12:30 p.m. Meeting materials can be found here: *www.energy.gov/seab/seab-meetings.*

Public Participation: The meeting is open to the public virtually. Individuals who would like to attend must register for the meeting here: *https://www.energy.gov/seab/seab-meetings.*

Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the meeting. Approximately 15 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed three minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so via email, *seab@hq.doe.gov,* no later than 5 p.m. Eastern Time on Tuesday, December 3, 2024.

Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to David Borak, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, or email to: *seab@hq.doe.gov.*

Minutes: The minutes of the meeting will be available on the SEAB website at *www.energy.gov/seab* or by contacting David Borak at *seab@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on November 15, 2024, by David Borak, Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 15, 2024.

Jennifer Hartzell,

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

[FR Doc. 2024–27102 Filed 11–19–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Proposed Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Notice.

SUMMARY: EIA submitted an information collection request for the three-year extension, with changes, to the Petroleum Marketing Program (PMP) as required under the Paperwork Reduction Act of 1995. EIA's PMP collects volumetric and price information needed for determining the supply of and demand for crude oil and refined petroleum products.

DATES: Comments on this information collection must be received no later than December 20, 2024. 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: Kenneth Pick, EIA Clearance Officer, at (202) 586–5562. The forms and instructions are available at *https://www.eia.gov/survey/.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.:* 1905–0174;

(2) *Information Collection Request Title:* Petroleum Marketing Program;

(3) *Type of Request:* Three-year extension with changes;

(4) *Purpose:* The surveys included in the Petroleum Marketing Program collect volume and price information needed for determining the supply of and demand for crude oil and refined petroleum products. These surveys provide a basic set of data pertaining to the structure, efficiency, and behavior of petroleum markets. These data are published by EIA on its website, at *https://www.eia.gov.* The Petroleum Marketing Program consists of the following surveys: Form EIA–14 *Refiners' Monthly Cost Report;* Form EIA–182 *Domestic Crude Oil First Purchase Report;* Form EIA–856 *Monthly Foreign Crude Oil Acquisition Report;* Form EIA–877 *Winter Heating Fuels Telephone Survey;* Form EIA–878 *Motor Gasoline Price Survey;* Form EIA–888 *On-Highway Diesel Fuel Price Survey;*

(4a) *Proposed Changes to Information Collection:*

Form EIA–888, *On-Highway Diesel Fuel Price Survey* (Potential Change to Data Collection Form and Instructions)

EIA proposes modifying Form EIA–888, On-Highway Diesel Fuel Price Survey, to include a checkbox allowing stations to indicate that they do not sell diesel fuel. This designation will make it easier to identify stations that are no longer in scope for the survey but are still in operation.

(4b) *Proposed Survey Discontinuations:*

EIA is requesting the discontinuation and removal of the following four surveys from the Petroleum Marketing Program:

Form EIA–863, *Petroleum Product Sales Identification Survey*

The EIA–863, *Petroleum Product Sales Identification Survey,* has been suspended since 2011, with the last completed survey cycle occurring for 2006 data. Surveys previously reliant on these data for sample design have implemented new sampling methodologies, which no longer require these data. EIA proposes formally discontinuing this survey.

Form EIA–782A, Refiners'/Gas Plant Operators' Monthly Petroleum Product Sales Report, Form EIA–782C, Monthly Report of Prime Supplier Sales of Petroleum Products Sold for Local Consumption, and Form EIA–821, Annual Fuel Oil and Kerosene Sales Report

To concentrate limited EIA and respondent resources on more timely products, EIA proposes eliminating the EIA–782A, *Refiners'/Gas Plant Operators' Monthly Petroleum Product Sales Report,* the EIA–782C, *Monthly Report of Prime Supplier Sales of Petroleum Products Sold for Local Consumption,* and the EIA–821, *Annual Fuel Oil and Kerosene Sales Report,* surveys. EIA remains committed to balancing the costs associated with collecting data (for both respondents and taxpayers) with the benefits of providing a more complete data set. The U.S. energy industry is dynamic, and our surveys and publications have and will continue to evolve to provide the best value to the American people in support of efficient energy markets. We continue to explore opportunities to incorporate similar data from other sources.

(5) *Annual Estimated Number of Respondents:* 5,241;

(6) *Annual Estimated Number of Total Responses:* 199,792;

(7) *Annual Estimated Number of Burden Hours:* 28,557;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $ 2,603,256 (28,557 annual burden hours multiplied by $91.16 per hour), a reduction from $ 5,147,216 (63,040 annual burden hours multiplied by $81.65 per hour) in 2021. EIA estimates that respondents will have no additional costs associated with the surveys other than the burden hours and the maintenance of the information during the normal course of business.

Statutory Authority: 15 U.S.C. 772(b) and 42 U.S.C. 7101 *et seq.*

Signed in Washington, DC, on November 14, 2024.

Samson A. Adeshiyan,

Director, Office of Statistical Methods and Research, U.S. Energy Information Administration.

[FR Doc. 2024–27071 Filed 11–19–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Loveland Area Projects—Rate Order No. WAPA–212

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate.

SUMMARY: The formula rates for the Rocky Mountain (RM) region's Loveland Area Projects (LAP) firm electric service and sale of surplus products have been confirmed, approved, and placed into effect on an interim basis (Provisional Formula Rates). LAP consists of the Fryingpan-Arkansas Project (Fry-Ark) and the Pick-Sloan Missouri Basin Program (P–SMBP)—Western Division, which were integrated for marketing and ratemaking purposes in 1989. These new formula rates replace the existing formula rates for these services under Rate Schedules L–F12, Firm Electric Service; and L–M3, Sale of Surplus Products, which expire on December 31, 2027. The LAP firm electric service composite rate is increasing over a 2-year period with an 8.8 percent increase on January 1, 2025, and an additional 8.2 percent increase on January 1, 2026. There are no changes to the formula rate for sale of surplus products.

DATES: The Provisional Formula Rates under Rate Schedules L–F13, Firm Electric Service; and L–M4, Sale of Surplus Products, are effective on the first day of the first full billing period beginning on or after January 1, 2025, and will remain in effect through December 31, 2029, pending confirmation and approval by the Federal Energy Regulatory Commission (FERC) on a final basis or until superseded.

FOR FURTHER INFORMATION CONTACT: Barton V. Barnhart, Regional Manager, Rocky Mountain Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986, or email: *lapfirmadj@wapa.gov,* or Sheila D. Cook, Rates Manager, Rocky Mountain Region, Western Area Power Administration, (970) 685–9562, or email: *scook@wapa.gov.*

SUPPLEMENTARY INFORMATION: On September 12, 2023, FERC confirmed and approved Rate Schedules L–F12 and L–M3 under Rate Order No. WAPA–202 on a final basis through December 31, 2027.[1] Western Area Power Administration (WAPA) published a **Federal Register** notice (Proposed FRN) on June 28, 2024 (89 FR 53992), proposing adjustments to increase the base component and decrease the drought adder component of the LAP firm electric service rate using a two-step rate adjustment where roughly 50 percent of the total increase is being applied in step 1 (January 2025) and the remaining 50 percent is being applied in step 2 (January 2026), and to put new 5-year rate schedules in place. The Proposed FRN also initiated a 60-day public consultation and comment period and set forth the dates and locations of the virtual public information and public comment forums.

Legal Authority

By Delegation Order No. S1–DEL–RATES–2016, effective November 19, 2016, the Secretary of Energy delegated: (1) the authority to develop power and transmission rates to the WAPA Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates, to FERC. By Delegation Order No. S1–DEL–S3–2024, effective August 30, 2024, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary for Infrastructure. By Redelegation Order No. S3–DEL–WAPA1–2023, effective April 10, 2023, the Under Secretary for Infrastructure further redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to WAPA's Administrator. This rate action is issued under Redelegation Order No. S3–DEL–WAPA1–2023 and Department of Energy procedures for public participation in rate adjustments set forth in 10 CFR part 903.[2]

Following review of RM's proposal, Rate Order No. WAPA–212, which provides the formula rates for LAP firm electric service and sale of surplus products, is hereby confirmed, approved, and placed into effect on an interim basis. WAPA will submit Rate Order No. WAPA–212 to FERC for confirmation and approval on a final basis.

Department of Energy

Administrator, Western Area Power Administration

In the Matter of: Western Area Power Administration, Rocky Mountain Region, Rate Adjustment for the Loveland Area Projects, Firm Electric Service and Sale of Surplus Products, Formula Rates, Rate Order No. WAPA–212

Order Confirming, Approving, and Placing the Formula Rates for the Loveland Area Projects Into Effect on an Interim Basis

The formula rates in Rate Order No. WAPA–212 are established following section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152).[1]

By Delegation Order No. S1–DEL–RATES–2016, effective November 19, 2016, the Secretary of Energy delegated: (1) the authority to develop power and transmission rates to the Western Area Power Administration (WAPA) Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates, to the Federal Energy Regulatory Commission (FERC). By Delegation Order No. S1–DEL–S3–2024, effective August 30, 2024, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary for Infrastructure. By Redelegation Order No. S3–DEL–WAPA1–2023, effective April 10, 2023, the Under Secretary for Infrastructure further redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to WAPA's Administrator. This rate action is issued under Redelegation Order No. S3–DEL–WAPA1–2023 and DOE procedures for public participation in rate adjustments set forth at 10 CFR part 903.[2]

Acronyms, Terms, and Definitions

As used in this Rate Order, the following acronyms, terms, and definitions apply:

Base: A component of the firm electric service rate design that is a fixed revenue requirement that includes operation and maintenance expenses (O&M), investments and replacements, interest on investments and replacements, normal timing power purchases, and transmission costs.

Capacity: The electric capability of a generator, transformer, transmission circuit, or other equipment. It is expressed in kilowatts (kW) or megawatts (MW).

Capacity Rate: The rate which sets forth the charges for capacity. It is expressed in dollars per kilowatt-month and applied to each kilowatt of the Contract Rate of Delivery or CROD.

Composite Rate: The Power Repayment Study (PRS) rate for commercial firm power, which is the total annual revenue requirement for capacity and energy divided by the total annual energy sales. It is expressed in mills per kilowatt-hour (mills/kWh) and used only for comparison purposes.

Corps of Engineers Annual Operating Plan (AOP): The United States Army Corps of Engineers (USACE) water management guidelines designed to meet the reservoir regulation objectives.

Customer: An entity with a contract that is receiving Loveland Area Projects (LAP) firm electric service from WAPA.

Customer Rate Brochure: A document prepared for public distribution explaining the rationale and background for the information contained in the Proposed FRN and in this rate order.

[1] *Order Confirming and Approving Rate Schedules on a Final Basis,* FERC Docket No. EF23–1–000 (2023).

[2] 50 FR 37835 (Sept. 18, 1985) and 84 FR 5347 (Feb. 21, 2019).

[1] This Act transferred to, and vested in, the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s); and other acts that specifically apply to the projects involved.

[2] 50 FR 37835 (Sept. 18, 1985) and 84 FR 5347 (Feb. 21, 2019).

Deficit(s): Deferred or unrecovered annual and/or interest expenses.

Drought Adder: A component of the firm electric service rate design that is a formula-based revenue requirement that includes future power purchases above normal timing power purchases, previous purchase power drought-related Deficits, and interest on the purchase power drought-related Deficits.

Energy: Measured in terms of the work it is capable of doing over a period of time. Electric energy is expressed in kilowatt-hours (kWh) or megawatt-hours (MWh).

Energy Charge: The charge under the rate schedule for energy. It is expressed in mills per kilowatt-hour and applied to each kilowatt-hour delivered to each Customer.

Firm: Power intended to be available at all times during the period covered by a guaranteed commitment to deliver, even under adverse conditions.

FRN: **Federal Register** Notice—a document published in the **Federal Register** in order for WAPA to provide information of public interest.

FY: WAPA's fiscal year; October 1 to September 30.

kW: Kilowatt—the electrical unit of capacity that equals 1,000 watts.

kWh: Kilowatt-hour—the electrical unit of energy that equals 1,000 watts in 1 hour.

kW-month: Kilowatt-month—the electrical unit of the monthly amount of capacity.

mills/kWh: Mills per kilowatt-hour—the unit of charge for energy (equal to one tenth of a cent or one thousandth of a dollar).

Microsoft Teams: Microsoft Teams is an online secure invite-only meeting platform used by WAPA. The general website is *www.microsoft.com/en-us/microsoft-teams/group-chat-software.*

NEPA: National Environmental Policy Act of 1969, as amended.

Non-timing Power Purchases: Power purchases related to drought conditions, not related to operational constraints.

Normal Timing Power Purchases: Power purchases related to operational constraints (*e.g.,* management of endangered species habitat, water quality, navigation, balancing authority purposes, market events, etc.), not associated with drought conditions.

O&M: Operation and maintenance expenses.

Order RA 6120.2: DOE Order outlining Power Marketing Administration financial reporting and rate-making procedures.

Power: Capacity and energy.

Power Factor: The ratio of real to apparent power at any given point and time in an electrical circuit. Generally, it is expressed as a percentage.

Power Repayment Study (PRS): Defined in Order RA 6120.2 as a study portraying the annual repayment of power production and transmission costs of a power system through the application of revenues over the repayment period of the power system. The study shows, among other items, estimated revenues and expenses, year by year, over the remainder of the power system's repayment period (based upon conditions prevailing over the cost evaluation period), the estimated amount of Federal investment amortized during each year, and the total estimated amount of Federal investment remaining to be amortized.

Preference: The provisions of Reclamation Law that require WAPA to first make Federal Power available to certain entities. For example, section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) states that preference in the sale of Federal Power shall be given to municipalities and other public corporations or agencies and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made under the Rural Electrification Act of 1936.

Provisional Formula Rates: Formula rates confirmed, approved, and placed into effect on an interim basis by the Secretary of Energy or his/her designee.

Rate-setting PRS: The PRS used for the rate adjustment.

Regions: WAPA's Rocky Mountain (RM) region, WAPA's Upper Great Plains (UGP) region.

Revenue Requirement: The revenue required by the PRS to recover annual expenses (such as O&M, purchase power, transmission service expenses, interest, and deferred expenses) and repay Federal investments and replacements and other assigned costs.

Effective Date

The Provisional Formula Rate Schedules L–F13, Firm Electric Service; and L–M4, Sale of Surplus Products, will take effect on the first day of the first full billing period beginning on or after January 1, 2025, and will remain in effect through December 31, 2029, pending approval by FERC on a final basis or until superseded.

Public Notice and Comment

RM followed the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, in developing these formula rates. RM took the following steps to involve interested parties in the rate process:

1. On June 28, 2024, a **Federal Register** notice (89 FR 53992) (Proposed FRN) announced the proposed formula rates and initiated a 60-day public consultation and comment period.

2. On July 1, 2024, RM notified Preference Customers and interested parties of the proposed rates and provided a copy of the published Proposed FRN.

3. On August 7, 2024, RM held a public information forum via Microsoft Teams. RM's representatives explained the proposed formula rates, answered questions, and gave notice that more information was available in the Customer Rate Brochure.

4. On August 7, 2024, RM held a public comment forum via Microsoft Teams to provide an opportunity for Customers and other interested parties to comment for the record.

5. RM established a public website to post information about the rate process. The website is located at: *www.wapa.gov/about-wapa/regions/rm/rm-rates/2025-rate-adjustment-firm-electric-service.*

6. During the 60-day consultation and comment period, which ended on August 27, 2024, RM received three oral comment submissions and one written comment letter. The comments and RM's responses are addressed in the ''Comments'' section. All comments have been considered in the preparation of this Rate Order.

Oral comments were received from the following organizations:

City of Orange City, Iowa (member utility)

Mid-West Electric Consumers Association, Colorado (customer association)

Missouri River Energy Services, South Dakota (action agency)

Written comments were received from the following organization:

Mid-West Electric Consumers Association, Colorado (customer association)

Power Repayment Study—Firm Electric Service Rate Discussion

PRSs are prepared each FY to determine if revenues will be sufficient to repay, within the required time, all costs assigned to the Pick-Sloan Missouri Basin Program (P–SMBP) and the Fryingpan-Arkansas Project (Fry-Ark). Repayment criteria are based on applicable laws and legislation, as well as policies including Order RA 6120.2. To meet the Cost Recovery Criteria outlined in Order RA 6120.2, RM developed a rate adjustment to demonstrate that sufficient revenues will be collected under the Provisional

Formula Rate to meet future obligations. The Revenue Requirement of the Fry-Ark PRS is combined with the P–SMBP—Western Division (WD) Revenue Requirement, derived from the P–SMBP PRS, to develop one rate for LAP firm electric service. The Revenue Requirement and composite rate for LAP firm electric service are being increased using a two-step adjustment, where roughly 50 percent of the total increase is being applied in step 1 (January 2025) and the remaining 50 percent is being applied in step 2 (January 2026), as indicated in Table 1:

TABLE 1—COMPARISON OF EXISTING AND PROVISIONAL REVENUE REQUIREMENTS AND COMPOSITE RATE

LAP firm electric service	Existing under L–F12 as of Jan. 1, 2023	Provisional under L–F13 first step as of Jan. 1, 2025	First step percent change	Provisional under L–F13 second step as of Jan. 1, 2026	Second step percent change
Total Revenue Requirement [1] (in million $)	$74.6	$81.3	9.0	$87.9	8.1
Pick-Sloan—WD [1 2]					
Fry-Ark					
(in million $).	$58.5	$62.6	7.0	$66.3	5.9
	$16.1	$18.7	16.1	$21.6	15.5
LAP Composite Rate [1] (mills/kWh)	36.61	39.84	8.8	43.10	8.2

[1] Provisional values are estimates only based on using set/final Base and estimated Drought Adder components.
[2] Additional information on the overall P–SMBP PRS and charge components can be found in Rate Order No. WAPA–213 and on the UGP's website at: *www.wapa.gov/about-wapa/regions/ugp/ugp-rates/2025-firm-rate-adjustment*.

Firm Electric Service—Existing and Provisional Formula Rates

Under the existing and provisional rate methodology, rates for LAP firm electric service are designed to recover an annual Revenue Requirement that includes investment and replacement repayment (including aid to irrigation), interest, purchase power, O&M, and other expenses within the allowable period. The annual Revenue Requirement continues to be allocated equally between capacity and energy.

Base and Drought Adder Components

As a part of the existing and provisional rate schedule, RM provides for a formula-based adjustment of the Drought Adder component, with an annual increase of up to 2mills/kWh each year. The 2 mills/kWh cap places a limit on the amount the Drought Adder component can be adjusted upward relative to associated drought costs included in the Drought Adder formula rate for any 1-year cycle. The Drought Adder component may be adjusted downward by any amount. Continuing to identify the firm electric service Revenue Requirement using Base and Drought Adder components will assist the Regions in presenting the future impacts of droughts, demonstrate repayment of drought-related costs in the PRSs, and allow the Regions to be more responsive to changes caused by drought-related expenses. RM will continue to charge and bill its customers firm electric service rates for energy and capacity, which are the sum of the Base and Drought Adder components.

Under Rate Schedule L–F13, RM will continue to identify its LAP firm electric service Revenue Requirement using Base and Drought Adder components. The Base component is a fixed Revenue Requirement from each PRS that includes annual O&M, investment and replacement repayment, and associated interest, Normal Timing Power Purchases, and transmission costs. RM cannot adjust the Base component without a public process. The Drought Adder component is a formula-based Revenue Requirement from each PRS that includes costs attributable to drought conditions in the Regions. The Drought Adder component includes costs associated with future Non-timing Power Purchases to meet firm electric service contractual obligations not covered with available system generation due to a drought, previously incurred Deficits due to purchased power debt that resulted from Non-timing Power Purchases made during a drought, and the interest associated with drought-related Deficits. The Drought Adder component is designed to repay drought-related Deficits within 10 years from the time the Deficit was incurred, using balloon-payment methodology. For example, a drought-related Deficit incurred in FY2024 would be repaid by FY2034.

The annual Revenue Requirement calculation will continue to be summarized by the following formula: Annual Revenue Requirement = Base Revenue Requirement + Drought Adder Revenue Requirement.

Annual Drought Adder Adjustment Process

RM reviews the inputs for the P–SMBP and Fry-Ark PRS Base and Drought Adder components after the annual PRSs are complete, generally in the first quarter of the calendar year. If an adjustment to the LAP Base component is necessary, or if an incremental upward adjustment to the LAP Drought Adder component greater than the equivalent of 2 mills/kWh to the LAP Rate is necessary, RM will initiate a public process pursuant to 10 CFR part 903 prior to making an adjustment.

In accordance with the approved annual Drought Adder adjustment process, the PRS Drought Adder components are reviewed annually in early summer to determine if drought costs differ from those projected in the PRSs. In October, RM will determine if a change to the LAP Drought Adder component is necessary, either incremental or decremental. Any incremental adjustment to the Drought Adder component, up to 2mills/kWh, or any decremental adjustment will be implemented in the following January billing cycle. Although decremental adjustments to the Drought Adder component will occur as drought costs are repaid, the adjustments cannot result in a negative Drought Adder component. Implementing the Drought Adder component adjustment on January 1 of each year will help keep the drought-related Deficits from escalating as quickly, will lower the interest expense due to drought-related Deficits, will demonstrate responsible Deficit management, and will provide prompt drought-related Deficit repayments.

Revenue Requirement Changes

The Base component costs for the P–SMBP PRS have increased primarily due to increased O&M from WAPA and the generating agencies. The Base component costs for the Fry-Ark PRS have increased primarily due to

increased annual expenses, mainly attributed to transmission purchases and O&M from both WAPA and the Bureau of Reclamation and increases in capital investment projections for the Mount Elbert Power Plant repairs/refurbishment.

The driver behind the P–SMBP Drought Adder component decrease is the USACE's 2024 AOP projecting less than average generation, despite the improvement to generation as projected in the WAPA–202 January 2023 rate. Planned repayment of both the Base and Drought Adder Deficits are in the same time frame (2027) as they were projected to be repaid under WAPA–202. Uncertainties with water inflows, hydro generation, and replacement energy prices continue to pose potential risks regarding the ability to satisfy firm power contractual commitments.

The net effect of these changes to the PRS Base and Drought Adder components results in an overall increase to the LAP rate. To implement the required rate increase over a two-year period/in two steps, the Base component Revenue Requirements and associated charges for each step are set values. For the Drought Adder component, RM is using estimated Revenue Requirements and associated charges for each step based on the USACE's 2024 AOP and drought costs projected in the Rate-Setting PRSs. In accordance with the approved annual Drought Adder adjustment process, these Drought Adder estimates are subject to change based upon updated AOPs/generation models and revised drought costs. A comparison of the existing and provisional charge component Revenue Requirements for firm electric service are shown in Table 2:

TABLE 2—COMPARISON OF EXISTING AND PROVISIONAL CHARGE COMPONENT REVENUE REQUIREMENTS

LAP firm electric service	Existing under L–F12 as of Jan.1, 2023 (in million $)	Provisional under L–F13 first step as of Jan. 1, 2025 (in million $)	First step percent change	Provisional under L–F13 second step as of Jan. 1, 2026 (in million $)	Second step percent change
Base Component	$67.8	$76.4	12.7	$85.1	11.4
Pick-Sloan—WD [1]					
Fry—Ark	51.7	57.7	11.6	63.5	10.1
	16.1	18.7	16.1	21.6	15.5
Drought Adder Component [2]	6.8	4.9	−27.9	2.8	−42.9
Pick-Sloan—WD [1 2]					
Fry—Ark [2]	6.8	4.9	−27.9	2.8	−42.9
	0.0	0.0	0.0	0.0	0.0

[1] Additional information on the overall P–SMBP PRS and charge components can be found in Rate Order No.WAPA–213 and on UGP's website at: *www.wapa.gov/about-wapa/regions/ugp/ugp-rates/2025-firm-rate-adjustment*.

[2] Provisional values are estimates that may change during the existing annual Drought Adder adjustment process.

A summary of the provisional charge components is shown in Table 3:

TABLE 3—SUMMARY OF TWO-STEP PROVISIONAL CHARGE COMPONENTS

	Provisional charges under rate schedule L–F13 first step as of Jan. 1, 2025			Provisional charges under rate schedule L–F13 second step as of Jan. 1, 2026		
	Base component	Drought adder component [1]	Total charge [2]	Base component	Drought adder component [1]	Total charge [2]
Firm Capacity ($/kilowatt-month)	$4.91	$0.31	$5.22	$5.47	$0.18	$5.65
Firm Energy (mills/kWh)	18.72	1.20	19.92	20.86	0.69	21.55

[1] Provisional values are estimates that may change during the existing annual Drought Adder adjustment process.

[2] Provisional values are estimates only based on using final Base and estimated Drought Adder components.

Statement of Revenue and Related Expenses

The following Table 4 provides a summary of projected revenue and expense data for the Fry-Ark firm power service Revenue Requirement through the 5-year provisional rate approval periods:

BILLING CODE 6450–01–P

Table 4 – Fry-Ark Comparison of 5-Year Rate Periods
Total Revenues and Expenses

Fry-Ark	Existing Rate FY 2023-2027 (in thousand $)	Provisional Rate FY 2025-2029 (in thousand $)	Difference (in thousand $)
Revenues:			
Firm Power	$80,557	$105,025	$24,468
Other Revenue	$33,909	$27,908	-$6,001
Total Revenues	**$114,466**	**$132,933**	**$18,467**
Revenue Distribution:			
Expenses:			
O&M	$38,760	$44,561	$5,801
Purchase Power	$1,378	$2,662	$1,284
Transmission	$20,182	$24,704	$4,522
Ancillary Services	$6,513	$2,167	-$4,346
Interest	$12,446	$13,696	$1,250
Total Expenses	**$79,279**	**$87,790**	**$8,511**
Principal Payments:			
Capitalized Expenses (deficits)	$0	$0	$0
Original Project and Additions	$12,873	$19,957	$7,084
Replacements	$22,314	$25,186	$2,872
Total Principal Payments	**$35,187**	**$45,143**	**$9,956**
Total Revenue Distribution	**$114,466**	**$132,933**	**$18,467**

BILLING CODE 6450–01–C

The summary of the P–SMBP projected revenue and expenses for the 5-year rate-setting periods is included in the P–SMBP Statement of Revenue and Related Expenses that is part of Rate Order No. WAPA–213.

Sale of Surplus Products Rate Discussion

The sale of surplus products rate schedule is formula-based, providing for LAP Marketing Office to sell LAP surplus energy and capacity products. If LAP surplus products are available, as specified in the rate schedule, the charge will be based on market rates plus administrative costs. The customer will be responsible for acquiring transmission service necessary to deliver the product(s) for which a separate charge may be incurred. Rate Schedule L–M3 is being superseded by the Provisional Rate Schedule L–M4 and continues to allow for the sale of energy, frequency response, regulation, and reserves.

Comments

RM received four separate oral and/or written comments during the public consultation and comment period. The comments expressed have been paraphrased and/or combined, where appropriate, without compromising the meaning of the comments.

A. *Comment:* The customer association, member utility, and action agency commented that they understand a rate increase is necessary due to inflation on O&M and labor costs, along with increased debt principal costs and they support and appreciate the increase being implemented in two steps rather than one large increase.

Response: WAPA appreciates the recognition of the impacts many entities are facing due to increasing inflation and labor costs, the specific costs of the power repayment study, and the two-step implementation for the rate adjustment.

B. *Comment:* The customer association and the action agency commented that they have a concern with the addition of new Full-Time Employees (FTE) when many positions within WAPA remain unfilled. The customers encourage WAPA to evaluate its internal processes for cost control, seeking efficiencies in workflow and staffing.

Response: WAPA understands the concern raised with the addition of new FTEs and the impacts of the FTEs to the rate. WAPA is committed to finding ways to limit cost increases impacting its customers while still ensuring it has the positions needed to fulfill its mission.

C. *Comment:* The action agency commented that they lack an understanding of any compromises made within the budgeting process to meet the WAPA Administrator's guidance stating tradeoffs need to be made. The action agency also stated they believe that this guidance could have been followed as an element of cost control.

Response: WAPA appreciates the comment regarding the need for better cost control and that compromises in the budgeting process may be necessary

to accomplish this effort. WAPA is committed to looking for ways to control its costs and will continue to communicate its funding priorities to its customers.

D. *Comment:* The action agency and the customer association commented that they have concerns about the long-term viability of the P–SMBP going forward as it faces significant financial and operational issues in the future including: (1) USACE's plan of rehabilitation of the Missouri River; (2) dam safety repairs; (3) Aid to Irrigation payments coming due; and (4) environmental impact issues from non-supporting stakeholders. They also expressed their concern that these issues could result in significant future rate impacts to the firm power customers and that WAPA needs to focus on cost control in the future.

Response: WAPA appreciates the concerns regarding the long-term stability and affordability of the P–SMBP beyond the 5-year rate window. WAPA is committed to continuing to focus on the impact of rising costs and to mitigate those costs when possible.

E. *Comment:* The customer organization commented that they appreciate WAPA engaging with the customers early in the ratemaking process, responding to Customer concerns and questions. The customer organization also commented that they encourage WAPA leadership to support their rates and finance teams who have long-standing working relationships with the customers.

Response: WAPA appreciates the comment regarding WAPA's commitment to engaging with the Customers on issues concerning the firm power rate.

Certification of Rates

I have certified that the Provisional Formula Rates for LAP firm electric service under Rate Schedule L–F13 and LAP sale of surplus products under Rate Schedule L–M4 are the lowest possible rates, consistent with sound business principles. The Provisional Formula Rates were developed following administrative policies and applicable laws.

Availability of Information

Information used by RM to develop the Provisional Formula Rates is available for inspection and copying at the Rocky Mountain Regional Office, 5555 East Crossroads Boulevard, Loveland, Colorado. Many of these documents are also available on RM's Rates website at: *www.wapa.gov/about-wapa/regions/rm/rm-rates/2025-rate-adjustment-firm-electric-service.*

Ratemaking Procedure Requirements

Environmental Compliance

WAPA has determined that this action fits within the following categorical exclusion listed in appendix B to subpart D of 10 CFR part 1021: B4.3 (Electric power marketing rate changes).[3] Categorically excluded projects and activities do not require preparation of either an environmental impact statement or an environmental assessment. A copy of the categorical exclusion determination is available on WAPA's Rates website at: *www.wapa.gov/wp-content/uploads/2024/10/2025-001-Proposed-Loveland-area-FY25-Rate-adjustment-CX.pdf.*

Determination Under Executive Order 12866

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Submission to the Federal Energy Regulatory Commission

The Provisional Formula Rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and final approval.

Order

In view of the above and under the authority delegated to me, I hereby confirm, approve, and place into effect, on an interim basis, Rate Order No. WAPA–212. The rates will remain in effect on an interim basis until: (1) FERC confirms and approves them on a final basis; (2) subsequent rates are confirmed and approved; or (3) such rates are superseded.

Signing Authority

This document of the Department of Energy was signed on November 12, 2024, by Tracey A. LeBeau, Administrator, Western Area Power Administration, 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 14, 2024.

Treena V. Garrett,

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

Rate Schedule L–F13

(Supersedes Rate Schedule L–F12 Effective January 1, 2023)

United States Department of Energy

Western Area Power Administration

Rocky Mountain Region

Loveland Area Projects

Firm Electric Service

(Approved Under Rate Order No. WAPA–212)

Effective

First Step: Beginning on the first day of the first full billing period beginning on or after January 1, 2025, through December 31, 2025.

Second Step: Beginning on January 1, 2026, and extending through December 31, 2029, or until superseded by another rate schedule, whichever occurs earlier.

Available

Within the marketing area served by the Loveland Area Projects (LAP) (consisting of the Fryingpan-Arkansas Project and the Pick-Sloan Missouri Basin Program—Western Division, which were integrated for marketing and rate-making purposes in 1989), parts of Colorado, Kansas, Nebraska, and Wyoming.

Applicable

To the LAP firm electric service delivered at specific point(s) of delivery, as established by contract.

Character

Alternating current, 60 hertz, three phase, delivered and metered at the voltages and points established by contract.

Formula Rate and Charge Components

LAP Firm Electric Service Rate (Rate) = Base component + Drought Adder component:

[3] The determination was done in compliance with NEPA (42 U.S.C. 4321–4347); the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

	First step January 1, 2025 monthly charges			Second step January 1, 2026 monthly charges		
	Base component	Drought adder component	Total charge	Base component	Drought adder component [1]	Total charge [2]
Capacity Charge ($/kilowatt-month of billing capacity [3])	$4.91	$0.31	$5.22	$5.47	$0.18	$5.65
Energy Charge (mills/kWh of monthly entitlement)	18.72	1.20	19.92	20.86	0.69	21.55

[1] Values are estimates that are subject to change during the annual Drought Adder adjustment process.
[2] Values are estimates only based on final Base and estimated Drought Adder components.
[3] Unless otherwise specified by contract, the billing capacity will be the seasonal contract rate of delivery.

Charge Components

Base Component: A fixed revenue requirement that includes operation and maintenance expense, investments and replacements, interest on investments and replacements, normal timing power purchases (purchases due to operational constraints, not associated with drought), and transmission costs. Any proposed change to the Base component will require a public process. The Base component revenue requirement for the first step is $76,396,300 and for the second step is $85,126,600.

Base formulas:

$$\text{Base Capacity} = \frac{50\% \times \text{Base Revenue Requirement}}{\text{Firm Billing Capacity}}$$

$$\text{Base Energy} = \frac{50\% \times \text{Base Revenue Requirement}}{\text{Annual Energy}}$$

Drought Adder Component: A formula-based revenue requirement that includes future power purchases above normal timing power purchases, previous purchase power drought-related deficits, and interest on the purchase power drought-related deficits. The Drought Adder component revenue requirement for the first step is $4,890,480 and for the second step is estimated to be $2,803,080. The second step revenue requirement is subject to change during the annual Drought Adder adjustment processes starting in January 2026.

Drought Adder formulas:

$$\text{Drought Adder Capacity} = \frac{50\% \times \text{Drought Adder Revenue Requirement}}{\text{Firm Billing Capacity}}$$

$$\text{Drought Adder Energy} = \frac{50\% \times \text{Drought Adder Revenue Requirement}}{\text{Annual Energy}}$$

Annual Drought Adder Adjustment Process

The Drought Adder component may be adjusted annually using the above formulas for any costs attributed to drought of less than or equal to the equivalent of 2 mills/kWh to the Rate. Any planned incremental upward adjustment to the Drought Adder component greater than the equivalent of 2 mills/kWh to the Rate will require a public process.

The annual review process is initiated in early summer when the Rocky Mountain (RM) region reviews the Drought Adder component and provides notice of any estimated change to the Drought Adder component charge under the formula. In October, RM will make a final determination of any change to the Drought Adder component charge, either incremental or decremental. If a Drought Adder component change is required, a modified Drought Adder revenue requirement and the associated charges will become effective the following January 1 and will be identified in a Drought Adder modification update. RM will inform customers of updates by letter and post updates to RM's external website.

Adjustments

For Transformer Losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

For Power Factor: None. Customers will be required to maintain a power factor within the range of 95-percent leading to 95-percent lagging, measured at the point of interconnection.

Rate Schedule L–M4

(Supersedes Rate Schedule L–M3 Effective January 1, 2023)

United States Department of Energy

Western Area Power Administration

Rocky Mountain Region

Loveland Area Projects

Sale of Surplus Products

(Approved Under Rate Order No. WAPA–212)

Effective

The first day of the first full billing period beginning on or after January 1, 2025, and extending through December 31, 2029, or until superseded by another rate schedule, whichever occurs earlier.

Applicable

This rate schedule applies to Loveland Area Projects (LAP) marketing and is applicable to the sale of the following LAP surplus energy and capacity products: energy, frequency response, regulation, and reserves. If any of the above LAP surplus products are available, LAP can make the product(s) available for sale, providing entities enter into separate agreement(s) with LAP Marketing Office which will specify the terms of sale(s).

Formula Rate

The charge for each product will be determined at the time of the sale based on market rates, plus administrative costs. The customer will be responsible for acquiring transmission service necessary to deliver the product(s), for which a separate charge may be incurred.

[FR Doc. 2024–26932 Filed 11–19–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program—Eastern Division—Rate Order No. WAPA–213

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: The formula rates for the Upper Great Plains (UGP) region's Pick-Sloan Missouri Basin Program (P–SMBP)—Eastern Division (ED) firm power service, firm peaking power service, and sale of surplus products have been confirmed, approved, and placed into effect on an interim basis (Provisional Formula Rates). These new formula rates replace the existing formula rates for these services under Rate Schedules P–SED–F14, Firm Power Service; P–SED–FP14, Firm Peaking Power Service; and P–SED–M2, Sale of Surplus Products, which expire on December 31, 2027. The P–SMBP—ED firm power service composite rate is increasing over a 2-year period with a 7.5 percent increase on January 1, 2025, and an additional 6.2 percent increase on January 1, 2026. There are no changes to the formula rate for sale of surplus products.

DATES: The Provisional Formula Rates under Rate Schedules P–SED–F15, Firm Power Service; P–SED–FP15, Firm Peaking Power Service; and Rate Schedule P–SED–M3, Sale of Surplus Products, are effective on the first day of the first full billing period beginning on or after January 1, 2025, and will remain in effect through December 31, 2029, pending confirmation and approval by the Federal Energy Regulatory Commission (FERC) on a final basis or until superseded.

FOR FURTHER INFORMATION CONTACT: Lloyd Linke, Regional Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, 6th Floor, Billings, MT 59101–1266, or email: *ugpfirmrate@wapa.gov,* or Linda Cady-Hoffman, Rates Manager, Upper Great Plains Region, Western Area Power Administration, (406) 255–2920, or email: *cady@wapa.gov* or *ugpfirmrate@wapa.gov*.

SUPPLEMENTARY INFORMATION: On June 29, 2023, FERC confirmed and approved Formula Rate Schedules P–SED–F14, P–SED–FP14, and P–SED–M2, under Rate Order No. WAPA–203, on a final basis through December 31, 2027.[1] Western Area Power Administration (WAPA) published a **Federal Register** notice (Proposed FRN) on June 28, 2024 (89 FR 53989), proposing adjustments to increase the base component and decrease the drought adder component of the P–SMBP—ED firm power service and firm peaking power service rate using a two-step rate adjustment where roughly 50 percent of the total increase is being applied in step 1 (January 2025) and the remaining 50 percent is being applied in step 2 (January 2026), and to put new 5-year rate schedules in place. The Proposed FRN also initiated a 60-day public consultation and comment period and set forth the dates and locations of the virtual public information and public comment forums.

[1] *Order Confirming and Approving Rate Schedule on a Final Basis,* FERC Docket No. EF23–2–000 (2023).

Legal Authority

By Delegation Order No. S1–DEL–RATES–2016, effective November 19, 2016, the Secretary of Energy delegated: (1) the authority to develop power and transmission rates to the WAPA Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates, to FERC. By Delegation Order No. S1–DEL–S3–2024, effective August 30, 2024, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary for Infrastructure. By Redelegation Order No. S3–DEL–WAPA1–2023, effective April 10, 2023, the Under Secretary for Infrastructure further redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to WAPA's Administrator. This rate action is issued under Redelegation Order No. S3–DEL–WAPA1–2023 and Department of Energy procedures for public participation in rate adjustments set forth at 10 CFR part 903.[2]

Following review of UGP's proposal, Rate Order No. WAPA–213, which provides the formula rates for the P–SMBP—ED firm power service, firm peaking power service, and sale of surplus products, is hereby confirmed, approved, and placed into effect on an interim basis. WAPA will submit Rate Order No. WAPA–213 to FERC for confirmation and approval on a final basis.

Department of Energy

Administrator, Western Area Power Administration

In the Matter of: Western Area Power Administration, Upper Great Plains Region, Rate Adjustment for the Pick-Sloan Missouri Basin Program—Eastern Division, Firm Power Service, Firm Peaking Power Service, and Sale of Surplus Products Formula Rates, Rate Order No. WAPA–213

Order Confirming, Approving, and Placing The Formula Rates for the Pick-Sloan Missouri Basin Program—Eastern Division into Effect on an Interim Basis

The formula rates in Rate Order No. WAPA–213 are established following section 302 of the Department of Energy

[2] 50 FR 37835 (Sept. 18, 1985) and 84 FR 5347 (Feb. 21, 2019).

(DOE) Organization Act (42 U.S.C. 7152).[1]

By Delegation Order No. S1–DEL–RATES–2016, effective November 19, 2016, the Secretary of Energy delegated: (1) the authority to develop power and transmission rates to the Western Area Power Administration (WAPA) Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates, to the Federal Energy Regulatory Commission (FERC). By Delegation Order No. S1–DEL–S3–2024, effective August 30, 2024, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary for Infrastructure. By Redelegation Order No. S3–DEL–WAPA1–2023, effective April 10, 2023, the Under Secretary for Infrastructure further redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to WAPA's Administrator. This rate action is issued under Redelegation Order No. S3–DEL–WAPA1–2023 and DOE procedures for public participation in rate adjustments set forth at 10 CFR part 903.[2]

Acronyms, Terms, and Definitions

As used in this Rate Order, the following acronyms, terms, and definitions apply:

Base: A component of the firm power and firm peaking power rate design that is a fixed revenue requirement that includes operation and maintenance expenses (O&M), investments and replacements, interest on investments and replacements, normal timing power purchases, and transmission costs.

Capacity: The electric capability of a generator, transformer, transmission circuit, or other equipment. It is expressed in kilowatts (kW) or megawatts (MW).

Composite Rate: The Power Repayment Study (PRS) rate for commercial firm power, which is the total annual revenue requirement for capacity and energy divided by the total annual energy sales. It is expressed in mills per kilowatt-hour (mills/kWh) and used only for comparison purposes.

Corps of Engineers Annual Operating Plan (AOP): The United States Army Corps of Engineers (USACE) water management guidelines designed to meet the reservoir regulation objectives.

Customer: An entity with a contract that is receiving Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP—ED) firm power service from WAPA.

Customer Rate Brochure: A document prepared for public distribution explaining the rationale and background for the information contained in the Proposed FRN and in this rate order.

Deficit(s): Deferred or unrecovered annual and/or interest expenses.

Demand: The rate at which electric energy is delivered to or by a system or part of a system, generally expressed in kilowatts (kW) or megawatts (MW), at a given instant or averaged over any designated interval of time.

Drought Adder: A component of the firm power and firm peaking power rate design that is a formula-based revenue requirement that includes future power purchases above normal timing power purchases, previous purchase power drought-related Deficits, and interest on the purchase power drought-related Deficits.

Energy: Measured in terms of the work it is capable of doing over a period of time. Electric energy is expressed in kilowatt-hours (kWh) or megawatt-hours (MWh).

Energy Charge: The charge under the rate schedule for energy. It is expressed in mills per kilowatt-hour and applied to each kilowatt-hour delivered to each Customer.

Firm: Power intended to be available at all times during the period covered by a guaranteed commitment to deliver, even under adverse conditions.

FRN: **Federal Register** Notice—a document published in the **Federal Register** in order for WAPA to provide information of public interest.

FY: WAPA's fiscal year; October 1 to September 30.

kW: Kilowatt—the electrical unit of capacity that equals 1,000 watts.

kWh: Kilowatt-hour—the electrical unit of energy that equals 1,000 watts in 1 hour.

kW-month: Kilowatt-month—the electrical unit of the monthly amount of capacity.

mills/kWh: Mills per kilowatt-hour—the unit of charge for energy (equal to one tenth of a cent or one thousandth of a dollar).

Microsoft Teams: Microsoft Teams is an online secure invite-only meeting platform used by WAPA. The general website is *www.microsoft.com/en-us/microsoft-teams/group-chat-software*.

NEPA: National Environmental Policy Act of 1969, as amended.

Non-timing Power Purchases: Power purchases related to drought conditions, not related to operational constraints.

Normal Timing Power Purchases: Power purchases related to operational constraints (*e.g.,* management of endangered species habitat, water quality, navigation, balancing authority purposes, market events, etc.), not associated with drought conditions.

O&M: Operation and maintenance expenses.

Order RA 6120.2: DOE Order outlining Power Marketing Administration financial reporting and rate-making procedures.

Power: Capacity and energy.

Power Factor: The ratio of real to apparent power at any given point and time in an electrical circuit. Generally, it is expressed as a percentage.

Power Repayment Study (PRS): Defined in Order RA 6120.2 as a study portraying the annual repayment of power production and transmission costs of a power system through the application of revenues over the repayment period of the power system. The study shows, among other items, estimated revenues and expenses, year by year, over the remainder of the power system's repayment period (based upon conditions prevailing over the cost evaluation period), the estimated amount of Federal investment amortized during each year, and the total estimated amount of Federal investment remaining to be amortized.

Preference: The provisions of Reclamation Law that require WAPA to first make Federal Power available to certain entities. For example, section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) states that preference in the sale of Federal Power shall be given to municipalities and other public corporations or agencies and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made under the Rural Electrification Act of 1936.

Provisional Formula Rates: Formula rates confirmed, approved, and placed into effect on an interim basis by the Secretary of Energy or his/her designee.

Rate-setting PRS: The PRS used for the rate adjustment.

Regions: WAPA's Rocky Mountain (RM) region, WAPA's Upper Great Plains (UGP) region.

Revenue Requirement: The revenue required by the PRS to recover annual expenses (such as O&M, purchase power, transmission service, interest,

[1] This Act transferred to, and vested in, the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s); and other acts that specifically apply to the projects involved.

[2] 50 FR 37835 (Sept. 18, 1985) and 84 FR 5347 (Feb. 21, 2019).

and deferred expenses) and repay Federal investments and replacements and other assigned costs.

Effective Date

The Provisional Formula Rate Schedules P–SED–F15, Firm Power Service; P–SED–FP15, Firm Peaking Power Service; and P–SED–M3, Sale of Surplus Products, will take effect on the first day of the first full billing period beginning on or after January 1, 2025, and will remain in effect through December 31, 2029, pending approval by FERC on a final basis or until superseded.

Public Notice and Comment

UGP followed the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, in developing these formula rates. UGP took the following steps to involve interested parties in the rate process:

1. On June 28, 2024, a **Federal Register** notice (89 FR 53989) (Proposed FRN) announced the proposed formula rates and launched the 60-day public consultation and comment period.

2. On July 2, 2024, UGP notified Preference Customers and interested parties of the proposed rates and provided a copy of the published Proposed FRN.

3. On August 7, 2024, UGP held a public information forum via Microsoft Teams. UGP's representatives explained the proposed formula rates, answered questions, and gave notice that more information was available in the Customer Rate Brochure.

4. On August 7, 2024, UGP held a public comment forum via Microsoft Teams to provide an opportunity for Customers and other interested parties to comment for the record.

5. UGP established a public website to post information about the rate process. The website is located at: *www.wapa.gov/about-wapa/regions/ugp/ugp-rates/2025-firm-rate-adjustment.*

6. During the 60-day consultation and comment period, which ended on August 27, 2024, UGP received three oral comment submissions and 20 written comment letters. The comments and UGP's responses are addressed in the ''Comments'' section. All comments have been considered in the preparation of this Rate Order.

Oral comments were received from the following organizations:

City of Orange City, Iowa (member utility)
Mid-West Electric Consumers Association, Colorado (customer association)
Missouri River Energy Services, South Dakota (action agency)

Written comments were received from the following organizations:

East River Electric Power Cooperative, South Dakota (member utility)
Mid-West Electric Consumers Association, Colorado (customer association)
Missouri River Energy Services, South Dakota (action agency)
City of Alton, Iowa (member utility)
City of Benson, Minnesota (member utility)
City of Denison, Iowa (member utility)
City of Detroit Lakes, Minnesota (member utility)
City of Hawarden, Iowa (member utility)
City of Lake Park, Iowa (member utility)
City of Madison, Minnesota (member utility)
City of Orange City, Iowa (member utility)
City of Rock Rapids, Iowa (member utility)
City of Sauk Centre, Minnesota (member utility)
City of Sioux Center, Iowa (member utility)
City of Valley City, North Dakota (member utility)
City of Vermillion, South Dakota (member utility)
City of Wadena, Minnesota (member utility)
City of Watertown, South Dakota (member utility)
City of Willmar, Minnesota (member utility)
City of Worthington, Minnesota (member utility)

Power Repayment Study—Firm Power Service Rate Discussion

A PRS is prepared each FY to determine if revenues will be sufficient to repay, within the required time, all costs assigned to the Pick-Sloan Missouri Basin Program (P–SMBP). Repayment criteria are based on applicable laws and legislation as well as policies including Order RA 6120.2. To meet the Cost Recovery Criteria outlined in Order RA 6120.2, UGP developed a rate adjustment to demonstrate sufficient revenues will be collected under the Provisional Formula Rates to meet future obligations. The Revenue Requirement for P–SMBP is recovered by both the UGP in the P–SMBP—ED rates and by RM in the Loveland Area Projects (LAP) rate. The Revenue Requirement and composite rate for P–SMBP—ED firm power service is being increased using a two-step adjustment, where roughly 50 percent of the total increase is being applied in step 1 (January 2025) and the remaining 50 percent is being applied in step 2 (January 2026), as indicated in Table 1:

TABLE 1—COMPARISON OF EXISTING AND PROVISIONAL REVENUE REQUIREMENTS AND COMPOSITE RATE

P–SMBP firm power service	Existing under P–SED–F14 as of Jan. 1, 2023	Provisional under P–SED–F15 first step as of Jan. 1, 2025 [1]	First Step Percent Change	Provisional under P–SED–F15 second step as of Jan. 1, 2026 [2]	Second step percent change
Total Revenue Requirement (in million $)	$268.4	$288.1	7.4	$306.0	6.2
P–SMBP—ED Composite Rate (mills/kWh)	27.91	30.00	7.5	31.87	6.2

[1] Provisional values are estimates only based on using set/final Base and estimated Drought Adder components.
[2] Provisional values are estimates that may change during the existing annual drought adder adjustment process.

Firm Power Service—Existing and Provisional Formula Rates

Under the existing and provisional rate methodology, rates for P–SMBP—ED firm power and firm peaking power services are designed to recover an annual Revenue Requirement that includes investment and replacement repayment (including aid to irrigation), interest, purchase power, O&M, and other expenses within the allowable period. The annual Revenue Requirement continues to be allocated equally between demand and energy.

Base and Drought Adder Components

As a part of the existing and provisional rate schedules, UGP provides for a formula-based adjustment

of the Drought Adder component, with an annual increase of up to 2 mills/kWh. The 2 mills/kWh cap places a limit on the amount the Drought Adder component can be adjusted upward relative to associated drought costs included in the Drought Adder formula rate for any 1-year cycle. The Drought Adder component may be adjusted downward by any amount. Continuing to identify the firm power service Revenue Requirement using Base and Drought Adder components will assist the Regions in presenting future impacts of droughts, demonstrate repayment of drought-related costs in the PRS, and allow the Regions to be more responsive to changes caused by drought-related expenses. UGP will continue to charge and bill its customers firm power and firm peaking power service rates for energy and demand, which are the sum of the Base and Drought Adder components.

Under Rate Schedule P–SED–F15, UGP will continue to identify its P–SMBP—ED firm power service Revenue Requirement using Base and Drought Adder components. The Base component is a fixed Revenue Requirement that includes annual O&M, investment and replacement repayment, and associated interest, Normal Timing Power Purchases, and transmission costs. UGP cannot adjust the Base component without a public process. The Drought Adder component is a formula-based Revenue Requirement that includes costs attributable to drought conditions in the Regions. The Drought Adder component includes costs associated with future Non-timing Power Purchases to meet firm power service contractual obligations not covered with available system generation due to a drought, previously incurred Deficits due to purchased power debt that resulted from Non-timing Power Purchases made during a drought, and the interest associated with drought-related Deficits. The Drought Adder component is designed to repay drought-related Deficits within 10 years from the time the Deficit was incurred, using balloon-payment methodology. For example, a drought-related Deficit incurred in FY 2024 would be repaid by FY 2034.

The annual Revenue Requirement calculation will continue to be summarized by the following formula: Annual Revenue Requirement = Base Revenue Requirement + Drought Adder Revenue Requirement.

Annual Drought Adder Adjustment Process

The Regions review the inputs for the P–SMBP Base and Drought Adder components after the annual PRS is complete, generally in the first quarter of the calendar year. If an adjustment to the P–SMBP Base component is necessary, or if an incremental upward adjustment to the P–SMBP PRS Drought Adder component greater than the equivalent of 2 mills/kWh to the P–SMBP Composite Rate is necessary, the Regions will initiate a public process pursuant to 10 CFR part 903 prior to making an adjustment.

In accordance with the approved annual Drought Adder adjustment process, the PRS Drought Adder component is reviewed annually in early summer to determine if drought costs differ from those projected in the PRS. In October, the Regions will determine if a change to the Drought Adder component is necessary, either incremental or decremental. Any incremental adjustment to the Drought Adder component, up to 2 mills/kWh, or any decremental adjustment will be implemented in the following January billing cycle. Although decremental adjustments to the Drought Adder component will occur as drought costs are repaid, the adjustments cannot result in a negative Drought Adder component. Implementing the Drought Adder component adjustment on January 1 of each year will help keep the drought-related Deficits from escalating as quickly, will lower the interest expense due to drought-related Deficits, will demonstrate responsible Deficit management, and will provide prompt drought-related Deficit repayments.

Revenue Requirement Changes

The Base component costs for the P–SMBP PRS have increased primarily due to increased O&M from WAPA and the generating agencies.

The driver behind the P–SMBP Drought Adder component decrease is the USACE's 2024 AOP projecting less than average generation, despite the improvement to generation as projected in the WAPA–203 January 2023 rates. Planned repayment of both the Base and Drought Adder Deficits are in the same time frame (2027) as they were projected to be repaid under WAPA–203. Uncertainties with water inflows, hydro generation, and replacement energy prices continue to pose potential risks regarding the ability to satisfy firm power contractual commitments.

The net effect of these changes to the PRS Base and Drought Adder components results in an overall increase to the P–SMBP rate. To implement the required rate increase over a two-year period/in two steps, the Base component Revenue Requirements and associated charges for each step are set values. For the Drought Adder component, UGP is using estimated Revenue Requirements and associated charges for each step based on the USACE's 2024 AOP and drought costs projected in the Rate-Setting PRS. In accordance with the approved annual drought adder adjustment process, these Drought Adder estimates are subject to change based upon updated AOPs/generation models and revised drought costs. A comparison of the existing and provisional charge component Revenue Requirement for firm power service are shown in Table 2:

TABLE 2—COMPARISON OF EXISTING AND PROVISIONAL CHARGE COMPONENT REVENUE REQUIREMENTS

P–SMBP—ED firm power service	Existing under P–SED–F14/P–SED–FP14 as of Jan. 1, 2023 (in million $)	Provisional under P–SED–F15/P–SED–FP15 first step as of Jan. 1, 2025 [1] (in million $)	First step percent change	Provisional under P–SED–F15/P–SED–FP15 second step as of Jan. 1, 2026 [1] (in million $)	Second step percent change
Base Component	$235.4	$264.5	12.4	$292.4	10.5
Drought Adder Component	33.0	23.6	−28.5	13.6	−42.4

[1] Provisional values are estimates that may change during the existing annual Drought Adder adjustment process.

A summary of the provisional charge components is shown in Table 3:

TABLE 3—SUMMARY OF TWO-STEP PROVISIONAL CHARGE COMPONENTS

	Provisional charges under rate schedules P–SED–F15 and P–SED–FP15 first step as of Jan. 1, 2025			Provisional charges under rate schedules P–SED–F15 and P–SED–FP15 second step as of Jan. 1, 2026		
	Base component	Drought adder component [1]	Total charge [2]	Base component	Drought adder component [1]	Total charge [2]
Firm Demand ($/kilowatt-month)	$6.05	$0.55	$6.60	$6.70	$0.30	$7.00
Firm Energy (mills/kWh)	15.21	1.34	16.55	16.80	0.80	17.60
Firm Peaking Demand ($/kilowatt-month)	$5.55	$0.50	$6.05	$6.10	$0.30	$6.40
Firm Peaking Energy [3] (mills/kWh)	15.21	1.34	16.55	16.80	0.80	17.60

[1] Provisional values are estimates that may change during the existing annual Drought Adder adjustment process.
[2] Provisional values are estimates only based on using final Base and estimated Drought Adder components.
[3] Firm peaking energy is normally returned. This charge will be assessed in the event firm peaking energy is not returned.

Statement of Revenue and Related Expenses

The following Table 4 provides a summary of the projected revenue and expense data for the P–SMBP firm power service Revenue Requirement through the 5-year provisional rate approval periods:

BILLING CODE 6450–01–P

Table 4 – P-SMBP Comparison of 5-Year Rate Periods
Total Revenues and Expenses

	Existing Rate FY 2023-2027 (in million $)	Provisional Rate FY 2025-2029 (in million $)	Difference (in million $)
Total Revenues	$3,185.8	$3,357.2	$171.4
Revenue Distribution:			
Expenses:			
O&M	$1,376.5	$1,603.2	$226.7
Purchase Power	$ 288.0	$ 300.8	$ 12.8
Transmission	$ 516.5	$ 574.0	$ 57.5
Interest	$ 845.2	$ 539.5	-$305.7
Total Expenses	$3,026.2	$3,017.5	-$ 8.7
Principal Payments:			
Capitalized Expenses (Deficits)	$111.2	$176.1	$ 64.9
Original Project and Additions	$ 38.2	$114.9	$ 76.7
Irrigation Aid	$ 0.0	$ 0.0	$ 0.0
Replacements	$ 10.2	$ 48.7	$ 38.5
Total Principal Payments	$159.6	$339.7	$180.1
Total Revenue Distribution	$3,185.8	$3,357.2	$171.4

BILLING CODE 6450–01–C

Sale of Surplus Products Rate Discussion

The sale of surplus products rate schedule is formula-based, providing for P–SMBP—ED Marketing Office to sell P–SMBP—ED surplus energy and demand products. If P–SMBP—ED surplus products are available, as specified in the rate schedule, the charge will be based on market rates plus administrative costs. The customer will be responsible for acquiring transmission service necessary to deliver the product(s) for which a

separate charge may be incurred. Rate Schedule P–SED–M2 is being superseded by the Provisional Rate Schedule P–SED–M3 and continues to allow for the sale of energy, frequency response, regulation, and reserves.

Comments

UGP received 23 separate oral and/or written comments during the public consultation and comment period. The comments expressed have been paraphrased and/or combined, where appropriate, without compromising the meaning of the comments:

A. *Comment:* The action agency commented that the rate adjustment is a $15 million cumulative increase for their member communities. The member utilities commented that the rate adjustment would have increases ranging from $30,000 to $490,000 annually in wholesale power supply costs depending on the customers' Contract Rate of Delivery (CROD).

Response: WAPA recognizes the magnitude of the increased rate and its impact on its customers. WAPA is committed to continuing to adapt to rising industry costs while also providing power and energy to its customers at the lowest cost possible. WAPA does not take the increase in costs lightly and is committed to continuing to find ways to limit the impact of increasing industry costs as much as possible.

B. *Comment:* The customer association, member utilities, and action agency commented that they understand a rate increase is necessary due to inflation on O&M and labor costs, along with increased debt principal costs and they support and appreciate the increase being implemented in two steps rather than one large 14 percent increase.

Response: WAPA appreciates the recognition of the impacts many entities are facing due to increasing inflation and labor costs, the specific costs of the power repayment study, and the two-step implementation for the rate adjustment.

C. *Comment:* The customer association, member utilities, and the action agency commented that they have a concern with the addition of new Full-Time Employees (FTE) when many positions within WAPA remain unfilled. The customers encourage WAPA to evaluate its internal processes for cost control, seeking efficiencies in workflow and staffing.

Response: WAPA understands the concern raised with the addition of new FTEs and the impacts of the FTEs to the rate. WAPA is committed to finding ways to limit cost increases impacting its customers while still ensuring it has the positions needed to fulfill its mission.

D. *Comment:* The action agency commented that they lack an understanding of any compromises made within the budgeting process to meet the WAPA Administrator's guidance stating tradeoffs need to be made. The action agency also stated they believe that this guidance could have been followed as an element of cost control.

Response: WAPA appreciates the comment regarding the need for better cost control and that compromises in the budgeting process may be necessary to accomplish this effort. WAPA is committed to looking for ways to control its costs and will continue to communicate its funding priorities to its customers.

E. *Comment:* The action agency and the customer association commented that they have concerns about the long-term viability of the P–SMBP going forward as it faces significant financial and operational issues in the future including: (1) USACE's plan of rehabilitation of the Missouri River; (2) dam safety repairs; (3) Aid-to-Irrigation payments coming due; and (4) environmental impact issues from non-supporting stakeholders. They also expressed their concern that these issues could result in significant future rate impacts to the firm power customers and that WAPA needs to focus on cost control in the future.

Response: WAPA appreciates the concerns regarding the long-term stability and affordability of the P–SMBP beyond the 5-year rate window. WAPA is committed to continuing to focus on the impact of rising costs and to mitigate those costs when possible.

F. *Comment:* The customer organization commented that they appreciate WAPA engaging with the customers early in the ratemaking process, responding to Customer concerns and questions. The customer organization also commented that they encourage WAPA leadership to support their rates and finance teams who have long-standing working relationships with the customers.

Response: WAPA appreciates the comment regarding WAPA's commitment to engaging with the Customers on the issues concerning the firm power rate.

Certification of Rates

I have certified that the Provisional Formula Rates for P–SMBP—ED firm power service under Rate Schedule P–SED–F15, P–SMBP—ED firm peaking power service under Rate Schedule P–SED–FP15, and P–SMBP—ED sale of surplus products under Rate Schedule P–SED–M3 are the lowest possible rates, consistent with sound business principles. The Provisional Formula Rates were developed following administrative policies and applicable laws.

Availability of Information

Information used by UGP to develop the Provisional Formula Rates is available for inspection and copying at the Upper Great Plains Regional Office located at 2900 4th Avenue North, 6th Floor, Billings, Montana. Many of these documents are also available on UGP's Rates website at: *www.wapa.gov/about-wapa/regions/ugp/ugp-rates/2025-firm-rate-adjustment*.

Ratemaking Procedure Requirements

Environmental Compliance

WAPA has determined that this action fits within the following categorical exclusions listed in appendix B to subpart D of 10 CFR part 1021: B4.3 (Electric power marketing rate changes).[3] Categorically excluded projects and activities do not require preparation of either an environmental impact statement or an environmental assessment. A copy of the categorical exclusion determination is available on WAPA's Rates website at: *www.wapa.gov/wp-content/uploads/2024/08/Rate-order-drought-adder-and-base-component-increases-for-2025-and-2026-CX-08302024.pdf*.

Determination Under Executive Order 12866

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Submission to the Federal Energy Regulatory Commission

The Provisional Formula Rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and final approval.

Order

In view of the above and under the authority delegated to me, I hereby confirm, approve, and place into effect, on an interim basis, Rate Order No. WAPA–213. The rates will remain in effect on an interim basis until: (1) FERC

[3] The determination was done in compliance with NEPA (42 U.S.C. 4321–4347); the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

confirms and approves them on a final basis; (2) subsequent rates are confirmed and approved; or (3) such rates are superseded.

Signing Authority

This document of the Department of Energy was signed on November 12, 2024, by Tracey A. LeBeau, Administrator, Western Area Power Administration, 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 14, 2024.

Treena V. Garrett,

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

Rate Schedule P–SED–F15

(Supersedes Schedule P–SED–F14)

United States Department of Energy

Western Area Power Administration

Upper Great Plains Region

Pick-Sloan Missouri Basin Program—Eastern Division

Firm Power Service

(Approved Under Rate Order No. WAPA–213)

Effective

First Step: Beginning on the first day of the first day of the first full billing period beginning on or after January 1, 2025, through December 31, 2025.

Second Step: Beginning on January 1, 2026, through December 31, 2029, or until superseded by another rate schedule, whichever occurs earlier.

Available

Within the marketing area served by the Eastern Division of the Pick-Sloan Missouri Basin Program; within Montana, North Dakota, South Dakota, Minnesota, Iowa, and Nebraska.

Applicable

To the power and energy delivered to customers as firm power service, as established in the contract for service.

Character

Alternating current, 60 hertz, three phase, delivered and metered at the voltages and points established by contract.

Formula Rate and Charge Components

Rate = Base component + Drought Adder component

	First step January 1, 2025 monthly charges			Second step January 1, 2026 monthly charges		
	Base component	Drought adder component	Total charge	Base component	Drought adder component [1]	Total charge [2]
Firm Demand Charge ($/kilowatt-month)	$6.05	$0.55	$6.60	$6.70	$0.30	$7.00
Firm Energy Charge (mills/kWh)	15.21	1.34	16.55	16.80	0.80	17.60

[1] Values are estimates that are subject to change during the annual Drought Adder adjustment process.
[2] Values are estimates only based on final Base and estimated Drought Adder components.

Billing Demand: The billing demand will be as defined by the power sales contract.

Charge Components

Base Component: A fixed revenue requirement that includes operation and maintenance expense, investments and replacements, interest on investments and replacements, normal timing purchase power (purchases due to operational constraints, not associated with drought), and transmission costs. Any provisional change to the Base component will require a public process.

Base formulas:

$$\text{Base Demand} = \frac{50\% \times \text{Base Revenue Requirement}}{\text{Firm Metered Billing Units}}$$

$$\text{Base Energy} = \frac{50\% \times \text{Base Revenue Requirement}}{\text{Annual Energy}}$$

Drought Adder Component: A formula-based revenue requirement that includes future purchase power expense above timing purchases, previous purchase power drought deficits, and interest on the purchase power drought deficits. The second step revenue requirement is subject to change during the annual Drought Adder adjustment process starting in January 2026.

Drought Adder formulas:

$$\text{Drought Adder Demand} = \frac{\text{50\% x Drought Adder Revenue Requirement}}{\text{Firm Metered Billing Units}}$$

$$\text{Drought Adder Energy} = \frac{\text{50\% x Drought Adder Revenue Requirement}}{\text{Annual Energy}}$$

Annual Drought Adder Adjustment Process

The Drought Adder may be adjusted annually using the above formulas for any costs attributed to drought of less than or equal to the equivalent of 2 mills/kWh to the Power Repayment Study (PRS) composite rate. Any planned incremental upward adjustment to the Drought Adder greater than the equivalent of 2 mills/kWh to the PRS composite rate will require a public process.

The annual review process is initiated in early summer when WAPA reviews the Drought Adder component and provides notice of any estimated change to the Drought Adder component charge under the formula. In October, WAPA will make a final determination of any change to the Drought Adder component charge, either incremental or decremental. If a Drought Adder component change is required, a modified Drought Adder revenue requirement and the associated charges will become effective the following January 1 and will be identified in a Drought Adder modification update. WAPA will inform customers of updates by letter and post updates to WAPA's external website.

Adjustments

For Billing of Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligations, such overrun shall be billed at 10 times the formula rate.

For Power Factor: None. Customers will be required to maintain a power factor at the point of delivery between 95-percent lagging and 95-percent leading.

Rate Schedule P–SED–FP15

(Supersedes Schedule P–SED–FP14)

United States Department of Energy

Western Area Power Administration

Upper Great Plains Region

Pick-Sloan Missouri Basin Program—Eastern Division

Firm Peaking Power Service

(Approved Under Rate Order No. WAPA–213)

Effective

First Step: Beginning on the first day of the first full billing period beginning on or after January 1, 2025, through December 31, 2025.

Second Step: Beginning on January 1, 2026, through December 31, 2029, or until superseded by another rate schedule, whichever occurs earlier.

Available

Within the marketing area served by the Eastern Division of the Pick-Sloan Missouri Basin Program; within Montana, North Dakota, South Dakota, Minnesota, Iowa, and Nebraska.

Applicable

To the power sold to customers as firm peaking power service, as established in the contract for service.

Character

Alternating current, 60 hertz, three phase, delivered and metered at the voltages and points established by contract.

Formula Rate and Charge Components

Rate = Base component + Drought Adder component

	First step January 1, 2025 monthly charges			Second step January 1, 2026 monthly charges		
	Base component	Drought adder component	Total charge	Base component	Drought adder component [1]	Total charge [2]
Firm Peaking Demand Charge ($/kilowatt-month)	$5.55	$0.50	$6.05	$6.10	$0.30	$6.40

[1] Values are estimates that are subject to change during the annual Drought Adder adjustment process.
[2] Values are estimates only based on final Base and estimated Drought Adder component.

Charge Components

Base Component: A fixed revenue requirement that includes operation and maintenance expense, investments and replacements, interest on investments and replacements, normal timing purchase power (purchases due to operational constraints, not associated with drought), and transmission costs. Any provisional change to the Base component will require a public process.

Base formula:

$$\text{Base Demand} = \frac{\text{Base Peaking Demand Revenue Requirement}}{\text{Peaking CROD Billing Units}}$$

Drought Adder Component: A formula-based revenue requirement that includes future purchase power above timing purchases, previous purchase power drought deficits, and interest on the purchase power drought deficits. The second step revenue requirement is subject to change during the annual Drought Adder adjustment processes starting in January 2026.

Drought Adder formula:

$$\text{Drought Adder Component} = \frac{\text{Drought Adder Peaking Demand Revenue Requirement}}{\text{Peaking CROD Billing Units}}$$

Annual Drought Adder Adjustment Process

The Drought Adder may be adjusted annually using the above formulas for any costs attributed to drought of less than or equal to the equivalent of 2 mills/kWh to the Power Repayment Study (PRS) composite rate. Any planned incremental upward adjustment to the Drought Adder greater than the equivalent of 2 mills/kWh to the PRS composite rate will require a public process.

The annual review process is initiated in early summer when WAPA reviews the Drought Adder component and provides notice of any estimated change to the Drought Adder component charge under the formula. In October, WAPA will make a final determination of any change to the Drought Adder component charge, either incremental or decremental. If a Drought Adder component change is required, a modified Drought Adder revenue requirement and the associated charges will become effective the following January 1 and will be identified in a Drought Adder modification update. WAPA will inform customers of updates by letter and post updates to WAPA's external website.

Billing Demand

The billing demand will be the greater of (1) the highest 30-minute integrated demand measured during the month up to, but not in excess of, the delivery obligation under the power sales contract, or (2) the contract rate of delivery.

Adjustments

For Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual obligation for peaking demand and/or energy, such overrun shall be billed at 10 times the above rate.

Rate Schedule P–SED–M3

(Supersedes Rate Schedule P–SED–M2)

United States Department of Energy

Western Area Power Administration

Upper Great Plains Region

Pick-Sloan Missouri Basin Program—Eastern Division

Sale of Surplus Products

(Approved Under Rate Order No. WAPA–213)

Effective

The first day of the first full billing period beginning on or after January 1, 2025, through December 31, 2029, or until superseded by another rate schedule, whichever occurs earlier.

Applicable

This rate schedule applies to Eastern Division of the Pick-Sloan Missouri Basin Program marketing and is applicable to the sale of the following P–SMBP—ED surplus energy and capacity products: energy, frequency response, regulation, and reserves. If any P–SMBP—ED surplus energy and capacity products are available, UGP can make the product(s) available for sale, providing entities enter into a separate agreement(s) with UGP Marketing Office which will specify the terms of sale(s).

Formula Rate

The charge for each product is determined at the time of the sale based on market rates, plus administrative costs. The customer will be responsible for acquiring transmission services necessary to deliver the product(s), for which a separate charge may be incurred.

[FR Doc. 2024–26933 Filed 11–19–24; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2024–0131; FRL–12261–02–OCSPP]

Risk Management Under the Toxic Substances Control Act: Certain Per- and Polyfluoroalkyl Substances; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for the notice that published in the **Federal Register** on September 30, 2024, seeking public comment on the manufacture of certain per- and polyfluoroalkyl substances (PFAS), including perfluorooctanoic acid (PFOA), perfluorononanoic acid (PFNA), and perfluorodecanoic acid (PFDA), during the fluorination of high-density polyethylene (HDPE) and other plastic containers to inform regulations as appropriate under the Toxic Substances Control Act (TSCA). That notice established a public comment period that is scheduled to end on November 29, 2024. This document extends that comment period for 31 days to December 30, 2024. EPA received a request to extend the comment period from an interested stakeholder who requested additional time to collect information relating to EPA's notice and develop thoughtful responses to the issues raised in EPA's notice. EPA believes it is appropriate to extend the comment period in order to give stakeholders including the requester additional time to identify and gather information related to the issues identified in EPA's notice and to prepare comprehensive comments.

DATES: The comment period for the document published on September 30, 2024, at 89 FR 79581 (FRL–12261–01–OCSPP), is now extended. Comments must be received on or before December 30, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID)

number EPA–HQ–OPPT–2024–0131, online at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Thomas Groeneveld, Existing Chemicals Risk Management Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–1188; email address: *groeneveld.thomas@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is hereby extending the comment period established in the **Federal Register** document of September 30, 2024 (89 FR 79581) (FRL–12261–01–OCSPP), to give stakeholders additional time to review that document, identify and gather relevant information, and prepare comments. EPA is extending the comment period, which was set to end on November 29, 2024, to December 30, 2024.

To submit comments or access the docket, please follow the detailed instructions provided under **ADDRESSES**. If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 15 U.S.C. 2605.

Dated: November 15, 2024.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2024–27111 Filed 11–19–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–12294–01–R9]

Notice of Availability of Final Designation of Certain Stormwater Discharges Within Two Watersheds in Los Angeles County, California Under the National Pollutant Discharge Elimination System of the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Regional Administrator of the Environmental Protection Agency (EPA) Region 9 is providing notice of the availability of EPA's Final Designation of stormwater discharges from certain commercial, industrial and institutional (CII) sites in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed in Los Angeles County, California for National Pollutant Discharge Elimination System (NPDES) permitting under the Clean Water Act (CWA).

DATES: EPA's *Final Designation of Stormwater Discharges from Certain Commercial, Industrial and Institutional Sites in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed in Los Angeles County* (''EPA's Final Designation'') was signed on November 5, 2024.

FOR FURTHER INFORMATION CONTACT: Eugene Bromley, EPA Region 9, Water Division, NPDES Permits Section (WTR–2–3), 75 Hawthorne Street, San Francisco, CA 94105; telephone (415) 972–3510; email: *bromley.eugene@epa.gov,* or *R9RDA@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Does this action apply to me?

Entities potentially regulated by this action include a wide variety of privately-owned CII facilities such as shopping centers, office complexes, warehouses, private schools and hospitals, and various manufacturing facilities. Entities affected by this action are located within either of two watersheds in Los Angeles County, in California: the Los Cerritos Channel/Alamitos Bay Watershed or the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed. This description of affected entities is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This description of affected activities includes the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not included could also be affected. To determine whether your entity is affected by this action, you should also review the description of EPA's action in documents online at the website listed in the section *C* below. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. Summary of Final Designation

In the Final Designation, EPA has determined that stormwater discharges from certain CII sites in the Los Cerritos Channel/Alamitos Bay and Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watersheds in Los Angeles County are contributing to violations of water quality standards and require NPDES permit coverage under the CWA. The Final Designation differs from the Revised Preliminary Designation of November 2, 2023 (88 FR 75282) in that EPA is not designating privately-operated facilities at the Ports of Long Beach and Los Angeles at this time. EPA is taking a phased approach to this Final Designation such that EPA may consider designating stormwater discharges from additional CII sources in the future.

This Final Designation is in response to two September 15, 2015 petitions entitled ''Petition For A Determination That Stormwater Discharges From Commercial, Industrial, And Institutional Sites Contribute To Water Quality Standards Violations in Dominguez Channel and the Los Angeles/Long Beach Inner Harbor (Los Angeles County, California) and Require Clean Water Act Permits,'' and ''Petition For A Determination That Stormwater Discharges From Commercial, Industrial, And Institutional Sites Contribute To Water Quality Standards Violations in the Alamitos Bay/Los Cerritos Watershed (Los Angeles County, California) And Require Clean Water Act Permits'' as well as an order from the U.S. District Court for the Central District of California in *Los Angeles Waterkeeper* v. *Pruitt,* 320 F. Supp.3d 1115 (C.D. CA 2018).

EPA's Final Designation is made pursuant to CWA sections 402(p)(2)(E) and (6) and EPA's implementing regulations at 40 CFR 122.26(a)(1)(v) and 40 CFR 122.26(a)(9)(i)(D) that authorize EPA to designate stormwater discharges for regulation under the NPDES permitting program that are contributing to violations of water quality standards but are not otherwise

required to be permitted under EPA's stormwater regulations.

C. How can I get copies of this document and other related information?

Details of EPA's Final Designation, Response to Public Comments and ancillary materials may be viewed on EPA Region 9's website at: *https://www.epa.gov/npdes-permits/residual-designation-authority-address-stormwater-quality-problems-epas-pacific.*

Dated: November 13, 2024.

Martha Guzman Aceves,

Regional Administrator, EPA Region 9.

[FR Doc. 2024–27128 Filed 11–19–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2024–0414; FRL–12308–01–OCSPP]

Pesticides; Draft Guidance; Evaluating the Efficacy of Pre-Saturated/Impregnated Antimicrobial Towelettes for Disinfection Claims; Notice of Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is announcing the availability of and soliciting comment on its draft guidance for adding disinfectant efficacy claims against bacteria to antimicrobial towelettes for use on hard non-porous surfaces. Specifically, the guidance document describes a pathway for efficacy testing using a new standardized method designed specifically for antimicrobial towelettes, how to prepare an application for registration, and regulatory guidance for pesticidal claims for those products.

DATES: Comments must be received on or before January 21, 2025.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2024–0414, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Ryan Karcher, Microbiology Laboratory Branch (7503M), Biological and Economic Analysis Division, Office of Pesticide Programs, Environmental Protection Agency, Environmental Science Center, 701 Mapes Road Ft. Meade, MD 20755–5350; telephone number: (410) 305–2860; email address: *karcher.ryan.s@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action is directed to the public in general; although this action may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

This guidance is issued under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.*

C. What action is the Agency taking?

EPA is announcing the availability of and soliciting comment on a draft guidance document that describes a pathway for efficacy testing using a new standardized method designed specifically for antimicrobial towelettes, how to prepare an application for registration, and regulatory guidance for pesticidal claims for those products. Specifically, the guidance describes the use of a standard test method, ASTM E3363, for adding for adding efficacy claims to pre-saturated antimicrobial towelettes for use on hard, non-porous surfaces against bacteria.

D. What are the incremental economic impacts of this action?

This action has no substantive economic impacts because the draft guidance will not affect the regulatory status of any registration or application for registration of any pesticide product. Applicants are already required to conduct testing, and the adoption of this new testing method does not alter those requirements. The agency believes, however, that the draft guidance has the potential to reduce the regulatory burden by providing a more streamlined process for antimicrobial products intended to treat bacterial public health pathogens with pre-saturated/impregnated towelettes on hard, non-porous surfaces.

E. What should I consider as I prepare my comments for EPA?

1. Submitting CBI.

Do not submit CBI to EPA through email or *https://www.regulations.gov.* If you wish to include CBI in your comment, please follow the applicable instructions at *https://www.epa.gov/dockets/commenting-epa-dockets#rules* and clearly mark the information that you claim to be CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR parts 2.

2. *Tips for preparing your comments.*

When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Background

Towelettes are a unique combination of antimicrobial chemical and towelette substrate pre-packaged as a unit in fixed proportions for application. Previous test methods used to evaluate the efficacy of antimicrobial towelettes were originally designed to test liquid formulations and had to be modified to accommodate towelettes. EPA received requests from registrants and stakeholders to implement use of the recently standardized efficacy method for assessing antimicrobial towelettes identified as ASTM E3363. Test method ASTM E3363 provides a specific and consistent means to assess the efficacy of towelettes through the combination of chemical inactivation of the test microbe and mechanical removal of inoculum from a surface.

EPA received requests from registrants and stakeholders to implement use of the recently standardized efficacy method for assessing antimicrobial towelettes (ASTM E3363). EPA worked closely with stakeholders during the development of this test method. There is significant interest from stakeholders and the public in the availability of antimicrobial towelettes with these public health claims, particularly in institutional, clinical, and health-care settings.

III. Do guidance documents contain binding requirements?

As guidance, these documents are not binding on the Agency or any outside parties, and the Agency may depart from it where circumstances warrant and without prior notice. While EPA has made every effort to ensure the

accuracy of the discussion in the guidance, the obligations of EPA and the regulated community are determined by statutes, regulations, or other legally binding documents. In the event of a conflict between the discussion in the guidance documents and any statute, regulation, or other legally binding document, the guidance documents will not be controlling.

Authority: 7 U.S.C. 136 *et seq.*

Dated: November 14, 2024.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2024–27058 Filed 11–19–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–12375–01–OMS]

National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, the EPA gives notice of a public meeting of the National Advisory Committee (NAC) and the Governmental Advisory Committee (GAC). The NAC and GAC provide advice to the EPA Administrator on a broad range of environmental policy, technology, and management issues. NAC and GAC members represent academia, business/industry, non-governmental organizations, and state, local, and Tribal governments. The purpose of this meeting is to provide advice to the EPA Administrator on the 2026–2030 Commission for Environmental Cooperation (CEC) Strategic Plan, and other matters related to the Commission for Environmental Cooperation. Due to unforeseen administrative circumstances, it is possible that EPA may announce this meeting with less than 15 calendar days' notice.

DATES: The meeting will be held December 5, 2024, from 8 a.m. to 3 p.m. (MST). The registration deadline is November 29, 2024. Requests to make oral comments or submit written public comments must be received by November 29, 2024. Requests for accessibility and/or accommodations for individuals with disabilities must be received by December 3, 2024.

ADDRESSES: The meeting will be held virtually and in-person at San Xavier District Community Center, 2018 West San Xavier Road, Tucson, Arizona 85746. A copy of the agenda will be posted at *http://www.epa.gov/faca/nacgac.*

FOR FURTHER INFORMATION CONTACT: Oscar Carrillo at (202) 564–0347 or via email at *carrillo.oscar@epa.gov.*

SUPPLEMENTARY INFORMATION: The NAC and GAC are Presidential Federal advisory committees that advise the U.S. Government via the EPA Administrator on trade and environmental matters related to the Environmental Cooperation Agreement (ECA), which entered into force at the same time as the United States-Mexico Canada Agreement (USMCA). The NAC and GAC were created in 1994 and operate in accordance with the Federal Advisory Committee Act. Establishment of the committees is authorized under Article 11 of the ECA. The meeting will be held virtually and in-person in Tucson, Arizona at 2018 West San Xavier Road, Tucson, Arizona 85746. The meeting is open to the public with limited seating available for in-person attendance and on a first come, first served basis. Members of the public wishing to participate or attend in-person must contact Oscar Carrillo at *carrillo.oscar@epa.gov* or 202–564–0347 by November 29, 2024, to register. Members of the public wishing to attend or participate virtually must contact Oscar Carrillo using the information above by November 29, 2024, to receive a link to the meeting.

Requests to make oral comments or submit written public comments to the committees, also should be directed to Oscar Carrillo at least four business days prior to the meeting (November 29, 2024). Requests for accessibility and/or accommodations for individuals with disabilities should be directed to Oscar Carrillo at the phone number or email address listed above. To ensure adequate time for processing, please make requests for accommodations by December 3, 2024.

Robersena Young-Mackall,

Director.

[FR Doc. 2024–26997 Filed 11–19–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Request for Comment on the Annual Report for Fiscal Year 2024 and Three-Year Plan

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued its ''Annual Report for Fiscal Year 2024 and Three-Year Plan''. Respondents are encouraged to comment on the content of the annual report and FASAB's project priorities for the next three years.

DATES: Written comments are requested by January 17, 2025.

ADDRESSES: The ''Annual Report for Fiscal Year 2024 and Three-Year Plan'' is available on the FASAB website at *https://www.fasab.gov/documents-for-comment/.* Copies can be obtained by contacting FASAB at (202) 512–7350. Comments should be sent to *fasab@fasab.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

Authority: 31 U.S.C. 3511(d); Federal Advisory Committee Act, 5 U.S.C. 1001–1014.

Dated: November 15, 2024.

Monica R. Valentine,

Executive Director.

[FR Doc. 2024–27081 Filed 11–19–24; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0010; FR ID 262374]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the

information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before January 21, 2025. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0010.

Title: Ownership Report for Commercial Broadcast Stations, FCC Form 323; Section 73.3615, Ownership Reports; Section 74.797, Biennial Ownership Reports.

Form Number: FCC Form 323.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions; State, Local, or Tribal Governments.

Number of Respondents: 4,340 respondents; 4,340 responses.

Estimated Time per Response: 1.5 to 2.5 hours.

Frequency of Response: On occasion reporting requirement; biennial reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these collections are contained in 47 U.S.C. 151, 152(a), 154(i), 257, 303(r), 307, 309, and 310.

Total Annual Burden: 9,620 hours.

Total Annual Cost: $10,220,980.

Needs and Uses: On January 20, 2016, the Commission released a Report and Order, Second Report and Order, and Order on Reconsideration in MB Docket Nos. 07–294, 10–103, and MD Docket No. 10–234 (Second Report and Order). The Second Report and Order refines the collection of data reported on FCC Form 323, Ownership Report for Commercial Broadcast Stations, and FCC Form 323–E, Ownership Report for Noncommercial Broadcast Stations. Specifically, the Second Report and Order implements a Restricted Use FRN (RUFRN) within the Commission's Registration System (CORES) that individuals may use solely for the purpose of broadcast ownership report filings; eliminates the availability of the Special Use FRN (SUFRN) for broadcast station ownership reports, except in very limited circumstances; prescribes revisions to Form 323–E that conform the reporting requirements for noncommercial educational (NCE) broadcast stations more closely to those for commercial stations; and makes a number of significant changes to the Commission's reporting requirements that reduce the filing burdens on broadcasters, streamline the process, and improve data quality. These enhancements enable the Commission to obtain data reflecting a useful, accurate, and thorough assessment of minority and female broadcast station ownership in the United States while reducing certain filing burdens.

Currently, Form 323, Section II–A/II–B, Question 2.c asks ''Does the Respondent or any interest holder reported in response to Question 2(a) hold an attributable interest in any newspaper entities in the same market as any station for which this report is filed, as defined in 47 CFR 73.3555?'' This question was relevant to the Commission's Newspaper/Broadcast Cross-Ownership Rule, which prohibited common ownership of a full-power broadcast station and a daily newspaper if the station's contour (defined separately by type of station) completely encompassed the newspaper's city of publication and the station and newspaper were in the same relevant Nielsen market. On November 20, 2017, the Commission released an Order on Reconsideration and Notice of Proposed Rulemaking in MB Docket Nos, 04–256, 07–294, 09–182, 14–50, and 17–289 (Order on Reconsideration). Among other things, the Order on Reconsideration repealed the Newspaper/Broadcast Cross-Ownership Rule. Accordingly, Section II–A/II–B, Question 2.c will be eliminated from Form 323.

Licensees of commercial AM, FM, and full power television broadcast stations, as well as licensees of Class A and Low Power Television stations, must file FCC Form 323 every two years. Biennial Ownership Reports shall provide information accurate as of October 1 of the year in which the Report is filed. Form 323 shall be filed by December 1 in all odd-numbered years.

In addition, Licensees and Permittees of commercial AM, FM, and full power television stations must file Form 323 following the consummation of a transfer of control or an assignment of a commercial AM, FM, or full power television station license or construction permit; a Permittee of a new commercial AM, FM, or full power television station must file Form 323 within 30 days after the grant of the construction permit; and a Permittee of a new commercial AM, FM, or full power television broadcast station must file Form 323 to update the initial report or to certify the continuing accuracy and completeness of the previously filed report on the date that the Permittee applies for a license to cover the construction permit.

In the case of organizational structures that include holding companies or other forms of indirect ownership, a separate Form 323 must be filed for each entity in the organizational structure that has an attributable interest in the Licensee or Permittee.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–27079 Filed 11–19–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0292; FR ID 262391]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize

the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before January 21, 2025. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

OMB Control Number: 3060–0292.

Title: Section 69.605, Reporting and Distribution of Pool Access Revenues, Part 69—Access Charges.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 803 respondents; 9,625 responses.

Estimated Time per Response: 0.75 hours–1 hour.

Frequency of Response: Annual and monthly reporting requirements and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154, 201, 202, 203, 205, 218 and 403 of the Communications Act of 1934, as amended.

Total Annual Burden: 7,219 hours.

Total Annual Cost: No cost.

Needs and Uses: Section 69.605 requires that access revenues and cost data shall be reported by participants in association tariffs to the association for computation of monthly pool revenues distributions. The association shall submit a report on or before February 1 of each calendar year describing the associations' cost study review process for the preceding calendar year as well as the results of that process. For any revisions to the cost study results made or recommended by the association that would change the respective carrier's calculated annual common line or traffic sensitive revenue requirement by ten percent or more, the report shall include the following information:

(1) Name of the carrier;

(2) A detailed description of the revisions;

(3) The amount of the revisions;

(4) The impact of the revisions on the carrier's calculated common line and traffic sensitive revenue requirements; and

(5) The carrier's total annual common line and traffic sensitive revenue requirement. The information is used to compute charges in tariffs for access service (or origination and termination) and to compute revenue pool distributions. Neither process could be implemented without the information.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–27083 Filed 11–19–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1162; FR ID 262390]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before December 20, 2024.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of

information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1162.

Title: Closed Captioning of Video Programming Delivered Using Internet Protocol, and Apparatus Closed Caption Requirements.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or Household, Businesses or other for-profit, Not-for-profit institutions, State, local, or Tribal government, Federal Government.

Number of Respondents and Responses: 1,772 respondents; 124,154 responses.

Estimated Time per Response: 0.017–10 hours.

Frequency of Response: One time and on occasion reporting requirements; Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Mandatory; Required to obtain or retain benefits; Voluntary. The statutory authority for this collection is contained in the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617.

Total Annual Burden: 11,465 hours.

Total Annual Cost: $95,700.

Needs and Uses: The Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) directed the Commission to revise its regulations to mandate closed captioning on video programming delivered via Internet Protocol (IP) that was published or exhibited on television with captions after the effective date of the regulations. Accordingly, the Commission requires video programming owners (VPOs) to send program files to video programming distributors and providers (hereinafter VPDs) with required captions, and it requires VPDs to enable the rendering or pass through of all required captions to the end user. The CVAA also directed the Commission to revise its regulations to mandate that all apparatus designed to receive, play back, or record video programming be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming, except that apparatus that use a picture screen that is 13 inches or smaller and recording devices must comply only if doing so is achievable. These rules are codified at 47 CFR 79.4 and 79.100–79.104.

In July 2024, the Commission adopted rules requiring manufacturers of covered apparatus and multichannel video programming distributors (MVPDs) to make closed captioning display settings readily accessible to individuals who are deaf and hard of hearing. The Commission will determine whether settings are readily accessible to consumers by evaluating the following factors: proximity, discoverability, previewability, and consistency and persistence. The compliance deadline will be after the Office of Management and Budget completes its review of any new or modified information collection requirements under the Paperwork Reduction Act or August 17, 2026, whichever is later. The previously approved burden estimates set forth below for requests for a Commission determination of technical feasibility of apparatus closed caption requirements, requests for a Commission determination of achievability of apparatus closed caption requirements, and complaints alleging violations of the apparatus closed caption requirements, all are sufficient to encompass any such filings resulting from the new rule. The 2024 Caption Display Settings Order imposes two new information collection requirements set forth as (i) and (j) below.

The information collection requirements consist of:

(a) Mechanism for information about video programming subject to the IP closed captioning requirements.

Pursuant to 47 CFR 79.4(c)(1)(ii) and (c)(2)(ii) of the Commission's rules, VPOs and VPDs must agree upon a mechanism to make information available to VPDs about video programming that becomes subject to the requirements of 47 CFR 79.4 on an ongoing basis. VPDs must make a good faith effort to identify video programming that must be captioned when delivered using IP using the agreed upon mechanism.

For example, VPOs and VPDs may agree on a mechanism whereby the VPOs provide captions or certifications that captions are not required, and update those certifications and provide captions when captions later become required. A VPD may rely in good faith on a certification by a VPO that the programming need not be captioned if: (1) the certification includes a clear and concise explanation of why captions are not required; and (2) the VPD is able to produce the certification to the Commission in the event of a complaint. VPOs may provide certifications for specific programming or a more general certification, for example, for all programming covered by a particular contract.

VPDs may seek Commission determinations that other proposed mechanisms provide adequate information for them to rely on in good faith by filing an informal request and providing sufficient information for the Commission to make such determinations.

(b) Contact information for the receipt and handling of written closed captioning complaints.

Pursuant to 47 CFR 79.4(c)(2)(iii), VPDs must make their contact information available to end users for the receipt and handling of written IP closed captioning complaints. The required contact information includes the name of a person with primary responsibility for IP captioning issues and who can ensure compliance with these rules, as well as the person's title or office, telephone number, fax number, postal mailing address, and email address. VPDs must keep this information current and update it within 10 business days of any change. The Commission expects that such contact information will be prominently displayed in a way that it is accessible to all end users. A general notice on the VPD's website with such contact information, if provided, must be provided in a location that is conspicuous to viewers.

(c) Petitions for exemption based on economic burden.

Pursuant to 47 CFR 79.4(d), a VPO or VPD may petition the Commission for a full or partial exemption from the closed captioning requirements for IP-delivered video programming based upon a showing that they would be economically burdensome. Petitions for exemption must be supported with sufficient evidence to demonstrate economic burden (significant difficulty or expense). The Commission will consider four specific factors when determining economic burden and any other factors the petitioner deems relevant, along with any available alternatives that might constitute a reasonable substitute for the closed captioning requirements. Petitions and subsequent pleadings must be filed electronically.

The Commission will place such petitions on public notice. Comments or oppositions to the petition may be filed

electronically within 30 days after release of the public notice of the petition, and must include a certification that the petitioner was served with a copy. The petitioner may reply to any comments or oppositions filed within 20 days after the close of the period for filing comments or oppositions, and replies must include a certification that the commenting or opposing party was served with a copy. Upon a finding of good cause, the Commission may lengthen or shorten any comment period and waive or establish other procedural requirements. Petitions and responsive pleadings must include a detailed, full showing, supported by affidavit, of any facts or considerations relied on.

(d) Complaints alleging violations of the closed captioning rules for IP-delivered video programming.

Pursuant to 47 CFR 79.4(e), a written complaint alleging a violation of the closed captioning rules for IP-delivered video programming may be filed with the Commission or with the VPD responsible for enabling the rendering or pass through of the closed captions for the video programming. Complaints must be filed within 60 days after the date the complainant experienced a problem with captioning. Complaints should (but are not required to) include certain information.

If the complaint is filed first with the VPD, the VPD must respond in writing to the complainant within 30 days after receipt of a closed captioning complaint. If a VPD fails to respond timely, or the response does not satisfy the consumer, the complainant may re-file the complaint with the Commission within 30 days after the time allotted for the VPD to respond. If a consumer re-files the complaint with the Commission (after filing with the VPD) and the complaint satisfies the requirements, the Commission will forward the complaint to the named VPD, as well as to any other VPD and/or VPO that Commission staff determines may be involved, who then must respond in writing to the Commission and the complainant within 30 days after receipt of the complaint from the Commission.

If the complaint is filed first with the Commission and the complaint satisfies the requirements, the Commission will forward the complaint to the named VPD and/or VPO, and to any other VPD and/or VPO that Commission staff determine may be involved, who must respond in writing to the Commission and the complainant within 30 days after receipt of the complaint from the Commission. In response to a complaint, a VPD and/or VPO must provide the Commission with sufficient records and documentation. The Commission will review all relevant information provided by the complainant and the subject VPDs and/or VPOs, as well as any additional information the Commission deems relevant from its files or public sources. The Commission may request additional information from any relevant entities when, in the estimation of Commission staff, such information is needed to investigate the complaint or adjudicate potential violation(s) of Commission rules. When the Commission requests additional information, parties to which such requests are addressed must provide the requested information in the manner and within the time period the Commission specifies.

(e) Requests for Commission determination of technical feasibility of apparatus closed caption requirements.

Pursuant to 47 CFR 79.103(a), as of January 1, 2014, all digital apparatus designed to receive or play back video programming that uses a picture screen of any size must be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming, if technically feasible. Pursuant to 47 CFR 79.103(e), manufacturers of apparatus subject to paragraph (a) of the rule and MVPDs will be required to ensure that consumers are able to readily access user display settings for closed captioning on apparatus designed to receive or play back video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States and uses a picture scree of any size, if technically feasible. If new apparatus or classes of apparatus for viewing video programming emerge on which it would not be technically feasible to include closed captioning or readily accessible user display settings for closed captioning, parties may raise that argument as a defense to a complaint or, alternatively, file a request under 47 CFR 1.41 for a Commission determination of technical feasibility before manufacturing or importing the product.

(f) Requests for Commission determination of achievability of apparatus closed caption requirements.

Pursuant to 47 CFR 79.103(a), as of January 1, 2014, all digital apparatus designed to receive or play back video programming that use a picture screen less than 13 inches in size must be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming, only if doing so is achievable. In addition, pursuant to 47 CFR 79.104(a), as of January 1, 2014, all apparatus designed to record video programming must enable the rendering or the pass through of closed captions such that viewers are able to activate and de-activate the closed captions as the video programming is played back, only if doing so is achievable. Pursuant to 47 CFR 79.103(e), the requirement that closed captioning display settings are readily accessible will only apply to apparatus that use a picture screen of less than 13 inches in size if compliance is achievable.

Manufacturers of such apparatus and MVPDs may petition the Commission, pursuant to 47 CFR 1.41, for a full or partial exemption from the closed captioning requirements before manufacturing or importing the apparatus or may assert as a response to a complaint that these requirements, in full or in part, are not achievable. Pursuant to 47 CFR 79.103(b)(3), such a petition or response must be supported with sufficient evidence to demonstrate that compliance is not achievable (meaning with reasonable effort or expense) and the Commission will consider four specific factors when making such determinations.

(g) Petitions for purpose-based waivers of apparatus closed caption requirements.

Manufacturers seeking certainty prior to the sale of a device may petition the Commission, pursuant to 47 CFR 79.103(b)(4), for a full or partial waiver of the closed captioning requirements based on one of the following provisions:

(i) The apparatus is primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound; or

(ii) The apparatus is designed for multiple purposes, capable of receiving or playing back video programming transmitted simultaneously with sound but whose essential utility is derived from other purposes.

(h) Complaints alleging violations of the apparatus closed caption requirements.

Consumers may file written complaints alleging violations of the Commission's rules, 47 CFR 79.101–79.104, requiring apparatus designed to receive, play back, or record video programming to be equipped with built-in closed caption decoder circuitry or capability designed to display closed captions, and requiring that consumers are able to readily access user display settings for closed captioning on covered apparatus. A written complaint filed with the Commission must be transmitted to the Consumer and

Governmental Affairs Bureau through the Commission's online informal complaint filing system, U.S. Mail, overnight delivery, or facsimile. Such complaints should include certain information about the complainant and the alleged violation. The Commission may forward such complaints to the named manufacturer or provider, as well as to any other entity that Commission staff determines may be involved, and may request additional information from any relevant parties when, in the estimation of Commission staff, such information is needed to investigate the complaint or adjudicate potential violations of Commission rules.

(i) Application programming interface (API) notification to application developers.

Pursuant to 47 CFR 79.103(e)(1)(iv)(A), with regard to an MVPD's provision of navigation devices, it will be required to expose closed caption display settings via an API or similar method that an over-the-top application provider can use upon launch of their application on the device. The API or similar method will need to enable the application provider to use the device-level caption settings for its own content, if it chooses, and covered entities will be required to notify application developers about this API or similar method through any reasonable means. One example of a ''reasonable means'' for the required notice is a developer portal that a developer must utilize for its application to appear on the device.

(j) Customer notice of new operating systems.

The 2024 Caption Display Settings Order provides that MVPDs should provide notice to customers who are deaf or hard of hearing when new operating systems are deployed.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–27080 Filed 11–19–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 262411]

Open Commission Meeting Thursday, November 21, 2024

November 14, 2024

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, November 21, 2024, which is scheduled to commence at 10:30 a.m. in the Commission Meeting Room of the Federal Communications Commission, 45 L Street NE, Washington, DC.

While attendance at the Open Meeting is available to the public, the FCC headquarters building is not open access and all guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees at the Open Meeting will not be required to have an appointment but must otherwise comply with protocols outlined at: *www.fcc.gov/visit.* Open Meetings are streamed live at: *www.fcc.gov/live* and on the FCC's YouTube channel.

Item No.	Bureau	Subject
1	International Affairs	*Title:* Review of Submarine Cable Landing License Rules and Procedures to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks (OI Docket No. 24–523); Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules (MD Docket No. 24–524). *Summary:* The Commission will consider a Notice of Proposed Rulemaking that would undertake the first comprehensive review of the Commission's submarine cable rules since 2001. By this proceeding, the Commission seeks comment on how best to improve and streamline its submarine cable rules to facilitate efficient deployment of submarine cables while at the same time ensuring the security, resilience, and protection of this critical infrastructure.
2	Wireline Competition	*Title:* Enhancing Caller ID Authentication Rules (WC Docket No. 17–97). *Summary:* The Commission will consider a Report and Order that would strengthen its caller ID authentication rules by authorizing the use of third parties in the authentication process subject to limits that ensure accountability for compliance with the STIR/SHAKEN standards.
3	Media	*Title:* Amendment of Section 74.1231(i) of the Commission's Rules on FM Broadcast Booster Stations (MB Docket No. 20–401); Modernization of Media Initiative (MB Docket No. 17–105). *Summary:* The Commission will consider a Second Report and Order and Order on Reconsideration that would adopt final service rules that will enable FM and low power (LPFM) broadcasters to use FM booster stations to originate program content.
4	Enforcement	*Title*: Enforcement Bureau Action. *Summary:* The Commission will consider an enforcement action.

* * * * *

The meeting will be webcast at: *www.fcc.gov/live.* Open captioning will be provided as well as a text only version on the FCC website. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

Press Access—Members of the news media are welcome to attend the meeting and will be provided reserved seating on a first-come, first-served basis. Following the meeting, the Chairwoman may hold a news conference in which she will take questions from credentialed members of the press in attendance. Also, senior policy and legal staff will be made available to the press in attendance for questions related to the items on the meeting agenda. Commissioners may also choose to hold press conferences. Press may also direct questions to the Office of Media Relations (OMR): *MediaRelations@fcc.gov.* Questions

about credentialing should be directed to OMR.

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2024–27076 Filed 11–19–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0084; FR ID 262366]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before January 21, 2025. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0084.

Title: Ownership Report for Noncommercial Educational Broadcast Stations, FCC Form 323–E; Section 73.3615, Ownership Reports.

Form Number: FCC Form 323–E.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions.

Number of Respondents: 2,636 respondents; 2,636 responses.

Estimated Time per Response: 1 to 1.5 hours.

Frequency of Response: On occasion reporting requirement; biennial reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these collections are contained in 47 U.S.C. 151, 152(a), 154(i), 257, 303(r), 307, 308, 309, and 310.

Total Annual Burden: 3,867 hours.

Total Annual Cost: $2,319,900.

Needs and Uses: Licensees of noncommercial educational AM, FM, and television broadcast stations must file FCC Form 323–E every two years. Biennial Ownership Reports shall provide information accurate as of October 1 of the year in which the Report is filed. Form 323–E shall be filed by December 1 in all odd-numbered years.

In addition, Licensees and Permittees of noncommercial educational AM, FM, and television broadcast stations must file Form 323–E following the consummation of a transfer of control or an assignment of a noncommercial educational AM, FM, or television broadcast station license or construction permit; a Permittee of a new noncommercial educational AM, FM, or television broadcast station must file Form 323–E within 30 days after the grant of the construction permit; and a Permittee of a new noncommercial educational AM, FM, or television broadcast station must file Form 323–E to update the initial report or to certify the continuing accuracy and completeness of the previously filed report on the date that the Permittee applies for a license to cover the construction permit.

In the case of organizational structures that include holding companies or other forms of indirect ownership, a separate Form 323–E must be filed for each entity in the organizational structure that has an attributable interest in the Licensee or Permittee.

Federal Communications Commission.

Marlene Dortch,

Secretary. Office of the Secretary.

[FR Doc. 2024–27078 Filed 11–19–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meetings; Correction

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice; correction.

SUMMARY: The Federal Deposit Insurance Corporation is correcting a notice published in the **Federal Register** on October 11, 2024. This document, noticing a closed meeting held on October 8, 2024, contained an incorrect report of the vote regarding the closing of the meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Friday, October 11, 2024, in FR Doc. 2024–23688, on page 82608 in the second column, correct the text ''vote of Chairman Martin J. Gruenberg, Vice Chairman Travis Hill, Director Jonathan McKernan, Director Michael J. Hsu (Acting Comptroller of the Currency), and Director Rohit Chopra (Director, Consumer Financial Protection Bureau)'' to read: ''vote of Chairman Martin J. Gruenberg, Vice Chairman Travis Hill, Director Jonathan McKernan, and Director Rohit Chopra (Director, Consumer Financial Protection Bureau)''.

FOR FURTHER INFORMATION CONTACT: Debra A. Decker, Executive Secretary, at 202–898–8748.

Dated: November 18, 2024.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–27312 Filed 11–18–24; 4:15 pm]

BILLING CODE 6714–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS24–21]

Appraisal Subcommittee; Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of special closed meeting.

Description: In accordance with section 1104(b) of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, codified at 12 U.S.C. 3333(b), notice is hereby given that the Appraisal Subcommittee (ASC) met for a Special Closed Meeting on this date.

Location: Virtual meeting via Webex.

Date: November 13, 2024.

Time: 11:16 a.m. ET.

Discussion Item

State Compliance Reviews

The ASC convened a Special Closed Meeting to discuss State Compliance Reviews pursuant to section 1104(b) of title XI (12 U.S.C. 3333(b)).

James R. Park,

Executive Director.

[FR Doc. 2024–27110 Filed 11–19–24; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL MARITIME COMMISSION

[FMC–2024–0018; FMC–2024–0019; FMC–2024–0020; FMC–2024–0021]

Renewal of Agency Information Collections of Previously Approved Collections; 60-Day Public Comment Request; Marine Terminal Operators; Service Contracts, Non-Vessel Operating Common Carriers

AGENCY: Federal Maritime Commission.

ACTION: Notice and request for comment.

SUMMARY: The Federal Maritime Commission (Commission) is giving public notice that the agency has submitted to the Office of Management and Budget (OMB) for approval extensions, without change, of existing information collections related to marine terminal operator schedules, service contracts, non-vessel-operating common carrier (NVOCC) service arrangements and negotiated rate agreements. The public is invited to comment on these information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before January 21, 2025.

ADDRESSES: The Commission is accepting comments using the Federal eRulemaking Portal at *www.regulations.gov.* The dockets for this notice, which include a copy of any applicable forms, and submitting comments can be found at *https://www.regulations.gov/* under the following Docket Nos:

46 CFR part 525: FMC–2024–0018.
46 CFR part 530: FMC–2024–0019.
46 CFR part 531: FMC–2024–0020.
46 CFR part 532: FMC–2024–0021.

Follow the instructions provided for submitting comments.

FOR FURTHER INFORMATION CONTACT: Amy Strauss, (202) 523–5793, *tradeanalysis@fmc.gov.*

SUPPLEMENTARY INFORMATION: The Commission invites the general public and other Federal agencies to comment on any aspect of the continuing information collections listed in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We are particularly interested in receiving comments on: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

Information Collections Open for Comment

I. Title: 46 CFR Part 525—Marine Terminal Operator Schedules and Related Form FMC–1

OMB Approval Number: 3072–0061 (Expires July 31, 2025).

Abstract: Section 40501(f) of title 46 of the United States Code provides marine terminal operators (MTOs) with the option of making their schedules of rates, regulations, and practices available to the public subject to 46 U.S.C. 41102(c). MTOs must maintain a complete set of all of their terminal schedules and shall promptly make them available to the Commission upon request. Each MTO is required to file Form FMC–1 with the Bureau of Trade Analysis providing its organization name, organization number, home office address, name and telephone number of the firm's representative, the location of its terminal schedule(s), and the publisher, if any, used to maintain its terminal schedule. The Commission publishes a list on its website of the location of any terminal schedule made available to the public.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses the information filed by these parties to maintain continuous surveillance over the activities of these entities and to meet its responsibilities with regard to identifying and preventing unreasonable preference or prejudice and unjust discrimination pursuant to 46 U.S.C. 41102.

Frequency: Submission of new FMC–1 forms or updates to existing forms are not assigned a specific time frame by the Commission; they are submitted as circumstances warrant. However, it is unlikely that any single entity would need to provide information more than once in a calendar year.

Type of Respondents: Marine Terminal Operators.

Number of Annual Respondents: There are currently 202 MTOs registered with the Commission. One hundred and forty-six (146) of those entities make their schedules available to the public. Based on previous years, the Commission estimates that approximately 20 MTOs will file a new FMC–1 or update an existing FMC–1. MTOs are not required to inform the Commission when they update a marine terminal schedule outside of publishing its location; however, the Commission estimates that 10 MTOs would update their schedules in a given year.

Estimated Time per Response: The time per response for completing Form FMC–1 averages 0.5 person-hours, and approximately 5 person-hours for updating an existing MTO schedule.

Total Annual Burden: The Commission estimates the total person-hour burden at 60 person-hours per year.

II. Title: 46 CFR Part 530—Service Contracts and Related Form FMC–83

OMB Approval Number: 3072–0065 (Expires July 31, 2025).

Abstract: Section 40502 of title 46 of the United States Code requires ocean common carriers and agreements between or among such carriers to file their service contracts confidentially with the Commission. The Commission's rules governing the filing

of service contracts are set forth at 46 CFR part 530.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission monitors service contract filings to ensure compliance with 46 U.S.C. subtitle IV.

Frequency: Frequency of filings is determined by the ocean common carrier and its customers. When parties enter into a service contract or amend the contract, the service contract or amendment must be filed with the Commission.

Type of Respondents: Ocean common carriers or their duly appointed agents are required to file service contracts and amendments with the Commission.

Number of Annual Respondents: The Commission estimates an annual respondent universe of 89 ocean common carriers. During 2023, carriers filed 361,971 original service contracts, and 851,191 service contract amendments.

Estimated Time per Response: The Commission estimates that the time per response ranges from 0.0166 to 1 person-hours for reporting and recordkeeping requirements contained in the regulations and is 0.1 person-hours for completing Form FMC–83.

Total Annual Burden: The Commission estimates the total annual person-hour burden at 45,171 person-hours.

III. Title: 46 CFR Part 531—NVOCC Service Arrangements

OMB Approval Number: 3072–0070 (Expires July 31, 2025).

Abstract: 46 CFR part 531 allows NVOCCs and shippers' associations with NVOCC members to act as shipper parties in NVOCC Service Arrangements (NSAs), and to be exempt from certain tariff publication requirements of 46 U.S.C. subtitle IV provided the NVOCC posts a prominent notice in its rules tariff invoking the NSA exemption and provides electronic access to its rules tariff to the public free of charge. This information collection corresponds to the requirements to include the NSA exemption in the tariff, recordkeeping requirements, and the requirement to make the tariff publicly available free of charge.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses NSAs and associated data for monitoring and investigatory purposes and, in its proceedings, to adjudicate related issues raised by private parties.

Frequency: NVOCCs that opt to enter into an NSA in lieu of publishing tariff rate(s) must post a notice in its rules tariff invoking the NSA exemption.

Type of Respondents: Parties that enter into NSAs are NVOCCs and shippers' associations with NVOCC members.

Number of Annual Respondents: Of the total respondent universe of approximately 8,700 active NVOCCs, the Commission estimates that 325 NVOCCs per year add a prominent notice to their electronically published rules tariff indicating the intention to invoke the NSA exemption. The Commission estimates that approximately 1,500 NVOCCs in total have invoked this exemption and would therefore be subject to the recordkeeping requirements.

Estimated Time per Response: The time per response is estimated to be 15 minutes to add a tariff rule invoking the NSA exemption, and one hour for recordkeeping requirements.

Total Annual Burden: Total annual burden is estimated to be 1,581 hours.

IV. Title: 46 CFR Part 532—NVOCC Negotiated Rate Arrangements

OMB Approval Number: 3072–0071 (Expires July 31, 2025).

Abstract: Section 40103 of title 46 of the United States Code authorizes the Commission to exempt by order or regulation ''any class of agreements between persons subject to [46 U.S.C. subtitle IV, Part A] or any specified activity of those persons from any requirement of [46 U.S.C. subtitle IV, Part A] if the Commission finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce.'' The Commission may attach conditions to any exemption and may, by order, revoke an exemption. In 46 CFR part 532, the Commission exempted NVOCCs from the tariff rate publication requirements of Part 520 and allowed an NVOCC to enter into an NVOCC Negotiated Rate Arrangement (NRA) in lieu of publishing its tariff rate(s), provided the NVOCC posts a prominent notice in its rules tariff invoking the NRA exemption and provides electronic access to its rules tariff to the public free of charge. This information collection corresponds to the rules tariff prominent notice and the requirement to make its rules tariff publicly available free of charge.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses the information filed by an NVOCC in its rules tariff to determine whether the NVOCC has invoked the exemption for a particular shipment or shipments. The Commission has used and will continue to use the information required to be maintained by NVOCCs for monitoring and investigatory purposes, and, in its proceedings, to adjudicate related issues raised by private parties.

Type of Respondents: Parties that enter into NRAs are NVOCCs and shippers' associations with NVOCC members.

Number of Annual Respondents: Of the total respondent universe of approximately 8,700 active NVOCCs, an average of 500 annually over the last three years have added a prominent notice to its electronically published rules tariff indicating the intention to invoke the NRA exemption. The Commission estimates that a total of 3,800 NVOCCs now utilize the NRA exemption and would then need approximately one hour per year for recordkeeping requirements.

Estimated Time per Response: The time per response is estimated to be 15 minutes to add a tariff rule invoking the NRA exemption, and one hour for recordkeeping requirements.

Total Annual Burden: Total annual burden is estimated to be 3,925 hours.

David Eng,

Secretary.

[FR Doc. 2024–27129 Filed 11–19–24; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

[Docket No. OP–1845]

DEPARTMENT OF THE TREASURY

Study and Report to Congress on the Impact on Consumers and Markets in the United States of a Final International Insurance Capital Standard

AGENCY: Board of Governors of the Federal Reserve System and Federal Insurance Office, Department of the Treasury.

ACTION: Notice of completion of report drafting; request for comments.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) and the Federal Insurance Office (FIO) of the Department of the Treasury (together, the agencies) are providing notice that the agencies have completed drafting

and submitted a report to Congress as contemplated by section 211(c)(3) of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), on the impact on consumers and markets in the United States before supporting or consenting to the adoption of a final international insurance capital standard. In accordance with section 211(c)(3)(B)(ii) of EGRRCPA, the agencies invite comment on the report.

DATES: Comments must be received by January 12, 2025.

ADDRESSES: Comments should be directed to:

Board: You may submit comments, identified by Docket No. OP–1845 by any of the following methods:

- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

In general, all public comments will be made available on the Board's website at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, and will not be modified to remove confidential, contact or any identifiable information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9 a.m. and 5 p.m. during Federal business weekdays.

Treasury: Submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site, or by mail to the Federal Insurance Office, Attn: Krishna Kundu, Room 1410 MT, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Because postal mail may be subject to processing delays, it is recommended that comments be submitted electronically. If submitting comments by mail, please submit an original version with two copies. Comments should be captioned ''FED–FIO ICS Impact Study Report.'' In general, Treasury will post all comments to *www.regulations.gov* without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. All comments, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT:

Board: Lara Lylozian, Deputy Associate Director and Chief Accountant, (202) 475–6656; or Matt Walker, Manager, Insurance Supervision & Regulation, (202) 872–4971, Division of Supervision and Regulation; or Dafina Stewart, Deputy Associate General Counsel, (202) 452–2677; Andrew Hartlage, Special Counsel, (202) 452–6483; Jonah Kind, Senior Counsel, (202) 452–2045; or Jasmin Keskinen, Senior Attorney, (202) 475–6650, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

Treasury: Krishna Kundu, Senior Insurance Regulatory Policy Analyst, FIO, (202) 622–2753; or Mark Schlegel, Senior Counsel, Office of the General Counsel, Department of the Treasury, (202) 622–1027, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: Under section 211(c)(3)(A) of EGRRCPA,[1] the Secretary of the Treasury (the Secretary), the Chair of the Board (the Chair), and the Director of FIO must, in consultation with the National Association of Insurance Commissioners, complete a study on, and submit to Congress a report on the results of the study, the impact on consumers and markets in the United States before supporting or consenting to the adoption of any final international insurance capital standard. In addition, section 211(c)(3)(B)(ii) of EGRRCPA provides that there shall be an opportunity for public comment for a period of 60 days after the date on which the report is submitted to Congress.[2] Previously, the Secretary, the Chair, and the Director of FIO provided public notice before commencing to draft the report, as required by section 211(c)(3)(B)(i) of EGRRCPA.[3] In connection with this request for comment, the Secretary, the Chair, and the Director of FIO are also providing public notice that the draft of the report is completed, as required by section 211(c)(3)(B)(i) of EGRRCPA.

As background, the International Association of Insurance Supervisors (IAIS) is developing the Insurance Capital Standard (ICS) as a consolidated group-wide capital standard for internationally active insurance groups, to create a common language for insurance supervisors and enhance global convergence on insurance capital regulation.[4] The IAIS also is assessing whether the Aggregation Method developed by the United States provides comparable outcomes to the ICS. If so, it will be considered an outcome-equivalent approach for implementation of the ICS as a prescribed capital requirement.[5]

On November 13, 2024, the Secretary, the Chair, and the Director of FIO submitted to Congress the report contemplated in section 211(c)(3)(A) of EGRRCPA. Pursuant to section 211(c)(3)(C) of EGRRCPA, the Secretary, the Chair, and the Director of FIO also submitted the report to the Comptroller General of the United States for review. A copy of the report is available at *https://www.federalreserve.gov/publications/the-impact-of-the-international-insurance-capital-standard-on-consumers-and-markets-in-the-united-states.htm.* The agencies invite public comment on the report. Interested persons should direct their comments as provided above in this notice. Comments must be received by January 12, 2025.

Kayla Arslanian,

Executive Secretary, Department of the Treasury.

Steven E. Seitz,

Director, Federal Insurance Office, Department of the Treasury.

By order of the Chair of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2024–27005 Filed 11–19–24; 8:45 am]

BILLING CODE 6210–01–P

[1] 31 U.S.C. 313 note.

[2] *Id.*

[3] 89 FR 57154 (July 12, 2024).

[4] International Association of Insurance Supervisors, *https://www.iaisweb.org/activities-topics/standard-setting/insurance-capital-standard/.*

[5] IAIS statement, ''The IAIS begins the AM comparability assessment,'' October 17, 2023, *https://www.iaisweb.org/uploads/2023/10/IAIS-statement-IAIS-begins-the-AM-comparability-assessment.pdf.*

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Savings and Loan Holding Company

The notificants listed below have applied under the Change in Bank Control Act (''Act'') (12 U.S.C. 1817(j)) and of the Board's Regulation LL (12 CFR 238.31) to acquire shares of a savings and loan holding company. The factors that are considered in acting on

the notices are set forth in paragraph 6 of the Act (12 U.S.C. 1817(j)(6)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 6 of the Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than December 5, 2024.

A. Federal Reserve Bank of Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521. Comments can also be sent electronically to *Comments.applications@phil.frb.org:*

1. *Nicholas A. Frungillo Jr., as trustee of a to-be-formed voting trust, both of Mountainside, New Jersey, for the benefit of Mark Silber;* to acquire voting shares of Vecta, Inc., New York, New York, and thereby indirectly acquire voting shares of Sunnyside Federal Savings and Loan Association of Irvington, Irvington, New York.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2024–27104 Filed 11–19–24; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[Notice-MRB–2024–08; Docket No. 2024–0002; Sequence No. 54]

Notice of Acquisition Policy Federal Advisory Committee Upcoming Web-Based Public Meeting

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice.

SUMMARY: GSA is providing notice of a meeting of the GSA Acquisition Policy Federal Advisory Committee (hereinafter ''the Committee'' or ''the GAP FAC'') in accordance with the requirements of the Federal Advisory Committee Act (FACA), as amended. This meeting will be open to the public, accessible via webcast. Information on attending and providing written and oral public comment is under the **SUPPLEMENTARY INFORMATION** section.

DATES: The GAP FAC will hold an open public meeting on Thursday, December 5, 2024, from 11 a.m. to 1 p.m. eastern standard time (EST).

ADDRESSES: The meeting will be accessible via webcast. Registrants are required to register to receive the webcast information before the meeting.

FOR FURTHER INFORMATION CONTACT: Stephanie Hardison, Designated Federal Officer, OGP, 202–258–6823, or David Cochennic, Deputy Designated Federal Officer,OGP, 904–403–0829, or email: *gapfac@gsa.gov. Additional information about the Committee, including meeting materials and agendas, are available online at https://gsa.gov/policy-regulations/policy/acquisition-policy/gsa-acquisition-policy-federal-advisory-committee.*

SUPPLEMENTARY INFORMATION: The GAP FAC serves as an advisory body to GSA's Administrator, providing guidance on how GSA can utilize its acquisition tools and authorities to target the highest priority challenges in federal procurement. The GAP FAC will focus on advising GSA on regulatory, policy and procedural reforms that will facilitate policy development and strategies for integrating emerging technological considerations in the federal acquisition process. Through these efforts, the GAP FAC aims to facilitate impactful advancements that drive innovation in federal procurement.

Purpose of the Meeting

The purpose of this meeting is to provide introductions, discuss the Committee charge, and begin the Committee's work.

Meeting Agenda

- Welcome and Opening remarks
- GAP FAC Purpose & Goals
- Expert Speaker or Presentation
- Review of Priorities and Discussion
- Public Comments
- Summary and Next Steps
- Closing Remarks and Adjournment

Meeting Registration

The meeting is open to the public and the meeting will be accessible by webcast. Registration information is located on the GAP FAC website: *https://www.gsa.gov/policy-regulations/policy/acquisition-policy/gsa-acquisition-policy-federal-advisory-committee.* Public attendees who want to attend virtually will need to register no later than 5 p.m. EST, on December 4, 2024 to obtain the meeting webcast information. All registrants will be asked to provide their name, affiliation, and email address. After registration, individuals will receive webcast access information details via email.

Public Comment

Written and oral comments are being accepted throughout the life of the Committee. Written comments can be sent to *gapfac@gsa.gov.* For written comments specific to this public meeting, submit the comment via email by December 4, 2024 with the meeting date in the subject line. Written comments submitted after December 4, 2024 will be provided to the Committee members, but please be advised that Committee members may not have adequate time to consider the comments prior to the meeting. Public participants will be given the opportunity to provide oral comments during the meeting. Oral comments will be captured on the meeting recording and posted to the GAP FAC website once the meeting materials are approved.

Special Accommodations

For information on services for individuals with disabilities, or to request accommodation of a disability, please contact the Designated Federal Officer at least 10 business days prior to the meeting to give GSA as much time as possible to process the request. Closed captioning and live ASL interpreter services will be available.

Jeffrey A. Koses,

Senior Procurement Executive and Acting Chief Acquisition Officer, Office of Government-wide Policy, General Services Administration.

[FR Doc. 2024–27069 Filed 11–19–24; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Information collection notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project (new): ''The AHRQ Safety Program for Healthcare Associated Infection Prevention.''

DATES: Comments on this notice must be received by January 21, 2025.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *REPORTSCLEARANCE OFFICER@ahrq.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *REPORTSCLEARANCE OFFICER@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

The AHRQ Safety Program for Healthcare Associated Infection Prevention

Healthcare-associated infections (HAIs) are a major cause of illness in the U.S., affecting one out of every 31 hospital inpatients (3% of all hospitalized patients) daily and resulting in as many as 700,000 infections per year. Some of the most predominant HAIs include catheter-associated urinary tract infections (CAUTI), central line-associated blood stream infections (CLABSI), and ventilator-associated pneumonia and ventilator-associated events (VAP/VAE). The current estimated incidence in hospitalized patients is approximately 27,000 CAUTI cases annually and 30,000 CLABSI cases annually. VAE cases affect between 5–40% of patients requiring mechanical ventilator support for more than two days. VAE cases are considered the deadliest HAI, with all-cause mortality rates associated with VAE as high as 50% and a direct attributable mortality rate of 9%.

To help hospitals reduce HAIs, AHRQ created the Comprehensive Unit-based Safety Program (CUSP). CUSP is designed to engage clinical teams to make healthcare safer by combining improved teamwork, clinical best practices, and the science of safety. The CUSP approach improves safety culture at the unit level, enables harm prevention, and engages providers who are on the front lines while integrating technical and adaptive/cultural approaches to making sustainable change. The Core CUSP Toolkit provides teams with training resources and tools to apply the CUSP method and build their capacity to address safety issues. This publicly available Toolkit is modular and modifiable to meet individual unit needs (*https://www.ahrq.gov/hai/cusp/modules/index.html*).

AHRQ has had success across numerous national CUSP implementation programs, including CUSP for CLABSI, which showed a 41% CLABSI reduction in over 1,000 intensive care units (ICUs), and CUSP for CAUTI in hospitals, which reduced CAUTI rates by 30% in more than 700 non-ICUs. These two programs, along with other AHRQ CUSP programs, resulted in the following Toolkits:

1. Toolkit for Reducing CLABSI: *https://www.ahrq.gov/hai/clabsi-tools/index.html*
2. Toolkit for Reducing CAUTI in Acute Care Hospitals: *https://www.ahrq.gov/hai/tools/cauti-hospitals/index.html*
3. Toolkit to Improve Safety for Mechanically Ventilated Patients: *https://www.ahrq.gov/hai/tools/mvp/index.html*
4. Toolkit for Preventing CLABSI and CAUTI in ICUs: *https://www.ahrq.gov/hai/tools/clabsi-cauti-icu/index.html*

AHRQ and partners developed many of the tools in these Toolkits several years ago, and some over 10 years ago. Some organizations may not want to use a tool that is older, or dated, and may wonder whether the information is still current. AHRQ is also aware that parts of some Toolkits have supporting information that has been updated, but those updates have not been incorporated into current tools or resources on the AHRQ website. The fifth Toolkit for this program to update, the CUSP Toolkit that supports translating the evidence into practice, also requires modernization and updating to address the current healthcare environment and resource realities to ensure success in HAI reduction.

The AHRQ Safety Program for HAI Prevention will assess what components of the updated Toolkits are routinely used and helpful and what components need additional updating and refinement. Current AHRQ HAI Prevention Toolkits provide a wealth of valuable information but also require revision to incorporate new evidence-based practices and remove those no longer supported by scientific evidence. Revised Toolkits based on lessons learned from the implementation of this program will enhance their utility to healthcare workers and support the adoption of the AHRQ Safety Program for HAI Prevention practices.

This project has the following goals:

1. Update the five existing AHRQ HAI Prevention Toolkits.
2. Finalize the updated Toolkits for public use, incorporating feedback from participating units.

The AHRQ Safety Program for HAI Prevention will consist of three cohorts:

1. CLABSI cohort—comprised of approximately 100 acute care units (ICUs and non-ICUs);
2. CAUTI cohort—comprised of approximately 100 ICUs and non-ICUs; and
3. VAP/VAE cohort—compromised of approximately 75 ICUs.

All cohorts will include acute care hospital units from all 10 Health and Human Services regions. AHRQ will utilize a pre-post design, comparing data collected at baseline and at the end of the program (endline) within each cohort.

The AHRQ Safety Program for HAI Prevention will include the following data collections:

(1) *Semi-structured Interviews:* Conducted at the end of the assessment, the program will select participants from each of the three cohorts, focusing on participants who were active during the cohort (*e.g.,* attended webinars and office hours regularly) to participate in virtual discussions to examine participants' experiences during the AHRQ Safety Program for HAI Prevention, including use and perceptions of materials, experiences with measurement, and feedback about the program.

(2) *Hospital Survey on Patient Safety (HSOPS):* The HSOPS will be completed by all participating staff to assess patient safety issues, medical errors, and event reporting practices. Participants will complete the HSOPS at baseline and endline for all three cohorts.

(3) *CUSP Device Rounds:* The CUSP Device Rounds will be completed collaboratively by a CUSP staff member with an Infection Preventionist at each participating unit once per month to assess whether units are following best practices in HAI for the respective cohort (*i.e.,* for all three cohorts).

(4) *Gap Analysis:* The Gap Analysis is a tool used to understand the needs of participating units, prioritize areas for improvement, and advocate for institution-level and unit-level resources. The Gap Analysis will be completed collaboratively by a Unit Lead and an Infection Preventionist at baseline and endline for all three cohorts. The endline Gap Analysis will also include questions for self-report changes in HAI rates and HAI prevention processes at endline of each cohort.

(5) *Clinical Outcomes Data:* AHRQ will collect unit-level clinical outcomes data reported by Infection Prevention and Control Programs to assess HAI rates across the program. Participating units will either extract clinical outcomes data from their Electronic Health Records (EHRs) and submit via the secure program website or confer National Healthcare Safety Network (NHSN) data rights to the program group to eliminate data collection burden. The program will request participating units to retrospectively provide 12 months of pre-implementation clinical outcomes data, and monthly clinical outcomes data, reported quarterly, during the implementation period for all three cohorts. The data collected monthly include the number of patients in the medical unit, number of patients with a medical device in place (central line, catheter, or ventilator) and the number HAIs associated with the medical device (central line, catheter, or ventilator).

This study is being conducted by AHRQ through its contractor, NORC at the University of Chicago (NORC) and NORC's subcontractor, the Johns Hopkins Armstrong Institute of Patient Safety and Quality (JHAI), pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of health care services and with respect to quality measurement and improvement [42 U.S.C. 299a(a)(1) and (2)].

Method of Collection

This data collection effort will be part of a comprehensive strategy to assess:

1. Participating units' experiences related to the AHRQ Safety Program for HAI Prevention (*i.e.,* use and perceptions of revised AHRQ Toolkits and Technical Assistance (TA), experiences with measurement, and feedback about the program);

2. Participating units' changes in HAI processes (*i.e.,* self-reported improvements in CLABSI, CAUTI, or VAP/VAE prevention processes, interventions implemented by units, and units' capacities to improve HAI rates); and

3. Participating units' changes in HAI rates (*i.e.,* units' CLABSI, CAUTI, or VAP/VAE reported rates and self-reported improvements in HAI rates).

To minimize respondent burden and to permit the electronic submission of survey responses and data collection forms, the AHRQ HSOPS, CUSP Device Rounds, Gap Analyses (including self-reported change in HAI rates and HAI prevention processes), and the clinical outcomes data collection form from EHR extracts will be web-based and deployed using secure, well-designed, low-burden, and respondent-friendly survey administration instruments and process.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this information collection. The total annual burden hours are estimated to be 2,854 hours for the following data collection tools:

1. *Semi-structured Interviews:* Conducted with eight interview participants from each of the three cohorts (for a total of 24 interviews) at endline only. Each interview requires 30 minutes on average to complete. We anticipate a 100% response rate.

2. *HSOPS:* To be completed by an average of 20 staff at each participating unit at both baseline and endline. Across the three cohorts, with a maximum of 400 units, this results in 8,000 respondents. An expected response rate of 45% should yield 3,600 completed respondents at each time point (baseline/endline). The survey is administered at baseline and endline for each cohort to measure the changes in patient safety culture resulting from participation in the program. The survey takes approximately 15 minutes to complete.

3. *CUSP Device Rounds:* Completed monthly for nine months by two staff members at each participating unit throughout implementation and requires 45 minutes for each staff member, equaling 90 minutes to complete in total. Across the three cohorts, with a maximum of 400 units, this results in 800 respondents. An expected response rate of 75% should yield 600 respondents per time point (monthly).

4. *Gap Analysis:* Completed by two staff members at each participating unit, once at baseline and again at endline for each cohort. Across the three cohorts, with a maximum of 400 units, this results in 800 respondents. An expected response rate of 75% should result in 600 respondents per time point (baseline/endline). This data collection is expected to require 60 minutes to complete.

5. *Clinical Outcomes Data:* Completed by one staff member at each participating unit to provide 12 months of pre-implementation clinical outcomes data and monthly clinical outcomes data, reported quarterly, during the implementation period for all three cohorts. Across the three cohorts, with a maximum of 400 units, this results in 400 respondents. An expected response rate of 75% should result in 300 respondents per time point (baseline for retrospective data and quarterly for monthly data). This data collection is expected to require 3.5 hours to complete at baseline followed by 30 minutes to complete quarterly, averaging 75 minutes across implementation. We anticipate approximately 90% of hospitals in the CLABSI and CAUTI cohorts to confer NHSN data rights to the AHRQ Safety Program for HAI Prevention. In the VAP/VAE cohort, we expect approximately 40% of hospitals to confer NHSN data rights to the program.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents *	Number of responses per respondent	Hours per response	Total burden hours
1. Semi-structured Interviews	8	1	30/60	4
2. HSOPS	1,200	2	15/60	600
3. CUSP Device Rounds	100	9	90/60	1,350
4. Gap Analysis	200	2	60/60	400
5. Clinical Outcomes data	100	4	75/60	500

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents *	Number of responses per respondent	Hours per response	Total burden hours
Total	1,608			2,854

* Annualized number of respondents is based on the maximum number of units recruited, times the estimated response rate and divided by three to capture an annualized number.

Exhibit 2 shows the estimated annual cost burden associated with the respondents' time to participate in this information collection. The annual cost burden is estimated to be $199,201.80.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Total burden hours	Average hourly wage rate *	Total cost burden
1. Semi-structured Interviews	8	[a] $74.20	$296.80
2. HSOPS	1,200	[a] 74.20	44,520.00
3. CUSP Device Rounds	100	[a] 74.20	100,170.00
4. Gap Analysis	200	[a] 74.20	29,680.00
5. Clinical Outcomes data	100	[b] 49.07	24,535.00
Total	1,608		199,201.80

* National Compensation Survey: Occupational wages in the United States May 2023, ''U.S. Department of Labor, Bureau of Labor Statistics.'' *May 2023 National Occupational Employment and Wage Estimates (bls.gov).*

[a] Average of the mean hourly wage for physicians (29–1210), registered nurses (29–1141), nurse practitioners (29–1171), and physician's assistants (29–1071).

[b] Mean hourly wage for Healthcare Practitioners and Technical Occupations (29–0000).

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Marquita Cullom,

Associate Director.

[FR Doc. 2024–27108 Filed 11–19–24; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10320]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by January 21, 2025.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *https://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: __, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA

website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10320 Health Care Reform Insurance Web Portal Requirements 45 CFR Part 159

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collections

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Health Care Reform Insurance Web Portal Requirements 45 CFR part 159; *Use:* In accordance with sections 1103 and 10102 of The Patient Protection and Affordability Care Act, Public Law 111–148 (2010) (Affordable Care Act) the U.S. Department of Health and Human Services (HHS) is tasked with developing and implementing an internet website portal to assist consumers with identifying affordable and comprehensive health insurance coverage options that are available in their State. Consistent with minimizing burden and providing consistency in data collection, the Centers for Medicare & Medicaid Services (CMS) updates its *HealthCare.gov* collection requirements as regulatory developments occur. There have been no developments since the last approved collection that require changes to the Paperwork Reduction Act (PRA) package. Therefore, we are submitting this request as an extension of the currently approved information collection. *Form Number:* CMS–10320 (OMB control number 0938–1086); *Frequency:* Occasionally; *Affected Public:* State, Local, and Tribal Governments; *Number of Respondents:* 814; *Number of Responses:* 814; *Total Annual Hours:* 50,653. (For questions regarding this collection contact Kimberlee Heckstall at 410–786–1647.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–27052 Filed 11–19–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget (OMB) Review; Sexual Risk Avoidance Education Program Performance Analysis Study—Extension (OMB #0970–0536).

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Planning, Research, and Evaluation (OPRE) and the Family and Youth Services Bureau in the Administration for Children and Families (ACF) request an extension without changes of a currently approved information collection activity as part of the Sexual Risk Avoidance Education (SRAE) Program Performance Analysis Study (PAS). The goal of the study is to collect, analyze, and report on performance measures data for the SRAE program (OMB Control No. 0970–0536; expiration date January 31, 2025). The purpose of the requested extension is to continue the ongoing data collection and submission of the performance measures by SRAE grant recipients. Minor updates were identified to incorporate into the OMB-approved versions of instruments.

DATES: *Comments due* December 20, 2024. 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 *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The purpose of the SRAE program is to educate youth on how to voluntarily refrain from nonmarital sexual activity and prevent other youth risk behaviors. Data will continue to be used to determine if the SRAE grant recipients are meeting performance benchmarks related to their program's mission and priorities.

The SRAE PAS collects performance measures data from SRAE grant recipients, program providers, and participants. The data include information on program structure, cost, and support for implementation; program attendance, reach, and dosage; the characteristics of youth involved in programming; youth sexual and other risky behavior prior to program participation; and youth sexual and other risky behavior intentions at program exit. The performance measures help the ACF program office and grant recipients to monitor and report on progress in implementing SRAE programs and inform technical assistance.

Some of the performance measures data come from youth participants through surveys SRAE grant recipients administer at program entry and exit. There are separate versions of the entry and exit surveys for middle school youth, which exclude some of the more sensitive items that are included in the versions for high school and older youth. There is also a shorter version of the entry survey for programs conducting impact studies, to reduce the burden on participants in those programs who are likely responding to other surveys as part of their impact study. Although there was a version of the exit survey for programs conducting impact studies in the past, it was removed through the previous OMB request, and youth in these programs now complete the same version of the exit survey as other youth.

ACF is currently working on future revisions to this information collection, which will be submitted to OMB for review and approval in 2025. Notices inviting public comment on those revisions will accompany that request, but comments received in response to this notice could also inform those revisions. Through this request process minor discrepancies were noted between the OMB-approved instruments and those currently in use. These minor errors were fixed in the versions included with the request to OMB.

Respondents: General Departmental (GDSRAE), State (SSRAE), and Competitive (CSRAE) grant recipients, their subrecipients, and program participants.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total/ annual burden (in hours)
(1) Participant Entry Survey				
GDSRAE participants	126,130	1	0.1333	16,813
SSRAE participants	317,633	1	0.1333	42,340
CSRAE participants	20,136	1	0.1333	2,684
(2) Participant Exit Survey				
GDSRAE participants	100,904	1	0.1667	16,821
SSRAE participants	254,106	1	0.1667	42,360
CSRAE participants	16,109	1	0.1667	2,685
(3) Performance reporting data entry form: grant recipients				
GDSRAE grant recipients	119	2	16	3,808
SSRAE grant recipients	39	2	16	1,248
CSRAE grant recipients	34	2	16	1,088
(4) Performance reporting data entry form: subrecipients				
GDSRAE subrecipients	252	2	13	6,552
SSRAE subrecipients	426	2	13	11,076
CSRAE subrecipients	63	2	13	1,638

Estimated Total Annual Burden Hours: 149,113.

Authority: 42 U.S.C. 1310.

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024–27053 Filed 11–19–24; 8:45 am]

BILLING CODE 4184–83–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–P–4163]

Determination That NOXAFIL (Posaconazole) Delayed-Release Tablets, 100 Grams Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** on October 16, 2024. The document announced that NOXAFIL (posaconazole) delayed-release tablets, 100 grams (g), was not withdrawn from sale for reasons of safety or effectiveness. The document incorrectly listed the dosage strength as 100 g. The correct strength is 100 milligrams (mg). This notice corrects that error.

FOR FURTHER INFORMATION CONTACT: Awo Archampong-Gray, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6243, Silver Spring, MD 20993–0002, 301–796–0110, *Awo.Archampong-Gray@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In FR Doc. 2024–23811, published in the **Federal Register** of Wednesday, October 16, 2024 (89 FR 83504), appearing on pages 83504 and 83505, the following corrections are made:

1. On page 83504, in the second column, the title of the document is corrected to read ''Determination That NOXAFIL (Posaconazole) Delayed-Release Tablets, 100 Milligrams, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness.''

2. On page 83504, in the third column, in the **SUMMARY**, in the first paragraph, ''NOXAFIL (posaconazole) delayed-release tablets, 100 grams (g),'' is corrected to read ''NOXAFIL (posaconazole) delayed-release tablets, 100 milligrams (mg),''.

3. On page 83505, in the first and second columns, all uses of ''100 g'' are corrected to read ''100 mg''.

Dated: November 7, 2024.

Kimberlee Trzeciak,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2024–27082 Filed 11–19–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–P–3699]

Determination That IC-GREEN (Indocyanine Green), 25 Milligrams/Vial, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that IC-GREEN (indocyanine green), 25 milligrams (mg)/vial, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for IC-GREEN (indocyanine green), 25 mg/vial, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Madeleine Giaquinto, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6219, Silver Spring, MD 20993–0002, *Madeleine.Giaquinto@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved, and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

IC-GREEN (indocyanine green), 25 mg/vial, is the subject of NDA 11525, held by Renew Pharmaceuticals and initially approved on February 9, 1959. IC-GREEN, 25 mg/vial, is indicated for determining cardiac output, hepatic function, and liver blood flow.

IC-GREEN (indocyanine green), 25 mg/vial, is currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Zydus Pharmaceuticals (USA), Inc. submitted a citizen petition dated August 2, 2024 (Docket No. FDA–2024–P–3699), under 21 CFR 10.30, requesting that the Agency determine whether IC-GREEN (indocyanine green), 25 mg/vial, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that IC-GREEN (indocyanine green), 25 mg/vial, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that this drug product was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of IC-GREEN (indocyanine green), 25 mg/vial, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list IC-GREEN (indocyanine green), 25 mg/vial, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to this drug product or these drug products may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: November 7, 2024.

Kimberlee Trzeciak,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2024–27090 Filed 11–19–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–3110]

Miguel Angel Montalvo Villa: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) permanently debarring Miguel Angel Montalvo Villa from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Montalvo Villa was convicted of multiple felonies under Federal law for conduct relating to the development or approval, including the process for development or approval, of any drug product. Mr. Montalvo Villa was given notice of the proposed debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. As of September 19, 2024 (30 days after receipt of the notice), Mr. Montalvo Villa has not responded. Mr. Montalvo Villa's failure to respond and request a hearing constitutes a waiver of Mr. Montalvo Villa's right to a hearing concerning this matter.

DATES: This order is applicable November 20, 2024.

ADDRESSES: Any application by Mr. Montalvo Villa for special termination of debarment under section 306(d)(4) of the FD&C Act (21 U.S.C. 335a(d)(4)) may be submitted at any time as follows:

Electronic Submissions

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. An application submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your application will be made public, you are solely responsible for ensuring that your application 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 application, that information will be posted on *https://www.regulations.gov.*

• If you want to submit an application with confidential information that you do not wish to be made available to the public, submit the application as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

• *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 a written/paper application submitted to the Dockets Management Staff, FDA will post your application, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All applications must include the Docket No. FDA–2024–N–3110. Received applications 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 an application with confidential information that you do not wish to be made publicly available, submit your application 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 your application. 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. 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, 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 between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500. Publicly available submissions may be seen in the docket.

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Field Enforcement, Office of Field Regulatory Operations, Office of Inspections and Investigations, Food and Drug Administration, 240–402–8743, or *debarments@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(a)(2)(A) of the FD&C Act requires debarment of an individual from providing services in any capacity to a person that has an approved or pending drug product application if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process of development or approval, of any drug product. On November 30, 2023, Mr. Montalvo Villa was convicted as defined in section 306(l)(1) of the FD&C Act in the U. S. District Court for the Southern District of Florida-Miami Division when the court entered judgment against him, after a jury trial, for three offenses, one count of conspiracy to commit wire fraud in violation of 18 U.S.C. 1349, one count of wire fraud in violation of 18 U.S.C. 1343, and one count of false statements in violation of 18 U.S.C. 1001(a)(2). The underlying facts supporting the conviction are as follows: as contained in the witness testimony reflected in the transcripts from Mr. Montalvo Villa's trial, from around January 2015, through about March 2018, Mr. Montalvo Villa was the co-owner of AMB Research Center, Inc. (AMB), a medical clinic located in Miami, Florida. AMB conducted clinical trials of new drugs for pharmaceutical companies and other sponsors. At AMB, Mr. Montalvo Villa was the majority owner and served as President. In March 2016, AMB entered into a Clinical Trial Agreement with a Contract Research Organization (CRO) that managed and oversaw a clinical trial designed to evaluate the safety and efficacy of an investigational drug intended to treat persons with Clostridium difficile-associated diarrhea (CDAD clinical trial) on behalf of a sponsor (a pharmaceutical company).

Mr. Montalvo Villa, along with his co-conspirators, entered into a conspiracy to cause the sponsor and/or the CRO to make payments on the contracts for the CDAD clinical trial, by making false and fraudulent representations regarding, among other things, subject eligibility for and participation in the CDAD clinical trial, and falsifying and fabricating documents, data, and other items relating to the CDAD clinical trial including subject informed consent forms, case histories, and data.

Mr. Montalvo Villa participated with two other co-conspirators with falsifying and fabricating study documents. Mr. Montalvo Villa and his co-conspirators falsified the study data of subjects who did not participate in the CDAD clinical trial in full compliance with the protocol. Mr. Montalvo Villa was primarily responsible in completing the patients' informed consent form and falsifying their signatures to make it appear as though the patients had consented to participate in the clinical trial when they had not.

For purposes of obtaining money from the sponsor and/or CRO, Mr. Montalvo Villa along with his co-conspirators, created false and fraudulent study records and submitted fraudulent stool and blood samples. For example, electronic case record files (eCRFs) falsely represented that the subjects completed the informed consent form (ICF) process with the Principal Investigator which required her to review the ICF with each subject and personally obtain the subject's written informed consent. In fact, she never completed the ICF process with subjects, and some subjects had never been to AMB or did not participate in the trial. Mr. Montalvo Villa knew that false information and data was submitted in the case report forms and eCRFs including false information and data representing that subjects had satisfied eligibility criteria to participate in the CDAD clinical trial, received and taken the study medication, provided stool samples, completed the required documents and journals, and participated in assessments conducted by the clinical investigator. In addition, Mr. Montalvo Villa knew that 10 or more individuals' means of identification were used unlawfully or without authority in furtherance of the conspiracy. Specifically, Mr. Montalvo Villa, along with some of his co-conspirators, used the means of identification of real persons, to create subject identification numbers for those persons, and then used those subject identification numbers to falsely portray

the persons as legitimate subjects in the CDAD clinical trial, when in fact they were not. Mr. Montalvo Villa was primarily responsible for completing the patients' informed consent form and falsifying their signatures to make it appear as though the patients consented to participate in the clinical trial when they had not. In addition, Mr. Montalvo Villa along with his co-conspirators submitted his own stool and blood samples to make it appear as if they came from study participants.

Furthermore, Mr. Montalvo Villa was one of only two individuals who inputted CDAD clinical trial data in the Almac Clinical Technology Integrated Response Technology database (Almac database). The information in the Almac database was the foundation for all subsequent subject CDAD clinical trial data. Mr. Montalvo Villa repeatedly entered false and fabricated subject screening and randomization information in the Almac database.

After an on-site audit by the Sponsor of AMB, the Sponsor notified the FDA in writing of potential scientific misconduct by AMB. Mr. Montalvo Villa wrote AMB's response letter, which contained false information, for the Principal Investigator's signature. Mr. Montalvo Villa told the Principal Investigator that she would lose her medical license if she did not sign the letter. In addition, an FDA regulatory investigator conducted an official on-site inspection of AMB for the CDAD clinical trial that began on February 20, 2018. On the first day of the inspection, Mr. Montalvo Villa told the FDA investigator that during the CDAD clinical trial he was present when his co-conspirator, the Principal Investigator, had obtained all the informed consents from the trial subjects. Mr. Montalvo Villa also told the regulatory investigator that copies of the informed consent were given to the subjects and that he was the most responsible person at AMB.

Mr. Montalvo Villa received $100,634.84 in proceeds for the CDAD clinical trial. AMB received over $277,000 for the CDAD clinical trial.

FDA sent Mr. Montalvo Villa, by certified mail, on August 12, 2024, a notice proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(A) of the FD&C Act, that Mr. Montalvo Villa was convicted of a felony under Federal law for conduct relating to the development or approval, including the process of development or approval, of any drug product. The proposal informed Mr. Montalvo Villa of the proposed debarment and offered him an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Montalvo Villa received the proposal and notice of opportunity for a hearing on August 20, 2024. Mr. Montalvo Villa failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Division of Field Enforcement Director, Office of Inspections and Investigations, under section 306(a)(2)(A) of the FD&C Act, under authority delegated to the Division of Field Enforcement Director, finds that Mr. Miguel Angel Montalvo Villa has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process of development or approval, of any drug product.

As a result of the foregoing finding, Mr. Montalvo Villa is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application, effective (see **DATES**) (see sections 306(a)(2)(A) and 306(c)(2)(A)(ii) of the FD&C Act). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses in any capacity the services of Mr. Montalvo Villa during his debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Mr. Montalvo Villa provides services in any capacity to a person with an approved or pending drug product application during his period of debarment, he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug application from Mr. Montalvo Villa during his period of debarment, other than in connection with an audit under section 306 of the FD&C Act (section 306(c)(1)(B) of the FD&C Act). Note that, for purposes of sections 306 and 307 of the FD&C Act, a ''drug product'' is defined as a ''drug subject to regulation under section 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, 382) or under section 351 of the Public Health Service Act (42 U.S.C. 262)'' (section 201(dd) of the FD&C Act (21 U.S.C. 321(dd))).

Dated: November 7, 2024.

Kimberlee Trzeciak,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2024–27093 Filed 11–19–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0150]

Revocation of Two Authorizations of Emergency Use of In Vitro Diagnostic Devices for Detection and/or Diagnosis of COVID–19; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the Emergency Use Authorizations (EUAs) (the Authorizations) issued to Cue Health, Inc., for the Cue COVID–19 Test, and Cue COVID–19 Test for Home and Over The Counter (OTC) Use. FDA revoked the Authorizations under the Federal Food, Drug, and Cosmetic Act (FD&C Act) as requested by the Authorization holder. The revocations, which include an explanation of the reasons for each revocation, are reprinted at the end of this document.

DATES: The revocation of the Authorizations for the Cue Health, Inc.'s Cue COVID–19 Test, and Cue COVID–19 Test for Home and Over The Counter (OTC) Use are effective as of October 9, 2024.

ADDRESSES: Submit written requests for a single copy of the revocations to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the revocations may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revocations.

FOR FURTHER INFORMATION CONTACT: Kim Sapsford-Medintz, Office of Product Evaluation and Quality, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3216, Silver Spring, MD 20993–0002, 301–796–0311 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) as amended by the Project BioShield Act of 2004 (Pub. L. 108–276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5) allows FDA to strengthen the public health protections against biological, chemical, radiological, or nuclear agent or agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations.

On June 10, 2020, FDA issued the Authorization to Cue Health, Inc., for the Cue COVID–19 Test, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on November 20, 2020 (85 FR 74346), as required by section 564(h)(1) of the FD&C Act.

On March 5, 2021, FDA issued the Authorization to Cue Health, Inc., for the Cue COVID–19 Test for Home and Over The Counter (OTC) Use, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on July 23, 2021 (86 FR 39040), as required by section 564(h)(1) of the FD&C Act.

Subsequent updates to the Authorizations were made available on FDA's website. The authorization of a device for emergency use under section 564 of the FD&C Act may, pursuant to section 564(g)(2) of the FD&C Act, be revoked when the criteria under section 564(c) of the FD&C Act for issuance of such authorization are no longer met (section 564(g)(2)(B) of the FD&C Act), or other circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the FD&C Act).

II. Authorizations Revocation Requests

In a request received by FDA on September 9, 2024, Cue Health, Inc., requested the revocation of, and on October 9, 2024, FDA revoked, the Authorization for the Cue Health, Inc.'s Cue COVID–19 Test. Because Cue Health, Inc., notified FDA that they ceased manufacturing, shipping, and distributing the Cue COVID–19 Test and requested FDA revoke the Cue COVID–19 Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

In a request received by FDA on September 9, 2024, Cue Health, Inc., requested the revocation of, and on October 9, 2024, FDA revoked, the Authorization for Cue Health, Inc.'s Cue COVID–19 Test for Home and Over The Counter (OTC) Use. Because Cue Health, Inc., notified FDA that they have ceased manufacturing, shipping, and distributing the Cue COVID–19 Test for Home and Over The Counter (OTC) Use and requested FDA revoke the Cue COVID–19 Test for Home and Over The Counter (OTC) Use, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

III. Electronic Access

An electronic version of this document and the full text of the revocations are available on the internet at *https://www.regulations.gov/.*

IV. The Revocations

Having concluded that the criteria for revocation of the Authorizations under section 564(g)(2)(C) of the FD&C Act are met, FDA has revoked the EUAs of Cue Health, Inc.'s Cue COVID–19 Test, and Cue COVID–19 Test for Home and Over The Counter (OTC) Use. The revocations in their entirety follow and provide an explanation of the reasons for revocation, as required by section 564(h)(1) of the FD&C Act.

BILLING CODE 4164–01–P

U.S. FOOD & DRUG ADMINISTRATION

October 9, 2024

Chanda Owens
Cue Health Inc.
4890 Carroll Canyon Road, Suite 100
San Diego, CA 92121
Re: Revocation of EUA200248

Dear Chanda Owens:

This letter is in response to the request from Cue Health Inc., in a letter dated September 9, 2024, that the U.S. Food and Drug Administration (FDA) revoke the EUA for the Cue COVID-19 Test issued on June 10, 2020, amended on August 20, 2020, reissued on March 26, 2021, and then amended on March 1, 2022, March 9, 2022, and March 8, 2023. Cue Health Inc. indicated that they have ceased manufacture, shipping and distribution of the authorized product and requested that the EUA be revoked. FDA understands that as of the date of this letter any remaining viable Cue COVID-19 Test cartridges in distribution in the United States cannot be used due to the disabling of the Cue Health Mobile Application (Cue Health App) required to run the test.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Cue Health Inc. has requested that FDA revoke the EUA for the Cue COVID-19 Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA200248 for the Cue COVID-19 Test, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the Cue COVID-19 Test is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

//s//

Ellen J. Flannery, J.D.
Deputy Center Director for Policy
Director, Office of Policy
Center for Devices and Radiological Health
Food and Drug Administration

U.S. FOOD & DRUG ADMINISTRATION

October 9, 2024

Chanda Owens
Cue Health Inc.
4890 Carroll Canyon Road, Suite 100
San Diego, CA 92121
Re: Revocation of EUA210180

Dear Chanda Owens:

This letter is in response to the request from Cue Health Inc., in a letter dated September 9, 2024, that the U.S. Food and Drug Administration (FDA) revoke the EUA for the Cue COVID-19 Test for Home and Over The Counter (OTC) Use issued on March 5, 2021, and amended on September 23, 2021, February 9, 2022, January 21, 2022 and August 24, 2022. Cue Health Inc. indicated that they have ceased manufacture, shipping and distribution of the authorized product and requested that the EUA be revoked. FDA understands that as of the date of this letter any remaining viable Cue COVID-19 Test for Home and Over The Counter (OTC) Use cartridges in distribution in the United States cannot be used due to the disabling of the Cue Health Mobile Application (Cue Health App) required to run the test.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Cue Health Inc. has requested that FDA revoke the EUA for the Cue COVID-19 Test for Home and Over The Counter (OTC) Use, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA210180 for the Cue COVID-19 Test for Home and Over The Counter (OTC) Use, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the Cue COVID-19 Test for Home and Over The Counter (OTC) Use is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

\\s\\

Ellen J. Flannery, J.D.
Deputy Center Director for Policy
Director, Office of Policy
Center for Devices and Radiological Health
Food and Drug Administration

Dated: November 14, 2024.

Kimberlee Trzeciak,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2024–27094 Filed 11–19–24; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Product-Specific Guidances; Draft and Revised Draft Guidances 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 additional draft and revised draft product-specific guidances. The draft guidances provide product-specific recommendations on, among other things, the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs). In the **Federal Register** of June 11, 2010, FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific

Products'' that explained the process that would be used to make product-specific guidances available to the public on FDA's website. The draft guidances identified in this notice were developed using the process described in that guidance.

DATES: Submit either electronic or written comments on the draft guidance by January 21, 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–2007–D–0369 for ''Product-Specific Guidances; Draft and Revised Draft Guidances for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' 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: Joseph Kotsybar, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 3623A, Silver Spring, MD 20993–0002, 240–402–1062, *PSG-Questions@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products'' that explained the process that would be used to make product-specific guidances available to the public on FDA's website at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs.*

As described in that guidance, FDA adopted this process to develop and disseminate product-specific guidances and provide a meaningful opportunity for the public to consider and comment on those guidances. Under that process, draft guidances are posted on FDA's website and announced periodically in the **Federal Register**. The public is encouraged to submit comments on those recommendations within 60 days of their announcement in the **Federal Register**. FDA considers any comments received and either publishes final guidances or publishes revised draft guidances for comment. Guidances were last announced in the **Federal Register** on August 23, 2024 (89 FR 68162). This notice announces draft product-specific guidances, either new or revised, that are posted on FDA's website.

II. Drug Products for Which New Draft Product-Specific Guidances Are Available

FDA is announcing the availability of new draft product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 1—NEW DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

Active ingredient(s)
Acalabrutinib maleate.
Adapalene; Benzoyl peroxide; Clindamycin phosphate.
Allopurinol.
Aripiprazole.
Aripiprazole lauroxil.
Buspirone hydrochloride.
Cantharidin.
Cefazolin sodium.
Clonazepam.
Cyclosporine

TABLE 1—NEW DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS—Continued

Active ingredient(s)
Dexamethasone; Neomycin sulfate; Polymyxin b sulfate.
Enfuvirtide.
Eplontersen sodium.
Estrogens, conjugated.
Icatibant acetate.
Macitentan; Tadalafil.
Magnesium sulfate; Polyethylene glycol 3350; Potassium chloride; Sodium chloride; Sodium sulfate.
Memantine hydrochloride.
Mitomycin.
Paclitaxel.
Palovarotene.
Pemetrexed disodium.
Phentolamine mesylate.
Phytonadione (multiple reference listed drugs).
Quizartinib dihydrochloride.
Risperidone.
Ritlecitinib tosylate.
Treprostinil.

III. Drug Products for Which Revised Draft Product-Specific Guidances Are Available

FDA is announcing the availability of revised draft product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 2.—REVISED DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

Active Ingredient(s).
Allopurinol.
Azelaic acid.
Bictegravir sodium; Emtricitabine; Tenofovir alafenamide fumarate.
Budesonide; Formoterol fumarate dihydrate.
Enzalutamide.
Ferric carboxymaltose.
Ferumoxytol.
Fluticasone propionate.
Fluticasone propionate; Salmeterol xinafoate.
Formoterol fumarate.
Formoterol fumarate; Mometasone furoate.
Labetalol hydrochloride.
Lenvatinib mesylate.
Levonorgestrel.
Liraglutide.
Losartan potassium.
Mometasone furoate.
Nepafenac (multiple reference listed drugs).
Nitroglycerin.
Olaparib.
Phytonadione (multiple reference listed drugs).
Primidone.
Rasagiline mesylate.
Ruxolitinib phosphate.
Salmeterol xinafoate.
Tacrolimus.
Tazarotene.

TABLE 2.—REVISED DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS—Continued

Active Ingredient(s).
Tiotropium bromide.
Tramadol hydrochloride.

For a complete history of previously published **Federal Register** notices related to product-specific guidances, go to *https://www.regulations.gov* and enter Docket No. FDA–2007–D–0369.

These draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). These draft guidances, when finalized, will represent the current thinking of FDA on, among other things, the product-specific design of BE studies to support ANDAs. They do not establish any rights for any person and are not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

IV. Paperwork Reduction Act of 1995

While these guidances contain no collection of information, they do 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 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 312 for investigational new drugs have been approved under 0910–0014. The collections of information in 21 CFR part 314 for applications for FDA approval to market a new drug and in 21 CFR part 320 for bioavailability and bioequivalence requirements have been approved under OMB control number 0910–0001.

V. 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 7, 2024.

Kimberlee Trzeciak,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2024–27048 Filed 11–19–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–4604]

Per- and Polyfluoroalkyl Substances in Seafood; Request for Information

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Notice; request for information.

SUMMARY: The Food and Drug Administration (FDA or we) is requesting information to help fill data gaps that remain regarding per- and polyfluoroalkyl substances (PFAS) in seafood. The purpose of this request is to help increase our understanding of the potential for PFAS exposure from seafood. We intend to use the information submitted in response to this request to help inform future activities to reduce dietary exposure to PFAS that may pose a health concern.

DATES: Either electronic or written comments on the notice must be submitted by February 18, 2025.

ADDRESSES: You may submit comments and information as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 18, 2025. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you

do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2024–N–4604 for ''Per- and Polyfluoroalkyl Substances in Seafood; Request for Information.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Stacey Wiggins, Office of Dairy and Seafood Safety, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1470; or Alexandra Beliveau or Jessica Ritsick, Office of Policy, Regulations, and Information, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION:

I. Background

A. PFAS in Food, Generally

PFAS are a diverse group of thousands of synthetic chemicals—including perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid, perfluorononanoic acid, perfluorohexane sulfonic acid, and perfluorodecanoic acid—that are used in a wide range of consumer and industrial products. PFAS do not easily break down, and some types have been shown to accumulate in the environment and in our bodies. Exposure to certain types of PFAS has been linked to serious health effects, including hepatic, cardiovascular, immune, and developmental effects (Refs. 1 through 4).

FDA has developed validated methods for testing for certain PFAS at very low levels (*i.e.,* in the parts per trillion) in increasingly diverse types of foods (Ref. 5). We select specific PFAS for testing based on, for example, information from the scientific literature, the expected PFAS uptake in foods, and the availability of chemical standards to accurately detect and identify the presence of PFAS.

As with other chemical contaminants for which there are no established action levels or tolerances, FDA evaluates PFAS in food on a case-by-case basis. When we detect PFAS in food, we may conduct a human health assessment to evaluate whether the levels detected present a possible human health concern. We consider the level of the contaminant in the specific food, consumption patterns for that specific food in various sectors of the population (by age), and current toxicological data for the PFAS chemical(s) detected to determine whether the concentration of PFAS found in the food poses a health concern (see Ref. 5 for additional information on our approach to human health assessments, generally).

Addressing potential effects of Americans' PFAS exposure is a national priority and is coordinated across several Federal Agencies. Through these interagency collaborations, we are working to identify routes of PFAS exposure, understand associated health risks, and reduce the public's dietary exposure to PFAS that may pose health concern. FDA is a part of the Council on Environmental Quality-led Interagency Policy Committee on PFAS, which is tasked with coordinating the Federal response to PFAS contamination in the environment and in products. Additionally, FDA also participates in an interagency Strategy Team on PFAS, focused on research and development.

B. PFAS in Seafood

For purposes of this document, we use the term ''seafood'' to refer to fresh or saltwater finfish, crustaceans, other forms of aquatic animal life (*e.g.,* alligator) other than birds or mammals, and all mollusks, where such animal life is intended for human consumption, which is consistent with our definition of ''fish'' under 21 CFR 123.3(d). Since 2019, we have been utilizing samples collected from the Total Diet Study (TDS) to evaluate the presence of PFAS in foods, including seafood. The analysis of TDS samples was a preliminary step in determining whether more targeted or larger surveys of PFAS in foods may be needed. To date, we have analyzed 810 TDS food samples, including samples from 7 regional collections and 1 national collection. PFAS were detected at relatively low levels in 23 out of 810 TDS food samples. Of those 23 food samples with PFAS detected, 19 were seafood samples (Ref. 6). Using human health assessments, we determined that none of the TDS seafood samples had levels of PFAS that would be considered a human health concern. However, FDA's testing indicates that seafood may be at higher risk for environmental PFAS contamination compared to other types of food. This request for information is one way we are working to better understand PFAS contamination in commercial seafood to reduce dietary exposure to PFAS that may pose a health concern.

To expand on the results from the TDS samples and evaluate potential exposure to PFAS from other seafood

types, we collected additional seafood samples for PFAS analysis in 2021 and 2022. The survey targeted the most commonly consumed seafood in the United States and consisted of 81 samples comprised of clams, cod, crab, pollock, salmon, shrimp, tilapia, and canned tuna—most of which were imported to the United States. This work advances our efforts to understand PFAS levels in commercial seafood and is also a part of our comprehensive approach to help ensure the safety of imported seafood, as outlined in the ''Activities for the Safety of Imported Seafood'' report released in March 2023 (Ref. 7). Based on the PFOA concentrations found in canned clams, we concluded that consumption of the canned clams sampled from China were likely a human health concern. Two voluntary recalls of processed clams from China have occurred due to these findings (Refs. 8 and 9).

Because many potential hazards can be introduced at the source—in growing areas, in aquaculture farms, and on fishing vessels—seafood presents a unique challenge and opportunity to prevent contamination. This request for information is an opportunity for interested entities (including the seafood industry, academia, and state and other Federal Agencies) (you) to provide information to address the data gaps that exist. This request is consistent with FDA's efforts to increase our understanding of the potential for PFAS exposure from seafood and to reduce dietary exposure to PFAS that may pose a health concern. The information submitted in response to this request for information will help enhance FDA's knowledge about the types of seafood prone to accumulate PFAS and harvest locations with PFAS contamination, improve our comprehensive understanding of the sources of PFAS in seafood, prioritize our sampling strategies and seafood targets for testing, and inform potential mitigation strategies. Additional information about existing data and information on PFAS in seafood will help us advance our public health mission and further support the current Administration's comprehensive approach to addressing PFAS and advancing clean air, water, and food (Refs. 10 through 12).

II. Request for Information

This request focuses on PFAS in seafood. We request data and information in response to specific questions presented below that fall under the following categories: (1) PFAS concentrations in seafood; (2) PFAS concentrations in the environment; (3) PFAS concentrations in processing water; and (4) mitigation strategies for PFAS in seafood. When responding, please identify the question by its number (*e.g.,* ''1.1'') so that we can associate your response with a specific question. Please be as detailed as possible in your response.

It is important to know whether samples were found to contain detectable PFAS. Information about samples where no PFAS was detected is just as important as samples where PFAS was detected. This information helps identify where PFAS was observed and lets us know that it was undetected, as opposed to simply not sampled.

When reporting PFAS concentrations detected (Questions 1–3), please include information about sample preparations (*e.g.,* individual samples versus composites of subsamples) and analytical methods (*e.g.,* the analytical method(s) used and associated limits of detection, limit of quantitation, and method detection limit (MDL)). Such information provides context and helps enable better interpretation of data (*e.g.,* determining which datasets can be compared to other datasets and what conclusions may be drawn). For example, if analytical methods with high MDLs were used and reported non-detectable concentrations, it is possible that the concentrations may have been detectable if a more sensitive method had been used.

While the questions presented below are aimed at gathering data and information on PFAS in seafood that is most pertinent, we welcome any additional data and information regarding PFAS in seafood that may improve our understanding and advance our public health mission.

1. PFAS Concentrations in Seafood

FDA is interested in identifying which specific seafood types are more prone to PFAS accumulation, as this could help inform future seafood sampling plans. We have been analyzing the most commonly consumed seafood in the United States for PFAS; however, there are many other seafood types for which data are limited. Additionally, we are interested in the harvest locations where the seafood samples were collected. Information about geographical PFAS contamination and harvest areas where seafood may be contaminated with PFAS will help inform potential mitigation strategies.

For each item below, please provide the PFAS concentrations for each type of PFAS detected (including samples where no PFAS was detected), as well as any relevant data (*e.g.,* sample collection date), evidence, or other information to support your response.

1.1 Which types of seafood (*e.g.,* scientific name, acceptable market name, common name) have you tested for PFAS? Please describe the sample (*e.g.,* individual or composite) and provide the number of subsamples used for composite samples. Please answer the following questions for each type of seafood tested, providing any data and evidence to support your response.

1.1.1 Was the seafood sample a commercial seafood product (*i.e.,* was the seafood in or intended for interstate commerce whether collected from harvest areas, processing stages, or at retail)? Or was the seafood sample collected a non-commercial seafood product?

1.1.2 Was the seafood sample harvested from fresh water or salt water? What else is known about the harvest location of the seafood sample? Please provide latitude and longitude of harvest location, if known.

1.1.3 Was the seafood sample raw or processed? If raw, was the sample fresh or frozen? If processed, was the sample frozen, canned, pouched, or other? Was the processed sample cooked, eviscerated, smoked, dried, or other?

1.1.4 Was the seafood sample wild-caught or raised via aquaculture?

1.1.5 If the sample was a commercial seafood product, what was the country of origin on the seafood label? The country of origin label indicates the country where the last substantial transformation to the seafood product was made, which may not be the country where the seafood was harvested (19 U.S.C. 1304(a) and 19 CFR part 134; see also Ref. 13).

1.2 Knowing whether the seafood sample (for commercial or non-commercial seafood) has been tested whole or separated into parts is valuable, particularly for informing potential mitigation strategies (*e.g.,* anatomical parts demonstrated to have higher PFAS concentrations may be removed as a mitigation strategy for the remaining parts to be sold for consumption). For each question below, please provide any relevant data, evidence, or other information to support your response.

1.2.1 How would you characterize the seafood sample that was tested (*e.g.,* whole, muscle, roe, viscera)?

1.2.2 If the seafood was separated into different tissues, which specific tissues were used to measure PFAS concentrations? Why were those specific tissues chosen for testing?

2. PFAS Concentrations in the Environment (*e.g.,* Water and Sediment in Seafood Harvest Areas)

PFAS can enter seafood through environmental contamination. FDA is interested in understanding PFAS sources and concentrations in the environment that impact seafood. Such information can aid in the identification of harvest areas to avoid. Examples of PFAS sources in the environment include water and sediment.

For each item below, please provide the PFAS concentrations for each type of PFAS detected (including samples where no PFAS was detected), as well as any relevant data (*e.g.,* sample collection date), evidence, or other information to support your response.

2.1 In conjunction with testing PFAS concentrations in seafood, please describe any environmental samples (*e.g.,* volume or amount of matrix, individual or composite) you have tested from locations where seafood was grown or harvested, including the number of subsamples used for composite samples. Please provide latitude and longitude of sample location, if known.

2.1.1 What type of environmental sample was collected and analyzed for PFAS (*i.e.,* water, sediment, or another type of sample (*e.g.,* soil, biosolids))? Please provide the date of sample collection, if known.

2.1.2 If water, was the sample fresh water or salt water? What was the depth at which the water sample was collected? What was the salinity of the salt water?

2.1.3 If sediment, was the sample mud, sand, or clay? What was the depth at which the sediment was collected?

2.1.4 If another type of sample, please provide additional information about the sample matrix (*e.g.,* whether the samples were biosolids or soils near the coast).

2.2 If known, please provide any historical data you have about PFAS sources in the sampling locale and any information showing a relationship between PFAS in the environmental samples and PFAS in the seafood samples. Such historical information can help identify whether there are patterns or trends in PFAS contamination that may be useful in predicting potential PFAS contamination in seafood, which could inform mitigation efforts.

2.2.1 Are there any factors specific to this geographic location that play a role in PFAS accumulation? If yes, please elaborate.

2.2.2 Is the PFAS contamination in the geographic location persistent? Please provide the rationale for this conclusion.

2.2.3 What, if anything, has the data shown about the source of the PFAS contamination?

3. PFAS Concentration in Processing Water

PFAS can enter processed seafood through the use of contaminated processing water. FDA would like to know about the occurrence of PFAS contamination in processing water intended for use with seafood. Identification of the source of contaminated water that was intended for use as processing water will help FDA better understand potential and likely routes of PFAS contamination, and may help inform mitigation strategies, such as the need to find alternative source water for food processing. It is also helpful to know if water that was intended for use as processing water was tested but not found to contain detectable concentrations of PFAS.

For each item below, please provide the PFAS concentrations for each type of PFAS detected (including samples where no PFAS was detected), as well as any relevant data (*e.g.,* sample collection date), evidence, or other information to support your response.

3.1 What processing water samples have been tested for PFAS? At what stage of processing was the process water used or intended to be used? Please describe the sample (*e.g.,* individual or composite, volume) and provide the number of subsamples used for composite samples.

3.2 What is the source of the processing water (*e.g.,* municipal, private, well)? If known, please provide any historical data you have about PFAS sources in the sampling locale of the processing water, and any information showing a relationship between PFAS in the processing water samples and seafood samples. Such information can help identify whether patterns or trends are available to aid in mitigation efforts.

4. Mitigation Strategies for PFAS in Seafood

As PFAS are known to accumulate and persist in the environment, it is important to develop mitigation strategies for reducing PFAS contamination in seafood. Examples of mitigation strategies include changing or closing seafood harvest locations if an area is contaminated with PFAS or processing certain tissues of seafood that have been determined to not accumulate PFAS. Understanding the rates of PFAS accumulation and elimination from seafood can help to determine whether natural or controlled reduction strategies may be effective at removing PFAS. FDA is interested to learn about additional mitigation strategies that may be used to reduce or prevent PFAS contamination of seafood. For each item below, please provide any relevant data, evidence, or other information to support your response.

4.1 Please describe the PFAS mitigation strategies that you have used or of which you are aware to reduce PFAS in seafood, including any industry-wide practices. Please provide details regarding, as applicable, testing seafood products and/or processing water for PFAS, changing seafood harvest areas and/or processing water sources based on PFAS concentrations, eviscerating seafood and/or processing different tissues for consumption, or depurating (*i.e.,* storing in controlled conditions to allow for elimination of impurities) PFAS from seafood.

4.1.1 Which mitigation strategies have you determined to be successful at reducing PFAS in seafood? Please provide details about the strategy, including your criteria for determining success and the level to which PFAS was reduced.

4.1.2 What challenges have you encountered regarding mitigation strategies for reducing PFAS contamination in seafood?

4.2 If any seafood growing areas or harvest areas have been found to be contaminated with PFAS, please describe whether the area has been placed in a closed or prohibited status, you have been impacted by growing or harvest areas being placed in a closed status, or you have avoided harvesting in the area. Please describe the contamination event in as much detail as possible (*e.g.,* PFAS concentration, location with latitude and longitude if known, length of closure or avoidance).

4.3 To what degree is PFAS in seafood testing being incorporated into Seafood Hazard Analysis Critical Control Point (HACCP) plans? If PFAS was detected in seafood or processing water, was PFAS added to HACCP plans? Please provide details, such as what critical limit is being considered.

III. References

The following references are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* Although FDA verified the website addresses in this document, please note that websites are subject to change over time.

1. Agency for Toxic Substances and Disease Registry, ''Toxicological Profile for Perfluoroalkyls.'' Accessed June 14, 2024. Available at: *https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf.*
2. U.S. Environmental Protection Agency, ''Human Health Toxicity Assessment for PFBS.'' Accessed June 14, 2024. Available at: *https://www.epa.gov/chemical-research/learn-about-human-health-toxicity-assessment-pfbs.*
3. U.S. Environmental Protection Agency, ''Human Health Toxicity Assessments for GenX Chemicals.'' Accessed June 14, 2024. Available at: *https://www.epa.gov/chemical-research/human-health-toxicity-assessments-genx-chemicals.*
4. U.S. Environmental Protection Agency, ''Final IRIS Assessment of Perfluorobutanoic Acid (PFBA) and Related Salts.'' Accessed June 14, 2024. Available at: *https://www.epa.gov/newsreleases/epa-publishes-iris-handbook-and-final-iris-assessment-perfluorobutanoic-acid-pfba-and.*
5. U.S. Food and Drug Administration, ''Testing Food for PFAS and Assessing Dietary Exposure.'' Accessed June 14, 2024. Available at: *https://www.fda.gov/food/process-contaminants-food/testing-food-pfas-and-assessing-dietary-exposure.*
6. U.S. Food and Drug Administration, ''Analytical Results of Testing Food for PFAS from Environmental Contamination.'' Accessed June 14, 2024. Available at: *https://www.fda.gov/food/process-contaminants-food/analytical-results-testing-food-pfas-environmental-contamination.*
7. U.S. Food and Drug Administration, ''Activities for the Safety of Imported Seafood, February 2023.'' Accessed June 14, 2024. Available at: *https://www.fda.gov/media/165447/download.*
8. U.S. Food and Drug Administration, ''FDA Shares Results on PFAS Testing in Seafood, July 15, 2022.'' Accessed June 14, 2024. Available at: *https://www.fda.gov/food/cfsan-constituent-updates/fda-shares-results-pfas-testing-seafood.*
9. U.S. Food and Drug Administration, ''Crown Prince, Inc. Issues Voluntary Recall of Smoked Baby Clams in Olive Oil Due to the Presence of Detectable Levels of PFAS Chemicals.'' Accessed June 14, 2024. Available at: *https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/crown-prince-inc-issues-voluntary-recall-smoked-baby-clams-olive-oil-due-presence-detectable-levels.*
10. The White House, ''Fact Sheet: Biden-Harris Administration Launches Plan to Combat PFAS Pollution, October 2021.'' Accessed June 14, 2024. Available at: *https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/18/fact-sheet-biden-harris-administration-launches-plan-to-combat-pfas-pollution/.*
11. The White House, ''Fact Sheet: Biden-Harris Administration Combatting PFAS Pollution to Safeguard Clean Drinking Water for All Americans, June 2022.'' Accessed June 14, 2024. Available at: *https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/15/fact-sheet-biden-harris-administration-combatting-pfas-pollution-to-safeguard-clean-drinking-water-for-all-americans/.*
12. The White House, ''Fact Sheet: Biden-Harris Administration Takes New Action to Protect Communities from PFAS Pollution, March 2023.'' Accessed June 14, 2024. Available at: *https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/14/fact-sheet-biden-harris-administration-takes-new-action-to-protect-communities-from-pfas-pollution/.*
13. U.S. Food and Drug Administration, ''CPG Sec. 560.200 Country of Origin Labeling.'' Accessed June 14, 2024. Available at: *https://www.fda.gov/media/71994/download.*

Dated: November 12, 2024.

Kimberlee Trzeciak,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2024–27070 Filed 11–19–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA), Office of the Commissioner (OC), Office of Digital Transformation (ODT) has modified their organizational structure. The new organizational structure was approved by the Secretary of Health and Human Services on September 20, 2024.

FOR FURTHER INFORMATION CONTACT: William Tootle, Director, Office of Budget; 10903 New Hampshire Avenue, WO–2, #3313, Silver Spring, MD 20990.

SUPPLEMENTARY INFORMATION:

I. Introduction

Part D, Chapter D–B, (Food and Drug Administration), the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, 60 FR 56606, November 9, 1995, 64 FR 36361, July 6, 1999, 72 FR 50112, August 30, 2007, 74 FR 41713, August 18, 2009, 76 FR 45270, July 28, 2011, and 84 FR 22854, May 20, 2019) is revised to reflect FDA, OC's ODT.

The changes to ODT's organizational structure consolidate similar functions and resources across multiple areas and align the organizational structure with federal and industry standards. This will create a more agile organization, improve resource management, enhance customer service, and better align the name of organizational components with current functions. The reorganization will maintain a reasonable span of control and clear and appropriate lines of authority and responsibilities between organizations. This will also ensure optimal resource utilization and leveraging of existing staff talent and will allow ODT more efficiency and effectiveness in the advancement of continuous improvement efforts.

DCAD. ORGANIZATION: ODT is headed by the Chief Information Officer and includes:

Office of Digital Transformation (DCAD)
Office of Information Management and Technology (DCADA)
Enterprise Architecture Staff (DCADA2)
Office of Technology and Delivery (DCADAA)
Division of Infrastructure Services (DCADAAA)
Network Services Support Staff (DCADAAA10)
Systems Operations Support Staff (DCADAAA11)
Operations and Planning Staff (DCADAAA12)
Data Center Facilities Branch (DCADAAA13)
Quality Assurance Branch (DCADAAA14)
Network Communications Branch (DCADAAA15)
Server Operations Services Branch (DCADAAA16)
Enterprise Management Operations Branch (DCADAAA17)
Cloud Operations Branch (DCADAAA18)
Division of Application Services (DCADAAB)
Operations Support Staff (DCADAAB10)
Enterprise Business and Post-Market Staff (DCADAAB11)
Scientific Support Staff (DCADAAB12)
Human Food Support Branch (DCADAAB13)
Regulatory Science Support Branch (DCADAAB14)
Compliance and Enforcement Branch (DCADAAB15)
Application Services Support Branch (DCADAAB16)
Platform Management Support Branch (DCADAAB17)
Digital Solutions Partners Branch (DCADAAB18)
Business Intelligence Data Branch (DCADAAB19)
Products Review and Approval Branch (DCADAAB20)
Digital Solution Delivery Branch (DCADAAB21)
Registration Listing Services Branch (DCADAAB22)
User Fee Support Branch (DCADAAB23)
Division of Engineering (DCADAAD)

Engineering Services Support Staff (DCADAAD1)
Implementation Branch (DCADAAD2)
Engineering Branch (DCADAAD3)
Data Governance Branch (DCADAAD4)
Cloud Services Branch (DCADAAD5)
Infrastructure Engineering Branch (DCADAAD6)
Database and Content Services Branch (DCADAAD7)
Division of Technology Quality Management (DCADAAE)
Contract Budget and IT Strategy Branch (DCADAAE1)
Project and Program Portfolio Branch (DCADAAE2)
Resources Management Branch (DCADAAE3)
Office of Customer Experience (DCADAB)
Division of Collaboration Services (DCADABH)
Collaboration Support Branch (DCADABH1)
Collaboration Administration Branch (DCADABH2)
Collaboration System Administration Branch (DCADABH3)
Division of Endpoint Management (DCADABI)
Property and Deployment Branch (DCADABI1)
Endpoint Management Branch (DCADABI2)
Division of Service Desk and Support (DCADABJ)
Service Desk Operations Branch (DCADABJ1)
Service Management Branch (DCADABJ2)
Specialized Support Branch (DCADABJ3)
Global Support Branch (DCADABJ4)
Division of End User Services (DCADABK)
Operations Support Branch Zone 1 (DCADABK1)
Operations Support Branch Zone 2 (DCADABK2)
Operations Support Branch Zone 3 (DCADABK3)
Division of ERIC Administration (DCADABL)
Performance, Growth and Enablement Branch (DCADABL1)
Help Desk Service Branch (DCADABL2)
Operations and Desk Services Branch (DCADABL3)
Office of Information Security (DCADB)
Cybersecurity Program Staff (DCADB2)
Division of Counterintelligence and Insider Threat (DCADBE)
Counterintelligence/Cyber Hunt Branch (DCADBE1)
Division of Cybersecurity Operations (DCADBF)
Division of Cybersecurity Risk and Compliance (DCADBG)
Division of Cybersecurity Capabilities and Integrations (DCADBH)
Office of Data, Analytics, and Research (DCADC)
Advanced Data Analytics and Innovation Staff (DCADC1)
Data & Analytics Governance Staff (DCADC2)
Master Data Management Staff (DCADC6)
Data Ecosystem Services Staff (DCADC7)
Data and Insights Services Staff (DCADC8)
Office of Enterprise Portfolio Management (DCADF)
Division of Acquisition Innovation (DCADFA)
Acquisition Operations Branch (DCADFA1)
Acquisition Governance Branch (DCADFA2)
IT Asset Management Branch (DCADFA3)
Division of Technology Business Management (DCADFB)
IT Governance Staff (DCADFB1)
IT Policy Branch (DCADFB2)
Business Intelligence Branch (DCADFB3)
Division of IT Finance (DCADFC)
Budget Formulation Branch (DCADFC1)
Budget Execution Branch (DCADFC2)
Office of Organizational Excellence (DCADG)
Division of Management (DCADGA)
Administrative Services Branch (DCADGA1)
Employee Experience Branch (DCADGA2)
Talent Strategy Branch (DCADGA3)
Division of Strategy, Education, and Communications (DCADGB)
Learning and Development Branch (DCADGB1)
Strategic Initiatives Branch (DCADGB2)
Strategic Communications Branch (DCADGB3)

II. Delegations of Authority

Pending further delegation, directives, or orders by the Commissioner of Food and Drugs, all delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegations, provided they are consistent with this reorganization.

III. Electronic Access

This reorganization is reflected in FDA's Staff Manual Guide (SMG). Persons interested in seeing the complete SMG can find it on FDA's website at: *https://www.fda.gov/AboutFDA/ReportsManualsForms/StaffManualGuides/default.htm.*

Authority: 44 U.S.C. 3101.

Dated: November 14, 2024.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2024–27011 Filed 11–19–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–P–2515]

Determination That FORTESTA (Testosterone) Gel, 10 Milligrams/0.5 Gram Actuation, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that FORTESTA (testosterone) gel, 10 milligrams (mg)/0.5 gram (gm) actuation, was not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to this drug product, and it will allow FDA to continue to approve ANDAs that refer to the product as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Swati Rawani, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6221, Silver Spring, MD 20993–0002, 240–402–9917, *Swati.Rawani@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved, and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or

ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

FORTESTA (testosterone) Gel, 10 mg/0.5 gm actuation, is the subject of NDA 021463, held by Endo Operations Ltd., and initially approved on December 29, 2020. FORTESTA is indicated for replacement therapy in males for conditions associated with a deficiency or absence of endogenous testosterone: primary hypogonadism (congenital or acquired), hypogonadotropic hypogonadism (congenital or acquired).

In a letter dated December 1, 2023, Endo Operations Ltd., notified FDA that FORTESTA (testosterone) gel, 10 mg/0.5 gm actuation, was being discontinued, and FDA moved the drug product to the ''Discontinued Drug Product List'' section of the Orange Book.

Encube Ethicals Private Limited submitted a citizen petition dated May 22, 2024 (Docket No. FDA–2024–P–2515), under 21 CFR 10.30, requesting that the Agency determine whether FORTESTA (testosterone) gel, 10 mg/0.5 gm actuation, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that FORTESTA (testosterone) gel, 10 mg/0.5 gm actuation, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that this drug product was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of FORTESTA (testosterone) gel, 10 mg/0.5 gm actuation, from sale. We have also independently evaluated relevant literature and data for possible post-marketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list FORTESTA (testosterone) gel, 10 mg/0.5 gm actuation, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to this drug product. Additional ANDAs for this drug product may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: November 7, 2024.

Kimberlee Trzeciak,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2024–27103 Filed 11–19–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Supplemental Funding; National Rural Health Information Clearinghouse Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of supplemental funding.

SUMMARY: HRSA provided supplemental funds to the National Rural Health Information Clearinghouse Program recipient, University of North Dakota, to develop toolkits and other resources that address strategies to promote rural community health and support the improvement of health care in rural areas.

FOR FURTHER INFORMATION CONTACT: Sarah Scott, Federal Office of Rural Health Policy, HRSA, at *sscott2@hrsa.gov* and 301–287–2619.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: University of North Dakota.

Amount of Non-Competitive Award: One award for $782,000.

Project Period: June 1, 2020, through May 31, 2025.

Assistance Listing (CFDA) Number: 93.223.

Award Instrument: Cooperative Agreement Supplement for Services.

Authority: Section 711 of the Social Security Act (42 U.S.C. 912).

TABLE 1—RECIPIENTS AND AWARD AMOUNTS

Grant number	Award recipient name	City, State	Award amount
U56RH05539	University of North Dakota	Grand Forks, ND	$782,000

Justification: This supplement allows the University of North Dakota to build on past and ongoing projects to improve health care in rural areas by advancing the knowledge base regarding strategies to support and enhance rural community health. The University of North Dakota has longstanding experience developing resources like toolkits and webinars to support a broad range of rural health topics. The supplement will allow the University of North Dakota to create new toolkits and resources on important topics related to rural community health and health care.

Diana Espinosa,

Principal Deputy Administrator.

[FR Doc. 2024–27099 Filed 11–19–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Supplemental Funding; Rural Health and Economic Development Analysis Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of supplemental funding.

SUMMARY: HRSA provided supplemental funds to the sole award recipient of the Rural Health and Economic Development Analysis Program to support a research project that quantifies the relationships between health care and economic factors in rural communities.

FOR FURTHER INFORMATION CONTACT: Karis Tyner, Federal Office of Rural Health Policy, HRSA, at *ktyner@hrsa.gov* and 240–645–5756.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: University of Kentucky.

Amount of Non-Competitive Award: One award for $175,000.

Project Period: September 1, 2022, through August 31, 2025.

Assistance Listing (CFDA) Number: 93.155.

Award Instrument: Cooperative Agreement Supplement for Research.

Authority: Section 711 of the Social Security Act (42 U.S.C. 912).

TABLE 1—RECIPIENTS AND AWARD AMOUNTS

Grant No.	Award recipient name	City, state	Award amount
U1ZRH33331	University of Kentucky	Lexington, KY	$175,000

Justification: The University of Kentucky, the sole recipient of the Rural Health and Economic Development Analysis Program funding, possesses specialized experience in rural health care research and economic analysis that positions it to be the most qualified entity to perform this work. The funding allows the University of Kentucky to collect and analyze additional data on health care and economic impacts, building on the planned research project and providing more information to inform policy makers and other rural stakeholders. Its research may focus on emerging issues at the intersection of rural health care improvement and rural economic analysis.

Diana Espinosa,

Principal Deputy Administrator.

[FR Doc. 2024–27109 Filed 11–19–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Supplemental Funding; National Rural Health Policy, Community, and Collaboration Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of supplemental funding.

SUMMARY: HRSA provided supplemental funds to the sole award recipient of the National Rural Health Policy, Community, and Collaboration Program to enhance rural health state partnerships, support ongoing work with technical assistance recipients, and work to support a toolkit designed to assist rural health networks.

FOR FURTHER INFORMATION CONTACT: Alexa Ofori, Senior Advisor, Federal Office of Rural Health Policy, HRSA, at *aofori@hrsa.gov* and 301–945–3986.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: National Rural Health Association.

Amount of Non-Competitive Award: One award for $710,000.

Project Period: August 1, 2024, through July 31, 2029.

Assistance Listing (CFDA) Number: 93.155.

Authority: Section 711 of the Social Security Act (42 U.S.C. 912).

TABLE 1—RECIPIENTS AND AWARD AMOUNTS

Grant No.	Award recipient name	City, State	Award amount
U16RH03702	National Rural Health Association	Leawood, KS	$710,000

Justification: The purpose of the National Rural Health Policy, Community, and Collaboration Program is to identify, engage, educate, and collaborate with rural stakeholders on national rural health policy issues and promising practices to improve health care in rural areas nationwide. These activities build on past and ongoing National Rural Health Association projects supported by HRSA and align with the goals of the program to educate rural stakeholders about national policy issues and promising practices for rural health and to facilitate collaboration with key stakeholders to improve the exchange of information and promising practices that support rural health.

Diana Espinosa,

Principal Deputy Administrator.

[FR Doc. 2024–27088 Filed 11–19–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting. This meeting is open to the public.

Name: National Committee on Vital and Health Statistics (NCVHS) Meeting.

DATES: Tuesday, December 3, 2024: 10 a.m.–5 p.m. EST, and Wednesday, December 4, 2024: 10 a.m.–3 p.m. EST.

ADDRESSES: Virtual open meeting. The public is welcome to obtain a link to attend this meeting by following the instructions posted on the Committee website: *https://ncvhs.hhs.gov/meetings/full-committee-meeting-22/.*

FOR FURTHER INFORMATION CONTACT: Substantive program information may be obtained from Naomi Michaelis,

MPA, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Hyattsville, Maryland 20782, or via electronic mail to *nmichaelis@cdc.gov;* or by telephone (301) 458–4202. Summaries of meetings and a roster of Committee members are available on the NCVHS website *https://ncvhs.hhs.gov/,* where further information including an agenda and instructions to access the broadcast of the meeting will be posted.

Should you require reasonable accommodation, please telephone the CDC Office of Equal Employment Opportunity at (770) 488–3210 as soon as possible.

SUPPLEMENTARY INFORMATION: As outlined in its Charter, the National Committee on Vital and Health Statistics assists and advises the Secretary of HHS on health data, data standards, statistics, privacy, national health information policy, and the Department's strategy to best address those issues. The original authorities of NCVHS are described at 42 U.S.C. 242k. Additional authorities were added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Pub. L. 104–191, 110 Stat. 1936, Aug. 21, 1996), under which NCVHS advises the Secretary on administrative simplification standards, including those for privacy, security, adoption and implementation of transaction standards, unique identifiers, code sets, and operating rules adopted under the Patient Protection and Affordable Care Act (ACA, Pub. L. 111–148, 124 Stat. 119, Mar. 23, 2010). Included in HIPAA is the statutory reporting requirement that the Committee submit to Congress and make public, a report regarding the implementation of part C of title XI of the Social Security Act.

Purpose: Topics on the meeting agenda will include updates from the Department and the ICD–11 Workgroup. The Subcommittee on Privacy, Confidentiality, and Security will continue its inquiry into and discussion of Privacy and Security in Health Data Access. The Subcommittee on Standards will report on its current and future activities. The Committee will reserve time on the agenda for public comment. Meeting times and topics are subject to change. Please refer to the tentative agenda that will be posted on the NCVHS website at this link *https://ncvhs.hhs.gov/meetings/full-committee-meeting-22/ for updates.*

Laina Bush,

Deputy Assistant Secretary, Office of Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2024–27049 Filed 11–19–24; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Neurological Disorders and Stroke Special Emphasis Panel; R13 Review, November 21, 2024, 10:00 a.m. to November 22, 2024, 05:00 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD, 20852 which was published in the **Federal Register** on October 24, 2024, FR Doc. 2024–24884, 89 FR 85223.

This notice is being amended to change the dates of this two-day meeting to December 2, 2024, and December 3, 2024. The meeting time remains the same. The meeting is closed to the public.

Dated: November 14, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–27045 Filed 11–19–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Lifestyle change, Biobehavioral Medicine, and Health Outcomes.

Date: December 12, 2024.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, (301) 496–0726, email: *prenticekj@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Behavioral Motor Function.

Date: December 12, 2024.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Stephanie Christine Nagle Emmens, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–6604, email: *nagleemmenssc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 14, 2024.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–27004 Filed 11–19–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License, Inter-Institutional Agreement-Institution Lead: Peptides and Peptide Microarrays for Detection and Differentiation of Antibody Responses to Ebola Virus and Other Pathogens.

AGENCY: National Institutes of Health, National Institute of Allergy and Infectious Diseases.

ACTION: Notice.

SUMMARY: The National Institute of Allergy and Infectious Diseases, an institute of the National Institutes of Health, Department of Health and

Human Services, is contemplating the grant of an exclusive, sublicensable patent license to The Trustees of Columbia University in the City of New York, Columbia Technology Ventures, located in New York, New York to practice the inventions embodied in the patent applications listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: Only written comments and/or applications for a license which are received by the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases on or before December 5, 2024 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, and comments relating to the contemplated exclusive patent license should be directed to: Wade Green, Ph.D., Lead Technology Transfer and Patent Specialist, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Suite 2G, MSC9804, Rockville, MD 20852–9804, phone number 301–761–7505, or *wade.green@nih.gov.*

SUPPLEMENTARY INFORMATION: The following represents the intellectual property to be licensed under the prospective agreement: U.S. Provisional Patent Application Serial No. 68/428,826, filed November 30, 2022, titled ''Peptides And Peptide Microarrays For Detection And Differentiation Of Antibody Responses To Ebola Virus And Other Pathogens'' (HHS Reference No. E–028–2024–0–US–01) and International Patent Application No. PCT/US23/81625, filed on November 29, 2023, titled ''Peptides And Peptide Microarrays For Detection And Differentiation Of Antibody Responses To Ebola Virus'' (HHS Reference No. E–028–2024–0–PC–01). All rights in these inventions have been assigned to The Trustees of Columbia University in the City of New York, Columbia Technology Ventures and the Government of the United States of America.

The prospective patent license will be for the purpose of consolidating the patent rights with The Trustees of Columbia University in the City of New York, Columbia Technology Ventures, the co-owner of said rights, for commercial development and marketing. Consolidation of these co-owned rights is intended to expedite development of the invention, consistent with the goals of the Bayh-Dole Act codified as 35 U.S.C. 200–212.

The prospective interinstitutional agreement will include an exclusive license for NIAID's rights in these jointly owned patents. It will be sublicensable, and any sublicenses granted by The Trustees of Columbia University in the City of New York Columbia Technology Ventures will be subject to the provisions of 37 CFR part 404.

The subject patent rights are related to novel peptides that enable specific and sensitive serological detection of adaptive immune responses to a wide range of clinically important high threat pathogens circulating in sub-Saharan Africa on a wide range of platforms. These assays allow identification of individuals who have been immunized and/or infected with filoviruses.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and may be granted unless within fifteen (15) days from the date of this published notice, the National Insitute of Allergy and Infectious Diseases receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information in these license applications will be made only as required and upon a request under *the Freedom of Information Act,* 5 U.S.C. 552.

Dated: November 15, 2024.

Jeremiah D. Mitzelfelt,

Acting Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2024–27096 Filed 11–19–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; 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 Advancing Translational Sciences Special Emphasis Panel; Tissue Chips in Space 2.0.

Date: February 13–14, 2025.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Center for Advancing Translational Sciences, National Institutes of Health, 9609 Medical Center Drive, Bethesda, MD 20892 (Virtual).

Contact Person: Alumit Ishai, Ph.D., Scientific Review Officer, Office of Grants Management and Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 9609 Medical Center Drive, Suite 1E504, Bethesda, MD 20892, (301) 827–5819, *alumit.ishai@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: November 14, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–27046 Filed 11–19–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting.

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Clinical Trial Readiness Review Meeting.

Date: December 13, 2024.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Meeting Format: Virtual Meeting.

Contact Person: Ana Olariu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301–496–9223 *Ana.Olariu@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: November 14, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–27047 Filed 11–19–24; 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: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Project: Zero Suicide in Health Systems Evaluation—New Package

The Substance Abuse and Mental Health Services Administration (SAMHSA)'s Center for Mental Health Services (CMHS) is requesting clearance for the new data collection associated with the evaluation of the SAMHSA Zero Suicide in Health Systems (Zero Suicide Evaluation). The Zero Suicide program is authorized under the CURES Act. SAMHSA is required to evaluate the Zero Suicide grant, specifically (1) evaluate the activities supported by grants awarded, disseminate, as appropriate, the findings from the evaluation; and (2) provide appropriate information, training, and technical assistance, as appropriate, to eligible entities that receive a grant under this section, in order to help such entities to meet the requirements of this section, including assistance with selection and implementation of evidence.

The goal of the Zero Suicide program is the reduction of suicide and suicide attempts across America, focusing on individuals who are 25 years and older. The purpose of this program is to implement the Zero Suicide intervention and prevention model for adults throughout a health system or systems. The Zero Suicide model is a comprehensive, multi-setting approach to suicide prevention in health systems. To accomplish this critical, lifesaving work, it is essential that the effectiveness of these programs be evaluated on an ongoing basis, with implementation of suicide prevention programs continually informed by high-quality evaluation results. SAMHSA will use this data to reduce suicide ideation, suicide attempts, and deaths due to suicide.

SAMHSA has awarded new grants and continued funding to 25 grantees, Cohort 5 (15 grantees) with project period of Sept 30, 2023, to Sept 29, 2028; and Cohort 4 (10 grantees; includes one tribal organization) with project period of March 31, 2021, to March 30, 2026. SAMHSA has requested funding for 11 grantees to be funded as Cohort 6 in the fiscal year 2025.

The Zero Suicide Evaluation is designed to evaluate the implementation, effectiveness, and overall impact of the Zero Suicide program upon grantees in the United States. The evaluation will assess Zero Suicide program activities implemented by grantees and ultimately provide SAMHSA with the information needed to understand and document program effectiveness on reducing suicide morbidity and mortality, specifically among those who encounter the healthcare system. While acknowledging the lack of evidence for cultural adaptations to evidence-based and empirically supported treatments and interventions, and that research has not been conducted with historically marginalized and underserved communities (*e.g.,* Black, Asian, Autistic, Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, and Asexual Plus (LGBTQIA+), and others), Zero Suicide pushes systems to ensure that clients' cultural contexts are considered and honored in what treatments are offered and how those treatments are adapted. Thus, with behavioral health equity as a central component woven throughout the Zero Suicide Framework, the proposed evaluation will ensure that each study includes specific behavioral health equity tenets to ensure a culturally specific understanding of Zero Suicide implementation, outcomes, and impacts.

The Zero Suicide Evaluation includes four studies: Systems Change, Work Force, Consumer Experience, and Impact. The purpose of the Systems Change Study is to understand how grantees are implementing the Zero Suicide Program. The Systems Change Study collection instruments include the: Prevention Strategies Inventory (PSI), Behavioral Health Provider Survey (BHPS), Case Studies, and Cost Sub-Studies.

The purpose of the Workforce Study is to document staff awareness and perceptions associated with the Zero Suicide activities implemented by Zero Suicide-participating Healthcare Organizations (HCOs). The Workforce Study instruments include the: Work Force Survey (WFS), Training Activity Summary Page (TASP), and the Training Utilization and Preservation Survey (TUPS).

The purpose of Consumer Experience Study is to understand the relationship between Zero Suicide activities and key clinical outcomes (*i.e.,* suicide risk, depression), along with consumer perceptions of care, access to care, services received, and treatment adherence. The Consumer Experience Study instruments include the: BHPS, Consumer Experience Survey (CES), Clinical Outcomes Form (COF), and Grantee Performance Data.

The Impact Study will use secondary data and quasi-experimental designs to develop a control group and estimate the causal impact of the Zero Suicide Program on suicide morbidity and mortality.

Ultimately, the purpose of the Zero Suicide Evaluation is to build the program's knowledge base of effectiveness by thoroughly describing the implementation, outcomes, and impact of a program meant to reduce deaths by suicide.

The total annualized burden is an estimated 15,504 respondents for the Zero Suicide instruments, with a combined hourly estimate to be 4,902 hours. Burden estimates are based on the data collection requirements and the number of respondents. The estimated response burden to collect this information associated with the Zero Suicide Evaluation annualized over the requested 3-year clearance period is presented below:

TOTAL AND ANNUALIZED AVERAGES: RESPONDENTS, RESPONSES AND HOURS

Type of respondent	Form	Number of respondents per year	Responses per respondent	Total number of responses	Burden per response (hours)	Annual burden (hours)	Hourly wage rate	Total cost
Project Evaluator[1]	PSI	40	4	160	1	160	$61.53	$9,845
Grantee/HCO administrator[2]	BHPS	47	1	47	0.5	24	61.53	1,477
Grantee/HCO administrator[2]	KII—Case Studies	7	1	7	1	7	61.53	431
HCO Staff[3]	KII—Case Studies	27	1	27	1	27	26.81	724
Grantee/HCO administrator[2]	KII—Cost Sub studies	2	1	2	1	2	61.53	123
HCO Staff[3]	WFS	9,400	1	9,400	0.25	2,350	26.81	63,004
Project Evaluator[1]	TASP	40	10	400	0.25	100	36.67	3,667
HCO Staff[3]	TUPS—Baseline	3,334	1	3,334	0.25	834	26.81	22,360
HCO Staff[3]	TUPS—6 month	252	1	252	0.5	126	26.81	3,378
HCO Staff[3]	TUPS—12 month	189	1	189	0.5	95	26.81	2,547
Clinicians	C—SIF	180	8.3	1,494	0.25	374	57.21	21,397
Consumer	CES—Baseline	1,128	1	1,128	0.4	451	7.25	3,270
Consumer	CES—6-month	843	1	843	0.4	337	7.25	2,443
Consumer	C—KII	15	1	15	1	15	7.25	109
Total		15,504		17,298		4,902		134,773

Abbreviation: HCO = Healthcare Organization.

[1] BLS OES May 2022 National Industry-Specific Occupation Employment and Wage Estimates average annual salary for Survey Researchers (code 19–3022); *https://www.bls.gov/oes/cuSeetrrent/naics5_541720.htm.*

[2] BLS OES May 2022 National Industry-Specific Occupation Employment and Wage Estimates average annual salary for Medical and Health Services Managers (code 11–9111); *https://www.bls.gov/oes/current/oes119111.htm.*

[3] BLS OES May 2022 National Industry-Specific Occupation Employment and Wage Estimates average annual salary for Community and Social Service Occupations (code 29–1000); *https://www.bls.gov/oes/current/oes210000.htm.*

[4] BLS OES May 2022 National Industry-Specific Occupation Employment and Wage Estimates average annual salary for Health Diagnosing and Treating Practitioners (code 29–1000); *https://www.bls.gov/oes/current/oes_nat.htm#29-0000.*

[5] BLS OES May 2022 Characteristics of minimum wage workers, 2022; *https://www.bls.gov/opub/reports/minimum-wage/2022/home.htm#:~:text=In%202022%2C%2078.7%20million%20workers,wage%20of%20%247.25%20per%20hour.*

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.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2024–27065 Filed 11–19–24; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NV_FRN_MO#4500183119]

Notice of Segregation of Public Land for the Esmeralda Solar Projects, Esmeralda County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: Through this notice the Bureau of Land Management (BLM) is segregating public lands included in seven rights-of-way applications, serialized as NVNV106386133, for the Leeward Esmeralda (NVNV105848463), Connect Gen Smoky Valley (NVNV105848465), Arevia Gold Dust (NVNV105851657), Invenergy Nivloc (NVNV105851658), NextEra Esmeralda (NVNV105851682), Red Ridge 1 (NVNV105852204) and Red Ridge 2 (NVNV105852205) solar energy projects, from appropriation under the public land laws, including the Mining Law, but not the Mineral Leasing or Material Sales Acts, for a period of up to 2 years from the date of publication of this notice, subject to valid existing rights. This segregation is to allow for the orderly administration of the public lands to facilitate consideration of development of renewable energy resources. The public lands segregated by this notice total 117,384.38 acres.

DATES: This segregation for the lands identified in this notice is effective on November 20, 2024.

FOR FURTHER INFORMATION CONTACT: Perry B. Wickham, Field Manager, at telephone: (775) 482–7801; address: P.O. Box 911, 1553 S Main Street, Tonopah, NV 89049; or email: *pwickham@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TYY, TDD, or TeleBraille) to access telecommunication 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: Regulations found at 43 CFR 2091.3–1(e) and 2804.25(f) allow the BLM to segregate public lands within a right-of-way application area for solar energy development from the operation of the public land laws, including the Mining Law, by publication of a **Federal Register** notice. The BLM uses this segregation authority to preserve its ability to approve, approve with modifications, or deny proposed rights-of-way, and to facilitate the orderly administration of the public lands. This segregation is subject to valid existing rights, including existing valid mining claims located before this segregation notice. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature that would not impact lands identified in this notice may be allowed with the approval of an authorized officer of the BLM during the segregation period. The lands segregated under this notice are legally described as follows:

Mount Diablo Meridian, Nevada

T. 1 N., R. 37 E.,
Secs. 1 thru 5 and secs. 8 thru 16, unsurveyed;
Sec. 21, unsurveyed;
Sec. 22, partly unsurveyed, excepting M.S. No. 4895, Placer mining claims Blanco, Blanco #1, Blanco #2, Blanco #4, Blanco # 5, and Blanco #6;
Secs. 23 thru 26, unsurveyed;
Sec. 27, partly unsurveyed, excepting M.S. No. 4895, Placer mining claims Blanco, Blanco #1, Blanco #2, Blanco #4, Blanco # 5, and Blanco #6;
Secs. 35 and 36, unsurveyed.
T. 2 N., R. 37 E.,
Secs. 23 thru 26;
Sec. 32, S½NE¼, W½, and SE¼; sec. 33, W½ and SE¼;
Secs. 34 thru 36.
Tps. 1 and 2 N., R. 38 E., unsurveyed.
T.1 N., R. 38 ½ E.,
Secs. 4 thru 9, unsurveyed;

Sec. 16, N½, unsurveyed;
Sec. 17, N½, unsurveyed;
Sec. 18, N½, unsurveyed.
T.2 N., R 38 ½ E., unsurveyed.
T. 2 N., R. 39 E.,
Secs. 2 thru 10, unsurveyed;
Secs. 11 and 14, partly unsurveyed, excepting M.S. No. 2126 and M.S. No. 2135; secs. 15 thru 22 and secs. 28 thru 31, unsurveyed.
T.1 S., R. 38 E.,
Secs. 1 thru 16 and sec. 24.
T. 1 S., R. 39 E.,
Secs. 3 thru 10 and secs. 15 thru 22.

The area described contains 117,384.38 acres, according to the official plats of the surveys and protraction diagrams on file with the BLM.

As provided in the regulations, the segregation of lands in this notice will not exceed 2 years from the date of publication unless extended for an additional 2 years through publication of a new notice in the **Federal Register**. The segregation period will terminate and the land will automatically reopen to appropriation under the public land laws, including the Mining Law, at the earliest of the following dates: upon issuance of a decision by the authorized officer granting, granting with modifications, or denying the application for a right-of-way; automatically at the end of the segregation; or upon publication of a **Federal Register** notice terminating the segregation.

Upon termination of the segregation of these lands, all lands subject to this segregation would automatically reopen to appropriation under the public land laws, including the Mining Law.

Authority: 43 CFR 2091.3–1(e) and 43 CFR 2804.25(f).

Perry B. Wickham,

Field Manager, Tonopah Field Office.

[FR Doc. 2024–27124 Filed 11–19–24; 8:45 am]

BILLING CODE 4331–21–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039059; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the Sherman Institute, Riverside County, CA and the Fort Mohave Indian School, Mohave County, AZ.

DATES: Repatriation of the human remains in this notice may occur on or after December 20, 2024.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at minimum, two individuals were collected at the Sherman Institute, Riverside County, CA. The human remains are hair clippings collected from one individual who was recorded as being 24 years old and one individual who was recorded as being 17 years old and identified as ''Mojave.'' Samuel H. Gilliam took the hair clippings at the Sherman Institute between 1930 and 1933. Gilliam sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Based on the information available, human remains representing, at minimum, one individual was collected at the Fort Mohave Indian School, Mohave County, AZ. The human remains are hair clippings collected from one individual who was recorded as being 10 years old and identified as ''Mojave.'' Timothy G. Mackey took the hair clippings at the Fort Mohave Indian School between 1930 and 1933. Mackey sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Cultural Affiliation

Based on the available information and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains described in this notice.

Determinations

The PMAE has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Fort Mojave Indian Tribe of Arizona, California & Nevada.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after December 20, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: November 7, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–27036 Filed 11–19–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039063; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the U.S. Indian Vocational School, Bernalillo County, NM.

DATES: Repatriation of the human remains in this notice may occur on or after December 20, 2024.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at minimum, nine individuals were collected at the U.S. Indian Vocational School, Bernalillo County, NM. The human remains are hair clippings collected from two individuals who were recorded as being 17 years old, two individuals who were recorded as being 16 years old, one individual who was recorded as being 15 years old, three individuals who were recorded as being 14 years old, and one individual who was recorded as being 13 years old and identified as ''Acoma.'' Reuben Perry took the hair clippings at the U.S. Indian Vocational School between 1930 and 1933. Perry sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Cultural Affiliation

Based on the available information and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains described in this notice.

Determinations

The PMAE has determined that:

- The human remains described in this notice represent the physical remains of nine individuals of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Pueblo of Acoma, New Mexico.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after December 20, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: November 7, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–27030 Filed 11–19–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039062; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the Fort Totten Indian School, Benson, ND and Chemawa (Salem) Indian School, Marion County, OR.

DATES: Repatriation of the human remains in this notice may occur on or after December 20, 2024.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at minimum, one individual was collected at the Fort Totten Indian School, Benson, ND. The human remains are hair clippings collected from one individual who was recorded as being 57 years old and identified as ''Cree.'' Orrin C. Gray took the hair clippings at the Fort Totten Indian School between 1930 and 1933. Gray sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Based on the information available, human remains representing, at

minimum, one individual was collected at the Chemawa (Salem) Indian School, Marion County, OR. The human remains are hair clippings collected from one individual who was recorded as being 15 years old and identified as ''Cree.'' James T. Ryan took the hair clippings at the Chemawa (Salem) Indian School between 1930 and 1933. Ryan sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Cultural Affiliation

Based on the available information and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains described in this notice.

Determinations

The PMAE has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Chippewa Cree Indians of the Rocky Boy's Reservation, Montana.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after December 20, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: November 7, 2024

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–27037 Filed 11–19–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039067; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the Sherman Institute, Riverside County, CA and Carson Indian School, Carson City County, NV.

DATES: Repatriation of the human remains in this notice may occur on or after December 20, 2024.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at minimum, two individuals were collected at the Sherman Institute, Riverside County, CA. The human remains are hair clippings collected from one individual who was recorded as being 20 years old and one individual who was recorded as being 18 years old and identified as ''Mono.'' Samuel H. Gilliam took the hair clippings at the Sherman Institute between 1930 and 1933. Gilliam sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Based on the information available, human remains representing, at minimum, one individual was collected at the Carson Indian School, Carson City County, NV. The human remains are hair clippings collected from one individual who was recorded as being 16 years old and identified as ''Mono.'' Frederic Snyder took the hair clippings at the Carson Indian School between 1930 and 1933. Snyder sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Cultural Affiliation

Based on the available information and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains described in this notice.

Determinations

The PMAE has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Big Sandy Rancheria of Western Mono Indians of California; Cold Springs Rancheria of Mono Indians of California; and the Northfork Rancheria of Mono Indians of California.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after December 20, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not

competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: November 7, 2024

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–27039 Filed 11–19–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–39080; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before November 9, 2024, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by December 5, 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 9, 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.

KANSAS

Johnson County

Walker School, (Public Schools of Kansas MPS), 9420 W 50th Terr, Merriam, MP100011170

NORTH CAROLINA

Buncombe County

Hopkins Chapel A.M.E. Zion Church, 21 College Place, Ashville, SG100011171.

Pender County

Shelter Neck Historic District, 3707 Croomsbridge Road, Burgaw vicinity, SG100011165

TENNESSEE

Shelby County

First National Bank Operations Center, 55 N Danny Thomas Blvd., Memphis, SG100011179

UTAH

Summit County

Silver King Coalition Mine Historic District (Historic Mining Resources of Park City, Utah MPS), approximately 655 King Road, Park City vicinity, MP100011167

VIRGINIA

Frederick County

Kernstown Battlefield Historic District, 610 Battle Park Drive, Winchester, SG100011178

WISCONSIN

Ozaukee County

St. Peter Shipwreck (Schooner) (Great Lakes Shipwreck Sites of Wisconsin MPS), Address Restricted, Port Washington vicinity, MP100011163

An additional documentation has been received for the following resource(s):

MARYLAND

Frederick County

Catoctin Mountain Park (Additional Documentation) (ECW Architecture in Catoctin Mountain Park MPS), Address Restricted, Thurmont vicinity, AD14000325, Comment period: 0 days

NORTH CAROLINA

Cabarrus County

Mount Pleasant Historic District (Additional Documentation), College. Franklin. Jackson, Kluttz, Main, Park, and Walnut Streets, Mount Pleasant, AD86001050

Nomination(s) submitted by Federal Preservation Officers:

The State Historic Preservation Officer reviewed the following nomination(s) and responded to the Federal Preservation Officer within 45 days of receipt of the nomination(s) and supports listing the properties in the National Register of Historic Places.

COLORADO

Montezuma County

Rock Springs Ranger Station (Mesa Verde National Park's Early Administrative Resources MPS), Wetherill Mesa Road, Mesa Verde National Park, MP100011174

Park Point Fire Lookout (Mesa Verde National Park's Early Administrative Resources MPS), Park Point Lookout Access Road at Mile Marker 10 off Main Park Road, Mesa Verde National Park, MP100011175

Chapin Mesa Village Historic District (Mesa Verde National Park's Early Administrative Resources MPS), Chapin Mesa, Headquarters Loop Road, Mesa Verde National Park, MP100011176

Entrance Residence, Check Station Residence (Mesa Verde National Park's Early Administrative Resources MPS), Park Entrance Road at junction with U.S. Highway 160, Mesa Verde National Park, MP100011177

UTAH

Davis County

Building 225-Airplane Repair Hangar, 5875 Southgate Avenue, Hill AFB, SG100011169

Authority: Section 60.13 of 36 CFR part 60.

Paul R. Lusignan,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2024–26860 Filed 11–19–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039065; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the

Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the U.S. Indian Vocational School, Bernalillo County, NM.

DATES: Repatriation of the human remains in this notice may occur on or after December 20, 2024.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at minimum, 31 individuals were collected at the U.S. Indian Vocational School, Bernalillo County, NM. The human remains are hair clippings collected from two individuals who were recorded as being 19 years old, six individuals who were recorded as being 18 years old, seven individuals who were recorded as being 17 years old, six individuals who were recorded as being 16 years old, five individuals who were recorded as being 15 years old, three individuals who were recorded as being 14 years old, and two individuals who were recorded as being 13 years old and identified as ''Zuni.'' Reuben Perry took the hair clippings at the U.S. Indian Vocational School between 1930 and 1933. Perry sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Cultural Affiliation

Based on the available information and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains described in this notice.

Determinations

The PMAE has determined that:

- The human remains described in this notice represent the physical remains of 31 individuals of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Zuni Tribe of the Zuni Reservation, New Mexico.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after December 20, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: November 7, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–27033 Filed 11–19–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039058; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the U.S. Indian Vocational School, Bernalillo County, NM.

DATES: Repatriation of the human remains in this notice may occur on or after December 20, 2024.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at minimum, four individuals were collected at the U.S. Indian Vocational School, Bernalillo County, NM. The human remains are hair clippings collected from one individual who was recorded as being 16 years old and three individuals who were recorded as being 14 years old and identified as ''Isleta.'' Reuben Perry took the hair clippings at the U.S. Indian Vocational School between 1930 and 1933. Perry sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Cultural Affiliation

Based on the available information and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains described in this notice.

Determinations

The PMAE has determined that:

- The human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Pueblo of Isleta, New Mexico, and the Ysleta del Sur Pueblo.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after December 20, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: November 7, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–27038 Filed 11–19–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039061; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the Genoa Indian School, Nance County, NE, the Flandreau Indian School, Moody County, SD, and the American Museum of Natural History, New York County, NY.

DATES: Repatriation of the human remains in this notice may occur on or after December 20, 2024.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at minimum, one individual was collected at the Genoa Indian School, Nance County, NE. The human remains are hair clippings collected from one individual who was recorded as being 17 years old and identified as ''Crow.'' S.B. Davis took the hair clippings at the Genoa Indian School between 1930 and 1933. Davis sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Based on the information available, human remains representing, at minimum, one individual was collected at the Flandreau Indian School, Moody County, SD. The human remains are hair clippings collected from one individual who was recorded as being 17 years old and identified as ''Crow.'' George E. Peters took the hair clippings at the Flandreau Indian School between 1930 and 1933. Peters sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Based on the information available, human remains representing, at minimum, three individuals were collected at the American Museum of Natural History, New York County, NY. The human remains are hair clippings collected from one individual who was recorded as being 46 years old, one individual who was recorded as being 34 years old, and one individual who was recorded as being 26 years old and identified as ''Crow.'' Henry L. Shapiro took the hair clippings at the American Museum of Natural History between 1930 and 1933. Shapiro sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Cultural Affiliation

Based on the available information and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains described in this notice.

Determinations

The PMAE has determined that:

- The human remains described in this notice represent the physical remains of five individuals of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Crow Tribe of Montana.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after December 20, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: November 7, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–27035 Filed 11–19–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039060; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the Flandreau Indian School, Moody County, SD and St. Michael's Mission, Fremont County, WY.

DATES: Repatriation of the human remains in this notice may occur on or after December 20, 2024.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at minimum, three individuals were collected at the Flandreau Indian School, Moody County, SD. The human remains are hair clippings collected from one individual who was recorded as being 16 years old, one individual who was recorded as being 15 years old, and one individual who was recorded as being 12 years old and identified as ''Gros Ventre.'' George E. Peters took the hair clippings at the Flandreau Indian School between 1930 and 1933. Peters sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Based on the information available, human remains representing, at minimum, one individual was collected at the St. Michael's Mission, Fremont County, WY. The human remains are hair clippings collected from one individual who was recorded as being 33 years old and identified as ''Gros Ventre; Shoshone.'' A. Abbott Hastings took the hair clippings at St. Michael's Mission between 1930 and 1933. Hastings sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Cultural Affiliation

Based on the available information and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains described in this notice.

Determinations

The PMAE has determined that:

- The human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Fort Belknap Indian Community of the Fort Belknap Reservation of Montana.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after December 20, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: November 7, 2024

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–27040 Filed 11–19–24; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Network Switching and Routing Equipment Supporting Bit Indexed Explicit Replication (BIER), DN 3783;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Optimum Communications Services, Inc. on November 13, 2024. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the

sale within the United States after importation of certain network switching and routing equipment supporting bit indexed explicit replication (BIER). The complaint names as respondents: Beijing Tongruida Information Technology Co., Ltd. (Tongruida) of China; Ella Optoelectronic Technology Hebei Co., Ltd. (Ella) of China; Zhengzhou Qiongzhi Ceyu Network Technology Co., Ltd. (Qiongzhi) of China; and Beijing Morriss Technology Co., Ltd. (Morris) of China. The complainant requests that the Commission issue a general exclusion order, limited exclusion orders, and cease and desist orders.

Proposed respondents, other interested parties, members of the public, and interested government agencies are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3783'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. Government employees and contract personnel [2], solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: November 14, 2024.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2024–27001 Filed 11–19–24; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–601 and 731–TA–1411 (Review)]

Laminated Woven Sacks From Vietnam

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the countervailing duty order and antidumping duty order on laminated woven sacks from Vietnam would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on May 1, 2024 (89 FR 35241) and determined on August 5, 2024, that it would conduct expedited reviews (89 FR 77544, September 23, 2024).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on November 15, 2024. The views of the Commission are contained in USITC Publication 5561 (November 2024), entitled *Laminated Woven Sacks from Vietnam: Investigation Nos. 701–TA–601 and 731–TA–1411 (Review).*

By order of the Commission.

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Issued: November 15, 2024.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2024–27120 Filed 11–19–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Women's Flats with Colored Outsoles Thereof, DN 3784;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Gavrieli Brands LLC on November 13, 2024. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of women's flats with colored outsoles thereof. The complaint names as respondents: Kijera's OneDrop LLC of New York, NY; Craze of Philippines; Pierjeda Information Technology Co., Ltd. of China; Shengze Trading Company of China; Guangzhou Shun Cheng Trading Co., Ltd. of China; Kunming Ouxiang Trading Co., Ltd. of China; Huihui Bianan of China; Bingxin Qingfeng of China; Baiqiuju1983 of China; tb249835650 of China; Yuyoufang Foreign Trade Store of China; Xu Wenping 123 of China; and Ynwll of China. The complainant requests that the Commission issue a general exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, members of the public, and interested government agencies are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3784'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. Government employees and contract

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*

personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: November 14, 2024.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2024–27002 Filed 11–19–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–737–738 and 731–TA–1712–1715 (Preliminary)]

Hexamine (Hexamethylenetetramine) From China, Germany, India, and Saudi Arabia

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of hexamine (hexamethylenetetramine) from China, Germany, India, and Saudi Arabia, provided for in subheading 2933.69.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and imports of the subject merchandise from China and India that are alleged to be subsidized by the governments of China and India.[2] [3]

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 89 FR 87545 and 87560 (November 4, 2024).

[3] Chair Karpel determines that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of hexamine from China, Germany, India, and Saudi Arabia that are alleged to be sold in the United States at LTFV and imports of the subject merchandise from China and India that are alleged to be subsidized by the governments of China and India.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under §§ 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under §§ 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Any other party may file an entry of appearance for the final phase of the investigations after publication of the final phase notice of scheduling. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations. As provided in section 207.20 of the Commission's rules, the Director of the Office of Investigations will circulate draft questionnaires for the final phase of the investigations to parties to the investigations, placing copies on the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*), for comment.

Background

On September 30, 2024, Bakelite Synthetics (Atlanta, Georgia) filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of hexamine from China and India and LTFV imports of hexamine from China, Germany, India, and Saudi Arabia. Accordingly, effective September 30, 2024, the Commission instituted countervailing duty investigation Nos. 701–TA–737–738 and antidumping duty investigation Nos. 731–TA–1712–1715 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on October 4, 2024 (89 FR 80929). The Commission conducted its conference on October 21, 2024. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on November 14, 2024. The views of the Commission are contained in USITC Publication 5563 (November 2024), entitled *Hexamine (Hexamethylenetetramine) from China, Germany, India, and Saudi Arabia: Investigation Nos. 701–TA–737–738 and 731–TA–1712–1715 (Preliminary).*

By order of the Commission.

Issued: November 14, 2024.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2024–26998 Filed 11–19–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0009]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Application for Suspension of Deportation (EOIR–40)

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until January 21, 2025.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact

Laeticia Mukala-Nirere, Attorney Advisor, Office of the General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone: (703) 305–0470, *EOIR.PRA.Comments@usdoj.gov* or *Kabina.L.Mukala-Nirere@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: Certain individuals who are deportable from the United States may be eligible to request that the Attorney General suspend their deportation and adjust their status under former section 244 of the Immigration and Nationality Act (INA). *See also* 8 CFR 1240.55 (2024). An applicant seeking suspension of deportation may file Form EOIR–40 based on the individual facts and circumstances in his/her case. To be granted such relief from deportation, the applicant must prove that s/he meets all the statutory prerequisites for such relief and that s/he is entitled to a favorable exercise of discretion. The form contains information, such as identifying characteristics, residence, employment history and family information, which is necessary for the Attorney General to determine the statutory eligibility of individual noncitizens, who have been determined to be deportable from the United States, for suspension of their deportation pursuant to former section 244 of the INA.

Overview of This Information Collection

1. *Type of Information Collection:* Renewal, with change, of a currently approved collection. EOIR is making a few non-substantive changes to the current Form EOIR–40, to include typographical and grammatical edits, adding appropriate spacing between words, and removing unnecessary spacing and symbols between words. EOIR is also making several minor but substantive changes to the current Form EOIR–40, to include removing the word ''alien'' from the document, and replacing it with the word ''noncitizen''; clarifying the description of the dimension of an applicant's facial image for passport photographs; modifying the sentence explaining the purpose and instructions of this form; adding ''other'' as an alternate option for gender identity; changing the word ''home'' phone number to ''cell'' phone number; and including a privacy act statement.

2. *The Title of the Form/Collection:* Application for Suspension of Deportation.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is EOIR–40; the sponsoring component is Executive Office for Immigration Review, United States Department of Justice.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Primary: Individual noncitizens determined to be deportable from the United States. Other: None. Abstract: This information collection is necessary to determine the statutory eligibility of individual noncitizens, who have been determined to be deportable from the United States, for suspension of their deportation pursuant to former section 244 of the INA and 8 CFR 1240.55 (2011).

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 147 respondents will complete the form annually with an average of 5 hour and 45 minutes per response.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 845.25 hours. It is estimated that respondents will take 5 hour and 45 minutes to complete the form.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:*

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency (annually)	Total annual responses	Time per response (hours)	Total annual burden (hours)
Title	147	1	147	5.75	845.25
Unduplicated Totals					

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: November 15, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–27075 Filed 11–19–24; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Retirement Savings Lost and Found

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Announcement of voluntary information collection request.

SUMMARY: This notice announces that the Office of Management and Budget's

Office of Information and Regulatory Affairs has approved under the Paperwork Reduction Act of 1995 an information collection request developed by the Department of Labor's Employee Benefits Security Administration (Department or EBSA). Accordingly, EBSA is now collecting information from retirement plan administrators (*e.g.,* via their recordkeepers) in order to establish and maintain the Retirement Savings Lost and Found online searchable database described in section 523 of the Employee Retirement Income Security Act of 1974. This database will help connect missing participants and other individuals who have lost track of their retirement benefits with retirement plans that may be holding such benefits. This information collection request is voluntary. This notice also provides guidance and announces an enforcement policy, both to incentivize and encourage the voluntary submission of data.

DATES: Information may be submitted immediately.

ADDRESSES: Information may be submitted at *https://lostandfound-intake.dol.gov/.*

FOR FURTHER INFORMATION CONTACT: For questions regarding how to submit data in response to this information collection request: contact Division of IT Operations Support, Office of Program Planning, Evaluation and Management, Employee Benefits Security Administration, (202) 693–8610. For general questions regarding section 523 of the Employee Retirement Income Security Act, contact Stephen Sklenar, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Department of Labor's Employee Benefits Security Administration (Department or EBSA) is now collecting information from retirement plan administrators in order to establish and maintain the Retirement Savings Lost and Found online searchable database described in section 523 of the Employee Retirement Income Security Act of 1974 (ERISA). This database will help connect missing participants and other individuals who may have lost track of their retirement benefits with retirement plans that may be holding such benefits. This information collection request is voluntary.

The information being collected is basic information about individuals of a certain age who may be owed benefits under ERISA retirement plans. Specifically, EBSA is requesting the name and social security number of any participant who separated from service, is owed a benefit from the plan, and is age 65 or older. EBSA also is asking for current contact information for the plan administrator so that individuals meeting these characteristics may contact the plan administrator and make an inquiry.

The scope of this information collection request is very narrow. It is much narrower than what was previously proposed by the Department and what is ultimately going to be necessary to establish and maintain the complete database contemplated by section 523 of ERISA.[1] The Department narrowed the scope of its proposal in response to public concerns that the proposal was overly broad and unnecessarily burdensome. As supported by commenters, the Department is starting its information collection efforts by focusing on information about individuals who are at or near normal retirement age and who are owed a benefit by the plan. This is because such individuals are more likely to benefit sooner from a functioning Retirement Savings Lost and Found database than other age cohorts. Future efforts through notice and comment, however, will be needed to gradually expand the database to fully implement section 523 of ERISA.

II. Summary of Burden

In summary, the final information collection request has a 3-year average hour burden of 26,017 hours with an equivalent cost of $4,660,421 and a cost burden of $0.[2]

A summary of paperwork burden estimates follows:

Type of Review: Revision.

Agency: Employee Benefits Security Administration, U.S. Department of Labor.

Title: Retirement Savings Lost and Found.

OMB Control Number: 1210–0172.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Estimated Number of Respondents: 150,920.

Estimated Number of Annual Responses: 150,940.

Frequency of Response: Annual.

Estimated Total Annual Burden Hours: 26,017.

Estimated Total Annual Burden Cost: $0.

III. Background

A. Section 303 of SECURE 2.0

Section 303 of the SECURE 2.0 Act of 2022, which was enacted on December 29, 2022 (SECURE 2.0),[3] amended part 5 of subtitle B of title I of ERISA to add Section 523, which requires the Department, not later than 2 years after the date of enactment and in consultation with the Secretary of the Treasury, to create an online searchable database, to be known as the Retirement Savings Lost and Found. Among other things, SECURE 2.0 requires that this database allow retirement savers who may have lost track of their retirement plan to search for the contact information of their plan administrator in order to make a claim for benefits that they may be owed under the plan.

Section 523(a) of ERISA expressly directs the Secretary to establish an online searchable database which, inter alia, allows an individual to locate information about a plan if the individual is or was a participant of that plan. Section 523(e) of ERISA expressly authorizes the Department to collect certain information for plan years beginning after December 31, 2023. For example, it authorizes the Department to collect the information described in sections 6057(b)(1) through (4) and 6057(a)(2)(A) and (B) of the Internal Revenue Code of 1986 (Code). It also authorizes the Department to collect the names and social security numbers of participants and former participants described in Code section 6057(a)(2)(C) (*i.e.,* individuals who separated from service covered under their plans and who are entitled to deferred vested benefits) and identify those who were fully paid their deferred vested benefits. Finally, it authorizes the Department to collect the names and social security numbers of each participant or former participant in the plan with respect to whom vested benefits were distributed under section 401(a)(31)(B) of the Code or to whom a deferred annuity contract was distributed.

B. IRS Form 8955–SSA

Much of the foregoing information is currently reported to the Internal

[1] 89 FR 26932.

[2] The total burden for this information collection is estimated as an hour burden. The hour burden is measured as the time for recordkeepers to obtain authorization, the time for plan administrators to provide authorization to the recordkeepers, and the time for recordkeepers to provide data to the Retirement Savings Lost and Found database. Costs accounted for in the hour burden are not included in cost burden to avoid double counting, resulting in a cost burden of zero. The act of transmitting the data to the Retirement Savings Lost and Found is a cost burden but since that will occur electronically, the Department subsumed the minimal cost of that activity within the hour burden.

[3] Consolidated Appropriations Act, 2023, H.R. 2617.

Revenue Service (IRS) on Form 8955–SSA (Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits).[4] The information reported on Forms 8955–SSA is generally provided by the IRS to the Social Security Administration (SSA). The SSA then provides the reported information to separated vested participants when they file for social security benefits. Pursuant to section 523(a) of ERISA, the Department consulted with the Secretary of the Treasury and IRS on the Retirement Savings Lost and Found online searchable database, and its ability to rely on the data reported on Form 8955–SSA to populate the database.

Initially, citing concerns under section 6103 of the Code,[5] IRS indicated that it would not authorize the release of this data to the Department for the purpose of communicating either directly with participants and beneficiaries about retirement plans that may still owe them retirement benefits or indirectly through the Retirement Savings Lost and Found online searchable database. As explained below in section VII F of this notice, however, the Department believes the issues are now resolved and that it will be able to receive the information reported on Form 8955–SSA.

Nevertheless, the Department is moving forward with the voluntary information collection request because of the uncertainties associated with the Form 8955–SSA data, concerns about the completeness and accuracy of that data, and the importance of complying with the statutory deadline contained in section 523 of ERISA. Accordingly, the Department continues to request that plan administrators voluntarily furnish the information specified below directly to the Department.

C. Terminated Vested Participants Project

Separate from the database required by SECURE 2.0, the Department administers the Terminated Vested Participants Project (TVPP or missing participant program). The TVPP has three key objectives for defined benefit pension plans. First, to ensure these plans maintain adequate census and other records necessary to determine (a) the identity and address of participants and beneficiaries due benefits under the plan, (b) the amount of benefits due under the plan, and (c) when participants and beneficiaries are eligible to commence benefits. Second, to ensure these plans have appropriate procedures for advising participants with vested accrued benefits of their eligibility to apply for benefits as they near normal retirement age and the date they must start required minimum distributions under federal tax law. Third, to ensure these plans implement appropriate search procedures for terminated participants and beneficiaries for whom they have incorrect or incomplete information. Since 2017, the Department has recovered more than $7 billion for such ''missing'' participants and beneficiaries.

IV. April 2024 Proposed Information Collection Request

On April 16, 2024, the Department published for notice and comment in the **Federal Register** a proposed information collection request (April 2024 Proposed ICR) setting forth a proposed framework for a voluntary information collection. The April 2024 Proposed ICR contained three broad categories of information, as follows: (1) Information From Plans With Separated Vested Participants; (2) Information From Plans That Distributed Benefits Under Section 401(a)(31)(B) of the Internal Revenue Code; and (3) Information From Plans That Distributed Annuities.[6] The specific information in each category of the April 2024 Proposed ICR is set forth below in Section IV. The Department received thirteen comment letters in response to the April 2024 Proposed ICR. The commenters' concerns are addressed in Sections V–VII.

A. Plans With Separated Vested Participants

The April 2024 Proposed ICR, in relevant part, sought to collect the following information for any plan with a participant or former participant described in 26 U.S.C. 6057(a)(2)(C) (''separated vested participant''):

1. Name and plan number of plan as reflected on the most recent Form 5500 Annual Return/Report of Employee Benefit Plan or Form 5500–SF Short Form Annual Return/Report of Employee Benefit Plan (individually and collectively ''Form 5500''). If the plan had names other than the name on the most recent Form 5500, provide the prior names and plan numbers and include the date of change.

2. Name, employer identification number (EIN), mailing address, and telephone number of the plan administrator as reflected on the most recent Form 5500. If the plan had plan administrators other than the plan administrator on the most recent Form 5500, provide the names and EINs of the prior plan administrators and include the date of change.

3. Name, EIN, mailing address, and telephone number of the plan sponsor as reflected on the most recent Form 5500, if different than the plan administrator. If the plan had plan sponsors other than the plan sponsor on the most recent Form 5500, provide the names and EINs of the prior plan sponsors and include the date of change.

4. Name, date of birth, mailing address, email address, telephone number, and social security number (SSN) of each separated vested participant.

5. Nature, form, and amount of benefit of each separated vested participant.

6. If the vested benefit of each such separated vested participant was fully paid in a form other than an annuity (*i.e.,* lump sum payout) to the separated vested participant, provide the date and the amount of the distribution.

7. If an annuity form of benefit, state whether the separated vested participant has begun receiving benefits, the date of the annuity commencement, and the monthly benefit.

8. Name, date of birth, mailing address, email address, telephone number, and SSN of any separated vested participant of normal retirement age or older who is owed a vested benefit, and who has been unresponsive to plan communications about their benefits or whose contact information as set forth in paragraph 4 above, the plan has reason to believe is no longer accurate.

9. Name, date of birth, mailing address, email address, telephone number, and SSN of any designated beneficiary of the separated vested participant.

10. With respect to any participant whose benefit was transferred to the plan in the manner described in Line 9 of the Form 8955–SSA, provide the name and plan number of the transferor plan. Include the date of transfer to the plan.

B. Plans That Distributed Benefits Under Section 401(a)(31)(B) of the Internal Revenue Code

The April 2024 Proposed ICR, in relevant part, sought to collect the following information for any plan that

[4] The Form 8955–SSA is the designated successor to Schedule SSA (Form 5500). The Schedule SSA attachment to the Form 5500 was the vehicle the IRS used to collect this information until the Schedule SSA was replaced by the stand-alone IRS Form 8955–SSA.

[5] See 26 U.S.C. 6103 (confidentiality and disclosure of returns and return information).

[6] 89 FR 26932.

distributed benefits under section 401(a)(31)(B) of the Code:

1. Name of plan and plan number as reflected on the most recent Form 5500. If the plan had names other than the name on the most recent Form 5500, provide the prior names and plan numbers to include the date of change.

2. Name, EIN, mailing address, and telephone number of the plan administrator as reflected on the most recent Form 5500. If the plan had plan administrators other than the plan administrator on the most recent Form 5500, provide the names and EINs of the prior plan administrators and include the date of change.

3. Name, EIN, mailing address, and telephone number of the plan sponsor as reflected on the most recent Form 5500, if different than the plan administrator. If the plan had plan sponsors other than the plan sponsor on the most recent Form 5500, provide the names and EINs of the prior plan sponsors and include the date of change.

4. Name, date of birth, mailing address, email address, telephone number and SSN of each participant or former participant with respect to whom any amount of the vested benefit was distributed under section 401(a)(31)(B) of the Code.

5. With respect to such participant or former participant, the name of the designated trustee or issuer described in section 401(a)(31)(B) of the Code.

6. With respect to such participant or former participant, the address of the designated trustee or issuer described in section 401(a)(31)(B) of the Code.

7. With respect to such participant or former participant, the amount of the distribution.

8. With respect to such participant or former participant, the account number of the individual retirement plan to which the amount was distributed.

9. With respect to such participant or former participant, the name, date of birth, mailing address, email address, telephone number, and SSN of any designated beneficiary.

C. Plans That Distributed Annuities

The April 2024 Proposed ICR, in relevant part, sought to collect the following information for any plan that distributed benefits pursuant to an annuity contract described in 29 CFR 2510.3–3(d)(2)(ii):

1. Name and plan number of plan as reflected on the most recent Form 5500. If the plan had names other than the name on the most recent Form 5500, provide the prior names and plan numbers to include the date of change.

2. Name, EIN, mailing address, and telephone number of the current plan administrator as reflected on the most recent Form 5500. If the plan had plan administrators other than the plan administrator on the most recent Form 5500, provide the names and EINs of the prior plan administrators and include the date of change.

3. Name, EIN, mailing address, and telephone number of plan sponsor as reflected on the most recent Form 5500, if different than the plan administrator. If the plan had plan sponsors other than the plan sponsor on the most recent Form 5500, provide the names and EINs of the prior plan sponsors and include the date of change.

4. Name, date of birth, SSN, mailing address, email address, and telephone number of each participant or former participant with respect to whom an annuity contract, described in 29 CFR 2510.3–3(d)(2)(ii), was distributed.

5. With respect to such participant or former participant, the name of the issuer of the annuity contract.

6. With respect to such participant or former participant, the address of the issuer of the annuity contract.

7. With respect to such participant or former participant, the contract or certificate number.

8. With respect to such participant or former participant, the name, date of birth, mailing address, email address, telephone number, and SSN of any designated beneficiary.

D. Historical Data

With respect to all three categories of information described above (in sections A through C), the April 2024 Proposed ICR sought historic information, to the extent available, dating back to the date the plan first became subject to ERISA or as far back as possible, if shorter. The Proposed ICR sought this data in an effort to establish the most effective Retirement Savings Lost and Found online searchable database possible.

E. Public Comments on April 2024 Proposal

Nearly every commenter objected to the breadth of the April 2024 Proposed ICR. One commenter, for instance, asserted that there is very little information the Department needs to build the Retirement Savings Lost and Found database contemplated by section 523 of ERISA. This commenter is of the view that ''the only information needed is the participant's name, the plan name and the plan's contact information, and any updates to the latter two.'' [7] This commenter suggested that the Department reevaluate what actually is needed for the database to function and focus on collecting only that information.

A different commenter asserted that, in many respects, the April 2024 Proposed ICR goes beyond what the Department is expressly authorized to collect under section 523 of ERISA. This commenter also contended that the April 2024 Proposed ICR goes beyond ''what is reasonably necessary to ensure the proper administration and maintenance of the [Retirement Savings Lost and Found], as envisioned by Congress.'' [8] This commenter suggested that, before moving on to additional services and functionality that might necessitate broader information requests, the Department should limit its information request to only those data elements that are necessary for participants to locate and receive information that is needed to access benefits owed them. In the commenter's view, such information did not include, for example, information regarding (a) beneficiaries; (b) participant and beneficiary contact information such as phone numbers, email addresses, and physical addresses; and (c) account balances.

A third commenter stated that the April 2024 Proposed ICR asks plan administrators for an ''overwhelming'' amount of information beyond what is specifically authorized.[9] Unauthorized and unnecessary information, according to this commenter, includes (a) plan sponsor information; (b) date of birth, mailing address, email address, and telephone number of the participant; (c) beneficiary information; and (d) historical information. This commenter believes that the April 2024 Proposed ICR unnecessarily complicates what was supposed to be a basic online database, raising serious privacy and administration concerns. Accordingly, the commenter urged the Department to narrow the April 2024 Proposed ICR and abandon the proposal.

A fourth commenter stated that the April 2024 Proposed ICR requests significantly more information about participants and their beneficiaries than is authorized by the statute's limited list of data elements.[10] This commenter also argued that the proposal requests data dating back to the date a plan became covered by ERISA, while the statue

[7] Comment Letter of US Chamber of Commerce, page 3.

[8] Comment Letter of SPARK, page 2.

[9] Comment Letter of the ERISA Industry Committee, pp 2–3.

[10] Comment Letter of the Investment Company Institute, page 5.

specifically authorizes only the collection of information with respect to plan years beginning in 2024. In the commenter's view, the April 2024 Proposed ICR impermissibly expanded both the data elements, and the time period covered. This commenter asserted that collecting and providing the additional data would be prohibitively expensive, placing an enormous cost and burden on plans and their recordkeepers—cost that may ultimately be passed on to plan participants. The commenter also expressed concern that the prospect of sharing participants' confidential and personal information raises significant data concerns, and could expose plans and their recordkeepers to liability, particularly in the event of any data breach.[11] This commenter urged the Department to collect no more than the information specified by section 523(e) of ERISA.

Another commenter expressed its concern with the April 2024 Proposed ICR's request for data on individuals that exceeds the data specifically described in the statute.[12] This commenter stated that the statute contemplates the name and taxpayer identifying number of terminated vested participants whose benefits were distributed during the plan year, together with certain limited additional information such as whether an annuity was distributed to such an individual and the name and address of the annuity issuer. This commenter asserted that the more personal information the Department requests beyond what is necessary, the greater the potential liability if such data is compromised, and the greater the possibility that plans will not provide any information. This commenter encourages the Department not to proceed with any voluntary information collection request, but instead proceed directly to the rulemaking process and limit the information required to what is required by the statute.

This commenter also strongly objected to the historical information requested by the April 2024 Proposed ICR. This commenter argued that the statute does not contemplate requiring administrators to report the plan-related information described in Internal Revenue Code section 6057(b)(1)–(4) or 6057(a)(2)(A)–(B) on a retroactive basis, let alone as far back as to the date a covered plan became subject to ERISA. This commenter submits that the re-creation of historical plan data by administrators would in many cases be exceedingly challenging and time-consuming, and for some plans it will be impossible to produce.

[11] See also Comment Letter of American Retirement Association (sharing this concern), page 2.

[12] Comment Letter of American Benefits Council, page 6.

V. September 2024 Revised Information Collection Request

A. Narrowed Scope of April 2024 Proposal

In response to the public comments received on the April 2024 Proposed ICR (discussed above in section IV E of this notice), the Department revised and republished the proposed ICR in September 2024 again soliciting public input (September 2024 Revised ICR).[13] As compared to the April 2024 Proposed ICR, the September 2024 Revised ICR proposed to significantly narrow the scope of collection to capture only information on separated vested participants who have reached age 65 and who are owed a benefit, as well as basic contact information for the plan administrator. Information on separated vested participants under the second proposal in September included deceased participants who would have been age 65 or older if they had survived and whose beneficiary is entitled to a benefit; separated vested participants aged 65 or older whose benefits were conditionally forfeited under Treasury Regulation section 1.411(a)–4(b)(6); and separated vested participants aged 65 or older who are in pay status. The comment period for the September 2024 Revised ICR closed on October 15, 2024, and five comments on the September Revised ICR were received.

B. Public Comments on Narrower Scope

Overall, commenters supported the narrower scope of collection in the September 2024 Revised ICR. Commenters, however, continued to raise a number of concerns including with respect to cybersecurity risks. These comments and concerns are addressed below.

VI. Final Information Collection Request

A. Decision To Narrow Information Collection Request

The Department does not agree with the position of those commenters described in Section IV.E who found it inappropriate for the Department to collect all of the information listed in the April 2024 Proposed ICR. Nevertheless, the Department generally agrees to structure the final information collection request to reduce cost and burden on responders in order to encourage participation. The Department has significantly narrowed the scope of the final information collection request in response to public comments. Generally speaking, this final information collection request is limited to the current contact information for the plan as well as the name and social security number of any participant who separated from service, is owed a benefit, and is age 65 or older. In this regard, the scope of the final information collection request is very similar to the scope of the September 2024 Revised ICR, with a few improvements made in response to public comments received on the September proposal.

Subsection VI B of this notice delineates the precise data points being sought under the final ICR. Unlike the April 2024 Proposed ICR, this final information collection request does not seek, among other things, data on: (a) historical practices dating back to the date the covered plan became subject to ERISA; (b) beneficiaries; (c) date of birth, mailing address, email address, and telephone number of each separated vested participant; (d) benefits distributed under section 401(a)(31)(B) of the Internal Revenue Code; and (e) benefits distributed pursuant to an annuity contract described in 29 CFR 2510.3–3(d)(2)(ii).

As supported by commenters, the Department is starting its information collection efforts by focusing on information about individuals who are at or near normal retirement age and who are owed a benefit by the plan. This is because such individuals are more likely to benefit sooner from a functioning database than other age cohorts. Future efforts, however, are needed to gradually expand the database to fully implement section 523 of ERISA. At this time, the Department is requesting only the following specific information.

B. Specific Information Requested—Limited to Plans With Separated Vested Participants Still Owed Benefits

For any plan with a participant or former participant described in 26 U.S.C. 6057(a)(2)(C)(i) and (ii) (''separated vested participant''), provide the following information with respect to that plan in accordance with filing instructions created by the Department:

1. Name and plan number of plan as reflected on the most recent Form 5500 Annual Return/Report of Employee Benefit Plan or Form 5500–SF Short Form Annual Return/Report of

[13] 89 FR 74291 (Sept. 12, 2024).

Employee Benefit Plan (individually and collectively ''Form 5500'').

2. Name, employer identification number (EIN), mailing address, and telephone number of the plan administrator as reflected on the most recent Form 5500.

3. Name, EIN, and telephone number of the plan sponsor as reflected on the most recent Form 5500.

4. Name and SSN of any separated vested participant aged 65 (or older) who is owed a vested benefit. This includes deceased participants who would have been age 65 or older if they had survived and whose beneficiary is entitled to a benefit; separated vested participants aged 65 or older whose benefits were conditionally forfeited under Treasury Regulation section 1.411(a)–4(b)(6); and separated vested participants aged 65 or older who are in pay status.

5. With respect to participants previously reported to the Retirement Savings Lost and Found as owed a benefit that has since been paid, indicate once their benefit has been paid and the date of the payment.

C. Scope—Beneficiaries

Commenters on the September 2024 Revised ICR objected to collecting information about beneficiaries. Commenters stated that information about beneficiaries is beyond the scope of section 523 of ERISA. The Department does not agree that information about beneficiaries is outside the scope of section 523 of ERISA. Regardless, the commenters misapprehended the scope of the September 2024 Revised ICR. Neither it nor the final ICR seeks to collect information about beneficiaries. The final ICR, however, does request data on deceased participants who still have benefits under the plan so that the deceased participant's beneficiary or survivor may use the Retirement Savings Lost and Found to search for that benefit.

D. Scope—Participants in Pay Status

Commenters questioned why the September 2024 Revised ICR sought to collect information on separated vested participants aged 65 or older who are in pay status in defined benefit plans. Commenters asserted that individuals in pay status are not ''missing'' or ''lost.'' The final ICR seeks this information because these individuals are still owed a benefit under the plan. ERISA section 523 includes missing and lost individuals but is not limited to them.

E. Scope—Church Plans

One commenter on the September 2024 Revised ICR asked whether the Department intends the final ICR to cover non-electing church plans. The scope of the final ICR is coextensive with the scope of section 523 of ERISA. Section 523(a)(2) of ERISA generally limits the scope of section 523 to ''a plan to which the vesting standards of section 203 apply.'' Since non-electing church plans are not subject to section 203 of ERISA, the final ICR does not cover such plans.

F. Method of Transmitting Data

The April 2024 Proposed ICR solicited public comment on two electronic methods to submit data to Retirement Savings Lost and Found. Under the first method, plan administrators (or their authorized representatives, such as recordkeepers) would be able to electronically submit data as an attachment to the Form 5500 using EFAST2. The second method mentioned was the establishment of a portal for plan administrators (or their recordkeepers) to submit the information directly into the Retirement Savings Lost and Found database as an alternative to submitting the information as an attachment to the Form 5500 using EFAST2. Under either method, the April 2024 Proposed ICR indicted that the Department would provide a model format that plan administrators could use to submit the information.

Overall, commenters offered support for both methods of electronically submitting the data. While generally supportive of the use of EFAST2, commenters questioned the feasibility of being able to submit a Retirement Savings Lost and Found attachment in time to meet the plan's deadline for filing the plan's 2023 Form 5500. Some commenters, noting that the Form 5500 is filed annually, suggested that the Retirement Savings Lost and Found data should be furnished more frequently than annually in order to keep the Retirement Savings Lost and Found current, *e.g.,* at least quarterly. Some commenters raised privacy concerns with attaching certain Retirement Savings Lost and Found data (social security numbers) to the Form 5500 (which is a public filing). Other commenters expressed a preference for a direct upload portal for plan recordkeepers to submit information directly into the Retirement Savings Lost and Found database because this method would permit a single recordkeeper to submit bulk uploads on behalf of multiple plans simultaneously and would allow frequent uploads on regular basis, *e.g.,* quarterly, monthly, or even more frequently, so that the Retirement Savings Lost and Found does not become stale.

The Department established a portal for plan administrators or their recordkeepers to submit the information directly into the Retirement Savings Lost and Found database, instead of submitting the information as an attachment to the Form 5500 using EFAST2 as was contemplated by the April 2024 Proposed ICR. The Department also created an upload template to assist filers.[14] The template is a table, in Microsoft Excel/CSV format, designed to capture details on separated vested participants who have reached age 65 and who are owed a benefit, and basic information about their plans. The plan administrator or the plan's recordkeeper may download, populate, and then upload the completed Excel/CSV file directly with EBSA through RSFL. This direct portal approach allows recordkeepers to file on behalf of multiple plans simultaneously. RSFL requires filers to have a free *Login.gov* account, and to create a user profile. The Department has also developed line-by-line instructions to guide filers through the process.[15] The upload template and instructions are available at *https://lostandfound-intake.dol.gov/template.xlsx.*

Many commenters discussing the topic of transmitting data to the Retirement Savings Lost and Found also mentioned concerns about data security after the transfer. In response, the Department notes that the Retirement Savings Lost and Found is being developed in accordance with the U.S. Department of Commerce National Institute of Standards and Technology SP 800–53 Revision 5 security controls, including implementation of all applicable privacy controls.[16] Retirement Savings Lost and Found administrators will use the Department's login credential practices to access the Retirement Savings Lost and Found, including Multi-Factor Authentication login and Single Sign-On account access via Personal Identity

[14] See appendix A.

[15] See appendix B.

[16] To include AC–03(14)—Individual Access; PL–08—Security and Privacy Architectures; PT–05(2)—Privacy Act Statements; RA–08—Privacy Impact Assessments; SC–07(24)—Personally Identifiable Information; SI–12—Information Management and Retention; SC–28—Protection of Information at Rest; SC–28(1)—Cryptographic Protection. Additional information on individual security and privacy controls is available on the NIST Cybersecurity and Privacy Reference Tool web page, *https://csrc.nist.gov/projects/cprt/catalog#/cprt/framework/version/SP_800_53_5_1_1/home.*

Verification certificate authentication. Public users (search users) will require *Login.gov* credentials to access the Retirement Savings Lost and Found. Top industry standards for data encryption will be used to encrypt data while at rest [17] and in transit.[18]

VII. Miscellaneous

A. Fiduciary Duty To Mitigate Cybersecurity Risk

Several commenters raised concerns about data security and their potential exposure to liability under ERISA in the event of a future data breach involving the Retirement Savings Lost and Found. The commenters acknowledged that fiduciaries have an obligation under section 404 of ERISA to take prudent measures to protect participants' personal information and mitigate cybersecurity risks. The commenters stated that the April 2024 Proposed ICR and the September 2024 Revised ICR both had failed to provide sufficient information about the Retirement Savings Lost and Found's security features to enable plan fiduciaries to prudently conclude that furnishing the information described in the proposals would not constitute a breach of ERISA's fiduciary duties. The commenters concluded that this may prevent a significant number of plans from responding to the voluntary information collection request. The commenters requested a detailed description of the Retirement Savings Lost and Found's security protocols and asked that the Department agree to indemnify and otherwise make whole plans and their recordkeepers for losses that occur as result of a data security failure attributable to the Retirement Savings Lost and Found.

The Department agrees with these commenters that responsible plan fiduciaries have an obligation to ensure proper mitigation of cybersecurity risks, which includes using only services that follow strong cybersecurity practices. The Department had not finished constructing the security protocols at the time of publication of the September 2024 Revised ICR. A more fulsome description, however, now is contained in Section VI F, above, of this notice.

The Department has taken great care to ensure the security and confidentiality of participant data and reassures plan fiduciaries that if they voluntarily furnish data in response to this information collection request and follow the instructions for transmitting the data to the Department, they will have satisfied their duty under section 404 of ERISA to ensure proper mitigation of cybersecurity risks. Accordingly, plan fiduciaries' submission of data to the Retirement Savings Lost and Found in accordance with the system's instructions on submissions will not violate fiduciaries' duties of prudence and loyalty, but rather would promote participant interests in securing promised benefits in accordance with those obligations. Such plan fiduciaries will not be subject to liability under ERISA for the Department's conduct in the event of a future security failure involving Retirement Savings Lost and Found. In light of this opinion, the Department need not address the commenters' request for indemnification.

B. State Privacy Laws

Several commenters requested that the Department address the interaction of state privacy laws with this voluntary information collection request. They raised concerns about potential liability under ERISA's fiduciary provisions and state law in connection with voluntarily furnishing certain personal information (*e.g.,* name, social security number, telephone number, date of birth, mailing address) under this information collection request without first obtaining participant consent.

The Department notes that section 523(e) of ERISA explicitly authorizes the Department to collect, among other information, the ''name and taxpayer identifying number'' of affected participants or former participants. The Department also observes, however, that state privacy laws vary in their scope and application, it is unclear whether any apply in the specific circumstances at hand, and commenters acknowledged such laws often contain an exemption for information provided to government authorities to comply with a regulatory inquiry. No commenter suggested that the Department is not a government authority or that the Retirement Savings Lost and Found is not a proper regulatory function in light of section 523 of ERISA.

Further, the Department narrowed this voluntary information collection request to two pieces of sensitive data—the participant's name and social security number—both of which the plan has already reported to the federal government under section 6057 of the Code for purposes aligned with and integrated with the Retirement Savings Lost and Found. In any event, the Department will not take enforcement action under ERISA against any plan fiduciary, or recordkeeper or other party acting on behalf of the plan, for responding to this information collection request without first obtaining participant consent to the extent required by state law provided that the plan fiduciary acts reasonably and in good faith in responding to this information collection request.[19] The Department believes this enforcement policy, in combination with the narrower scope of the revised information collection request and participants' right to opt out of Retirement Savings Lost and Found, discussed in sections VI and VII of this notice, below, addresses the commenters' concerns. However, individuals with residual concerns or unique circumstances are encouraged to contact the Department directly for additional assistance.

C. User Authentication as Protection

Some commenters raised concerns that establishing a publicly accessible online searchable database storing sensitive personal information, such as social security numbers or information regarding retirement account balances, introduces the risk that this information will be disclosed to an unintended audience or possibly used for fraud. Generally, these commenters urged the Department to limit information returned from a search of the Retirement Savings Lost and Found to that related to the individual conducting the search and to prevent data ''scraping,'' a process used by certain ''property finders,'' ''recovery agents,'' ''heirfinders,'' and other data aggregators to mass collect information using other publicly accessible databases such as those used to search state unclaimed property funds. The Department understands these concerns and incorporated limitations to the search function to address this risk, such as requiring an authenticated account for each user searching the Retirement Savings Lost and Found and producing search results particularized to that account holder. Unlike other publicly available property search tools and engines, no general list of information will be accessible for the public to view. As such, the risk for unintended disclosure, or fraud using information collected from the Retirement Savings Lost and Found, is thoroughly mitigated.

[17] While at rest, the Amazon RDS encrypted DB instances will use the industry standard AES–256 encryption algorithm to encrypt the data on the server that hosts the Amazon RDS DB instances.

[18] In transit, data passed from the user to the application will be protected via standard HTTPS/SSL encryption and data from the database to the application will be protected by TLS encryption.

[19] However, no party acting on behalf of a plan may furnish information in response to this information collection request without the approval or consent of a responsible plan fiduciary.

D. Use of Plan Assets To Pay Cost of Voluntary Reporting

Commenters requested clarification regarding whether, and the extent to which, plan assets may be used, consistent with ERISA's fiduciary duties, to pay the cost of voluntary reporting. Commenters mentioned that such cost includes the cost associated with collecting, formatting, and transmitting the data, and that the scope of the final ICR obviously will impact costs. In the Department's view, the reasonable cost of voluntarily reporting the data under the revised ICR is a permissible use of plan assets because the purpose of the reporting is to connect separated vested participants with benefits owed them under the plan.

E. Participants' Opt-Out Rights

Commenters requested clarification on how participants may exercise their statutory right to opt-out of Retirement Savings Lost and Found. Section 523(c)(2) of ERISA provides that in establishing the Retirement Savings Lost and Found, the Department, in consultation with the Secretary of the Treasury, shall take all necessary and proper precautions to ''allow any individual to contact the Secretary to opt out of inclusion in the Retirement Savings Lost and Found.'' Commenters observed that the Proposed ICR did not describe an opt-out mechanism or procedure.

The Department considered a number of options to enable participants to exercise this statutory right in a convenient and easy-to-use mechanism for participants of all ages, backgrounds, and abilities. Initially, participants may opt out online by submitting a request at *https://www.dol.gov/agencies/ebsa/about-ebsa/ask-a-question/ask-ebsa.* Instructions will guide the participant. If a participant chooses to opt out of the Retirement Savings Lost and Found, the participant's data will be suppressed from appearing in searches of the Retirement Savings Lost and Found. The participant's decision will be documented and referred to database administrators for execution. The Department is also considering adding an online self-service opt out feature directly to the Retirement Savings Lost and Found, but this option is not available now.

F. Alternatives to the Voluntary Information Collection Request

Commenters recommended the Department consider alternative methods for implementing the Retirement Savings Lost and Found. One commenter suggested that the Department consider hiring a private sector contractor to operate the Retirement Savings Lost and Found. Another commenter stated its concern that the voluntary ICR approach to populating the Retirement Savings Lost and Found with information will compromise the content and effectiveness of the Retirement Savings Lost and Found and, thus, the Department should abandon its current approach and instead proceed to formal notice and comment rulemaking.

The Department declines to abandon its current approach. The current approach gives the Department the best chance to comply with the Congressional directive in a timely manner. Under its current approach, the Department has substantially reduced the burden of responding to the ICR. In addition, the current approach does not foreclose the Department from making improvements to the Retirement Savings Lost and Found in the future. The Department will take the comments received on the ICR into consideration regarding any future improvements.

In response to commenters' requests that the Department continue to work with IRS, SSA, or both, to obtain Form 8955–SSA information directly from those agencies instead of requesting such information from plan administrators, the Department notes that it has continued its discussions with both agencies and believes it will be able to use the Form 8955–SSA data. The Department notes, however, that the Form 8955–SSA data may often be inaccurate, outdated, or incomplete.[20] For instance, current recordkeeper data can show if benefits have been paid out, whereas Form 8955–SSA data likely cannot. Access to payout data is critical to keep the Retirement Savings Lost and Found current and reduce the instances of ''false positive'' search results mentioned by the commenters. These commenters strongly encouraged the Department to make every possible effort to maintain as up-to-date information as possible so that the public has confidence in the integrity of Retirement Savings Lost and Found. To that end, even if Form 8955–SSA data is received, such data would stand to benefit if supplemented by current recordkeeper data. The minimal voluntary data collection requested here will enable plans and plan sponsors to ensure the accuracy of information contained in the database. Accurate data will serve the interests of both plans and plan participants in obtaining benefits to which they are truly entitled and in avoiding search efforts and inquiries to plans and plan sponsors based on erroneous information. As noted above, the current approach also gives the Department the best chance to comply with the Congressional directive in a timely manner.

G. Multi-Vendor Plans

Commenters raised a concern with what they described as ''multi-vendor'' situations. Commenters explained that this occurs when a plan has more than one recordkeeper, such as in the case of ERISA-covered 403(b) plans. Commenters stated that the Department did not address this situation in the April 2024 Proposed ICR or the September 2024 Revised ICR. Commenters are concerned that the Retirement Savings Lost and Found may not be able to intake and integrate more than one upload template for a single plan. The Department understands this issue and confirms that the Retirement Savings Lost and Found is able to accommodate multiple filings from different recordkeepers for the same plan.

H. Failure To Reflect Payments

Commenters raised concerns about what they described as ''false positives.'' They described this as the potential for Retirement Savings Lost and Found searches to indicate that participants are owed previously distributed benefits if the Retirement Savings Lost and Found is not updated to reflect distributions. These commenters requested that the Department establish a mechanism for filers to submit data indicating that a participant has been paid their benefits. Otherwise, RSFL would show false positives, leading to confusion. These commenters suggested that the Department remove participants from the Retirement Savings Lost and Found once benefits are paid.

The Department agrees with these comments on the need to reduce confusion and is taking the following actions. Two data elements are being added to the Retirement Savings Lost and Found upload template in Columns V and W. These modifications permit the filer to indicate (1) whether the present value of the total accrued benefit has been paid and (2) the date of payment. In addition, when searchers run queries, Retirement Savings Lost and Found results will display the payment information captured in these new fields, if applicable. This outcome will mitigate the concerns raised by the commenters.

[20] United States Government Accountability Office, Report GAO–14–92 (Nov. 2013), Private Pensions: Clarity of Required Reports and Disclosures Could be Improved.

I. Use of Information Collected

One commenter expressed concern that the Department would use information collected under the ICR to audit plans. Information collected under the ICR is considered information collected under section 523 of ERISA. Section 523(f) of ERISA imposes limits on how the Department uses information collected under section 523. The Department will respect the limitations in section 523(f) in connection with information obtained under the ICR.

J. Use of Other Authorities Under ERISA To Collect Information

Some commenters requested that the Department retract previously made statements that it has the authority to collect information through investigations and under a general grant of rulemaking authority. The Department declines to retract the statements. See sections 504 and 505 of ERISA. Questions regarding the Department's investigative authority and its general rulemaking authority are beyond the scope of this ICR.

K. Fiduciary Duty—Guidance on Missing Participants

One commenter requested that the Department issue guidance regarding the steps a plan fiduciary must take under section 404 to search for ''missing'' participants. This commenter's request is outside the scope of the ICR. In this connection, however, the Department notes that it has given extensive guidance with respect to missing participants, which can be found on its website.[21] If there are questions regarding that guidance or additional guidance needed on issues related to missing participants, interested parties should contact the Department with their questions or requests.

Signed at Washington, DC, this 14th day of November, 2024.

Lisa M. Gomez,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

BILLING CODE 4510–29–P

[21] See Compliance Assistance Release 2021–01; Best Practices for Pension Plans; and EBSA Field Assistance Bulletin 2021–01 (*https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/retirement/missing-participants-guidance*).

Appendix A

Table.-- *Lost and Found Data Upload Template*

(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)
Guidance	Name of Plan as shown on Form 5500	(no dashes or spaces)		Plan Sponsor Employer Identification Number (EIN) (no dashes or spaces)	(no dashes or spaces)		Plan Administrator Employer Identification Number (EIN) (no dashes or spaces)	(if applicable)	Plan Administrator phone number (no dashes or spaces)	Street Address (room, apt., suite no. and street, or P.O. box)	City of Plan Administrator identified in column G
Requested Data	**Name of Plan**	**Plan Number**	**Plan Sponsor Name**	**Employer Identification Number (EIN)**	**Plan Sponsor Phone Number**	**Plan Administrator Name**	**EIN**	**In Care of Name**	**Phone Number**	**Street Address**	**City**
Example	ABC Plan	123	ABC Inc.	123456789	2024567899	Doug Douglas	987654321	Smith	1234567777	PO Box 982902	El Paso
	DEF Plan	123	DEF Inc.	123456788	4104567899	Stephen Stevens	123456789	Franks	1234567888	PO Box 982901	El Paso
	XYZ Plan	789	XYZ Inc.	123456777	3014567899	Tom Thomas	123456788	Doyle	1234567899	1 Corporate Way	Philadelphia
	XYZ Plan	789	XYZ Inc.	123456777	3014567899	Tom Thomas	123456788	Doyle	1234567899	1 Corporate Way	Philadelphia

Table.-- *Lost and Found Data Upload Template (continued)*

(M)	(N)	(O)	(P)	(Q)	(R)	(S)	(T)	(U)	(V)	(W)
State (XX) of Plan Administrator identified in column G	Zip (XXXXX) of Plan Administrator identified in column G	Foreign Province/State (if applicable) of Plan Administrator identified in column G	Foreign Country (if applicable) of Plan Administrator identified in column G	Foreign Postal Code (if applicable) of Plan Administrator (no dashes or spaces) identified in column G	Enter the social security number (or ITIN if applicable) (no dashes or spaces) of each participant who (1) is a separated vested participant (as described in 26 U.S.C. 6057(a)(2)(C)(i) and (ii)), (2) is owed a benefit, and (3) has reached age 65 (or older)	First Name of Participant	Middle Name of Participant	Last Name of Participant	Leave blank if participant is owed a benefit. Enter "Paid" if this column was blank on a previous filing but a benefit has since been paid.	Enter date as MM/DD/YYYY
State	**Zip**	**Foreign Province (or State)**	**Foreign Country**	**Foreign Postal Code**	**Separated Vested Participant Social Security Number**	**First Name**	**Middle Name**	**Last Name**	**Benefit Payment**	**Date of Benefit Payment**
TX	79998				123456789	Mary	X	Washington		

TX	79999				123456789	George	X	Washington		
PA	19380				123456789	John	X	Adams		
PA	19380					Benjamin	X	Franklin		

Paperwork Reduction Act Statement

According to the Paperwork Reduction Act of 1995 (Pub. L. 104-13) (PRA), no persons are required to respond to a collection of information unless such collection displays a valid Office of Management and Budget (OMB) control number. The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. See 44 U.S.C. 3507. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. See 44 U.S.C. 3512.

The public reporting burden for this collection of information is estimated to have a three-year average approximately 70 hours per recordkeeper or plan submitting data to the Retirement Savings Lost and Found and 10 minutes per plan to provide consent. Interested parties are encouraged to send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Office of Research and Analysis, Attention: PRA Clearance Officer, 200 Constitution Avenue, N.W., Room N-5718, Washington, DC 20210 or email ebsa.opr@dol.gov and reference the OMB Control Number 1210-NEW.

OMB Control Number 1210-0172 (expires 11/30/2027).

Appendix B

FILING INSTRUCTIONS
For
Retirement Savings Lost and Found Database

Upload Template

These instructions explain how to provide information to the Department of Labor Employee Benefits Security Administration (EBSA) for the Retirement Savings Lost and Found Database. Giving us this information is voluntary.

Who may file

Retirement plan administrators and authorized third parties, such as the plan's recordkeeper, may provide information for the Retirement Savings Lost and Found.[22]

What to file

The filing includes basic information about the plan, the plan sponsor and administrator, and separated vested participants.

When to file

Plans should file at least annually. However, we strongly encourage you to update the information more frequently, such as quarterly, to ensure the Retirement Savings Lost and Found stays up to date.

How to file

Step 1: Use the Retirement Savings Lost and Found template

This Microsoft Excel/CSV template is a table designed by the Department to collect details on separated vested participants who have reached age 65 and are owed a benefit. It also gathers basic information about their plans.

Step 2: File directly with the Retirement Savings Lost and Found

After filling in the template, upload the completed Excel/CSV file directly with the Retirement Savings Lost and Found at https://lostandfound-intake.dol.gov/. This method allows recordkeepers to file on behalf of multiple plans simultaneously. Filers must have a Login.gov account and must create a user profile.

Other information

[22] A plan administrator is defined in section 3(16) of the Employee Retirement Income Security Act (ERISA). A retirement plan is defined in section 3(2).

Before filing, recordkeepers must have authorization from a responsible fiduciary of each plan whose information is being submitted. Plan administrators and recordkeepers should maintain documentation of the authorization in their records.[23]

Do not file the Retirement Savings Lost and Found template through the EFAST2 Form 5500 filing system along with or as part of the plan's annual return/report.

Using the Retirement Savings Lost and Found template

The instructions below describe how to use each column on the template. References to specific lines on the Form 5500 or Form 5500-SF indicate precisely what information the filer should include in the relevant column.

You should enter information on a separate row for each person meeting the criteria specified in Column R. If a person meets the Column R criteria for more than one plan, enter the information on a separate row for each plan.

Do not include spaces or dashes between numbers for any numerical information, such as plan and identification numbers, telephone numbers, addresses, and Social Security numbers.

Column B – Name of Plan

- Enter the plan's formal name.
    - Line 1a of the most recently filed Form 5500, Form 5500-SF, or Schedule DCG.

Column C – Plan Number

- Enter the three-digit plan or entity number the employer or plan administrator assigned to the plan.
    - Line 1b of the Form 5500, Form 5500-SF, or Schedule DCG.

Column D – Plan Sponsor Name

- Enter the plan sponsor's name.
    - Line 2a of the Form 5500, Form 5500-SF, or Schedule DCG.

Column E – Plan Sponsor EIN

- Enter the nine-digit employer identification number (EIN).
    - Line 2b of the Form 5500, Form 5500-SF, or Schedule DCG.

Column F – Plan Sponsor Phone Number

- Enter the plan sponsor's 10-digit telephone number.
    - Line 2c of the Form 5500, Form 5500-SF, or Schedule DCG.

[23] The documentation should be maintained for a period of time equal to or greater than the period of time described in ERISA section 107.

Column G – Plan Administrator

- Enter the plan administrator's name.
  - Line 3a of the Form 5500 or Form 5500-SF or Line 2a if the "Same as Plan Sponsor" Line 3a Box is checked.

Column H – Plan Administrator EIN

- Enter the plan administrator's nine-digit EIN.
  - Line 3b of Form 5500 or Form 5500-SF or Line 2b if the "Same as Plan Sponsor" Line 3a Box is checked.

Column I – In Care of Name (if any)

- Enter any "in care of" name used or associated with the plan administrator.
  - Line 3a of the Form 5500 or Form 5500-SF or Line 2a if the "Same as Plan Sponsor" Line 3a Box is checked.

Column J – Plan Administrator Phone Number

- Enter the plan administrator's 10-digit telephone number.
  - Line 3c of the Form 5500 or Form 5500-SF or Line 2c if the "Same as Plan Sponsor" Line 3a Box is checked.

Column K – Plan Administrator Street Address

- Enter the street address where the plan administrator receives mail (e.g., building number and street name or P.O. Box).
  - Line 3a of the Form 5500 or Form 5500-SF or Line 2a if the "Same as Plan Sponsor" Line 3a Box is checked.

Column L – Plan Administrator City

- Enter the name of the city or town where the plan administrator is located.
  - Line 3a of the Form 5500 or Form 5500-SF or Line 2a if the "Same as Plan Sponsor" Line 3a Box is checked.

Column M – Plan Administrator State

- Enter a two-letter abbreviation for the state or U.S. territory where the plan administrator is located.
  - Line 3a of the Form 5500 or Form 5500-SF or Line 2a if the "Same as Plan Sponsor" Line 3a Box is checked.
- If you are using a foreign address, leave this column blank and skip ahead to Column O.

Column N – Plan Administrator Zip Code

- Enter the plan administrator's zip code.
  - Line 3a of the Form 5500 or Form 5500-SF or Line 2a if the "Same as Plan Sponsor" Line 3a Box is checked.

Column O – Plan Administrator Foreign Province/State (if applicable)

- Enter the plan administrator's foreign province or state.
  - Line 3a for the Form 5500 or Form 5500-SF or Line 2a if the "Same as Plan Sponsor" Line 3a Box is checked.
- If you are using a foreign address, leave columns M and N blank.

Column P – Plan Administrator Foreign County Name (if applicable)

- Enter the plan administrator's foreign country.
  - Line 3a of the Form 5500 or Form 5500-SF or Line 2a if the "Same as Plan Sponsor" Line 3a Box is checked.

Column Q – Plan Administrator Foreign Postal (Routing) Code (if applicable)

- Enter the plan administrator's foreign country postal or routing code.
  - Line 3a of the Form 5500 or Form 5500-SF or Line 2a if the "Same as Plan Sponsor" Line 3a Box is checked.

Column R – Separated Vested Participant Social Security Number

- Enter the Social Security number or IRS Individual Taxpayer Identification Number (ITIN) of each participant who:
  - is a separated vested participant,[24]
  - is owed a benefit from the plan, and
  - has reached age 65 or older.
- You should include:
  - deceased participants who would have been age 65 or older if they had survived and whose beneficiary is entitled to a benefit,
  - separated vested participants aged 65 or older whose benefits were conditionally forfeited under Treasury Regulation section 1.411(a)-4(b)(6), and
  - separated vested participants aged 65 or older who are in pay status.

Column S – First Name of Participant

- Enter the first name of the participant whose social security number or ITIN is listed in Column R.

Column T – Middle Name of Participant (if applicable)

- Enter the middle name of the participant referenced in Column R.

Column U – Last Name of Participant

- Enter the last name of the participant referenced in Column R.

[24] Separated vested participants are described in 26 U.S.C. 6057(a)(2)(C)(i) and (ii). This includes persons previously reported on Form 8955-SSA or former Schedule SSA of Form 5500.

Column V – Benefit Payment

- Leave blank if participant referenced in R is owed a benefit from the plan. Enter "Paid" if, in any prior filing, column V was blank, but since the benefits were fully paid.

Column W – Date of Benefit Payment

- If "Paid" is entered in Column V, enter the date of payment in the MM/DD/YYYY format.

[FR Doc. 2024–27098 Filed 11–19–24; 8:45 am]
BILLING CODE 4510–29–C

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request, Strengthening Community Colleges Training Grant Program Round 4 (SCC4) Evaluation, New Collection

AGENCY: Office of Employment and Training Administration, Chief Evaluation Office, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents is properly assessed. Currently, the Department of Labor is soliciting comments concerning the collection of data for an evaluation of the fourth round of the Strengthening Community Colleges Training Grants Program. A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before January 21, 2025.

ADDRESSES: You may submit comments by either one of the following methods: *Email: ChiefEvaluationOffice@dol.gov; Mail or Courier:* Suchitra Akmanchi, Chief Evaluation Office, OASP, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Suchitra Akmanchi by email at *ChiefEvaluationOffice@dol.gov* or by phone at (202) 693 8935.

SUPPLEMENTARY INFORMATION:

I. Background: The Chief Evaluation Office (CEO) and the Employment and Training Administration (ETA) in the U.S. Department of Labor (DOL) are partnering to commission an evaluation of the fourth round of the Strengthening Community Colleges Training Grants Program (SCC4). The program, which awarded grants to sixteen community college grantees, aims to enable community colleges to adopt and enhance evidence-based career pathways programs that lead to equitable access to employment opportunities in good jobs aligned with locally in-demand industries. The SCC4 evaluation will shed light on which programs are effective for which types of students, why they are effective, and the core components that support success. In addition, SCC4 will build on existing evidence regarding successful programs in community college settings and advance the understanding of how career pathways programs promote equitable outcomes. The SCC4 Evaluation includes two components: (1) an impact study to measure the effects of SCC4 grant program strategies on participant outcomes and (2) an implementation study to understand program implementation. The impact study will include both a quasi-experimental design (QED) and a randomized controlled trial (RCT) each with a subset of grantees. Impact study grantees were identified during an evaluability assessment in summer 2024, during which they were assessed on a series of criteria including the potential number of enrolled students, interest in and feasibility of random assignment of students to treatment and control service groups, and a notable difference in the services available to treatment and control group students. Five community college sites from four grantees will be included in the RCT portion of the study. Twelve grantees will be included in the QED study. The implementation study will include all sixteen grantees and examine the context of SCC4 programs, including how grantees integrate employer perspectives and student voice to shape programming. The evaluation will occur over four years (2024 to 2028). The evaluation will rely on rigorous study procedures and high-quality data. To facilitate these studies, the evaluation will use several instruments, which will be used during site visits, phone calls, and surveys with SCC4-involved staff and participating students.

This **Federal Register** Notice provides the opportunity to comment on the following proposed data collection instruments that the evaluation will use:

Impact Study:

1. *Participant baseline survey and consent form.* Survey of 6,000 impact study participants to collect basic demographic information, interest in receiving support services, and current employment and earnings information.

2. *Participant follow-up survey.* Follow-up survey of 1,800 impact study participants focused on job quality, job characteristics, and overall well-being.

3. *Service receipt logs.* As part of the impact study data, grantee staff will track information frequency and type of the services they provide to participants. Fifteen grantee staff across the five participating impact study sites, will be responsible for inputting information into these logs.

Implementation Study:

The implementation study will use the following data collections to understand the education and economic

context surrounding the program, the organization and administrative structure, recruitment and enrollment, partnerships, employer engagement and work-based learning, integrated academic and career learning, academic and career counseling, wrap-around services, and program sustainability.

4. *Grantee survey.* Survey of a lead contact each of the 16 grantees to collect program information on service delivery models, staffing, partnerships, and the implementation of the main program elements.

5. *Semi-structured interview guide for college administrators and program directors.* During the two rounds of site visits to impact study sites and phone calls with non-impact study sites calls, we will conduct one-on-one or small group, semi-structured interviews with up to 80 college administrators and program directors.

6. *Semi-structured interview guide for instructors and faculty.* During the two rounds of site visits with impact study sites and phone calls with non-impact study sites, we will conduct one-on-one or small group, semi-structured interviews with up to 64 instructors and faculty for SCC4 programs.

7. *Semi-structured interview guide for SCC4 participants.* During the two rounds of site visits with impact study sites and phone calls with non-impact study sites, we will conduct one-on-one or small group, semi-structured interviews with up to 64 SCC4 participants.

8. *Semi-structured interview guide for college staff.* During the two rounds of site visits with impact study sites and phone calls with non-impact study sites, we will conduct one-on-one or small group, semi-structured interviews with up to 80 college staff providing services to SCC4 students, such as staff in student support services or the admissions office.

9. *Semi-structured interview guide for external constituents.* During the two rounds of site visits with impact study sites and phone calls with non-impact study sites, we will conduct one-on-one or small group, semi-structured interviews with up to 80 external constituents who may interact with SCC4 students, or support implementation of SCC4 programs, such as employer partners.

II. Desired Focus of Comments: Currently, the Department of Labor is soliciting comments concerning the above data collection for the Sectoral Strategies and Employer Engagement Portfolio Program Evaluation. DOL is particularly interested in comments that do the following:

○ evaluate whether the proposed collection of information is necessary for the proper performance functions of the agency, including whether the information will have practical utility;

○ evaluate the accuracy of the agency's burden estimate of the proposed information collection, including the validity of the methodology and assumptions;

○ enhance the quality, utility, and clarity of the information to be collected; and

○ minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology—for example, permitting electronic submissions of responses.

III. Current Actions: At this time, DOL is requesting clearance for the participant baseline survey and consent form, the participant follow-up survey, service receipt logs, the grantee survey, and semi-structured interview guides.

Type of review: New information collection request.

OMB Control Number: 1290–0NEW.

Affected Public: Individuals or households.

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

ESTIMATED ANNUAL BURDEN HOURS

Instrument	Number of respondents	Frequency of response	Total number responses	Average burden per response (hour)	Estimated total annual burden (hours)
Participant baseline survey	[1] 6,000	1	6,000	.16	320
Participant follow-up survey	[2] 1,800	1	1,800	.33	198
Service receipt logs	[3] 15	2,600	39,000	.05	650
Grantee survey	[4] 16	1	16	.5	3
College administrator and program director interviews	[5] 80	2	160	.75	40
Instructors and faculty interviews	[6] 64	2	128	.75	32
Participant interviews	[7] 64	2	128	.75	32
College staff interviews	[8] 80	2	160	.75	32
External constituent interviews	[9] 80	2	160	.75	40
Total	8,199	.....	47,552	.....	1,347

[1] Assumes a total of 6,000 impact study participants over the three-year clearance period.
[2] Assumes a sample of 6,000 with a 30 percent response rate for a total of 1,800 impact study participants over the three-year clearance period.
[3] Assumes 3 staff per 5 impact study sites over the three-year clearance period.
[4] Assumes 1 program director per 16 grantees over the three-year clearance period.
[5] Assumes 5 college administrator or program directors per 16 grantees over the three-year clearance period.
[6] Assumes 4 instructors and faculty per 16 grantees over the three-year clearance period.
[7] Assumes 4 SCC4 participants per 16 grantees over the three-year clearance period
[8] Assumes 5 college staff per 16 grantees over the three-year clearance period.
[9] Assumes 5 external constituents per 16 grantees over the three-year clearance period.

Alix Gould-Werth,

Chief Evaluation Officer,U.S. Department of Labor.

[FR Doc. 2024–27044 Filed 11–19–24; 8:45 am]

BILLING CODE 4510–HX–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Financial Report Form ETA–9130

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before December 20, 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: Michael Howell by telephone at 202–693–6782, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: ETA utilizes the e-Grants Federal Reporting System, an online 9130 reporting system for recipients to enter and certify quarterly financial data. The data collected is used to assess the effectiveness of ETA programs and to monitor and analyze the financial activity of its recipients. This data collection format permits ETA to evaluate program effectiveness, monitor compliance with statutory limitations, and analyze financial activity, while complying with OMB efforts to streamline Federal financial reporting. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 15, 2024 (89 FR 57431).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Financial Report Form ETA–9130.

OMB Control Number: 1205–0461.

Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Respondents: 5,400.

Total Estimated Number of Responses: 21,600.

Total Estimated Annual Time Burden: 16,200 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024–27051 Filed 11–19–24; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Friday, November 22, 2024.

PLACE: NCUA Event Center, Lobby, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428

STATUS: Open.

MATTER TO BE CONSIDERED: 1. Board Briefing, NCUA's 2025–2026 Budget.

CONTACT PERSON FOR MORE INFORMATION: Melane Conyers-Ausbrooks, Secretary of the Board, Telephone: 703–518–6304.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2024–27246 Filed 11–18–24; 11:15 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering; 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 Computer and Information Science and Engineering (#1115) (Hybrid).

Date and Time: December 11, 2024—12 p.m.–5 p.m. (eastern), December 12, 2024—9 a.m.–1 p.m. (eastern).

Place: NSF, 2415 Eisenhower Avenue, Room 3430, Alexandria, VA 22314 (In-Person and Virtual).

To attend the meeting virtually, please send your request for the virtual meeting link to the following email: *ciseac@nsf.gov.*

Type of Meeting: Open.

Contact Persons: KaJuana Mayberry, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone:703–292–8900; email: *ciseac@nsf.gov.*

Purpose of Meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to Computer and Information Science and Engineering programs and activities.

Agenda:

- CISE update
- CISE AC subgroup update
- NSF quantum activities
- NSF research security activities

Dated: November 14, 2024.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2024–27056 Filed 11–19–24; 8:45 am]

BILLING CODE 7555–01–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 13, 2024; 11a.m.–3p.m. (eastern).

Place: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314 (In-Person and Virtual).

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-commitee.*

Purpose of Meeting: To provide advice to the National Science Foundation concerning the 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:

Friday, December 13, 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 14, 2024.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2024–27057 Filed 11–19–24; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2024–0001]

Sunshine Act Meetings

TIME AND DATE: Week of November 18, 2024.

PLACE: Via Teleconference.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Week of November 18, 2024

Wednesday, November 20, 2024

10:00 a.m. Affirmation Session (Public Meeting) (Tentative); Kairos Power, LLC (Hermes 2 Test Reactor Facility), Docket Nos. 50–611–CP & 50–612–CP, Mandatory Hearing Decision (Tentative) (Contact: Wesley Held: 301–287–3591).

Additional Information: By a vote of 4–0 on November 18, 2024, the Commission determined pursuant to 5 U.S.C. 552b(e)(1) and 10 CFR 9.107 that this item be affirmed with less than one week notice to the public. The item will be affirmed in the meeting being held on November 20, 2024. The public is invited to attend the Commission's meeting live; via teleconference. Details for joining the teleconference in listen only mode can be found at *https://www.nrc.gov/pmns/mtg.*

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Betty.Thweatt@nrc.gov* or *Samantha.Miklaszewski@nrc.gov.*

The NRC is holding the meeting under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: November 18, 2024.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2024–27325 Filed 11–18–24; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2024–13; MC2025–369 and K2025–367; MC2025–371 and K2025–369; MC2025–372 and K2025–370; MC2025–373 and K2025–371; MC2025–374 and K2025–372; MC2025–379 and K2025–377; MC2025–380 and K2025–378; MC2025–381 and K2025–379; MC2025–382 and K2025–380; MC2025–383 and K2025–381; MC2025–384 and K2025–382; MC2025–385 and K2025–383; MC2025–386 and K2025–384; MC2025–387 and K2025–385; MC2025–388 and K2025–386; MC2025–389 and K2025–387; MC2025–390 and K2025–388]

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 21, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *https://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 (*https://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.

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.

[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).

II. Public Proceeding(s)

1. *Docket No(s).:* CP2024–13; *Filing Title:* Request of the United States Postal Service Concerning Modification One to Priority Mail Express International, Priority Mail International & Commercial ePacket Contract 2 Negotiated Service Agreement, Which Includes an Extension of That Agreement; *Filing Acceptance Date:* November 12, 2024; *Filing Authority:* 39 CFR 3035.105, 39 CFR 3041.505, and 39 CFR 3041.515; *Public Representative:* Katalin Clendenin; *Comments Due:* November 21, 2024.

2. *Docket No(s).:* MC2025–369 and K2025–367; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 698 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 13, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* November 21, 2024.

3. *Docket No(s).:* MC2025–371 and K2025–369; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 454 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 12, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* November 21, 2024.

4. *Docket No(s).:* MC2025–372 and K2025–370; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 699 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 12, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* November 21, 2024.

5. *Docket No(s).:* MC2025–373 and K2025–371; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 700 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 12, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* November 21, 2024.

6. *Docket No(s).:* MC2025–374 and CP2025–372; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 701 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 12, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* November 21, 2024.

7. *Docket No(s).:* MC2025–379 and K2025–377; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 457 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 13, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* November 21, 2024.

8. *Docket No(s).:* MC2025–380 and K2025–378; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 458 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 13, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* November 21, 2024.

9. *Docket No(s).:* MC2025–381 and K2025–379; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 704 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 13, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* November 21, 2024.

10. *Docket No(s).:* MC2025–382 and K2025–380; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 705 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 13, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* November 21, 2024.

11. *Docket No(s).:* MC2025–383 and K2025–381; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 459 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 13, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* November 21, 2024.

12. *Docket No(s).:* MC2025–384 and K2025–382; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 706 to the Competitive Product List and Notice of Filing Materials

Under Seal; *Filing Acceptance Date:* November 13, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* November 21, 2024.

13. *Docket No(s).:* MC2025–385 and K2025–383; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 707 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 13, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* November 21, 2024.

14. *Docket No(s).:* MC2025–386 and K2025–384; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 708 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 13, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* November 21, 2024.

15. *Docket No(s).:* MC2025–387 and K2025–385; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 709 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 13, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* November 21, 2024.

16. *Docket No(s).:* MC2025–388 and K2025–386; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 710 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 13, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* November 21, 2024.

17. *Docket No(s).:* MC2025–389 and K2025–387; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 460 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 13, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* November 21, 2024.

18. *Docket No(s).:* MC2025–390 and K2025–388; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 711 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 13, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* November 21, 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. 2024–26976 Filed 11–19–24; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2020–182; CP2023–16; MC2025–162 and K2025–160; MC2025–391 and K2025–389; MC2025–392 and K2025–390; MC2025–393 and K2025–391; MC2025–394 and K2025–392; MC2025–395 and K2025–393; MC2025–396 and K2025–394; MC2025–397 and K2025–395; MC2025–398 and K2025–396; MC2025–399 and K2025–397; MC2025–400 and K2025–398; MC2025–401 and K2025–399; MC2025–402 and K2025–400; MC2025–403 and K2025–401; MC2025–404 and K2025–402; MC2025–405 and K2025–403; MC2025–407 and K2025–405; MC2025–408 and K2025–406; MC2025–409 and K2025–407; MC2025–410 and K2025–408; MC2025–411 and K2025–409; MC2025–412 and K2025–410]

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 22, 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.

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

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

CFR 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).:* CP2020–182; *Filing Title:* Request of the United States Postal Service Concerning Modification Four to Global Reseller Expedited Package 2 Negotiated Service Agreement, Which Includes an Extension of That Agreement; *Filing Acceptance Date:* November 14, 2024; *Filing Authority:* 39 CFR 3035.105, 39 CFR 3041.505, and 39 CFR 3041.515; *Public Representative:* Katalin Clendenin; *Comments Due:* November 22, 2024.

2. *Docket No(s).:* CP2023–16; *Filing Title:* Request of the United States Postal Service Concerning Modification Two to Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 8, Which Includes an Extension of That Agreement; *Filing Acceptance Date:* November 14, 2024; *Filing Authority:* 39 CFR 3035.105, 39 CFR 3041.505, and 39 CFR 3041.515; *Public Representative:* Katalin Clendenin; *Comments Due:* November 22, 2024.

3. *Docket No(s).:* MC2025–162 and K2025–160; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 539 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 25, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* November 22, 2024.

4. *Docket No(s).:* MC2025–391 and K2025–389; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 712 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 14, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* November 22, 2024.

5. *Docket No(s).:* MC2025–392 and K2025–390; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 713 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 14, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* November 22, 2024.

6. *Docket No(s).:* MC2025–393 and K2025–391; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 714 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 14, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* November 22, 2024.

7. *Docket No(s).:* MC2025–394 and K2025–392; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 461 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 14, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* November 22, 2024.

8. *Docket No(s).:* MC2025–395 and K2025–393; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 715 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 14, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* November 22, 2024.

9. *Docket No(s).:* MC2025–396 and K2025–394; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 716 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 14, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* November 22, 2024.

10. *Docket No(s).:* MC2025–397 and K2025–395; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 717 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 14, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* November 22, 2024.

11. *Docket No(s).:* MC2025–398 and K2025–396; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 718 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 14, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* November 22, 2024.

12. *Docket No(s).:* MC2025–399 and K2025–397; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 719 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 14, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* November 22, 2024.

13. *Docket No(s).:* MC2025–400 and K2025–398; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 720 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 14, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* November 22, 2024.

14. *Docket No(s).:* MC2025–401 and K2025–399; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 721 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 14, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* November 22, 2024.

15. *Docket No(s).:* MC2025–402 and K2025–400; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 462 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 14, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* November 22, 2024.

16. *Docket No(s).:* MC2025–403 and K2025–401; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 722 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 14, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* November 22, 2024.

17. *Docket No(s).:* MC2025–404 and K2025–402; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 723 to the Competitive Product

List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 14, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* November 22, 2024.

18. *Docket No(s).:* MC2025–405 and K2025–403; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 724 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 14, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* November 22, 2024.

19. *Docket No(s).:* MC2025–407 and K2025–405; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 725 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 14, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* November 22, 2024.

20. *Docket No(s).:* MC2025–408 and K2025–406; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 726 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 14, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* November 22, 2024.

21. *Docket No(s).:* MC2025–409 and K2025–407; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 727 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 14, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* November 22, 2024.

22. *Docket No(s).:* MC2025–410 and K2025–408; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 728 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 14, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* November 22, 2024.

23. *Docket No(s).:* MC2025–411 and K2025–409; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 729 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 14, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* November 22, 2024.

24. *Docket No(s).:* MC2025–412 and K2025–410; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 730 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 14, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* November 22, 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. 2024–27126 Filed 11–19–24; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

2025 Railroad Experience Rating Proclamations, Monthly Compensation Base and Other Determinations

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: As required by the Railroad Unemployment Insurance Act (Act), the Railroad Retirement Board (RRB) hereby publishes its notice for calendar year 2025 of account balances, factors used in calculating experience-based employer contribution rates, computation of amounts related to the monthly compensation base, and the maximum daily benefit rate for days of unemployment or sickness.

DATES: The balance in notice (1) and the determinations made in notices (3) through (7) are based on data as of June 30, 2024. The balance in notice (2) is based on data as of September 30, 2024. The determinations made in notices (5) through (7) apply to the calculation, under section 8(a)(1)(C) of the Act, of employer contribution rates for 2025. The determinations made in notices (8) through (11) are effective January 1, 2025. The determination made in notice (12) is effective for registration periods beginning after June 30, 2025.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 N Rush Street, Chicago, Illinois 60611–1275.

FOR FURTHER INFORMATION CONTACT: Sheryl Enders, Bureau of the Actuary and Research, Railroad Retirement Board, 844 N Rush Street, Chicago, Illinois 60611–1275, telephone (312) 751–4729.

SUPPLEMENTARY INFORMATION: The RRB is required by section 8(c)(1) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(1)) as amended by Public Law 100–647, to proclaim by October 15 of each year certain system-wide factors used in calculating experience-based employer contribution rates for the following year. The RRB is further required by section 8(c)(2) of the Act (45 U.S.C. 358(c)(2)) to publish the amounts so determined and proclaimed. The RRB is required by section 12(r)(3) of the Act (45 U.S.C. 362(r)(3)) to publish by December 11, 2024, the computation of the calendar year 2025 monthly compensation base (section 1(i) of the Act) and amounts described in sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act which are related to changes in the monthly compensation base. Also, the RRB is required to publish, by June 11, 2025, the maximum daily benefit rate under section 2(a)(3) of the Act for days of unemployment and days of sickness in registration periods beginning after June 30, 2025.

Pursuant to section 8(c)(2) and section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(2) and 45 U.S.C. 362(r)(3), respectively), the Board gives notice of the following:

1. The accrual balance of the Railroad Unemployment Insurance (RUI) Account, as of June 30, 2024, is $454,806,922.20;

2. The September 30, 2024, balance of any new loans to the RUI Account, including accrued interest, is zero;

3. The system compensation base is $4,603,450,450.74 as of June 30, 2024;

4. The cumulative system unallocated charge balance is ($494,856,655.87) as of June 30, 2024;

5. The pooled credit ratio for calendar year 2025 is 0.83 percent;

6. The pooled charged ratio for calendar year 2025 is zero;

7. The surcharge rate for calendar year 2025 is zero;

8. The monthly compensation base under section 1(i) of the Act is $2,065 for months in calendar year 2025;

9. The amount described in sections 1(k) and 3 of the Act as ''2.5 times the monthly compensation base'' is $5,162.50 for base year (calendar year) 2025;

10. The amount described in section 4(a–2)(i)(A) of the Act as ''2.5 times the

monthly compensation base'' is $5,162.50 with respect to disqualifications ending in calendar year 2025;

11. The amount described in section 2(c) of the Act as ''an amount that bears the same ratio to $775 as the monthly compensation base for that year as computed under section 1(i) of this Act bears to $600'' is $2,667 for months in calendar year 2025;

12. The maximum daily benefit rate under section 2(a)(3) of the Act is $99 with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 2025.

Surcharge Rate

A surcharge is added in the calculation of each employer's contribution rate, subject to the applicable maximum rate, for a calendar year whenever the balance to the credit of the RUI Account on the preceding June 30 is less than the greater of $100 million or the amount that bears the same ratio to $100 million as the system compensation base for that June 30 bears to the system compensation base as of June 30, 1991. If the RUI Account balance is less than $100 million (as indexed), but at least $50 million (as indexed), the surcharge will be 1.5 percent. If the RUI Account balance is less than $50 million (as indexed), but greater than zero, the surcharge will be 2.5 percent. The maximum surcharge of 3.5 percent applies if the RUI Account balance is less than zero.

The ratio of the June 30, 2024 system compensation base of $4,603,450,450.74 to the June 30, 1991 system compensation base of $2,763,287,237.04 is 1.66593266. Multiplying 1.66593266 by $100 million yields $166,593,266.00. Multiplying $50 million by 1.66593266 produces $83,296,633.00. The Account balance on June 30, 2024, was $454,806,922.20. Accordingly, the surcharge rate for calendar year 2025 is zero.

Pooled Credit

A pooled credit is applied in the calculation of each employer's contribution rate, subject to the applicable minimum rate, for a calendar year whenever the balance to the credit of the RUI Account on the preceding June 30 is more than the greater of $250 million or the amount that bears the same ratio to $250 million as the system compensation base for that June 30 bears to the system compensation base as of June 30, 1991. If the balance is more than the greater of $250 million or the indexed $250 million, the excess amount is divided by the system compensation base for the preceding calendar year, resulting in the pooled credit amount.

The ratio of the June 30, 2024 system compensation base of $4,603,450,450.74 to the June 30, 1991 system compensation base of $2,763,287,237.04 is 1.66593266. Multiplying 1.66593266 by $250 million yields $416,483,165.00. The Account balance on June 30, 2024, was $454,806,922.20. The difference between the indexed threshold and the Account balance is $38,323,757.20. Dividing $38,323,757.20 by $4,603,450,450.74 yields 0.0083, or 0.83 percent, the pooled credit amount for 2025.

Monthly Compensation Base

For years after 1988, section 1(i) of the Act contains a formula for determining the monthly compensation base. Under the prescribed formula, the monthly compensation base increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The monthly compensation base for months in calendar year 2025 shall be equal to the greater of (a) $600 or (b) $600 [1 + {(A − 37,800)/56,700}], where A equals the amount of the applicable base with respect to tier 1 taxes for 2025 under section 3231(e)(2) of the Internal Revenue Code of 1986. Section 1(i) further provides that if the amount so determined is not a multiple of $5, it shall be rounded to the nearest multiple of $5.

Using the calendar year 2025 tier 1 tax base of $176,100 for A above produces the amount of $2,063.49, which must then be rounded to $2,065. Accordingly, the monthly compensation base is determined to be $2,065 for months in calendar year 2025.

Amounts Related to Changes in Monthly Compensation Base

For years after 1988, sections 1(k), 3, 4(a–2)(i)(A) and 2(c) of the Act contain formulas for determining amounts related to the monthly compensation base.

Under section 1(k), remuneration earned from employment covered under the Act cannot be considered subsidiary remuneration if the employee's base year compensation is less than 2.5 times the monthly compensation base for months in such base year. Under section 3, an employee shall be a ''qualified employee'' if his/her base year compensation is not less than 2.5 times the monthly compensation base for months in such base year. Under section 4(a–2)(i)(A), an employee who leaves work voluntarily without good cause is disqualified from receiving unemployment benefits until he has been paid compensation of not less than 2.5 times the monthly compensation base for months in the calendar year in which the disqualification ends.

Multiplying 2.5 by the calendar year 2025 monthly compensation base of $2,065 produces $5,162.50. Accordingly, the amount determined under sections 1(k), 3 and 4(a–2)(i)(A) is $5,162.50 for calendar year 2025.

Under section 2(c), the maximum amount of normal benefits paid for days of unemployment within a benefit year and the maximum amount of normal benefits paid for days of sickness within a benefit year shall not exceed an employee's compensation in the base year. In determining an employee's base year compensation, any money remuneration in a month not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year bears to $600 shall be taken into account.

The calendar year 2025 monthly compensation base is $2,065. The ratio of $2,065 to $600 is 3.44166667. Multiplying 3.44166667 by $775 produces $2,667. Accordingly, the amount determined under section 2(c) is $2,667 for months in calendar year 2025.

Maximum Daily Benefit Rate

Section 2(a)(3) contains a formula for determining the maximum daily benefit rate for registration periods beginning after June 30, 1989, and after each June 30 thereafter. Legislation enacted on October 9, 1996, revised the formula for indexing maximum daily benefit rates. Under the prescribed formula, the maximum daily benefit rate increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The maximum daily benefit rate for registration periods beginning after June 30, 2025, shall be equal to 5 percent of the monthly compensation base for the base year immediately preceding the beginning of the benefit year. Section 2(a)(3) further provides that if the amount so computed is not a multiple of $1, it shall be rounded down to the nearest multiple of $1.

The calendar year 2024 monthly compensation base is $1,985. Multiplying $1,985 by 0.05 yields $99.25. Accordingly, the maximum daily benefit rate for days of unemployment and days of sickness beginning in registration periods after June 30, 2025, is determined to be $99.

By Authority of the Board.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2024–27066 Filed 11–19–24; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101631; File No. SR–CBOE–2024–036]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Options on Ethereum Exchange-Traded Funds

November 14, 2024.

I. Introduction

On August 19, 2024, Cboe Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow the listing and trading of options on Units [3] that represent interests in the Fidelity Ethereum Fund (the ''Fidelity Fund''), the 21Shares Core Ethereum ETF (the ''21Shares Fund''), the Invesco Galaxy Ethereum ETF (the ''Invesco Fund''), the Franklin Ethereum ETF (the ''Franklin Fund''), the VanEck Ethereum Trust (the ''VanEck Fund''), the Grayscale Ethereum Trust (the ''Grayscale Fund''), the Grayscale Mini Ethereum Trust (the ''Grayscale Mini Fund''), the Bitwise Ethereum ETF (the ''Bitwise Fund''), and the iShares Ethereum Trust ETF (the ''iShares Fund'' and, collectively, the ''Ethereum Funds'').[4] The proposed rule change was published for comment in the **Federal Register** on September 4, 2024.[5] The Commission has received no comments regarding the proposal.

On October 11, 2024, pursuant to Section 19(b)(2) of the Exchange Act,[6] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[7] This order institutes proceedings under Section 19(b)(2)(B) of the Act [8] to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

As described more fully in the Notice,[9] the Exchange proposes to amend Exchange Rule 4.3, Interpretation and Policy .06(a)(4) to allow the Exchange to list and trade options on Units of the Ethereum Funds. The Exchange states that current Exchange Rule 4.3, Interpretation and Policy .06(a) provides that, subject to certain other criteria set forth in that Rule, securities deemed appropriate for options trading include Units that represent certain types of interests, including interests in certain specific trusts that hold financial instruments, money market instruments, or precious metals (which are deemed commodities).[10]

The Exchange states that the Ethereum Funds are Ethereum-backed commodity ETFs structured as trusts, and that, similar to any Unit currently deemed appropriate for options trading under Exchange Rule 4.3, Interpretation and Policy .06, the investment objective of each Ethereum Fund trust is for its shares to reflect the performance of Ethereum (less the expenses of the trust's operations), offering investors an opportunity to gain exposure to Ethereum without the complexities of Ethereum delivery.[11] The Exchange states that, as is the case for Units currently deemed appropriate for options trading, an Ethereum Fund's shares represent units of fractional undivided beneficial interest in the trust, the assets of which consist principally of Ethereum and are designed to track Ethereum or the performance of the price of Ethereum and offer access to the Ethereum market.[12] The Exchange states that the Ethereum Funds provide investors with cost-efficient alternatives that allow a level of participation in the Ethereum market through the securities market, and that the primary substantive difference between Ethereum Funds and Units currently deemed appropriate for options trading are that Units may hold securities, certain financial instruments, and specified precious metals (which are deemed commodities), while Ethereum Funds hold Ethereum (which is also deemed a commodity).[13]

The Exchange states that it believes that the Ethereum Funds satisfy the Exchange's initial listing standards in Exchange Rule 4.3, Interpretation and Policy .06(b) that Units must either (1) meet the criteria and standards set forth in Rule 4.3, Interpretation and Policy .01(a), or (2) be available for creation or redemption each business day from or through the issuer in cash or in kind at a price related to net asset value, and the issuer must be obligated to issue Units in a specified aggregate number even if some or all of the investment assets required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investments has undertaken to deliver the investment assets as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as provided in the respective prospectus.[14] The Exchange states that the Ethereum Funds satisfy Exchange Rule 4.3, Interpretation and Policy .06(b)(2), as they are all subject to this creation and redemption process.[15]

The Exchange further states that, while not required by the Exchange's Rules for purposes of options listings, the majority of the Ethereum Funds satisfy the criteria and guidelines set forth in Exchange Rule 4.3, Interpretation and Policy .01.[16] The Exchange states that, pursuant to Exchange Rule 4.3(a), a security (which includes a Unit) on which options may be listed and traded on the Exchange must be duly registered (with the Commission) and be an NMS stock (as defined in Rule 600 of Regulation NMS under the Act), and be characterized by a substantial number of outstanding shares that are widely held and actively traded.[17] The Exchange states that each of the Ethereum Funds is an NMS Stock, as defined in Rule 600 of Regulation

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Cboe Rule 1.1 defines a ''Unit'' (which may also be referred to as an exchange-traded fund (''ETF'')) as a share or other security traded on a national securities exchange and defined as an NMS stock as set forth in Rule 4.3.

[4] The Commission approved proposals by several exchanges to list and trade shares of trusts that hold Ether, including the Ethereum Funds. *See* Securities Exchange Act Release Nos. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024); and 100541 (July 17, 2024), 89 FR 59786 (July 23, 2024).

[5] *See* Securities Exchange Act Release No. 100862 (Aug. 28, 2024), 89 FR 72146 (''Notice'').

[6] 15 U.S.C. 78s(b)(2).

[7] *See* Securities Exchange Act Release No. 101321 (Oct. 11, 2024), 89 FR 83723 (Oct. 17, 2024) (designating December 3, 2024, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change).

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See supra* note 5.

[10] *See* Notice, 89 FR at 72146–7.

[11] *See id.* at 72147.

[12] The Exchange states that the trusts may include minimal cash. *See id.* at note 5.

[13] *See* Notice, 89 FR at 72147.

[14] *See id.*

[15] *See id.*

[16] *See id.*

[17] The Exchange states that the criteria and guidelines for a security to be considered widely held and actively traded are set forth in Exchange Rule 4.3, Interpretation and Policy .01, subject to exceptions. *See id.* at note 7.

NMS under the Act, and that each Ethereum Fund is characterized by a substantial number of outstanding shares that are widely held and actively traded.[18]

The Exchange states that, as of August 7, 2024, the Ethereum Funds had the following number of shares outstanding:[19]

Ethereum fund	Shares outstanding
Fidelity Fund	10,850,000
21Shares Fund	760,000
Invesco Fund	468,000
Franklin Fund	1,500,000
VanEck Fund	1,725,000
Grayscale Fund	228,468,500
Grayscale Mini Fund	380,898,500
Bitwise Fund	12,370,000
iShares Fund	37,200,000

The Exchange states that, despite the fact that these Ethereum Funds were in only their third week of trading (they began trading on July 23, 2024), five of these funds already have more than 7,000,000 shares outstanding, which is the minimum number of shares of a corporate stock that the Exchange generally requires to list options on that stock pursuant to Exchange Rule 4.3, Interpretation and Policy .01(a)(1).[20] However, the Exchange states that shares outstanding (*i.e.,* free float),[21] while commonly used to determine investable capacities of corporate stocks, has little utility with respect to ETFs due to the market structure of ETFs.[22] The Exchange states that proofing of ETF baskets, in addition to the efficiency of creation/redemption mechanisms, decouple concepts of ''floating'' ETF shares against the impacts of ETF liquidity to the liquidity of ETF constituents.[23] The Exchange states that although ETF market makers may often limit the amount of floating ETF shares, primary market mechanisms enable virtually limitless capacity to create and redeem ETF shares on a daily basis.[24] The Exchange states that, as evidenced during their brief time in market, the gross value of daily shares created or redeemed for each Ethereum Fund approximates its assets under management (''AUM'') as of July 24, 2024, which were as follows:[25]

Ethereum Fund	AUM
Fidelity Fund	9,481,360
21Shares Fund	148,080,600
Invesco Fund	37,197,280
Franklin Fund	19,301,340
VanEck Fund	9,013,556
Grayscale Fund	8,040,436,000
Grayscale Mini Fund	1,043,203,000
Bitwise Fund	230,788,700
iShares Fund	287,328,200

The Exchange states that this demonstrates that each Ethereum Fund is characterized by a substantial number of outstanding shares.[26] The Exchange further states that, given how recently Ethereum Funds began trading, the Exchange does not have access to the number of beneficial holders of Ethereum Funds at this time.[27] However, the Exchange states that, given the significant trading volumes of the Ethereum Funds, it is reasonable to expect that shares of all of the Ethereum Funds are characterized by a substantial number of outstanding shares that are widely held.[28] The Exchange also believes each Ethereum Fund is characterized by a substantial number of outstanding shares that are actively traded.[29] The Exchange states that, as of August 7, 2024, the total trading volume (by shares and notional) for each fund since they began trading on July 23, 2024, and the average daily volume (''ADV'') over the five-day period of August 2 through August 7, 2024, for each Ethereum Fund was as follows:[30]

Ethereum Fund	Trading volume (shares)	Trading volume (notional $)	ADV (shares)
Fidelity Fund	32,751,647	1,023,590,893.88	1,279,085.00
21Shares Fund	2,995,673	46,584,597.69	183,032.80
Invesco Fund	2,398,977	75,800,517.49	116,423.80
Franklin Fund	3,726,018	89,987,417.90	114,194.60
VanEck Fund	5,557,411	247,424,935.45	288,519.00
Grayscale Fund	221,839,519	5,934,238,584.03	7,429,260.00
Grayscale Mini Fund	387,753,619	1,117,121,565.01	24,800,550.00
Bitwise Fund	27,454,355	638,820,845.28	806,202.19
iShares Fund	124,839,230	2,896,601,784.35	6,720,303.00

The Exchange states that the trading volume for each except one Ethereum Fund is higher (and several significantly higher) than 2,400,000 shares (and that one is only 1,023 shares below that number), which is the minimum 12-month volume the Exchange generally requires for a security in order to list options on that security as set forth in Exchange Rule 4.3, Interpretation and Policy .01.[31] Additionally, the Exchange states that from July 23 (the first day the Ethereum Funds began trading) through August 7, 2024, the ADV for each Ethereum Fund is in the top 25% of all ETFs that are currently trading.[32] The Exchange states that this data demonstrates each Ethereum Fund is characterized by a substantial number of outstanding shares that are actively traded.[33]

The Exchange states that options on Ethereum Funds will be subject to the Exchange's continued listing standards in Exchange Rule 4.4, Interpretation and Policy .06 for Units deemed appropriate for options trading pursuant to Exchange Rule 4.3, Interpretation and Policy .06.[34] The Exchange states that Exchange Rule 4.4, Interpretation and Policy .06 provides that Units that were initially approved for options trading pursuant to Exchange Rule 4.3, Interpretation and Policy .06 shall be deemed not to meet the requirements for continued approval, and the Exchange

[18] *See* Notice, 89 FR at 72147.

[19] *See id.*

[20] *See id.*

[21] The Exchange states that all outstanding ETF shares are considered free float because there are no restricted ETF shares or shares held by insiders, as is the case with respect to corporate stocks. *See id.* at note 9.

[22] *See id.*

[23] *See* Notice, 89 FR at 72147.

[24] The Exchange states that this is the primary reasoning for why the Exchange may list options on ETFs as long as they are subject to the creation and redemption process and generally do not need to satisfy the criteria set forth in Interpretation and Policy .01. *See id.* note 10.

[25] *See* Notice, 89 FR at 72148.

[26] *See id.*

[27] *See id.*

[28] *See id.*

[29] *See id.*

[30] *See id.*

[31] *See id.*

[32] *See id.*

[33] *See id.*

[34] *See id.*

shall not open for trading any additional series of option contracts of the class covering such Unit, if the Units cease to be an NMS stock or the Units are halted from trading in their primary market.[35] Additionally, the Exchange states that options on Units may be subject to the suspension of opening transactions in any of the following circumstances: (1) in the case of options covering Units approved for trading under Exchange Rule 4.3, Interpretation and Policy .06(b)(1), in accordance with the terms of paragraphs (a), (b), and (c) of Exchange Rule 4.4, Interpretation and Policy .01; (2) in the case of options covering Units approved for trading under Exchange Rule 4.3, Interpretation and Policy .06(b)(2) (as is the case for the Ethereum Funds), following the initial twelve-month period beginning upon the commencement of trading in the Units on a national securities exchange, there are fewer than 50 record and/or beneficial holders of such Units for 30 or more consecutive trading days; (3) the value of the index or portfolio of securities, non-U.S. currency, or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or financial instruments and money market instruments on which the Units are based is no longer calculated or available; or (4) such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.[36]

The Exchange states that options on each Ethereum Fund will be physically settled contracts with American-style exercise.[37] As described more fully in the Notice, the Exchange states that Ethereum Fund options will trade in the same manner as any other Unit options on the Exchange.[38] The Exchange states that Exchange Rules that currently apply to the listing and trading of all Unit options on the Exchange, including, for example, Exchange Rules that govern listing criteria, expiration and exercise prices, minimum increments, position and exercise limits, margin requirements, customer accounts and trading halt procedures will apply to the listing and trading of Ethereum Funds on the Exchange in the same manner as they apply to other options on all other Units that are listed and traded on the Exchange, including the precious-metal backed commodity Units already deemed appropriate for options trading on the Exchange pursuant to current Exchange Rule 4.3, Interpretation and Policy .06(a)(4).[39]

The Exchange states that position and exercise limits for options on Units, including options on Ethereum Funds, will be determined pursuant to Exchange Rules 8.30 and 8.42, respectively.[40] The Exchange states that position and exercise limits for Unit options vary according to the number of outstanding shares and the trading volumes of the underlying Unit over the past six months, where the largest in capitalization and the most frequently traded Units have an option position and exercise limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; and smaller capitalization Units have position and exercise limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market.[41]

The Exchange represents that the same surveillance procedures applicable to all other options on Units currently listed and traded on the Exchange will apply to options on Ethereum Funds, and that it has the necessary systems capacity to support the new option series.[42] The Exchange states that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading Unit options.[43] The Exchange further states that it may obtain information from CME Group Inc.'s designated contract markets that are members of the Intermarket Surveillance Group related to any financial instrument that is based, in whole or in part, upon an interest in or performance of Ethereum, as applicable.[44] The Exchange states that it has analyzed its capacity and believes that the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing of new series that may result from the introduction of options on Ethereum Funds up to the number of expirations currently permissible under the Exchange's Rules.[45] The Exchange states that because the proposal is limited to Units on a single commodity, any additional traffic that may be generated from the introduction of Ethereum Fund options will be manageable.[46]

The Exchange states that offering options on Ethereum Funds will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of Ethereum and a hedging vehicle to meet their investment needs in connection with Ethereum-related products and positions.[47] The Exchange states that it expects investors will transact in options on Ethereum Funds in the unregulated over-the-counter (''OTC'') options market, but may prefer to trade such options in a listed environment to receive the benefits of trading listed options, including (1) enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra party creditworthiness due to the role of OCC as issuer and guarantor of all listed options.[48] The Exchange states that listing Ethereum Fund options may cause investors to bring this liquidity to the Exchange, which would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow.[49] The Exchange states that Units that hold financial instruments, money market instruments, or precious metal commodities on which the Exchange may already list and trade options are trusts structured in substantially the same manner as the Ethereum Funds and essentially offer the same objectives and benefits to investors, just with respect to different assets.[50] The Exchange states that it has not identified any issues with the continued listing and trading of any Unit options, including Units that hold commodities (*i.e.,* precious metals) that it currently lists and trades on the Exchange.[51]

The Exchange states that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b)(5) of the Act.[52] The Exchange states that the proposal to list and trade options on Ethereum Funds will remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors because offering options on Ethereum Funds will provide investors with an

[35] *See id.*
[36] *See id.*
[37] *See id.*
[38] *See id.* at 72149.
[39] *See id.*
[40] *See id.*
[41] *See id.*
[42] *See id.*
[43] *See id.*
[44] *See id.*
[45] *See id.*
[46] *See id.*
[47] *See id.*
[48] *See id.*
[49] *See id.*
[50] *See id.*
[51] *See id.* at 72150.
[52] 15 U.S.C. 78f(b)(5). *See* Notice, 89 FR at 72150.

opportunity to realize the benefits of utilizing options on a Ethereum Fund, including cost efficiencies and increased hedging strategies.[53] The Exchange further states that offering Ethereum Fund options will benefit investors by providing them with a relatively lower-cost risk management tool, which will allow them to manage their positions and associated risk in their portfolios more easily in connection with exposure to the price of Ethereum and with Ethereum-related products and positions.[54] Additionally, the Exchange states that its offering of Ethereum Fund options will provide investors with the ability to transact in such options in a listed market environment as opposed to in the unregulated OTC options market, which would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow to the benefit of all investors.[55] The Exchange states that it already lists options on other commodity-based Units, which are trusts structured in substantially the same manner as Ethereum Funds and essentially offer the same objectives and benefits to investors, just with respect to a different commodity (*i.e.,* Ethereum rather than precious metals), and for which the Exchange has not identified any issues with their continued listing and trading.[56] The Exchange states that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, because it is consistent with current Exchange Rules previously filed with the Commission.[57] The Exchange states that options on Ethereum Funds satisfy the initial listing standards and continued listing standards currently in the Exchange Rules applicable to options on all Units, including Units that hold other commodities already deemed appropriate for options trading on the Exchange.[58] In addition, the Exchange states that each Ethereum Fund is characterized by a substantial number of shares that are widely held and actively traded.[59] In addition, the Exchange states that Ethereum Fund options will trade in the same manner as any other Unit options—the same Exchange Rules that currently govern the listing and trading of all Unit options, including permissible expirations, strike prices and minimum increments, and applicable position and exercise limits and margin requirements, will govern the listing and trading of options on Ethereum Funds in the same manner.[60]

The Exchange states that the proposed position and exercise limits for the Ethereum Fund options are consistent with the Exchange Act, will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because they are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options.[61] The Exchange states that the proposed position and exercise limits are the same limits that apply to other ETF options, including other commodity ETF options.[62] The Exchange states that the proposed position and exercise limits balance the liquidity provisioning in the market against the prevention of manipulation, as they currently do for other equity options (including commodity ETF options).[63] The Exchange further states that the available supply in the markets of Ethereum is not relevant when establishing position limits for options on the Ethereum Funds, as what is held by an ETF has historically not been a relevant factor considered by the Commission when it has considered rule filings to list options on ETFs, including commodity ETFs.[64] The Exchange states that when the Commission previously approved rules to list options on other commodity ETFs, the Commission did not require consideration of whether the available supply of those commodities should be considered when the Exchange established those position limits.[65] The Exchange states that position limits in the Exchange's Rules at that time were the same as they are today as set forth in Exchange Rule 8.30 (and as proposed to be applicable to options on the Ethereum Funds).[66]

III. Proceedings To Determine Whether To Approve or Disapprove SR–CBOE–2024–036 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[67] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[68] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act,[69] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and protect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change.'' [70] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[71] and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[72] The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act. In particular, the Commission asks commenters to address whether the proposal includes sufficient data and analysis to support a conclusion that the proposal is consistent with the

[53] *See id.*
[54] *See id.*
[55] *See id.*
[56] *See id.*
[57] *See id.*
[58] *See id.*
[59] *See id.*
[60] *See id.*
[61] *See id.*
[62] *See id.*
[63] *See id.*
[64] *See id.*
[65] *See id.*
[66] *See id.*
[67] 15 U.S.C. 78s(b)(2)(B).
[68] *Id.*
[69] 15 U.S.C. 78f(b)(5).
[70] 17 CFR 201.700(b)(3).
[71] *See id.*
[72] *See id.*

requirements of Section 6(b)(5) of the Act.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[73]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by December 11, 2024. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by December 26, 2024.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CBOE–2024–036 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CBOE–2024–036. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CBOE–2024–036 and should be submitted on or before December 11, 2024. Rebuttal comments should be submitted by December 26, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[74]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–27013 Filed 11–19–24; 8:45 am]

BILLING CODE 8011–01–P

[73] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[74] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101630; File No. SR–NYSEARCA–2024–97]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NYSE Arca Rule 7.13–E To Remove References to the Chair of the Board

November 14, 2024.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 8, 2024, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rule 7.13–E to remove references to the Chair of the Board. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Rule 7.13–E (Trading Suspensions) to remove references to the Chair of the Board of Directors of the Exchange (''Board'').

Under current Rule 7.13–E,[4] except as otherwise stated in Rule 5.5, the Chair of the Board or the President of the Exchange, or the officer designee of the Chair or the President, has the power to suspend trading on any and all securities traded on the Exchange whenever in his or her opinion such suspension would be in the public interest. No such action shall continue longer than two days or as soon

[4] The current text of Rule 7.13–E was adopted in 2017 when the Exchange's subsidiary NYSE Arca Equities Inc. was merged into the Exchange. *See* Securities and Exchange Act Release No. 81419 (August 17, 2017), 82 FR 40044 (August 23, 2017) (SR–NYSEArca-2017–40) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, in Connection With the Proposed Merger of Its Wholly Owned Subsidiary NYSE Arca Equities, Inc. With and Into the Exchange).

thereafter as a quorum of Directors can be assembled, unless the Board approves the continuation of such suspension.

The Exchange believes that it is advisable to remove the references to the Chair in Rule 7.13–E because the Chair has not acted under Rule 7.13–E since the rule was adopted and the Exchange does not anticipate that an independent or non-employee Chair will have sufficient involvement in the day-to-day operations of the Exchange to act under the Rule.

Moreover, the proposed changes to Rule 7.13–E would make it substantially similar to the rule text governing Trading Suspensions currently in place on the Exchange's affiliate the New York Stock Exchange LLC (''NYSE'') in NYSE Rule 7.13.[5] The proposed changes to Rule 7.13–E therefore would harmonize the Exchange's rules with those of its affiliate NYSE and provide for consistent authority to suspend trading across the Exchange and the NYSE.

To effectuate the change, the first sentence of the Rule would be amended as follows (proposed deletions bracketed):

> Except as otherwise stated in Rule 5.5–E, [the Chair of the Board or] the President, or the officer designee of [the Chair or] the President, shall have the power to suspend trading in any and all securities traded on the Exchange whenever in his or her opinion such suspension would be in the public interest.

The requirement that no such action continue longer than two days or as soon thereafter as a quorum of Directors can be assembled, unless the Board approves the continuation of such suspension, would remain. No other changes to Rule 7.13–E are proposed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(1)[7] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is designed to provide fair procedures for the denial of membership to any person seeking Exchange membership, the barring of any person from becoming associated with a member, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof, consistent with the objectives of Section 6(b)(7)[9] and Section 6(d)(2)[10] of the Act.

The proposed amendment would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Act, thereby furthering the objectives of Section 6(b)(1)[11] of the Act. Amending Rule 7.13–E to remove the references to the Chair would contribute to the orderly operation of the Exchange, as it would make Rule 7.13–E more accurately reflect current practice, as the Chair has not acted under Rule 7.13–E since the rule was adopted. It would also reflect the fact that the Exchange does not anticipate that an independent or non-employee Chair will have sufficient involvement in the day-to-day operations of the Exchange to act under the Rule. At the same time, the Chair would continue to have an oversight role, since the requirement would remain that no suspension of trading continue longer than two days or as soon thereafter as a quorum of Directors can be assembled, unless the Board approves the continuation of such suspension. Given that, the Board—including the Chair—would continue to oversee the length of time any suspension of trading made under the Rule would be in effect.

Because amended Rule 7.13–E would more accurately reflect current practice while still giving the Chair an oversight role, the Exchange believes that the proposed change would be beneficial to both investors and the public interest, thereby promoting the maintenance of a fair and orderly market and the protection of investors and the public interest consistent with Section 6(b)(5) of the Act.[12] Moreover, the Exchange believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, protect investors and the public interest because substantially similar authority to suspend trading already exists on the Exchange's affiliate NYSE, and therefore is not novel.

For the same reasons, the Exchange believes that the proposed changes would continue to provide fair procedures for the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange consistent with the objectives of Section 6(b)(7)[13] and Section 6(d)(2)[14] of the Act.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[15] The proposed rule change is not intended to address competitive issues but rather is concerned solely with amending Rule 7.13–E so that it more accurately reflects current practice and to make it substantially similar to NYSE Rule 7.13.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[5] The differences are that the proposed NYSE Arca Rule 7.13–E (a) has an added cross-reference to Rule 5.5–E, (b) uses ''traded on the Exchange'' instead of ''trading on the Exchange'' and (c) uses ''President'' instead of ''CEO.'' *See* Securities and Exchange Act Release No. 101477 (October 30, 2024), 89 FR 87917 (November 5, 2024) (SR–NYSE–2024–58) (Order Approving a Proposed Rule Change to Amend NYSE Rule 7.13). Exchange Rule 5.5–E has trading suspension provisions. *See* Rule 5.5–E(l) (Other Reasons for Suspending or Delisting) and Rule 5.5–E(m) (Delisting Procedures) (listing Exchange Rules under which the Exchange may determine that it may be appropriate to either suspend dealings in and/or remove securities from listing); *see also* Rule 5.5–E(a) (Maintenance Requirements and Delisting Procedures), Commentary .01 (''[w]hen the issuer fails to meet any provision of the applicable maintenance requirements of this Rule 5.5–E, the Exchange shall determine whether to suspend dealings in the security and/or request the issuer to take action to remedy any identified deficiency.'').

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(1).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(7).

[10] 15 U.S.C. 78f(d)(2).

[11] 15 U.S.C. 78f(b)(1).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(7).

[14] 15 U.S.C. 78f(d)(2).

[15] 15 U.S.C. 78f(b)(8).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and subparagraph (f)(6) of Rule 19b–4 thereunder.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2024–97 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2024–97. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2024–97 and should be submitted on or before December 11, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–27020 Filed 11–19–24; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101627; File No. SR–NYSE–2024–72]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Proprietary Market Data Fee Schedule To Establish an Access Fee for the NYSE Pillar Depth Data Feed

November 14, 2024.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 4, 2024, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Proprietary Market Data Fee Schedule to establish an Access Fee for the NYSE Pillar Depth data feed. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the NYSE Proprietary Market Data Fee Schedule (''Fee Schedule''). Specifically, the Exchange proposes to establish an Access Fee for the NYSE Pillar Depth (''Pillar Depth'') data feed, effective November 4, 2024.[4]

The proposed fee for Pillar Depth would be $250 per month, provided that the market data recipient separately pays the applicable fees for the five existing market data products underlying the Pillar Depth data feed, consistent with the existing fee

[4] The Exchange originally filed to amend the Fee Schedule on May 13, 2024 (SR–NYSE–2024–30). On July 11, 2024, the Exchange withdrew SR–NYSE–2024 30 and replaced it with SR–NYSE–2024–39. On September 6, 2024, the Exchange withdrew SR–NYSE–2024–39 and replaced it with SR–NYSE–2024–55. On November 4, 2024, the Exchange withdrew SR–NYSE–2024–55 and replaced it with this filing.

structures for those market data products.

The Pillar Depth data feed is a frequency-based depth of book market data feed that provides a consolidated view of the ten (10) best price levels on both the bid and offer sides across the NYSE Group's combined limit order books for securities traded on the NYSE Group equities markets, *i.e.,* NYSE, NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), NYSE Chicago, Inc. (''NYSE Chicago'') and NYSE National, Inc. (''NYSE National''), for which the NYSE Group equities markets report quotes and trades under the Consolidated Tape Association (''CTA'') Plan or the Nasdaq/UTP Plan.[5] In other words, Pillar Depth would be a compilation of limit order data that the Exchange provides to vendors and subscribers, updated no less frequently than once per second. Specifically, the Pillar Depth data feed consists of certain data elements from five market data feeds [6]—NYSE Aggregated Lite,[7] NYSE American Aggregated Lite,[8] NYSE Arca Aggregated Lite,[9] NYSE Chicago Aggregated Lite [10] and NYSE National Aggregated Lite.[11]

The Exchange, NYSE American, NYSE Arca, NYSE Chicago and NYSE National are the exclusive distributors of the five Aggregated Lite feeds from which certain data elements are taken to create the Pillar Depth data feed. By contrast, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that comprises the Pillar Depth data feed. Any entity that receives, or elects to receive, the five underlying Aggregated Lite data feeds would be able, if it so chooses, to create a data feed with the same information included in Pillar Depth and sell and distribute it to its clients so that it could be received by those clients as quickly as the Pillar Depth data feed would be received by those same clients.[12]

As proposed, the Exchange would charge a $250 per month Access Fee for the aggregation and consolidation function that the Exchange performs in creating Pillar Depth. To obtain Pillar Depth, a market data recipient would need to pay any applicable fees for the five data feeds underlying Pillar Depth, consistent with the existing fee schedules for those market data products as previously filed with the Commission and which may be amended from time to time, including any applicable Access, Redistribution, Professional User, Non-Professional User, Non-Display or Enterprise fees. The Exchange proposes to denote the requirement for market data recipients to pay the applicable fees for the five data feeds underlying Pillar Depth in proposed footnote 3 on the Fee Schedule.

When subscribing to Pillar Depth, the underlying data feeds would be delivered in the Pillar Depth consolidated format, as described above, but charged for as if the recipient were receiving the underlying feeds directly. The Exchange notes that if a subscriber chooses to receive the five underlying feeds both separately and in the Pillar Depth format, such subscriber may be subject to additional Professional User or Non-Professional User fees to reflect the distribution of both Pillar Depth (which incorporates the five underlying data feeds) and any separate dissemination of the underlying data feeds. The Exchange believes that the proposed fees for Pillar Depth would not be lower than the cost to a vendor of creating a comparable product, including the cost of receiving the underlying data feeds.

The Exchange notes that another market participant seeking to distribute a competing product to Pillar Depth might engage in a different analysis of assessing the cost of a competing product, which may incorporate passing through fees associated with co-location at the Mahwah, New Jersey data center. However, the incremental co-location cost to a particular vendor might be inconsequential if such vendor is already co-located and is able to allocate its co-location costs over numerous product and customer relationships. The Exchange therefore believes that a vendor could create and offer a product similar to Pillar Depth on a cost-competitive basis.

The proposed rule change is intended to encourage market participants to subscribe to Pillar Depth by making it more affordable for prospective customers. The proposed fee change would allow the Exchange to compete more effectively with the Cboe One Premium Feed, which as described below, is a comparable market data offering to Pillar Depth.

The Exchange notes that the proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations or others would have in complying with the proposed rule change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[13] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[14] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers. The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [15] in that it is consistent with (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets; and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[16] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

[5] *See* Securities Exchange Act Release No. 100030 (April 25, 2024), 89 FR 35260 (May 1, 2024) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the NYSE Pillar Depth Data Feed) (SR–NYSE–2024–24) (''Pillar Depth Product Filing'').

[6] Each of these data feeds are offered pursuant to preexisting and effective rules and fees filed with the Commission. This filing does not affect those rules, or the fees associated with these underlying data feeds or the ability for the Exchange, NYSE American, NYSE Arca, NYSE Chicago or NYSE National to amend the data feeds or fees associated with those data feeds pursuant to a separate rule filing.

[7] *See* Securities Exchange Act Release No. 99689 (March 7, 2024) 89 FR 18466 (March 13, 2024) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the NYSE Aggregated Lite Market Data Feed) (SR–NYSE–2024–12).

[8] *See* Securities Exchange Act Release No. 99690 (March 7, 2024) 89 FR 18445 (March 13, 2024) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the NYSE American Aggregated Lite Market Data Feed) (SR–NYSEAMER–2024–14).

[9] *See* Securities Exchange Act Release No. 99713 (March 12, 2024) 89 FR 19381 (March 18, 2024) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the NYSE Arca Aggregated Lite Market Data Feed) (SR–NYSEARCA–2024–22).

[10] *See* Securities Exchange Act Release No. 99691 (March 7, 2024) 89 FR 18468 (March 13, 2024) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the NYSE Chicago Aggregated Lite Market Data Feed) (SR–NYSECHX–2024–08).

[11] *See* Securities Exchange Act Release No. 99715 (March 12, 2024) 89 FR 19383 (March 18, 2024) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the NYSE National Aggregated Lite Market Data Feed) (SR–NYSENAT–2024–06).

[12] *See* Pillar Depth Product Filing, *supra* note 5.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4), (5).

[15] 15 U.S.C. 78k–1.

[16] 17 CFR 242.603.

The Proposed Rule Change Is Reasonable

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [17]

With respect to market data, the decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC* upheld the Commission's reliance on the existence of competitive market mechanisms to evaluate the reasonableness and fairness of fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system ''evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed'' and that the SEC wield its regulatory power ''in those situations where competition may not be sufficient,'' such as in the creation of a ''consolidated transactional reporting system.'' [18]

The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [19]

More recently, the Commission confirmed that it applies a ''market-based'' test in its assessment of market data fees, and that under that test:

> the Commission considers whether the exchange was subject to significant competitive forces in setting the terms of its proposal for [market data], including the level of any fees. If an exchange meets this burden, the Commission will find that its fee rule is consistent with the Act unless there is a substantial countervailing basis to find that the terms of the rule violate the Act or the rules thereunder.[20]

As discussed below, the Exchange believes that its proposed fees are constrained by competitive forces.

As the D.C. Circuit recognized in *NetCoalition I,* ''[n]o one disputes that competition for order flow is fierce.'' [21] The court further noted that ''no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers,'' and that an exchange ''must compete vigorously for order flow to maintain its share of trading volume.'' [22]

As noted above, while Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [23] Indeed, today, equity trading is currently dispersed across 16 exchanges,[24] numerous alternative trading systems,[25] broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share.[26]

Further, low barriers to entry mean that new exchanges may rapidly and inexpensively enter the market to compete with the Exchange. For example, since 2020, three new ones have entered the market: Long Term Stock Exchange (LTSE), which began operations as an exchange on August 28, 2020; [27] Members Exchange (MEMX), which began operations as an exchange on September 29, 2020; [28] and Miami International Holdings (MIAX), which began operations of its first equities exchange on September 29, 2020.[29]

More specifically, in setting fees for the Pillar Depth data feed, the Exchange is constrained by the fact that, if its pricing is unattractive to customers, customers have their pick of alternatives to purchase similar data from instead of purchasing it from the Exchange. The existence of alternatives to the Exchange's data product ensures that the Exchange cannot set unreasonable market data fees without suffering the negative effects of that decision in the competitive market for non-latency-sensitive proprietary partial depth of book market data.

The Exchange further believes that requiring market data recipients to separately pay for the five underlying data feeds to Pillar Depth is reasonable because by design, Pillar Depth represents an aggregated and consolidated version of those existing five data feeds. The Exchange notes that it is not seeking with this filing to establish fees relating to the underlying five Aggregated Lite data feeds, as those fees have been established consistent with Section 19(b)(3)(A) of the Act [30] and Rule 19b–4(f)(2) [31] thereunder, and which may be amended from time to time. However, the Exchange believes it would be unfair if it did not require Pillar Depth data feed recipients to separately pay for those five feeds because otherwise, Pillar Depth data feed recipients would be receiving a data product that includes such underlying data at a lower cost than separately subscribing to the underlying data feeds. Similarly, the Exchange believes that it would be reasonable to charge separate Professional User or Non-Professional User fees if a market data recipient chooses to receive both Pillar Depth and a separate dissemination of the five underlying data feeds in a non-consolidated form. The Exchange believes that such delivery would constitute two separate uses of the underlying data feeds and thus should be charged accordingly, consistent with the existing fee schedule

[17] *See* Regulation NMS Adopting Release, 70 FR 37495, at 37499.

[18] *NetCoalition* v. *SEC,* 615 F.3d 525, 535 (D.C. Cir. 2010) (''*NetCoalition I*'') (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323).

[19] *Id.* at 535.

[20] *See* Securities Exchange Act Release No. 34–90217 (October 16, 2020), 85 FR 67392 (October 22, 2020) (SR–NYSENAT–2020–05) (''National IF Approval Order'') (internal quotation marks omitted), quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (''2008 ArcaBook Approval Order'').

[21] *NetCoalition I,* 615 F.3d at 544 (internal quotation omitted).

[22] *Id.*

[23] *See* Securities Exchange Act Release No. 61358, 75 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[24] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[25] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[26] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[27] *See* LTSE Market Announcement: MA–2020–020, dated August 14, 2020, announcing LTSE production securities phase-in planned for August 28, available here: *https://assets-global.website-files.com/6462417e8db99f8baa06952c/6462417e8db99f8baa0698e7_MA-2020-020__Production_Securities_Launching_August_28_-_Google_Docs.pdf* and LTSE Market Announcement: MA–2020–025, available here: *https://assets-global.website-files.com/6462417e8db99f8baa06952c/6462417e8db99f8baa069873_MA-2020-025.pdf.*

[28] As of October 29, 2020, MEMX is trading all NMS symbols. *See https://info.memxtrading.com/trader-alert-20-10-memx-trading-symbols-update/.*

[29] *See* MIAX Pearl Press release, dated September 29, 2020, available here: *https://www.miaxoptions.com/sites/default/files/alert-files/MIAX_Press_Release_09292020.pdf.*

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f)(2).

for those market data products. The Exchange therefore believes that the proposed fee structure for Pillar Depth would not be lower than the cost to another party to create a comparable product, including the cost of receiving the underlying data feeds.

The Exchange notes that its proposed fee structure is similar to the fee structure for the NYSE BQT data feed.[32] The NYSE BQT data feed provides best bid and offer (''BBO'') and last sale information (''Trades'') for the Exchange and its affiliates, NYSE Arca, NYSE American, NYSE Chicago and NYSE National. NYSE BQT consists of certain data elements from ten market data feeds—NYSE Trades, NYSE BBO, NYSE Arca Trades, NYSE Arca BBO, NYSE American Trades, NYSE American BBO, NYSE Chicago Trades, NYSE Chicago BBO, NYSE National Trades and NYSE National BBO.[33] To receive NYSE BQT, a market data recipient must pay the applicable fee for the ten data feeds underlying NYSE BQT, and an Access Fee of $250 per month.[34]

The Exchange notes that Pillar Depth is entirely optional. The Exchange is not required to make Pillar Depth available to any customers, nor is any customer required to purchase the Pillar Depth data feed. Unlike some other data products (*e.g.,* the consolidated quotation and last-sale information feeds) that firms are required to purchase in order to fulfil regulatory obligations,[35] a customer's decision whether to purchase Pillar Depth is entirely discretionary. The Exchange believes that Pillar Depth would provide high-quality, comprehensive partial depth of book data for the Exchange, NYSE Arca, NYSE American, NYSE Chicago and NYSE National in a unified view that an anticipated end user might use for purposes of identifying an indicative price of Tape A, B and C securities through leveraging the depth and breadth of NYSE, NYSE Arca, NYSE American, NYSE Chicago and NYSE National without having to purchase consolidated data and thus it would not be a latency-sensitive product. The Exchange does not anticipate that an end user would, or could, use Pillar Depth data for purposes of making order-routing or trading decisions. Firms that choose to subscribe to Pillar Depth are able to determine for themselves whether Pillar Depth is necessary for their business needs, and if so, whether or not it is attractively priced. If Pillar Depth does not provide sufficient benefit to firms based on the uses those firms may have for it, such firms may simply choose to conduct their business operations in ways that do not use Pillar Depth.

In setting the proposed fees for Pillar Depth, the Exchange considered the competitiveness of the market for non-latency-sensitive proprietary partial depth of book data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish reasonable fees. The proposed fees are therefore reasonable because in setting them, the Exchange is constrained by the availability of substitute partial depth of book market data products. The Commission has been clear that such substitutes need not be identical, but only substantially similar to the product at hand.[36]

The four U.S. equities exchanges operated by Cboe Exchange, Inc.—Cboe BZX Exchange, Inc. (''BZX''), Cboe BYX Exchange, Inc. (''BYX''), Cboe EDGA Exchange, Inc. (''EDGA''), and Cboe EDGX Exchange, Inc. (''EDGX''), currently offer a market data product called the Cboe One Premium Feed,[37] which competes with the Pillar Depth data feed. Similar to the Cboe One Premium Feed, Pillar Depth can be utilized by vendors and subscribers to quickly access and distribute aggregated order book data. As noted above, Pillar Depth, similar to Cboe One Premium Feed, would provide aggregated depth per security, including the bid, ask and share quantity for orders received by the NYSE Group markets. The Exchange believes that Pillar Depth will offer a competitive alternative to the Cboe One Premium Feed.[38]

The fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to these data products further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute its similar product than the Exchange charges to consolidate and distribute Pillar Depth, prospective users likely would not subscribe to, or would cease subscribing to, Pillar Depth.

The Proposed Fees Are Equitably Allocated and Are Not Unfairly Discriminatory

The Exchange believes that the proposed fee is equitable and non-discriminatory in that it would apply uniformly to all recipients of Exchange data. The Exchange also believes the proposed fee is competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients. The Exchange also notes that the proposed fee is not designed to permit unfair discrimination because all market data recipients that subscribe to

[32] *See* Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish an Access Fee for the NYSE Best Quote & Trades Data Feed) (SR–NYSE–2014–64).

[33] *See* Securities Exchange Act Release Nos. 72750 (August 4, 2014), 79 FR 46494 (August 8, 2014) (notice—NYSE BQT); and 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (approval order—NYSE BQT) (SR–NYSE–2014–40) (''NYSE BQT Filing''). In 2018, NYSE BQT was amended to include NYSE National BBO and NYSE National Trades. *See* Securities Exchange Act Release No. 83359 (June 1, 2018), 83 FR 26507 (June 7, 2018) (SR–NYSE–2018–22). In 2019, NYSE BQT was amended to include NYSE Chicago BBO and NYSE Chicago Trades. *See* Securities Exchange Act Release No. 87511 (November 12, 2019), 84 FR 63689 (November 18, 2019) (SR–NYSE–2019–60).

[34] *See* Securities Exchange Act Release No. 82121 (November 30, 2017), 82 FR 57627 (December 6, 22017) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fees for NYSE BBO and NYSE Trades To Lower the Enterprise Fee, and for NYSE BQT To Lower the Access Fee) (SR–NYSE–2017–60).

[35] The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations. *See In the Matter of the Application of Securities Industry and Financial Markets Association for Review of Actions Taken by Self-Regulatory Organizations,* Release Nos. 34–72182; AP–3–15350; AP–3–15351 (May 16, 2014). Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions, and some broker-dealers and ATSs have chosen not to do so.

[36] For example, in the National IF Approval Order, the Commission recognized that for some customers, the best bid and offer information from consolidated data feeds may function as a substitute for the NYSE National Integrated Feed product, which contains order by order information. *See* National IF Approval Order, *supra* note 20, at 67397 [release p. 21] (''[I]nformation provided by NYSE National demonstrates that a number of executing broker-dealers do not subscribe to the NYSE National Integrated Feed and executing broker-dealers can otherwise obtain NYSE National best bid and offer information from the consolidated data feeds.'' (internal quotations omitted)).

[37] *See* BZX Rule 11.22(j); BYX Rule 11.22(i); EDGA Rule 13.8(b); and EDGX Rule 13.8(b). The Cboe One Feed offered by BZX, BYX, EDGA and EDGX is a data feed that contains the aggregate best bid and offer of all displayed orders for securities traded on the Cboe exchanges. The Cboe One Feed also contains the individual last sale information, consolidated volume, the primary listing market's official opening and closing price, and the current day consolidated high and low price for all listed equity securities. Cboe One Feed recipients may also elect to receive aggregated two-sided quotations from the Cboe exchanges for five (5) price levels (''Cboe One Premium Feed'').

[38] Fees for the Cboe One Premium Feed are available at *https://www.cboe.com/market_data_services/us/equities/cboe_one/.*

Pillar Depth would be charged the same fee. The Exchange further believes that the proposed Pillar Depth fee structure is equitable and not unfairly discriminatory because all vendors and subscribers that elect to purchase Pillar Depth would be charged the same fees. In addition, vendors and subscribers that do not wish to purchase Pillar Depth may separately purchase the five individual underlying products, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating Pillar Depth. To enable such competition, the Exchange is offering Pillar Depth on terms that a subscriber of those five feeds could offer a competing product if it so chooses.

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) [39] of the Act, the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the Pillar Depth data feed represents aggregated and consolidated information from five existing market data feeds. Although the Exchange, NYSE American, NYSE Arca, NYSE Chicago and NYSE National are the exclusive distributors of the five Aggregated Lite data feeds from which certain data elements are taken to create Pillar Depth, the Exchange may not be the exclusive distributor of the aggregated and consolidated information that comprises the Pillar Depth data feed. Any other market participant recipient of the five Aggregated Lite feeds would be able, if it chose, to create a data feed with the same information as Pillar Depth and distribute it to their clients on a level-playing field with respect to latency and cost as compared to the Exchange's product.[40]

Intramarket Competition. The Exchange believes that the proposed fees do not put any market participant at a relative disadvantage compared to other market participant. As noted above, the proposed fees would apply equally to all subscribers of Pillar Depth, and subscribers may choose whether to subscribe to Pillar Depth at all. The Exchange also believes that the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue market on competition.

Intermarket Competition. The Exchange believes that the proposed monthly Access Fee the Exchange proposes to charge subscribers for Pillar Depth would be pro-competitive because another market data recipient could perform a similar aggregating and consolidating function and similarly charge for such service. The Exchange notes that a competing vendor might engage in a different analysis of assessing the cost of a competing product, which may incorporate passing through fees associated with co-location at the Mahwah, New Jersey data center. However, the incremental co-location costs to a particular vendor may be inconsequential if such vendor is already co-located and is able to allocate its co-location costs over numerous product and customer relationships. The Exchange therefore believes that a competing vendor could create and offer a product similar to the Pillar Depth data feed at a similar cost. For these reasons, the Exchange believes that vendors could readily offer a product similar to Pillar Depth on a competitive basis.

Specifically, the Exchange believes that the proposed fees do not impose a burden on competition or on other exchanges that is not necessary or appropriate because of the availability of substitute partial depth of book market data products. As described above, Pillar Depth would compete with the Cboe One Premium Feed.[41] These products each serve as reasonable substitutes for one another as they are each designed to provide investors with a unified view of quotes in all Tape A, B, and C securities. Each product provides subscribers with aggregated and consolidated quotes from multiple U.S. equities markets. Pillar Depth provides partial depth of book data from five NYSE-affiliated U.S. equities exchanges, while Cboe One Premium Feed similarly provides partial depth of book data from Cboe's four U.S. equities exchanges. Pillar Depth and Cboe One Premium Feed are intended to provide indicative pricing and therefore, are reasonable substitutes for one another. In setting the fee for the Pillar Depth, the Exchange is constrained by the fact that if its pricing is unattractive, customers will have their pick of alternative partial depth of book market data products to purchase instead of purchasing the Exchange's product. Because market data users can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another source of market data information for its own. These competitive pressures ensure that no one exchange's market data fees can impose an unnecessary burden on competition, and the Exchange's proposed fees do not do so here.

As such, in establishing the proposed fees, the Exchange considered the competitiveness of the market for non-latency-sensitive proprietary partial depth of book data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of alternatives to Pillar Depth, including the five underlying feeds, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[42] and Rule 19b–4(f)(2) thereunder [43] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[39] 78 U.S.C. 78f(b)(8).

[40] *See* Pillar Depth Product Filing, *supra* note 5.

[41] *See supra,* note 37.

[42] 15 U.S.C. 78s(b)(3)(A)(ii).

[43] 17 CFR 240.19b–4.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2024–72 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSE–2024–72. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSE–2024–72 and should be submitted on or before December 11, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–27016 Filed 11–19–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35386; 812–15179–01]

Precidian ETF Trust II, et al.

November 14, 2024.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application to amend a prior order for exemptive relief.

Summary of Application: Applicants request an order (''Amended Order'') that would amend a prior order to permit a Fund to use Creation Baskets (as defined below) that include instruments that are not included, or that are included with different weightings, in the Fund's Pro Rata Basket (as defined below).

Applicants: Precidian ETF Trust II (''Trust''), Precidian Funds LLC, and Foreside Fund Services, LLC (collectively, the ''Applicants'').

Filing Dates: The application was filed on November 24, 2020, and amended on January 14, 2022, March 28, 2022, September 2, 2022, December 13, 2023, April 15, 2024, and November 8, 2024.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on December 9, 2024 and should be accompanied by proof of service on the Applicants in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Investment Company Act of 1940 (''Act''), hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing to the Commission's Secretary.

ADDRESSES:

The Commission: *Secretarys-Office@sec.gov.*

Applicants: *john.mcguire@morganlewis.com.*

FOR FURTHER INFORMATION CONTACT: Kris Easter Guidroz, Senior Counsel; Trace Rakestraw, Senior Special Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' sixth amended and restated application, dated November 8, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

I. Introduction

1. On May 20, 2019, the Commission issued an order [1] under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), and 22(d) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act (the ''Prior Order'').[2] The Prior Order permits Applicants to operate actively-managed exchange-traded funds (''ETFs'') that are not required to disclose their full portfolio holdings on a daily basis (each, a ''Fund''). Rather, pursuant to the Prior Order, each Fund disseminates a ''verified intraday indicative value,'' or

[44] 17 CFR 200.30–3(a)(12).

[1] *See* Precidian ETFs Trust, et al., Investment Company Act Release No. 33440 (April 8, 2019) (notice) and Investment Company Act Release No. 33477 (May. 20, 2019) (order). Except as specifically noted in the application for the Amended Order, all representations and conditions contained in the application first submitted with the Commission (File No. 812–14405), as amended and restated, and filed with the Commission on April 4, 2019 (the ''First Application''), remain applicable to the operation of the Funds and will apply to any Funds relying on the Amended Order.

[2] The relief granted under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act (the ''Section 12(d)(1) Relief''), and relief under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act relating to the Section 12(d)(1) Relief, expired on January 19, 2022. *See* Fund of Funds Arrangements, Investment Company Act Rel. No. 10871 (Oct. 7, 2020), at III.

''VIIV,'' reflecting the value of its portfolio holdings, calculated every second throughout the trading day.

2. Shares of each Fund are purchased and redeemed only in Creation Units and generally on an in-kind basis. Purchasers acquire Creation Units by transferring to the Fund Deposit Instruments [3] and shareholders redeeming their Shares receive from the Fund Redemption Instruments (each, a ''Creation Basket''). Under the Prior Order, the names and quantities of the instruments that constitute a Fund's Creation Basket must be a pro rata slice of the Fund's actual portfolio except for certain cash substitutions (''Pro Rata Basket'').

3. Applicants now seek to amend the Prior Order to, in effect, give the Funds the same flexibility with respect to Creation Basket composition as afforded to ETFs relying on rule 6c–1 under the Act.[4] More specifically, Applicants have requested that the Funds be allowed to use Creation Baskets that include instruments that are not included, or are included but in different weightings, in the Fund's Pro Rata Basket. As part of Applicants' request, the Funds would comply with additional requirements, including disclosing additional information.

II. The Application

A. Applicants' Proposal

4. Upon amending the Prior Order, each Fund would continue to offer its Pro Rata Basket every Business Day but could also offer a Creation Basket that differs from the Pro Rata Basket to provide Authorized Participants the option to transact in either basket. Each Business Day, before the open of trading on the Exchange where the Fund is listed, the Fund will publish on its website the composition of any Creation Basket exchanged with an Authorized Participant on the previous Business Day that differed from such Business Day's Pro Rata Basket other than solely with respect to cash substitutions.

5. Applicants represent that a Fund may determine that it is desirable to use Creation Baskets that differ from a Pro Rata Basket. For example, a Fund may use a Creation Basket that contains one or more instruments that are not included in its Pro Rata Basket if the Adviser or Sub-Adviser seeks to add an instrument to the Fund's portfolio without incurring transaction costs associated with the purchase of the instrument for cash. Similarly, if the Adviser or Sub-Adviser decides to sell an instrument from a Fund's portfolio, the Fund may include the instrument in a Creation Basket with the expectation that the Fund will deliver it in-kind during a redemption transaction.

6. The Funds will use the requested basket flexibility only in circumstances in which Applicants believe there will be no harm to the Funds or their shareholders and in order to benefit the Funds and their shareholders by reducing costs, increasing efficiency, and improving trading. To ensure that there is effective arbitrage on Business Days when the Adviser determines a Fund should use a Creation Basket that differs from its Pro Rata Basket, the Adviser will cause the Fund to disclose on its website that Business Day, before the opening of regular trading on the primary listing Exchange of the Fund's Shares: (i) that the Fund is accepting Creation Baskets that differ from the Pro Rata Basket, (ii) a basket of securities and cash that is designed to closely track the daily performance of the Fund (an ''Optimized Basket''),[5] and (iii) an Optimized Basket Overlap metric that measures the overlap between the Optimized Basket and the Fund's actual portfolio.

7. For at least the first three years after a Fund begins using Creation Baskets that differ from its Pro Rata Basket, the Adviser will promptly call a meeting of the Board, and the Board will promptly meet to consider recommendations for appropriate remedial measures presented by the Adviser, if the tracking error of the Optimized Basket exceeds 1% (*i.e.,* the difference, in percentage terms, between the NAV per share of the Optimized Basket and that of the actual portfolio at the end of a trading day).

8. Pursuant to condition 6, each Fund will maintain and preserve a copy of each Optimized Basket published on the Fund's website and a copy of each Creation Basket made available.

9. In addition, pursuant to conditions 6 and 10, each Fund will comply with the recordkeeping requirements of rule 6c–11 and will adopt and implement written policies and procedures that govern the construction of Creation Baskets as required under rule 6c–11 except that only Creation Baskets different from a Fund's Pro Rata Basket will be treated as a ''custom basket'' under subsections (d)(2)(ii) and (c)(3) of rule 6c–11.

B. Considerations relating to the Requested Relief

10. Applicants represent that the ability to use a Creation Basket that includes instruments that are not included, or are included with different weightings, in a Fund's Pro Rata Basket, does not raise any new policy concerns about reverse engineering of a Fund's portfolio, self-dealing or overreaching, or selective disclosure beyond those concerns addressed in connection with the Prior Order. Further, the Fund will disclose additional information, as noted in paragraph 6 above, to ensure that there is effective arbitrage on Business Days when the Adviser determines a Fund should use a Creation Basket that differs from its Pro Rata Basket.

11. *Reverse Engineering.* Applicants acknowledge that, by using a Creation Basket that includes instruments that are not included in a Fund's Pro Rata Basket, or are included in different percentages, and by publishing such Creation Basket on its website, the Fund would provide market participants with additional information about which instruments it adds or removes from the Fund's portfolio. However, Applicants represent that they will operate the Funds in a manner designed to minimize the risk of reverse engineering and, for the reasons set forth in the Application, believe successful front-running or free-riding is highly unlikely.

12. *Self-Dealing or Overreaching.* Applicants state their belief that Authorized Participants and other market participants will not have the ability to disadvantage the Funds by manipulating or influencing the composition of Creation Baskets, including those that differ from a Fund's Pro Rata Basket. Like the basket and custom basket policies and procedures required of ETFs by rule 6c–11, the Funds will adopt and implement written policies and procedures that govern the construction of creation baskets and the process that will be used for the acceptance of creation baskets to safeguard the best interests of the Funds and their shareholders.[6]

13. *Selective Disclosure.* The Funds and each person acting on behalf of the

[3] All capitalized terms not otherwise defined in this notice have the meanings ascribed to them in the First Application.

[4] The Funds are not able to operate in reliance on rule 6c–11 because they do not disclose their portfolio holdings on a daily basis as required by the rule. *See* rule 6c–11(c)(1)(i) (requiring an ETF to disclose prominently on its website, publicly available and free of charge, the portfolio holdings that will form the basis for the Fund's calculation of per share NAV).

[5] A Fund's Optimized Basket will be comprised of: (i) portfolio holdings; (ii) other securities that the Fund can purchase, including U.S. listed ETFs; and (iii) cash and cash equivalents.

[6] *See* Exchange-Traded Funds, Investment Company Act Release No. 33646 (Sept. 25, 2019) (''ETF Adopting Release''), at 80–94 (discussion of rule 6c–11 requirement for ETF policies and procedures concerning basket construction and acceptance and heightened policies and procedures for custom baskets).

Funds must continue to comply with Regulation Fair Disclosure as if it applied to them (except that the exemptions provided in rule 100(b)(2)(iii) therein shall not apply). Applicants believe that the creation basket flexibility they are seeking does not raise any new concerns about selective disclosure of material non-public information. First, a Fund's use of, or conversations with Authorized Participants about, Creation Baskets that would result in such disclosure would effectively be limited by the Funds' obligation to comply with Regulation Fair Disclosure. Second, each Business Day before the open of trading on the Exchange where a Fund is listed, the Fund will publish on its website the composition of any basket accepted by the Fund on the previous Business Day that differed from such Business Day's Pro Rata Basket.

II. Requested Exemptive Relief

Applicants believe that the Prior Order continues to meet the relevant standards for relief pursuant to section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), and 22(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.[7]

III. Applicants' Conditions:

Applicants agree that any Order of the Commission granting the requested relief will be subject to all of the conditions in the Prior Order, except condition 2 and condition 6 which are replaced with new conditions 2 and 6 below, as well as new condition 10:

2. The website for the Trust, which will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and market closing price or Bid/Ask Price of the Shares, a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV, and any other information regarding premiums and discounts as may be required for other ETFs under Rule 6c–11 under the 1940 Act. The website will also disclose the median bid-ask spread for each Fund's most recent fiscal year based on the National Best Bid and Offer at the time of calculation of NAV (or such other spread measurement as may be required for other ETFs under Rule 6c–11 under the 1940 Act). On each applicable Business Day, when accepting orders involving a Creation Basket that differs from the Fund's Pro Rata Basket, each Fund will publish on its website before the opening of regular trading on the primary listing Exchange of the Fund's Shares an Optimized Basket and Optimized Basket Overlap.

6. Each Fund will comply with the recordkeeping requirements of Rule 6c–11 under the Act, except that for purposes of this condition, only Creation Baskets different from the Fund's Pro Rata Basket will be treated as a ''custom basket'' under Rule 6c–11(d)(2)(ii). In addition, each Fund will maintain and preserve, for a period of not less than five years, in an easily accessible place, (i) a copy of any Optimized Basket published on the Fund's website for each Business Day; and (ii) a copy of each Creation Basket made available on a given day. In addition, each Fund will maintain and preserve, for a period of not less than five years, in an easily accessible place, all written agreements (or copies thereof) between the Fund and each AP Representative related to the AP Representative's role as such.

10. Each Fund will adopt and implement written policies and procedures that govern the construction of Creation Baskets, as required under Rule 6c–11(c)(3) under the Act, except that for purposes of this condition, any Creation Basket different from the Fund's Pro Rata Basket will be treated as a ''custom basket.'' The Fund's basket policies and procedures will be covered by the Fund's compliance program and other requirements under Rule 38a–1 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–27015 Filed 11–19–24; 8:45 am]

BILLING CODE 8011–01–P

[7] *See supra* note 2.

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–451, OMB Control No. 3235–0509]

Submission for OMB Review; Comment Request; Extension: Rule 301 of Regulation ATS

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 301 of Regulation ATS (17 CFR 242.301) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Regulation ATS provides a regulatory structure for alternative trading systems. Rule 301 of Regulation ATS contains certain record keeping and reporting requirements, as well as additional obligations that apply only to alternative trading systems with significant volume. The Rule requires all alternative trading systems that wish to comply with Regulation ATS to file an initial operation report on Form ATS. Alternative trading systems are also required to supply updates on Form ATS to the Commission describing material changes to the system, file quarterly transaction reports on Form ATS–R, and file cessation of operations reports on Form ATS. An alternative trading system with significant volume is required to comply with requirements for fair access and systems capacity, integrity, and security.

The Commission staff estimates that entities subject to the requirements of Rule 301 will spend a total of approximately 2,983 hours a year to comply with the Rule.

Regulation ATS requires ATSs to preserve any records, for at least three years, made in the process of complying with the system's capacity, integrity and security requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by December 20, 2024 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Tanya Ruttenberg, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: November 15, 2024.

Vanessa A. Countryman.

Secretary.

[FR Doc. 2024–27119 Filed 11–19–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–392, OMB Control No. 3235–0447]

Submission for OMB Review; Comment Request; Extension: Rule 17f–6

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17f–6 (17 CFR 270.17f–6) under the Investment Company Act of 1940 (15 U.S.C. 80a) permits registered investment companies (''funds'') to maintain assets (*i.e.,* margin) with futures commission merchants (''FCMs'') in connection with commodity transactions effected on both domestic and foreign exchanges. Before the rule was adopted, funds generally were required to maintain such assets in special accounts with a custodian bank.

The rule requires a written contract that contains certain provisions designed to ensure important safeguards and other benefits relating to the custody of fund assets by FCMs. To protect fund assets, the contract must require that FCMs comply with the segregation or secured amount requirements of the Commodity Exchange Act (''CEA'') and the rules under that statute. The contract also must contain a requirement that FCMs obtain an acknowledgment from any clearing organization that the fund's assets are held on behalf of the FCM's customers according to CEA provisions.

Because rule 17f–6 does not impose any ongoing obligations on funds or FCMs, Commission staff estimates there are only costs related to new contracts between funds and FCMs. This estimate does not include the time required by an FCM to comply with the rule's contract requirements because, to the extent that complying with the contract provisions could be considered ''collections of information,'' the burden hours for compliance are already included in other PRA submissions.[1] Commission staff estimates that approximately 1,164 series of 151 funds which report that futures commission merchants and commodity clearing organizations provide custodial services to the fund.[2] Based on these estimates, the total annual burden hours associated with rule 17f–6 is 27 hours. The estimated total annual burden hours associated with rule 17f–6 have decreased 1 hour, from 28 to 27 hours and external costs increased from $11,900 to $15,534. These changes in burden hours and external costs reflect changes in the number of affected entities and in the external cost associated with the information collection requirements. These changes reflect revised estimates.

These estimates are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collections of information requirements of the rule are necessary to obtain the benefit of relying on the rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by December 20, 2024 to (i) *www.reginfo.gov/public/do/PRAMain* or *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov,* and (ii) Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Tanya Ruttenberg, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: November 15, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–27117 Filed 11–19–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101621; File No. SR–OCC–2024–013]

Self-Regulatory Organizations; Options Clearing Corporation; Order Approving Proposed Rule Change by The Options Clearing Corporation Concerning Modifications to Its By-Laws and Rules Primarily To Discontinue Certain Outmoded or Unused Products and Services

November 14, 2024.

I. Introduction

On September 13, 2024, The Options Clearing Corporation (''OCC''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to make modifications to its By-Laws and Rules primarily to discontinue certain outmoded or unused products and services (''Proposed Rule Change''). The Proposed Rule Change was published for comment in the **Federal Register** on October 1, 2024.[3] The Commission has not received any comments on the Proposed Rule Change. For the reasons discussed below, the Commission is approving the Proposed Rule Change.

II. Description of the Proposed Rule Change

OCC is a clearing agency that clears a number of transactions including standardized equity options listed on national securities exchanges and registered with the Commission, stock loans, and futures.[4] Since 2000, for its core clearing, risk management, and data management applications, OCC has relied on a platform it calls ''ENCORE.'' ENCORE operates in on-premises data

[1] The rule requires a contract with the FCM to contain two provisions requiring the FCM to comply with existing requirements under the CEA and rules adopted thereunder; thus, to the extent these provisions could be considered collections of information, the hours required for compliance would be included in the collection of information burden hours submitted by the CFTC for its rules.

[2] This estimate is based on the average number of funds that reported on Form N–CEN from April 2021–March 2024, in response to sub-items C.12.6. and D.14.6; money market funds are excluded from this estimate because exchange-traded futures contracts or commodity options are not eligible securities for money market funds; the number of series and funds that reported on Form N–CEN in response these sub-items were: 1,112 series of 150 funds for the period April 2021–March 2022; 1,180 series of 152 funds for the period April 2022–March 2023; and 1,210 series of 151 funds for the period April 2023–March 2024 (for filings received through June 30, 2024).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 101189 (Sept. 25, 2024), 89 FR 79978 (Oct. 1, 2024) (File No. SR–OCC–2024–013) (''Notice'').

[4] All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules, *available at https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

centers.[5] Among other things, ENCORE is OCC's system for receiving trade and post-trade data on a transaction by transaction basis, maintaining clearing member positions, calculating margin and clearing fund requirements, and providing reporting to OCC staff, regulators and clearing members.[6] OCC plans to discontinue ENCORE and migrate its functions to a cloud-based successor clearing system that it calls Ovation.[7]

As part of the transition to Ovation, OCC is determining which features of ENCORE will migrate to Ovation.[8] The Proposed Rule Change describes certain functions that OCC proposes discontinuing because they are outmoded, unused,[9] or no longer support OCC's ability to clear and settle transactions. In this category, under the Proposed Rule Change, OCC would (i) no longer facilitate the settlement of commissions and fees owed between Clearing Members that are party to a Clearing Member Trade Assignment (''CMTA'') arrangement; (ii) delete rule provisions related to over-the-counter (''OTC'') option products; [10] (iii) delete from its rules the ''associated Market Maker'' account subtype; and (iv) no longer require that Clearing Members maintain records of both parties to a trade.

The Proposed Rule Change also includes three sets of additional changes that OCC proposed to make in connection with the transition to Ovation. In this category, OCC proposes to (i) allow Clearing Members to ''give-up'' one or more positions in cleared contracts that are futures or futures options to another Clearing Member without designating the specific account of the Given-Up Clearing Member to which such positions must be allocated; (ii) categorize a trade as an opening transaction when an opening or closing indicator is not included on a trade; and (iii) conform rules related to the discharge of broker-to-broker settlement obligations to current practice.

A. Discontinuing Existing Functions

i. Discontinuing the Facilitation of Commissions and Fees Between CMTA Clearing Members

CMTA arrangements allow a Clearing Member that executed a securities options trade (Executing Clearing Member), to send the trade directly through OCC to another Clearing Member (Carrying Clearing Member) for clearance and settlement.[11] Clearing Members generally use CMTA arrangements when they execute transactions for correspondent brokers that custody their assets with separate Carrying Clearing Members or execute transactions for an institutional customer that has a prime brokerage arrangement with a separate Clearing Member.[12]

Currently, subject to certain conditions, Clearing Members that are parties to a CMTA arrangement may opt to have OCC facilitate the settlement of fees and commissions for transactions pursuant to the CMTA arrangement. However, no Clearing Member has used the service since 2016, nor have any expressed interest in using it in the future.[13] Accordingly, OCC proposes to eliminate it.

To effect the discontinuation of the service, OCC proposes a number of changes to its Rules. Specifically, OCC proposes deleting Rules 407(a)(2) and 504(e), as well as certain text in Rule 504(g).[14]

Rule 407(a)(2) allows Clearing Members that are parties to a CMTA arrangement to authorize OCC to settle fees and commissions owed by the Carrying Clearing Member to the Executing Clearing Member in respect of transfers effected pursuant to the CMTA arrangement. It also discusses Clearing Members' requirements [15] and restrictions [16] for electing to have OCC settle the applicable fees and commissions for transactions under the CMTA as well as guidance as to when the Clearing Members' election to have OCC settle applicable fees and commissions under the CMTA arrangement is effective.

Rule 504(e) provides that OCC, as agent, is authorized to effect non-guaranteed settlement of fees and commissions owed by a Carrying Clearing Member to an Executing Clearing Member for transfers effected pursuant to their registered CMTA arrangement, provided their CMTA registration authorizes OCC to effect such settlements.[17]

Finally, certain text in Rule 504(g) indicates that OCC has no obligation to effect settlement of fees and commissions as provided in Rule 407 if either the Executing Clearing Member or the Carrying Clearing Member has been suspended by OCC. The Proposed Rule Change would delete this text but leave the remainder of Rule 504(g) untouched.

ii. Deleting Provisions Related to Clearing and Settling OTC Options

OCC's current Rules and By-Laws are designed to support the clearing and settling of OTC options.[18] However, OCC has only ever cleared OTC options based on the S&P 500 index,[19] and has not cleared and settled an OTC option since 2014. OCC does not currently have any open interest in OTC options and OCC's Clearing Members have not expressed interest in clearing OTC options with OCC in the future.[20] As such, OCC proposes removing all provisions from its By-Laws and Rules related to clearing and settling OTC options.[21]

[5] Securities Exchange Act Release No. 96113 (October 20, 2022), 87 FR 64824, 64825 (Oct. 26, 2022) (File No. SR–OCC–2021–802).

[6] Notice, 89 FR at 79978–79.

[7] *Id.;* Notice, 89 FR at 79979.

[8] *Id.* at 79978–79.

[9] *Id.* at 79979.

[10] An OTC option is an option contract with variable terms that are negotiated bilaterally between the parties to such transaction (subject to any specific requirements applicable to such products as set forth in the By-Laws and Rules), and that is affirmed through the facilities of an OTC Trade Source and submitted to OCC for clearing as a confirmed trade. OCC By-Laws, Article I.

[11] Securities Exchange Act Release No. 88974 (May 29, 2020), 85 FR 34468, 34469 (June 4, 2020) (File No. SR–OCC–2020–005).

[12] Securities Exchange Act Release No. 49841 (June 9, 2004), 69 FR 34207, 34207 (June 18, 2004) (File No. SR–OCC–2003–011).

[13] Notice, 89 FR at 79979.

[14] OCC proposes to replace the deleted text in Rule 504(e) with the word Reserved.

[15] Specifically, OCC requires Clearing Members making such an election to specifically register that aspect of their CMTA arrangement with OCC. Clearing Members making such election authorize (1) the Executing Clearing Member to enter into OCC's systems fee and commission information with respect to transfers effected pursuant to the CMTA arrangement between the Clearing members, subject to such system checks as may be established by OCC from time to time and (2) OCC to calculate and settle, in accordance with the applicable provisions of Rule 504, the aggregate of such entered amounts on the next following business day without any further authorization or consent of the Carrying Clearing Member.

[16] Rule 407 notes that any entries of commission and fee information under Rule 407(a)(2) shall be solely fees and commissions related to transfers effected pursuant to the Clearing Members' CMTA arrangement and for no other purposes.

[17] Further, Rule 504(e) also indicates how OCC determines the aggregate amounts to be settled, warns that OCC is not obligated to validate the accuracy of information input into OCC's systems to determine settlement amounts, indicates when OCC effects settlement, and confirms that OCC settlement facilitation under the CMTA arrangement does not require the Carrying Clearing Member to give any additional authorization or consent and that OCC does not have any role in resolving disputes between the Carrying Clearing Member and the Executing Clearing Member regarding these settlements. OCC would replace the text of Rule 504(e) with the word ''Reserved.''

[18] Securities Exchange Act Release No. 68434 (Dec. 14, 2012), 77 FR 75243 (Dec. 19, 2012) (File No. SR–OCC–2012–14).

[19] Notice, 89 FR at 79980.

[20] *Id.*

[21] *Id.* OCC indicates that it would submit a proposed rule change to the Commission as necessary in the event that it decides to support the

To effect this change, OCC proposes deleting from the By-Laws the definitions for ''OTC option,'' ''OTC index option,'' ''OTC Trade Source,'' ''OTC Trade Source Rules,'' and ''Backloaded OTC Option.'' The Proposed Rule Change would also delete text in provisions of the By-Laws and Rules that reference the above terms or that are otherwise related to OCC's clearance and settlement of OTC options. As a result, the following provisions in the By-Laws would have relevant OTC-related terms deleted from them (or, where indicated, be deleted in their entirety): Article I; [22] Article VI, Section 1, Interpretation and Policies .01(a); Article VI, Section 3, Interpretations and Policies .09 (deleted in its entirety); Article VI, Sections 10(b) and (g); Article VI, Sections 27(a) and (b); Article XVII, Introduction; Article XVII, Definitions, Section 1; [23] Article XVII, Section 3(h); Article XVII, Section 3, Interpretation and Policies .01 (deleted in its entirety); Article XVII, Section 4(a)(2); Article XVII, Section 5(a); and Article XVII, Section 6 (deleted in its entirety).

Likewise, the following provisions in the Rules would have relevant OTC-related terms deleted from them (or, where indicated, be deleted in their entirety): Rule 201(b)(6) (deleted in its entirety); Rules 401(a), (a)(1)(i), (b), (d), (e), (f), and (g); Rule 405; Rule 406; Rule 407(l) (deleted in its entirety); Rule 408(a); Rules 611(a), (b), and (d) (deleted in its entirety); Rule 801(b); Rule 803 Interpretation and Policy .01; Rule 804; Rule 1003 Interpretation and Policy .02 (deleted in its entirety); Rule 1104 Interpretation and Policy .03 (deleted in its entirety); Rule 1105; Rule 1106(e)(2) (deleted in its entirety); Rule 1106 Interpretation and Policy .01; Chapter XVIII of the Rules, Introduction; Rules 1804(b) and (c); and Rule 1804 Interpretation and Policy .03 (deleted in its entirety).

iii. Eliminating the Associated Market Maker Sub-Account Type

OCC currently allows its Clearing Members to use combined market maker accounts. OCC's rules provide for three types of combined market maker accounts: a combined account limited to Market-Makers that are neither Proprietary Market-Makers [24] nor Associated Market-Makers; [25] a combined account limited to Proprietary Market-Makers; and a combined account limited to Associated Market-Makers.[26]

Currently, Clearing Members do not use the Associated Market-Maker sub-account type. Thus, OCC proposes deleting references to this sub-account type from its By-Laws.[27] To effect this change, the Proposed Rule Change would delete the definition for Associated Market-Maker from Article I of the By-Laws. It would also remove from the By-Laws language related to Associated Market-Makers and the accounts their trades may be included in from Article VI, Section 3(c), Interpretation and Policy .03, and Interpretation and Policy .06. Finally, the Proposed Rule Change would replace a reference to Section 3(i) with a reference to Section 3(c) in the first sentence of Interpretation and Policy .06. As a result of the changes, OCC's By-Laws would provide for only two combined market-maker accounts going forward—one limited to Market-Makers that are not proprietary Market-Makers and one limited to Proprietary Market-Makers.

iv. Recordkeeping Requirements

OCC's rules currently require Clearing Members to maintain a record of the Purchasing Clearing Member and the Writing Clearing Member to each confirmed trade.[28] Before electronic trading was adopted, this requirement helped OCC reconcile counterparty settlement obligations and efficiently clear and settle confirmed trades, which aided OCC in avoiding settlement delays and disputes.[29]

With the adoption of electronic trading, OCC no longer needs Clearing Members to keep a record of the Purchasing Clearing Member and the Writing Clearing Member to each transaction.[30] OCC's role as a CCP further diminishes the need for this requirement because OCC novates all confirmed trades in options contracts so that it becomes the buyer to every seller and the seller to every buyer. As such, the original counterparty information in transactions is not relevant or necessary in respect of OCC's clearance and settlement process.[31]

OCC proposes no longer requiring that Clearing Members keep records of the Purchasing Clearing Member and the Writing Clearing Member to transactions. To accomplish this, OCC proposes adding an exception to its Rule 208 so that it would require only that Clearing Members keep records showing all confirmed trade data required pursuant to OCC's By-Laws and Rules, including confirmed trade information reported to OCC under Rule 401 except for the identity of the counterparty Clearing Member.

B. Miscellaneous Changes

As noted above, OCC also proposes three miscellaneous changes to its By-Laws and Rules. First, the Proposed Rule Change would allow Clearing Members to ''give up'' one or more positions in cleared contracts that are futures or futures options to another

clearance and settlement of OTC Options in the future. *Id.*

[22] OCC proposes deleting definitions for ''OTC Index Option Clearing Member'' and ''Origination Date.'' Additionally, OCC proposes deleting text from the definitions for ''Class,'' ''Clearing Member,'' ''Confirmed Trade,'' ''Index Multiplier,'' ''Index Value Determinant,'' ''Trade Date,'' and ''Variable Terms'' that discusses the definitions in the context of OTC Options or that is related to OTC Options. As a result of the removal of provisions related to OTC Options, the Proposed Rule change would also delete text from Interpretation and Policy .01 to Section C of Article I that indicates that the term ''Exchange Transaction'' was removed from the By-Laws and Rules and replaced with the term ''Confirmed Trade'' to reflect the expansion of OCC's clearing activities into OTC options. *Id.* at 79980 n.11.

[23] OCC proposes deleting text related to OTC options in the definitions for ''Class of Options,'' ''Current Underlying Interest Value; Current Index Value,'' ''Expiration Date,'' ''Expiration Time (deleted entirely),'' ''Reporting Authority,'' and ''Series of Options.''

[24] A Proprietary Market-Maker is a Market-Maker that is (A) a non-customer of such Clearing Member or (B) a Related Person of such Clearing Member that (i) is not a customer of such Clearing Member for purposes of Rule 15c3–3 of the Securities and Exchange Commission, (ii) does not carry the accounts of persons who are customers of such Market-Maker for purposes of Rule 15c3–3, and (iii) has consented to be treated as a proprietary Market-Maker for purposes of the By-Laws and Rules. This term includes any participant, as such, in an account that is not required to be segregated under Section 4d of the Commodity Exchange Act of which 10% or more is owned by a proprietary Market-Maker.

[25] An Associated Market-Maker is a person maintaining an account with a Clearing Member as a Market-Maker, specialist, stock market-maker, stock specialist, or Registered Trader that is a Related Person of the Clearing Member and shall include any participant, as such in an account of which 10% or more is owned by an associated Market-Maker, or an aggregate of 10% or more of which is owned by one or more associated Market-Makers.

[26] OCC By-Laws, Article VI, Section 3, Interpretation and Policy .06. The Commission has previously acknowledged that Clearing Members may find these accounts attractive because positions in these accounts can offset one another in a manner that may lead to lower margin requirements. Securities Exchange Act Release No. 33492 (Jan. 19, 1994), 59 FR 3896, 3897 n.11 (Jan. 27, 1994) (File No. SR–OCC–90–11).

[27] Notice, 89 FR at 79982.

[28] Under Rule 208, Clearing Members must keep records showing all confirmed trade data required by OCC's By-Laws and Rules including confirmed trade information reported to OCC under Rule 401. OCC Rules, Rule 208. Rule 401 requires that confirmed trades include the identity of the Purchasing Clearing Member and the Writing Clearing Member to the transaction. OCC Rules, Rule 401(a)(1)(i).

[29] Notice, 89 FR at 79980.

[30] *Id.*

[31] *Id.* at 79981. Additionally, OCC asserts that configuring Ovation to maintain such records would require OCC to invest significant resources that could impact Ovation's release timeline. *Id.* at 79980.

Clearing Member without designating the specific account of the Given-Up Clearing Member to which such positions must be allocated in order to better facilitate give-up allocations to the appropriate account. Second, OCC's amendments would categorize a trade as an opening transaction when an opening or closing indicator is not included on a trade for an options or futures contract to ensure that an existing position is not inadvertently closed out. Third, OCC proposes changes related to the discharge of broker-to-broker settlement obligations to better reflect its current practice.[32]

i. Designating the Appropriate Given-Up Clearing Member Account

Similar to the CMTA arrangements described above, a second way that OCC provides flexibility with respect to which broker executes a transaction is through give-up transactions.[33] Rule 408 allows for one or more positions in cleared contracts to be allocated from a designated account of a Giving-Up Clearing Member to a designated account of a Given-Up Clearing Member. Mechanically, these transactions are initiated post-trade by the Giving-Up Clearing Member by instructing OCC to move a position in one of its accounts to the designated account of the Given-Up Clearing Member. The Giving-Up Clearing Member may designate the Given-Up Clearing Member's account to which it would like to allocate positions. Currently, this allocation process is only available for positions in futures and options on futures cleared and settled by OCC.[34]

OCC proposes changing which Clearing Member must designate the account to which OCC should allocate given-up positions from the Giving-Up Clearing Member to the Given-Up Clearing Member. OCC believes this change will help reduce the risk of positions being transferred to an incorrect account because it would provide the Given-Up Clearing Member with more control over where positions it executes ultimately are transferred.[35] To do this, OCC would delete certain references to designated accounts in Rules 408(a) and (b). Currently, Rule 408(a) provides that positions may be allocated to a designated account of a Given-Up Clearing Member. OCC proposes deleting the reference to a designated account so that Rule 408(a) provides that positions may be allocated to a Given-Up Clearing Member. Rule 408(b) contemplates instructions to allocate positions from a designated account of the Giving-Up Clearing Member to a designated account of the Given-Up Clearing Member. Under OCC's proposal, the revised rule text would instead contemplate instructions to allocate positions from a designated account of the Giving-Up Clearing Member to a Given-Up Clearing Member. OCC also proposed to add text to Rule 408(b) indicating that, if certain conditions are met, the Given-Up Clearing Member may designate an account to which the allocation will be made. Once the Given-Up Clearing Member designates an account, OCC will adjust the positions in the respective designated accounts of the Giving-Up and Given-Up Clearing Members in accordance with the allocation instruction.

In line with current practice, the Proposed Rule Change would also clarify that this allocation process is only available for futures and options on futures. OCC would amend the title of Rule 408 to be ''Allocations of Positions for Futures and Futures Options'' rather than just ''Allocations of Positions.'' Currently, Rule 408(a) provides that give up allocations are available for cleared contracts. OCC's proposal would clarify that one or more positions in cleared contracts that are futures or futures options may be allocated in a give up allocation. Similarly, in Rule 408(e), OCC proposes replacing the word ''options'' with ''futures options'' in multiple locations to clarify that give-up allocations are only available for futures and options on futures contracts.[36]

To remove duplicative text from Rule 408, OCC proposes deleting the last sentence from Rule 408(b), which currently provides that if the Giving-Up Clearing Member and the Given-Up Clearing Member are not parties to an allocation agreement registered with OCC, then OCC shall adjust the positions in the respective designated accounts of the Giving-Up and Given-Up Clearing Member in accordance with the allocation instruction only upon receipt of notice from the Given-Up Clearing Member of its affirmative acceptance of the allocation.[37] OCC believes this rule text is already covered elsewhere in Rule 408.[38]

Similarly, OCC proposes removing a reference to allocation agreements in Rule 408(b) because that reference is duplicative of Rule 408(d).[39] Rule 408(b) requires the Giving-Up Clearing Member and the Given-Up clearing Member to be parties to an allocation agreement registered with OCC before OCC is required to allocate positions pursuant to a give-up transaction. OCC Rule 408(d), however, provides that the Given-Up Clearing Member is responsible for all settlement and other obligations in respect of each position that has been allocated to one of its accounts pursuant to a its acceptance of an allocation instruction. Further, under Rule 408(c) registration of an allocation agreement functionally is notice of affirmative acceptance of an allocation.[40] In OCC's view, because of Rule 408(c), there is no need for this separate requirement in Rule 408(b).

OCC also proposes removing duplicative text from Rule 408(d) to clarify Rule 408.[41] Currently, Rule 408(d) contains references to registered allocation agreements alongside references to acceptances of allocation instructions. For instance, 408(d) indicates that the Given-Up Clearing Member shall be responsible for all settlement and other obligations in respect of each position that has been allocated to one of its accounts pursuant to a registered allocation agreement or pursuant to its acceptance of an allocation instruction. Rule 408(d) also provides that, if there is not a registered allocation agreement on file with OCC or the Given-Up Clearing Member has rejected or not timely provided OCC with notice of its affirmative acceptance of an allocation, the relevant position will remain in the account of the Giving-Up Clearing Member. As noted above, registration of an allocation agreement is functionally the same as notice of affirmative acceptance of an allocation. Thus, referring to allocation

[32] *Id.* at 79979.

[33] Securities Exchange Act Release No. 85779 (May 6, 2019), 84 FR 20689 (May 10, 2019) (File No. SR–OCC–2019–003).

[34] Notice, 89 FR at 79981.

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.* As discussed above, proposed Rule 408(b) would indicate that OCC will adjust positions in the respective designated accounts of the Giving-Up and Given-Up Clearing Members in accordance with an allocation instruction only after the Given-Up Clearing Member designates the account to which the allocation instruction will be made. Moreover, Rule 408(d) would provide that if the Given-Up Clearing Member has rejected or not provided OCC with notice of its affirmative acceptance of an allocation at or before the deadline prescribed by OCC, the position(s) that is (are) the subject of such allocation instruction shall remain in the account of the Giving-Up Clearing Member, which shall be responsible for all settlement and other obligations in respect thereof, unless the position is transferred or adjusted pursuant to other provisions of the By-Laws and Rules.

[39] Notice, 89 FR at 79981.

[40] Rule 408(c) provides that the registration of an allocation agreement constitutes notice to OCC that the Giving-Up Clearing Member has been authorized by the Given-Up clearing Member to allocate positions to an account of the Given-Up Clearing Member without further action by the Given-Up Clearing Member.

[41] Notice, 89 FR at 79981.

agreements in addition to acceptance of allocation instructions is duplicative. As such, OCC proposes removing references to allocation agreements in Rule 408(d).[42]

ii. Default Treatment for Certain Confirmed Transactions

OCC currently accepts and novates confirmed transactions in options, sent to OCC by an options exchange, irrespective of whether there is an indication that the transaction is either an opening or closing transaction. In practice, if the transaction is not identified as either an opening or closing transaction, then OCC treats it as an opening transaction.

OCC proposes to reflect this current practice in its rules.[43] Rule 401, Interpretation and Policy .01 already provides that, in the case of futures, trade information submitted by an Exchange need not identify a transaction as opening or closing. It also indicates that if trade information submitted by an Exchange for a futures trade does not identify a transaction as opening or closing, OCC will treat all purchase and sale transactions in futures in accounts other than Market Maker accounts as opening transactions. OCC proposes to broaden the application of Rule 401, Interpretation and Policy .01 to encompass options as well as futures.

OCC also proposes to broaden the scope of Rule 401, Interpretation and Policy .01 to apply to Market-Maker accounts. Currently, Rule 401, Interpretation and Policy .01 does not apply to purchase and sale transactions in futures and options in Market Maker accounts. OCC proposes removing this limitation because it believes that the practice of treating unidentified trades as opening transactions is operationally safer because it helps avoid the unintentional closure of existing positions, irrespective of whether the specific unidentified trade is in a Market Maker account or not.[44]

iii. Broker-Broker Settlement Obligations

OCC proposes two changes related to its broker-to-broker settlement obligations to align its rules with its practices. Ordinarily, settlement of exercise and assignment activity occurs through OCC's correspondent clearing corporation, the National Securities Clearing Corporation (''NSCC'') pursuant to OCC's Rule 901.[45] In certain circumstances, such as when an underlying security is not CCC-eligible,[46] OCC directs that settlement will occur on a broker-to-broker basis pursuant to Rules 903–912. Under OCC Rule 909, when settlement is not made through the correspondent clearing corporation, for example when broker-broker settlement is directed, the Delivering Clearing Member and the Receiving Clearing Member must send notices to OCC as to the number of units of the underlying security delivered and the amount received. Under OCC Rule 909(d), when a Delivering or Receiving Clearing Member submits to OCC notice of a delivery, payment, or receipt of delivery or payment, and the contra Clearing Member does not respond to such notice within two business days, the contraparty's failure to respond constitutes acknowledgement to OCC that the obligation has been settled as indicated in the submitting Clearing Member's notice, provided that the designated delivery date has occurred. However, OCC's current practice differs from this provision in Rule 909. Rather, when OCC directs broker-broker settlement it also indicates that, if it is not possible for the Delivering Clearing Member to effect delivery of the underlying shares on the designated settlement date, then the settlement obligations of both Delivering and Receiving Clearing Members will be delayed until OCC designates a new exercise settlement date, settlement method, and/or settlement value.[47]

The Proposed Rule Change would amend Rule 909 to align the Rule with current practice. Specifically, OCC would amend Rule 909(d) to provide that OCC will construe a contraparty's failure to respond to indicate that the obligation is unsettled until such time as either (i) both Delivering and Receiving Clearing Members mutually agree to settle the obligation and notify OCC; or (ii) OCC settles the obligation on behalf of both Delivering and Receiving Clearing Members pursuant to OCC's policies and procedures.

Separately, OCC Rule 909 currently requires Clearing Members to submit notices indicating the number of units of the underlying security delivered (received) and the amount received (paid) therefor for transactions not settled via NSCC. In practice, however, the amount received or paid is systematically determined at OCC rather than being specified by the Clearing Members.[48] Therefore, OCC proposes removing ''and the amount received (paid)'' from the text of Rule 909.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act requires the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.[49] Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [50] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[51] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[52] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.[53]

After carefully considering the Proposed Rule Change, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act [54] and Rule 17Ad–22(e)(21).[55]

A. Consistency With Section 17A(b)(3)(F) of the Act

Under Section 17A(b)(3)(F) of the Act, OCC's rules, among other things, must be ''designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements,

[42] Notice, 89 FR at 79981.

[43] *Id.*

[44] *Id.* at 79982.

[45] *See* Interpretation and Policy .02 to OCC Rule 901.

[46] *Id.* The term CCC-eligible means that securities contracts in the underlying security arising from the exercise or maturity of a cleared security are eligible for settlement through the Continuous Net Settlement Accounting Operation of NSCC. OCC By-Laws, Article I, Section C.6.

[47] Taking such action is allowed under Article VI, Section 19 of the By-Laws.

[48] OCC states that the practice of systematically calculating cash amounts helps OCC avoid processing notices entered by Clearing Members that may be inaccurate. *See* Notice, 89 FR at 79982.

[49] 15 U.S.C. 78s(b)(2)(C).

[50] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[51] *Id.*

[52] *Id.*

[53] *Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 447 (D.C. Cir. 2017) (''Susquehanna'').

[54] 15 U.S.C. 78q–1(b)(3)(F).

[55] 17 CFR 240Ad–22(e)(21).

contracts, and transactions.'' [56] Based on the Commission's review of the record, and for the reasons discussed below, OCC's proposed rule change is consistent with Section 17A(b)(3)(F).

OCC proposes amending its rules to discontinue a number of existing functions that are outmoded or unused. As described above, OCC would no longer offer services through which it facilitates the settlement of commissions and fees owed between Clearing Members that are party to a CMTA arrangement because Clearing Members have neither expressed interest in using this service nor, since 2016, have they used it.[57] OCC would cease clearing and settlement services with respect to OTC options because it has not cleared or settled an OTC option since 2014, its Clearing Members have not expressed interest in OCC doing so in the future, and it does not currently have any open interest in OTC options.[58] OCC's amendments would also discontinue the Associated Market-Maker account subtype because its Clearing Members do not use it.[59] OCC also proposes to eliminate the requirement that Clearing Members maintain records of both parties to a trade because the original counterparty information in transactions is not relevant or necessary in respect of OCC's clearance and settlement process.

Discontinuing services no longer in use, and the rules related to such services, removes unnecessary complexity from OCC's rules without impeding the clearance or settlement of securities transactions. Similarly, removing from its rules obligations on Clearing Members that are no longer necessary to support OCC's ability to clear and settle transactions, such as the obligation for Clearing Members to maintain unnecessary records, reduces complexity without impeding OCC's clearance and settlement activities. Reducing complexity would also improve the clarity of OCC's rules.

As described above, OCC also proposes changes to improve the accuracy of its clearance and settlement of transactions. Specifically, OCC proposes requiring the Given-Up Clearing Member, rather than the Giving-Up Clearing Member, to designate an account to which the allocation in a give up transaction will be made. This proposed change would provide a Given-Up Clearing Member with more control over its own account and could help reduce the risk that such a Clearing Member would receive positions it does not want.[60] Separately, OCC proposes to treat confirmed transactions in options and futures as opening transactions where the trade information provided to OCC does not indicate whether the transaction is an opening or closing transaction. This would reduce the risk of an unintentional closure of existing positions. By avoiding mistakenly closing existing positions and reducing the risk that a transaction will be transferred to the wrong account, OCC's proposed changes promote the accurate clearance and settlement of securities transactions.

Finally, OCC proposes to amend its rules to no longer construe a Clearing Member's failure to act as acknowledgement of settlement in broker-to-broker transactions. Rather, OCC would not construe such a transaction to have settled until either it receives notice from both Clearing Members of their mutual agreement to settle the obligation or OCC settles the positions pursuant to its policies and procedures. This could reduce potential inaccuracies in OCC's settlement of the contracts it clears, and would also be consistent with current practice.[61]

By removing the duplicative portions of Rule 408, OCC would improve the clarity of its Rules,[62] which in turn increases the likelihood that its participants understand the methods available to clear and settle transactions and how those methods function. Similarly, ensuring that the rules align with current practice, in the ways discussed above, helps prevent confusion by OCC's Clearing Members as to the methods available to clear and settle transactions and how those methods function. By preventing such confusion, OCC makes it more likely that participants are able to efficiently and accurately execute their transactions. As such, the Proposed Rule Change promotes the prompt and accurate clearance and settlement of securities transactions.

The Proposed Rule Change is, therefore, consistent with the requirements of Section 17A(b)(3)(F) of the Act.[63]

B. Consistency With Rule 17Ad–22(e)(21)

Rule 17Ad–22(e)(21) requires OCC to ''establish, implement, maintain, and enforce written policies and procedures reasonably designed to . . . be efficient and effective in meeting the requirements of its participants and the markets it serves . . . .'' [64] Based on its review of the record, and for the reasons discussed below, OCC's Proposed Rule Change is consistent with Rule 17Ad–22(e)(21). When clearing agencies establish policies and procedures that address Rule 17Ad–22(e)(21), the Commission has indicated that they should ask whether their policies' and procedures' design meets the needs of its participants and the markets it serves, particularly with respect to choice of a clearance and settlement arrangement, operating structure, scope of products cleared, settled, or recorded, and use of technology and procedures.[65]

OCC's policies and procedures would meet the needs of its participants and the markets it serves after its proposed discontinuation of products and services its Clearing Members no longer use. OCC proposes discontinuing its facilitation of the settlement of commissions and fees owed between Clearing Members that are party to a CMTA arrangement because Clearing Members have neither expressed interest in using this service nor, since 2016, have they used it.[66] OCC plans on no longer offering clearing and settlement services with respect to OTC options because it has not cleared and settled an OTC option since 2014, its Clearing Members have not expressed interest in OCC doing so in the future, and it does not currently have any open interest in OTC options.[67] OCC also would discontinue the Associated Market-Maker account subtype because its Clearing Members do not use it.[68] OCC is not obligated to offer these products and services. Further, its Clearing Members' lack of interest in these products and services suggests that they do not need them. As such, OCC's proposed discontinuation of these products and services is consistent with the requirements of Rule 17Ad–22(e)(21).[69]

[56] 15 U.S.C. 78q–1(b)(3)(F).

[57] Notice, 89 FR at 79979.

[58] *Id.* at 79980.

[59] *Id.* at 79982.

[60] As noted above, OCC also proposes to remove duplicative provisions in the rules governing such transactions.

[61] As discussed above, other proposed changes that align the rules with current practice include clarifying that give-up transactions are only available for futures and options on futures; removing the requirement to include certain information in notices; and defaulting to an opening transaction when certain trade information do not indicate that a transaction is either an opening or closing transaction.

[62] OCC also proposes correcting an inaccurate reference to Section 3 of its By-Laws, Paragraph I. This too increases the clarity of its rules.

[63] 15 U.S.C. 78q–1(b)(3)(F).

[64] 17 CFR 240.17Ad–22(e)(21).

[65] Securities Exchange Act Release No. 78961, 81 FR 70786, 70841 (Oct. 13, 2016) (File No. S7–03–14).

[66] Notice, 89 FR at 79979.

[67] *Id.* at 79980.

[68] *Id.* at 79982.

[69] 17 CFR 240.17Ad–22(e)(21).

The Proposed Rule Change is, therefore, consistent with the requirements of Rule 17Ad–22(e)(21).[70]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, Section 17A(b)(3)(F) of the Act[71] and Rule 17Ad–22(e)(21).[72]

It is therefore Oodered pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR–OCC–2024–013) be, and hereby is, approved.[73]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[74]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–27012 Filed 11–19–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101628; File No. SR–NYSEAMER–2024–68]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Establish Fees for the NYSE American Aggregated Lite Data Feed

November 14, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 4, 2024, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish fees for the NYSE American Aggregated Lite data feed. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the NYSE American LLC Equities Proprietary Market Data Fees Schedule (''Fee Schedule'') and establish fees for the NYSE American Aggregated Lite (''NYSE American Agg Lite'') data feed,[4] effective November 4, 2024.[5]

In summary, the NYSE American Agg Lite is a NYSE American-only frequency-based depth of book market data feed of the NYSE American's limit order book for up to ten (10) price levels on both the bid and offer sides of the order book for securities traded on the Exchange and for which the Exchange reports quotes and trades under the Consolidated Tape Association (''CTA'') Plan or the Nasdaq/UTP Plan. The NYSE American Agg Lite is a compilation of limit order data that the Exchange provides to vendors and subscribers. The NYSE American Agg Lite includes partial depth of book order data as well as security status messages. The security status message informs subscribers of changes in the status of a specific security, such as trading halts, short sale restriction, etc. In addition, the NYSE American Agg Lite includes order imbalance information prior to the opening and closing of trading.

Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[6]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.''[7] Indeed, cash equity trading is currently dispersed across 16 exchanges,[8] numerous alternative trading systems,[9] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share (whether including or excluding auction volume).[10]

Proposed NYSE American Agg Lite Data Feed Fees

The Exchange proposes to establish the fees listed below for the NYSE American Agg Lite data feed. The

[70] 17 CFR 240.17Ad–22(e)(21).

[71] 15 U.S.C. 78q–1(b)(3)(F).

[72] 17 CFR 240.17Ad–22(e)(21).

[73] In approving the proposed rule change, the Commission considered the proposal's impacts on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[74] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The proposed rule change establishing the NYSE American Agg Lite data feed was immediately effective on February 27, 2024. *See* Securities Exchange Act Release No. 99690 (March 7, 2024), 89 FR 18445 (March 13, 2024) (SR–NYSEAMER–2024–14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the NYSE American Aggregated Lite Market Data Feed).

[5] The Exchange originally filed to amend the Fee Schedule on May 13, 2024 (SR–NYSEAMER–2024–31). On July 11, 2024, the Exchange withdrew SR–NYSEAMER–2024–31 and replaced it with SR–NYSEAMER–2024–44. On September 6, 2024, the Exchange withdrew SR–NYSEAMER–2024–44 and replaced it with SR–NYSEAMER–2024–55. On November 4, 2024, the Exchange withdrew SR–NYSEAMER–2024–55 and replaced it with this filing.

[6] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[7] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[8] *See* Cboe U.S. Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fastanswers/divisionsmarketregmrexchangesshtml.html.*

[9] *See* FINRA ATS Transparency Data, available at *https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is available at *https://www.sec.gov/foia/docs/atslist.htm.*

[10] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

Exchange proposes to charge fees for the same categories of market data use as its affiliated exchanges (namely, NYSE, NYSE Arca and NYSE National) currently charge. The Exchange believes that adopting the same fee structure as its affiliated exchanges would reduce administrative burdens on market data subscribers that also currently subscribe to market data feeds from the Exchange's affiliates.

1. *Access Fee.* For the receipt of access to the NYSE American Agg Lite data feed, the Exchange proposes to charge $500 per month. This proposed Access Fee would be charged to any data recipient that receives the NYSE American Agg Lite data feed. Data recipients that only use display devices to view NYSE American Agg Lite market data and do not separately receive a data feed would not be charged an Access Fee. The proposed Access Fee would be charged only once per firm.

2. *User Fees.* The Exchange proposes to charge a Professional User Fee (Per User) of $1 per month. The Exchange does not propose a fee for Non-Professional Users. The Professional User Fee would apply to each display device that has access to the NYSE American Agg Lite data feed.

3. *Redistribution Fee.* For redistribution of the NYSE American Agg Lite data feed, the Exchange proposes to establish a fee of $250 per month. The proposed Redistribution Fee would be charged to any Redistributor of the NYSE American Agg Lite data feed, which is defined to mean a vendor or any person that provides a real-time NYSE American market data product externally to a data recipient that is not its affiliate or wholly-owned subsidiary, or to any system that an external data recipient uses, irrespective of the means of transmission or access. The proposed Redistribution Fee would be charged only once per Redistributor account. As an incentive to potential Redistributors to subscribe to the NYSE American Agg Lite data feed, the Exchange proposes to waive the Access Fee and Redistribution Fee for a Redistributor if the Redistributor provides NYSE American Agg Lite externally to at least one data feed recipient and reports such data feed recipient or recipients to the Exchange. For example, a Redistributor that subscribes to the NYSE American Agg Lite data feed will have the Access Fee and Redistribution Fee waived if such Redistributor provides NYSE American Agg Lite externally to at least one data feed recipient and reports such data feed recipient to the Exchange.

By targeting this proposed fee waiver to Redistributors that provide external distribution of NYSE American Agg Lite, the Exchange believes that this would provide an incentive for Redistributors to make the NYSE American Agg Lite market data product available to its customers. Specifically, if a data recipient is interested in subscribing to NYSE American Agg Lite and relies on a Redistributor to obtain market data products from the Exchange, that data recipient would need its Redistributor to subscribe to and redistribute NYSE American Agg Lite. The Exchange believes that this proposed fee waiver for Redistributors of NYSE American Agg Lite would provide an incentive for Redistributors to make NYSE American Agg Lite available to their customers, which will increase the availability of the Exchange's market data products to a larger potential population of data recipients.

Further, the Exchange proposes to adopt a credit that would be applicable to Redistributors that provide external distribution of NYSE American Agg Lite to Professional and Non-Professional Users. As proposed, such Redistributors would receive a credit equal to the amount of the monthly Professional User and Non-Professional User Fees for such external distribution, up to a maximum of the combination of the Access Fee and Redistribution Fee for NYSE American Agg Lite that the Redistributor would otherwise be required to pay to the Exchange. For example, a Redistributor that reports external Professional Users in a month totaling $750 or more would receive a maximum credit of $750 for that month, which could effectively reduce its monthly fee for access and redistribution to zero. If that same Redistributor were to report external User quantities in a month totaling $600 of monthly usage, that Redistributor would receive a credit of $600. The Exchange believes the proposed credit would provide Redistributors with an incentive to increase their redistribution of NYSE American Agg Lite because the credit they would be eligible to receive would increase if they report additional external User quantities.

4. *Enterprise Fees.*

The Exchange proposes to establish an enterprise license that will reduce Exchange fees and administrative costs for subscribers that disseminate NYSE American Agg Lite. Subscribers that are broker-dealers will be able to distribute the NYSE American Agg Lite data feed for display usage to an unlimited number of recipients (professional users and non-professional users) for a monthly fee of $550, with an opportunity to lower that fee to $500 per month if they contract for twelve months of service in advance.

As proposed, the NYSE American Agg Lite data feed may be distributed pursuant to the proposed market data enterprise license only for display usage and in the context of a brokerage relationship with a broker-dealer through such broker-dealer's own devices. Purchase of an enterprise license would eliminate per User subscriber fees for NYSE American Agg Lite. Further, the Exchange proposes to waive the Access Fee and the Redistribution Fee for NYSE American Agg lite for Redistributors that pay the Professional and Non-Professional Enterprise Fee. The Exchange believes the proposed fee waiver would provide an incentive for Redistributors to subscribe to the NYSE American Agg Lite market data product at the enterprise level to reduce the fees it would pay to the Exchange and without having to report the number of users that receive the data feed from the Redistributor.

Subscribers that intend to purchase a market data enterprise license for at least twelve months may elect to purchase this product in advance for a monthly fee of $500 per month for distribution to an unlimited number of professional users and non-professional users. This feature is intended to simplify cost projections and budgeting for both subscribers and the Exchange. Subscribers that elect not to purchase this particular feature will nevertheless be able to obtain all of the market data information offered by NYSE American Agg Lite by paying the standard fee of $550 per month for distribution to an unlimited number of professional users and non-professional users. Subscribers that elect to pay the monthly fee will be able to switch to the annual fee at any time, and those that elect to purchase the annual contract would be able to change to the monthly contract, with notice, at the end of the twelve-month period.

The Exchange believes that the proposed market data enterprise license will reduce exchange fees, lower administrative costs for subscribers, and help expand the availability of market information to investors, and thereby increase participation in financial markets.

5. *Non-Display Use Fees.*

The Exchange proposes to establish non-display fees [11] for the NYSE American Agg Lite data feed that are based on the non-display use categories charged by NYSE, NYSE Arca, NYSE National, the CTA, and the UTP Plan for

[11] *See infra,* note 15.

non-display use.[12] Non-display use would mean accessing, processing, or consuming the NYSE American Agg Lite data feed delivered directly or through a Redistributor, for a purpose other than in support of a data recipient's display or further internal or external redistribution (''Non-Display Use''). Non-Display Use would include trading uses such as high frequency or algorithmic trading as well as any trading in any asset class, automated order or quote generation and/or order pegging, price referencing for algorithmic trading or smart order routing, operations control programs, investment analysis, order verification, surveillance programs, risk management, compliance, and portfolio management.

Under the proposal, for Non-Display Use of NYSE American Agg Lite, there would be three categories of, and fees applicable, to data recipients. One, two, or three categories of Non-Display Use may apply to a data recipient.

- As proposed, the Category 1 Fee would be $1,000 per month and would apply when a data recipient's Non-Display Use of the NYSE American Agg Lite data feed is on its own behalf, not on behalf of its clients.
- As proposed, Category 2 Fees would be $1,000 per month and would apply to a data recipient's Non-Display Use of the NYSE American Agg Lite data feed on behalf of its clients.
- As proposed, Category 3 Fees would be $1,000 per month and would apply to a data recipient's Non-Display Use of the NYSE American Agg Lite data feed for the purpose of internally matching buy and sell orders within an organization, including matching customer orders for a data recipient's own behalf and/or on behalf of its clients. This category would apply to Non-Display Use in trading platforms, such as, but not restricted to, alternative trading systems (''ATSs''), broker crossing networks, broker crossing systems not filed as ATSs, dark pools, multilateral trading facilities, exchanges and systematic internalization systems. A data recipient will be charged $1,000 per month for each platform on which it uses the Non-Display data internally to match buy and sell orders, up to a cap of $3,000 per month; even if the data recipient uses the NYSE American Agg Lite data feed for more than three platforms, it will not pay more than $3,000 for such Category 3 use per month.

The description of the three non-display use categories is set forth in the Fee Schedule in endnote 1 and that endnote would be referenced in the NYSE American Agg Lite data feed fees on the Fee Schedule. The text in the endnote would remain unchanged.

Data recipients that receive the NYSE American Agg Lite data feed for Non-Display Use would be required to complete and submit a Non-Display Use Declaration before they would be authorized to receive the feed. A firm subject to Category 3 Fees would be required to identify each platform that uses the NYSE American Agg Lite data feed for a Category 3 Non-Display Use basis, such as ATSs and broker crossing systems not registered as ATSs, as part of the Non-Display Use Declaration.

6. *Non-Display Use Declaration Late Fee.* Data recipients that receive the NYSE American Agg Lite data feed for Non-Display Use would be required to complete and submit a Non-Display Use Declaration before they would be authorized to receive the feed. Beginning in 2025, NYSE American Agg Lite data feed recipients would be required to submit, by January 31 of each year, the Non-Display Use Declaration. The requirement to submit a Non-Display Use Declaration applies to all real-time NYSE American data feed product recipients. The Exchange proposes to charge a Non-Display Use Declaration Late Fee of $1,000 per month to any data recipient that pays an Access Fee for the NYSE American Agg Lite data feed that has failed to timely complete and submit a Non-Display Use Declaration. Specifically, with respect to the Non-Display Use Declaration due by January 31 of each year, the Non-Display Use Declaration Late Fee would apply to data recipients that fail to complete and submit the Non-Display Use Declaration by the January 31 due date, and would apply beginning February 1 and for each month thereafter until the data recipient has completed and submitted the annual Non-Display Use Declaration.

The proposed Non-Display Use Declaration Late Fee applicable to NYSE American Agg Lite data feed would be set forth in endnote 2 on the Fee Schedule. As proposed, endnote 2 would be amended with the proposed addition of the following new text: ''The Non-Display Declaration Late Fee will apply, beginning in 2025, to NYSE American Aggregated Lite data recipients that fail to complete and submit the annual Non-Display Use Declaration by the January 31st due date, and applies beginning February 1st and for each month thereafter until the data recipient has completed and submitted the annual Non-Display use Declaration.''

In addition, if a data recipient's use of the NYSE American Agg Lite data feed changes at any time after the data recipient submits a Non-Display Use Declaration, the data recipient must inform the Exchange of the change by completing and submitting at the time of the change an updated declaration reflecting the change of use.

7. *Multiple Data Feed Fee.* The Exchange proposes to establish a monthly fee, the ''Multiple Data Feed Fee,'' that would apply to data recipients that take a data feed for a market data product in more than two locations. Data recipients taking the NYSE American Agg Lite data feed in more than two locations would be charged $200 per additional location per month. No new reporting would be required.[13]

8. *Three-Month Fee Waiver.* The Exchange currently provides a one-month free trial to any firm that subscribes to a particular NYSE American market data product for the first time. Under the current one-month trial, a first-time subscriber is not charged the Access Fee, Non-Display Fee, any applicable Professional and Non-Professional User Fee and Redistribution Fee for one calendar month.[14] The Exchange now proposes an additional three-month fee waiver for any Redistributor that subscribes to a particular NYSE American market data product for the first time for external redistribution. As proposed, a first-time Redistributor would be any firm that has

[12] *See* Endnote 1 to the NYSE Proprietary Market Data Fees, available here: *https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Fee_Schedule.pdf;* Endnote 1 to the NYSE Arca Equities Proprietary Market Data Fees, available here: *https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Equities_Proprietary_Data_Fee_Schedule.pdf;* Endnote 1 to the NYSE National Equities Proprietary Market Data Fees, available here: *https://www.nyse.com/publicdocs/nyse/data/NYSE_National_Market_Data_Fee_Schedule.pdf;* Endnote 8 to the Schedule of Market Data Charges for the CTA, available here: *https://www.ctaplan.com/publicdocs/ctaplan/notifications/trader-update/Schedule%20Of%20Market%20Data%20Charges%20-%20January%201,%202015.pdf;* and Non-Display Usage Fees as set forth in the UTP Plan Fee Schedule and Non-Display Policy, available here: *http://utpplan.com/DOC/Datapolicies.pdf. See, e.g.,* Securities Exchange Act Release Nos. 69285 (April 3, 2013), 78 FR 21172 (April 9, 2013) (SR–NYSEMKT–2013–32) and 72020 (September 9, 2014), 79 FR 55040 (September 15, 2014) (SR–NYSEMKT–2014–72).

[13] Data vendors currently report a unique Vendor Account Number for each location at which they provide a data feed to a data recipient. The Exchange considers each Vendor Account Number a location. For example, if a data recipient has five Vendor Account Numbers, representing five locations, for the receipt of the NYSE American Agg Lite data feed, that data recipient will pay the Multiple Data Feed fee with respect to three of the five locations.

[14] *See* Fee Schedule.

not previously subscribed to and externally redistributed a particular NYSE American market data product listed on the Fee Schedule. As proposed, a first-time Redistributor that subscribes to a particular NYSE American market data product would not be charged the Access Fee and the Redistribution Fee for that product for three calendar months. Any other fees, including but not limited to, Non-Display Fee, any applicable Professional and Non-Professional User Fee, and Enterprise Fee would be billable after the first calendar month after a first-time Redistributor subscribes to a particular NYSE American market data product. For example, a first-time Redistributor that chooses to subscribe to NYSE American Agg Lite on September 24, 2024 would not be charged the Access Fee and the Redistribution Fee for the months of October, November, and December 2024. The proposed fee waiver would be for the three calendar months following the date a Redistributor is approved to receive access to the particular NYSE American market data product. The Exchange would provide the three-month fee waiver for each particular product to each Redistributor once.

The Exchange believes that providing a three-month fee waiver to NYSE American market data products listed on the Fee Schedule would enable potential Redistributors to determine whether a particular NYSE American market data product is useful to their business models before fully committing to expend development and implementation costs related to the receipt of that product, and is intended to encourage increased use of the Exchange's market data products by defraying some of the development and implementation costs Redistributors would ordinarily have to expend before using a product. The proposed three-month fee waiver would also provide Redistributors with time to begin onboarding new clients prior to being liable to the Access Fee and the Redistribution Fee, allowing time to choose how to allocate costs and increase revenues to defray costs associated with providing a new feed to its customers.

Application of Proposed Fees

The Exchange is not required to make the NYSE American Agg Lite data feed available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase the NYSE American Agg Lite data feed. Firms that choose to purchase the NYSE American Agg Lite data feed do so for the primary goals of using it to increase their revenues, reduce their expenses, and in some instances to compete directly with the Exchange (including for order flow). Those firms are able to determine for themselves whether or not the NYSE American Agg Lite data feed or any other similar products are attractively priced.

The Exchange believes the proposed rule change would provide an incentive both for data subscribers to subscribe to NYSE American Agg Lite and for Redistributors to subscribe to the product for purposes of providing external distribution of NYSE American Agg Lite. The Exchange believes that this proposed rule change also has the potential to attract new Redistributors for NYSE American Agg Lite.

The proposed fee structure is not novel as it is based on the fee structure currently in place for the NYSE American OpenBook feed. The Exchange is proposing fees for the NYSE American Agg Lite data feed that are based on the existing fee structure and rates that data recipients already pay for the NYSE American OpenBook feed. Specifically, the fees for the NYSE American OpenBook feed—which like the NYSE American Agg Lite data feed, includes depth of book and security status messages—consist of an Access Fee of $1,000 per month, a Professional User Fee (Per User) of $5 per month, a Non-Professional User Fee (Per User) of $1 per month, Non-Display Fees [15] of $2,000 per month for each of Categories 1, 2 and 3. The Exchange does not currently charge a Redistribution Fee for NYSE American OpenBook. The Exchange also charges a Non-Display Use Declaration Late Fee of $1,000 per month and a Multiple Data Feed Fee of $200 per month for NYSE American OpenBook.[16]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[17] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[18] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Proposed Rule Change Is Reasonable

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [19]

With respect to market data, the decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC* upheld the Commission's reliance on the existence of competitive market mechanisms to evaluate the reasonableness and fairness of fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system ''evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed'' and that the SEC wield its regulatory power ''in those situations where competition may not be sufficient,'' such as in the creation of a ''consolidated transactional reporting system.'' [20]

The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [21]

More recently, the Commission confirmed that it applies a ''market-based'' test in its assessment of market data fees, and that under that test:

> the Commission considers whether the exchange was subject to significant competitive forces in setting the terms of its proposal for [market data], including the level of any fees. If an exchange meets this burden, the Commission will find that its fee rule is consistent with the Act unless there is a substantial countervailing basis to find

[15] The Exchange does not anticipate that data recipients would use NYSE American Agg Lite for non-display purpose. However, the Exchange is adopting Non-Display use fees so that the proposed fees for NYSE American Agg Lite are consistent with the Exchange's fee structure for its other proprietary market data products.

[16] *See* NYSE American LLC Equities Proprietary Market Data Fees at *https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Equities_Market_Data_Fee_Schedule.pdf.*

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4), (5).

[19] *See* Regulation NMS Adopting Release, 70 FR 37495, at 37499.

[20] *NetCoalition* v. *SEC,* 615 F.3d 525, 535 (D.C. Cir. 2010) (''*NetCoalition I*'') (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323).

[21] *Id.* at 535.

that the terms of the rule violate the Act or the rules thereunder.[22]

As discussed below, the Exchange believes that its proposed fees are constrained by competitive forces.

As the D.C. Circuit recognized in *NetCoalition I,* ''[n]o one disputes that competition for order flow is fierce.'' [23] The court further noted that ''no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers,'' and that an exchange ''must compete vigorously for order flow to maintain its share of trading volume.'' [24]

As noted above, while Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [25] Indeed, today, equity trading is currently dispersed across 16 exchanges,[26] numerous alternative trading systems,[27] broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share.[28]

Further, low barriers to entry mean that new exchanges may rapidly and inexpensively enter the market to compete with the Exchange. For example, since 2020, three new ones have entered the market: Long Term Stock Exchange (LTSE), which began operations as an exchange on August 28, 2020; [29] Members Exchange (MEMX), which began operations as an exchange on September 29, 2020; [30] and Miami International Holdings (MIAX), which began operations of its first equities exchange on September 29, 2020.[31]

More specifically, in setting fees for the NYSE American Agg Lite data feed, the Exchange is constrained by the fact that, if its pricing is unattractive to customers, customers have their pick of alternatives to purchase similar data from instead of purchasing it from the Exchange. The existence of alternatives to the Exchange's data product ensures that the Exchange cannot set unreasonable market data fees without suffering the negative effects of that decision in the competitive market for non-latency-sensitive proprietary partial depth of book market data.

The Exchange notes that the NYSE American Agg Lite is entirely optional. The Exchange is not required to make the NYSE American Agg Lite available to any customers, nor is any customer required to purchase the NYSE American Agg Lite market data feed. Unlike some other data products (*e.g.,* the consolidated quotation and last-sale information feeds) that firms are required to purchase in order to fulfil regulatory obligations,[32] a customer's decision whether to purchase the NYSE American Agg Lite is entirely discretionary. The Exchange believes NYSE American Agg Lite would provide high-quality, comprehensive partial depth of book data that an anticipated end user might use for purposes of identifying an indicative price of Tape A, B and C securities without having to purchase consolidated data and thus it would not be a latency-sensitive product. The Exchange does not anticipate that an end user would, or could, use NYSE American Agg Lite data for purposes of making order-routing or trading decisions. Firms that choose to subscribe to NYSE American Agg Lite are able to determine for themselves whether the NYSE American Agg Lite data feed is necessary for their business needs, and if so, whether or not it is attractively priced. If the NYSE American Agg Lite data feed does not provide sufficient benefit to firms based on the uses those firms may have for it, such firms may simply choose to conduct their business operations in ways that do not use the NYSE American Agg Lite data feed.

In setting the proposed fees for the NYSE American Agg Lite data feed, the Exchange considered the competitiveness of the market for non-latency-sensitive proprietary partial depth of book data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish reasonable fees. The proposed fees are therefore reasonable because in setting them, the Exchange is constrained by the availability of substitute partial depth of book market data products. The Commission has been clear that substitute products need not be identical, but only substantially similar to the product at hand.[33]

The NYSE American Aggregated Lite market data feed is subject to significant competitive forces that constrain its pricing. Specifically, the NYSE American Agg Lite data feed competes head-to-head with similar market data products currently offered by the four U.S. equities exchanges operated by Cboe Exchange, Inc.—Cboe BZX Exchange, Inc. (''BZX''), Cboe BYX Exchange, Inc. (''BYX''), Cboe EDGA Exchange, Inc. (''EDGA''), and Cboe EDGX Exchange, Inc. (''EDGX''), each of which offers a market data product called BZX Summary Depth, BYX Summary Depth, EDGA Summary Depth and EDGX Summary Depth, respectively (collectively, the ''Cboe Summary Depth'').[34] Similar to Cboe Summary

[22] *See* Securities Exchange Act Release No. 34–90217 (October 16, 2020), 85 FR 67392 (October 22, 2020) (SR–NYSENAT–2020–05) (''National IF Approval Order'') (internal quotation marks omitted), quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008).

[23] *NetCoalition I,* 615 F.3d at 544 (internal quotation omitted).

[24] *Id.*

[25] *See* Securities Exchange Act Release No. 61358, 75 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[26] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[27] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[28] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[29] *See* LTSE Market Announcement: MA–2020–020, dated August 14, 2020, announcing LTSE production securities phase-in planned for August 28, available here: *https://assets-global.website-files.com/6462417e8db99f8baa06952c/6462417e8db99f8baa0698e7_MA-2020-020__Production_Securities_Launching_August_28_-_Google_Docs.pdf* and LTSE Market Announcement: MA–2020–025, available here: *https://assets-global.website-files.com/6462417e8db99f8baa06952c/6462417e8db99f8baa069873_MA-2020-025.pdf.*

[30] As of October 29, 2020, MEMX is trading all NMS symbols. *See https://info.memxtrading.com/trader-alert-20-10-memx-trading-symbols-update/.*

[31] *See* MIAX Pearl Press release, dated September 29, 2020, available here: *https://www.miaxoptions.com/sites/default/files/alert-files/MIAX_Press_Release_09292020.pdf.*

[32] The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations. *See In the Matter of the Application of Securities Industry and Financial Markets Association for Review of Actions Taken by Self-Regulatory Organizations,* Release Nos. 34–72182; AP–3–15350; AP–3–15351 (May 16, 2014). Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions, and some broker-dealers and ATSs have chosen not to do so.

[33] For example, in the National IF Approval Order, the Commission recognized that for some customers, the best bid and offer information from consolidated data feeds may function as a substitute for the NYSE National Integrated Feed product, which contains order by order information. *See* National IF Approval Order, *supra* note 22, at 67397 [release p. 21] (''[I]nformation provided by NYSE National demonstrates that a number of executing broker-dealers do not subscribe to the NYSE National Integrated Feed and executing broker-dealers can otherwise obtain NYSE National best bid and offer information from the consolidated data feeds.'' (internal quotations omitted)).

[34] *See* BZX Rule 11.22(m) BZX Summary Depth; BYX Rule 11.22(k) BYX Summary Depth; EDGA Rule 13.8(f) EDGA Summary Depth; and EDGX Rule

Continued

Depth, NYSE American Agg Lite can be utilized by vendors and subscribers to quickly access and distribute aggregated order book data. As noted above, NYSE American Agg Lite, similar to Cboe Summary Depth, would provide aggregated depth per security, including the bid, ask and share quantity for orders received by NYSE American, except unlike Cboe Summary Depth, which provides aggregated depth per security for up to five price levels, NYSE American Agg Lite would provide aggregated depth per security for up to ten price levels on both the bid and offer sides of the NYSE American limit order book as well as auction imbalance data.

The specific fees that the Exchange proposes for the NYSE American Agg Lite data feed are reasonable for the following additional reasons.

Overall. The Exchange believes that the proposed fees for the NYSE American Agg Lite data feed are reasonable because they would provide vendors and subscribers with the option to subscribe to a market data product that integrates a subset of data from existing products and where such aggregated data is published at a pre-defined interval, thus lowering bandwidth, infrastructure and operational requirements.

The Exchange believes the proposed fees for the NYSE American Agg Lite data feed are also reasonable when compared to fees for comparable products, such as the Cboe Summary Depth.[35] Additionally, the Exchange is proposing fees for the NYSE American Agg Lite data feed that are based on the existing fee structure that data recipients already pay for the NYSE American's other market data products. The Exchange believes that adopting the same fee structure would reduce administrative burdens on NYSE American data subscribers that also currently subscribe to market data feeds from NYSE American.

Access Fee. The Exchange believes that the proposed monthly Access Fee of $500 for the NYSE American Aggregated Lite data feed is reasonable because it is lower than the fees charged by BZX, BYX, EDGA, and EDGX, each of which charges between $2,500 per month to $5,000 per month for both Internal Distribution and External Distribution of the Cboe Summary Depth market data product.[36]

User Fees. The Exchange believes that having separate Professional and Non-Professional User fees for the NYSE American Agg Lite data feed is reasonable because it will make the product more affordable and result in greater availability to Professional and Non-Professional Users. Not charging a Non-Professional User fee is reasonable because it provides a cost-effective method for Non-Professional Users to access the NYSE American Agg Lite data feed by providing the same data that is available to Professional Users. The proposed monthly Professional User Fee (Per User) of $1 and monthly Non-Professional User Fee (Per User) of $0 are reasonable because they are comparable to user fees generally charged by exchanges. For example, NYSE American charges a monthly Professional User Fee (Per User) of $5 and a monthly Non-Professional User Fee (Per User) of $1 for the NYSE American OpenBook feed.[37] Although the proposed User Fees for Professional and Non-Professional Users are higher than those charged by BZX, BYX, EDGA and EDGX, the Exchange notes that User fees are only a subset of the total fees that vendors and subscribers pay and the lower fees proposed to access and redistribute NYSE American Agg Lite would provide such market data recipients with a more affordable alternative to existing substitutes offered by the Exchange and its competitors.

Redistribution Fees. The Exchange believes that charging a Redistribution Fee is reasonable because the vendors that would be charged such a fee profit by re-transmitting the Exchange's market data to their customers. This fee would be charged only once per month to each vendor account that redistributes the NYSE American Agg Lite data feed, regardless of the number of customers to which that vendor redistributes the data. The Exchange believes the proposed monthly Redistribution Fee of $250 for the NYSE American Agg Lite data feed is reasonable because it is nominal and lower than the fees charged by BZX, BYX, EDGA and EDGX, each of which charges considerably more for both Internal Distribution and External Distribution of the Cboe Summary Depth market data feed.[38]

Enterprise Fees. The Exchange believes the proposed enterprise license is reasonable because it would reduce exchange fees, lower administrative costs for subscribers that are broker-dealers and help expand the availability of market information to investors, and thereby increase participation in financial markets. Subscribers that are broker-dealers would be able to disseminate the NYSE American Agg Lite data feed for display usage to an unlimited number of professional users and non-professional users for a monthly fee of $550, or $500 if they contract for twelve months of service in advance. The proposed enterprise license would result in lower fees for subscribers able to reach the largest audience of investors, including retail investors. Discounts for broader dissemination of market data information have routinely been adopted by exchanges and permitted by the Commission as equitable allocations of reasonable dues, fees and charges.[39]

Non-Display Use Fees.[40] Non-display data can be used by data recipients for a wide variety of uses, including proprietary and agency trading and smart order routing, as well as by data recipients that operate order matching and execution platforms. Non-display data also can be used for a variety of non-trading purposes that indirectly support trading, such as risk management and compliance. Although some of these non-trading uses do not directly generate revenues, they can nonetheless substantially reduce a recipient's costs by automating such functions so that they can be carried out in a more efficient and accurate manner and reduce errors and labor costs, thereby benefiting recipients. The Exchange believes that charging for non-trading uses is reasonable because data recipients can derive substantial benefit from such uses, for example, by automating tasks so that they can be performed more quickly and accurately and less expensively than if they were performed manually.

The Exchange believes that the proposed fees of $1,000 per month for each of Categories 1, 2, and 3 is reasonable. These fees are comparable to non-display use fees generally charged by exchanges. For example, the fees for Non-Display Use of NYSE American OpenBook for Categories 1, 2 and 3 is $2,000 per month.[41] The Exchange believes that it is reasonable to cap non-display use fees for Category 3 at $3,000

13.8(f) EDGX Summary Depth. The Cboe Summary Depth offered by BZX, BYX, EDGA and EDGX are each a data feed that offers aggregated two-sided quotations for all displayed orders for up to five (5) price levels and contains the individual last sale information, market status, trading status and trade break messages.

[35] *See https://cdn.cboe.com/resources/membership/US_Market_Data_Product_Price_List.pdf.*

[36] *Id.*

[37] *See* Fee Schedule.

[38] *See supra,* note 35.

[39] For example, the Commission has permitted pricing discounts for market data under Nasdaq Rules 7023(c) and 7047(b). *See also* Securities Exchange Act Release No. 82182 (November 30, 2017), 82 FR 57627 (December 6, 2017) (SR–NYSE–2017–60) (changing an enterprise fee for NYSE BBO and NYSE Trades).

[40] *See supra,* note 15.

[41] *See* Fee Schedule.

per month per data recipient, because a higher monthly fee may potentially dissuade subscribers from buying the NYSE American Agg Lite data feed.

The proposed Non-Display Use fees for the NYSE American Agg Lite data feed are also reasonable because they take into account the usefulness of receiving the data for Non-Display Use on an integrated basis.

Non-Display Use Declaration Late Fee. The Exchange believes that it is reasonable to require annual submissions of the Non-Display Use Declaration so that the Exchange will have current and accurate information about the use of the NYSE American Agg Lite data feed and can correctly assess fees for the uses of the NYSE American Agg Lite data feed. Requiring annual submissions of such declarations is reasonable because it also allows users to re-assess their own usage each year.

The Exchange believes that it is reasonable to impose a late fee in connection with the submission of the Non-Display Use Declaration. In order to correctly assess fees for the non-display use of the NYSE American Agg Lite data feed, the Exchange needs to have current and accurate information about the use of the NYSE American Agg Lite data feed. The failure of data recipients to submit the Non-Display Use Declaration on time leads to potentially incorrect billing and administrative burdens, including tracking and obtaining late Non-Display Use Declarations and correcting and following up on payments owed in connection with late Non-Display Use Declarations. The purpose of the late fee is to incent data recipients to submit the Non-Display Use Declaration promptly to avoid the administrative burdens associated with the late submission of Non-Display Use Declarations.

Multiple Data Feed Fee. The Exchange believes that it is reasonable to require data recipients to pay a modest fee for taking a data feed for a market data product in more than two locations. In addition, there are administrative burdens associated with tracking each location at which a data recipient receives the product. The Multiple Data Feed Fee is designed to encourage data recipients to better manage their requests for additional data feeds and to monitor their usage of data feeds. The proposed fee is designed to apply to data feeds received in more than two locations so that each data recipient can have one primary and one backup data location before having to pay a multiple data feed fee.

Three-Month Fee Waiver. The Exchange believes the proposal to waive the Access Fee and the Redistribution Fee for the NYSE American Agg Lite data feed to new Redistributors for three calendar months is reasonable because it would enable potential Redistributors to determine whether a particular NYSE American market data product is useful to their business models before fully committing to expend development and implementation costs related to the receipt of that product, and is intended to encourage increased use of the Exchange's market data products by defraying some of the development and implementation costs Redistributors would ordinarily have to expend before using a product. The proposed fee waiver would also allow Redistributors to become familiar with the feed and determine whether it suits their needs without incurring fees. Making a new market data product available without charging a fee for three months is consistent with offerings of other exchanges. For example, BZX offers subscribers of BZX Summary Depth a three-month credit for external distribution, which is akin to the three-month fee waiver proposed by the Exchange.[42]

For all of the foregoing reasons, the Exchange believes that the proposed fees for the NYSE American Agg Lite data feed are reasonable.

The Proposed Fees Are Equitably Allocated

The Exchange believes the proposed fees for the NYSE American Agg Lite data feed are allocated fairly and equitably among the various categories of users of the feed, and any differences among categories of users are justified.

Overall. The Exchange believes that the proposed fees are equitably allocated because they will apply to all data recipients that choose to subscribe to the NYSE American Agg Lite data feed. Any subscriber or vendor that chooses to subscribe to the NYSE American Agg Lite data feed is subject to the same Fee Schedule, regardless of what type of business they operate or the use they plan to make of the data feed. Subscribers and vendors are not required to purchase the NYSE American Agg Lite data feed and may choose to receive the data on the NYSE American Agg Lite data feed regardless of what type of business they operate or the use they plan to make of the data feed.

Access Fee. The Exchange believes the proposed monthly Access Fee of $500 for the NYSE American Agg Lite data feed is equitably allocated because it would be charged on an equal basis to all data recipients that receive a data feed of the NYSE American Agg Lite data feed, regardless of what type of business they operate or the use they plan to make of the data feed.

User Fees. The Exchange believes that the fee structure differentiating Professional User fees ($1 per month per user) from Non-Professional User fees ($0 per month per user) for display device access to the NYSE American Agg Lite data feed is equitable. This structure has long been used by the Exchange to reduce the price of data to Non-Professional Users and make it more broadly available.[43] Offering the NYSE American Agg Lite data feed to Non-Professional Users with the same data as is available to Professional Users results in greater equity among data recipients. These user fees would be charged uniformly to all display devices that have access to the NYSE American Agg Lite data feed.

Redistribution Fees. The Exchange believes the proposed monthly fee of $250 for redistributing the NYSE American Agg Lite data feed is equitably allocated because it would be charged on an equal basis to those Redistributors that choose to redistribute the feed.

Enterprise Fees. The Exchange believes the proposed enterprise license is equitably allocated because it would be available on an equal basis to all subscribers that are broker-dealers, each of whom would benefit from reduced exchange fees and from lower administrative costs. Moreover, the specific feature of the proposed enterprise license that will allow subscribers to lower fees by subscribing to a twelve-month contract is also an equitable allocation because all subscribers will have the same option of choosing between the stability of a fixed, lower rate, and the more flexible option of maintaining the ability to change market data products after a month of service. Subscribers will be free to move from the monthly to the annual rate at any time, or from annual to a monthly fee, with notice, at the expiration of the twelve-month period.

[42] *See e.g.,* Securities Exchange Act Release No. 94432 (March 16, 2022), 87 FR 16277 (March 22, 2022) (SR-CboeBZX–2022–015) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Applicable to Various Market Data Products).

[43] *See, e.g.,* Securities Exchange Act Release No. 70212 (August 15, 2013), 78 FR 51775 (August 21, 2013) (SR–NYSEMKT–2013–69) (lowering the Non-Professional User Fee (Per User) for NYSE MKT BBO and Trades); Securities Exchange Act Release No. 20002, File No. S7–433 (July 22, 1983), 48 FR 34552 (July 29, 1983) (establishing Non-Professional fees for CTA data); NASDAQ BX Equity 7 Pricing Schedule, Section 123.

Non-Display Use Fees. The Exchange believes the proposed Non-Display Use fees are equitably allocated because they would require subscribers to pay fees only for the uses they actually make of the data. As noted above, non-display data can be used by data recipients for a wide variety of purposes (including trading, risk management, and compliance) as well as purposes that reduce the recipient's costs by automating certain functions. The Exchange believes that it is equitable to charge non-display data subscribers a $1,000 fee for each category of use they make of such data—namely, using the data on their own behalf (Category 1), on behalf of their clients (Category 2), and to internally match buy and sell orders within an organization (Category 3)—because this fee structure results in subscribers with greater uses of the data paying higher fees, and subscribers with fewer uses of the data paying lower fees. This segmented fee structure is also equitable because no subscriber of non-display data would be charged a fee for a category of use in which it did not actually engage.

The Exchange believes that it is equitable to cap non-display use fees for Category 3 at $3,000 per month per data recipient, because a higher monthly fee may potentially dissuade subscribers from buying the NYSE American Agg Lite data feed.

Non-Display Use Declaration Late Fee. The Exchange believes that the proposed fee of $1,000 per month for a late Non-Display Use Declaration is equitably allocated because it applies to any data recipient that pays an Access Fee for the NYSE American Agg Lite data feed but has failed to complete and submit a Non-Display Use Declaration. In addition, the Exchange believes that it is equitable to charge a late fee to subscribers who fail to timely submit their Non-Display Use Declarations because their failure to do so leads to potentially incorrect billing and administrative burdens on the part of the Exchange. The Exchange believes it is equitable to defray these administrative costs by imposing a late fee only on subscribers' whose declarations were late, as opposed to all subscribers.

Multiple Data Feed Fee. The Exchange believes that the $200 per month per location fee to data recipients taking the NYSE American Agg Lite data feed in more than two locations is equitable because it would apply to all such customers, regardless of what type of business they operate or the use they make of the data feed. In addition, the Exchange believes that it is equitable to charge a fee to subscribers for taking a data feed in more than two locations because there are administrative burdens on the part of the Exchange associated with tracking each location at which a data recipient receives the product. The Exchange believes that it is equitable for it to defray these administrative costs by imposing a modest fee only on subscribers who seek to take the feed in more than two locations, as opposed to all subscribers.

Three-Month Fee Waiver. The Exchange believes the proposal to waive the Access Fee and the Redistribution Fee for the NYSE American Agg Lite data feed to new Redistributors for three calendar months is equitable because it would apply to any first-time Redistributor, regardless of the use they plan to make of the feed. As proposed, any first-time Redistributor of the NYSE American Agg Lite data feed would not be charged the Access Fee and the Redistribution Fee for three calendar months. The Exchange believes it is equitable to restrict the availability of this three-month fee waiver to Redistributors that have not previously subscribed to and redistributed the NYSE American Agg Lite data feed, since customers who are current or previous subscribers of the feed are already familiar with it and are able to determine whether it suits their needs.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the NYSE American Agg Lite data feed are equitably allocated.

The Proposed Fees Are Not Unfairly Discriminatory

The Exchange believes the proposed fees for the NYSE American Agg Lite data feed are not unfairly discriminatory because any differences in the application of the fees are based on meaningful distinctions between customers, and those meaningful distinctions are not unfairly discriminatory between customers.

Overall. The Exchange believes that the proposed fees are not unfairly discriminatory because they would apply to all data recipients that choose to subscribe to the NYSE American Agg Lite data feed. Any subscriber, including Redistributor, that chooses to subscribe to the NYSE American Agg Lite data feed is subject to the same Fee Schedule, regardless of what type of business they operate or the use they plan to make of the data feed. Subscribers, including Redistributors, may choose to receive the data on the NYSE American Agg Lite data feed regardless of what type of business they operate or the use they plan to make of the data feed.

Access Fee. The Exchange believes the proposed monthly Access Fee of $500 for the NYSE American Agg Lite data feed is not unfairly discriminatory because it would be charged on an equal basis to all data recipients that receive a data feed of the NYSE American Agg Lite, regardless of what type of business they operate or the use they plan to make of the data feed.

User Fees. The Exchange believes that the fee structure differentiating Professional User fees ($1 per month per user) from Non-Professional User fees ($0 per month per user) for display device access to the NYSE American Agg Lite data feed is not unfairly discriminatory. This structure has long been used by the Exchange to reduce the price of data to Non-Professional Users and make it more broadly available.[44] Offering the NYSE American Agg Lite data feed to Non-Professional Users with the same data as is available to Professional Users results in greater equity among data recipients. These user fees would be charged uniformly to all display devices that have access to the NYSE American Agg Lite data feed.

Redistribution Fees. The Exchange believes the proposed monthly fee of $250 for redistributing the NYSE American Agg Lite data feed is not unfairly discriminatory because it would be charged on an equal basis to those Redistributors that choose to redistribute the feed.

Enterprise Fees. The Exchange believes the proposed enterprise license will not unfairly discriminate between customers, issuers, brokers or dealers. The Act does not prohibit all distinctions among customers, but only discrimination that is unfair, and it is not unfair discrimination to charge those subscribers that are able to reach the largest audiences of investors, including retail investors, a lower fee for incremental investors in order to encourage the widespread distribution of market data. This principle has been repeatedly endorsed by the Commission, as evidenced by the approval of enterprise licenses for other market data products.[45] Moreover, the proposed enterprise license will be subject to significant competition, and that competition will ensure that there is no unfair discrimination. Each subscriber will be able to accept or

[44] *Id.*

[45] *See e.g.,* Securities Exchange Act Release No. 83751 (July 31, 2018), 83 FR 38428 (August 6, 2018) (SR–NASDAQ–2018–058) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Lower Fees and Administrative Costs for Distributors of Nasdaq Basic, Nasdaq Last Sale, NLS Plus and the Nasdaq Depth-of-Book Products Through a Consolidated Enterprise License).

reject the license depending on whether it will or will not lower costs for that particular subscriber, and, if the license is not sufficiently competitive, the Exchange may lose market share. The proposed enterprise license will compete with other enterprise licenses of the Exchange, underlying fee schedules promulgated by the Exchange, and enterprise licenses and fee structures implemented by other exchanges. As such, it is a voluntary product for which market participants can readily find substitutes. Accordingly, the Exchange is constrained from introducing a fee that would be inequitable or unfairly discriminatory.

Non-Display Use Fees.[46] The Exchange believes the proposed Non-Display Use fees are not unfairly discriminatory because they would require subscribers for non-display use to pay fees only for the categories of use they actually make of the data. As noted above, non-display data can be used by data recipients for a wide variety of purposes (including trading, risk management, and compliance) as well as purposes that reduce the recipient's costs by automating certain functions. The Exchange believes that it is not unfairly discriminatory to charge non-display data subscribers a $1,000 per month fee for each category of use they make of such data—namely, using the data on their own behalf (Category 1), on behalf of their clients (Category 2), and to internally match buy and sell orders within an organization (Category 3)—because this fee structure results in subscribers with greater uses for the data paying higher fees, while subscribers with fewer uses of the data pay lower fees. This segmented fee structure is not unfairly discriminatory because no subscriber of non-display data would be charged a fee for a category of use in which it did not actually engage.

The Exchange believes that it is not unreasonably discriminatory to cap non-display use fees for Category 3 at $3,000 per month per data recipient, because a higher monthly fee may potentially dissuade subscribers from buying the NYSE American Agg Lite data feed.

Non-Display Use Declaration Late Fee. The Exchange believes that the proposed fee of $1,000 per month for a late Non-Display Use Declaration is not unfairly discriminatory because it applies to any data recipient that pays an Access Fee for the NYSE American Agg Lite data feed but has failed to complete and submit a Non-Display Use Declaration. In addition, the Exchange believes that it is not unfairly discriminatory to charge a late fee to subscribers who fail to timely submit their Non-Display Use Declarations because their failure to do so leads to potentially incorrect billing and administrative burdens on the part of the Exchange. Nor is it unfairly discriminatory for the Exchange to defray these administrative costs by imposing a late fee only on subscribers' whose declarations were late, as opposed to all subscribers.

Multiple Data Feed Fee. The Exchange believes that the $200 per month per location fee to data recipients taking the NYSE American Agg Lite data feed in more than two locations is not unfairly discriminatory because it would apply to all such customers, regardless of what type of business they operate or the use they make of the data feed. In addition, the Exchange believes that it is not unfairly discriminatory to charge a fee to subscribers for taking a data feed in more than two locations because there are administrative burdens on the part of the Exchange associated with tracking each location at which a data recipient receives the product. The Exchange believes that it is not unfairly discriminatory for it to defray these administrative costs by imposing a modest fee only on subscribers who seek to take the feed in more than two locations, as opposed to all subscribers.

Three-Month Fee Waiver. The Exchange believes the proposal to waive the Access Fee and the Redistribution Fee for the NYSE American Agg Lite data feed to new Redistributors for three months is not unfairly discriminatory because it would apply to any first-time Redistributor, regardless of the use they plan to make of the feed. As proposed, any first-time Redistributor of the NYSE American Agg Lite data feed would not be charged the Access Fee and the Redistribution Fee for three calendar months. The Exchange believes it is not unfairly discriminatory to restrict the availability of this three-month fee waiver to Redistributors that have not previously subscribed to the NYSE American Agg Lite data feed, since Redistributors who are current or previous subscribers of the feed are already familiar with it and are able to determine whether it suits their needs.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the NYSE American Agg Lite data feed are not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed fees will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As noted above, the proposed fees would apply to all subscribers, including Redistributors, of the NYSE American Agg Lite data feed, and customers may choose whether to subscribe to the feed at all. The Exchange also believes that the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on competition. As shown above, to the extent that particular proposed fees apply to only a subset of subscribers (*e.g.,* Category 2 fees apply only to those making non-display use on behalf of clients; late fees apply only to customers who fail to timely submit their declarations), those distinctions are not unfairly discriminatory and do not unfairly burden one set of customers over another. To the contrary, by tailoring the proposed fees in this manner, the Exchange believes that it has eliminated the potential burden on competition that might result from unfairly asking subscribers to pay fees for services they did not use, or late fees they did not actually incur.

Intermarket Competition. The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate. In setting the proposed fees, the Exchange is constrained by the availability of substitute partial depth of book market data products and by the fact that if its pricing is unattractive, customers will have their pick of alternative non-latency-sensitive partial depth of book market data products to purchase instead of purchasing the Exchange's products.

Specifically, the Exchange believes that the proposed fees do not impose a burden on competition or on other exchanges that is not necessary or appropriate because of the availability of substitute partial depth of book market data products. As noted above, BZX, BYX, EDGA, and EDGX each offers a proprietary data feed like the NYSE American Agg Lite data feed, supplying partial depth of book order data, security status updates, stock summary messages, and the exchange's best bid and offer at any given time, on a real-time basis. Because market data users can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users

[46] *See supra,* note 15.

may purchase another market's market data product. These competitive pressures ensure that no one exchange's market data fees can impose an unnecessary burden on competition, and the Exchange's proposed fees do not do so here.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [47] of the Act and subparagraph (f)(2) of Rule 19b–4 [48] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [49] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEAMER–2024–68 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEAMER–2024–68. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEAMER–2024–68 and should be submitted on or before December 11, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–27017 Filed 11–19–24; 8:45 am]

BILLING CODE 8011–01–P

[47] 15 U.S.C. 78s(b)(3)(A).

[48] 17 CFR 240.19b–4(f)(2).

[49] 15 U.S.C. 78s(b)(2)(B).

[50] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101619; File No. SR–NYSEAMER–2024–67]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Section 1003 of the NYSE American LLC Company Guide To Provide the Exchange With Discretion To Commence Suspension and Delisting Proceedings With Respect to a Listed Company That Has Changed Its Primary Business Focus

November 14, 2024.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 4, 2024, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 1003 of the NYSE American LLC Company Guide to provide the Exchange with discretion to commence suspension and delisting proceedings with respect to a listed company that has changed its primary business focus to a new area of business that it was not engaged in at the time of its original listing, or which was immaterial to its operations at the time of its original listing. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

It has been the Exchange's experience that listed companies occasionally change the focus of their operations from the business they were engaged in at the time of initial listing to a business line that is completely unrelated or that was not material at the time of its original listing. The Exchange is concerned that, in such circumstances, investors who acquired the company's stock prior to this change in operations (including, in many cases, in connection with the company's initial public offering) may have made their investment decision based on the company's disclosure about its original business and might not have made their investment if they had been aware of how the company would change. In addition, a wholesale change in business operations may give rise to a concern about the suitability for listing of the company had it been in engaged in that line of business at the time of its application for listing. The Exchange notes that, in some circumstances, there has been significant downward price movement subsequent to such a change in business focus, which resulted in significant investor losses and an inability to meet exchange continued listing standards.[4]

In light of the foregoing, the Exchange proposes to amend Section 1003 (''Application of Policies'') of the Guide to add proposed Section 1003(i) (''Change in Primary Business Focus'') providing that the Exchange may in its sole discretion subject a listed company to immediate suspension and delisting if that listed company has changed its primary business focus to a new area of business that it was not engaged in at the time of its original listing or which was immaterial to its operations at the time of its original listing. The proposed rule text provides that any company that undertakes a change in its primary business focus must promptly provide notice of such change in writing to the Exchange. The Exchange will undertake the continued listing analysis and potentially take delisting action under the proposed provision regardless of whether the listed company complies with its obligation to provide written notification to the Exchange. Listed companies who would meet the requirements to provide written notification to the Exchange under the new provision but do not do so would be considered non-compliant with the notification requirement. If the Exchange determines that a listed company is unsuitable for continued listing due to a change in its primary business focus, the Exchange will commence suspension and delisting procedures immediately in accordance with the procedures set out in Section 1010.[5] A listed company is not eligible to follow the procedures outlined in Section 1009 with respect to proposed Section 1003(h). The Exchange notes that any company delisted under proposed Section 1003(h) will be entitled to avail itself of the due process rights provided by the appeal process set forth in Chapter 12.

The opening paragraph of Section 1003 states that companies that are noncompliant may utilize the cure periods set forth in Section 1009. The Exchange proposes to qualify this provision to clarify that companies are not eligible for the cure provisions if the text of the applicable provision in Section 1003 provides otherwise. This proposed change is to distinguish the treatment of companies under proposed Section 1003(h) which would subject such companies to immediate suspension and delisting without recourse to the cure provisions in Section 1009.

Upon becoming aware of such a change in the company's primary business focus, by notification from the listed company or otherwise, the Exchange's Staff would conduct a thorough assessment of the company's suitability for continued listing in light of such change. The Exchange would focus its analysis on whether it would have accepted the listed company for initial listing if it had been engaged in its modified business at the time of original listing. The Exchange notes that this analysis will focus on the qualitative aspects of the company's suitability for listing and will not entail an application of the quantitative standards for initial listing. In conducting this analysis, the Exchange would take into consideration other changes that may have occurred in connection with the change in the company's primary business focus, including in all cases, but not limited to, any changes in the management, board of directors, voting power, ownership, and financial structure of the company. The Exchange notes that the additional factors enumerated in the proposed rule text are consistent with areas that would be part of any initial listing review and are therefore a necessary part of any consideration of whether the company would have been suitable for initial listing in the form it took after its change of primary business focus. As discussed above, the Exchange's Staff would conduct a thorough assessment of the company's suitability for continued listing in light of such change. In addition, continued listing quantitative standards will continue to apply to a company that is being reviewed under the new standard just as with any company already listed on the Exchange.

The Exchange acknowledges that seeking to suspend and delist a company's stock under this revised rule would be an extraordinary action. The Exchange therefore anticipates seldom relying on this new discretionary authority, and only after thorough analysis of all relevant facts and circumstances.

The Exchange also notes that the proposal rule change is substantially similar to a recent amendment adopted by the NYSE to Section 802.01D of the NYSE Listed Company Manual that was approved by the Commission as consistent with the Act.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair

[4] For example, Bit Brother, a company listed on Nasdaq, initially focused on selling tea products but ultimately changed its business line to crypto. After three reverse splits, one of which was quite large (1000:1), the company was still unable to regain sustained compliance with listing standards. The stock was delisted from Nasdaq in February 2024. *See https://www.wsj.com/finance/stocks/as-trading-frenzies-grip-penny-stocks-criticism-of-nasdaq-grows-8bd4118b* (Feb 23, 2024).

[5] Section 1010(b) states that whenever the Exchange determines, in accordance with Section 1009 or otherwise, that a class of securities should be removed from listing (or unlisted trading) for reasons other than the reasons specified in 1010(a), it will follow the procedures contained in Part 12.

[6] *See* Securities Exchange Act Release No. 100585 (July 24, 2024) (SR–NYSE–2024–21).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

discrimination between customers, issuers, brokers, or dealers.

The Exchange believes it is consistent with the protection of investors to amend Section 1003 to provide the Exchange with the discretion to immediately commence suspension and delisting procedures with respect to a listed company that has changed its primary business focus to a new area of business that it was not engaged in at the time of its original listing or which was immaterial to its operations at the time of its original listing. The Exchange notes that investors who acquired the company's stock prior to this change in operations (including, in many cases, in connection with the company's initial public offering) may have made their investment decision based on the company's disclosure about its original business and might not have made their investment if they had been aware of how the company would change. In addition, the Exchange is concerned that a listed company may change its business operations to a line of business that would have given rise to a concern about the suitability for listing of the company had it been in engaged in that line of business at the time of its application for listing. The Exchange notes that taking delisting action in such cases would be discretionary and that the Exchange would undertake such action only after a careful analysis of the company's suitability for continued listing, taking into account all relevant factors, including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the company. In making these determinations, the Exchange would focus its analysis on whether it would have accepted the listed company for initial listing if it had been engaged in its modified business at the time of original listing. The Exchange notes that this analysis will focus on the qualitative aspects of the company's suitability for listing and will not entail an application of the quantitative standards for initial listing. The Exchange believes that the proposed requirement that any listed company that undertakes a change in its primary business focus must promptly provide notice of such change in writing to the Exchange will enable the Exchange to more systematically identify circumstances where it is necessary to consider the appropriateness for continued listing of such companies.

Finally, the Exchange also notes that a company that is subject to suspension and delisting under this new provision would be entitled to a review of the delisting determination under the procedures set forth in Part 12 of the Company Guide. The Exchange believes that this will provide, consistent with Section 6(b)(7) of the Act, a fair procedure for review of a suspension and delisting of a company under the new provision.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that there are several listing venues and that any company that the Exchange deemed unsuitable for continued listing under the proposed rule could apply for listing on one or more other exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEAMER–2024–67 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEAMER–2024–67. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEAMER–2024–67 and should be submitted on or before December 11, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–27021 Filed 11–19–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101626; File No. SR–NYSE–2024–71]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for the NYSE Aggregated Lite Data Feed

November 14, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 4, 2024, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish fees for the NYSE Aggregated Lite data feed. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the NYSE Proprietary Market Data Fees Schedule (''Fee Schedule'') and establish fees for the NYSE Aggregated Lite (''NYSE Agg Lite'') data feed,[4] effective November 4, 2024.[5]

In summary, the NYSE Agg Lite is a NYSE-only frequency-based depth of book market data feed of the NYSE's limit order book for up to ten (10) price levels on both the bid and offer sides of the order book for securities traded on the Exchange and for which the Exchange reports quotes and trades under the Consolidated Tape Association (''CTA'') Plan or the Nasdaq/UTP Plan. The NYSE Agg Lite is a compilation of limit order data that the Exchange provides to vendors and subscribers. The NYSE Agg Lite includes partial depth of book order data as well as security status messages. The security status message informs subscribers of changes in the status of a specific security, such as trading halts, short sale restriction, etc. In addition, the NYSE Agg Lite includes order imbalance information prior to the opening and closing of trading.

Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[6]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.''[7] Indeed, cash equity trading is currently dispersed across 16 exchanges,[8] numerous alternative trading systems,[9] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share (whether including or excluding auction volume).[10]

Proposed NYSE Agg Lite Data Feed Fees

The Exchange proposes to establish the fees listed below for the NYSE Agg Lite data feed. The Exchange proposes to charge fees for the same categories of market data use as its affiliated exchanges (namely, NYSE Arca, NYSE American and NYSE National) currently charge. The Exchange believes that adopting the same fee structure as its affiliated exchanges would reduce administrative burdens on market data subscribers that also currently subscribe to market data feeds from the Exchange's affiliates.

1. *Access Fee.* For the receipt of access to the NYSE Agg Lite data feed, the Exchange proposes to charge $3,000 per month. This proposed Access Fee would be charged to any data recipient that receives the NYSE Agg Lite data feed. Data recipients that only use display devices to view NYSE Agg Lite market data and do not separately receive a data feed would not be charged an Access Fee. The proposed Access Fee would be charged only once per firm.

2. *User Fees.* The Exchange proposes to charge a Professional User Fee (Per User) of $35 per month and a Non-

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The proposed rule change establishing the NYSE Agg Lite data feed was immediately effective on February 27, 2024. *See* Securities Exchange Act Release No. 99689 (March 7, 2024), 89 FR 18466 (March 13, 2024) (SR–NYSE–2024–12) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the NYSE Aggregated Lite Market Data Feed).

[5] The Exchange originally filed to amend the Fee Schedule on May 13, 2024 (SR–NYSE–2024–29). On July 11, 2024, the Exchange withdrew SR–NYSE–2024–29 and replaced it with SR–NYSE–2024–38. On September 6, 2024, the Exchange withdrew SR–NYSE–2024–38 and replaced it with SR–NYSE–2024–54. On November 4, 2024, the Exchange withdrew SR–NYSE–2024–54 and replaced it with this filing.

[6] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[7] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[8] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fastanswers/divisionsmarketregmrexchangesshtml.html.*

[9] *See* FINRA ATS Transparency Data, available at *https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is available at *https://www.sec.gov/foia/docs/atslist.htm.*

[10] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

Professional User Fee (Per User) of $6 per month. These user fees would apply to each display device that has access to the NYSE Agg Lite data feed.

3. *Redistribution Fee.* For redistribution of the NYSE Agg Lite data feed, the Exchange proposes to establish a fee of $250 per month. The proposed Redistribution Fee would be charged to any Redistributor of the NYSE Agg Lite data feed, which is defined to mean a vendor or any person that provides a real-time NYSE market data product externally to a data recipient that is not its affiliate or wholly-owned subsidiary, or to any system that an external data recipient uses, irrespective of the means of transmission or access. The proposed Redistribution Fee would be charged only once per Redistributor account. As an incentive to potential Redistributors to subscribe to the NYSE Agg Lite data feed, the Exchange proposes to waive the Access Fee and Redistribution Fee for a Redistributor if the Redistributor provides NYSE Agg Lite externally to at least one data feed recipient and reports such data feed recipient or recipients to the Exchange. For example, a Redistributor that subscribes to the NYSE Agg Lite data feed will have the Access Fee and Redistribution Fee waived if such Redistributor provides NYSE Agg Lite externally to at least one data feed recipient and reports such data feed recipient to the Exchange.

By targeting this proposed fee waiver to Redistributors that provide external distribution of NYSE Agg Lite, the Exchange believes that this would provide an incentive for Redistributors to make the NYSE Agg Lite market data product available to its customers. Specifically, if a data recipient is interested in subscribing to NYSE Agg Lite and relies on a Redistributor to obtain market data products from the Exchange, that data recipient would need its Redistributor to subscribe to and redistribute NYSE Agg Lite. The Exchange believes that this proposed fee waiver for Redistributors of NYSE Agg Lite would provide an incentive for Redistributors to make NYSE Agg Lite available to their customers, which will increase the availability of the Exchange's market data products to a larger potential population of data recipients.

Further, the Exchange proposes to adopt a credit that would be applicable to Redistributors that provide external distribution of NYSE Agg Lite to Professional and Non-Professional Users. As proposed, such Redistributors would receive a credit equal to the amount of the monthly Professional User and Non-Professional User Fees for such external distribution, up to a maximum of the combination of the Access Fee and Redistribution Fee for NYSE Agg Lite that the Redistributor would otherwise be required to pay to the Exchange. For example, a Redistributor that reports external Professional Users and Non-Professional Users in a month totaling $3,250 or more would receive a maximum credit of $3,250 for that month, which could effectively reduce its monthly fee for access and redistribution to zero. If that same Redistributor were to report external User quantities in a month totaling $600 of monthly usage, that Redistributor would receive a credit of $600. The Exchange believes the proposed credit would provide Redistributors with an incentive to increase their redistribution of NYSE Agg Lite because the credit they would be eligible to receive would increase if they report additional external User quantities.

4. *Enterprise Fees.*

The Exchange proposes to establish an enterprise license that will reduce Exchange fees and administrative costs for subscribers that disseminate NYSE Agg Lite. Subscribers that are broker-dealers will be able to distribute the NYSE Agg Lite data feed for display usage to an unlimited number of non-professional users for a monthly fee of $20,000, with an opportunity to lower that fee to $18,000 per month if they contract for twelve months of service in advance. Alternatively, subscribers that are broker-dealers will be able to distribute the NYSE Agg Lite data feed for display usage to an unlimited number of recipients (professional users and non-professional users) for a monthly fee of $25,000, with an opportunity to lower that fee to $22,500 per month if they contract for twelve months of service in advance.

As proposed, the NYSE Agg Lite data feed may be distributed pursuant to the proposed market data enterprise license only for display usage and in the context of a brokerage relationship with a broker-dealer through such broker-dealer's own devices. Purchase of an enterprise license would eliminate per User subscriber fees for NYSE Agg Lite. Further, the Exchange proposes to waive the Access Fee and the Redistribution Fee for NYSE Agg lite for Redistributors that pay either the Non-Professional Enterprise Fee or the Professional and Non-Professional Enterprise Fee. The Exchange believes the proposed fee waiver would provide an incentive for Redistributors to subscribe to the NYSE Agg Lite market data product at the enterprise level to reduce the fees it would pay to the Exchange and without having to report the number of users that receive the data feed from the Redistributor.

Subscribers that intend to purchase a market data enterprise license for at least twelve months may elect to purchase this product in advance for a monthly fee of $18,000 for distribution of NYSE Agg Lite to an unlimited number of non-professional users, or $22,500 per month for distribution to an unlimited number of professional users and non-professional users. This feature is intended to simplify cost projections and budgeting for both subscribers and the Exchange. Subscribers that elect not to purchase this particular feature will nevertheless be able to obtain all of the market data information offered by NYSE Agg Lite by paying the standard fee of $20,000 per month for distribution of NYSE Agg Lite to an unlimited number of non-professional users, or $25,000 per month for distribution to an unlimited number of professional users and non-professional users. Subscribers that elect to pay the monthly fee will be able to switch to the annual fee at any time, and those that elect to purchase the annual contract would be able to change to the monthly contract, with notice, at the end of the twelve-month period.

The Exchange believes that the proposed market data enterprise license will reduce exchange fees, lower administrative costs for subscribers, and help expand the availability of market information to investors, and thereby increase participation in financial markets.

5. *Non-Display Use Fees.*

The Exchange proposes to establish non-display fees [11] for the NYSE Agg Lite data feed that are based on the non-display use categories charged by NYSE Arca, NYSE American, NYSE National, the CTA, and the UTP Plan for non-display use.[12] Non-display use would

[11] *See infra,* note 15.

[12] *See* Endnote 1 to the NYSE Arca Equites Proprietary Market Data Fees, available here: *https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Equities_Proprietary_Data_Fee_Schedule.pdf;* Endnote 1 to the NYSE American LLC Equities Proprietary Market Data Fees, available here: *https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Equities_Market_Data_Fee_Schedule.pdf;* Endnote 1 to the NYSE National Equities Proprietary Market Data Fees, available here: *https://www.nyse.com/publicdocs/nyse/data/NYSE_National_Market_Data_Fee_Schedule.pdf;* Endnote 8 to the Schedule of Market Data Charges for the CTA, available here: *https://www.ctaplan.com/publicdocs/ctaplan/notifications/trader-update/Schedule%20Of%20Market%20Data%20Charges%20-%20January%201,%202015.pdf;* and Non-Display Usage Fees as set forth in the UTP Plan Fee Schedule and Non-Display Policy, available here: *http://utpplan.com/DOC/Datapolicies.pdf. See, e.g.,* Securities Exchange Act Release Nos. 69278 (April 2, 2013), 78 FR 20973 (April 8, 2013) (SR–NYSE–2013–25)

mean accessing, processing, or consuming the NYSE Agg Lite data feed delivered directly or through a Redistributor, for a purpose other than in support of a data recipient's display or further internal or external redistribution (''Non-Display Use''). Non-Display Use would include trading uses such as high frequency or algorithmic trading as well as any trading in any asset class, automated order or quote generation and/or order pegging, price referencing for algorithmic trading or smart order routing, operations control programs, investment analysis, order verification, surveillance programs, risk management, compliance, and portfolio management.

Under the proposal, for Non-Display Use of NYSE Agg Lite, there would be three categories of, and fees applicable, to data recipients. One, two, or three categories of Non-Display Use may apply to a data recipient.

- As proposed, the Category 1 Fee would be $4,500 per month and would apply when a data recipient's Non-Display Use of the NYSE Agg Lite data feed is on its own behalf, not on behalf of its clients.
- As proposed, Category 2 Fees would be $4,500 per month and would apply to a data recipient's Non-Display Use of the NYSE Agg Lite data feed on behalf of its clients.
- As proposed, Category 3 Fees would be $4,500 per month and would apply to a data recipient's Non-Display Use of the NYSE Agg Lite data feed for the purpose of internally matching buy and sell orders within an organization, including matching customer orders for a data recipient's own behalf and/or on behalf of its clients. This category would apply to Non-Display Use in trading platforms, such as, but not restricted to, alternative trading systems (''ATSs''), broker crossing networks, broker crossing systems not filed as ATSs, dark pools, multilateral trading facilities, exchanges and systematic internalization systems. A data recipient will be charged $4,500 per month for each platform on which it uses the Non-Display data internally to match buy and sell orders, up to a cap of $13,500 per month; even if the data recipient uses the NYSE Agg Lite data feed for more than three platforms, it will not pay more than $13,500 for such Category 3 use per month.

The description of the three non-display use categories is set forth in the Fee Schedule in endnote 1 and that endnote would be referenced in the NYSE Agg Lite data feed fees on the Fee Schedule. The text in the endnote would remain unchanged.

Data recipients that receive the NYSE Agg Lite data feed for Non-Display Use would be required to complete and submit a Non-Display Use Declaration before they would be authorized to receive the feed. A firm subject to Category 3 Fees would be required to identify each platform that uses the NYSE Agg Lite data feed for a Category 3 Non-Display Use basis, such as ATSs and broker crossing systems not registered as ATSs, as part of the Non-Display Use Declaration.

6. *Non-Display Use Declaration Late Fee.* Data recipients that receive the NYSE Agg Lite data feed for Non-Display Use would be required to complete and submit a Non-Display Use Declaration before they would be authorized to receive the feed. Beginning in 2025, NYSE Agg Lite data feed recipients would be required to submit, by January 31 of each year, the Non-Display Use Declaration. The requirement to submit a Non-Display Use Declaration applies to all real-time NYSE data feed product recipients. The Exchange proposes to charge a Non-Display Use Declaration Late Fee of $1,000 per month to any data recipient that pays an Access Fee for the NYSE Agg Lite data feed that has failed to timely complete and submit a Non-Display Use Declaration. Specifically, with respect to the Non-Display Use Declaration due by January 31 of each year, the Non-Display Use Declaration Late Fee would apply to data recipients that fail to complete and submit the Non-Display Use Declaration by the January 31 due date, and would apply beginning February 1 and for each month thereafter until the data recipient has completed and submitted the annual Non-Display Use Declaration.

The proposed Non-Display Use Declaration Late Fee applicable to NYSE Agg Lite data feed would be set forth in endnote 2 on the Fee Schedule. As proposed, endnote 2 would be amended with the proposed addition of the following new text: ''The Non-Display Declaration Late Fee will apply, beginning in 2025, to NYSE Aggregated Lite data recipients that fail to complete and submit the annual Non-Display Use Declaration by the January 31st due date, and applies beginning February 1st and for each month thereafter until the data recipient has completed and submitted the annual Non-Display use Declaration.''

In addition, if a data recipient's use of the NYSE Agg Lite data feed changes at any time after the data recipient submits a Non-Display Use Declaration, the data recipient must inform the Exchange of the change by completing and submitting at the time of the change an updated declaration reflecting the change of use.

7. *Multiple Data Feed Fee.* The Exchange proposes to establish a monthly fee, the ''Multiple Data Feed Fee,'' that would apply to data recipients that take a data feed for a market data product in more than two locations. Data recipients taking the NYSE Agg Lite data feed in more than two locations would be charged $200 per additional location per month. No new reporting would be required.[13]

8. *Three-Month Fee Waiver.* The Exchange currently provides a one-month free trial to any firm that subscribes to a particular NYSE market data product for the first time. Under the current one-month trial, a first-time subscriber is not charged the Access Fee, Non-Display Fee, any applicable Professional and Non-Professional User Fee and Redistribution Fee for one calendar month.[14] The Exchange now proposes an additional three-month fee waiver for any Redistributor that subscribes to a particular NYSE market data product for the first time for external redistribution. As proposed, a first-time Redistributor would be any firm that has not previously subscribed to and externally redistributed a particular NYSE market data product listed on the Fee Schedule. As proposed, a first-time Redistributor that subscribes to a particular NYSE market data product would not be charged the Access Fee and the Redistribution Fee for that product for three calendar months. Any other fees, including but not limited to, Non-Display Fee, any applicable Professional and Non-Professional User Fee, and Enterprise Fee would be billable after the first calendar month after a first-time Redistributor subscribes to a particular NYSE market data product. For example, a first-time Redistributor that chooses to subscribe to NYSE Agg Lite on September 24, 2024 would not be charged the Access Fee and the Redistribution Fee for the months of October, November, and December 2024. The proposed fee waiver would be for the three calendar months following the date a Redistributor is approved to

and 72923 (Aug. 26, 2014), 79 FR 52079 (Sept. 2, 2014) (SR–NYSE–2014–43).

[13] Data vendors currently report a unique Vendor Account Number for each location at which they provide a data feed to a data recipient. The Exchange considers each Vendor Account Number a location. For example, if a data recipient has five Vendor Account Numbers, representing five locations, for the receipt of the NYSE Agg Lite data feed, that data recipient will pay the Multiple Data Feed fee with respect to three of the five locations.

[14] *See* Fee Schedule.

receive access to the particular NYSE market data product. The Exchange would provide the three-month fee waiver for each particular product to each Redistributor once.

The Exchange believes that providing a three-month fee waiver to NYSE market data products listed on the Fee Schedule would enable potential Redistributors to determine whether a particular NYSE market data product is useful to their business models before fully committing to expend development and implementation costs related to the receipt of that product, and is intended to encourage increased use of the Exchange's market data products by defraying some of the development and implementation costs Redistributors would ordinarily have to expend before using a product. The proposed three-month fee waiver would also provide Redistributors with time to begin onboarding new clients prior to being liable to the Access Fee and the Redistribution Fee, allowing time to choose how to allocate costs and increase revenues to defray costs associated with providing a new feed to its customers.

Application of Proposed Fees

The Exchange is not required to make the NYSE Agg Lite data feed available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase the NYSE Agg Lite data feed. Firms that choose to purchase the NYSE Agg Lite data feed do so for the primary goals of using it to increase their revenues, reduce their expenses, and in some instances to compete directly with the Exchange (including for order flow). Those firms are able to determine for themselves whether or not the NYSE Agg Lite data feed or any other similar products are attractively priced.

The Exchange believes the proposed rule change would provide an incentive both for data subscribers to subscribe to NYSE Agg Lite and for Redistributors to subscribe to the product for purposes of providing external distribution of NYSE Agg Lite. The Exchange believes that this proposed rule change also has the potential to attract new Redistributors for NYSE Agg Lite.

The proposed fee structure is not novel as it is based on the fee structure currently in place for the NYSE OpenBook feed. The Exchange is proposing fees for the NYSE Agg Lite data feed that are based on the existing fee structure and rates that data recipients already pay for the NYSE OpenBook feed. Specifically, the fees for the NYSE OpenBook feed—which like the NYSE Agg Lite data feed, includes depth of book and security status messages—consist of an Access Fee of $5,000 per month, a Professional User Fee (Per User) of $60 per month, a Non-Professional User Fee (Per User) of $15 per month, Non-Display Fees [15] of $6,000 per month for each of Categories 1, 2 and 3, and a Redistribution Fee of $3,000 per month. The Exchange also charges a Non-Display Use Declaration Late Fee of $1,000 per month and a Multiple Data Feed Fee of $200 per month for NYSE OpenBoook.[16]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[17] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[18] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Proposed Rule Change Is Reasonable

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [19]

With respect to market data, the decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC* upheld the Commission's reliance on the existence of competitive market mechanisms to evaluate the reasonableness and fairness of fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system ''evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed'' and that the SEC wield its regulatory power ''in those situations where competition may not be sufficient,'' such as in the creation of a ''consolidated transactional reporting system.'' [20]

The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [21]

More recently, the Commission confirmed that it applies a ''market-based'' test in its assessment of market data fees, and that under that test:

> the Commission considers whether the exchange was subject to significant competitive forces in setting the terms of its proposal for [market data], including the level of any fees. If an exchange meets this burden, the Commission will find that its fee rule is consistent with the Act unless there is a substantial countervailing basis to find that the terms of the rule violate the Act or the rules thereunder.[22]

As discussed below, the Exchange believes that its proposed fees are constrained by competitive forces.

As the D.C. Circuit recognized in *NetCoalition I,* ''[n]o one disputes that competition for order flow is fierce.'' [23] The court further noted that ''no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers,'' and that an exchange ''must compete vigorously for order flow to maintain its share of trading volume.'' [24]

As noted above, while Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that

[15] The Exchange does not anticipate that data recipients would use NYSE Agg Lite for non-display purpose. However, the Exchange is adopting Non-Display use fees so that the proposed fees for NYSE Agg Lite are consistent with the Exchange's fee structure for its other proprietary market data products.

[16] *See* NYSE Proprietary Market Data Fees at *https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Fee_Schedule.pdf.*

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4), (5).

[19] *See* Regulation NMS Adopting Release, 70 FR 37495, at 37499.

[20] *NetCoalition* v. *SEC,* 615 F.3d 525, 535 (D.C. Cir. 2010) (''*NetCoalition I*'') (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323).

[21] *Id.* at 535.

[22] *See* Securities Exchange Act Release No. 34–90217 (October 16, 2020), 85 FR 67392 (October 22, 2020) (SR–NYSENAT–2020–05) (''National IF Approval Order'') (internal quotation marks omitted), quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008).

[23] *NetCoalition I,* 615 F.3d at 544 (internal quotation omitted).

[24] *Id.*

stock.'' [25] Indeed, today, equity trading is currently dispersed across 16 exchanges,[26] numerous alternative trading systems,[27] broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share.[28]

Further, low barriers to entry mean that new exchanges may rapidly and inexpensively enter the market to compete with the Exchange. For example, since 2020, three new ones have entered the market: Long Term Stock Exchange (LTSE), which began operations as an exchange on August 28, 2020; [29] Members Exchange (MEMX), which began operations as an exchange on September 29, 2020; [30] and Miami International Holdings (MIAX), which began operations of its first equities exchange on September 29, 2020.[31]

More specifically, in setting fees for the NYSE Agg Lite data feed, the Exchange is constrained by the fact that, if its pricing is unattractive to customers, customers have their pick of alternatives to purchase similar data from instead of purchasing it from the Exchange. The existence of alternatives to the Exchange's data product ensures that the Exchange cannot set unreasonable market data fees without suffering the negative effects of that decision in the competitive market for non-latency-sensitive proprietary partial depth of book market data.

The Exchange notes that the NYSE Agg Lite is entirely optional. The Exchange is not required to make the NYSE Agg Lite available to any customers, nor is any customer required to purchase the NYSE Agg Lite market data feed. Unlike some other data products (*e.g.,* the consolidated quotation and last-sale information feeds) that firms are required to purchase in order to fulfil regulatory obligations,[32] a customer's decision whether to purchase the NYSE Agg Lite is entirely discretionary. The Exchange believes NYSE Agg Lite would provide high-quality, comprehensive partial depth of book data that an anticipated end user might use for purposes of identifying an indicative price of Tape A, B, and C securities without having to purchase consolidated data and thus it would not be a latency-sensitive product. The Exchange does not anticipate that an end user would, or could, use NYSE Agg Lite data for purposes of making order-routing or trading decisions. Firms that choose to subscribe to NYSE Agg Lite are able to determine for themselves whether the NYSE Agg Lite data feed is necessary for their business needs, and if so, whether or not it is attractively priced. If the NYSE Agg Lite data feed does not provide sufficient benefit to firms based on the uses those firms may have for it, such firms may simply choose to conduct their business operations in ways that do not use the NYSE Agg Lite data feed.

In setting the proposed fees for the NYSE Agg Lite data feed, the Exchange considered the competitiveness of the market for non-latency-sensitive proprietary partial depth of book data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish reasonable fees. The proposed fees are therefore reasonable because in setting them, the Exchange is constrained by the availability of substitute partial depth of book market data products. The Commission has been clear that substitute products need not be identical, but only substantially similar to the product at hand.[33]

The NYSE Aggregated Lite market data feed is subject to significant competitive forces that constrain its pricing. Specifically, the NYSE Agg Lite data feed competes head-to-head with similar market data products currently offered by the four U.S. equities exchanges operated by Cboe Exchange, Inc.—Cboe BZX Exchange, Inc. (''BZX''), Cboe BYX Exchange, Inc. (''BYX''), Cboe EDGA Exchange, Inc. (''EDGA''), and Cboe EDGX Exchange, Inc. (''EDGX''), each of which offers a market data product called BZX Summary Depth, BYX Summary Depth, EDGA Summary Depth and EDGX Summary Depth, respectively (collectively, the ''Cboe Summary Depth'').[34] Similar to Cboe Summary Depth, NYSE Agg Lite can be utilized by vendors and subscribers to quickly access and distribute aggregated order book data. As noted above, NYSE Agg Lite, similar to Cboe Summary Depth, would provide aggregated depth per security, including the bid, ask and share quantity for orders received by NYSE, except unlike Cboe Summary Depth, which provides aggregated depth per security for up to five price levels, NYSE Agg Lite would provide aggregated depth per security for up to ten price levels on both the bid and offer sides of the NYSE limit order book as well as auction imbalance data.

The specific fees that the Exchange proposes for the NYSE Agg Lite data feed are reasonable for the following additional reasons.

Overall. The Exchange believes that the proposed fees for the NYSE Agg Lite data feed are reasonable because they would provide vendors and subscribers with the option to subscribe to a market data product that integrates a subset of data from existing products and where such aggregated data is published at a pre-defined interval, thus lowering bandwidth, infrastructure and operational requirements.

The Exchange believes the proposed fees for the NYSE Agg Lite data feed are

---

[25] *See* Securities Exchange Act Release No. 61358, 75 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[26] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[27] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[28] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[29] *See* LTSE Market Announcement: MA–2020–020, dated August 14, 2020, announcing LTSE production securities phase-in planned for August 28, available here: *https://assets-global.website-files.com/6462417e8db99f8baa06952c/6462417e8db99f8baa0698e7_MA-2020-020__Production_Securities_Launching_August_28_-_Google_Docs.pdf* and LTSE Market Announcement: MA–2020–025, available here: *https://assets-global.website-files.com/6462417e8db99f8baa06952c/6462417e8db99f8baa069873_MA-2020-025.pdf.*

[30] As of October 29, 2020, MEMX is trading all NMS symbols. *See https://info.memxtrading.com/trader-alert-20-10-memx-trading-symbols-update/.*

[31] *See* MIAX Pearl Press release, dated September 29, 2020, available here: *https://www.miaxoptions.com/sites/default/files/alert-files/MIAX_Press_Release_09292020.pdf.*

[32] The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations. *See In the Matter of the Application of Securities Industry and Financial Markets Association for Review of Actions Taken by Self-Regulatory Organizations,* Release Nos. 34–72182; AP–3–15350; AP–3–15351 (May 16, 2014). Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions, and some broker-dealers and ATSs have chosen not to do so.

[33] For example, in the National IF Approval Order, the Commission recognized that for some customers, the best bid and offer information from consolidated data feeds may function as a substitute for the NYSE National Integrated Feed product, which contains order by order information. *See* National IF Approval Order, *supra* note 22, at 67397 [release p. 21] (''[I]nformation provided by NYSE National demonstrates that a number of executing broker-dealers do not subscribe to the NYSE National Integrated Feed and executing broker-dealers can otherwise obtain NYSE National best bid and offer information from the consolidated data feeds.'' (internal quotations omitted)).

[34] *See* BZX Rule 11.22(m) BZX Summary Depth; BYX Rule 11.22(k) BYX Summary Depth; EDGA Rule 13.8(f) EDGA Summary Depth; and EDGX Rule 13.8(f) EDGX Summary Depth. The Cboe Summary Depth offered by BZX, BYX, EDGA and EDGX are each a data feed that offers aggregated two-sided quotations for all displayed orders for up to five (5) price levels and contains the individual last sale information, market status, trading status and trade break messages.

also reasonable when compared to fees for comparable products, such as the Cboe Summary Depth.[35] Additionally, the Exchange is proposing fees for the NYSE Agg Lite data feed that are based on the existing fee structure that data recipients already pay for the NYSE's other market data products. The Exchange believes that adopting the same fee structure would reduce administrative burdens on NYSE data subscribers that also currently subscribe to market data feeds from NYSE.

Access Fee. The Exchange believes that the proposed monthly Access Fee of $3,000 for the NYSE Aggregated Lite data feed is reasonable because it is comparable to the fees charged by BZX, BYX, EDGA, and EDGX, each of which charges between $2,500 per month to $5,000 per month for both Internal Distribution and External Distribution of the Cboe Summary Depth market data product.[36]

User Fees. The Exchange believes that having separate Professional and Non-Professional User fees for the NYSE Agg Lite data feed is reasonable because it will make the product more affordable and result in greater availability to Professional and Non-Professional Users. Setting a modest Non-Professional User fee is reasonable because it provides an additional method for Non-Professional Users to access the NYSE Agg Lite data feed by providing the same data that is available to Professional Users. The proposed monthly Professional User Fee (Per User) of $35 and monthly Non-Professional User Fee (Per User) of $6 are reasonable because they are comparable to user fees generally charged by exchanges. For example, NYSE charges a monthly Professional User Fee (Per User) of $60 and a monthly Non-Professional User Fee (Per User) of $15 for the NYSE OpenBook feed.[37] Although the proposed User Fees for Professional and Non-Professional Users are higher than those charged by BZX, BYX, EDGA and EDGX, the Exchange notes that User fees are only a subset of the total fees that vendors and subscribers pay and the lower fees proposed to access and redistribute NYSE Agg Lite would provide such market data recipients with a more affordable alternative to existing substitutes offered by the Exchange and its competitors.

Redistribution Fees. The Exchange believes that charging a Redistribution Fee is reasonable because the vendors that would be charged such a fee profit by re-transmitting the Exchange's market data to their customers. This fee would be charged only once per month to each vendor account that redistributes the NYSE Agg Lite data feed, regardless of the number of customers to which that vendor redistributes the data. The Exchange believes the proposed monthly Redistribution Fee of $250 for the NYSE Agg Lite data feed is reasonable because it is nominal and lower than the fees charged by BZX, BYX, EDGA and EDGX, each of which charges considerably more for both Internal Distribution and External Distribution of the Cboe Summary Depth market data feed.[38]

Enterprise Fees. The Exchange believes the proposed enterprise license is reasonable because it would reduce exchange fees, lower administrative costs for subscribers that are broker-dealers and help expand the availability of market information to investors, and thereby increase participation in financial markets. Subscribers that are broker-dealers would be able to disseminate the NYSE Agg Lite data feed for display usage to an unlimited number of non-professional users for a monthly fee of $20,000, or $18,000 if they contract for twelve months of service in advance. Alternatively, subscribers that are broker-dealers would be able to disseminate the NYSE Agg Lite data feed for display usage to an unlimited number of professional users and non-professional users for a monthly fee of $25,000, or $22,500 if they contract for twelve months of service in advance. The proposed enterprise license would result in lower fees for subscribers able to reach the largest audience of investors, including retail investors. Discounts for broader dissemination of market data information have routinely been adopted by exchanges and permitted by the Commission as equitable allocations of reasonable dues, fees and charges.[39]

Non-Display Use Fees.[40] Non-display data can be used by data recipients for a wide variety of uses, including proprietary and agency trading and smart order routing, as well as by data recipients that operate order matching and execution platforms. Non-display data also can be used for a variety of non-trading purposes that indirectly support trading, such as risk management and compliance. Although some of these non-trading uses do not directly generate revenues, they can nonetheless substantially reduce a recipient's costs by automating such functions so that they can be carried out in a more efficient and accurate manner and reduce errors and labor costs, thereby benefiting recipients. The Exchange believes that charging for non-trading uses is reasonable because data recipients can derive substantial benefit from such uses, for example, by automating tasks so that they can be performed more quickly and accurately and less expensively than if they were performed manually.

The Exchange believes that the proposed fees of $4,500 per month for each of Categories 1, 2, and 3 is reasonable. These fees are comparable to non-display use fees generally charged by exchanges. For example, the fees for Non-Display Use of NYSE OpenBook for Categories 1, 2 and 3 is $6,000 per month.[41] The Exchange believes that it is reasonable to cap non-display use fees for Category 3 at $13,500 per month per data recipient, because a higher monthly fee may potentially dissuade subscribers from buying the NYSE Agg Lite data feed.

The proposed Non-Display Use fees for the NYSE Agg Lite data feed are also reasonable because they take into account the usefulness of receiving the data for Non-Display Use on an integrated basis.

Non-Display Use Declaration Late Fee. The Exchange believes that it is reasonable to require annual submissions of the Non-Display Use Declaration so that the Exchange will have current and accurate information about the use of the NYSE Agg Lite data feed and can correctly assess fees for the uses of the NYSE Agg Lite data feed. Requiring annual submissions of such declarations is reasonable because it also allows users to re-assess their own usage each year.

The Exchange believes that it is reasonable to impose a late fee in connection with the submission of the Non-Display Use Declaration. In order to correctly assess fees for the non-display use of the NYSE Agg Lite data feed, the Exchange needs to have current and accurate information about the use of the NYSE Agg Lite data feed. The failure of data recipients to submit the Non-Display Use Declaration on time leads to potentially incorrect billing and administrative burdens,

[35] *See https://cdn.cboe.com/resources/membership/US_Market_Data_Product_Price_List.pdf.*

[36] *Id.*

[37] *See* Fee Schedule.

[38] *See supra,* note 35.

[39] For example, the Commission has permitted pricing discounts for market data under Nasdaq Rules 7023(c) and 7047(b). *See also* Securities Exchange Act Release No. 82182 (November 30, 2017), 82 FR 57627 (December 6, 2017) (SR–NYSE–2017–60) (changing an enterprise fee for NYSE BBO and NYSE Trades).

[40] *See supra,* note 15.

[41] *See* Fee Schedule.

including tracking and obtaining late Non-Display Use Declarations and correcting and following up on payments owed in connection with late Non-Display Use Declarations. The purpose of the late fee is to incent data recipients to submit the Non-Display Use Declaration promptly to avoid the administrative burdens associated with the late submission of Non-Display Use Declarations.

Multiple Data Feed Fee. The Exchange believes that it is reasonable to require data recipients to pay a modest fee for taking a data feed for a market data product in more than two locations. In addition, there are administrative burdens associated with tracking each location at which a data recipient receives the product. The Multiple Data Feed Fee is designed to encourage data recipients to better manage their requests for additional data feeds and to monitor their usage of data feeds. The proposed fee is designed to apply to data feeds received in more than two locations so that each data recipient can have one primary and one backup data location before having to pay a multiple data feed fee.

Three-Month Fee Waiver. The Exchange believes the proposal to waive the Access Fee and the Redistribution Fee for the NYSE Agg Lite data feed to new Redistributors for three calendar months is reasonable because it would enable potential Redistributors to determine whether a particular NYSE market data product is useful to their business models before fully committing to expend development and implementation costs related to the receipt of that product, and is intended to encourage increased use of the Exchange's market data products by defraying some of the development and implementation costs Redistributors would ordinarily have to expend before using a product. The proposed fee waiver would also allow Redistributors to become familiar with the feed and determine whether it suits their needs without incurring fees. Making a new market data product available without charging a fee for three months is consistent with offerings of other exchanges. For example, BZX offers subscribers of BZX Summary Depth a three-month credit for external distribution, which is akin to the three-month fee waiver proposed by the Exchange.[42]

For all of the foregoing reasons, the Exchange believes that the proposed fees for the NYSE Agg Lite data feed are reasonable.

The Proposed Fees Are Equitably Allocated

The Exchange believes the proposed fees for the NYSE Agg Lite data feed are allocated fairly and equitably among the various categories of users of the feed, and any differences among categories of users are justified.

Overall. The Exchange believes that the proposed fees are equitably allocated because they will apply to all data recipients that choose to subscribe to the NYSE Agg Lite data feed. Any subscriber or vendor that chooses to subscribe to the NYSE Agg Lite data feed is subject to the same Fee Schedule, regardless of what type of business they operate or the use they plan to make of the data feed. Subscribers and vendors are not required to purchase the NYSE Agg Lite data feed and may choose to receive the data on the NYSE Agg Lite data feed regardless of what type of business they operate or the use they plan to make of the data feed.

Access Fee. The Exchange believes the proposed monthly Access Fee of $3,000 for the NYSE Agg Lite data feed is equitably allocated because it would be charged on an equal basis to all data recipients that receive a data feed of the NYSE Agg Lite data feed, regardless of what type of business they operate or the use they plan to make of the data feed.

User Fees. The Exchange believes that the fee structure differentiating Professional User fees ($35 per month per user) from Non-Professional User fees ($6 per month per user) for display device access to the NYSE Agg Lite data feed is equitable. This structure has long been used by the Exchange to reduce the price of data to Non-Professional Users and make it more broadly available.[43] Offering the NYSE Agg Lite data feed to Non-Professional Users with the same data as is available to Professional Users results in greater equity among data recipients. These user fees would be charged uniformly to all display devices that have access to the NYSE Agg Lite data feed.

Redistribution Fees. The Exchange believes the proposed monthly fee of $250 for redistributing the NYSE Agg Lite data feed is equitably allocated because it would be charged on an equal basis to those Redistributors that choose to redistribute the feed.

Enterprise Fees. The Exchange believes the proposed enterprise license is equitably allocated because it would be available on an equal basis to all subscribers that are broker-dealers, each of whom would benefit from reduced exchange fees and from lower administrative costs. Moreover, the specific feature of the proposed enterprise license that will allow subscribers to lower fees by subscribing to a twelve-month contract is also an equitable allocation because all subscribers will have the same option of choosing between the stability of a fixed, lower rate, and the more flexible option of maintaining the ability to change market data products after a month of service. Subscribers will be free to move from the monthly to the annual rate at any time, or from annual to a monthly fee, with notice, at the expiration of the twelve-month period.

Non-Display Use Fees. The Exchange believes the proposed Non-Display Use fees are equitably allocated because they would require subscribers to pay fees only for the uses they actually make of the data. As noted above, non-display data can be used by data recipients for a wide variety of purposes (including trading, risk management, and compliance) as well as purposes that reduce the recipient's costs by automating certain functions. The Exchange believes that it is equitable to charge non-display data subscribers a $4,500 fee for each category of use they make of such data—namely, using the data on their own behalf (Category 1), on behalf of their clients (Category 2), and to internally match buy and sell orders within an organization (Category 3)—because this fee structure results in subscribers with greater uses of the data paying higher fees, and subscribers with fewer uses of the data paying lower fees. This segmented fee structure is also equitable because no subscriber of non-display data would be charged a fee for a category of use in which it did not actually engage.

The Exchange believes that it is equitable to cap non-display use fees for Category 3 at $13,500 per month per data recipient, because a higher monthly fee may potentially dissuade subscribers from buying the NYSE Agg Lite data feed.

Non-Display Use Declaration Late Fee. The Exchange believes that the proposed fee of $1,000 per month for a late Non-Display Use Declaration is equitably allocated because it applies to

[42] *See e.g.,* Securities Exchange Act Release No. 94432 (March 16, 2022), 87 FR 16277 (March 22, 2022) (SR–CboeBZX–2022–015) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Applicable to Various Market Data Products).

[43] *See, e.g.,* Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR–NYSE–2008–131) (establishing the $15 Non-Professional User Fee (Per User) for NYSE OpenBook); Securities Exchange Act Release No. 20002, File No. S7–433 (July 22, 1983), 48 FR 34552 (July 29, 1983) (establishing Non-Professional fees for CTA data); NASDAQ BX Equity 7 Pricing Schedule, Section 123.

any data recipient that pays an Access Fee for the NYSE Agg Lite data feed but has failed to complete and submit a Non-Display Use Declaration. In addition, the Exchange believes that it is equitable to charge a late fee to subscribers who fail to timely submit their Non-Display Use Declarations because their failure to do so leads to potentially incorrect billing and administrative burdens on the part of the Exchange. The Exchange believes it is equitable to defray these administrative costs by imposing a late fee only on subscribers' whose declarations were late, as opposed to all subscribers.

Multiple Data Feed Fee. The Exchange believes that the $200 per month per location fee to data recipients taking the NYSE Agg Lite data feed in more than two locations is equitable because it would apply to all such customers, regardless of what type of business they operate or the use they make of the data feed. In addition, the Exchange believes that it is equitable to charge a fee to subscribers for taking a data feed in more than two locations because there are administrative burdens on the part of the Exchange associated with tracking each location at which a data recipient receives the product. The Exchange believes that it is equitable for it to defray these administrative costs by imposing a modest fee only on subscribers who seek to take the feed in more than two locations, as opposed to all subscribers.

Three-Month Fee Waiver. The Exchange believes the proposal to waive the Access Fee and the Redistribution Fee for the NYSE Agg Lite data feed to new Redistributors for three calendar months is equitable because it would apply to any first-time Redistributor, regardless of the use they plan to make of the feed. As proposed, any first-time Redistributor of the NYSE Agg Lite data feed would not be charged the Access Fee and the Redistribution Fee for three calendar months. The Exchange believes it is equitable to restrict the availability of this three-month fee waiver to Redistributors that have not previously subscribed to and redistributed the NYSE Agg Lite data feed, since customers who are current or previous subscribers of the feed are already familiar with it and are able to determine whether it suits their needs.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the NYSE Agg Lite data feed are equitably allocated.

The Proposed Fees Are Not Unfairly Discriminatory

The Exchange believes the proposed fees for the NYSE Agg Lite data feed are not unfairly discriminatory because any differences in the application of the fees are based on meaningful distinctions between customers, and those meaningful distinctions are not unfairly discriminatory between customers.

Overall. The Exchange believes that the proposed fees are not unfairly discriminatory because they would apply to all data recipients that choose to subscribe to the NYSE Agg Lite data feed. Any subscriber, including Redistributor, that chooses to subscribe to the NYSE Agg Lite data feed is subject to the same Fee Schedule, regardless of what type of business they operate or the use they plan to make of the data feed. Subscribers, including Redistributors, may choose to receive the data on the NYSE Agg Lite data feed regardless of what type of business they operate or the use they plan to make of the data feed.

Access Fee. The Exchange believes the proposed monthly Access Fee of $3,000 for the NYSE Agg Lite data feed is not unfairly discriminatory because it would be charged on an equal basis to all data recipients that receive a data feed of the NYSE Agg Lite, regardless of what type of business they operate or the use they plan to make of the data feed.

User Fees. The Exchange believes that the fee structure differentiating Professional User fees ($35 per month per user) from Non-Professional User fees ($6 per month per user) for display device access to the NYSE Agg Lite data feed is not unfairly discriminatory. This structure has long been used by the Exchange to reduce the price of data to Non-Professional Users and make it more broadly available.[44] Offering the NYSE Agg Lite data feed to Non-Professional Users with the same data as is available to Professional Users results in greater equity among data recipients. These user fees would be charged uniformly to all display devices that have access to the NYSE Agg Lite data feed.

Redistribution Fees. The Exchange believes the proposed monthly fee of $250 for redistributing the NYSE Agg Lite data feed is not unfairly discriminatory because it would be charged on an equal basis to those Redistributors that choose to redistribute the feed.

Enterprise Fees. The Exchange believes the proposed enterprise license will not unfairly discriminate between customers, issuers, brokers or dealers. The Act does not prohibit all distinctions among customers, but only discrimination that is unfair, and it is not unfair discrimination to charge those subscribers that are able to reach the largest audiences of investors, including retail investors, a lower fee for incremental investors in order to encourage the widespread distribution of market data. This principle has been repeatedly endorsed by the Commission, as evidenced by the approval of enterprise licenses for other market data products.[45] Moreover, the proposed enterprise license will be subject to significant competition, and that competition will ensure that there is no unfair discrimination. Each subscriber will be able to accept or reject the license depending on whether it will or will not lower costs for that particular subscriber, and, if the license is not sufficiently competitive, the Exchange may lose market share. The proposed enterprise license will compete with other enterprise licenses of the Exchange, underlying fee schedules promulgated by the Exchange, and enterprise licenses and fee structures implemented by other exchanges. As such, it is a voluntary product for which market participants can readily find substitutes. Accordingly, the Exchange is constrained from introducing a fee that would be inequitable or unfairly discriminatory.

Non-Display Use Fees.[46] The Exchange believes the proposed Non-Display Use fees are not unfairly discriminatory because they would require subscribers for non-display use to pay fees only for the categories of use they actually make of the data. As noted above, non-display data can be used by data recipients for a wide variety of purposes (including trading, risk management, and compliance) as well as purposes that reduce the recipient's costs by automating certain functions. The Exchange believes that it is not unfairly discriminatory to charge non-display data subscribers a $4,500 per month fee for each category of use they make of such data—namely, using the data on their own behalf (Category 1), on behalf of their clients (Category 2), and to internally match buy and sell

[44] *Id.*

[45] *See e.g.,* Securities Exchange Act Release No. 83751 (July 31, 2018), 83 FR 38428 (August 6, 2018) (SR–NASDAQ–2018–058) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Lower Fees and Administrative Costs for Distributors of Nasdaq Basic, Nasdaq Last Sale, NLS Plus and the Nasdaq Depth-of-Book Products Through a Consolidated Enterprise License).

[46] *See supra,* note 15.

orders within an organization (Category 3)—because this fee structure results in subscribers with greater uses for the data paying higher fees, while subscribers with fewer uses of the data pay lower fees. This segmented fee structure is not unfairly discriminatory because no subscriber of non-display data would be charged a fee for a category of use in which it did not actually engage.

The Exchange believes that it is not unreasonably discriminatory to cap non-display use fees for Category 3 at $13,500 per month per data recipient, because a higher monthly fee may potentially dissuade subscribers from buying the NYSE Agg Lite data feed.

Non-Display Use Declaration Late Fee. The Exchange believes that the proposed fee of $1,000 per month for a late Non-Display Use Declaration is not unfairly discriminatory because it applies to any data recipient that pays an Access Fee for the NYSE Agg Lite data feed but has failed to complete and submit a Non-Display Use Declaration. In addition, the Exchange believes that it is not unfairly discriminatory to charge a late fee to subscribers who fail to timely submit their Non-Display Use Declarations because their failure to do so leads to potentially incorrect billing and administrative burdens on the part of the Exchange. Nor is it unfairly discriminatory for the Exchange to defray these administrative costs by imposing a late fee only on subscribers' whose declarations were late, as opposed to all subscribers.

Multiple Data Feed Fee. The Exchange believes that the $200 per month per location fee to data recipients taking the NYSE Agg Lite data feed in more than two locations is not unfairly discriminatory because it would apply to all such customers, regardless of what type of business they operate or the use they make of the data feed. In addition, the Exchange believes that it is not unfairly discriminatory to charge a fee to subscribers for taking a data feed in more than two locations because there are administrative burdens on the part of the Exchange associated with tracking each location at which a data recipient receives the product. The Exchange believes that it is not unfairly discriminatory for it to defray these administrative costs by imposing a modest fee only on subscribers who seek to take the feed in more than two locations, as opposed to all subscribers.

Three-Month Fee Waiver. The Exchange believes the proposal to waive the Access Fee and the Redistribution Fee for the NYSE Agg Lite data feed to new Redistributors for three months is not unfairly discriminatory because it would apply to any first-time Redistributor, regardless of the use they plan to make of the feed. As proposed, any first-time Redistributor of the NYSE Agg Lite data feed would not be charged the Access Fee and the Redistribution Fee for three calendar months. The Exchange believes it is not unfairly discriminatory to restrict the availability of this three-month fee waiver to Redistributors that have not previously subscribed to the NYSE Agg Lite data feed, since Redistributors who are current or previous subscribers of the feed are already familiar with it and are able to determine whether it suits their needs.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the NYSE Agg Lite data feed are not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed fees will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As noted above, the proposed fees would apply to all subscribers, including Redistributors, of the NYSE Agg Lite data feed, and customers may choose whether to subscribe to the feed at all. The Exchange also believes that the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on competition. As shown above, to the extent that particular proposed fees apply to only a subset of subscribers (*e.g.,* Category 2 fees apply only to those making non-display use on behalf of clients; late fees apply only to customers who fail to timely submit their declarations), those distinctions are not unfairly discriminatory and do not unfairly burden one set of customers over another. To the contrary, by tailoring the proposed fees in this manner, the Exchange believes that it has eliminated the potential burden on competition that might result from unfairly asking subscribers to pay fees for services they did not use, or late fees they did not actually incur.

Intermarket Competition. The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate. In setting the proposed fees, the Exchange is constrained by the availability of substitute partial depth of book market data products and by the fact that if its pricing is unattractive, customers will have their pick of alternative non-latency-sensitive partial depth of book market data products to purchase instead of purchasing the Exchange's products.

Specifically, the Exchange believes that the proposed fees do not impose a burden on competition or on other exchanges that is not necessary or appropriate because of the availability of substitute partial depth of book market data products. As noted above, BZX, BYX, EDGA, and EDGX each offers a proprietary data feed like the NYSE Agg Lite data feed, supplying partial depth of book order data, security status updates, stock summary messages, and the exchange's best bid and offer at any given time, on a real-time basis. Because market data users can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may purchase another market's market data product. These competitive pressures ensure that no one exchange's market data fees can impose an unnecessary burden on competition, and the Exchange's proposed fees do not do so here.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[47] and Rule 19b–4(f)(2) thereunder[48] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[47] 15 U.S.C. 78s(b)(3)(A)(ii).

[48] 17 CFR 240.19b–4.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2024–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSE–2024–71. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSE–2024–71 and should be submitted on or before December 11, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–27023 Filed 11–19–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35385; 812–15571]

Diamond Hill Securitized Credit Fund and Diamond Hill Capital Management, Inc.

November 14, 2024.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c) of the Act for an exemption from rule 23c–3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d-1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end investment companies to issue multiple classes of shares and to impose asset-based distribution and/or service fees and early withdrawal charges.

APPLICANTS: Diamond Hill Securitized Credit Fund and Diamond Hill Capital Management, Inc.

FILING DATES: The application was filed on May 7, 2024, and amended on August 13, 2024.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on December 9, 2024, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: *The Commission: Secretarys-Office@sec.gov.* Applicants: Michael V. Wible, Esq., Thompson Hine LLP, at *Michael.Wible@thompsonhine.com* and Jo Ann Quinif, President, Diamond Hill Securitized Credit Fund, at *jquinif@diamond-hill.com.*

FOR FURTHER INFORMATION CONTACT: Kieran G. Brown, Senior Counsel, or Terri Jordan, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' amended and restated application, dated August 13, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR 3 system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–27014 Filed 11–19–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–139, OMB Control No. 3235–0128]

Submission for OMB Review; Comment Request; Reinstatement With Change: Rule 12f–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in

[49] 17 CFR 200.30–3(a)(12).

Rule 12f–1 (17 CFR 240.12f–1) under the Securities Exchange Act of 1934 (''Act'') (15 U.S.C. 78a *et seq.*).

Rule 12f–1 (''Rule''), originally adopted in 1979 pursuant to Sections 12(f) and 23(a) of the Act, and as further modified in 1995 and 2005, sets forth the requirements for filing an exchange application to reinstate unlisted trading privileges (''UTP'') in a security in which UTP has been suspended by the Commission pursuant to Section 12(f)(2)(A) of the Act. Under Rule 12f–1, an exchange must submit one copy of an application for reinstatement of UTP to the Commission that contains specified information, as set forth in the Rule. The application for reinstatement, pursuant to the Rule, must provide the name of the issuer, the title of the security, the name of each national securities exchange, if any, on which the security is listed or admitted to unlisted trading privileges, whether transaction information concerning the security is reported pursuant to an effective transaction reporting plan contemplated by Rule 601 of Regulation NMS, the date of the Commission's suspension of unlisted trading privileges in the security on the exchange, and any other pertinent information related to whether the reinstatement of UTP in the subject security is consistent with the maintenance of fair and orderly markets and the protection of investors. Rule 12f–1 further requires a national securities exchange seeking to reinstate its ability to extend unlisted trading privileges in a security to indicate that it has provided a copy of such application to the issuer of the security, as well as to any other national securities exchange on which the security is listed or admitted to unlisted trading privileges.

The information required by Rule 12f–1 enables the Commission to make the necessary findings under the Act prior to granting applications to reinstate unlisted trading privileges. This information is also made available to members of the public who may wish to comment upon the applications. Without the Rule, the Commission would be unable to fulfill these statutory responsibilities.

This information collection requirement was previously approved by OMB, but the approval expired on May 31, 2024. Accordingly, the Commission will request a reinstatement of OMB's approval.

There are currently 25 national securities exchanges subject to Rule 12f–1. The burden of complying with Rule 12f–1 arises when a potential respondent seeks to reinstate its ability to extend unlisted trading privileges to any security for which unlisted trading privileges have been suspended by the Commission, pursuant to Section 12(f)(2)(A) of the Act. The staff estimates that each application would require approximately one hour to complete. Thus, each potential respondent would incur on average one burden hour in complying with the Rule.

The Commission staff estimates that there could be as many as 25 responses annually for an aggregate annual hour burden for all respondents of approximately 25 hours (25 responses × 1 hour per response). Each respondent's related internal cost of compliance for Rule 12f–1 would be approximately $242.00 (the cost of one hour of professional work of a paralegal needed to complete the application). The total annual cost of compliance for all potential respondents, therefore, is approximately $6,050 (25 responses × $242.00 per response).

Compliance with Rule 12f–1 is mandatory. Rule 12f–1 does not have a record retention requirement *per se.* However, responses made pursuant to Rule 12f–1 are subject to the recordkeeping requirements of Rules 17a–3 and 17a–4 of the Act. Information received in response to Rule 12f–1 shall not be kept confidential; the information collected is public information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by December 20, 2024 to (i) *www.reginfo.gov/public/do/PRAMain* or *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov,* and (ii) Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Tanya Ruttenberg, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: November 15, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–27118 Filed 11–19–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 101620; File No. SR–NASDAQ–2024–065]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend Equity 4 To Establish Halt Cross Price Protections and Make Other Related Changes

November 14, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on November 6, 2024, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Equity 4 to establish halt cross price protections and make other related changes.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Rules to implement halt cross protections to prevent clearly erroneous executions after the reopening of trading and ensure that securities are priced within reasonable levels from their halted price. The Exchange proposes to introduce price protections to the halt cross process that are similar to the protections currently employed in other auctions the Exchange conducts. In addition, the Exchange proposes to establish a ''Hybrid Closing Cross'' and introduce related price protections, as described below. With the proposed changes, the Exchange's processes would be more harmonized, which the Exchange believes would promote a more consistent experience for members and investors participating in the Exchange's auctions.

To implement the proposed price protections, the Exchange proposes to modify Equity 4 by: (i) adding the proposed halt cross protections to Equity 4, Section 4120,[3] replacing the prior procedures; (ii) adding information about dissemination of Auction Reference Prices and Auction Collars in Rule 4753(a)(3); and (iii) adding Rules for a modified closing cross in Rule 4754(b)(7).

In addition, the Exchange proposes to make a number of changes in Equity 4, including: (i) removing references to the Limit-Up-Limit-Down (''LULD'') Closing Cross in Rule 4702 and Rule 4755; (ii) clarifying how Auction Reference Prices and Auction Collars are disseminated in Rule 4753(a)(3); (iii) clarifying rule language about cancellation of IOC Orders for halted securities in Rule 4753(e); (iv) specifying that the Nasdaq Closing Cross shall include the LULD Closing Cross and the Hybrid Closing Cross in Rule 4754(a)(6); (v) adding ''NOII'' as an alternative defined term for ''Order Imbalance Indicator'' in Rule 4754(a)(7); (vi) adding ''EOII'' as an alternative defined term for ''Early Order Imbalance Indicator'' in Rule 4754(a)(10); (vii) amending language related to handling of late Limit on Close (''LOC'') Orders [4] in Rule 4754(b)(6); and (viii) modifying the priority for orders participating in the LULD Closing Cross in Rule 4754(b)(6).

Background

The Exchange currently offers price protection mechanisms in most of the auctions it conducts during the normal course of trading (including opening/closing auction, market-wide circuit breaker (''MWCB'') halts,[5] and LULD pauses [6]). In February 2023, there was an instance where a stock was halted for pending news and reopened at a price that was significantly away from its current market value due to an erroneous market order. Given such event, the Exchange believes that additional price protections specific to the halt cross process are needed. Implementing these new protections would help to ensure that securities reopen within a reasonable price range after the Exchange halts a security.

The Exchange proposes to implement a new price protection mechanism to the Nasdaq Halt Cross [7] process. In 2017, the Exchange amended its auction process for reopening a Nasdaq listed security following a trading pause initiated pursuant to the LULD Plan.[8] Specifically, the Exchange modified its Rules such that initial Auction Collars following a trading pause are calculated based on the Price Band that triggered the trading pause, and instituted the process for extending the auction and further widening the collars if necessary to accommodate buy or sell pressure outside of the collars then in effect.[9] In 2020, the Exchange amended its auction process for reopening a Nasdaq listed security following a MWCB halt to follow a process similar to the process applied for releasing a security following a trading pause under the LULD Plan.[10] The Exchange believes that these changes have been effective in facilitating a fair and orderly market following trading pauses initiated pursuant to the LULD Plan and following MWCB halts, and proposes to implement similar functionality for certain trading halts.[11] The Exchange believes that the proposed changes would promote price formation and provide a more consistent reopening process for members and investors following such trading halts.

The new price protection mechanism would be similar to what is currently utilized for reopening stocks following a MWCB halt or LULD trading pause, where pre-determined price collars would be built into the halt cross process. As described in more detail below, the Exchange proposes to establish a threshold of 10% below and above a reference price, within which the price of the stock must fall to reopen. If the price falls outside of those collars after an initial 5-minute display-only period, the collars would be widened by the same threshold amount as the initial collars and a subsequent 5-minute display-only period would commence. If the price falls outside of those collars after the second 5-minute display-only period, the collars would be widened by 20% below and above the reference price and a third 5-minute period would commence. This process would continue (at 20%) until the price falls within the set thresholds, after which the auction would execute and the stock would reopen for trading.

Customers would benefit from having the new price collar protections in place as it would ensure that executions received during the halt cross process are filled at prices that reflect the true market for the security. Allowing additional time for improved price discovery could increase market participation, improving liquidity and helping reduce price volatility.[12]

Proposed Changes to Rule 4120 (Limit Up-Limit Down Plan and Trading Halts)

As noted above, the Exchange proposes to introduce price protections to the halt cross process that are similar to the protections used today for reopening stocks following a LULD pause and MWCB halt and would ensure that the reopening price is reasonably related to current market conditions. The Exchange proposes to remove the current procedure for terminating certain trading halts provided in Rule 4120(c)(7) and replace

[3] All of the Rule 4000 series referenced in this filing are within Equity 4.

[4] A ''Limit On Close Order'' or ''LOC Order'' is an Order Type entered with a price that may be executed only in the Nasdaq Closing Cross or the LULD Closing Cross, and only if the price determined by the Nasdaq Closing Cross or the LULD Closing Cross is equal to or better than the price at which the LOC Order was entered. *See* Rule 4702(b)(12).

[5] A market-wide circuit breaker is triggered if the price of the S&P 500 Index declines by a specified amount compared to the closing price for the immediately preceding trading day. *See* Rule 4121.

[6] A LULD pause is a trading pause pursuant to the Plan to Address Extraordinary Market Volatility or ''LULD Plan''. *See https://www.luldplan.com/.*

[7] The ''Nasdaq Halt Cross'' is the process for determining the price at which Eligible Interest shall be executed at the open of trading for a halted security and for executing that Eligible Interest. *See* Rule 4753(a)(4). ''Eligible Interest'' shall mean any quotation or any order that has been entered into the system and designated with a time-in-force that would allow the order to be in force at the time of the Halt Cross. *See* Nasdaq Rule 4753(a)(5).

[8] *See* Securities Exchange Act Release No. 79876 (January 25, 2017), 82 FR 8888 (January 31, 2017) (SR–NASDAQ–2016–131).

[9] *Id.*

[10] *See* Securities Exchange Act Release No. 88383 (March 13, 2020), 85 FR 15819 (March 19, 2020) (SR–NASDAQ–2020–012).

[11] *See infra* note 13. The Exchange also notes that both NYSE Arca, Inc. and Cboe BZX Exchange, Inc. implemented similar processes for resuming trading following non-LULD regulatory halts. *See* Securities Exchange Act Release Nos. 79846 (January 19, 2017), 82 FR 8548 (January 26, 2017) (SR–NYSEArca–2016–130); and 84927 (December 21, 2018), 83 FR 67768 (December 31, 2018) (SRCboeBZX–2018–090).

[12] During 2023, there were 541 halts that would have been subject to the proposed rule if it was in effect at the time. Of those 540 halts, 296 of the securities would have fallen outside of a 10% collar after the first quoting period. Example A on page 8 illustrates the proposed price protections.

with proposed rule language describing the new procedure in proposed Rule 4120(c)(7). The Exchange believes that the imposition of price collars and a mechanism similar to what it currently utilized for reopening a security following a LULD trading pause or a MWCB halt would provide the Exchange with a price protection mechanism that is lacking under the Exchange's current Rules. The current reopening process does not have a mechanism for calculating price collars and a process for widening the collars if necessary to accommodate buy or sell pressure outside of the collars then in effect. The Exchange believes that its proposal would facilitate a fair and orderly market by reducing the potential for significant price disparity in post-auction trading.

Example A: The below is illustrative of the proposed price protections to the halt cross process:

- *1:30p.m.:* assume symbol ABC enters a regulatory halt; the last sale/reference price is $100.00; and auction collars are calculated at $90.00/$110.00;
- *1:35p.m.:* the calculated auction reference price is $114.00; the display only period is extended to 1:40pm; and the new auction collars are $80.00/$120.00;
- *1:40p.m.:* the calculated auction reference price is $122.00; the display only period is extended to 1:45pm; and the new auction collars are $60.00/$140.00;
- *1:45p.m.:* the calculated auction reference price is $132.00; at 1:45:01pm, there is no longer an order imbalance so the halt cross commences and the security is released for trading.

The introductory language in proposed Rule 4120(c)(7) provides that, a trading halt initiated under Rule 4120(a)(1), (4), (5), (6), (9), (10), (11) or (14) [13] shall be terminated when Nasdaq releases the security for trading. It would also provide that, for any such security listed on Nasdaq, prior to terminating the halt, there would be a 5-minute ''Initial Display Only Period'' during which market participants may enter quotations and orders in that security in Nasdaq systems. This is consistent with the process employed for reopening securities following LULD trading pauses.[14] This is also consistent with the process employed for reopening securities following MWCB halts, except that in the case of a MWCB halt, the Initial Display Only Period is 15 minutes in length (as opposed to 5) to coincide with the entire duration of the MWCB halt.[15] In addition, such introductory language is consistent with current rule language, with minor revisions. The minor revisions include referencing a ''halt'' rather than both a ''halt or pause'' for clarification and adding a specific defined term of ''Initial Display Only Period'' for the 5-minute period referenced. The types of halts covered by Rule 4120(c)(7) (*i.e.,* trading halt initiated under Rule 4120(a)(1), (4), (5), (6), (9), (10), (11) or (14)) remain unchanged.

Proposed Rule 4120(c)(7)(A) describes the Exchange's proposed process for establishing the ''Auction Reference Price''. The Auction Reference Price would mean: (a) the Nasdaq last sale price (either round or odd lot); and (b) if there is no Nasdaq last sale price, the prior trading day's Nasdaq Official Closing Price (''NOCP'').[16] The Exchange proposes to use the Nasdaq last sale price [17] (or if none, the NOCP) as this price is reflective of the current market for the halted security. The Exchange proposes to use Nasdaq specific prices rather than market-wide prices, consistent with MWCB, because of the accessibility and controllability of the Exchange data. In rare instances where there is no Nasdaq last sale price or NOCP, Nasdaq's MarketWatch Department (''MarketWatch'') would have discretion to set the Auction Reference Price.[18] The Exchange proposes to set the Auction Reference Price in a manner similar to that which is utilized for MWCB halts, in which the Auction Reference Price is the Nasdaq last sale price or if none, the NOCP.[19] However, the Exchange believes it is important to have a mechanism by which it may set a reference price in rare situations where there is no Nasdaq last sale price or NOCP. Similar to MWCB, the Exchange is not proposing to use the LULD Auction Reference Price, which is based on the Price Band that triggered the trading pause,[20] as the Exchange believes that a different reference is necessary for a reopening process that is unrelated to the LULD mechanism. LULD and halt crosses use distinctly different reference prices in the auction pricing methodology. The reference price in a LULD auction in all cases will be either the pre-calculated upper or lower LULD band value that was last disseminated. In contrast, the reference price of a regulatory halt will use the prevailing last price or designated price in the event there is no last price. The last prevailing price is more representative of the current value of a security, and as such, a better reference price to use for the halt reopening auction methodology.[21]

Proposed Rule 4120(c)(7)(A) also describes the Exchange's proposed process for determining the upper and lower ''Auction Collar'' prices. For securities with an Auction Reference Price of greater than $1, the lower Auction Collar price (which is rounded to the nearest minimum price increment [22]) is derived by subtracting $1 or 10% of the Auction Reference Price, whichever is greater, from the Auction Reference Price. For securities with an Auction Reference Price of $1 or less, the lower Auction Collar price (which is rounded to the nearest minimum price increment) is derived by subtracting $0.50 or 10% of the Auction Reference Price, whichever is greater, from the Auction Reference Price. For securities with an Auction Reference

[13] This covers trading halts related to dissemination of material news for Nasdaq-listed securities (*see* Rule 4120(a)(1)); halts of Nasdaq-listed American Depository Receipts or other Nasdaq-listed securities where underlying securities are halted by foreign markets or regulators for regulatory reasons (*see* Rule 4120(a)(4)); halts related to Exchange requests from issuers relating to material news, the issuer's ability to meet listing qualification requirements, or other information necessary to protect investors and the public interest (*see* Rule 4120(a)(5)); halts related to extraordinary market activity (*see* Rule 4120(a)(6)); halts in certain products where the Intraday Indicative Value or index value is not disseminated as required (*see* Rule 4120(a)(9)); halts in certain products where the net asset value is not being disseminated to all market participants at the same time (*see* Rule 4120(a)(10)); halts related to large price moves for Nasdaq-listed securities not covered by the LULD Plan (*see* Rule 4120(a)(11)), and halts related to reverse stock splits (*see* Rule 4120(a)(14)). In 2023, 98% of these aforementioned halts were news-related halts. The Exchange focuses on these specific trading halts because these halts currently not do have any price protection mechanism in place for the reopening of securities following a halt.

[14] *See* Rule 4120(c)(10).

[15] *See* Rule 4121(d).

[16] If there is no Nasdaq last sale price, the prior trading day's NOCP is preferable for establishing the Auction Reference Price. The NOCP, as opposed to the last sale price on another exchange, serves as the next best reference price as it is derived from the primary market center for the Nasdaq-listed securities.

[17] The Nasdaq last sale price reflects the last sale price of that trading session.

[18] Although the proposal would allow for some discretion to MarketWatch, the Exchange notes that such discretion is limited to setting the Auction Reference Price in these rare instances, which does not determine the ultimate price at which the security will trade. In exercising such limited discretion in these rare instances, MarketWatch would source the best estimation for the Auction Reference Price from an external vendor.

[19] *See* Rule 4121(d)(1)(A).

[20] *See* Rule 4120(c)(10)(A)(i).

[21] Further, LULD bands are published only during regular trading hours 9:30a.m.–4:00p.m. which prevents it from being considered as a refence price as halt auctions can occur at all eligible trading hours 4:00a.m.–8:00p.m.

[22] The term ''minimum price increment'' means $0.01 in the case of a System Security priced at $1 or more per share, and $0.0001 in the case of a System Security priced at less than $1 per share. *See* Equity 1, Section 1(a)(13).

Price of greater than $1, the upper Auction Collar price (which is rounded to the nearest minimum price increment) is derived by adding $1 or 10% of the Auction Reference Price, whichever is greater, to the Auction Reference Price. For securities with an Auction Reference Price of $1 or less, the upper Auction Collar price (which is rounded to the nearest minimum price increment) is derived by adding $0.50 or 10% of the Auction Reference Price, whichever is greater, to the Auction Reference Price. The proposed process for calculating the upper and lower Auction Collars is similar to the process used to calculate MWCB Auction Collars, where initial thresholds are applied on both sides of the Auction Reference Price.[23] In contrast, the initial price collar thresholds used for the LULD mechanism are determined by the direction of the trading that invoked the trading pause and the price of the LULD Band in place at the time the trading pause was triggered.[24] In this case, because there would not be a security-specific pricing direction reason for the halt, the Exchange believes that it is appropriate to apply the initial thresholds on both sides of the Auction Reference Price, as is currently done in the case of a MWCB halt. While the specific price collar thresholds used for the LULD and MWCB mechanisms are 5% of the Auction Reference Price, the proposed rule change would provide price collar thresholds of 10% (and 20% in the event a security enters a third period, as described below) of the Auction Reference Price. These price collar thresholds are appropriate as they balance the need for price protections with the desire to promote efficient price discovery and minimize the length of the interruption from a trading halt. The Exchange believes it is appropriate to set the price collar thresholds at a higher percentage as compared to the price collar thresholds used for the LULD and MWCB mechanisms because halts under the proposal are more likely to have a significant price impact, warranting wider collars to allow for price discovery to happen quicker.[25] While the LULD and MWCB mechanisms provide a price collar threshold of $0.15 for securities with an Auction Reference Price of $3 or less,[26] the Exchange proposes to include minimum threshold amounts for calculating the price collars (*i.e.,* $0.50 for securities with an Auction Reference Price of $1 or less and $1 for securities with an Auction Reference Price of greater than $1) to ensure that the Auction Collars for lower-priced securities are wide enough to allow for reopening and effective price discovery. This approach is reasonable because lower priced stocks can have significant price movement which warrants a greater minimum threshold in order to allow for efficient price discovery and a more timely reopening.

Proposed Rule 4120(c)(7)(B) describes what would happen at the end of the Initial Display Only Period, the circumstances when the Exchange would extend the Display Only Period, and how the Exchange would adjust the Auction Collars for an extension. At the conclusion of the Initial Display Only Period, the security would be released for trading unless, at the end of an Initial Display Only Period, Nasdaq detects an order imbalance [27] in the security. In that case, Nasdaq would extend the Display Only Period for an additional 5-minute period (''Extended Display Only Period''), and the Auction Collar prices would be adjusted as follows: The new lower Auction Collar price is derived by subtracting $1 or 10% of the initial Auction Reference Price, whichever is greater, from the previous lower Auction Collar price for securities with an Auction Reference Price of greater than $1 or $0.50 or 10% of the initial Auction Reference Price, whichever is greater, from the previous lower Auction Collar price for securities with an Auction Reference price of $1 or less. The new upper Auction Collar price is derived by adding $1 or 10% of the initial Auction Reference Price, whichever is greater, to the previous upper Auction Collar price for securities with an Auction Reference Price of greater than $1 or $0.50 or 10% of the initial Auction Reference Price, whichever is greater, to the previous upper Auction Collar price for securities with an Auction Reference price of $1 or less. The proposed process for initiating extensions is similar to the process currently used for extending trading pauses or halts under LULD [28] and MWCB,[29] with a couple differences. First, the proposed minimum thresholds and percentages used to calculate the Auction Collars during the Extended Display Only Period are consistent with that of the Initial Display Only Period and continue to differ from the LULD and MWCB mechanisms in that regard, as discussed above. Second, the proposed process for calculating the upper and lower Auction Collars during the Extended Display Only Period is similar to the process used to calculate Auction Collars during the Initial Display Only Period, where thresholds are applied on both sides of the Auction Reference Price. In contrast, the price collar thresholds used for the LULD and MWCB mechanisms are applied only in the direction that caused extension of the Display Only Period.[30] In this case, the Exchange believes that it is appropriate to continue to apply the thresholds on both sides of the Auction Reference Price to accommodate price swings in either direction and to increase the likelihood of resolving order imbalances.

Proposed Rule 4120(c)(7)(C) explains what would happen at the end of the Extended Display Only Period. At the conclusion of the Extended Display Only Period, the security would be released for trading unless, at the end of the Extended Display Only Period, Nasdaq detects an order imbalance in the security. In that case, Nasdaq would further extend the Display Only Period for an additional 5-minute period (''Third Period''), and the Auction Collar prices would be adjusted as follows: The new lower Auction Collar price is derived by subtracting $1 or 20% of the initial Auction Reference Price, whichever is greater, from the previous lower Auction Collar price for securities with an Auction Reference Price of greater than $1 or $0.50 or 20% of the initial Auction Reference Price, whichever is greater, from the previous lower Auction Collar price for securities with an Auction Reference price of $1 or less. The new upper Auction Collar price is derived by adding $1 or 20% of the initial Auction Reference Price, whichever is greater, to the previous upper Auction Collar price for securities with an Auction Reference Price of greater than $1 or $0.50 or 20% of the initial Auction Reference Price, whichever is greater, to the previous upper Auction Collar price for securities with an Auction Reference price of $1 or less. Nasdaq would release the

[23] *See* Rule 4121(d)(1)(B).

[24] *See* Rule 4120(c)(10)(A)(ii). In the LULD context, the initial price collar thresholds are asymmetrically updated because direction of the order imbalance (buyer/seller imbalances) are known at the time of the pause. In the halt cross context, the direction of the order imbalance (buyer/seller imbalances) is not known at the time of the halt. Accordingly, the initial price collar thresholds need to be applied symmetrically before arriving at the price at which the security will trade.

[25] For example, a news driven halt related to a drug announcement may warrant a significant price movement in a short period of time and a wider collar would allow the stock to reopen in a reasonable period.

[26] *See* Rule 4120(c)(10)(A)(ii); Rule 4121(d)(1)(B).

[27] The definition of an order imbalance is described below and included in proposed Rule 4120(c)(7)(E).

[28] *See* Rule 4120(c)(10)(B).

[29] *See* Rule 4121(d)(2).

[30] *See* Rule 4120(c)(10)(B); Rule 4121(d)(2).

security for trading at the first point [31] there is no order imbalance.[32] The Exchange believes it is appropriate to widen the collars by 20% instead of 10% to the extent a security has not reopened after the Extended Display Only Period because the order imbalance may be indicative that a significant price movement in the security is warranted based on the news announcement (or otherwise). If the security has not been released for trading by the conclusion of the Third Period, Nasdaq will continue to adjust the Auction Collar prices every five minutes in the manner described in this Rule 4120(c)(7)(C) until the security is released for trading. Other than the change in the percentage by which the Exchange will widen the collars, the process in proposed Rule 4120(c)(7)(C) is consistent with that of the LULD and MWCB mechanisms.[33]

Proposed Rule 4120(c)(7)(D) explains that, notwithstanding Rule 4120(c)(7)(A)–(C), a trading halt that exists at or after 3:50 p.m.[34] in a stock shall reopen via a Hybrid Closing Cross pursuant to Rule 4754(b)(7). As described in more detail below, the Hybrid Closing Cross would provide an alternative process for executing closing trades on the Exchange. Proposed Rule 4120(c)(7)(D) is consistent with the LULD mechanism, where a stock reopens via a LULD Closing Cross where a trading pause exists at or after 3:50 p.m.[35]

Proposed Rule 4120(c)(7)(E) explains when an order imbalance exists. Specifically, it provides that, for purposes of Rule 4120(c)(7), upon completion of the cross calculation an order imbalance shall be established as follows: the calculated price at which the security would be released for trading is above (below) the upper (lower) Auction Collar price; or (ii) all market orders would not be executed in the cross. This is the same manner in which an order imbalance is established under the current reopening process for trading pauses and MWCB halts.[36]

Proposed Rule 4120(c)(7)(F) provides that, if the Exchange is unable to reopen trading due to a systems or technology issue, it shall notify the securities information processor immediately. This is consistent with the Exchange's notification process for LULD.[37]

In sum, the proposed changes to Rule 4120(c)(7) would establish a price protection mechanism for the halt cross process for securities halted under the provisions noted above.[38] The proposed price protection mechanism is similar to what is currently utilized for reopening stocks following a LULD trading pause or MWCB halt. Price collars would be built into the halt cross process and if the price falls outside of those collars after an initial 5-minute display only period, the collars would be widened by the same threshold amount as the initial collars and a subsequent 5-minute display only period would commence. If the price falls outside of those collars after the second 5-minute display only period, the collars would be widened by a wider amount and a subsequent, third period would commence. This process would continue until the price falls within the set thresholds, after which the auction would execute and the stock would reopen for trading. Customers would benefit from having the new price collar protections in place as it would ensure that executions received during the halt cross process are filled at prices that reflect the true market for the security. Allowing additional time for improved price discovery could increase market participation, improving liquidity and helping reduce price volatility.

Proposed Changes to Rule 4702 (Order Types)

The Exchange proposes to amend Rule 4702 by deleting references to the LULD Closing Cross from Rule 4702(b)(12) (Limit on Close (LOC) Orders) and Rule 4702(b)(17) (Extended Trading Close (ETC) Orders). The Exchange believes that the LULD Closing Cross [39] as well as the proposed Hybrid Closing Cross [40] should be included in the definition of the Nasdaq Closing Cross because the LULD Closing Cross and the Hybrid Closing Cross are alternative processes for executing closing trades on the Exchange and therefore do not need to be specifically referenced in the Rules where the Nasdaq Closing Cross is already referenced, thereby simplifying the rule language. For clarification, the Exchange also proposes to specify that the Nasdaq Closing Cross includes the LULD Closing Cross and Hybrid Closing Cross in the definition of the Nasdaq Closing Cross in Rule 4754(a)(6), as described below.

Proposed Changes to Rule 4753 (Nasdaq Halt Cross)

First, the Exchange proposes to clarify that Auction Reference Prices and Auction Collars are not included in the Order Imbalance Indicator, but instead are disseminated in a separate message. For purposes of LULD and MWCB, the Rules incorrectly state that the Auction Reference Prices and Auction Collars are included in the Order Imbalance Indicator and the Exchange proposes to correct such inaccuracies by modifying Section (F) and (G) in Rule 4753(a)(3) accordingly.

The Exchange also proposes to add section (H) in Rule 4753(a)(3). This section (H) would provide that, for purposes of a trading halt initiated under Rule 4120(a)(1), (4), (5), (6), (9), (10), (11) or (14), the Exchange will disseminate a separate message with Auction Reference Prices and Auction Collars, as defined in Rule 4120(c)(7)(A).[41] This is consistent with dissemination of Auction Reference Prices and Auction Collars for purposes of LULD pauses and MWCB halts.

Rule 4753(e) currently states that any IOC Order for a halted security that is entered prior to the Nasdaq Closing Cross and for which the halt remains in effect at the commencement of the Nasdaq Closing Cross, shall be cancelled immediately after the Nasdaq Closing Cross. With the introduction of the Hybrid Closing Cross, as described further below, if the quoting period has

[31] The ''first point'' there is no order imbalance would occur after the next NOII message dissemination.

[32] Unlike the Initial Display Only Period and the Extended Display Only Period, the security could be released for trading prior to the end of the Third Period. For example, assume ABC security enters a regulatory halt at 1:30 p.m. The last sale/reference price is $100. The auction collars are $90 and $110. At 1:35 p.m., the calculated price at which the security would be released for trading is $122. The display only period is extended until 1:40. The new auction collars are $80 and $120. At 1:40 p.m., the calculated price at which the security would be release for trading is still $122. The Third Period commences at 1:40 p.m. The new auction collars are $60 and $140. At 1:40:01 p.m., the system detects that there is no longer an Order Imbalance so the Halt Cross commences and the security is released for trading.

[33] *See* Rule 4120(c)(10)(C); Rule 4121(d)(3).

[34] All times referenced in this filing are Eastern Time.

[35] *See* Rule 4120(c)(10)(D).

[36] *See* Rule 4120(c)(10)(E); Rule 4121(d)(4).

[37] *See* Rule 4120(a)(12)(G).

[38] *Supra* note 13.

[39] The LULD Closing Cross is the Exchange's auction process for executing closing trades in Nasdaq-listed securities when a trading pause pursuant to Rule 4120(a)(12) exists at or after 3:50 p.m. and before 4:00 p.m. *See* Rule 4754(b)(6).

[40] As described below, the Exchange proposes to establish the Hybrid Closing Cross in Rule 4754(b)(7). The Hybrid Closing Cross would be the Exchange's auction process for executing closing trades in Nasdaq-listed securities when a trading halt pursuant to Rules 4120(a)(1), (4), (5), (6), (9), (10), (11), or (14) exists at or after 3:50 p.m. and before 4:00 p.m.

[41] Dissemination will take place on Nasdaq's proprietary feed, Nasdaq TotalView-ITCH. As is the case with MWCB halts and to be consistent with current Exchange processes, the Exchange will not send auction information to the SIP, including price collars and the number of extensions. While auction information for LULD pauses is disseminated to the SIP per plan requirements, the Exchange does not disseminate auction information to the SIP for other halts.

commenced at any time prior to 4 p.m. IOC orders for halted securities would execute in the Hybrid Closing Cross. Similarly, IOC orders could also execute in the LULD Closing Cross. Therefore, the Exchange proposes to clarify, in Rule 4753(e), that any IOC Order for a halted security that is entered prior to the Nasdaq Closing Cross and for which the halt remains in effect at the commencement of the Nasdaq Closing Cross, *shall either execute in the Nasdaq Closing Cross or* be cancelled immediately after the Nasdaq Closing Cross.

Proposed Changes to Rule 4754 (Nasdaq Closing Cross)

First, the Exchange proposes to amend the definition of ''Nasdaq Closing Cross'' in Rule 4754(a)(6). As noted above, the Exchange believes that the LULD Closing Cross and Hybrid Closing Cross should be included in the definition of Nasdaq Closing Cross because they are types of closing crosses. The Exchange therefore proposes to clarify that the Nasdaq Closing Cross shall include the LULD Closing Cross and the Hybrid Closing Cross in Rule 4754(a)(6). Such change would allow the Exchange to simplify its rule language and prevent the Exchange from needing to list the LULD Closing Cross and Hybrid Closing Cross where the Nasdaq Closing Cross is referenced in the Rules.

Second, the Exchange proposes to add ''NOII'' as an alternative defined term for ''Order Imbalance Indicator'' in Rule 4754(a)(7). NOII is currently referenced in the Rules and the Exchange proposes to add references to NOII in the proposed rule change; however, NOII is not currently defined in the Rules. The Exchange is not proposing to make any substantive changes to the meaning of NOII or Order Imbalance Indicator. Rather, the Exchange wishes to provide clarity regarding the definition of NOII.

Third, the Exchange proposes to add ''EOII'' as an alternative defined term for ''Early Order Imbalance Indicator'' in Rule 4754(a)(10). EOII is currently referenced in the Rules and the Exchange proposes to add references to EOII in the proposed rule change; however, EOII is not currently defined in the Rules. The Exchange is not proposing to make any substantive changes to the meaning of EOII or Early Order Imbalance Indicator. Rather, the Exchange wishes to provide clarity regarding the definition of EOII.

Fourth, the Exchange proposes to make two changes to Rule 4754(b)(6), which relates to the LULD Closing Cross Following Limit-Up-Limit-Down Trading Pause. In part, Rule 4754(b)(6)(F)(ii) sets forth Rules as to how the Exchange would handle LOC Orders entered between 3:55 p.m. and immediately prior to 3:58 p.m. The Exchange wishes to make a clarifying change to specify that the relevant timeframe is after the NOII immediately following 3:55 p.m. and immediately prior to 3:58 p.m. In other words, instead of stating ''between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET,'' the Exchange proposes to state, ''after the NOII immediately following 3:55 p.m. ET and immediately prior to 3:58 p.m. ET'' to ensure the Rule is precise. In addition, the Exchange wishes to modify in Rule 4754(b)(6)(G) that orders participating in the LULD Closing Cross shall be executed in price/display/time priority rather than just price/time priority as the current rule language states. This modification would be consistent with how the Exchange generally assigns priority with the execution of Displayed Orders and interest before Non-Displayed Orders. Specifically, Rule 4754(b)(3)(B) prescribes that, in the Closing Cross, the Exchange prioritizes as a group the execution of Displayed Orders and interest, with price as the primary priority, and then within each price level, with time as the secondary priority.[42] Accordingly, the Exchange proposes to update the rule to reflect this current behavior, whereby displayed orders are executed ahead of hidden orders. Such change would provide more specificity in the Rule for accuracy.

Lastly, in proposed Rule 4754(b)(7), the Exchange proposes to adopt a modified closing cross (defined as the ''Hybrid Closing Cross'') that the Exchange would conduct for Nasdaq-listed securities when a trading halt pursuant to Rule 4120(a)(1), (4), (5), (6), (9), (10), (11) or (14) exists at or after 3:50 p.m. and before 4:00 p.m.[43] Today, the Exchange has not needed to handle a halt reopening auction at or after 3:50 p.m. and before 4:00 p.m. due to the current policy of MarketWatch not scheduling any reopening of a security past 3:30 p.m. The Exchange in practice does not want to negatively impact the price discovery process because of the possibility of a conflict between a halt cross reopening and the official closing cross in the closing minutes of the trading day. Under the Exchange's halt cross protection proposal, however, and its advent of collars and extensions, it is possible for a stock to be scheduled for reopening well ahead of the 4:00 p.m. close and have its quoting period extended multiple times past 3:50 p.m. due to its reference price falling outside of the established collars. As such, our proposed Hybrid Closing Cross process eliminates the possibility of a conflicting cross and allows the Exchange to ensure that it can establish an efficient price discovery process for the closing price upon the market close at 4:00 p.m. The Hybrid Closing Cross provides an alternative process for executing closing trades on Nasdaq for when certain trading halts[44] exist at or after 3:50 p.m. and before 4:00 p.m. (if the Display Only Period has begun for a halted security). The Exchange believes that the price protections for the LULD Closing Cross have been effective at facilitating price discovery and ensuring that the closing price of a security is reasonably based on current market conditions in the security, and therefore proposes to adopt similar price protections for its Hybrid Closing Cross.

Under the proposal, a halted security would only be eligible to resume trading via the Hybrid Closing Cross after the Display Only Period begins.[45] The Exchange proposes to define ''Auction Reference Price'', ''Eligible Interest'', and ''Imbalance'' in Rule 4754(b)(7)(A) for purposes of Rule 4754(b)(7). ''Auction Reference Price'' would have the same meaning as defined in Rule 4120(c)(7)(A), discussed above. ''Eligible Interest'' would have the same meaning as ''Close Eligible Interest'' in Rule 4754(a),[46] with the addition of any new orders with an eligible underlying Order Type and Attribute, entered during the trading halt. ''Imbalance'' would mean the number of shares of buy or sell Market on Close (''MOC''),[47] LOC Orders, or Eligible Interest that cannot

[42] *See* Rule 4754(b)(3)(B); *see also* Securities Exchange Act Release No. 34–97973 (July 25, 2023), 88 FR 49522 (July 31, 2023) (Notice of Filing and Immediate Effectiveness of File No. SR–NASDAQ–2023–024 to Amend Equity 4, Rules 4752, 4753, and 4754).

[43] In contrast, today, such halts would typically not be scheduled to resume trading during such period, avoiding interference with the closing cross.

[44] *See supra* note 13.

[45] A halted stock that has not entered the Display Only Period at or after 3:50 and before 4:00 p.m. would not participate in the Hybrid Closing Cross and would remain halted.

[46] ''Close Eligible Interest'' means any quotation or any order that may be entered into the system and designated with a time-in-force of SDAY, SGTC, MDAY, MGTC, SHEX, or GTMC. The System will delay processing any full cancellation request for Close Eligible Interest made during the Nasdaq Closing Cross until such time as the Nasdaq Closing Cross concludes, except for securities in a halt or pause. During a halt or pause, the System will process any full or partial cancellation request for Close Eligible Interest made for such halted or paused security during the Nasdaq Closing Cross. *See* Rule 4754(a)(1).

[47] A ''Market On Close Order'' or ''MOC Order'' is an Order Type entered without a price that may be executed only during the Nasdaq Closing Cross. *See* Rule 4702(b)(11).

be matched with other MOC, LOC, or Imbalance Only (''IO'') Order shares or Eligible Interest at a particular price at any given time. These proposed definitions are consistent with the definitions of Eligible Interest and Imbalance used for purposes of the LULD Closing Cross.[48]

In proposed Rule 4754(b)(7)(B), the Exchange proposes to specify the timing of the Hybrid Closing Cross and After Hours Trading, as well as what happens if there is insufficient trading in the System to execute a Hybrid Closing Cross. For trading halts existing at or after 3:50 and before 4:00 p.m., the Hybrid Closing Cross would occur at 4:00 p.m. After Hours Trading would commence after the Hybrid Closing Cross executes. If there is insufficient trading interest in the Nasdaq system to execute a Hybrid Closing Cross, Nasdaq would not conduct a cross in that security and would instead use the last sale on Nasdaq as the NOCP in that security for that trading day. After Hours Trading would commence after Nasdaq publishes the NOCP. Such procedures are consistent with that of the LULD Closing Cross.[49]

Proposed Rule 4754(b)(7)(C) provides information about dissemination of the EOII[50] and NOII[51] and about the price at which the Hybrid Closing Cross would execute. Specifically, Nasdaq proposes to continue disseminating the EOII and the NOII pursuant to Rule 4754(b)(1) until After Hours Trading begins. The Near Clearing Price[52] and Reference Prices contained in the EOII and the NOII, as applicable, would represent the price at which the Hybrid Closing Cross would execute should the cross conclude at that time, bounded by the Threshold Prices (defined below), and the Far Clearing Price[53] would represent the price at which the Hybrid Closing Cross would execute should the cross conclude at that time, if it were not bounded by the Threshold Prices (defined below). Such procedures are similar to that of the LULD Closing Cross.[54]

Proposed Rule 4754(b)(7)(D) would specify that the Hybrid Closing Cross would occur at the price within the threshold prices established pursuant to Rule 4754(b)(7)(E) (''Threshold Prices'') that maximizes the number of shares of Eligible Interest, MOC, LOC, and IO[55] Orders in the Nasdaq Market Center to be executed. If more than one price exists, the Hybrid Closing Cross would occur at the price within the Threshold Prices that minimizes any Imbalance. If more than one price still exists, the Hybrid Closing Cross would occur at the entered price[56] within the Threshold Prices at which shares will remain unexecuted in the cross. If there is no price within the Threshold Prices that satisfies the above conditions, then the Hybrid Closing Cross would occur at: (a) if an Imbalance exists, a price equal to the upper (lower) Threshold Price for a buy (sell) Imbalance; or (b) if no Imbalance exists, a price equal to the Auction Reference Price. The proposed tiebreakers in Rule 4754(b)(7)(D) are consistent with the tiebreakers used for determining the LULD Closing Cross price with one exception.[57] Specifically, if there is no price within the Threshold Prices that satisfies the conditions mentioned above and no Imbalance exists, the Hybrid Closing Cross would occur at a price equal to the Auction Reference Price[58] whereas the LULD Closing Cross occurs at a price that minimizes the distance from the last published Upper Band (Lower Band) for a Limit Up (Limit Down) Trading Pause.[59] Such difference reflects the need for a price that is unrelated to the LULD mechanism in the case of the Hybrid Closing Cross given there would not be a security-specific pricing direction reason for the halt (or LULD Bands).

The Exchange proposes to introduce price protections to the Hybrid Closing Cross that are similar to the protections used today for the LULD Closing Cross and will ensure that the Hybrid Closing Cross price is reasonably related to current market conditions. Proposed Rule 4754(b)(7)(E) would describe the Threshold Prices within which the Hybrid Closing Cross price must fall. The upper (lower) Threshold Price would be established by adding (subtracting) $1 or a certain percentage of the initial Auction Reference Price, whichever is greater, to the upper (or from the lower) Auction Collar price that was last disseminated pursuant to 4120(c)(7)(A)(ii) for securities with an Auction Reference Price of greater than $1. The upper (lower) Threshold Price would be established by adding (subtracting) $0.50 or a certain percentage of the initial Auction Reference Price, whichever is greater, to the upper (or from the lower) Auction Collar price that was last disseminated pursuant to 4120(c)(7)(A)(ii) for securities with an Auction Reference price of $1 or less. Nasdaq management would set and modify the thresholds from time to time upon prior notice to market participants. This is similar to the discretion provided to Nasdaq management in connection with the opening cross, closing cross, and LULD Closing Cross, where Nasdaq management has discretion to set and modify thresholds used in determining the Benchmark Prices.[60] Although the proposed price protections are similar in nature to those used for the LULD Closing Cross, the process for calculating the Benchmark Prices for the LULD Closing Cross is distinct because it involves widening the Auction Collar (or Band) on only one side,[61] while the proposed process would widen the Auction Reference Price on both sides for the Hybrid Closing Cross. In this case, because there would not be a security-specific pricing direction reason for the halt, the Exchange believes that it is appropriate to apply the thresholds on both sides of the Auction Reference Price.

Proposed Rule 4754(b)(7)(F) sets forth the orders that would be eligible to participate in the Hybrid Closing Cross, including all orders entered into the system and placed on the continuous book prior to the trading halt. Such orders may be modified or cancelled up until the time of the Hybrid Closing Cross. During the halt and prior to 4:00 p.m., new orders may be entered, modified, and cancelled and may participate in the Hybrid Closing Cross. MOC, LOC and IO Orders may be entered, modified, and cancelled pursuant to Rules 4702(b)(11), 4702(b)(12), and 4702(b)(13).[62] If the security entered a trading halt prior and up to 3:50 p.m., the System would not accept late LOC Orders.[63] For purposes

[48] *See* Rule 4754(b)(6)(A).

[49] *See* Rule 4754(b)(6)(B).

[50] *See* Rule 4754(a)(10).

[51] *See* Rule 4754(a)(7).

[52] *See* Rule 4754(a)(7)(E)(ii).

[53] *See* Rule 4754(a)(7)(E)(i).

[54] *See* Rule 4754(b)(6)(C).

[55] An ''Imbalance Only Order'' or ''IO Order'' is an Order entered with a price that may be executed only in the Nasdaq Closing Cross and only against MOC Orders or LOC Orders. *See* Rule 4702(b)(13).

[56] The ''entered price'' refers to the price of the cross eligible order interest at which shares would remain unexecuted in the Hybrid Closing Cross.

[57] *See* Rule 4754(b)(6)(D).

[58] *See* Rule 4754(b)(7)(A)(i).

[59] *See* Rule 4754(b)(6)(D)(iv)(b).

[60] *See* Rule 4752(d)(2)(E)(Opening Cross); Rule 4754(b)(2)(E)(Closing Cross); Rule 4754(b)(6)(E)(LULD Closing Cross).

[61] Rule 4754(b)(6)(E)(LULD Closing Cross).

[62] Though other order types are also applicable, the Exchange calls out MOC, LOC and IO Orders to make it clear that, for these order types, there may be exceptions to the general rule that ''During the halt and prior to 4:00 p.m., new orders may be entered, modified, and cancelled and may participate in the Hybrid Closing Cross.'' As such, the Exchange proposes to make it clear that Rules 4702(b)(11), 4702(b)(12), and 4702(b)(13) prevail.

[63] The System would not accept late LOC orders in this scenario because if a security entered a trading halt prior and up to 3:50 p.m. ET, there would be no relevant reference prices, upon which such orders depend.

of Hybrid Closing Cross price selection, buy (sell) IO orders are re-priced to one minimum price increment below (above) the initial Auction Reference Price. Such rules are consistent with the LULD mechanism,[64] except that the proposed rules do not include certain inapplicable language from the LULD Closing Cross processes.[65]

Proposed Rule 4754(b)(7)(G) provides that orders participating in the Hybrid Closing Cross would be executed in price/display/time priority order and for purposes of determining priority, eligible IO orders would be priced to the closing price and executed in time priority with other orders at that price. This clarification would be consistent with how the Exchange generally assigns priority with the execution of Displayed Orders and interest before Non-Displayed Orders. In addition, Proposed Rule 4754(b)(7)(G) provides that any order not executed in the Hybrid Closing Cross would be processed according to the entering firm's instructions. This is consistent with how orders execute in the LULD Closing Cross.[66]

Finally, the Exchange would renumber current Rule 4754(b)(7) as Rule 4754(b)(8) and update a related reference in such Rule.

Proposed Changes to Rule 4755 (Extended Trading Close)

Similar to the revisions made to Rule 4702 (Order Types), the Exchange proposes to delete references to the LULD Closing Cross from Rule 4755 because the Exchange proposes to include the LULD Closing Cross and the Hybrid Closing Cross in the definition of the Nasdaq Closing Cross, thereby making the specific references to the LULD Closing Cross in Rule 4755 unnecessary.

Implementation

The Exchange will issue an Equities Trader Alert not less than 7 days prior to implementing the proposed changes.

On February 22, 2022, the Exchange submitted a proposal to amend its Rules related to halts (''Halts Proposal'') for the purpose of implementing UTP Plan amendments and establishing common criteria and procedures for halting and resuming trading in equity securities in the event of regulatory or operational issues.[67] The Halts Proposal was approved on June 8, 2022.[68] The Exchange intends to implement the Halts Proposal in conjunction with other SROs. Because the Exchange continues to await an industry-wide implementation and wishes to implement the proposed enhancements to its halt cross process in the meantime, the Exchange intends to file a proposed rule change in the future in order to incorporate the changes herein with those changes in the Halts Proposal. As such, the proposed rule changes described herein reflect changes to the Exchange's currently operative rule language.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[69] in general, and furthers the objectives of Section 6(b)(5) of the Act,[70] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the proposed rule change is consistent with the Act because it would amend the halt auction process following certain trading halts[71] to be more closely aligned with the process currently implemented for halt auctions following a trading pause under the LULD Plan and the process for halt auctions following a MWCB halt. The current reopening process following a trading pause and following a MWCB halt have been generally successful in facilitating a fair and orderly process for reopening securities. The Exchange has therefore decided to propose a similar process for halt auctions following other types of halts, as specified above. The Exchange believes that its proposal would benefit investors by facilitating price discovery and promoting more consistency in how the Exchange conducts the reopening process following trading halts and pauses. While auctions cannot prevent price volatility, auctions should facilitate ongoing trading and afford market participants with ample time to participate in the auction price discovery process. Accordingly, this proposal balances transparency and timeliness to ensure efficient price discovery. Furthermore, because there are no price protection mechanisms specific to the halt cross process today, the Exchange believes that there is little risk[72] in adopting the proposal.

While the proposed reopening process would largely follow the reopening process in place today for trading pauses under the LULD Plan and/or MWCB halts, there would be several differences. These differences are primarily designed to ensure that suitable Auction Collars are utilized for the reopening process. The Exchange proposes to use the Nasdaq last sale price (or if none, the NOCP) as the Auction Reference Price, similar to the Auction Reference Price under a MWCB halt.[73] However, the Exchange also proposes to provide MarketWatch authority to set an Auction Reference Price in rare situations where there is no Nasdaq last sale price or NOCP.[74] In addition, the Exchange believes that it is appropriate to calculate both upper and lower Auction Collars that are a specified percentage or dollar amount from the reference price because the halts covered in the proposal do not involve security specific buy or sell pressure. With extensions, the Exchange also believes that it is appropriate to widen the collars on both sides to accommodate price swings in either direction and to increase the likelihood of resolving order imbalances. The proposal would utilize price collar thresholds of 10% (and 20% after the first two display only periods) of the Auction Reference Price, as compared to price collar thresholds of 5% of the Auction Reference Price used for the LULD and MWCB mechanisms, to ensure that the parameters are appropriately set to ensure securities are priced within a reasonable range of their halted price but are also not so restrictive as to prevent effective price discovery. These price collar thresholds are appropriate as they balance the need for price protections with the desire to promote efficient price discovery and minimize the length of the interruption from a trading halt. Finally, the Exchange proposes to include minimum threshold amounts for calculating the price collars (*i.e.,* $0.50 for securities with an Auction Reference Price of $1 or less and $1 for securities with an Auction Reference Price of greater than $1) to ensure that the Auction Collars

[64] *See* Rule 4754(b)(6)(F).

[65] Trading halts subject to the Hybrid Closing Cross would not be entered between 3:50 and 4 p.m. and therefore certain procedures included in the LULD Closing Cross Rules are inapplicable to the Hybrid Closing Cross. *See, e.g.,* Rule 4754(b)(6)(F)(ii)(b)–(c).

[66] *See* Rule 4754(b)(6)(G).

[67] *See* Securities Exchange Act Release No. 94370 (March 7, 2022), 87 FR 14071 (March 11, 2022). Nasdaq filed an amendment to the proposal on April 29, 2022. *See* Securities Exchange Act Release No. 94838 (May 3, 2022), 87 FR 27683 (May 9, 2022).

[68] *See* Securities Exchange Act Release No. 95069 (June 8, 2022), 87 FR 36018 (June 14, 2022).

[69] 15 U.S.C. 78f(b).

[70] 15 U.S.C. 78f(b)(5).

[71] *See supra* note 13.

[72] There is a risk of a delayed reopening if the price of the halted security is fluctuating.

[73] *Supra* note 16.

[74] *Supra* note 18.

for lower-priced securities are wide enough to allow for reopening and effective price discovery. This approach is reasonable because lower priced stocks can have significant price movement which warrants a greater minimum threshold in order to allow for efficient price discovery and a more timely reopening.

Otherwise, the proposed reopening process is consistent with the current LULD and/or MWCB reopening process. Similar to the current LULD and MWCB reopening process, the Exchange also believes that the proposed process is consistent with the protection of investors and the public interest because they are designed to facilitate price discovery by ensuring that all market order interest could be satisfied in the auction process. Furthermore, the Exchange believes that the standardized procedures to extend halt auctions an additional five minutes are appropriate because this would provide additional time to attract offsetting liquidity. If at the end of such extension, market orders still cannot be satisfied within the applicable collars, or if the reopening price would be outside of the applicable collars, the Exchange would extend the halt auction process an additional five minutes. The Exchange believes that extending the auction in these circumstances would protect investors and the public interest by reducing the potential for significant price disparity in post-auction trading.

The Exchange also believes that its proposal to establish a Hybrid Closing Cross and implement price protections for the Hybrid Closing Cross that are similar to the protections used today for the LULD Closing Cross would promote just and equitable principles of trade. For purposes of the LULD Closing Cross, the Exchange currently calculates and applies a price threshold to a benchmark value that, when applied to an individual security, determines the price threshold range within which the security must execute in the LULD Closing Cross. The Exchange believes that this mechanism has been effective in facilitating a fair and orderly price discovery process at the close and ensuring that the cross price derived does not exceed a price reasonably tied to the prevailing market at the time. The Exchange has therefore determined to adopt a Hybrid Closing Cross and apply similar protections to such Hybrid Closing Cross. The Exchange believes that its proposal would facilitate a fair and orderly close. Additionally, the Exchange believes that the proposed rule change would benefit investors by harmonizing the Exchange's LULD and Hybrid Closing Cross processes, thereby promoting a more consistent experience for members and investors and reducing any potential confusion regarding Nasdaq's closing processes.

While the proposed price protections for the Hybrid Closing Cross will largely follow the current implementation of the protections in place today for the LULD Closing Cross, there are certain differences. The differences are designed to account for inherent differences between LULD pauses and other trading halts and ensure that the proposed price protections are reasonably based on market conditions. One of the proposed tiebreakers in Rule 4754(b)(7)(D) references the Auction Reference Price whereas the LULD Closing Cross rule instead refers to a price that minimizes the distance from the last published Upper Band (Lower Band) for a Limit Up (Limit Down) Trading Pause. Such difference reflects the need for a price that is unrelated to the LULD mechanism in the case of the Hybrid Closing Cross given there would not be a security-specific pricing direction reason for the halt (or LULD Bands). Similarly, the process for calculating the Benchmark Prices for the LULD Closing Cross is distinct because it involves widening the Auction Collar (or Band) on only one side, while the proposed process would widen the Auction Reference Price on both sides for the Hybrid Closing Cross. In this case, because there would not be a security-specific pricing direction reason for the halt, the Exchange believes that it is appropriate to apply the thresholds on both sides of the Auction Reference Price. Finally, certain language from the LULD Closing Cross is omitted where it is inapplicable to the Hybrid Closing Cross.[75]

Finally, the Exchange also believes it is appropriate to make clarifying changes in Equity 4 to remove references to the LULD Closing Cross in Rule 4702 and Rule 4755, clarify how Auction Reference Prices and Auction Collars are disseminated in Rule 4753(a)(3), add an exception regarding cancellation of IOC Orders for halted securities in Rule 4753(e), specify that the Nasdaq Closing Cross shall include the LULD Closing Cross and the Hybrid Closing Cross in Rule 4754(a)(6), add ''NOII'' as an alternative defined term for ''Order Imbalance Indicator'' in Rule 4754(a)(7), add ''EOII'' as an alternative defined term for ''Early Order Imbalance Indicator'' in Rule 4754(a)(10), amend language related to handling of late LOC Orders in Rule 4754(b)(6), and modify the priority for orders participating in the LULD Closing Cross in Rule 4754(b)(6). The proposed changes would increase clarity and transparency in the Rules, consistent with the public interest and the protection of investors.

[75] *See supra* note 65.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change is not designed to address any competitive issues, but rather, is designed to provide a measured and transparent process for reopening Nasdaq listed securities after certain trading halts. The proposed rule change is similar to the current reopening process following a trading pause initiated under the LULD Plan, the process following a MWCB halt, and processes implemented on other exchanges for non-LULD regulatory halts. In addition, the proposed rule change is also designed to establish a Hybrid Closing Cross that aligns with the Exchange's LULD Closing Cross to provide for a transparent auction process for executing member interest at the close and promote a more consistent experience for members and investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NASDAQ–2024–065 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NASDAQ–2024–065. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NASDAQ–2024–065 and should be submitted on or before December 11, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[76]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–27019 Filed 11–19–24; 8:45 am]

BILLING CODE 8011–01–P

[76] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101629; File No. SR–NYSECHX–2024–34]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NYSE Chicago Rule 7.13 To Remove References to the Chair of the Board

November 14, 2024

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 8, 2024, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Chicago Rule 7.13 to remove references to the Chair of the Board. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Chicago Rule 7.13 (Trading Suspensions) to remove references to the Chair of the Board of Directors of the Exchange (''Board'').

Under current Rule 7.13,[4] the Chair of the Board or the chief executive officer of the Exchange (the ''CEO''), or the officer designee of the Chair or the CEO, has the power to suspend trading on any and all securities traded on the Exchange whenever in his or her opinion such suspension would be in the public interest. No such action shall continue longer than two days or as soon thereafter as a quorum of Directors can be assembled, unless the Board approves the continuation of such suspension.

The Exchange believes that it Is advisable to remove the references to the Chair in Rule 7.13 because the Chair has not acted under Rule 7.13 since the rule was adopted and the Exchange does not anticipate that an independent or non-employee Chair will have sufficient involvement in the day-to-day operations of the Exchange to act under the Rule.

Moreover, the proposed changes to Rule 7.13 would make it substantially similar to the rule text governing Trading Suspensions currently in place on the Exchange's affiliate the New York Stock Exchange LLC (''NYSE'') in NYSE Rule 7.13.[5] The proposed changes to Rule 7.13 therefore would harmonize the Exchange's rules with those of its affiliate NYSE and provide for consistent authority to suspend trading across the Exchange and the NYSE.

To effectuate the change, the first sentence of the Rule would be amended as follows (proposed deletions bracketed):

> The [Chair of the Board or the] CEO, or the officer designee of [the Chair or] the CEO, shall have the power to suspend trading in any and all securities traded on the Exchange whenever in his or her opinion such suspension would be in the public interest.

The requirement that no such action continue longer than two days or as soon thereafter as a quorum of Directors can be assembled, unless the Board

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The current text of Rule 7.13 was adopted in 2019 to harmonize the Exchange's rules with those of its affiliates NYSE American LLC, NYSE Arca, Inc., and NYSE National, Inc. *See* Securities and Exchange Act Release No. 85716 (April 25, 2019), 84 FR 18623 (May 1, 2019) (SR–NYSECHX–2019–07) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding New Rules on Hours of Business, Holidays and Trading Halts and Suspensions, and Amendment of Article 20, Rule 1).

[5] The difference is that the NYSE rule uses ''trading on the Exchange'' instead of ''traded on the Exchange.'' *See* Securities and Exchange Act Release No. 101477 (October 30, 2024), 89 FR 87917 (November 5, 2024) (SR–NYSE–2024–58) (Order Approving a Proposed Rule Change to Amend NYSE Rule 7.13).

approves the continuation of such suspension, would remain. No other changes to Rule 7.13 are proposed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(1)[7] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is designed to provide fair procedures for the denial of membership to any person seeking Exchange membership, the barring of any person from becoming associated with a member, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof, consistent with the objectives of Section 6(b)(7)[9] and Section 6(d)(2)[10] of the Act.

The proposed amendment would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Act, thereby furthering the objectives of Section 6(b)(1)[11] of the Act. Amending Rule 7.13 to remove the references to the Chair would contribute to the orderly operation of the Exchange, as it would make Rule 7.13 more accurately reflect current practice, as the Chair has not acted under Rule 7.13 since the rule was adopted. It would also reflect the fact that the Exchange does not anticipate that an independent or non-employee Chair will have sufficient involvement in the day-to-day operations of the Exchange to act under the Rule. At the same time, the Chair would continue to have an oversight role, since the requirement would remain that no suspension of trading continue longer than two days or as soon thereafter as a quorum of Directors can be assembled, unless the Board approves the continuation of such suspension. Given that, the Board—including the Chair—would continue to oversee the length of time any suspension of trading made under the Rule would be in effect.

Because amended Rule 7.13 would more accurately reflect current practice while still giving the Chair an oversight role, the Exchange believes that the proposed change would be beneficial to both investors and the public interest, thereby promoting the maintenance of a fair and orderly market and the protection of investors and the public interest consistent with Section 6(b)(5) of the Act.[12] Moreover, the Exchange believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, protect investors and the public interest because substantially similar authority to suspend trading already exists on the Exchange's affiliate NYSE, and therefore is not novel.

For the same reasons, the Exchange believes that the proposed changes would continue to provide fair procedures for the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange consistent with the objectives of Section 6(b)(7)[13] and Section 6(d)(2)[14] of the Act.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[15] The proposed rule change is not intended to address competitive issues but rather is concerned solely with amending Rule 7.13 so that it more accurately reflects current practice and to make it substantially similar to NYSE Rule 7.13.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and subparagraph (f)(6) of Rule 19b–4 thereunder.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSECHX–2024–34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

[6] 15 U.S.C. 78f(b).
[7] 15 U.S.C. 78f(b)(1).
[8] 15 U.S.C. 78f(b)(5).
[9] 15 U.S.C. 78f(b)(7).
[10] 15 U.S.C. 78f(d)(2).
[11] 15 U.S.C. 78f(b)(1).
[12] 15 U.S.C. 78f(b)(5).
[13] 15 U.S.C. 78f(b)(7).
[14] 15 U.S.C. 78f(d)(2).
[15] 15 U.S.C. 78f(b)(8).
[16] 15 U.S.C. 78s(b)(3)(A).
[17] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

All submissions should refer to file number SR–NYSECHX–2024–34. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSECHX–2024–34 and should be submitted on or before December 11, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–27022 Filed 11–19–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101624; File No. SR–NYSEAMER–2024–71]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend NYSE American Rule 7.13E To Remove References to the Chair of the Board

November 14, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 8, 2024, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE American Rule 7.13E to remove references to the Chair of the Board. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE American Rule 7.13E (Trading Suspensions) to remove references to the Chair of the Board of Directors of the Exchange (''Board'').

Under current Rule 7.13E,[4] the Chair of the Board or the chief executive officer of the Exchange (the ''CEO''), or the officer designee of the Chair or the CEO, has the power to suspend trading on any and all securities traded on the Exchange whenever in his or her opinion such suspension would be in the public interest. No such action shall continue longer than two days or as soon thereafter as a quorum of Directors can be assembled, unless the Board approves the continuation of such suspension.

The Exchange believes that it is advisable to remove the references to the Chair in Rule 7.13E because the Chair has not acted under Rule 7.13E since the rule was adopted and the Exchange does not anticipate that an independent or non-employee Chair will have sufficient involvement in the day-to-day operations of the Exchange to act under the Rule.

Moreover, the proposed changes to Rule 7.13E would make it substantially similar to the rule text governing Trading Suspensions currently in place on the Exchange's affiliate the New York Stock Exchange LLC (''NYSE'') in its Rule 7.13.[5] The proposed changes to Rule 7.13E therefore would harmonize the Exchange's rules with those of its affiliate NYSE and provide for consistent authority to suspend trading across the Exchange and the NYSE.

To effectuate the change, the first sentence of the Rule would be amended as follows (proposed deletions bracketed):

> The [Chair of the Board or the] CEO, or the officer designee of [the Chair or] the CEO, shall have the power to suspend trading in any and all securities traded on the Exchange whenever in his or her opinion such suspension would be in the public interest.

The requirement that no such action continue longer than two days or as soon thereafter as a quorum of Directors can be assembled, unless the Board approves the continuation of such suspension, would remain. No other changes to Rule 7.13E are proposed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(1)[7] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The current text of Rule 7.13E was adopted in 2017 to harmonize the Exchange's rules with those of its affiliate NYSE Arca, Inc. *See* Securities and Exchange Act Release No. 80590 (May 4, 2017), 82 FR 21843 (May 10, 2017) (SR–NYSEMKT–2017–01) (Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Adopt New Equity Trading Rules To Transition Trading on the Exchange From a Floor-Based Market With a Parity Allocation Model to a Fully Automated Market With a Price-Time Priority Model on the Exchange's New Trading Technology Platform, Pillar).

[5] The difference is that the NYSE rule uses ''trading on the Exchange'' instead of ''traded on the Exchange.'' *See* Securities and Exchange Act Release No. 101477 (October 30, 2024), 89 FR 87917 (November 5, 2024) (SR–NYSE–2024–58) (Order Approving a Proposed Rule Change to Amend NYSE Rule 7.13).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(1).

the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is designed to provide fair procedures for the denial of membership to any person seeking Exchange membership, the barring of any person from becoming associated with a member, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof, consistent with the objectives of Section 6(b)(7)[9] and Section 6(d)(2)[10] of the Act.

The proposed amendment would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Act, thereby furthering the objectives of Section 6(b)(1)[11] of the Act. Amending Rule 7.13E to remove the references to the Chair would contribute to the orderly operation of the Exchange, as it would make Rule 7.13E more accurately reflect current practice, as the Chair has not acted under Rule 7.13E since the rule was adopted. It would also reflect the fact that the Exchange does not anticipate that an independent or non-employee Chair will have sufficient involvement in the day-to-day operations of the Exchange to act under the Rule. At the same time, the Chair would continue to have an oversight role, since the requirement would remain that no suspension of trading continue longer than two days or as soon thereafter as a quorum of Directors can be assembled, unless the Board approves the continuation of such suspension. Given that, the Board—including the Chair—would continue to oversee the length of time any suspension of trading made under the Rule would be in effect.

Because amended Rule 7.13E would more accurately reflect current practice while still giving the Chair an oversight role, the Exchange believes that the proposed change would be beneficial to both investors and the public interest, thereby promoting the maintenance of a fair and orderly market and the protection of investors and the public interest consistent with Section 6(b)(5) of the Act.[12] Moreover, the Exchange believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, protect investors and the public interest because substantially similar authority to suspend trading already exists on the Exchange's affiliate NYSE, and therefore is not novel.

For the same reasons, the Exchange believes that the proposed changes would continue to provide fair procedures for the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange consistent with the objectives of Section 6(b)(7)[13] and Section 6(d)(2)[14] of the Act.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[15] The proposed rule change is not intended to address competitive issues but rather is concerned solely with amending Rule 7.13E so that it more accurately reflects current practice and to make it substantially similar to NYSE Rule 7.13.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and subparagraph (f)(6) of Rule 19b–4 thereunder.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEAMER–2024–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEAMER–2024–71. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements

[8] 15 U.S.C. 78f(b)(5).
[9] 15 U.S.C. 78f(b)(7).
[10] 15 U.S.C. 78f(d)(2).
[11] 15 U.S.C. 78f(b)(1).
[12] 15 U.S.C. 78f(b)(5).
[13] 15 U.S.C. 78f(b)(7).
[14] 15 U.S.C. 78f(d)(2).
[15] 15 U.S.C. 78f(b)(8).
[16] 15 U.S.C. 78s(b)(3)(A).
[17] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEAMER–2024–71 and should be submitted on or before December 11, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–27024 Filed 11–19–24; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 20877 and # 20878; ALASKA Disaster Number AK–20008]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Alaska

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alaska (FEMA–4846–DR), dated November 13, 2024.

Incident: Landslides.

DATES: Issued on November 13, 2024.

Incident Period: August 25, 2024.

Physical Loan Application Deadline Date: January 13, 2025.

Economic Injury (EIDL) Loan Application Deadline Date: August 13, 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: Notice is hereby given that as a result of the President's major disaster declaration on November 13, 2024, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Ketchikan Gateway Borough.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 208779 and for economic injury is 208780.

(Catalog of Federal Domestic Assistance Number 59008)

Alejandro Contreras,

Acting Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–27034 Filed 11–19–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board

AGENCY: Small Business Administration.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The U.S. Small Business Administration (SBA) is announcing the date, time, location and agenda for a meeting of the National Small Business Development Center Advisory Board (NSBDCAB). Members will convene as an independent source of advice and recommendations on matters related to the Small Business Development Center Program. The meeting will be held virtually for NSBDCAB Members and the public.

DATES: Thursday, December 12, 2024, from 2 p.m. to 3 p.m. EST.

ADDRESSES: The NSBDCAB meeting will be held virtually via Microsoft Teams. The access link will be provided to members of the public upon request.

FOR FURTHER INFORMATION CONTACT: Rachel Karton, Designated Federal Officer, Office of Small Business Development Centers (OSBDC), SBA, 409 Third Street SW, Washington, DC 20416; *Rachel.newman-karton@sba.gov;* 202–619–1816.

Anyone wishing to submit questions to the NSBDCAB can do so by submitting them via email to *Rachel.newman-karton@sba.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section l0(a) of the Federal Advisory Committee Act (5 U.S.C. appendix 2), the SBA announces a meeting of the National SBDC Advisory Board (NSBDCAB). This NSBDCAB provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers. The purpose of the meeting is to consider recommendations to SBA on matters pertaining to the SBDC Program.

Public Comment

Any member of the public may submit pertinent questions and comments concerning NSBDCAB affairs in advance by November 30, 2024. Individuals may email *Rachel.newman-karton@sba.gov* with subject line—''[Name/Organization] Comment for 12/12/24 Public Meeting.'' The NSBDCAB will respond to a selection of questions or statements with most relevance to the topic of small business enterprise. Please note that public comments are typically shared during the final few minutes of the NSBDCAB meeting.

Advance notice of attendance is required. Those wishing to attend the meeting are encouraged to RSVP, by December 5, 2024, using the contact information above.

This event will be held over Microsoft Teams. For technical assistance, please visit the Microsoft Teams Support Page.

Andrienne Johnson,

Committee Management Officer.

[FR Doc. 2024–27121 Filed 11–19–24; 8:45 am]

BILLING CODE 8026–09–P

[18] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20875 and #20876; WYOMING Disaster Number WY–20011]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Wyoming

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Wyoming (FEMA–4845–DR), dated November 13, 2024. Incident: Wildfires.

DATES: Issued on November 13, 2024.

Incident Period: August 21, 2024, through August 31, 2024.

Physical Loan Application Deadline Date: January 13, 2025.

Economic Injury (EIDL) Loan Application Deadline Date: August 13, 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: Notice is hereby given that as a result of the President's major disaster declaration on November 13, 2024, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Campbell, Johnson.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 208755 and for economic injury is 208760.

(Catalog of Federal Domestic Assistance Number 59008)

Alejandro Contreras,

Acting Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–27025 Filed 11–19–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 20870 and # 20871; PENNSYLVANIA Disaster Number PA–20016]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the Commonwealth of Pennsylvania

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Pennsylvania (FEMA–4815–DR), dated November 8, 2024.

Incident: Tropical Storm Debby.

DATES: Issued on November 14, 2024.

Incident Period: August 9, 2024 through August 10, 2024.

Physical Loan Application Deadline Date: January 7, 2025.

Economic Injury (EIDL) Loan Application Deadline Date: August 8, 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 Commonwealth of Pennsylvania, dated November 8, 2024, is hereby amended to include the following area as adversely affected by the disaster.

Primary County: Union.

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. 2024–27032 Filed 11–19–24; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12581]

Notice of Charter Renewal for the Advisory Committee on Historical Diplomatic Documentation

ACTION: Notice.

SUMMARY: The Advisory Committee on Historical Diplomatic Documentation has renewed its charter for a period of two years.

DATES: The Charter was renewed on October 31, 2024.

FOR FURTHER INFORMATION CONTACT: Questions concerning the Committee, and the renewal of its Charter should be directed to Adam M. Howard, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, 2300 E Street NW, Washington, DC 20372 (Navy Potomac Annex), telephone (202) 955–0214; email *history@state.gov.*

SUPPLEMENTARY INFORMATION: The Committee consists of nine members drawn from among historians, political scientists, archivists, international lawyers, and other social scientists who are distinguished in the field of U.S. foreign relations. This Advisory Committee will continue to make recommendations to the Historian and the Department of State on all aspects of the Department's program to publish the Foreign Relations of the United States series as well as on the Department's responsibility under statute (22 U.S.C. 4351, *et seq.*) to open its 25-year-old and older records for public review at the National Archives and Records Administration.

Adam M. Howard,

Executive Secretary, Office of the Historian, Department of State.

[FR Doc. 2024–27113 Filed 11–19–24; 8:45 am]

BILLING CODE 4710–34–P

DEPARTMENT OF STATE

[Public Notice: 12584]

Advisory Committee on Historical Diplomatic Documentation; Notice of Closed and Open Meetings for 2025

ACTION: Notice.

SUMMARY: The Advisory Committee on Historical Diplomatic Documentation will meet, in open and closed sessions, to discuss matters concerning declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the Foreign Relations series.

DATES: March 10–11, June 9–10, September 8–9, and December 8–9, 2025.

ADDRESSES: Open sessions for the meetings will take place from 10:00 a.m. until noon in SA–4D Conference Room 109, Department of State, 2300 E Street NW, Washington DC, 20372 (Potomac Navy Hill Annex), with a virtual option on March 10, June 9, September 8, and December 8. RSVP and requests for reasonable accommodation for each meeting should be sent as directed below:

- March 10, not later than March 3, 2025.
- June 9, not later than June 2, 2025.
- September 8, not later than September 1, 2025.
- December 8, not later than December 1, 2025.

FOR FURTHER INFORMATION CONTACT: Questions concerning the meeting should be directed to Adam M. Howard, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20372, telephone: (202) 955–0214, email: *history@state.gov.*

SUPPLEMENTARY INFORMATION: Closed Sessions. The following sessions will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463):

- March 10 and 11—afternoon and morning;
- June 9 and 10—afternoon and morning;
- September 8 and 9—afternoon and morning; and
- December 8 and 9—afternoon and morning, respectively.

The agenda calls for discussions of agency declassification decisions concerning the Foreign Relations series and other declassification issues. These are matters properly classified and not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure.

RSVP Instructions. To attend a meeting virtually, please forward your name and email address to Julie Fort, Office of the Historian (*FSIOHRSVP@state.gov*), prior to the applicable date above.

If you intend to attend one of the meetings in person, please note that prior notification and a valid government-issued photo ID (such as driver's license, passport, U.S. Government or military ID) are required for entrance into any Department of State building. Members of the public planning to attend the open meetings in person should RSVP, by the dates indicated above, to Julie Fort, Office of the Historian (*FSIOHRSVP@state.gov*). When responding, please provide date of birth, valid government-issued photo identification number and type (such as driver's license number/state, passport number/country, or U.S. Government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the specified forms of ID, please consult with Julie Fort at *FortJL@state.gov* for acceptable alternative forms of picture identification.

Personal data is requested pursuant to Pub. L. 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Pub. L. 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *https://www.state.gov/wp-content/uploads/2019/05/Security-Records-STATE-36.pdf*, for additional information.

Note that requests for reasonable accommodation received after the dates indicated in this notice will be considered but might not be possible to fulfill.

Adam M. Howard,

Executive Secretary, Office of the Historian, Department of State.

[FR Doc. 2024–27116 Filed 11–19–24; 8:45 am]

BILLING CODE 4710–34–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 290 (Sub-No. 417X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Mingo County, W. Va.

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR part 1152, subpart F—*Exempt Abandonments* to abandon an approximately 3.5-mile rail line (the Alma Branch) extending from milepost AL 0.0 +/- at or near Sprigg, W. Va., to milepost AL 3.5 +/- at or near Vimy, W. Va., in the vicinity of Matewan, Mingo County, W. Va. (the Line).[1] The Line traverses U.S. Postal Service Zip Codes 25661 and 25678.

NSR has certified that: (1) no local freight traffic has moved over the Line during the past two years; (2) any overhead traffic on the Line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government on behalf of such user) regarding cessation of service over the Line is pending with either the Surface Transportation Board (Board) or any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(b) and 1105.8(c) (notice of environmental and historic reports), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[2] this exemption will be effective on December 20, 2024, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues must be filed by November 29,

[1] On November 13, 2024, NSR filed an errata to its verified notice of exemption to correct a discrepancy regarding the mileposts of the Line.

[2] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

2024.[3] Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2) and interim trail use/railbanking requests under 49 CFR 1152.29 must be filed by December 2, 2024.[4] Petitions to reopen and requests for public use conditions under 49 CFR 1152.28 must be filed by December 10, 2024.

All pleadings, referring to Docket No. AB 290 (Sub-No. 417X), 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. In addition, a copy of each pleading must be served on NSR's representative, William A. Mullins, Mullins Law Group PLLC, 2001 L St. NW, Suite 720, Washington, DC 20036.

If the verified notice contains false or misleading information, the exemption is void ab initio.

NSR has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA will issue a Draft Environmental Assessment (Draft EA) by November 25, 2024. The Draft EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0294. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245. Comments on environmental or historic preservation matters must be filed within 15 days after the Draft EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/railbanking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by NSR's filing of a notice of consummation by November 20, 2025, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: November 14, 2024.

By the Board, Valerie O. Quinn, Acting Director, Office of Proceedings.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2024–26975 Filed 11–19–24; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 290 (Sub-No. 412X)]

Norfolk Southern Railway Company—Abandonment Exemption—in the City of Baltimore, MD.

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon its freight rail easement over an approximately one-mile rail line extending from milepost ±UU 0.00 to milepost ±UU 1.00 in the City of Baltimore, Md. (the Line). The Line traverses U.S. Postal Service Zip Codes 21201 and 21211.

According to the verified notice, the Maryland Transit Administration (MTA) owns the Line and currently operates passenger rail transit service over it.[1] NSR states that MTA's passenger services will continue after NSR abandons its easement. NSR therefore asserts that the corridor is not available for alternative public use(s). NSR also states that, based on these unique considerations, it does not intend to negotiate for trail use/railbanking.

NSR has certified that: (1) no local freight traffic has moved over the Line for at least two years; (2) any overhead traffic on the Line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government on behalf of such user) regarding cessation of service over the Line is pending with either the Surface Transportation Board (Board) or any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(b) and 1105.8(c) (notice of environmental and historic reports), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[2] this exemption will be effective on December 20, 2024, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues [3] must be filed by November 29, 2024. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2) and interim trail use/railbanking requests under 49 CFR 1152.29 must be filed by December 2, 2024.[4] Petitions to reopen and requests for public use conditions under 49 CFR 1152.28 must be filed by December 10, 2024.

All pleadings, referring to Docket No. AB 290 (Sub-No. 412X), 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 NSR's representative, William A. Mullins, Mullins Law Group PLLC, 2001 L St. NW, Suite 720, Washington, DC 20036.

If the verified notice contains false or misleading information, the exemption is void ab initio.

NSR has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA will issue a Draft Environmental Assessment (Draft EA) by November 25, 2024. The Draft EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0294. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245. Comments on environmental or historic preservation matters must be

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

[1] The Board previously determined that MTA did not require authorization from the Board's predecessor when MTA acquired the Line in 1990 and that MTA had not become a common carrier on the Line. *See Md. Transit Admin.—Pet. for Declaratory Ord.,* FD 34975, slip op. at 7–8 (STB served Oct. 9, 2007).

[2] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

filed within 15 days after the Draft EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by NSR's filing of a notice of consummation by November 20, 2025, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: November 14, 2024.

By the Board, Valerie O. Quinn, Acting Director, Office of Proceedings.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2024–27068 Filed 11–19–24; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 1240 (Sub-No. 1X)]

Southwest Pennsylvania Railroad Company—Abandonment Exemption—in Fayette County, Pa.

Southwest Pennsylvania Railroad Company (SWP), has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon approximately 1.87 miles of rail line near Uniontown, Fayette County, Pa., extending (1) approximately 0.66 miles from V.S. 874+34 at Redstone Junction near Washington Street to V.S. 839+30 at the north side of Oliver Road, and (2) approximately 1.21 miles from V.S. 1926+00 on the west side of North Gallatin Avenue Extension to V.S. 1989+93 near Coal Lick Run Junction near the North Union Township/City of Uniontown border (the Line). The Line traverses U.S. Postal Service Zip Code 15401.

SWP has certified that: (1) no local traffic has moved over the Line for at least two years; (2) any overhead traffic on the Line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government on behalf of such user) regarding cessation of service over the Line is pending with either the Surface Transportation Board (Board) or any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(b) and 1105.8(c) (notice of environmental and historic reports), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met. As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[1] this exemption will be effective on December 20, 2024, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues must be filed by November 29, 2024.[2] Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2) and interim trail use/railbanking requests under 49 CFR 1152.29 must be filed by December 2, 2024.[3] Petitions to reopen and requests for public use conditions under 49 CFR 1152.28 must be filed by December 10, 2024.

All pleadings, referring to Docket No. AB 1240 (Sub-No. 1X), 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 SWP's representative, Thomas J. Healey, Fletcher & Sippel LLC, 29 N. Wacker Drive, Suite 800, Chicago, IL 60606–3208.

If the verified notice contains false or misleading information, the exemption is void ab initio.

SWP has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA will issue a Draft Environmental Assessment (Draft EA) by November 25, 2024. The Draft EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0294. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245. Comments on environmental or historic preservation matters must be filed within 15 days after the Draft EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/railbanking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), SWP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by SWP's filing of a notice of consummation by November 20, 2025, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: November 14, 2024.

By the Board, Valerie O. Quinn, Acting Director, Office of Proceedings.

Regena Smith-Bernard,

Clearance Clerk.

[FR Doc. 2024–27105 Filed 11–19–24; 8:45 am]

BILLING CODE 4915–01–P

[1] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

SURFACE TRANSPORTATION BOARD

[Docket No. AB 290 (Sub-No. 415X)]

Northern Southern Railway Company—Abandonment Exemption—in Henderson and Polk Counties, NC, and Greenville and Spartanburg Counties, SC

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption pursuant to 49 CFR part 1152, subpart F—Exempt Abandonments to abandon an approximately 31.3-mile rail line extending from approximately milepost W 26.0 +/− to approximately milepost W 57.3 +/− in Henderson and Polk Counties, N.C., and Greenville and Spartanburg Counties, S.C. (the Line). The Line traverses U.S. Postal Service Zip Codes 28773, 28782, 28790, 29322, 29349, and 29356.

NSR has certified that: (1) no local traffic has moved over the Line for at least two years; (2) any overhead traffic on the Line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government on behalf of such user) regarding cessation of service

over the Line is pending with either the Surface Transportation Board (Board) or any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(b) and 1105.8(c) (notice of environmental and historic reports), 49 CFR 1105.12 (newspaper publication),[1] and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[2] this exemption will be effective on December 20, 2024, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues must be filed by November 29, 2024.[3] Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2) and interim trail use/railbanking requests under 49 CFR 1152.29 must be filed by December 2, 2024.[4] Petitions to reopen and requests for public use conditions under 49 CFR 1152.28 must be filed by December 10, 2024.

All pleadings, referring to Docket No. AB 290 (Sub-No. 415X), 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 NSR's representative, William A. Mullins, Mullins Law Group PLLC, 2001 L Street NW, Suite 720, Washington, DC 20036.

If the verified notice contains false or misleading information, the exemption is void ab initio.

NSR has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA will issue a Draft Environmental Assessment (Draft EA) by November 25, 2024. The Draft EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0294. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245. Comments on environmental and historic preservation matters must be filed within 15 days after the Draft EA becomes available to the public.

Environmental, historic preservation, public use, or interim trail use/railbanking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by NSR's filing of a notice of consummation by November 20, 2025, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: November 14, 2024.

By the Board, Valerie O. Quinn, Acting Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2024–27074 Filed 11–19–24; 8:45 am]

BILLING CODE 4915–01–P

[1] On November 13, 2024, NSR filed a corrected version of the certification required by 49 CFR 1105.12.

[2] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

SURFACE TRANSPORTATION BOARD

[Docket No. AB 290 Sub-No. (414X)]

Northern Southern Railway Company—Abandonment Exemption—in Pitt County, NC

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption pursuant to 49 CFR part 1152, subpart F—*Exempt Abandonments* to abandon an approximately one-mile rail line, extending from West 14th Street northward to Dickinson Avenue in Pitt County, N.C. (the Line). The Line contains no mileposts and traverses U.S. Postal Service Zip Code 27834.

NSR has certified that: (1) no local traffic has moved over the Line for at least two years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line is pending with either the Surface Transportation Board (Board) or any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(b) and 1105.8(c) (notice of environmental and historic report), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[1] the exemption will be effective on December 20, 2024, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues must be filed by November 29, 2024.[2] Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2) and interim trail use/railbanking requests under 49 CFR 1152.29 must be filed by December 2, 2024.[3] Petitions to reopen and requests for public use conditions under 49 CFR 1152.28 must be filed by December 10, 2024.

All pleadings, referring to Docket No. AB 290 (Sub-No. 414X), 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 NSR's representative,

[1] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

William A. Mullins, Mullins Law Group PLLC, 2001 L Street NW, Suite 720, Washington, DC 20036.

If the verified notice contains false or misleading information, the exemption is void ab initio.

NSR has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA will issue a Draft Environmental Assessment (Draft EA) by November 25, 2024. The Draft EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0294. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245. Comments on environmental and historic preservation matters must be filed within 15 days after the Draft EA becomes available to the public.

Environmental, historic preservation, public use, or interim trail use/railbanking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by NSR's filing of a notice of consummation by November 20, 2025, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: November 14, 2024.

By the Board, Valerie O. Quinn, Acting Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2024–26974 Filed 11–19–24; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice of Airport Development Aid Program (ADAP) and Airport Improvement Program (AIP) Property Release Hillsboro Airport, Hillsboro, Oregon

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Notice of request to release Airport Development Aid Program and Airport Improvement Program Property.

SUMMARY: Notice is being given that the FAA is considering a request from the Port of Portland, Oregon to waive the ADAP and AIP property requirements and dispose of approximately 15.7 acres of airport property located at Hillsboro Airport, in Hillsboro, Oregon.

DATES: Comments are due within 30 days of the date of the publication of this notice in the **Federal Register**. Emailed comments can be provided to Mr. Tim House, Lead Planner, Seattle Airports District Office, *timothy.a.house@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Tim House, Lead Planner, Seattle Airports District Office, 2200 S 216 St., Des Moines, WA 98198, *timothy.a.house@faa.gov,* (206) 231–4248. Documents reflecting this FAA action may be reviewed at the above locations.

SUPPLEMENTARY INFORMATION: The subject property is located north of the airport and separated from the aeronautical area by Evergreen Road. This release will allow the Port of Portland to sell 15.7 acres. The proceeds generated from the proposed release will be utilized for maintenance and capital improvements that support aeronautical activities. The Port of Portland, Oregon will receive not less than fair market value for the property. It has been determined through study that the subject 15.7 acres will not be needed for aeronautical purposes.

Authority: 49.U.S.C. 47153(c).

Issued in Des Moines, Washington on November 14, 2024.

Manson Wong,

Acting Manager, Seattle Airports District Office.

[FR Doc. 2024–27031 Filed 11–19–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on a Request To Release Surplus Property at the Melbourne Orlando International Airport, Melbourne, FL

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Request for public comment.

SUMMARY: Notice is being given that the FAA is considering a request from the City of Melbourne to release 99.575 (+/−) acres at the Melbourne Orlando International Airport, Melbourne, FL from the conditions, reservations, and restrictions as contained in a Quitclaim Deed agreement between the FAA and the City of Melbourne, dated April 20, 1948. The release of property will allow the City of Melbourne to dispose of the property for non-aeronautical purposes.

DATES: Comments are due on or before December 20, 2024.

ADDRESSES: Documents are available for review at the Melbourne Orlando International Airport, One Airport Terminal Parkway, Melbourne, FL 32901–1864, and the FAA Airports District Office, 8427 SouthPark Circle, Suite 524, Orlando, FL 32819. Written comments on the Sponsor's request must be delivered or mailed to: Marisol Elliott, Community Planner, Orlando Airports District Office, 8427 Southark Circle, Suite 524, Orlando, FL 32819.

FOR FURTHER INFORMATION CONTACT: Marisol Elliott, Community Planner, Orlando Airports District Office, 8427 SouthPark Circle, Suite 524, Orlando, FL 32819, (407) 487–7231.

SUPPLEMENTARY INFORMATION: The property is located along West Nasa Boulevard in Melbourne, FL and is currently used as a long-established mobile home community known as Tropical Haven. The parcel is currently depicted on the approved Airport Layout Plan as a non-aeronautical land use. The property will be released of its federal obligations given the land is no longer required by the City of Melbourne for airport purposes. The property will continue as Tropical Haven and will be sold at the Fair Market Value (FMV) which as been determined to be $44,000,000.00.

Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) requires the FAA to provide an opportunity for public notice and comment prior to the ''waiver'' or ''modification'' of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

Revision Date: August 23, 2022.

Rebecca Henry,

Acting Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 2024–27107 Filed 11–19–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0223]

Parts and Accessories Necessary for Safe Operation; Exemption Renewal for Groendyke Transport, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition; renewal of exemption.

SUMMARY: FMCSA announces its final decision to grant an exemption renewal requested by Groendyke Transport, Inc. (Groendyke) to allow the use of an amber brake-activated pulsating lamp on the rear of its trailers in addition to the steady-burning brake lamps required by the Federal Motor Carrier Safety Regulations (FMCSR). FMCSA concludes that renewing the exemption, subject to the terms and conditions set forth below, is likely to achieve a level of safety equivalent to or greater than the level of safety that would be achieved absent the exemption.

DATES: This renewed exemption is effective April 26, 2024, through April 26, 2029.

FOR FURTHER INFORMATION CONTACT: Mr. David Sutula, Chief, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–9209; *MCPSV@dot.gov.* If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2018-0223/document* and choose the document to review. To view comments, click this notice, then click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b)(2) and 49 CFR 381.300(b) to renew an exemption from the FMCSRs for subsequent periods of up to 5 years if it finds that such exemption would likely maintain a level of safety that is equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)).

III. Background

On June 28, 2024, after review of Groendyke's renewal application, FMCSA published its decision to provisionally grant a 6-month renewal of the exemption effective April 26, 2024, through October 26, 2024, and requested public comment (89 FR 54147). The comment period closed on July 29, 2024. The Agency did not receive any comments in response to the notice.

IV. Exemption Decision

A. Grant of Exemption

As explained in the notice of provisional renewal, FMCSA believes that renewing the exemption to allow the operation of Groendyke's brake-activated pulsating lamps, under the terms and conditions set forth in this exemption renewal decision, will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption. FMCSA further stated in the provisional renewal that if evidence of insufficient safety was not provided, the Agency anticipated granting a full 5-year exemption when the provisional renewal expired. FMCSA has not received any information that would alter the safety analysis from the June 28, 2024, provisional renewal and, accordingly, adopts the analysis and conclusions in this renewal.

FMCSA renews the exemption for 5 years subject to the terms and conditions of this decision. The exemption from the requirements of 49 CFR 393.25(e) is effective April 26, 2024, through April 26, 2029.

B. Applicability of Exemption

During the exemption period, Groendyke may install or continue to use an amber brake-activated pulsating lamp positioned in the upper center of the rear of its trailers in addition to the steady-burning brake lamps required by the FMCSRs.

C. Terms and Conditions

1. *Limitation of Exemption:*

- This exemption applies exclusively to CMVs operated by Groendyke Transport, Inc., and does not extend to any other motor carrier.

2. *Recurring Data Reporting Requirements:*

- Groendyke must provide recurring yearly data submissions to include information on rear-impact crashes and incidents involving a CMV equipped with Groendyke's amber brake-activated pulsating lamps. The first submission is due March 31, 2025, and subsequent submissions are due every 12-months thereafter until the exemption expires or is rescinded.
- The yearly data submissions must be sent via email to FMCSA at *MCPSV@dot.gov.*
- If Groendyke lacks certain categories of information, alternative information may be discussed with FMCSA and submitted if approved.

3. *Data Reporting Requirements for Rear-impact Crashes and Incidents:*

- At the end of each 12-month period, Groendyke must submit a report detailing crash rates, vehicle miles traveled, number and type of CMVs operating under the exemption, crash or incident information including the date of each crash or incident, along with the time, location, and a brief description of the event.
- Groendyke must provide any available information indicating malfunction of, or confusion caused by the use of, Groendyke's amber brake-activated pulsating lamps.

4. *Meetings:*

- Groendyke must meet with FMCSA upon request to answer questions regarding data and information provided under the exemption.

D. Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

E. Termination

FMCSA does not believe that drivers or CMVs covered by the exemption will experience any deterioration of their safety record. The exemption will be rescinded if: (1) Groendyke or its drivers or CMVs fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Vincent G. White,

Deputy Administrator.

[FR Doc. 2024–27091 Filed 11–19–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0066]

Enhanced Carrier Safety Measurement System (SMS)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice; response to public comments.

SUMMARY: FMCSA announces enhancements to the Safety Measurement System (SMS) used to identify motor carriers for safety interventions and addresses comments received in response to FMCSA's **Federal Register** notice titled, ''Revised Carrier Safety Measurement System (SMS).'' These enhancements build on the Agency's efforts to continually improve SMS, which it first implemented in 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Wesley Russell, Compliance Division, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (615) 620–9377, *wesley.russell@dot.gov.* If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

In December 2010, FMCSA implemented SMS to identify high risk motor carriers for investigations (75 FR 18256, Apr. 9, 2010). Section 5305(a) of the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114–94; 129 Stat. 1312; Dec. 4, 2015) requires FMCSA to ensure, at a minimum, that a review is conducted on motor carriers that demonstrate, through performance data, that they are among the highest risk carriers for 4 consecutive months. FMCSA and its State enforcement partners also use SMS to identify and prioritize motor carriers for inspections and less resource-intensive interventions, such as automated warning letters.

SMS also provides motor carriers and other stakeholders with safety performance data, which is updated monthly, through the public website at *https://ai.fmcsa.dot.gov/SMS.* Under section 5223 of the FAST Act, FMCSA removed SMS percentiles and alerts from the public SMS website for motor carriers transporting property. Passenger carrier percentiles and alerts remain publicly available, as well as inspection, investigation, crash, and registration data for all carriers.

On February 15, 2023, FMCSA proposed the following changes to its SMS and announced a 90-day preview and comment period for stakeholders (88 FR 9954):

1. Reorganized and Updated Safety Categories (Now ''Compliance Categories''), Including New Segmentation;
2. Consolidated Violations;
3. Simplified Violation Severity Weights;
4. Proportionate Percentiles Instead of Safety Event Groups;
5. Improved Intervention Thresholds;
6. Greater Focus on Recent Violations; and
7. Updated Utilization Factor.

During the 90-day preview and comment period, motor carriers could log in to the Prioritization Preview [1] to see what their own prioritization results would be under the proposed SMS methodology. The public was able to view what a logged-in carrier would see using example data. In addition, FMCSA held three question-and-answer sessions in March 2023 for the industry and the public, where participants were able to ask questions about the proposed changes and receive real-time responses. The comment period ended on May 16, 2023. Following the comment period, the Agency has continued to make the Prioritization Preview site available to industry and other safety stakeholders, so they have ample time to review and understand the impacts of the enhancements.

II. Summary of Public Comments and Response

FMCSA received 176 comments in response to the February 2023, notice. Of these, 111 submissions contained comments specific to the changes proposed in that notice; 65 submissions contained comments that were not relevant to the notice. The commenters included motor carriers, drivers/owner-operators, industry associations, and safety advocates. The following entities submitted relevant comments: Advocates for Highway and Auto Safety (Advocates), American Bus Association (ABA), American Trucking Associations, Inc. (ATA), Chamber of Commerce and Industry, et al. (Arizona Organizations), Arizona Trucking Association, Commercial Vehicle Safety Alliance (CVSA), Downeast Shipping LLC, Driver iQ, Drivewyze Ltd (Drivewyze), FedEx Corporation (FedEx), Greyhound Lines, Inc. (Greyhound), Independent Carrier Safety Association (ICSA), International Foodservice Distributors Association (IFDA), Motor Carrier Insurance Education Foundation (MCIEF), Minnesota Trucking Association (MTA), National School Transportation Association (NSTA), National Tank Truck Carriers, Inc. (NTTC), Owner-Operator Independent Drivers Association (OOIDA), Roehl Transport, Inc., SambaSafety, Schneider National, Inc. (Schneider), Shippers Preferred Express, Tour Up, Truck Safety Coalition (TSC), Veolia North America (Veolia), Yellow Corporation, Zoom Transportation Inc., Adrienne Anderson, Kellie Case, Dmitri Kachan, Adam Loutsch, Brian Loysen, Kathleen Ravin, Elizabeth St. Clare, Riky Von Honaker, and individuals who did not identify their organizations. Many stakeholders provided comments on multiple proposed changes and topics. Comments outside the scope of the February 2023 notice are not discussed in this notice.

Most of the comments on the February 2023, notice voiced support for the proposed changes. Some comments voiced concerns that this notice will address. The proposals for reorganized safety categories, consolidated violations, simplified violation severity weights, and greater focus on recent violations generated the most comments. In addition, many commenters suggested alternative approaches to a proposed change or requested that FMCSA provide further analysis or solicit additional input. The following sections provide a summary of the comments received and the Agency's responses for each proposed change.

1. Reorganized and Updated Safety Categories (Now ''Compliance Categories''), Including New Segmentation

A. Changing ''BASICs'' to ''Safety Categories'' (Now ''Compliance Categories'')

The vast majority of commenters did not address the proposal to replace the term Behavior Analysis and Safety Improvement Categories, or BASICs, with ''safety categories.'' Three commenters (ATA, ABA, and Driver iQ) agreed with the proposal to replace ''BASICs'' with another term but suggested alternative terminology to ''safety categories.''

ATA suggested using ''compliance categories,'' rather than ''safety categories,'' commenting that ''[r]eferring to the BASICs as 'Compliance Categories' simplifies the

[1] Available at *https://csa.fmcsa.dot.gov/prioritizationpreview/.*

terminology to a more understandable and relatable reference. It also will allow motor carrier operations and the enforcement community to more accurately pinpoint and address compliance concerns.'' ABA supported ATA's view, suggesting that '' 'compliance categories' . . . more accurately depicts the information categorized.'' Driver iQ also echoed ATA's comments.

Two of the four commenters (MCIEF and Riky Von Honaker) that addressed this proposal did not agree with it. MCIEF requested that FMCSA continue to use BASICs as it emphasizes the purpose of the Compliance, Safety, Accountability (CSA) program to analyze safety behavior, identify issues, and help carriers improve with the goal of preventing crashes. Riky Von Honaker expressed concerns that the new terminology could be used against carriers in litigation.

FMCSA Response

FMCSA acknowledges ATA, ABA, and Driver iQ's suggestion to replace ''BASICs'' with ''compliance categories'' instead of ''safety categories.'' FMCSA's analysis has demonstrated a strong relationship between each ''BASIC'' or category and safety; under the enhanced methodology, the group of carriers prioritized in any category has a crash rate of 7.77 crashes per 100 power units (PUs), which is 10 percent higher than the current methodology—and higher than the national crash rate for the same time period of 5.00 crashes per 100 PUs.[2] However, FMCSA acknowledges the public comments and has decided to move forward with ''compliance categories'' instead of ''safety categories'' as this will provide simpler and more relatable terminology.

B. Reorganized Safety Categories (Now ''Compliance Categories''): Unsafe Driving and Vehicle Maintenance

i. Unsafe Driving

Four commenters (ABA, ATA, MTA, and Adrienne Anderson) expressed support for the new Unsafe Driving Compliance Category, which incorporates: (1) Controlled Substances/Alcohol (CS/A) violations and (2) all Operating while Out-of-Service (OOS) violations. ATA stated that moving CS/A violations is ''logical,'' as drug and alcohol impaired driving is a form of unsafe driving, and that grouping all Operating while OOS violations under Unsafe Driving will help ''enforcement personnel more easily identify motor carriers who have violated OOS orders.'' ABA noted that these changes ''better reflect compliance realities and connections to actual safety risks.''

Three commenters (Advocates, NTTC, and an anonymous commenter) did not agree with moving CS/A violations to Unsafe Driving. Advocates and NTTC expressed the concern that this change may dilute the severity of CS/A violations and make it harder to identify carriers that employ drivers engaged in unsafe behaviors related to the use of controlled substances and alcohol. Advocates also pointed out that ''aside from increasing the number of carriers prioritized, [this change] appears to have little impact on the population of prioritized carriers from the aspects of crash rate and violation rate.'' An anonymous commenter also concurred that CS/A violations should remain separate from Unsafe Driving without further explanation.

Tour Up did not agree with moving violations related to operating while OOS to Unsafe Driving. Tour Up disagreed because being placed OOS for a ''chafed airline under the tractor that [the driver] was unaware of'' is not comparable to ''reckless driving and speeding.''

FMCSA Response

FMCSA acknowledges the comments from Advocates, NTTC, and the anonymous commenter. The sparsity of CS/A violations inhibited the CS/A BASIC's ability to identify high crash risk carriers. FMCSA's Exploratory Factor Analysis showed that the CS/A violations were strongly associated with the Unsafe Driving BASIC. By integrating CS/A violations into the new Unsafe Driving Compliance Category, the Agency will continue to hold carriers and drivers accountable for drug and alcohol compliance, while focusing its investigative resources on carriers with higher crash rates. FMCSA's analysis shows that the group of carriers prioritized in the new Unsafe Driving Compliance Category would have a crash rate of 10.63 crashes per 100 PUs, which is 3 percent higher than the Unsafe Driving BASIC in the current methodology.[3]

With regards to Tour Up's comment, FMCSA moved operating while OOS violations to the new Unsafe Driving Compliance Category because they reflect a type of unsafe driving behavior: a driver or motor carrier continuing to operate after receiving an OOS Order. Operating while OOS is similar to other violations in the Unsafe Driving Compliance Category, such as texting, speeding, and reckless driving, as they all indicate the driver made an unsafe driving decision related to operating a commercial motor vehicle (CMV).

ii. Vehicle Maintenance

Nine commenters (Arizona Organizations, ATA, Brian Loysen, Elizabeth St. Clare, FedEx, IFDA, MTA, OOIDA, and Shippers Preferred Express) supported the reorganization of the Vehicle Maintenance category into two categories: (1) a new Vehicle Maintenance: Driver Observed Compliance Category and (2) a Vehicle Maintenance Compliance Category. ATA and FedEx emphasized that the new Vehicle Maintenance: Driver Observed category more accurately reflects how carriers perform maintenance and assess compliance. ATA noted that it ''will allow for greater distinction between vehicle maintenance violations that are indicative of vehicles in poor maintenance condition regardless of the thoroughness of the driver performing a pre- or post-trip inspection that day.'' ATA, IFDA, MTA, and OOIDA also noted that the new Vehicle Maintenance: Driver Observed category has the potential to protect drivers from being held accountable for violations that they could not have reasonably discovered during a pre-trip inspection. Elizabeth St Clare added that this category would be useful for ''targeted training.''

While supportive of the new Vehicle Maintenance: Driver Observed category, ATA and MTA also recommended that the Agency engage industry stakeholders in determining which violations should be included in the category and conduct analysis to measure the category's effectiveness.

Downeast Shipping LLC pointed out that this new category highlights a larger issue about ''driver controllable violations'' and suggests that these violations be removed from a carrier's results.

FMCSA Response

Regarding ATA and MTA's suggestion to solicit industry input on the violations in the Vehicle Maintenance: Driver Observed Compliance Category and conduct analysis to measure the effectiveness of the category, FMCSA developed the new Vehicle Maintenance categories by leveraging results from an Exploratory Factor Analysis showing which violations were strongly associated with each other

[2] Available in table 23 of the Prioritization Foundational Document *https://csa.fmcsa.dot.gov/Documents/New_Methodology_for_Prioritization_Foundational_Document_112222_508.pdf.*

[3] Available in table 23 of the Prioritization Foundational Document *https://csa.fmcsa.dot.gov/Documents/New_Methodology_for_Prioritization_Foundational_Document_112222_508.pdf.*

along with Intermodal Equipment Provider ''Pre-Trip'' designations, developed with input from industry and enforcement. For more details on the development of the new compliance categories, see the Prioritization Preview Foundational Document.[4]

FMCSA disagrees with Downeast Shipping LLC's suggestion to remove violations in the Vehicle Maintenance: Driver Observed Compliance Category from carriers' results. Carriers have a responsibility to ensure that their drivers understand and comply with the Federal Motor Carrier Safety Regulations.

C. New Segmentation: Driver Fitness and Hazardous Materials Compliance Categories

Five commenters (ATA, IFDA, MTA, Schneider, and Veolia) voiced support for the proposed segmentation in Driver Fitness Compliance Category by Straight and Combination carriers and in Hazardous Materials Compliance Category by Cargo Tank and Non-Cargo Tank carriers. ATA noted that this new segmentation ''addresses inequities that have existed in the current CSA SMS'' and ''will allow for greater accuracy in identifying safety controls.'' Three commenters (Advocates, FedEx, and NTTC) specifically expressed support for segmentation in the Hazardous Materials Compliance Category. NTTC mentioned that segmenting this category by Cargo Tank and Non-Cargo Tank carriers ''is believed to tremendously reduce the opportunity for a cargo tank truck to get more violations than a van truck due to many inherent trailer differences.'' Advocates tentatively supported segmentation but requested that the Agency provide more data. FedEx also expressed support for this change and encouraged the Agency to explore further segmentation between small package and palletized freight.

Kellie Case and an anonymous commenter asked for additional clarification. Case asked if the Agency has considered normalizing between carriers that occasionally transport hazardous materials (HM) and those that are dedicated HM carriers. The anonymous commenter asked how carriers with both Straight and Combination vehicles would be treated in the Driver Fitness Compliance Category.

FMCSA Response

In response to Kellie Case's question, the Hazardous Materials Compliance Category focuses solely on the portion of a carrier's operation that is hauling HM, and whether the carrier frequently or rarely hauls HM should not have an impact on the carrier's ability to comply with the Hazardous Materials Regulations.

Regarding the anonymous commenter's question, Straight and Combination segmentation would work the same way it does for the Unsafe Driving and Crash Indicator BASICs in the current SMS. A carrier's designation of Straight or Combination in the Driver Fitness Compliance Category depends on the percentage of those types of vehicles in its operations, as outlined in the table below.

TABLE 1—STRAIGHT AND COMBINATION CARRIER CRITERIA

Carrier type	Criteria
Straight Carrier	More than 30 percent of the total Power Units (PUs) in their fleet are Straight trucks/other vehicles.
Combination Carrier	70 percent or more of the total PUs in their fleet are Combination trucks/motorcoach buses.

2. Consolidated Violations

Nine commenters (ABA, ATA, IFDA, MTA, NSTA, NTTC, OOIDA, Veolia, and an anonymous commenter) expressed support for reorganizing the existing 959 roadside violations into 116 violation groups. ABA, IFDA, and MTA agreed with FMCSA that the change will make the system easier for carriers and other stakeholders to understand and help improve consistency in enforcement of violations with similar underlying safety issues. NSTA stated that the change will ''reduce confusion for operators.'' NTTC added that this is ''a positive change which will permit companies to [more easily] facilitate training topics . . . for their personnel.'' The anonymous commenter wrote that the reorganization allows ''more clear insight into areas of concern'' for carriers, but pointed out that there are still areas of overlap between violation groups, citing the ''HOS Requirements'' and ''HOS Requirements—Nominal'' violation groups in the Hours of Service Compliance Category and the ''Brakes—OOS'' and ''Brakes'' violation groups in the Vehicle Maintenance Compliance Category.

Three commenters (Advocates, CVSA, and FedEx) shared concerns about the new reorganization. Advocates believes the change ''could diminish the importance of some violations and ignore flagrant violators of the Federal Motor Carrier Safety Regulations.'' CVSA is concerned that the combination of this change and the simplified severity weights ''may not accurately reflect a motor carrier's safety performance.'' FedEx asked whether this change would lead to less visibility and requested that FMCSA retain the granular level of violation data provided today on the SMS website.

FMCSA Response

FMCSA agrees with the anonymous commenter's assessment that there are still areas of overlap between the ''HOS Requirements'' and ''HOS Requirements—Nominal'' and the ''Brakes'' and ''Brakes—OOS'' violation groups. In response, FMCSA has consolidated these overlapping violation groups to further prevent inconsistencies in how violations are cited for the same underlying safety issue. See the Reorganization of Violations section of this notice for details.

In response to Advocates' concern, FMCSA's analysis indicated that grouping violations will not reduce their importance for prioritization purposes. The Agency's analysis shows that, in terms of prioritization, determining whether a safety issue is identified is more important than determining how many ways it was documented. Grouping carrier violations before analyzing the data ensures that carriers are treated fairly by holding similar carriers with similar safety issues to the same standard—regardless of how those issues were documented.

Regarding CVSA's concern, FMCSA analyzed the overall effectiveness of the proposed changes compared to the current SMS. FMCSA found that these changes would increase the number of carriers prioritized for intervention by 3 percent—and that this group of

[4] Available at *https://csa.fmcsa.dot.gov/Documents/New_Methodology_for_Prioritization_Foundational_Document_112222_508.pdf.*

prioritized carriers would have a crash rate 10 percent higher than those currently prioritized by SMS. Therefore, CVSA's belief that the proposed changes, taken together, may not accurately reflect a carrier's safety performance was not substantiated.

FMCSA is committed to ensuring that its SMS methodology for prioritizing motor carriers for interventions accurately reflects carriers' safety performance. The Agency will continue to evaluate the SMS methodology's effectiveness and propose improvements when needed. For more details on overall effectiveness of the proposed changes, see the Prioritization Preview Foundational Document.[5]

In response to FedEx's question, the new violation groupings will not change the level of violation information available; details on individual violations will continue to be displayed in the Inspection History tab on the SMS website.

3. Simplified Violation Severity Weights

Four commenters (CVSA, FedEx, Veolia, and Adrienne Anderson) agreed with FMCSA's proposal to move from a 1 to 10 scale for violation severity weights to simplified 1 or 2. FedEx stated that this change ''will be easier to administer . . . [and] the weights could help stabilize scores . . . by reducing the impact of outlier violations.'' Adrienne Anderson commented that the ''weights make more sense and [make it] more attainable to get below thresholds.''

Three commenters (Adam Loutsch, MTA, and Roehl Transport, Inc.) agreed with the change while proposing modifications to the weighting of specific violation types. Loutsch suggested that some ''serious'' moving violations receive higher weights than ''regular'' moving violations. MTA recommended that FMCSA should add a level to the weighting approach to ''address minor 'administrative' violations such as form and manner violations.'' Roehl Transport, Inc. echoed MTA and suggested ''administrative'' violations that do not contribute to crashes should receive a weight of 0.

Six commenters (ABA, ATA, Drivewyze, ICSA, IFDA, NSTA, NTTC, and Dmitri Kachan) agreed with FMCSA's proposal to move away from the 1 to 10 scale, but expressed concerns with moving to a 1 or 2 scale. ABA commented that this change could reduce the system's effectiveness by masking the individual violation's correlation to safety risk. NTTC expressed a similar concern that the new weighting ''may not accurately reflect the increased likelihood of a vehicle being involved in an accident.'' ATA, Drivewyze, ICSA, IFDA, NSTA, and Dmitri Kachan all expressed the same concern that a simplified scale will make it difficult to distinguish between less severe and more severe violations.

Riky Von Honaker disagreed with the proposal, suggesting that the new weighting system will show which carriers get the most violations, rather than which carriers should be prioritized.

FMCSA Response

FMCSA's analysis shows that assigning a customized weight to all violations was not as important as noting that the violation occurred. The number of violations a carrier has is a strong indicator of its safety compliance, or lack thereof. Carriers with poor safety management practices have patterns of violations across the compliance categories—regardless of each violation's level of egregiousness. Conversely, carriers with strong safety management practices have fewer violations per inspection. In addition, moving toward a simplified scale for severity weights does not inhibit SMS from identifying carriers with high crash rates. Of the three approaches to simplified severity weights evaluated by FMCSA, this 1 or 2 scale approach identifies the highest crash rate for carriers prioritized in any category at 6.95 crashes per 100 PUs. In addition, this crash rate is 39 percent higher than the national crash rate over the same analysis period of 5.00 crashes per 100 PUs. For more information on the analysis for the simplified severity weights, view the Prioritization Preview Foundational Document.[6]

4. Proportionate Percentiles

Seven commenters (ATA, MTA, NSTA, NTTC, OOIDA, Veolia, and Zoom Transportation Inc.) voiced support for moving from the safety event groups used in SMS to proportionate percentiles to eliminate large percentile changes that occur for non-safety-related reasons. OOIDA stated that ''. . . this proposal is sound and should help protect small-business truckers from witnessing radical jumps in their [percentile] without reason,'' and Zoom Transportation Inc. agreed, noting that proportionate percentiles are ''excellent in terms of classification and reducing percentile jumps.'' NSTA also pointed out that proportionate percentiles would ''result in a more accurate identification of 'at-risk operators.' ''

Two commenters (ABA and Greyhound) expressed concerns about motorcoach comparisons with other carrier types and requested that the prioritization methodology only compare motorcoaches to other motorcoaches.

Two commenters (FedEx and SambaSafety) requested additional information on how proportionate percentiles would work in the new prioritization methodology.

FMCSA Response

FMCSA recognizes ABA and Greyhound's suggested approach to only compare motorcoaches to other motorcoaches. However, of the 764,117 interstate carriers subject to FMCSA assessment, only 0.03 percent (1,963) are considered motorcoaches [7]—this subset is not large enough to provide stable carrier-to-carrier comparisons or accurately indicate how a motorcoach's performance is trending from month to month.

Regarding FedEx and SambaSafety's request for more information on proportionate percentiles, step-by-step instructions for calculating proportionate percentiles are available in Table 9 of the Prioritization Preview Foundational Document.[8] In addition, FMCSA is working on a set of communications materials that will be available when the final methodology is implemented.

5. Improved Intervention Thresholds

Six commenters (ABA, ATA, MTA, NTTC, Schneider, and Veolia) submitted comments supporting the changes to the Intervention Thresholds for Vehicle Maintenance, Vehicle Maintenance: Driver Observed, Driver Fitness, and Hazardous Materials Compliance Categories. ATA stated that ''these changes are justified as they place a greater focus on prioritizing intervention for safety categories that have the greatest correlation to crash risk.'' FedEx also commended FMCSA on its ''risk-management driven

[5] Available at *https://csa.fmcsa.dot.gov/Documents/New_Methodology_for_Prioritization_Foundational_Document_112222_508.pdf.*

[6] Available at *https://csa.fmcsa.dot.gov/Documents/New_Methodology_for_Prioritization_Foundational_Document_112222_508.pdf.*

[7] FMCSA defines *motorcoaches* as those registered to transport passengers and defined as a ''motorcoach'' in the Moving Ahead for Progress in the 21st Century (MAP–21) Act. More information on MAP–21 is available at *https://www.transportation.gov/map21.*

[8] Available at *https://csa.fmcsa.dot.gov/Documents/New_Methodology_for_Prioritization_Foundational_Document_112222_508.pdf.*

approach'' to the Intervention Thresholds in the Driver Fitness and Hazardous Materials Compliance Categories.

Two commenters (OOIDA and an anonymous commenter) offered critiques of the Intervention Threshold changes. OOIDA questioned whether the Agency should use the Driver Fitness or Hazardous Materials Compliance Categories to assess safety risk if a carrier has to be worse than 90 percent of their peers in order for the Agency to prioritize them. The anonymous commenter suggested without further explanation that the Intervention Thresholds for all the categories should be adjusted to 80 percent.

FMCSA Response

FMCSA acknowledges OOIDA's concern about the high thresholds for the Driver Fitness and Hazardous Materials Compliance Categories. FMCSA's analysis shows that every category has a different relationship to crash rate, with some having a higher correlation than others. Adjusting the thresholds ensures that the Agency focuses its enforcement program on carriers with the highest crash risk. In addition, the Driver Fitness and Hazardous Materials Compliance Categories can help carriers identify and improve patterns of noncompliance that contribute to their companies' overall safety, regardless of whether the carriers are over the threshold in these categories.

6. Greater Focus on Recent Violations

Ten commenters (ABA, ATA, CVSA, ICSA, Kathleen Ravin, MTA, NSTA, NTTC, OOIDA, and Veolia) expressed support for calculating percentiles only for carriers with cited violations in the past 12 months. This change applies to the Hours of Service, Vehicle Maintenance, Vehicle Maintenance: Driver Observed, Hazardous Materials, and Driver Fitness Compliance Categories. ABA ''strongly endorses'' this change, noting that it will benefit the Agency by ''better targeting resources towards carriers that pose a greater safety risk'' and will ''incentivize carriers to more aggressively manage compliance problem areas.'' NSTA concurs with ABA that this change could help the Agency focus on ''more prevalent at-risk operators.'' ICSA and Ravin also echoed the importance of incentivizing continuous improvement and behavior change. ICSA noted that ''it's especially important to smaller fleets that otherwise could be unfairly penalized by past mistakes.'' CVSA voiced agreement, noting that this change will ''provide a more accurate assessment of the motor carrier's current safety performance.'' ATA also expressed support and suggested that this change should be applied to all categories.

Schneider noted that this standard for calculating a percentile provides a ''logical threshold for the industry's many small carriers'' but suggested that this standard be applied differently for larger fleets by considering (1) whether a small number of violations in past 12 months is at an ''acceptable'' threshold and (2) the percentage of a larger carrier's ''clean'' inspections (inspections without violations).

Two commenters (TSC and Advocates) expressed concern with the proposal, stating that the new data sufficiency standard does not consider carriers that either have not received an annual inspection or have never been reviewed by the Agency at all.

FMCSA Response

FMCSA acknowledges Schneider's suggestion to account for the percentage of ''clean'' inspections or an ''acceptable'' number of violations per inspection for larger carriers when calculating percentiles. However, the purpose of this change is to account for smaller carriers that have not received inspections with violations in the past 12 months, thereby focusing the Agency's enforcement efforts on those with more recent safety issues. In addition, under the current SMS, there is no need for a percentile exemption or adjustment for carriers that receive more frequent inspections. When frequently inspected carriers have a relatively low number of violations per inspection, they will have a low percentile reflecting better than average compliance, and thus not be subject to prioritization.

FMCSA recognizes TSC and Advocates' concern that this updated standard does not account for carriers that have not received an annual inspection or have never been reviewed by the Agency. However, FMCSA has other enforcement tools to help to minimize the number of carriers that are not reviewed by the Agency or its State Partners. For example, the New Entrant program includes a safety audit on all new carriers entering in interstate commerce operations while the Inspection Selection System encourages law enforcement to inspect drivers and vehicles managed by carriers with little to no recent inspection history.

7. Updated Utilization Factor

Three commenters (MTA, Veolia, and Yellow Corporation) support the extension of the Utilization Factor from carriers that drive up to 200,000 Vehicle Miles Traveled (VMT) per average PU to carriers that drive up to 250,000 VMT per average PU. MTA indicated that a ''safely operating carrier must receive credit'' for its traveled miles and not be ''limited by an artificial mileage ceiling.'' Yellow Corporation voiced support for the change and recommended that the Agency consider incorporating driver information from Question 27 in the Motor Carrier Identification Report (MCS–150) in the Utilization Factor to better account for carriers with ''significant city operations.''

Two commenters (Advocates and ATA) expressed concern with the extension of the Utilization Factor to 250,000 VMT per average PU. Advocates pointed out that the ''benefits from reporting higher VMT could incentivize carriers to overestimate their usage.'' ATA believes the Utilization Factor should remain capped at 200,000 VMT per average PU. ATA stated that its own data analysis indicates that the average miles per truck per year have decreased significantly since 2009, citing that in 2022 ''for-hire truckload carriers had an average miles per truck of 95,829, which was 10.5 percent below that of 2009 (107,112 miles).''

FMCSA Response

FMCSA acknowledges that its self-reported carrier data may show lower average miles per truck in 2022, similar to ATA's analysis. However, higher-utilization carriers that drive between 200,000 and 250,00 VMT per average PU still exist, and the updated Utilization Factor is designed to account for them. In addition, FMCSA revisited its analysis of carrier-reported VMT from 2016, using more current data from the December 2020 Motor Carrier Management Information System snapshot, and confirmed that the conclusions from 2016 are still accurate. Results from this analysis are available in the Prioritization Preview Foundational Document.[9]

In response to Yellow Corporation's suggestion, the current Utilization Factor uses a carrier's VMT per average number of PUs, or vehicles, to account for different levels of on-road exposure to inspections and crashes. Question 27 in the MCS–150 form [10] asks carriers to report the number of interstate and intrastate drivers who operate CMVs for

[9] Available at *https://csa.fmcsa.dot.gov/Documents/New_Methodology_for_Prioritization_Foundational_Document_112222_508.pdf.*

[10] Available at *https://www.fmcsa.dot.gov/registration/form-mcs-150-and-instructions-motor-carrier-identification-report.*

their company on an average workday, as well as the total number of drivers regardless of employment status and total of number of drivers that hold a valid commercial driver's license. FMCSA believes that incorporating carrier-reported driver information from the MCS–150 would increase the Utilization Factor's complexity and lead to less accurate results.

III. Other Changes Considered and Not Proposed

1. Item Response Theory Modeling

The vast majority of commenters did not address FMCSA's analysis and decision not to move forward with an Item Response Theory (IRT) model for prioritization due to the model's complexity and inability to accurately identify motor carriers for safety interventions. Of the seven commenters that addressed it, five commenters (ABA, Advocates, ATA, CVSA, and ICSA) voiced support for FMCSA's decision. ABA stated, ''We endorse every effort to address issues of complexity, and ensure that the tool is understandable, accessible, and user-friendly to the greatest extent possible.'' ATA added, ''[We believe] that the ability to easily explain CSA SMS methodology to drivers and motor carriers alike is important.'' ICSA echoed the views held by ABA and ATA.

OOIDA acknowledged the difficulties with applying an IRT model to the motor carrier industry while expressing concern that the decision not to move forward with IRT could indicate that the Agency has not properly considered the other recommendations from the National Academies of Science (NAS).

TSC disagreed with FMCSA's decision, stating that IRT could run parallel to SMS and be used as a tool to provide enhanced carrier oversight.

FMCSA Response

FMCSA explained its decision not to adopt an IRT methodology and provided an overview of the limitations and challenges with using an IRT model for prioritization purposes in the February 2023 notice.

This notice focuses on addressing comments on the proposed changes to SMS, which were developed as a result of exploring the feasibility of the first NAS recommendation to develop an IRT model for prioritization.

2. Geographic Variation

Three commenters (ATA, IFDA, and OOIDA) expressed disappointment that FMCSA did not address geographic variation—that is, differences in CMV inspection and violation rates by State—commenting that this may lead to unfair SMS results for carriers that operate primarily in States with higher-than-average enforcement rates. ATA noted that while a State-focused approach may work for speeding violations, it may not for vehicle maintenance violations that need to be applied consistently in any operating condition, and that ''. . . CSA SMS scores are often a reflection of where a motor carrier operates, not how safely it does so.'' OOIDA commented, ''If the agency is going to create a universal safety rating for carriers that prioritizes different kinds of enforcement, by frequency or even in enforcement oversight, then they must account for those varying philosophies in how States enforce the Federal Motor Carrier Safety Regulations.''

FMCSA Response

FMCSA explored the feasibility of incorporating a model to address geographic variation during the design stage of the Agency's IRT model and revisited this analysis while developing the proposed methodology. Based on the results of these models, FMCSA concluded that it would not improve the Agency's ability to identify high-risk carriers. Further, it would undermine the goals of the Motor Carrier Safety Assistance Program, the Agency's grant program that provides financial assistance to States to reduce the number and severity of crashes, and resulting injuries and fatalities, involving CMVs and to promote the safe transportation of passengers and HM. For more on the varying challenges States face related to crash reduction and why it is important for FMCSA to encourage States to tailor their crash reduction strategies to local conditions and challenges, see the February 2023 notice.

IV. Additional Changes to SMS

In addition to the changes to SMS outlined above, FMCSA made additional changes based on analysis conducted and issues identified during the preview and comment period.

1. Reorganization of Violations

The following changes were put into effect in the preview, and in the current SMS methodology where applicable, to align with the needs of FMCSA's enforcement program.

FMCSA moved violation 390.3E from Unsafe Driving to Driver Fitness and added 392.15 to Driver Fitness to reflect the root of the underlying safety issue more accurately. Violations 390.3E and 392.15 both relate to operating a CMV while prohibited from performing safety-sensitive functions per § 382.501(a) in FMCSA's Drug and Alcohol Clearinghouse. Since these violations address whether a driver meets drug and alcohol requirements to perform safety-sensitive functions, they are more closely aligned with the Driver Fitness Compliance Category, which covers driver requirements for the safe operation of CMVs, including training, experience, licensing, and medical qualifications. Additional information on 390.3E and 392.15, including violation code descriptions, and the new violation group in the Driver Fitness Compliance Category, is provided in the table below.

TABLE 2—UNSAFE DRIVING VIOLATION MOVING TO THE DRIVER FITNESS COMPLIANCE CATEGORY

Violation group	Federal violation code	Violation code description
Operating While Prohibited (New)	390.3E	Prohibited from performing safety-sensitive functions per 382.501(a) in the Drug and Alcohol Clearinghouse.
Operating While Prohibited (New)	390.15	Driver prohibited from performing safety sensitive functions per § 382.501(a) in the Drug and Alcohol Clearinghouse.

To further prevent inconsistencies that occur when multiple violations are cited for a similar underlying issue, FMCSA made additional changes to the violation groups in Hours of Service and Vehicle Maintenance Compliance Categories.

FMCSA moved HOS violations in the ''HOS Requirements—Nominal'' violation group to the ''HOS Requirements'' group. A list of the ''nominal'' violations that were consolidated is provided in the table below.

TABLE 3—"HOS REQUIREMENTS—NOMINAL" VIOLATIONS MOVING TO THE "HOS REQUIREMENTS" VIOLATION GROUP

Federal violation code	Violation code description
395.3A2–PROPN	Driving beyond 14-hour duty period (Property carrying vehicle)—Nominal Violation.
395.3A3–PROPN	Driving beyond 11 hour driving limit in a 14-hour period. (Property carrying vehicle)—Nominal Violation.
395.3B1–PROPN	Driving after 60 hours on duty in a 7-day period. (Property carrying vehicle)—Nominal Violation.
395.3B2–NOM	Driving after 70 hours on duty in an 8-day period. (Property carrying vehicle)—Nominal Violation.
395.5A1–PASSN	Driving after 10 hour driving limit (Passenger carrying vehicle)—Nominal Violation.
395.5A2–PASSN	Driving after 15 hour driving limit (Passenger carrying vehicle)—Nominal Violation.
395.5B1–PASSN	Driving after 60 hours on duty in a 7-day period. (Passenger carrying vehicle)—Nominal Violation.
395.5B2–PASSN	Driving after 70 hours on duty in an 8-day period. (Passenger carrying vehicle)—Nominal Violation.

In addition, FMCSA consolidated the single Vehicle Maintenance violation in the ''Brakes—OOS'' violation group under the ''Brakes'' group. The ''OOS'' violation is listed in the table below.

TABLE 4—"BRAKES—OOS" VIOLATION MOVING TO THE "BRAKES" VIOLATION GROUP

Federal violation code	Violation code description
396.3A1BOS	BRAKES OUT OF SERVICE: The number of defective brakes is equal to or greater than 20 percent of the service brakes on the vehicle or combination.

In February 2024, FMCSA also moved 13 Vehicle Maintenance violations from the Lighting violation group to Clearance Identification Lamps/Other violation group in the current and preview SMS methodologies. This change will be carried over to the new methodology, where the violations will be part of the Clearance Lamp violation group in the new Vehicle Maintenance: Driver Observed Compliance Category. This update aligned the current SMS and the enhanced methodology with the latest changes to violations recorded as part of the roadside inspection program. A list of the Lighting violations that were moved to the Clearance Lamp violation group is provided in the table below.

TABLE 5—LIGHTING VIOLATIONS MOVING TO "CLEARANCE LAMP" VIOLATION GROUP

Federal violation code	Violation code description
393.9A–LIL	Lighting—Identification lamp(s) inoperative.
393.9A–LLPL	Lighting—License plate lamp inoperative.
393.9A–LSML	Lighting—Side marker lamp(s) inoperative.
393.9B–LIL	Lighting—Identification lamp(s) obscured.
393.9B–LLPL	Lighting—License plate lamp obscured.
393.11A1–LIL	Lighting—Identification lamp(s) missing.
393.11A1–LLPL	Lighting—License plate lamp missing.
393.11A1–LPL	Lighting—Parking lamp(s) missing.
393.11A1–LSML	Lighting—Side marker lamp(s) missing.
393.17A1–LDCL	Lighting—Driveaway, clearance lamp(s) missing on front of towing vehicle.
393.17A2–LDSML	Lighting—Driveaway, side marker lamp(s) missing on front of towing vehicle.
393.17B1–LDSML	Lighting—Driveaway, side marker lamp(s) missing on rearmost towed vehicle.
393.17D–LDSML	Lighting—Driveaway, side marker lamp(s) missing on intermediate towed vehicle.

2. Frequency of Updates to Data Inputs for SMS

Currently, FMCSA updates the SMS website once a month with SMS results for motor carriers. Complete prioritization results are available to motor carriers and enforcement personnel that are logged into the SMS website.[11] Logged-in motor carriers can only view their own data, while logged-in enforcement users can view safety data for all carriers.

FMCSA will continue to calculate the SMS results monthly, but in alignment with FMCSA's commitment to continuous improvement, the Agency is exploring the feasibility and impacts of providing more frequent updates to the inspection and crash data that is displayed on the SMS website. The Agency will share its decision and supporting findings in the follow-up notice announcing the enhanced SMS methodology.

V. Next Steps

FMCSA thanks industry stakeholders and enforcement personnel for engaging in an inclusive preview and comment period to continually improve its SMS methodology. Opportunities for more information, including a webinar series on the changes, will be announced on the Prioritization Preview website[12] in the coming months. A follow-up notice in the **Federal Register** will announce the launch date of the enhanced SMS website.

Vincent G. White,

Deputy Administrator.

[FR Doc. 2024–27087 Filed 11–19–24; 8:45 am]

BILLING CODE 4910–EX–P

[11] Available at *https://ai.fmcsa.dot.gov/sms.*

[12] Available at *https://csa.fmcsa.dot.gov/prioritizationpreview.*

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2014–0093]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter dated September 13, 2024, Long Island Rail Road (LIRR) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 240 (Qualification and Certification of Locomotive Engineers) and part 242 (Qualification and Certification of Conductors). The relevant Docket Number is FRA–2014–0093.

Specifically, LIRR requests relief required to continue participation in FRA's Confidential Close Call Reporting System (C^{3}RS) Program. LIRR seeks to continue shielding reporting employees from mandatory punitive sanctions that would otherwise arise as provided in §§ 240.117(e)(1)–(4); 240.305(a)(1)–(4) and (a)(6); 240.307; 242.403(b), (c), (e)(1)–(4), (e)(6)–(11), (f)(1)–(2); and 242.407. The C^{3}RS Program encourages certified operating crew members to report close calls and protects the employees and the railroad from discipline or sanctions arising from the incidents reported per the C^{3}RS Implementing Memorandum of Understanding (IMOU).

In support of its request, LIRR cited safety improvements related to the C^{3}RS program, including new switch signage and ongoing scenario-based training. LIRR also stated that ''all parties signatory to the IMOU and participating in the C^{3}RS Program believe that granting this waiver petition is in the public interest and consistent with railroad safety.''

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by January 21, 2025 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of the Department of Transportation's (DOT) dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2024–26994 Filed 11–19–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2024–0119]

Petition for Special Approval and Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letters dated October 15, 2024, and October 21, 2024, Michigan State Trust for Railway Preservation, Inc. (MSTRP), which operates The Steam Railroading Institute, petitioned the Federal Railroad Administration (FRA) for a special approval pursuant to 49 CFR part 215 (Railroad Freight Car Safety Standards), and a waiver of compliance from 49 CFR parts 215 and 224 (Reflectorization of Rail Freight Rolling Stock). FRA assigned the petition Docket Number FRA–2024–0119.

Specifically, MSTRP requests a special approval pursuant to § 215.203, *Restricted cars,* for 1 caboose (MSTX/C&O 3674) that is more than 50 years from the date of original construction. MSTRP also seeks relief from § 215.303, *Stenciling of restricted cars,* and § 224.3, *Applicability,* for the caboose. The equipment has been used in historic tourist/excursion service or for photographers and filmmakers in the past, and MSTRP stated that it wishes to use the caboose on its ''annual Christmastime trains between November and December.'' MSTRP added that the caboose will currently operate only on Great Lakes Central Railroad, but may operate on other short line railroads in the future.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.* FRA reserves the right to issue a decision subject to consideration of any subsequently filed comments.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by January 21, 2025 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of the U.S. Department of Transportation's (DOT) dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety,Chief Safety Officer.

[FR Doc. 2024–26992 Filed 11–19–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2020–0046]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter received September 26, 2024, The Everett Railroad Company (EV) petitioned the Federal Railroad Administration (FRA) to extend a special approval pursuant to 49 CFR part 215 (Railroad Freight Car Safety Standards), and to extend a waiver of compliance from parts 215 and 224 (Reflectorization of Rail Freight Rolling Stock). FRA assigned the petition Docket Number FRA–2020–0046.

Specifically, EV requested to extend the previous special approval pursuant to 49 CFR 215.203, *Restricted cars,* in this docket for 1 boxcar (PRR 77815), which is more than 50 years from the date of original construction. EV also seeks to extend relief from § 215.303, *Stenciling of restricted cars,* and part 224, to use the car as ''a historic relic in conjunction with the company's tourist and excursion trains.'' In its petition, EV explained that the relief will help ''maintain the car in its historic appearance and identity for photography, film and purposes of historic interpretation.''

In support of its request, EV stated that the car will operate under restricted speed rules (not exceeding 20 miles per hour) and that it will not be interchanged to any other railroad. EV added that the ''railroad's operating territory is generally rural in nature.''

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by January 21, 2025 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of the U.S. Department of Transportation's (DOT) dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2024–26995 Filed 11–19–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2024–0102]

Petition for Special Approval

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter dated August 23, 2024, Southern California Regional Rail Authority (Metrolink) petitioned the Federal Railroad Administration (FRA) for a special approval pursuant to 49 CFR part 238 (Passenger Equipment Safety Standards). FRA assigned the petition Docket Number FRA–2024–0102.

Specifically, Metrolink requested a special approval of alternative standard per § 238.21, *Special approval procedure,* regarding § 238.309(b), *Periodic brake equipment maintenance—DMU and MU locomotives,* for three Stadler FLIRT diesel multiple units (DMUs). Metrolink sought to extend the clean, oil, test, and stencil (COT&S) intervals from 736 days, as stated in § 238.309(b)(4) for ''all other DMU or MU locomotives,'' to 1,840 days, as permitted by § 238.309(b)(3) for DMUs ''part of a fleet that is 100 percent equipped with air dryers and is equipped with KB–HL1, KB–HS1, or KBCT1.''

In support of the request, Metrolink explained that the manufacturer of the braking systems, Knorr, is experiencing delays in lead time for materials required to complete the brake overhaul. Metrolink noted that only after a quote and scope of work is received from Knorr will it be possible for Metrolink to establish a schedule for completing the COT&S.

Metrolink asserted that ''[t]o ensure an equivalent level of safety for extending the COT&S intervals to an 1[,]840 day'' interval, Metrolink will: (1) perform ''detailed periodic maintenance inspections of the air brake system,'' and perform ''all tasks outlined in § 238.309(b)(4)'' (minus the replacement of actual brake components needing to be overhauled) on an annual basis; (2) perform ''a Class I brake test'' on all DMUs before daily service; (3) review the fault log daily; (4) review ''Teloc downloads'' weekly; and (5) provide FRA with a ''quarterly report detailing any air brake component defects or faults that relate to going beyond the overhaul intervals along with the corrective actions/repairs.''

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by January 21, 2025 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments

received into any of the U.S. Department of Transportation's (DOT) dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2024–26993 Filed 11–19–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2019–0064]

Petition for Extension and Modification of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letters dated August 27, 2024, and October 15, 2024, BNSF Railway Company (BNSF) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 232 (Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices). BNSF also petitioned to add three locations to the waiver: Auburn, Washington; Lincoln, Nebraska; and Missoula, Montana. The relevant Docket Number is FRA–2019–0064.

Specifically, BNSF requests to renew the existing waiver from 49 CFR 232.305(b)(2), *Single car air brake tests,* which permits BNSF to change the repair track designation (per § 232.303, *General requirements*) so that the track on which in-train wheel replacements are performed is not designated a shop or repair track. Accordingly, a single car air brake test (SCABT) is not required on each car undergoing an in-train wheelset replacement, but BNSF proposes to perform a SCABT on any car with an FRA-condemnable wheel defect as defined in § 232.303(b)(5). The relief currently applies to specific yard tracks for wheelset replacement at three BNSF facilities: Newton, Kansas; Kansas City, Kansas; and Temple, Texas. BNSF seeks to expand the waiver to apply to Auburn, Washington; Lincoln, Nebraska; and Missoula, Montana, as well.

In support of its request, BNSF stated that the program ''has significantly reduced the number of wheels in service with elevated kip impact readings, which, in turn has a long-term positive impact on rail integrity.'' Additionally, BNSF explained that ''by using [Wheel Impact Load Detectors] and replacing wheelsets with relatively minor defects, BNSF has replaced significantly more wheelsets than required by FRA regulations.''

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by January 21, 2025 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of the Department of Transportation's (DOT) dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2024–26999 Filed 11–19–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2024–0115]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letters received October 1, 2024, and November 4, 2024, the City of North Salt Lake (the City) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 222 (Use of Locomotive Horns at Public Highway-Rail Grade Crossings). FRA assigned the petition Docket Number FRA–2024–0115.

Specifically, the City requests relief from § 222.35(b)(1), *What are the minimum requirements for quiet zones?—Active grade crossing warning devices,* which states that each public highway-rail grade crossing in a quiet zone ''must be equipped, no later than the quiet zone implementation date, with active grade crossing warning devices comprising both flashing lights and gates which control traffic over the crossing.'' The City requests a two-year waiver from the regulation ''until the design and construction of the relocated signal mast and gate arm can be completed.''

In support of its request, the City stated that the signal mast and gate arm are currently located before the crossing on an industrial spur, where trains are operated at not more than 10 miles per hour. The crossing currently has signal lights, and the City will add a painted stop bar and sign reading ''STOP HERE WHEN FLASHING'' to ''further improve the safety at the crossing . . . until the design and construction of the gate arm can be completed.'' The City further explained that funding for the project has been secured and that granting this relief will allow ''reinstatement of the quiet zone while design, approval and construction of the gate arm is completed.''

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by January 21, 2025 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of the U.S. Department of Transportation's (DOT) dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2024–26996 Filed 11–19–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2019–0042]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter dated October 8, 2024, Buffalo & Pittsburgh Railroad, Inc. (BPRR) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 240 (Qualification and Certification of Locomotive Engineers) and part 242 (Qualification and Certification of Conductors). The relevant Docket Number is FRA–2019–0042.

Specifically, BPRR requests relief required to continue participation in FRA's Confidential Close Call Reporting System (C^{3}RS) Program. BPRR seeks to continue shielding reporting employees from mandatory punitive sanctions that would otherwise arise as provided in §§ 240.117(e)(1)–(4); 240.305(a)(1)–(4) and (a)(6); 240.307; 242.403(b), (c), (e)(1)–(4), (e)(6)–(11), (f)(1)–(2); and 242.407. The C^{3}RS Program encourages certified operating crew members to report close calls and protects the employees and the railroad from discipline or sanctions arising from the incidents reported per the C^{3}RS Implementing Memorandum of Understanding (IMOU).

In support of its request, the petition stated that BPRR's benefits from the C^{3}RS program have prompted ''other railroad subsidiaries under Genesee & Wyoming [Inc.] . . . to adopt C3RS.'' BPRR also stated that itself and ''participating parties continue to believe that the C3RS program provides tangible benefits and improves employee and public safety.''

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by January 21, 2025 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of the Department of Transportation's (DOT) dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2024–27000 Filed 11–19–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2024–0004]

Agency Information Collection Activities; Notice and Request for Comment; National Roadside Survey of Alcohol and Drug Prevalence of Road Users: 2025

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for public comment on proposed new collection of information.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) invites public comments about our intention to request approval from the Office of Management and Budget (OMB) for a new information collection. Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes a collection of information for which NHTSA intends to seek OMB approval for a National Roadside Survey (NRS) of alcohol and other drug prevalence among drivers and other road users (ORUs; *e.g.,* pedestrians, bicyclists, electric scooter riders, and those with mobility aids. NHTSA will conduct two studies. Study 1 will focus on drivers but include

convenience sampling of ORUs passing by the driver data collection locations. Study 2 is a pilot test assessing the feasibility of an NRS specific to ORUs. Both will collect breath and oral fluid specimens, demographic information, and self-report questionnaire data on roads across the country. Participation will be voluntary and anonymous.

DATES: Comments must be received on or before January 21, 2025.

ADDRESSES: You may submit comments identified by Docket No. NHTSA–2024–0004 using any of the following methods:

- *Electronic submissions:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9322 before coming.

Instructions: Each submission must include the agency name and the docket number for this Notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *https://www.transportation.gov/privacy.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets via internet.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Ms. Amy Berning, Contracting Officer's Representative, Office of Behavioral Safety Research (NPD–310), (202) 366–5587, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C 3501 *et seq.*), before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (i) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) how to enhance the quality, utility, and clarity of the information to be collected; and (iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses. In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB.

Title: National Roadside Survey of Alcohol and Drug Prevalence of Road Users: 2025.

OMB Control Number: New.

Form Numbers: NHTSA Form 1762, NHTSA Form 1763, and NHTSA Form 1764.

Type of Request: New information collection.

Type of Review Requested: Regular.

Requested Expiration Date of Approval: 3 years from date of approval.

Summary of the Collection of Information

NHTSA is seeking approval to conduct two studies. Study 1 will focus on drivers but include convenience sampling of ORUs passing by the data collection locations. Study 2 is a Pilot Test assessing the feasibility of an NRS specific to ORUs. Both will collect breath and oral fluid specimens, demographic information, and self-report questionnaire data on roads across the country. Participation will be voluntary and anonymous.

Study 1 will recruit drivers at the roadside to test for alcohol and other selected drugs known, or suspected, to impair cognitive and motor skills important for driving safety. The study will operate data collection research teams across the country to collect breath samples, oral fluid specimens, and questionnaire data to be analyzed to achieve NHTSA's research objectives. The study will allow NHTSA to estimate the population-level prevalence of alcohol- and other drug-positive driving on roadways in the U.S. for the selected days and times. Information will also be requested from other road users who pass by the Study 1 data collection locations.

Study 2 examines the viability of a stand-alone roadside nationwide survey focused solely on ORUs. This effort uses 20 new data collection locations, inclusive of 4 PSUs with 5 locations in each. This effort is to inform NHTSA on the feasibility of such a targeted roadside survey, and to determine the level of effort to execute a nationwide study of ORUs. The same procedures as Study 1 will be used.

Description of the Need for the Information and Proposed Use of the Information

NHTSA was established to reduce deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. As part of this statutory mandate, NHTSA is authorized to conduct research for the development of traffic safety programs. Subchapter V of Chapter 301 of Title 49 of the United States Code (U.S.C.) authorizes the Secretary of Transportation to conduct motor vehicle safety research. 49 U.S.C. 30182. Pursuant to Section 1.95 of Title 49 of the Code of Federal Regulations (CFR), the Secretary has delegated this authority to the National Highway Traffic Safety Administration (NHTSA). Additionally, Title 23, United States Code, Chapter 4, Section 403 gives the Secretary of Transportation (NHTSA by delegation) authorization to use funds appropriated to conduct research and development activities. The agency develops, promotes, and implements educational, engineering, and enforcement programs with the goal of ending preventable tragedies and reducing economic costs associated with vehicle use and highway travel. Current data is essential to develop appropriate approaches to improve traffic safety. This is especially true for information on impaired driving, both for alcohol, and for drug use and driving where data is much more limited.

Drugs affect biology, perception, psychomotor ability, and behavior. With the exception of alcohol, however, relatively little is known about the

prevalence of drugged driving currently on U.S. roadways because of the complexities associated with collecting, analyzing, and reporting information on other drug use. Given the number of States legalizing medicinal and/or recreational use of cannabis, and other issues such as the apparent increase in opioid use in the U.S., more information is needed on the level of alcohol-involved and other drug-involved driving on the nation's roadways to better inform NHTSA's countermeasure development efforts.

NHTSA and other traffic safety stakeholders have sought to learn about these issues through varied methodological approaches. For Study 1, researchers will collaborate with State and local officials to collect data at the roadside at 300 roadway locations (60 primary sampling units [PSUs], also known as ''sites,'' with 5 roadway locations each) across the country. Roadside surveys such as this provide objective measures of alcohol and other drugs in drivers' systems at the time they are actually driving, based on tests results from breath samples and oral fluid samples collected using established sample collection methods. All samples will then be tested, and results confirmed by a leading forensic by a leading forensic toxicology laboratory. This approach will allow for the estimation of alcohol and other drug prevalence among the non-crash-involved general driving population in the U.S. for the selected days and times studied.

Study 1 also explores whether it is possible to collect information from ORUs encountered at the driver data collection locations including individuals in transit on foot, on a bicycle, electric scooter, or with a mobility aid.

Study 2 is a separate test to determine the viability of a stand-alone roadside survey focused solely on ORUs (*i.e.,* excluding drivers) to estimate the population level prevalence of alcohol and other drug use among other road user types for specified days and times. Study 2 will select 20 new data collection locations to recruit a convenience sample of ORUs.

The results of this project will assist NHTSA as the agency develops its programmatic activities aimed at reducing crashes and fatalities that may be associated with the use of alcohol and/or other drugs. It is expected the results of this study will be compared to future studies to monitor alcohol and other drug prevalence trends over time on the nation's roadways.

Frequency of Collection: Both Study 1 and Study 2 are one-time data collections. Because 5 data collection locations are located in each PSU, there is a remote chance an individual could participate more than once in either effort. Because data collection is anonymous, it will not be possible to know if an individual participates more than once. However, this is not likely and not expected, as potential participants will not know data collection locations or times ahead of time, and the time at any location will be limited.

Affected Public: Study 1 will recruit volunteers who are drivers of passenger motor vehicles on active roadways at the 300 selected sampling locations. ORUs passing by the Study 1 data collection locations will also be recruited to participate. The site and location sampling are based on recruitment of drivers. For ORUs, participants will be recruited to the extent they are available at the locations.

Study 2 will focus specifically on ORUs (*i.e.,* excluding drivers) at 20 new sampling locations across 4 PSUs to assess the feasibility of conducting a stand-alone nationwide roadside survey on these vulnerable road user populations.

Estimated Number of Respondents: Study 1 expects to contact approximately 11,750 drivers with 9,000 agreeing to participate. Based on the last NRS results, it is expected 8,000 drivers will fully participate and 1,000 will partially participate (*i.e.,* stops providing information before full data collection is complete). Study 1 also expects to contact 750 ORUs at the Study 1 data collection locations with 500 fully participating and 60 partially participating.

Study 2 of only ORUs expects to contact approximately 750 individuals with 500 fully participating and 60 partially participating.

Estimated Total Annual Burden Hours: The total annual burden hours for the two studies is estimated to be 531 hours. The total amount of burden across both studies combined is estimated to be 1,593 hours. This includes approximately 1,500 hours for the 9,000 participants (8,000 Study 1 drivers, 500 Study 1 ORUs, 500 Study 2 ORUs) who will fully participate. The expected completion time for each individual is 10 minutes. The remaining 93 hours is for the 1,120 people who will partially participate (1,000 Study 1 drivers, 60 Study 1 ORUs, 60 Study 2 ORUs). It is expected these individuals will spend 5 minutes on average for partial participation.

The total amount of burden cost to respondents to participate across both studies is estimated to be $72,640 (see Table 1). The total annual burden cost to respondents is $24,213.

TABLE 1—SUMMARY OF TOTAL BURDEN HOURS AND ESTIMATED COSTS BY RESPONDENT TYPE

Type of respondent	Number of respondents	Minutes per respondent	Hourly wage + 30% fringe ($35.07 + $10.52)*	Total estimated burden hours	Estimated cost
Study 1 (NRS):					
Driver fully participates	8,000	10	$45.59	1,333.33	$60,786.51
Driver partially participates	1,000	5	45.59	83.33	3,799.01
Subtotal					64,585.52
ORU fully participates	500	10	45.59	83.33	3,799.01
ORU partially participates	60	5	45.59	5	227.95
Subtotal					4,026.96
Total				1,504.99 (1,505)	68,612.48 (68,612)
Study 2 (ORU Pilot):					
ORU fully participates	500	10	45.59	83.33	3,799.01

TABLE 1—SUMMARY OF TOTAL BURDEN HOURS AND ESTIMATED COSTS BY RESPONDENT TYPE—Continued

Type of respondent	Number of respondents	Minutes per respondent	Hourly wage + 30% fringe ($35.07 + $10.52)*	Total estimated burden hours	Estimated cost
ORU partially participates	60	5	45.59	5	227.95
Total				88.33 (88)	4,026.96 (4,027)
Both Studies Combined:					
Fully participates	9,000	10	45.59	1,500.00	68,385.00
Partially participates	1,120	5	45.59	93.33	4,254.91
Grand Total	10,120			1,593.33 (1,593)	72,639.91 (72,640)

*See July 2024 total private average hourly wages from the U.S. Bureau of Labor Statistics at *https://www.bls.gov/news.release/empsit.t19.htm;* Fully loaded wage is inclusive of a 30% addition to the base hourly wage to account for fringe benefits.

Estimated Total Annual Burden Cost: Participation in this study is voluntary and there are no costs to respondents beyond the time spent hearing about the study and participating in data collection if they decide to participate. Participants will incur no burden related to annual reporting or record keeping due to the collection of this new information.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (i) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (ii) the accuracy of the Department's estimate of the burden of the proposed information collection; (iii) ways to enhance the quality, utility and clarity of the information to be collected; and (iv) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

Nanda Narayanan Srinivasan,

Associate Administrator, Research and Program Development.

[FR Doc. 2024–27043 Filed 11–19–24; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2024–0166]

Pipeline Safety: Random Drug Testing Rate; Multi-Factor Authentication; and Operator and Contractor Management Information System Reporting

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: PHMSA has determined that the Minimum Annual Percentage Rate for Random Drug Testing for covered employees will be 50 percent during calendar year (CY) 2025. For CY 2024 reporting, Multi-Factor Authentication (MFA) login procedures must be used for submitting drug & alcohol (D&A) testing data into the Drug and Alcohol (D&A) Management Information System (DAMIS) database. This notice also explains how pipeline operators and contractors will obtain MFA login information.

DATES: Applicable January 1, 2025, through December 31, 2025.

FOR FURTHER INFORMATION CONTACT: Wayne Lemoi, Drug & Alcohol Program Manager, Office of Pipeline Safety, by phone at 909–937–7232 or by email at *wayne.lemoi@dot.gov.*

SUPPLEMENTARY INFORMATION:

Notice of CY 2025 Minimum Annual Percentage Rate for Random Drug Testing

Operators of gas, hazardous liquid, and carbon dioxide pipeline facilities; liquefied natural gas (LNG) plants; and underground natural gas storage facilities must randomly select and test a percentage of all covered employees for prohibited drug use in accordance with 49 Code of Federal Regulations part 199.

The Administrator can adjust the minimum random drug testing rate based on the reported positive rate of the industry's random drug tests, which is obtained from operators' and contractors' annual DAMIS reports as required by § 199.119(a). In accordance with § 199.105(c)(3), if the reported positive drug test rate is below one percent for two consecutive CYs, the Administrator may lower the random drug testing rate to 25 percent of all covered employees. Conversely, paragraph § 199.105(c)(4) requires the Administrator to raise the minimum annual random drug testing rate from 25 percent to 50 percent of all covered employees when the data obtained from the latest annual DAMIS reports required by § 199.119(a) indicate the positive test rate is equal to or greater than one percent.

While the minimum annual random drug testing rate was 25 percent of all covered employees during CY 2024, the DAMIS reports submitted for CY 2023 D&A testing had a random drug testing positive rate greater than one percent. Therefore, the Administrator is increasing the PHMSA minimum annual random drug testing rate to 50 percent of all covered employees for CY 2025.

Multi-Factor Authentication for DAMIS Reports

DOT will continue to use Multi-Factor Authentication (MFA) to limit and control access to the DOT's DAMIS database. MFA is not unique to PHMSA or to DAMIS. It is a Federal Government initiative that was implemented to protect the integrity and security of Federal Government databases from cybersecurity attacks and other risks.

MFA login procedures for ''primary pipeline'' operators and contractors are explained in the applicable sections below.

Pipeline Operator DAMIS Reporting

To collect more accurate pipeline industry DOT D&A test data and to avoid duplicate reporting of D&A test data, PHMSA limits DAMIS reporting to ''primary operators'' and contractors only. The term ''primary operator'' is not used in the D&A testing regulations in part 199; however, the term ''primary operator'' as used herein has the same meaning as the term ''primary entity'' as used in § 191.22 and § 195.64. Moreover, a ''primary operator'' can be a large or small operator as explained below.

Pipeline operators either have a D&A program that includes only one pipeline operator (*i.e.,* one OPID) or an ''umbrella'' type shared D&A program that includes multiple pipeline operators (*i.e.,* more than one OPID). For DAMIS reporting purposes the operator of the single operator D&A program is the ''primary pipeline operator.'' For shared D&A programs, the ''primary operator'' must be identified to PHMSA through Safety Program Relationship (SPR) data before submitting a DAMIS report. Operators are reminded to review their D&A program records to check the SPR status of their D&A program. If changes are needed to properly align the SPR data with the operator's D&A program, the operator must make a written notification to PHMSA.

The PHMSA regulations governing DAMIS reporting (§§ 199.119 and 199.229) are based on whether the primary operator is a large operator or a small operator. Pursuant to §§ 199.119(a) and 199.229(a), a large operator is an operator with more than 50 covered employees. Large operators are required to submit a DAMIS report each CY. Pursuant to §§ 199.119(a) and 199.229(a), a small operator is an operator with 50 or fewer covered employees. Small operators are only required to submit a DAMIS report if the operator receives a ''written notice'' from PHMSA requesting a report. Each CY, PHMSA transmits written notices as messages in the PHMSA Portal in late December.

To calculate the number of D&A covered employees to determine whether an operator is a large or small primary operator, include all covered employees of the primary operator plus all covered employees of any business units included in the DAMIS report under a shared D&A program. If your covered employees are in a random drug testing pool managed by a consortium, count only your own covered employees. If you have any covered employees subject to D&A testing under more than one DOT agency, count only those employees who were D&A tested under PHMSA, which is the agency selected on the Federal Drug Testing Custody and Control Form (CCF) or on the Alcohol Testing Form (ATF). While contractor employees are covered employees requiring D&A testing, contractor employees are not used to calculate whether a ''primary pipeline operator'' is a large or small operator. Therefore, do not include contractor employees in the above calculations.

Pipeline operators are no longer required to ''accept'' contractor reports. Instead, an operator will simply list the contractor, and the contractor's DAMIS report automatically becomes part of the operator's report once the contractor has submitted its report to DAMIS. Furthermore, operators are not able to view contractor data reports through DAMIS, but can get the report directly from the contractor, if they so desire.

For each contractor listed by a primary operator, DAMIS will show if a *Login.gov invitation* has been generated for the contractor. If no *Login.gov invitation* has been created for the contractor or if the *Login.gov invitation* was created for the wrong email address, the primary operator can generate a new *Login.gov invitation* by entering a new email address for the contractor. This email address cannot already be in use to access DAMIS for a primary operator or a different contractor.

Primary Operator MFA Login: In September 2023, PHMSA communicated by email with primary operators to confirm the email address of the person who will submit the primary operator's DAMIS report. These confirmed email addresses were loaded into DAMIS at the end of CY 2023. In early January 2024, DAMIS generated a one-time/one-use *Login.gov* invitation for the confirmed email addresses. PHMSA also makes *Login.gov* invitations available in the PHMSA Portal.

Contractor DAMIS Reporting

Because contractors do not have OPIDs, PHMSA uses a Business Tax Identification Number (BTIN) to track contractors in the DAMIS database.

A contractor may perform D&A covered functions for one pipeline operator or multiple operators. Additionally, a contractor may be local, regional, or nationwide, and/or may operate from a single location or from multiple locations. Regardless, the clear intent is for PHMSA and DOT to collect contractor D&A test data that is complete, accurate, and nonrepetitive. Accordingly, each contractor must prepare a single, complete, and accurate DAMIS report that includes all its D&A covered employees and all their DOT D&A test data. A contractor does not prepare or submit a separate and distinct DAMIS report for each pipeline operator, or for a contractor's separate offices or locations, unless those offices are distinct and separate under their own BTIN. Moreover, a contractor must not report the same covered employees and the same D&A tests in more than one BTIN. If a contractor has more than one BTIN, the contractor must allocate individual employees and their D&A tests results among the BTINs for which they actually worked, or report all the contractor's employees and test results under one BTIN.

PHMSA does not need or require a DAMIS report from each BTIN. PHMSA requires a valid set of contractor D&A test data that reflects the complete and accurate picture of who the contractor D&A tested and what the results of those tests were. PHMSA does not want covered employees or D&A tests to be reported more than once. If test results can be reported under one BTIN, that is acceptable.

PHMSA also recognizes that some pipeline operators perform D&A covered functions for other PHMSA regulated pipeline operators. While this may take place under a contract, pipeline operators with an OPID must never be listed as a contractor by any other pipeline operator in a DAMIS report.

Contractor MFA Login: MFA allows access for contractors to enter their D&A testing data directly into DAMIS. In September 2023, PHMSA communicated by email with contractors to confirm the email address of the person who will submit the contractor DAMIS report. These confirmed email addresses were loaded into DAMIS at the end of CY 2023. In early January 2024, DAMIS generated a one-time/one-use *Login.gov invitation* for the confirmed email address. Contractors can also request a new *Login.gov invitation* for a new email address by sending a request to *PHMSAPipelineDAMIS@dot.gov.*

Any primary operator can generate a new *Login.gov invitation* for a contractor by entering an email address that is not already established with *Login.gov* access to DAMIS.

Issued in Washington, DC, on November 7, 2024, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2024–26737 Filed 11–19–24; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons and vessels that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them. The vessels placed on the SDN List have been identified as property in which a block person has an interest.

DATES: This action was issued on November 14, 2024. See **SUPPLEMENTARY INFORMATION** section for relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; or Assistant Director for Sanctions Compliance, tel.: 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 November 14, 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–P

Individuals

1. BIN AHMED RUSHDI AL-QATIRJI, Hussam (Arabic: حسام بن أحمد رشدي قاطرجي) (a.k.a. AL-QATIRJI, Hossam (Arabic: حسام القاطرجي); a.k.a. AL-QATIRJI, Hussam; a.k.a. KATARJI, Hussam; a.k.a. KATERJI, Hussam; a.k.a. KHATARJI, Hussam; a.k.a. KHATIRJI, Hussam; a.k.a. QATARJI, Hossam; a.k.a. QATERJI, Hussam; a.k.a. QATIRJI BIN AHMED RUSHDI, Hussam (Arabic: بن احمد رشدي حسام قاطرجي)), Syria; DOB 11 Jan 1982; POB Raqqa, Syria; nationality Syria; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] [SYRIA] (Linked To: AL-QATIRJI COMPANY).

   Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism," 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, "Modernizing Sanctions To Combat Terrorism," 84 FR 48041 (E.O. 13224, as amended), for having acted or purported to act for or on behalf of, directly or indirectly, AL-QATIRJI COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. KATERJI, 'ABBAS; DOB 01 Jan 2006; nationality Syria; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport 016021971 (Syria) expires 17 Oct 2024 (individual) [SDGT] (Linked To: AL-QATIRJI COMPANY).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, AL-QATIRJI COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. QATIRJI, Muhammad Agha Ahmed Rashdi (Arabic: حمد آغا أحمد رشدي قاطرجي) (a.k.a. AL-QATIRJI, Muhammad Agha; a.k.a. QATIRJI, Muhammad Agha; a.k.a. QATIRJI, Muhammad Agha Ahmed), United Arab Emirates; DOB 01 Jan 1991; nationality Syria; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: AL-QATIRJI COMPANY).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, AL-QATIRJI COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Entities

1. AL-QATIRJI COMPANY (a.k.a. AL-SHAM AND AL-DARWISH COMPANY; a.k.a. KATERJI GROUP COMPANY; a.k.a. KATERJI GROUP LTD; a.k.a. KHATIRJI GROUP), Mazzah, Damascus, Syria; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Type: Activities of holding companies [SDGT] [SYRIA] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13224.

2. BLUES BLUESPECTRUM SHIPPING S.A., 60th Floor, BICSA Financial Center, Avenida Balboa, Panama City, Panama; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 2023; Identification Number IMO 6459297; Folio Mercantil No. 155744579 (Panama) [SDGT] (Linked To: AL-QATIRJI COMPANY).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AL-QATIRJI COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. SALINA SHIP MANAGEMENT PVT LTD (a.k.a. SALINA SHIP MANAGEMENT PRIVATE LIMITED), Office 603, Shagun Reality Insignia 195, Sector 19, Ulwe, Navi Mumbai, Maharashtra 410206, India; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 17 Mar 2023; Identification Number IMO 6422208; Business Registration Number UMH2023PTC399204 (India) [SDGT] (Linked To: AL-QATIRJI COMPANY).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AL-QATIRJI COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

4. AMITIS JAZIREH KISH SHIP MANAGEMENT CO LLC, Unit 44, 11th Floor, Mena Tower, Plot BO139, Sanaei Street, Kish 7941773197, Iran; Secondary

sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 2021; Identification Number IMO 6221126 [SDGT] (Linked To: AL-QATIRJI COMPANY).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AL-QATIRJI COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

5. SOFTWATER NAVIGATION HOLDING LTD., Trust Company Complex, Ajeltake Road, Majuro, Ajeltake Island MH 96960, Marshall Islands; 1st Floor General Building, Adnan Hakim Street, Baabda-Bir Hassan, Ghobeiry, Mount Lebanon, Lebanon; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 23 May 2023; Identification Number IMO 6414066; Registration Number 120208 (Marshall Islands) [SDGT] (Linked To: AL-QATIRJI COMPANY).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AL-QATIRJI COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

6. MOSHTAQ TEJARAT SANAT CO JSC (Arabic: شرکت□شتاق تجارت صنعت) 2nd Floor, South Unit, Felestin Street, 472, Tehran 1415714583, Iran; Unit 205, 2nd Floor, Yas Trading Office Complex, No. 0, Private Dead End, Doctor Ali Shariati Street, Gholhak, Central District, Tehran, Tehran 1941934336, Iran; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 22 Aug 2004; National ID No. 10102696911 (Iran); Identification Number IMO 6175130; alt. Identification Number 411478487166 (Iran); Registration Number 228557 (Iran) [SDGT] (Linked To: AL-QATIRJI COMPANY).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AL-QATIRJI COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

7. NATIVA MANAGEMENT LTD, Trust Company Complex Ajeltake Road, Majuro, Ajeltake Island MH 96960, Marshall Islands; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 2021; Identification Number IMO 6224770 [SDGT] (Linked To: AL-QATIRJI COMPANY).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AL-QATIRJI COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

8. ELIAS SHIPPING & TRADING GROUP SA (a.k.a. ELIAS SHIPPING AND TRADING GROUP S.A.), 21st Floor, Global Plaza Building, Calle 50, Panama City, Panama; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 2023; Identification Number IMO 6422446; Folio Mercantil No. 155736668 (Panama) [SDGT] (Linked To: AL-QATIRJI COMPANY).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AL-QATIRJI COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

9. PEARL SHIPPING & TRADING LTD (a.k.a. PEARL SHIPPING AND TRADING LTD), 1st Floor, Boubes Center, Moussaytbeh Street, Beirut, Lebanon; Registration Country Liberia; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 2017; Identification Number IMO 5988457 [SDGT] (Linked To: AL-QATIRJI COMPANY).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AL-QATIRJI COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

10. VELINE SHIPTRADE INCORPORATED (a.k.a. VELINE SHIPTRADE INC), Suite 10, 3rd Floor, La Ciotat, Mont Fleuri, Mahe, Seychelles; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 2022; Identification Number IMO 6372426 [SDGT] (Linked To: AL-QATIRJI COMPANY).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AL-QATIRJI COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

BILLING CODE 4810–AL–C

On November 14, 2024, OFAC also identified the following vessels as property in which a blocked person has an interest under the relevant sanctions authority listed below.

Vessels

1. CELINE (3E2126) Crude Oil Tanker Panama flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9305609; MMSI 352001369 (vessel) [SDGT] (Linked To: SALINA SHIP MANAGEMENT PVT LTD).

Identified as property in which SALINA SHIP MANAGEMENT PVT LTD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

2. ELINE (8PAA5) Crude Oil Tanker Barbados flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9292486; MMSI 314856000 (vessel) [SDGT] (Linked To: SALINA SHIP MANAGEMENT PVT LTD).

Identified as property in which SALINA SHIP MANAGEMENT PVT LTD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

3. JOEL (T8A4642) Crude Oil Tanker Palau flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9198094; MMSI 511101321 (vessel) [SDGT] (Linked To: BLUESPECTRUM SHIPPING S.A.).

Identified as property in which BLUESPECTRUM SHIPPING S.A., a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

4. LELIA (8PAB1) Crude Oil Tanker Barbados flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9258870; MMSI 314861000 (vessel) [SDGT] (Linked To: SALINA SHIP MANAGEMENT PVT LTD).

Identified as property in which SALINA SHIP MANAGEMENT PVT LTD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

5. CHLOE (a.k.a. SAM 121) (8RAX1) Crude Oil Tanker Guyana flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9173745; MMSI 750656000 (vessel) [SDGT] (Linked To: AL–QATIRJI COMPANY).

Identified as property in which AL–QATIRJI COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

6. LOTUS (EPNF3) Crude Oil Tanker Iran flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9203784; MMSI 422300300 (vessel) [SDGT] (Linked To: AL–QATIRJI COMPANY).

Identified as property in which AL–QATIRJI COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

7. REX 1 (3EUU2) Crude Oil Tanker Panama flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9219056; MMSI 372979000 (vessel) [SDGT] (Linked To: SOFTWATER NAVIGATION HOLDING LTD.).

Identified as property in which SOFTWATER NAVIGATION HOLDING LTD., a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

8. ROMINA (EPMH6) Crude Oil Tanker Iran flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9114608; MMSI 422278900 (vessel) [SDGT] (Linked To: AMITIS JAZIREH KISH SHIP MANAGEMENT CO LLC).

Identified as property in which AMITIS JAZIREH KISH SHIP MANAGEMENT CO LLC, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

9. LIA (a.k.a. DOMANI; a.k.a. GERD KNUTSEN; a.k.a. SERENITY) Crude Oil Tanker Guyana flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9041057 (vessel) [SDGT] [VENEZUELA–EO13850] (Linked To: FIDES SHIP MANAGEMENT LLC; Linked To: NATIVA MANAGEMENT LTD).

Identified as property in which NATIVA MANAGEMENT LTD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

10. STAR 5 (EPPV7) Crude Oil Tanker Iran flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9150377; MMSI 422362100 (vessel) [SDGT] (Linked To: MOSHTAQ TEJARAT SANAT CO JSC).

Identified as property in which MOSHTAQ TEJARAT SANAT CO JSC, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

11. BARON (a.k.a. DARAN; a.k.a. UPMAN) (8RCB2) Chemical/Products Tanker Guyana flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9080493; MMSI 667001798 (vessel) [SDGT] (Linked To: PEARL SHIPPING & TRADING LTD).

Identified as property in which PEARL SHIPPING & TRADING LTD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

12. MIA (a.k.a. FREEDOM; a.k.a. MAGUS) (8RCY1) Crude Oil Tanker Guyana flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9018464 (vessel) [SDGT] [VENEZUELA–EO13850] (Linked To: FIDES SHIP MANAGEMENT LLC; Linked To: VELINE SHIPTRADE INCORPORATED).

Identified as property in which VELINE SHIPTRADE INCORPORATED, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

13. RAMONA I (a.k.a. SHADI) (8RPE6) Crude Oil Tanker Guyana flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9233222; MMSI 750925000 (vessel) [SDGT] (Linked To: ELIAS SHIPPING & TRADING GROUP SA).

Identified as property in which ELIAS SHIPPING & TRADING GROUP SA, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

Lisa M. Palluconi,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2024–27073 Filed 11–19–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Federal Advisory Committee on Insurance

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces that the U.S. Department of the Treasury's Federal Advisory Committee on Insurance (FACI) will meet via videoconference on Thursday, December 12, 2024, from 1 p.m.–3:30 p.m. eastern time. The meeting is open to the public. The FACI provides non-binding recommendation and advice to the Federal Insurance Office (FIO) in the U.S. Department of Treasury.

DATES: The meeting will be held via videoconference on Thursday, December 12, 2024, from 1 p.m.–3:30 p.m. eastern time.

ADDRESSES:

Attendance: The meeting will be held via videoconference and is open to the public. The public can attend remotely via live webcast: *https://usdotyorktel.rev.vbrick.com/#/events/0605bc7e-cf8d-44f4-9098-4df5c00dbe1d.* The webcast will also be available through the FACI's website: *https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/federal-advisory-committee-on-insurance-faci.* Please refer to the FACI website for up-to-date information on this meeting. Requests for reasonable accommodations under Section 504 of the Rehabilitation Act should be directed to Snider Page, Office of Civil Rights and Equal Employment Opportunity, Department of the Treasury at (202) 622–0341, or *snider.page@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: John Gudgel, Senior Insurance Policy Analyst, Federal Insurance Office, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Room 1410 MT, Washington, DC 20220, at (202) 622–1748 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance

with the Federal Advisory Committee Act (FACA), 5 U.S.C. 1009(a)(2), through implementing regulations at 41 CFR 102–3.150.

Public Comment: Members of the public wishing to comment on the business of the FACI are invited to submit written statements by either of the following methods:

Electronic Statements

- Send electronic comments to *faci@treasury.gov.*

Paper Statements

- Send paper statements in triplicate to the Federal Advisory Committee on Insurance, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Room 1410 MT, Washington, DC 20220.

In general, the Department of the Treasury will make submitted comments available upon request without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. Requests for public comments can be submitted via email to *faci@treasury.gov.* The Department of the Treasury will also make such statements available for public inspection and copying in the Department of the Treasury's Library, 720 Madison Place NW, Room 1020, Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–2000. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Tentative Agenda/Topics for Discussion: This will be the fourth FACI meeting of 2024. In this meeting, the FACI will discuss topics related to climate-related financial risk and the insurance sector, and will also discuss cyber insurance developments and international insurance issues. The FACI will also receive status updates from each of its subcommittees and from FIO on its activities, as well as consider any new business.

Steven Seitz,

Director, Federal Insurance Office.

[FR Doc. 2024–26989 Filed 11–19–24; 8:45 am]

BILLING CODE 4810–AK–P

FEDERAL REGISTER

Vol. 89 Wednesday,

No. 224 November 20, 2024

Part II

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1, 41, and 42

Setting and Adjusting Patent Fees During Fiscal Year 2025; Final Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 41, and 42

[Docket No. PTO–P–2022–0033]

RIN 0651–AD64

Setting and Adjusting Patent Fees During Fiscal Year 2025

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (USPTO) sets or adjusts patent fees as authorized by the Leahy-Smith America Invents Act (AIA), as amended by the Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018 (SUCCESS Act). The fee adjustments are needed to provide the USPTO with sufficient aggregate revenue to recover the aggregate estimated costs of patent operations in future years (based on assumptions and estimates found in the agency's Fiscal Year 2025 Congressional Justification (FY 2025 Budget)), including implementing the USPTO 2022–2026 Strategic Plan (Strategic Plan).

DATES: This rule is effective on January 19, 2025. The amendments to § 1.18(b)(1) shall apply to those international design applications under the Hague Agreement having a date of international registration on or after January 19, 2025.

FOR FURTHER INFORMATION CONTACT: Brendan Hourigan, Director, Office of Planning and Budget, at 571–272–8966 or *Brendan.Hourigan@uspto.gov* or C. Brett Lockard, Director, Forecasting and Analysis Division, at 571–272–0928 or *Christopher.Lockard@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Introduction

The USPTO issues this final rule under section 10 of the AIA (section 10), Public Law 112–29, 125 Stat. 284, available at *https://www.congress.gov/112/plaws/publ29/PLAW-112publ29.pdf,* as amended by the SUCCESS Act, Public Law 115–273, 132 Stat. 4158, available at *https://www.congress.gov/115/plaws/publ273/PLAW-115publ273.pdf,* which authorizes the Under Secretary of Commerce for Intellectual Property and Director of the USPTO (Director) to set or adjust by rule any patent fee established, authorized, or charged under 35 U.S.C. for any services performed or materials furnished by the agency. Section 10 prescribes that fees may be set or adjusted only to recover the aggregate estimated costs to the USPTO for processing, activities, services, and materials relating to patents, including administrative costs with respect to such patent fees. Section 10 authority includes flexibility to set individual fees in a way that furthers key policy factors while considering the cost of the respective services. Section 10 also establishes certain procedural requirements for setting or adjusting fee regulations, such as public hearings and input from the Patent Public Advisory Committee (PPAC), a public comment period, and congressional oversight.

B. Purpose of This Action

Based on a biennial review of fees, costs, and revenues that began in fiscal year (FY) 2021, the USPTO concluded that fee adjustments are necessary to provide the agency with sufficient financial resources to facilitate the effective administration of the U.S. patent system, including implementing the Strategic Plan, available on the agency website at *https://www.uspto.gov/StrategicPlan.* The USPTO reviewed and analyzed the overall balance between the agency's estimated revenue and costs over the next five years (based on current projections) under this rule. The fees established under this final rule will help stabilize the USPTO's finances by offsetting the forecasted increase in aggregate costs and maintaining the patent operating reserve in the desired range. The patent operating reserve mitigates financing risk and enables the agency to deliver reliable and predictable service levels, while positioning it to undertake initiatives that encourage participation in the innovation ecosystem.

The individual fee adjustments align with the USPTO's strategic goals and its fee structure philosophy, including the agency's four key fee setting policy factors discussed in detail in Part IV: Rulemaking Goals and Strategies of this rule: (1) promote innovation strategies, (2) align fees with the full costs of products and services, (3) facilitate effective administration of the U.S. patent system, and (4) offer application processing options. The fee adjustments in this final rule will enable the USPTO to accomplish its mission to drive U.S. innovation, inclusive capitalism, and global competitiveness.

C. Summary of Provisions Impacted by This Action

This final rule sets or adjusts 433 patent fees for undiscounted, small, and micro entities, including the introduction of 52 new fees. Any reference herein to ''undiscounted entity'' includes all entities other than those with established entitlement to either a small or micro entity fee discount, see Part II: Background of this rule for more information.

Overall, discussed in detail below, the routine fees to obtain a patent (*i.e.,* filing, search, examination, and issue fees) will increase under this final rule relative to the current fee schedule to ensure financial sustainability and accommodate increases needed to improve the predictability and reliability of patent intellectual property (IP) protection. Applicants who meet the eligibility criteria for small or micro entity discounts will continue to pay a reduced fee for the fees eligible for discount under AIA section 10(b). Additional information describing the fee adjustments established by this final rule is included in Part V: Individual Fee Rationale in this rulemaking and in the ''Table of Patent Fees—Current, Final Patent Fee Schedule, and Unit Cost'' (Table of Patent Fees) available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting.*

D. Summary of Costs and Benefits of This Action

This final rule is 3(f)(1) significant and requires a Regulatory Impact Analysis (RIA) under Executive Order (E.O.) 12866, Regulatory Planning and Review, (Sept. 30, 1993). The USPTO prepared an RIA to analyze the costs and benefits of the final rule over a five-year period, FY 2025–29. The RIA includes an analysis of how well the four alternatives align with the rulemaking strategies and goals, which are comprised of strategic priorities (goals, objectives, and key performance strategies) from the Strategic Plan and fee setting policy factors. From this conceptual framework, the USPTO assessed the absolute and relative qualitative costs and benefits of each alternative. Consistent with Office of Management and Budget (OMB) Circular A–4, ''Regulatory Analysis'' (see 88 FR 77615, Nov. 13, 2023), this final rule involves a transfer payment from one group to another. The USPTO recognizes that it is very difficult to precisely monetize and quantify social costs and benefits resulting from deadweight loss of a transfer rule such as this final rule. The costs and benefits

identified and analyzed in the RIA are strictly qualitative. Qualitative costs and benefits have effects that are difficult to express in either dollar or numerical values. Monetized costs and benefits, on the other hand, have effects that can be expressed in dollar values. The USPTO did not identify any monetized costs and benefits of this final rule but found this final rule has significant qualitative benefits and only minimal costs.

The RIA assesses the qualitative costs and benefits with respect to fee schedule design—how well the fee schedule aligns to the key fee setting policy factors—and securing aggregate revenue to recover aggregate cost—whether the alternative provides adequate revenue to support the core mission and strategic priorities described in the final rule, Strategic Plan, and FY 2025 Budget. Based on the costs and benefits identified and analyzed in the RIA, the fee schedule detailed in this final rule offers the highest net benefits. As described throughout this document, the final fee schedule maintains the existing balance of below cost entry fees (*e.g.,* filing, search, and examination) and above cost maintenance fees as one approach to foster innovation. Further, as detailed in Part V: Individual Fee Rationale of this rule, the fee changes are targeted in support of one or more fee setting policy factors. Lastly, this final rule secures the aggregate revenue needed to maintain patent operations and achieve the strategic priorities encompassed in the rulemaking goals and strategies (see Part IV: Rulemaking Goals and Strategies of this rule). The final fee schedule produces sufficient aggregate revenue to fund the strategic objectives to issue and maintain robust and reliable patents, improve patent application pendency, optimize the patent application process to enable efficiencies for applicants and other stakeholders, and enhance internal processes to prevent fraudulent and abusive behaviors that do not embody the USPTO's mission. Table 1 summarizes the RIA results. Additional details describing the costs and benefits can be found in the RIA, available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting.*

Table 1: Final Patent Fee Schedule Costs and Benefits, Cumulative FY 2025–29

Qualitative costs and benefits	
Costs	
Fee schedule design	Minimal
Benefits	
Secure aggregate revenue to recover aggregate Costs	Significant
Fee schedule design	Significant
Net benefit	**Significant benefit**

II. Background

Section 10(a) of the AIA authorizes the Director to set or adjust by rule any patent fee established, authorized, or charged under 35 U.S.C. for any services performed or materials furnished by the agency. Fees under 35 U.S.C. may be set or adjusted only to recover the aggregate estimated costs to the USPTO for processing, activities, services, and materials related to patents, including administrative costs to the agency with respect to such patent operations. See 125 Stat. at 316. Provided that fees in the aggregate achieve overall aggregate cost recovery, the Director may set individual fees under section 10 at, below, or above their respective cost. Section 10(e) requires the Director to publish the final fee rule in the **Federal Register** and the USPTO's *Official Gazette* at least 45 days before the final fees become effective.

Section 10 authorizes the USPTO to set or adjust patent fees within the regulatory process. The USPTO has used the AIA's fee setting authority to achieve its key fee setting policy factors and to generate the aggregate revenue needed to recover the aggregate estimated costs of operations and strategic patent priorities in final rules published in FY 2013 (''Setting and Adjusting Patent Fees,'' 78 FR 4212 (Jan. 18, 2013)), FY 2018 (''Setting and Adjusting Patent Fees During Fiscal Year 2017,'' 82 FR 52780 (Nov. 14, 2017)), and FY 2020 (''Setting and Adjusting Patent Fees During Fiscal Year 2020,'' 85 FR 46932 (Aug. 3, 2020) (FY 2020 Final Rule)).

Section 4 of the SUCCESS Act amended section 10(i)(2) to provide that the Director's authority to set or adjust any fee under section 10 will end on September 16, 2026. While the fees established by this rule will remain in effect in perpetuity or until adjusted by a future rulemaking, the Director's authority to initiate new rulemakings to set or adjust fees will expire on that date.

On December 29, 2022, the President signed into law the Consolidated Appropriations Act, 2023, which included the Unleashing American Innovators Act (UAIA). The UAIA, available at *https://www.congress.gov/117/bills/hr2617/BILLS-117hr2617enr.pdf,* increased fee discounts for small entities from 50% to 60% and fee discounts for micro entities from 75% to 80% for fees for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents. The UAIA also increased fee discounts for small entities from 75% to 80% for filing a basic, nonprovisional utility application electronically. See Consolidated Appropriations Act, 2023, Public Law 117–328; ''Reducing Patent Fees for Small Entities and Micro Entities Under the Unleashing American Innovators Act of 2022,'' 88 FR 17147 (Mar. 22, 2023).

Section 10(b) of the AIA, as amended by the UAIA, requires the USPTO to reduce by 60% the fees for small entities that are set or adjusted under section 10(a) for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.

Section 10(g) of the AIA amended 35 U.S.C chapter 11 by adding section 123 concerning micro entities. The AIA, as amended by the UAIA, provides that the USPTO must reduce by 80% the fees for micro entities for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.

When adopting fees under section 10, the Director must provide PPAC the proposed fees at least 45 days prior to publishing in the **Federal Register**. PPAC then has 30 days to deliberate, consider, and comment on the proposal, as well as hold public hearings on the proposed fees. Before the USPTO issues any final fees, PPAC must make a written report available to the public of the comments, advice, and recommendations of the committee regarding the proposed fees. The USPTO must consider and analyze any comments, advice, or recommendations received from PPAC before finally setting or adjusting fees.

Consistent with this framework, on April 20, 2023, the Director notified PPAC of the USPTO's intent to set or adjust patent fees and submitted a preliminary patent fee proposal with supporting materials, which are available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting.* PPAC held a public hearing at the USPTO's headquarters in Alexandria, Virginia, on May 18, 2023, where members of the public were given an opportunity to provide oral testimony. Transcripts of the hearing are available on the USPTO website at *https://www.uspto.gov/sites/default/files/documents/PPAC_Hearing_Transcript-20230518.pdf.* Members of the public were also given an opportunity to submit written comments for PPAC to consider, and these comments are available on *Regulations.gov* at *https://www.regulations.gov/document/PTO-P-2023-0017-0001.* On August 14, 2023, PPAC issued a written report setting forth in detail their comments, advice, and recommendations regarding the preliminary proposed fees. The report is available on the USPTO website at *https://www.uspto.gov/sites/default/files/documents/PPAC-Report-on-2023-Fee-Proposal.docx.*

The USPTO considered and analyzed all comments, advice, and recommendations received from PPAC before publishing the notice of proposed rulemaking (NPRM), ''Setting and Adjusting Patent Fees during Fiscal Year 2025,'' in the **Federal Register** on April 3, 2024, at 89 FR 23226. The NPRM and associated materials are available at *https://www.uspto.gov/FeeSettingAndAdjusting.* Likewise, before issuing this final rule, the agency considered and analyzed all comments, advice, and recommendations received from the public during the 60-day comment period on the NPRM that closed on June 3, 2024. The agency's response to comments received is available in Part VI: Discussion of Comments of this rule.

III. Estimating Aggregate Costs and Revenues

Section 10 prescribes that patent fees may be set or adjusted only to recover the aggregate estimated costs to the USPTO for processing, activities, services, and materials relating to patents, including administrative costs with respect to such patent fees. The following is a description of how the USPTO calculates aggregate costs and revenue.

Step 1: Estimating Prospective Aggregate Costs

Estimating prospective aggregate costs is accomplished primarily through the annual USPTO budget formulation process. The budget is a five-year plan for carrying out base programs and new initiatives to deliver on the USPTO's statutory mission and implement strategic goals and objectives.

First, the USPTO projects the level of demand for patent products and services. Demand for products and services depends on many factors that are subject to change, including domestic and global economic activity. The USPTO also considers overseas patenting activities, policies and legislation, and known process efficiencies. Because filing, search, and examination costs are the largest share of the total patent operating costs, a primary production workload driver is the number of patent application filings (*i.e.,* incoming work to the USPTO). The USPTO looks at indicators such as the expected growth in Real Gross Domestic Product (RGDP), a leading indicator of incoming patent applications, to estimate prospective workload. RGDP is reported by the Bureau of Economic Analysis and is forecasted each February by the OMB in the Economic and Budget Analyses section of the Analytical Perspectives and twice annually by the Congressional Budget Office (CBO) in the Budget and Economic Outlook.

The expected workload must then be compared to the current examination capacity to determine any required staffing and operating cost (*e.g.,* salaries, workload processing contracts, and publication) adjustments. The USPTO uses a patent pendency model to estimate patent production output based on actual historical data and input assumptions, such as incoming patent applications and overtime hours. An overview of the model, including a description of inputs, outputs, key data relationships, and a simulation tool is available at *https://www.uspto.gov/learning-and-resources/statistics/patent-pendency-model.*

Next, the USPTO calculates budgetary spending requirements based on the prospective aggregate costs of patent operations. First, the USPTO estimates the prospective costs of status quo operations (base requirements). Then, the base requirements are adjusted for anticipated pay increases and inflationary increases for the budget year and four outyears. The USPTO then estimates the prospective costs for expected changes in production workload and new initiatives over the same period. The USPTO reduces cost estimates for completed initiatives and known cost savings expected over the same five-year horizon. A detailed description of the budgetary requirements, aggregate costs, and related assumptions for the Patents program is available in the FY 2025 Budget.

The USPTO estimates that the Patents program will cost $3.973 billion in FY 2025, including $2.835 billion for patent examining; $90 million for patent trial and appeals; $159 million for patent information resources; $24 million for activities related to IP protection, policy, and enforcement; and $866 million for general support costs necessary for patent operations (*e.g.,* the patent share of rent, utilities, legal, financial, human resources, other administrative services, and agency-wide information technology (IT) infrastructure and IT support costs). See Appendix II of the FY 2025 Budget. In addition, the USPTO will transfer $2 million to the Department of Commerce Inspector General for audit support.

Table 2 below provides key underlying production workload projections and assumptions from the FY 2025 Budget used to calculate aggregate costs. Table 3 (see Step 2) presents the total budgetary requirements (prospective aggregate costs) for FY 2025 through FY 2029 and the estimated collections and operating reserve balances that would result from the adjustments contained in this final rule. These projections are based on point-in-time estimates and assumptions that are subject to change. There is considerable uncertainty in out-year budgetary requirements. There are risks that could materialize over the next several years (*e.g.,* adjustments to

examination capacity, higher contracting costs, changes in workload, and other inflationary increases, etc.) that could increase the USPTO's budgetary requirements. These estimates are refreshed annually in the production of the USPTO's budget.

Table 2: Patent Production Workload Projections, FY 2025–29

Utility, plant, and reissue (UPR)	**FY 2025**	**FY 2026**	**FY 2027**	**FY 2028**	**FY 2029**
Applications*	609,400	615,400	623,600	629,600	642,200
Application growth rate	2.1%	1.0%	1.3%	1.0%	2.0%
Production units**	557,000	577,300	602,300	621,100	639,000
Unexamined patent application inventory	817,900	820,200	811,600	789,400	780,000
Examination capacity***	8,833	9,276	9,589	9,867	10,135
Performance measures (UPR)					
Average first action pendency (Months)	20.7	20.7	21.0	20.6	21.3
Average total pendency (months)	26.1	27.2	26.6	26.4	25.7

* In this table, the patent application filing data includes requests for continued examination.
** Each serial new (i.e., non-request for continued examination) application carries 1 production unit or 2.0 counts, a fraction of which is awarded for each major Office action type. In most, but not all cases, requests for continued examination carry a fraction of a production unit (e.g., 1.75 counts) and the credit for a first action is reduced by a corresponding amount.
*** In this table, examination capacity is the UPR examiners onboard at end-of-year, as described in the FY 2025 Budget.

Step 2: Estimating Prospective Aggregate Revenue

As described above in Step 1, the USPTO's prospective aggregate costs (as presented in the FY 2025 Budget) include budgetary requirements related to planned production, anticipated new initiatives, and a contribution to the patent operating reserve required for the USPTO to maintain patent operations and realize its strategic goals and objectives for the next five years. The prospective aggregate costs become the target aggregate revenue level that the new fee schedule must generate in a given year over the five-year planning horizon. To estimate aggregate revenue, the USPTO references the production models used to estimate aggregate costs and analyzes relevant factors and indicators to calculate or determine prospective fee workloads (*e.g.,* number of applications and requests for services and products).

Economic activity is an important consideration when developing workload and revenue forecasts for patent products and services because economic conditions affect patenting activity. Major economic indicators include the overall condition of the U.S. and global economies, spending on research and development activities, and investments that lead to the commercialization of new products and services. These indicators correlate with patent application filings, which are a key driver of patent fees. Economic indicators also provide insight into market conditions and the management of IP portfolios, which influence

application processing requests and post-issuance decisions to maintain patent protection. When developing fee workload forecasts, the USPTO considers other influential factors including overseas activity, policies and legislation, court decisions, process efficiencies, and anticipated applicant behavior.

Anticipated applicant behavior in response to fee changes is measured using an economic principle known as elasticity, which for the purpose of this final rule measures how sensitive applicants and patentees are to changes in fee amounts. The higher the elasticity measure (in absolute value), the greater the applicant response to the relevant fee change. If elasticity is low enough (*i.e.,* the elasticity measure is less than one in absolute value and demand is inelastic), a fee increase will lead to only a relatively small decrease in patent activities, and overall revenues will still increase. Conversely, if elasticity is high enough (*i.e.,* the elasticity measure is greater than one in absolute value and demand is elastic), a fee increase will lead to a relatively large decrease in patenting activities such that overall revenues will decrease. When developing fee forecasts, the USPTO accounts for how applicant behavior will change at different fee amounts projected for the various patent services. The USPTO previously analyzed elasticity for nine broad patent fee categories: filing/search/examination fees, excess independent claims fees, excess total claims fees, application size (excess page) fees, issue fees, request for continued examination (RCE) fees, appeal fees, AIA trial fees, and maintenance fees, including distinctions by entity size where applicable. Additional information about how the USPTO estimates elasticity is provided in ''Setting and Adjusting Patent Fees during Fiscal Year 2020—Description of Elasticity Estimates,'' available on the USPTO website at *https://www.uspto.gov/sites/default/files/documents/Elasticity_Appendix.docx.*

As required by law, the USPTO collects fees for patent-related services and products at different points in time within the patent application examination process and over the life of the pending patent application and granted patent to finance the associated work for providing those services. Maintenance fee payments account for about half of all patent fee collections and subsidize the cost of filing, search, and examination activities. Changes in application filing levels immediately impact current year fee collections. Fewer patent application filings mean the USPTO collects fewer fees to devote to production-related costs in the current pipeline. The production output in one- year impacts outyear revenue because less output in one year leads to fewer issue and maintenance fee payments in future years.

The USPTO's five-year estimated aggregate patent fee revenue (see table 3) is based on the number of patent applications it expects to receive for a given fiscal year, work it expects to process in a given fiscal year (an indicator of patent issue fee workloads), expected examination and process requests for the fiscal year, and the expected number of post-issuance decisions to maintain patent protection over that same fiscal year. Within the iterative process for estimating aggregate revenue, the USPTO adjusts individual fee rates up or down based on cost and policy decisions, estimates the effective dates of new fee rates, and multiplies the resulting fee rates by workload volumes (including elasticity adjustments) to calculate a revenue estimate for each fee. For the aggregate revenue estimates shown below, the USPTO assumes that all final rule fee rates will become effective on January 18, 2025. Using these figures, the USPTO sums the individual fee revenue estimates, and the result is a total aggregate revenue estimate for a given year (see table 3). The aggregate revenue estimate also includes collecting $50 million annually in other income associated with recoveries and reimbursable agreements (offsets to spending).

Table 3: Patent Financial Outlook, FY 2025–29

	Dollars in millions				
	FY 2025	**FY 2026**	**FY 2027**	**FY 2028**	**FY 2029**
Projected fee collections	3,963	4,240	4,343	4,308	4,317
Other income	50	50	50	50	50
Total projected fee collections and other income	4,013	4,290	4,393	4,359	4,367
Budgetary requirements	3,975	4,102	4,268	4,431	4,600
Funding to (+) and from (-) operating reserve	38	188	125	(72)	(233)
End-of-year operating reserve balance	831	1,019	1,145	1,073	840
Over/(under) minimum level	513	691	803	719	472
Over/(under) optimal level	(44)	117	206	98	(172)

IV. Rulemaking Goals and Strategies

A. Fee Setting Strategy

The strategy of this final rule is to establish a fee schedule that generates sufficient multi-year revenue to recover the aggregate estimated costs of maintaining USPTO patent operations. The overriding principles behind this strategy are to operate within a sustainable funding model that supports the USPTO's strategic goals and objectives, such as optimizing patent application pendency through the promotion of efficient operations and filing behaviors, issuing robust and reliable patents, and encouraging access to the patent system for all stakeholders.

The USPTO assessed this final rule for alignment with four key fee setting policy factors: (1) promoting innovation strategies seeks to ensure barriers to entry into the U.S. patent system remain low, and innovation is incentivized by granting inventors certain short-term exclusive rights to stimulate additional inventive activity; (2) aligning fees with the full costs of products and services recognizes that some applicants may use particular services in a more costly manner than other applicants (*e.g.,* patent applications cost more to process when more claims are filed); (3) facilitating the effective administration of the U.S. patent system seeks to encourage patent prosecution strategies that promote efficient patent prosecution, resulting in compact prosecution and reduction in the time it takes to obtain a patent; and (4) offering application processing options, where feasible, in recognition that patent prosecution is not a one-size-fits-all process. Part V: Individual Fee Rationale of this rule describes the reasoning for setting and adjusting individual fees, including the design benefits of the final fee schedule. The RIA, available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting,* also discusses fee schedule design benefits.

In the event any provision is invalidated or held to be impermissible as a result of a legal challenge, the ''remainder of the regulation could function sensibly without the stricken provision.'' *Belmont Mun. Light Dep't* v. *FERC,* 38 F.4th 173, 187 (D.C. Cir. 2022) (quoting *MD/DC/DE Broad. Ass'n* v. *FCC,* 236 F.3d 13, 22 (D.C. Cir. 2001)). The USPTO views each fee in this final rule as able to stand on its own and to ''function sensibly'' without the others. This means that in the event that a reviewing court were to find that any one fee setting or fee adjustment was invalid, that finding would not affect the fees or adjustments enacted elsewhere in the rule. Therefore, in the event that any portion of this final rule is held to be invalid or impermissible, the USPTO intends that the remaining aspects of the regulatory provisions, and fees set and adjusted therein, remain valid.

B. Fee Setting Considerations

The balance of this sub-section presents the specific fee setting considerations the USPTO reviewed in developing the final patent fee schedule: (1) historical cost of providing individual services, (2) the balance between projected costs and revenue to meet the USPTO's operational needs and strategic goals, (3) ensuring sustainable funding, and (4) PPAC's comments, advice, and recommendations on the USPTO's initial fee setting proposal and the public comments received in response to the April 2024 NPRM. Collectively, these considerations inform USPTO's chosen rulemaking strategy.

1. Historical Cost of Providing Individual Services

The USPTO sets individual fee rates to further key policy considerations while considering the cost of a particular service. For instance, the USPTO has a longstanding practice of setting basic filing, search, and examination (''front-end'') fees below the actual cost of processing and examining applications to encourage innovators to take advantage of patent rights and protections; these costs are subsidized by aggregate patent revenues elsewhere.

The USPTO considers unit cost accounting data provided by its Activity Based Information (ABI) program to evaluate the cost to provide specific services and then decide how to best align fees for particular services to recover the aggregate costs of all products and services. Using historical cost data and forecasted application demands, the USPTO can align fees to the costs of specific patent products and services. Additional information on the USPTO's costing methodology in addition to the last three years of historical cost data is provided in the document titled ''Setting and Adjusting Patent Fees during Fiscal Year 2025—Activity Based Information and Patent Fee Unit Expense Methodology,'' available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting.* Part V: Individual Fee Rationale of this rule describes the reasoning and anticipated benefits for setting some individual fees at cost, below cost, or above cost such that the USPTO recovers the aggregate costs of providing services through aggregate fee collections.

2. Balancing Projected Costs and Revenue

In developing this final patent fee schedule, the USPTO considered its current estimates of future year workload demands, fee collections, and costs to maintain core USPTO operations and meet its strategic goals as found in the FY 2025 Budget and the Strategic Plan. The USPTO's strategic goals include driving inclusive U.S. innovation and global competitiveness, promoting the efficient delivery of reliable IP rights, promoting the protection of IP against new and persistent threats, bringing innovation to impact, and generating impactful employee and customer experiences by maximizing agency operations. The following subsections provide details regarding updated revenue and cost estimates, cost-saving efforts taken by the USPTO, and planned strategic improvements.

a. Updated Revenue and Cost Estimates

Projected revenue from the current fee schedule is insufficient to meet future budgetary requirements (costs) due largely to unforeseen economic and policy factors since the USPTO last exercised its rulemaking authority to set patent fees in the FY 2020 Final Rule. As further discussed below, increased fee discounts for small and micro entities under the UAIA have reduced revenue estimates. Higher-than-expected inflation in the broader U.S. economy and government-wide pay raises have increased the USPTO's forecasted operating costs. Also, the USPTO has increased special pay rates and undertaken efforts to offer other incentives to recruit and retain examiners and other employees in patent specific job series in order to remain competitive in the job market for science, technology, engineering, and mathematics (STEM) workers. The USPTO is required by law to finance operations by recovering fees for the services offered by the agency. Not implementing the final rule would result in insufficient fee collections to process the anticipated work volumes, impacting stakeholders and failing to deliver on the USPTO mission.

On December 29, 2022, the President signed into law the Consolidated Appropriations Act, 2023, which included the UAIA. The law reduced barriers to entry into the patent system by increasing small entity discounts from 50% to 60% and micro entity

discounts from 75% to 80%. The USPTO estimated as part of its Fiscal Year 2024 Congressional Justification (FY 2024 Budget) that these discounts would reduce projected fee collections by $74 million in FY 2023 (partial year impact) and at least $100 million per year beginning in FY 2024 (full year impact). In addition to increased entity discounts, the UAIA increases costs through its provision that requires that the USPTO establish a new Southeast Regional Office and four new community outreach offices, including one in northern New England. The USPTO must also conduct a study to determine whether additional offices are required to achieve AIA mandates and to increase participation of underrepresented inventors in the patent system.

Higher-than-expected inflation in the broader U.S. economy starting in 2021 increased the USPTO's operating costs above previous estimates for labor and nonlabor activities such as benefits, service contracts, and equipment. Salaries and benefits comprise 70% of all patent-related costs, and employee pay raises enacted across all U.S. government agencies—including the USPTO—in 2023 and 2024 were much larger than previously budgeted. Federal General Schedule (GS) pay was raised by 4.6% in 2023 and 5.2% in 2024; before 2023 the last time GS pay was raised by at least 4.0% was in 2004. The FY 2025 Budget includes an estimated 2.0% civilian pay raise planned in calendar year (CY) 2025 and assumed 3.0% civilian pay raises in CY 2026–29, as well as inflationary increases for other labor and nonlabor activities.

Similarly, the USPTO adjusted the patent special rate table (pay) for the first time since 2007. In 2007 the special rate table was set 11.4% to 31.4% above the GS pay table for the Washington, DC area because patent-related job fields require a highly educated and technical STEM workforce. This specialization has historically posed recruitment challenges for the agency, and the increased pay rates kept the USPTO competitive with private sector compensation opportunities. Prior to the adjustment, the differential above the GS pay table had diminished over the years, and by 2023 nearly half of the covered employees no longer received a specialized supplement above the GS counterparts—reducing the USPTO's competitive edge amongst both private and other Federal agencies. Following the change in 2024, the number of employees eligible for a specialized supplement increased, and the special rate table was set at 5.8% to 19.3% above the GS pay table for the Washington, DC area for most covered employees. The objective of the special rate table change is to provide competitive compensation to patent employees, thereby reducing attrition and enhancing recruitment of qualified talent.

b. Cost-Saving Measures

The USPTO recognizes that fees cannot simply increase for every improvement deemed desirable. The agency has a responsibility to stakeholders to pursue strategic opportunities for improvement in an efficient, cost-conscious manner. Likewise, the USPTO recognizes its obligation to gain operational efficiency and reduce spending when appropriate. As noted in the FY 2023 Agency Financial Report (AFR), available on the agency website at *https://www.uspto.gov/AnnualReport,* total costs for the patent program increased 13.8% from FY 2019 to FY 2023; the Consumer Price Index for All Urban Consumers (CPI–U) grew by 19.9% over the same period. See CPI Inflation Calculator, U.S. Bureau of Labor Statistics, *https://www.bls.gov/data/inflation_calculator.htm.*

The USPTO's FY 2025 Budget submission includes cost reducing measures such as giving up leased space in Northern Virginia and a moderate reduction in overall IT spending. In FY 2025, the USPTO estimates $4,569 million in total spending for patent and trademark operations. This is a $122 million net increase from the agency's FY 2024 estimated spending level of $4,447 million. The net increase includes a $224 million upward adjustment for prescribed inflation and other adjustments and a $102 million downward adjustment in program spending and other realized efficiencies. This estimate builds on the $40 million in annual real estate savings assumed in the FY 2024 Budget submission to include additional annual cost savings of $12 million through releasing more leased space in Northern Virginia. The combined reduction in real estate space amounts to almost 1 million square feet and an estimated annual cost savings of approximately $52 million. Also, the USPTO is actively pursuing IT cost containment. The FY 2025 budget includes a relatively flat IT spending profile despite upward pressure from inflation, supply chain disruptions, and government-wide pay raises; ongoing IT improvements that offer business value to fee-paying customers; and data storage costs increasing proportionally with the forecasted growth in patent and trademark applications. The USPTO will achieve this cost containment goal via modern equipment in a new data center that will cost less to maintain and by retiring legacy IT systems. Both of these cost containment measures will further improve the USPTO's cybersecurity posture and increase system resiliency.

c. Efficient Delivery of Reliable IP Rights: Quality, Unexamined Inventory, and Pendency

The USPTO continuously works to improve patent quality, particularly the predictability, reliability, and robustness of issued patents. See the patent quality section of the USPTO's website, *https://www.uspto.gov/patents/quality-metrics,* for more information including statutory compliance measures, process measures, and perception measures. The USPTO's strategic goal to ''promote the efficient delivery of reliable IP rights'' recognizes the importance of innovation as a foundation of American economic growth and global competitiveness as well as the role the USPTO plays in encouraging these principles. The USPTO is committed to improving pendency to deliver timely, efficient services that help innovators bring their ideas and products to impact more quickly and efficiently. The USPTO diligently works to balance timely examination with improvements in patent quality, particularly the robustness and reliability of issued patents, while remaining mindful that patent applications are becoming increasingly more complex and that technologies are converging. To address these challenges, the USPTO must continue to develop and equip examiners with additional guidance, training, tools, advanced technology, and procedural resources.

The USPTO is pursuing initiatives to enhance patent quality and the clarity and completeness of the official record during prosecution of an application including encouraging applicants to begin filing patent applications in DOCX format, automating preexamination procedures, expanding examiner training, and working on additional guidance for examiners and the Patent Trial and Appeal Board (PTAB). Current guidance initiatives include refresher guidance on obviousness under 35 U.S.C. 103 and enablement under 35 U.S.C. 112 and new guidance on how examiners should analyze inventorship issues for artificial intelligence (AI)-assisted inventions. See ''Updated Guidance for Making a Proper Determination of Obviousness,'' 89 FR 14449 (February 27, 2024); ''Guidelines for Assessing Enablement in Utility Applications and Patents in

View of the Supreme Court Decision in *Amgen Inc. et al.* v. *Sanofi et al.,*'' 89 FR 1563 (December 21, 2023); ''Inventorship Guidance for AI-Assisted Inventions,'' 89 FR 10043 (February 13, 2024). Also, the USPTO is increasing patent examination quality and efficiency via initiatives such as the Global Dossier Initiative (see *https://www.uspto.gov/patents/basics/international-protection/global-dossier-initiative*) and by providing examiners with advanced technologies and tools for identifying prior art, such as the AI-based ''More Like This'' and ''Similarity Search'' features in the Patents End-to-End (PE2E) search suite (see 1494 Off. Gaz. Pat. Office 251 (January 11, 2022) and 1504 Off. Gaz. Pat. Office 359 (November 15, 2022)). More information on the USPTO's AI initiatives, including the AI and Emerging Technologies Partnership, is available at *https://www.uspto.gov/initiatives/artificial-intelligence.*

The USPTO recognizes that optimal pendency helps inventors and investors bring innovation to impact. The growing demand for patent services requires that the USPTO embrace new ways of delivering these critical IP services. Therefore, the USPTO is also working to identify policies, process changes, and technologies to improve patent pendency. Some of these efforts will focus on operational improvements to the patent examination process, including aligning the patent workforce with the incoming workload in the most efficient manner. Other efforts will target improvements to how applicants and other customers engage with the USPTO and navigate the prosecution process. For example, the USPTO has updated its website to improve access to resources and enhance customer service for inventors and practitioners, including modernizing and updating the Patent Basics and Patents Petitions pages, adding a Virtual Assistant on select pages, and providing an updated and modern general website search tool. The USPTO has also upgraded its computer systems, including transitioning in November 2023from legacy systems to Patent Center for the electronic filing and management of patent applications. Patent Center, a web-based platform that allows users to file and manage patent applications and requests, provides improved system performance and a more intuitive user interface for an enhanced user experience. The USPTO is committed to continuously improving the customer experience on its website to enhance and modernize accessibility, design, and overall satisfaction in our digital space. For information on additional enhancements to the agency's online services, visit the USPTO's web improvements page at *https://www.uspto.gov/about-us/website-improvements.* Effecting the changes in the examination process needed to ensure the issuance of reliable patents while also issuing those patents in a timely manner requires recognizing a potential increase in the core operating costs for future years.

Another major component of the overall patent process that has seen an increase in operating costs is the work carried out by the PTAB and the Central Reexamination Unit (CRU). These units play a key role in providing an efficient system for amending or voiding any patent claims that overreach and stunt innovation, inclusive capitalism, and global competitiveness. To ensure that post-issuance challenges to patent rights through the PTAB and the CRU help protect innovation and investments to commercialize innovation, the USPTO will invest in new tools and resources that increase communication, knowledge sharing, and collective problem solving. These strategic investments will enable the USPTO to identify and continue to implement guidelines and best practices to serve the patent system.

3. Sustainable Funding

All aspects of estimating the five-year forecast for aggregate cost, aggregate revenue, and the patent operating reserve are inherently uncertain because they are based on numerous, multifaceted planning assumptions predicated on external indicators of economic IP activity to forecast demand as well as internal workload drivers derived from production models. Maintaining a viable operating reserve is a key consideration as the USPTO sets patent fees. To mitigate the risk of uncertain demand, the USPTO maintains a patent operating reserve. The U.S. Government Accountability Office (GAO) considers operating reserves a best practice for user fee-funded government agencies like the USPTO. The patent operating reserve enables the USPTO to align fees and costs over a longer horizon and to improve its preparation for, and adjustment to, fluctuations in actual fee collections and spending.

The USPTO manages the operating reserve within a range of acceptable balances and assesses its options when projected balances fall either below or above that range. Minimum planning targets are intended to address immediate, unplanned changes in the economic or operating environments as the reserve builds to the optimal level. The minimum and optimal planning targets are reviewed every three years to ensure the reserve operating range (between minimum and optimal targets) mitigates the severity of an array of financial risks. Based on the current risk environment, including various risk factors such as economic and funding uncertainty and the high percentage of fixed costs in the Patents program, the USPTO established a minimum planning level of 8% of total spending—about one month's operating expenses (estimated between $318 million and $368 million from FY 2025–29)—and an optimal long-range target of 22% of total spending—about three months' operating expenses (estimated between $875 million and $1,012 million from FY 2025–2029).

Based on current cost and revenue assumptions in the FY 2025 Budget, the USPTO forecasts that in FY 2024 aggregate estimated costs will exceed aggregate revenue and the operating reserve will be used to maintain operations. The fees contained in this final rule are projected to increase patent fee collections to the point that they exceed known spending requirements, and forecasted excess fee collections will replenish the patent operating reserve each year from FY 2025 through FY 2027. Based on this forecast, the USPTO will likely achieve its optimal level for the patent operating reserve in FY 2026. Based on spending requirements, the USPTO expects to rely on the patent operating reserve to fund a portion of operating expenses in FY 2028 and FY 2029 as projected patent spending requirements will likely exceed projected fee collections.

These projections are based on point-in-time estimates and assumptions that are subject to change. For instance, the budget includes assumptions about filing levels, renewal rates, whether the President will authorize or Congress will mandate employee pay raises, the productivity of the workforce, and many other factors. A change in any of these factors could have a significant cumulative impact on fee collections or spending requirements that affect the reserve balances. As seen in table 3, set forth in Part III: Estimating Aggregate Costs and Revenue of this rule, the operating reserve balance can change significantly over a five-year planning horizon, underscoring the value of the operating reserves as a risk mitigation tool for USPTO's financial vulnerability to varying risk factors and the importance of fee setting authority.

The USPTO will continue to evaluate long-term planning assumptions to determine the appropriate course of

action beyond FY 2027 to appropriately adjust the Patents program for fluctuations in annual revenue resulting from changes in the economy, changes in spending requirements, and other financial risks. The USPTO will also continue to assess the patent operating reserve balance against its target balance annually, and at least every three years, the USPTO will evaluate whether the minimum and optimal target balance remain sufficient to provide the stable funding the USPTO needs. Per the USPTO's operating reserve policy, if the operating reserve balance is projected to exceed the optimal level by 10% for two consecutive years, the USPTO will consider fee reductions. The USPTO will continue to regularly review its operating budgets and long-range plans to ensure the prudent use of patent fees.

4. Comments, Advice, and Recommendations From PPAC and the Public

As detailed in the NPRM and the report prepared in accordance with AIA fee setting authority, PPAC conveyed support for seeking adequate revenue to recover the costs for the USPTO to fulfill its role in supporting the country's innovation ecosystem, commenting that ''[t]imely, high-quality search and examination require an appropriately compensated work force with adequate time to complete the same, supported by state of the art and reliable IT infrastructure.'' PPAC Report at 5–6.

In addition, PPAC recognized that ''the USPTO is in the best position to assess its own needs and balance the tradeoffs in setting individual fees.'' PPAC Report at 6. The USPTO considered and analyzed the comments, advice, and recommendations received from PPAC before publishing this final rule.

Likewise, the agency considered and analyzed the comments, advice, and recommendations received from the public during the 60-day comment period following publication of the NPRM before publishing this final rule. The agency's response to comments received is available in Part VI: Discussion of Comments of this rule.

C. Summary of Rationale and Purpose of the Proposed Rule

The USPTO estimates that the proposed patent fee schedule will produce sufficient aggregate revenue to recover the aggregate estimated costs of patent operations and ensure financial sustainability for effective administration of the patent system. This proposed rule aligns with the USPTO's four key fee setting policy factors and supports the USPTO's mission-focused strategic goals.

V. Individual Fee Rationale

The USPTO projects that aggregate revenue generated by the patent fees established in this final rule will recover the prospective aggregate estimated costs of patent operations as laid out in the FY 2025 Budget.

The USPTO did not set each individual fee necessarily equal to the estimated costs of performing activities related to the fee. Instead, as described in Part IV: Rulemaking Goals and Strategies of this rule, some fees are set at, above, or below their unit costs to balance four key fee setting policy factors: (1) promoting innovation strategies, (2) aligning fees with the full costs of products and services, (3) facilitating effective administration of the U.S. patent system, and (4) offering application processing options. For example, the agency sets many initial filing fees below unit cost to promote innovation strategies by removing barriers to entry to the patent system. To balance the aggregate revenue loss of fees set below cost, the USPTO must set other fees above cost in areas less likely to reduce inventorship (*e.g.,* maintenance).

For some fees established in this final rule, such as extension of time fees, the USPTO does not maintain individual historical cost data for services provided; instead, the agency considers the policy factors described in Part IV: Rulemaking Goals and Strategies of this rule to inform fee setting. For example, facilitating effective administration of the U.S. patent system enables the USPTO to foster an environment where USPTO personnel can provide and applicants can receive prompt, quality interim and final decisions; encourage the prompt conclusion of prosecuting an application, resulting in pendency reduction and faster dissemination of patented information; and help recover costs for activities that strain the patent system.

The fee changes are grouped into three categories: (A) an across-the-board adjustment to patent fees, (B) an adjustment to front-end fees, and (C) targeted fees. Part VII: Discussion of Specific Rules of this rule contains a complete listing of fees set or adjusted in the final patent fee schedule, including small and micro entity fees. This information is also listed in the Table of Patent Fees available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting.*

This final rule includes one procedural amendment (D) expanding the applicability of the rule allowing applicants to obtain a refund of search and excess claims fees paid in an application through express abandonment.

A. Across-the-Board Adjustment to Patent Fees

The broader U.S. economy has experienced higher-than-expected inflation the last two years and, in turn, USPTO operating costs increased relative to baseline estimates for labor and nonlabor activities such as benefits, service contracts, and equipment. Additionally, the USPTO adjusted the patent special rate table (pay) for the first time since 2007 to provide competitive compensation to patent employees. The agency's estimates of future costs in the FY 2025 Budget include a 2.0% civilian pay raise planned in CY 2025 and an assumption of 3.0% civilian pay raises in CY 2026–29, as well as inflationary increases for other labor and nonlabor activities.

In the NPRM, the USPTO proposed raising fees not covered by the targeted adjustments discussed in part V(C) of this rule by 5%. However, this final rule alters that proposal. The agency stated in the NPRM that it may need to refine the size of the across-the-board-adjustment either upward or downward such that fees are set at a level that secures aggregate cost recovery and maintains the operating reserves at acceptable levels. The USPTO has removed or adjusted several of the targeted proposals in the NPRM based on stakeholder feedback. To keep the USPTO on a stable financial track sufficient to recover the aggregate estimated costs of patent operations and to support the agency's strategic objectives, the agency is adjusting by approximately 7.5% all patent fees not covered by the targeted adjustments discussed in part V(C). This option results in an aggregate increase to projected patent fee collections that is about the same as the projected increase in the NPRM.

The effective date of this final rule is more than four years after the agency's last fee adjustment in October 2020. A 7.5% across-the-board increase in 2025 will be equivalent to a 1.7% annual increase, well below the prevailing inflation rate since October 2020. The agency is not proposing a larger increase in line with inflation because the across-the-board adjustment is intended to supplement the additional revenue collected from the targeted adjustments. Also, the USPTO will continue its ongoing efforts to improve operational efficiency and reduce spending when appropriate.

The 7.5% across-the-board adjustment strikes an appropriate balance between projected aggregate revenue and aggregate costs based on the assumptions used to develop the point-in-time estimates that support this final rule. For patent fees with small and micro entity fee reductions, the undiscounted fee is rounded up or down to the nearest $5 by applying standard arithmetic rules. The resulting fee amounts are more convenient to patent users and permit the USPTO to set small and micro entity fees at whole dollar amounts when applying applicable fee reductions. Therefore, some smaller fees will not change since a 7.5% increase would round down to the current fee, while other fees will change by slightly more or less than 7.5%, depending on rounding. For patent fees that do not have small and micro entity fee reductions, the fees are rounded to the nearest dollar by applying standard arithmetic rules. The fee adjustments in this category are listed in the Table of Patent Fees available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting.*

B. Adjustment to Front-End Patent Fees

The USPTO is adjusting all filing, search, and examination fees not covered by the targeted adjustments as discussed in part V(C) of this rule by an additional 2.5% on top of the 7.5% across-the-board adjustment, for a total front-end increase of 10%. This total is consistent with the fee increases proposed in the NPRM. The net increase over the across-the-board adjustment has been lowered from 5% to 2.5%, keeping the total increase for front-end patent fees at 10%. The current fee schedule sets filing, search, and examination fees below the costs of performing these services to achieve low barriers to entry into the innovation ecosystem. These front-end fees are subsidized by other fee collections, primarily maintenance fees. This adjustment will marginally recover some, but not all, additional filing, search, and examination costs earlier in the patent life cycle, thus mitigating the risk of potentially lower maintenance fee payments in the future while remaining consistent with a low barrier to entry policy.

Similar to the across-the-board adjustment, for fees that have small and micro entity fee reductions, the undiscounted fee is rounded up or down to the nearest $5 by applying standard arithmetic rules. Therefore, the fee rates established in this final rule might not be precisely 10% higher than the current fee rates. The fee adjustments in this category are listed in the Table of Patent Fees available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting.*

C. Targeted Adjustments to Patent Fees

The USPTO sets or adjusts the following fees for the reasons stated below. Small and micro entity fees are set as 40% and 20%, respectively, of the undiscounted fees.

1. After Final Consideration Pilot Program 2.0

The USPTO considered the public feedback on the After Final Consideration Pilot Program 2.0 (AFCP 2.0) and the proposed fee and decided not to renew the program. Consequently, a fee is not necessary. The program will expire on December 14, 2024.

2. Continuing Application Fees

Table 4: Continuing Application Fees

Description	Entity type	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Filing an application or presentation of benefit claim more than six years after earliest benefit date	Undiscounted	New	$2,700	n/a	n/a	n/a
Filing an application or presentation of benefit claim more than six years after earliest benefit date	Small	New	$1,080	n/a	n/a	n/a
Filing an application or presentation of benefit claim more than six years after earliest benefit date	Micro	New	$540	n/a	n/a	n/a
Filing an application or presentation of benefit claim more than nine years after earliest benefit date	Undiscounted	New	$4,000	n/a	n/a	n/a
Filing an application or presentation of benefit claim more than nine years after earliest benefit date	Small	New	$1,600	n/a	n/a	n/a
Filing an application or presentation of benefit claim more than nine years after earliest benefit date	Micro	New	$800	n/a	n/a	n/a

The USPTO is instituting new fees for certain continuing applications to ensure a sustainable funding model into the future. The patent fee structure is designed to encourage innovation by maintaining low barriers to entry, which the agency accomplishes by keeping front-end fees (filing, search, and examination fees) below the costs for the corresponding front-end services (preexamination, search, and examination), and by reducing most patent fees by 60% for small entities and by 80% for micro entities. For example, for a utility application, current front-end fees ($1,820 for undiscounted entities in FY 2023) are set far below the USPTO's average costs for filing, search, and examination activities ($6,165 in FY 2023). As of FY 2023, the subsidy (the difference between the USPTO's costs and what an applicant pays) for an average application was $4,345 for an undiscounted entity and even higher for those applicants paying discounted fee rates ($5,501 for a small entity filing electronically, and $5,801 for a micro entity).

The USPTO recovers the shortfall (*i.e.,* the costs associated with filing, search, and examination activities that are not recouped by their associated fees) from other fees, particularly issue fees and maintenance fee payments made after issuance of a utility patent. See *e.g.,* FY 2023 AFR at 63–64, available on the USPTO website at *https://www.uspto.gov/AnnualReport.* Maintenance fees are due 3.5 years, 7.5 years, and 11.5 years from the issue date of a utility patent. See 35 U.S.C. 41(b)(1). During FY 2023, maintenance fees collected from utility patentees were 54.9% of the USPTO's patent revenue, about one-third of which derived from payment of the 11.5-year fee. This revenue is vital to providing

the necessary aggregate financing to fund patent operations.

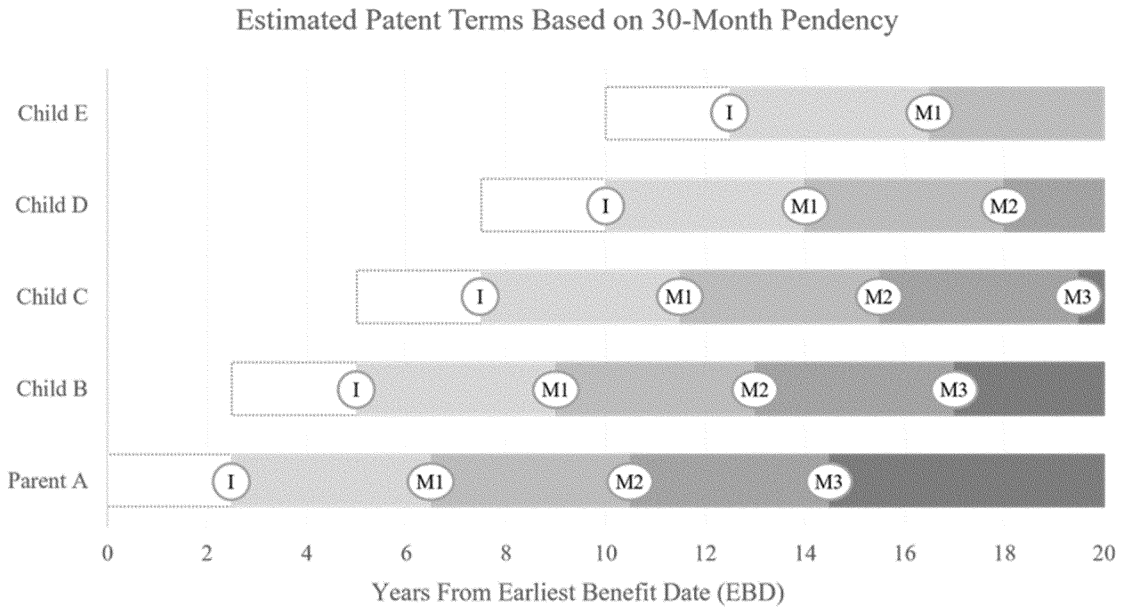
Continuing applications, which include continuation, divisional, and continuation-in-part applications filed under the conditions specified in 35 U.S.C. 120, 121, 365(c), or 386(c) and § 1.78, represent a large and increasing share of patent applications. From FY 2010 to FY 2022, total serialized filings rose about 44%, including a moderate increase in noncontinuing applications (about 25%) and a large increase in continuing applications (about 100%), due almost entirely to increased continuation filings. Since FY 2010, divisional and continuation-in-part applications remained flat at annual levels of about 22,000 and 19,000, respectively. However, continuation applications have tripled, from about 40,000 in FY 2010 to about 122,800 in FY 2022, representing about 34% of FY 2022 serialized filings.

The volume and rapid increase of continuing applications negatively impacts the USPTO's workload and docketing practices. For example, it is difficult for the agency to balance patent resources between the examination of ''new'' (*i.e.,* noncontinuing) applications disclosing new technologies and innovations and continuing applications that, in some cases, are a repetition of previously examined applications either issued as patents or that have become abandoned. See *e.g.,* FY 2021 pendency statistics review presented at the PPAC quarterly meeting on Nov. 18, 2021, available on the USPTO website at *https://www.uspto.gov/sites/default/files/documents/20211115-PPAC-FY21-pendency-stats-review.pdf* (note that about 80% of continuations have a patented parent). In addition, certain continuing applications, particularly divisional and continuation-in-part applications, might present different claimed inventions or more complex issues than a non-continuing application. Examiners are provided the same amount of time to examine a continuing application as a non-continuing application; equal time equates to equal cost to the agency.

Moreover, continuing applications filed long after their earliest benefit date (EBD) are less likely to have a patent term long enough for the USPTO to recover more of their costs from maintenance fees. The EBD is a term used in this rulemaking (the NPRM and this final rule) to refer to the earliest filing date for which benefit is claimed under 35 U.S.C. 120, 121, 365(c), or 386(c) and § 1.78(d). The EBD is determined on an application-by-application basis. The EBD cannot be the filing date of a foreign application or the filing date of a provisional application to which benefit is claimed under 35 U.S.C. 119(e). When the later-filed application is a utility or plant patent application, the EBD is also the date from which the 20-year patent term is calculated under 35 U.S.C. 154(a)(2). The EBD is also known as the patent term filing date. For more information about benefit claims, see Manual of Patent Examining Procedure (MPEP) (9th ed., Rev. 01.2024, November 2024) 210 and 211 *et seq.;* for more information about the patent term filing date, see MPEP 804, subsection I.B.1(a); and for more information about patent term, see MPEP 2701. The MPEP may be viewed on or downloaded from the USPTO website at *https://www.uspto.gov/MPEP* or *https://mpep.uspto.gov.*

Figure 1 depicts the estimated patent terms for a hypothetical patent family containing five applications that are filed at different times after their EBD: Parent A filed at 0 years, Child B filed at 2.5 years after the EBD, Child C filed at 5 years after the EBD, Child D filed at 7.5 years after the EBD, and Child E filed at 10 years after the EBD. Each application claims the benefit of every prior-filed application in the family under 35 U.S.C. 120, *e.g.,* Child C is a continuation of Child B, which is a continuation of Parent A. The pendency of each application is shown as a white bar with a dotted outline, and the term of each patent is shown as a shaded gray bar. For the sake of simplicity, the terms are estimated based on a 30-month pendency and assume that no patent term adjustments, patent term extensions, or terminal disclaimers apply. Key dates for each patent are indicated by labeled ovals (*e.g.,* ''I'' for the issue date, and ''M1,'' ''M2,'' or ''M3'' for the maintenance fee due dates, which for purposes of this illustration are shown as inclusive of the 35 U.S.C. 41(b)(2) grace periods).

Figure 1: Estimated Patent Terms



As shown in figure 1, Parent A is filed on the EBD, Child B is filed 2.5 years after the EBD, and Child C is filed 5 years after the EBD. All three of these applications will have a patent term long enough to require payment of all three maintenance fees to avoid expiration prior to the maximum statutory term. Child D and Child E, however, will not. Child D, filed 7.5 years after the EBD, will not have a term long enough to require payment of the third maintenance fee to avoid expiration prior to the maximum statutory term, and Child E, filed 10 years after the EBD, will not have a term long enough to require payment of the second or third maintenance fee to avoid expiration prior to the maximum statutory term.

While not all patentees choose to maintain their patents for their full term, the USPTO's ability to subsidize front-end fees is dependent on a sufficient number of patentees paying maintenance fees so that the aggregate revenue generated by patent fees will cover the aggregate costs of patent operations. As the volume of applications with terms that are not long enough to require one or more maintenance fees increases, the risk that the agency will not generate sufficient aggregate revenue also increases. Instituting fees for certain continuing applications based on the EBD will make the USPTO's funding model more resilient to changes in filing behaviors that impact the average term of issued patents and the resulting impact on maintenance fee payments.

In May 2023, the agency originally proposed that new fees would apply to nonprovisional applications that have an actual filing date more than three or more than seven years later than their EBD. In response to feedback from PPAC, the USPTO adjusted the thresholds in the NPRM and proposed that the new fees would apply to nonprovisional applications that have an actual filing date more than five or more than eight years later than their EBD. During the public comment period following the NPRM, the USPTO received a number of comments expressing concerns that the adjusted thresholds were still too early in time. After weighing the public feedback and considering the effects on the patent system as a whole, the USPTO has adjusted the timing thresholds for the continuing application fees as detailed below.

As set forth in this final rule, the new fees in § 1.17(w) apply to nonprovisional applications that have an actual filing date more than six years after their EBD. The § 1.17(w)(1) fee applies when the later-filed application's EBD is more than six and no more than nine years earlier than its actual filing date and is $2,700 for undiscounted applications, $1,080 for applications receiving a small entity discount, and $540 for applications receiving a micro entity discount. For the hypothetical patent family shown in figure 1, Child D would incur the § 1.17(w)(1) fee because it was filed 7.5 years after its EBD. The § 1.17(w)(2) fee applies when the later-filed application's EBD is more than nine years earlier than its actual filing date and is $4,000 for undiscounted applications, $1,600 for applications receiving a small entity discount, and $800 for applications receiving a micro entity discount. For the hypothetical patent family shown in figure 1, Child E would incur the § 1.17(w)(2) fee because it was filed 10 years after its EBD.

The new fees in § 1.17(w) will partially offset foregone maintenance fee revenue resulting from later-filed continuing applications and, therefore, recover more costs related to continuing applications filed long after their EBD directly from filers of such applications. As noted previously, the § 1.17(w) fees are designed so that continuing applications filed six or fewer years after their EBD will continue to receive a front-end fee subsidy that is equal to that received by non-continuing applications. Thus, low barriers to entry into the patent system are preserved for non-continuing applications and for approximately 80.3% of continuing applications. For those continuing applications filed more than six years after their EBD, the § 1.17(w) fee will essentially reduce the amount of the front-end fee subsidy in recognition that such applications are less likely to have a patent term long enough for the USPTO to recover the costs of their search and examination from maintenance fees. The § 1.17(w) fees are set at a rate that is both less than the front-end fee subsidy and substantially less than the third maintenance fee amount.

For example, for the hypothetical patent family shown in figure 1, under the undiscounted fee rates as adjusted by this final rule, Child D would pay the undiscounted § 1.17(w)(1) fee of $2,700 and would not have a term long enough to require payment of the third maintenance fee ($8,280) to avoid expiration prior to the maximum statutory term. Child E would pay the undiscounted § 1.17(w)(2) fee of $4,000 and would not have a term long enough to require payment of the second ($4,040) or third ($8,280) maintenance fee to avoid expiration prior to the maximum statutory term. Therefore, the § 1.17(w)(1) fees will help offset a front-end subsidy of approximately $4,165 (with front-end fees adjusted to a combined $2,000 in this final rule and combined FY 2023 unit costs of $6,165 for filing, search, and examination activities). If these applications paid discounted fees, the difference would be even greater. For example, if Child D received small entity fee discounts, the § 1.17(w)(1) fee would be $1,080, partially offsetting a front-end subsidy of approximately $5,435 and less than the third maintenance fee of $3,312.

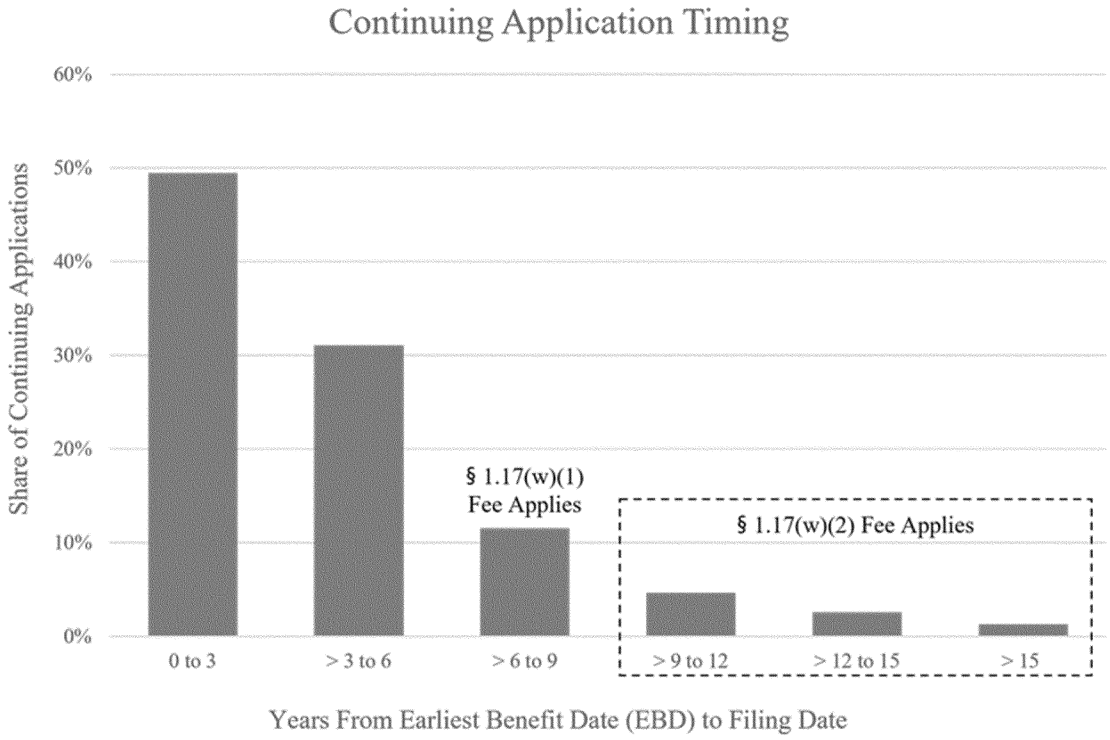
If future workloads for continuing applications were to remain consistent with FY 2022 data, about 80.3% of continuing applications would not incur the new fees because they are filed within six years of their EBD, while the remaining 19.7% of continuing applications (about 6.5% of all applications) would incur a continuing application fee. In particular, as shown in table 5, about 11.4% of continuing applications are filed more than six but not more than nine years after their EBD and would incur the § 1.17(w)(1) fee, and an additional 8.3% of continuing applications are filed more than nine years after their EBD and would incur the § 1.17(w)(2) fee. The table includes columns for ranges of years from the EBD to the filing date, the share of continuing applications in each range, and the applicability of the § 1.17(w) fees.

Table 5: Share of Continuing Applications Filed, by Years from EBD to Filing Date

Years from EBD to Filing Date	Share of continuing applications	Share of all applications	Applicable § 1.17(w) fee
0 to 3	49.4	16.3	None
> 3 to 6	30.9	10.2	
> 6 to 9	11.4	3.8	§ 1.17(w)(1) fee
> 9 to 12	4.6	1.5	§ 1.17(w)(2) fee
> 12 to 15	2.5	0.8	
> 15	1.2	0.4	

Figure 2 illustrates the same data, with the addition of noting when the § 1.17(w) fees are incurred. The x-axis represents the years from the EBD to the filing date, and the y-axis shows the total share of continuing applications. Each vertical bar in figure 2 corresponds to a row in table 5. The leftmost two vertical bars labeled ''0 to 3'' and ''>3 to 6'' represent the approximate 80.3% share of continuing applications will not incur the new fees, the vertical bar labeled ''>6 to 9'' represents the 11.4% share of continuing applications that will incur the § 1.17(w)(1) fee, and the rightmost three vertical bars inside the dashed box represent the 8.3% share of continuing applications that will incur the § 1.17(w)(2) fee.

Figure 2: Share of Continuing Applications Filed, by Years from EBD to Filing Date



For an application filed on or after the effective date of this final rule, payment of the § 1.17(w) fees is required at the time a prompting benefit claim (*i.e.,* a benefit claim that causes the EBD of the later-filed application to be more than six or nine years earlier than its actual filing date) is presented in the later-filed application. If the prompting benefit claim is presented at the time of filing the later-filed application, the applicable § 1.17(w) fee will be due at filing. If the prompting benefit claim is presented at a later time, the applicable § 1.17(w) fee will be due concurrently with the presentation of the prompting benefit claim. If the later presentation of the prompting benefit claim is by way of a petition for acceptance of an unintentionally delayed benefit claim under § 1.78(e), the applicable § 1.17(w) fee will be due in addition to the petition fee under § 1.17(m).

Because the fees in § 1.17(w) are based on the application's EBD, presenting multiple benefit claims at the same time will not incur multiple fees. However, if benefit claims are presented at multiple times during an application's pendency, a second fee

may be due if the later-presented benefit claim changes the application's EBD to be more than nine years earlier than the actual filing date. In this situation, the amount due under § 1.17(w)(2) for the later presentation will reflect any prior payment under § 1.17(w)(1) for the earlier presentation. For instance, if the fee under § 1.17(w)(1) was paid at the time of filing and a prompting benefit claim requiring payment of the § 1.17(w)(2) fee is presented at a later time, the additional amount owed is the difference between the current fee amount stated in § 1.17(w)(2) and the amount of the previous payment under § 1.17(w)(1).

An application that is pending prior to the effective date of this final rule will not incur a fee under § 1.17(w) based on any benefit claims that were properly presented prior to the effective date. If a benefit claim is presented in the application on or after the effective date of this final rule, however, the application will incur a fee under § 1.17(w) if the actual filing date of the application is more than six or nine years later than its EBD.

The following examples are not exhaustive but illustrate the most common situations anticipated to require payment of the new fees under § 1.17(w). For purposes of these examples, the agency assumes that all requirements for claiming benefit under 35 U.S.C. 119, 120, 121, 365(c), or 386(c) and § 1.78 are satisfied, and that all fees are paid at the undiscounted rates.

Example 1: Claiming benefit of a nonprovisional application under 35 U.S.C. 120. Application A is a nonprovisional application filed on July 1, 2026. The Application Data Sheet (ADS) present upon A's filing contains a benefit claim under 35 U.S.C. 120 to nonprovisional application N filed on March 2, 2020, which is the only benefit claim in the application. A's EBD is March 2, 2020, which is more than six but not more than nine years earlier than A's actual filing date of July 1, 2026. In this example, the § 1.17(w)(1) fee of $2,700 is due upon A's filing.

Example 2: Claiming benefit of a provisional application under 35 U.S.C. 119(e). Application B is a nonprovisional application filed on July 1, 2026. The ADS present upon B's filing contains a benefit claim under 35 U.S.C. 120 to nonprovisional application O filed on February 2, 2021, and a benefit claim under 35 U.S.C. 119(e) to provisional application P filed on March 3, 2020. The USPTO's records indicate that O also contains a benefit claim under 35 U.S.C. 119(e) to provisional application P. In this situation, P's filing date is not the EBD, because § 1.17(w) does not encompass benefit claims under 35 U.S.C. 119(e). Instead, B's EBD is February 2, 2021, which is less than six years earlier than B's actual filing date of July 1, 2026. In this example, no fee would be due under § 1.17(w).

Example 3: Claiming benefit of a provisional application under 35 U.S.C. 120. Application C is a nonprovisional application filed on July 1, 2026. The ADS present upon C's filing contains a benefit claim under 35 U.S.C. 120 to nonprovisional application O filed on February 2, 2021, and a benefit claim under 35 U.S.C. 120 to provisional application P filed on March 3, 2020. The USPTO's records indicate that O also contains a benefit claim under 35 U.S.C. 120 to provisional application P. In this situation, P's filing date is the EBD, because § 1.17(w) encompasses benefit claims under 35 U.S.C. 120. C's EBD is March 3, 2020, which is more than six but not more than nine years earlier than C's actual filing date of July 1, 2026. In this example, the § 1.17(w)(1) fee of $2,700 is due upon C's filing. Note, it is not recommended that applicants claim the benefit to a provisional application under 35 U.S.C. 120 since such a claim could have the effect of reducing the patent term. See MPEP 211.02, subsection III.

Example 4: Claiming priority to a foreign application under 35 U.S.C. 119(a). Application D is a nonprovisional application filed on July 1, 2026. The ADS present upon D's filing contains a benefit claim under 35 U.S.C. 120 to nonprovisional application O filed on February 2, 2021, and a priority claim under 35 U.S.C. 119(a) to foreign application Q filed on March 3, 2020. The USPTO's records indicate that O also contains a priority claim under 35 U.S.C. 119(a) to foreign application Q. In this situation, Q's filing date is not the EBD, because § 1.17(w) does not encompass priority claims to foreign applications under 35 U.S.C. 119. Instead, D's EBD is February 2, 2021, which is less than six years earlier than D's actual filing date of July 1, 2026. In this example, no fee would be due under § 1.17(w).

Example 5: National stage of an international application claiming priority to a foreign application under 35 U.S.C. 119(a) and 365(b). Application E is an international application filed under the Patent Cooperation Treaty (PCT) on July 1, 2026. The PCT Request form present upon E's filing contains a priority claim under 35 U.S.C. 119(a) and 365(b) to foreign application R filed on July 7, 2025. When the national stage of E is commenced in the United States under 35 U.S.C. 371, the USPTO will determine the EBD of the national stage application to evaluate whether any continuing application fees are due. In this situation, R's filing date is not the EBD, because § 1.17(w) does not encompass priority claims to foreign applications. Instead, E's EBD is July 1, 2026, which is the same as its actual filing date. In this example, no fee would be due under § 1.17(w).

Example 6: National stage of an international application claiming benefit of a nonprovisional application under 35 U.S.C. 120 and 365(c). Application F is an international application designating the United States that is filed under the PCT on July 1, 2026. The PCT request form present upon F's filing contains a benefit claim under 35 U.S.C. 120 and 365(c) to nonprovisional application N filed on March 2, 2020. When the national stage of F is commenced in the United States under 35 U.S.C. 371, the USPTO will determine the EBD of the national stage application to evaluate whether any continuing application fees are due. In this situation, N's filing date of March 2, 2020, is the EBD, because § 1.17(w) encompasses benefit claims under 35 U.S.C. 120 and 365(c). Thus, F's EBD is March 2, 2020, which is more than six years, and no more than nine years, earlier than F's actual filing date of July 1, 2026. In this example, the § 1.17(w)(1) fee of $2,700 is due when F commences the U.S. national stage under 35 U.S.C. 371.

Example 7: Bypass continuation of an international application claiming benefit of a nonprovisional application under 35 U.S.C. 120 and 365(c). Application G is a nonprovisional application filed on December 28, 2028. The ADS present upon G's filing contains benefit claims under 35 U.S.C. 120 and 365(c) to international application F filed on July 1, 2026, and nonprovisional application N filed on March 2, 2020. As noted in Example 6, supra, F also contains a benefit claim under 35 U.S.C. 120 and 365(c) to N. In this situation, N's filing date of March 2, 2020, is the EBD because § 1.17(w) encompasses benefit claims under 35 U.S.C. 120 and 365(c). Thus, G's EBD is March 2, 2020, which is more than six but not more than nine years earlier than G's actual filing date of December 28, 2028. In this example, the § 1.17(w)(1) fee of $2,700 is due upon G's filing.

Example 8: International design application claiming benefit of a nonprovisional application under 35 U.S.C. 120. Application H is an international design application designating the United States that is filed under the Hague Agreement Concerning the International Registration of Industrial Designs, July 2, 1999 (''Hague Agreement''), on July 1, 2026. The DM/1 form titled ''Application for International Registration'' present upon H's filing does not contain any priority or benefit claims. Thus, at the time of H's filing, H's EBD is the same as its actual filing date, and no fee would be due under § 1.17(w). Shortly after the international registration is published by the International Bureau and a U.S. application number (35/series) is established, the applicant files a corrected ADS containing a benefit claim under 35 U.S.C. 120 to nonprovisional application N filed on March 2, 2020. Because this newly added benefit claim causes H's EBD to become March 2, 2020, which is more than six but not more than nine years earlier than H's actual filing date of July 1, 2026, the § 1.17(w)(1) fee of $2,700 is due upon filing of the corrected ADS.

Example 9: Adding timely benefit claims under 35 U.S.C. 120 after filing; single fee due. Application I is a nonprovisional application filed on July 3, 2028. The ADS present upon I's filing does not contain any benefit claims, and thus no fee would be due under § 1.17(w) upon I's filing. Two months after I's filing, the applicant files a second ADS containing a benefit claim under 35 U.S.C. 120 to nonprovisional application O filed on February 2, 2021. Because this newly added benefit claim causes I's EBD to become February 2, 2021, which is more than six but

not more than nine years earlier than I's actual filing date of July 3, 2028, the § 1.17(w)(1) fee of $2,700 is due upon filing of the second ADS. The applicant pays the fee. One month later (three months after I's filing), the applicant files a third ADS containing the previously added benefit claim to O and a new benefit claim under 35 U.S.C. 120 to nonprovisional application N filed on March 2, 2020. This newly added benefit claim causes I's EBD to become March 2, 2020, which is more than six but not more than nine years earlier than I's actual filing date of July 3, 2028. However, because the applicant already paid the § 1.17(w)(1) fee, no additional fee is due upon filing of the third ADS.

Example 10: Adding timely benefit claims under 35 U.S.C. 120 after filing; multiple fees due. Application J is a nonprovisional application filed on July 5, 2029. The ADS present upon J's filing contains a benefit claim under 35 U.S.C. 120 to nonprovisional application O filed on February 2, 2021, which is the only benefit claim in the application. J's EBD is February 2, 2021, which is more than six but not more than nine years, earlier than J's actual filing date of July 5, 2029. In this example, the § 1.17(w)(1) fee of $2,700 is due upon J's filing. The applicant pays the fee. Two months after I's filing, the applicant files a second ADS containing the previously added benefit claim to O and a new benefit claim under 35 U.S.C. 120 to nonprovisional application N filed on March 2, 2020. This newly added benefit claim causes J's EBD to become March 2, 2020, which is more than nine years earlier than I's actual filing date of July 5, 2029, and thus prompts the fee in § 1.17(w)(2). Because the fee in § 1.17(w)(1) was previously paid, the previous payment is subtracted from the amount now due under § 1.17(w)(2). Accordingly, the amount due upon filing of the second ADS is $1,300 (the current fee amount of $4,000 set forth in § 1.17(w)(2) less the $2,700 previously paid under § 1.17(w)(1)).

Example 11: Adding delayed benefit claim under 35 U.S.C. 120. Application K is a nonprovisional application filed on July 5, 2029. The ADS present upon K's filing does not contain any benefit claims. Eighteen months after K's filing, the applicant files a second ADS containing a benefit claim under 35 U.S.C. 120 to nonprovisional application N filed on March 2, 2020. Because this newly added benefit claim causes K's EBD to become March 2, 2020, which is more than nine years earlier than K's actual filing date of July 5, 2029, the § 1.17(w)(2) fee of $4,000 is due upon filing of the second ADS. In addition, because this benefit claim is delayed (not submitted within the required time period in § 1.78(d)), a petition for acceptance of an unintentionally delayed benefit claim under § 1.78(e) and the petition fee under § 1.17(m) are also required.

Example 12: Adding timely benefit claim under 35 U.S.C. 120 in an application that predates the effective date of the final rule; § 1.17(w)(1) fee due. Application L is a nonprovisional application filed on January 2, 2025, which is prior to the effective date of this final rule. The ADS present upon L's filing contains a benefit claim under 35 U.S.C. 120 to nonprovisional application S filed on February 5, 2018, which is the only benefit claim in the application. L's EBD is February 5, 2018, which is more than six but not more than nine years earlier than L's actual filing date of January 2, 2025. Because L was filed prior to the effective date of this final rule, no fee under § 1.17(w)(1) was due upon L's filing or upon the effective date of the final rule. Two months after L's filing and after the effective date of this final rule, the applicant files a second ADS containing a benefit claim under 35 U.S.C. 120 to nonprovisional application O filed on February 2, 2021. While the newly added benefit claim does not change L's EBD, its presentation in an application having an EBD more than six but not more than nine years earlier than its actual filing date prompts the fee in § 1.17(w)(1). Accordingly, the § 1.17(w)(1) fee of $2,700 is due upon filing of the second ADS.

Example 13: Adding timely benefit claim under 35 U.S.C. 120 in an application that predates the effective date of the final rule; § 1.17(w)(2) fee due. Application M is a nonprovisional application filed on January 2, 2025, which is prior to the effective date of this final rule. The ADS present upon M's filing contains a benefit claim under 35 U.S.C. 120 to nonprovisional application S filed on February 5, 2018, which is the only benefit claim in the application. M's EBD is February 5, 2018, which is more than six but not more than nine years earlier than M's actual filing date of January 2, 2025. Because M was filed prior to the effective date of this final rule, no fee under § 1.17(w)(1) was due upon M's filing or upon the effective date of the final rule. Two months after M's filing and after the effective date of this final rule, the applicant files a second ADS containing a benefit claim under 35 U.S.C. 120 to nonprovisional application T filed on March 6, 2015. This newly added benefit claim causes M's EBD to become March 6, 2015, which is more than nine years earlier than M's actual filing date of January 2, 2025, and thus prompts the fee in § 1.17(w)(2). Accordingly, the § 1.17(w)(2) fee of $4,000 is due upon filing of the second ADS.

The USPTO does not believe these new fees will disproportionately impact small or micro entities. Based on FY 2022 data, of the applications that had an EDB more than six years before the actual filing date, about 70% were undiscounted, about 29% received a small entity discount, and about 1% received a micro entity discount. The USPTO also anticipates that these fees will be relatively technology neutral. Technology Center (TC) 3700 receives a much higher proportion of late-filed continuing applications than other areas, but this TC covers diverse subject matter and many technologies, including mechanical engineering, manufacturing, gaming, and medical devices and processes.

3. Design Application Fees

BILLING CODE 3510–16–P

Table 6: Design Application Fees

Description	Entity type	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Basic filing fee - Design	Undiscounted	$220	$300	$80	36	$269
Basic filing fee - Design	Small	$88	$120	$32	36	$269
Basic filing fee - Design	Micro	$44	$60	$16	36	$269
Basic filing fee - Design CPA	Undiscounted	$220	$300	$80	36	$964
Basic filing fee - Design CPA	Small	$88	$120	$32	36	$964
Basic filing fee - Design CPA	Micro	$44	$60	$16	36	$964
Design search fee or Design CPA search fee	Undiscounted	$160	$300	$140	88	$587
Design search fee or Design CPA search fee	Small	$64	$120	$56	88	$587
Design search fee or Design CPA search fee	Micro	$32	$60	$28	88	$587
Design examination fee or Design CPA examination fee	Undiscounted	$640	$700	$60	9	$857
Design examination fee or Design CPA examination fee	Small	$256	$280	$24	9	$857
Design examination fee or Design CPA examination fee	Micro	$128	$140	$12	9	$857
Design issue fee	Undiscounted	$740	$1,300	$560	76	$539
Design issue fee	Small	$296	$520	$224	76	$539
Design issue fee	Micro	$148	$260	$112	76	$539
Hague design issue fee	Undiscounted	$740	$1,300	$560	76	n/a
Hague design issue fee	Small	$296	$520	$224	76	n/a
Hague design issue fee	Micro	$148	$260	$112	76	n/a

Description	Entity type	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
International design application first part U.S. designation fee	Undiscounted	$1,020	$1,300	$280	27	n/a
International design application first part U.S. designation fee	Small	$408	$520	$112	27	n/a
International design application first part U.S. designation fee	Micro	$204	$260	$56	27	n/a
(Part II designation fee) Issue fee paid through the International Bureau in an international design application	Undiscounted	$740	$1,300	$560	76	n/a
(Part II designation fee) Issue fee paid through the International Bureau in an international design application	Small	$296	$520	$224	76	n/a
(Part II designation fee) Issue fee paid through the International Bureau in an international design application	Micro	$148	$260	$112	76	n/a

BILLING CODE 3510–16–C

The patent fee structure is designed to encourage innovation by maintaining low barriers to entry into the patent system. The USPTO accomplishes this goal by keeping initial filing fees for utility, plant, and design applications below the agency's costs for preexamination, search, and examination, and by reducing most patent fees by 60% for small entities and by 80% for micro entities. See Part II: Background, supra. The USPTO recovers the remaining costs of performing the work from other fees, particularly issue fees and maintenance fee payments made after issuance of a utility patent. See *e.g.,* the FY 2023 Agency Financial Report at 63–64, available on the USPTO website at *https://www.uspto.gov/AnnualReport.* Although the USPTO is not permitted to establish maintenance fees for design or plant patents (see 35 U.S.C. 41(b)(3)), the maintenance fees it collects from utility patentees represented 54.9% of patent revenue in FY 2023. This revenue is vital to providing the necessary aggregate revenue to recover the aggregate costs of patent operations.

Currently, the undiscounted design fees ($1,760 total for filing, search, examination, and issue fees) are set well below the cost of their associated services for both new design applications ($2,252 cost in FY 2023) and continued prosecution applications (CPAs) ($2,947 cost in FY 2023). The discounted design fees are significantly lower ($704 total for a small entity, and $352 total for a micro entity), even though the costs are the same. More than half of design applicants pay discounted fees; for example, of the design applications filed in FY 2023, 26% paid the micro entity fee amount, 37% paid the small entity fee amount, and only 37% paid the undiscounted fee amount.

As a result of design fees being set below cost and the heavy use of entity fee discounts by design applicants, the USPTO's collections from design fees are significantly below design costs. In FY 2023, the USPTO's collections from design fees averaged only $1,013 per application. This resulted in a shortfall of $1,239 per design application, which represented 55% of the cost. In other words, design applicants, on an aggregate basis, paid for only 45% of design costs. Because USPTO operations are financed solely by user fees, the agency must make up the shortfall in the design area through fees set in other patent areas. While the USPTO has

raised design fees twice in the last 10 years, those increases were not large enough to eliminate the shortfall over the long term. Thus, design costs continue to be subsidized by other fees, primarily utility patent maintenance fees.

This subsidy has grown in recent years, as shown in figure 3. The graph depicts average fee collections per design application (average collections) in dark gray, and the average shortfall or subsidy per design application (average subsidy) in light gray. The average subsidy per design application in FY 2022 was $1,108 and in FY 2023 was $1,239. Table 7 below figure 3 provides the actual dollar amounts for each data point (unit cost, average collections, and average subsidy) shown in figure 3 and also includes the subsidy as a percentage of unit cost for each fiscal year.

Figure 3: Subsidization of Design Applications Over Time

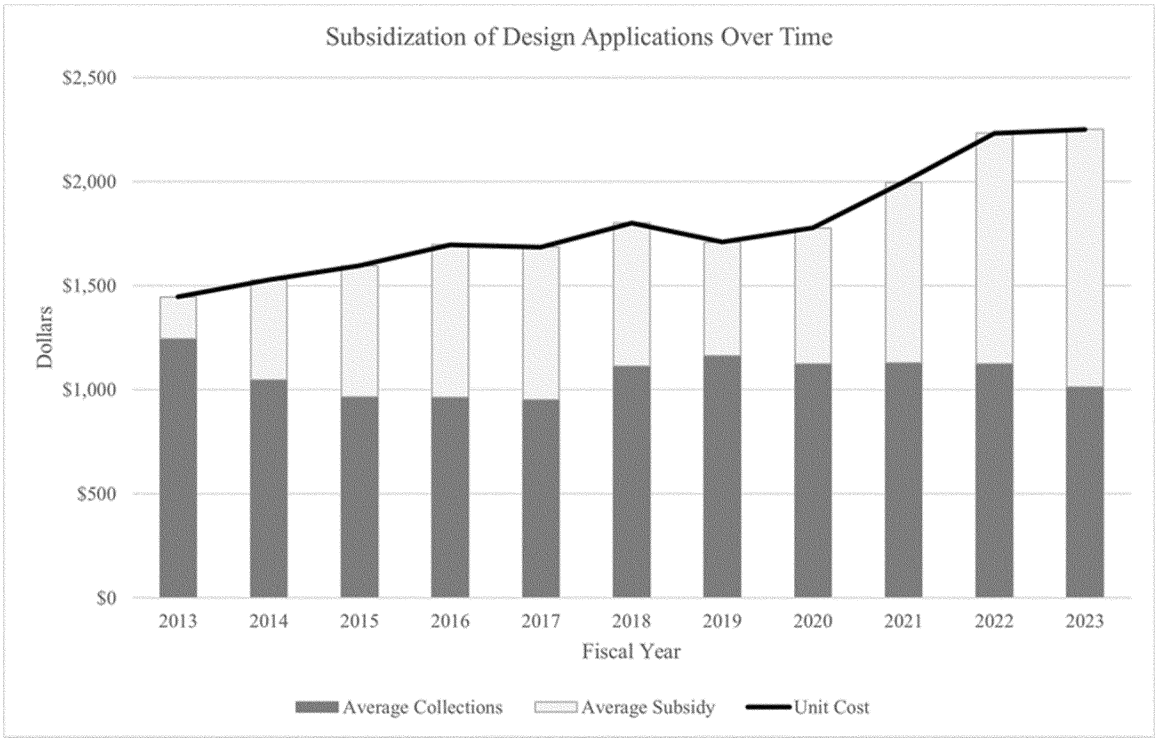


Table 7: Subsidization of Design Applications Over Time

Fiscal year	Unit cost	Average collections	Average subsidy	Subsidy as percentage of unit cost
2013	$1,446	$1,246	$200	14
2014	$1,528	$1,047	$481	31
2015	$1,596	$967	$629	39
2016	$1,697	$965	$732	43
2017	$1,686	$952	$734	44
2018	$1,802	$1,115	$687	38
2019	$1,710	$1,165	$545	32
2020	$1,778	$1,126	$652	37
2021	$1,998	$1,129	$869	43
2022	$2,233	$1,125	$1,108	50
2023	$2,252	$1,013	$1,239	55

Historically, this difference between design fees and design costs did not result in a significant subsidy because the annual volume of design applications was much lower than the annual volume of issued utility patents. Since 2014, however, the number of design applications has surged 50% (from 36,254 in FY 2014 to 53,665 in FY 2023), while the number of issued utility patents (and thus, the volume of potential future maintenance fees) has increased only 2% (from 303,930 in FY 2014 to 310,245 in FY 2023). See *e.g.,* FY 2023 Workload Table 1, available on the USPTO website at *https://www.uspto.gov/AnnualReport.* Furthermore, most of the growth in design application filings is attributable to applications in which discounted fees are paid. From FY 2014 to FY 2023, the number of undiscounted design applications (including CPAs) filed increased 12%, but the number of small entity applications increased 31%, and the number of micro entity applications increased 306%. As a result, the entity spread for design applications changed dramatically. For example, in FY 2014, the entity spread for design applications was 50% undiscounted, 40% small entity, and 10% micro entity; during FY 2023, the entity spread for design applications was 37% undiscounted, 37% small entity, and 26% micro entity. In contrast, the entity spread in utility application filings has remained the same from FY 2014 to FY 2023, at about 72% undiscounted, 24% small entity, and 4% micro entity.

Moreover, because design fee payors do not bear the full costs of design services, the current imbalance between fees and costs in the design patent area could lead to overuse of discounted services. See *e.g.,* ''Federal User Fees: A Design Guide,'' Report No. GAO–08–386SP (May 2008), available at *https://www.gao.gov/products/gao-08-386sp,* and the ''Patent and Trademark Office: New User Fee Design Presents Opportunities to Build on Transparency and Communication Success,'' Report No. GAO–12–514R (April 2012), available at *https://www.gao.gov/products/gao-12-514r.*

The USPTO is increasing the fees for design patent applications to account for inflationary cost increases and recover a larger portion of design costs from design applicants. The design fee increases will affect national design application filings including CPAs, and international design application filings that designate the United States under the Geneva Act of the Hague Agreement.

As shown in the fee table above, the combined total of filing fees in § 1.16(b), search fees in § 1.16(l), examination fees in § 1.16(p), and issue fees in § 1.18(b)(1) for a design application or CPA that proceeds to issuance is increasing from $1,760 to $2,600 for undiscounted applications, from $704 to $1,040 for applications receiving a small entity discount, and from $352 to $520 for applications receiving a micro entity discount. The reissue fees under § 1.16(e), 16(n), and 16(r) are part of the across-the-board adjustment and not included in this targeted adjustment.

Note that under the Hague Agreement and its implementing regulations in the United States, including § 1.1031, the required fees (known as designation fees) for international design application filings that designate the United States are set by reference to the national fees. Thus, the first part of the designation fee corresponds to the sum of the filing fee, search fee, and examination fee, and the second part of the designation fee corresponds to the issue fee. See MPEP 2910 for more information about international design application fees. The transmittal fee for international design applications filed in the USPTO as an office of indirect filing under § 1.1031(a) is part of the across-the-board adjustment and not included in this targeted adjustment.

The increased design fees for an undiscounted applicant ($2,600 in combined filing, search, examination, and issue fees) are now in between the cost of new design applications and CPA design applications, while the fees for discounted entities ($1,040 for a small entity and $520 for a micro entity) remain far below cost. Despite these increases, the adjusted fees will not achieve full recovery of design costs. On an individual basis, the adjusted fees, including the issue fee, will recover the cost of examining and issuing a design application if the applicant pays the undiscounted rate and does not file a CPA. Because most design applications qualify for discounted fees, design fee collections will not fully recover design costs on an aggregate basis. For example, if the application filing volume, entity spread, and cost remain the same as in FY 2023, the increased fees would result in design fee collections averaging $1,462 per application, thus reducing the shortfall to about $790 per application, which is about 35% of the cost. The final rule thus improves cost recovery from design applicants, who will now on an aggregate basis pay for about 65% of design costs as compared to the 45% they paid in FY 2023.

These design fees maintain a low barrier to entry into the patent system while increasing revenue to recover more design costs from design applicants. The USPTO has accomplished these goals by balancing relatively low front-end fees against the higher design issue fee and the reduced, but still large, subsidy from utility maintenance fees. While front-end fees are set below cost for all entities, both the design issue fee and utility maintenance fees are set above their unit cost for undiscounted entities. For example, the design issue cost is $539, and the design issue fee is $1,300 for an undiscounted entity, $520 for a small entity, and $260 for a micro entity. As of June 2024, the undiscounted issue fee of $1,300 was 6% lower than the inflation-adjusted 2013 issue fee would be. As a result of this balancing, the USPTO has managed to keep the front-end fees only $5 to $10 higher than they were set in 2020 for the majority of design applicants. When the issue fee is included, the total fees paid by discounted entities are still 13% less than inflation-adjusted 2013 fees would be. See CPI Inflation Calculator, U.S. Bureau of Labor Statistics, *https://www.bls.gov/data/inflation_calculator.htm* (comparing March 2013 to June 2024 to calculate buying power).

The USPTO believes these fee adjustments appropriately balance encouraging innovation and recovering costs. For example, based on the FY 2023 unit cost and assuming that filing volume and entity spread remain stable, recovering the full cost of design services from design applicants would require total fees of about $4,000 for undiscounted applications. Abruptly raising fees to these levels could discourage innovation, so the USPTO is implementing a more moderate increase to $2,600 for undiscounted applications. After considering all relevant factors, the agency believes the adjusted design fees strike a balance that encourages innovation while bringing in increased revenue to recover more design costs.

The USPTO is conscious that fee increases affect resource-constrained applicants. The agency will continue to offer the 60% discount for small entities and the 80% discount for micro entities, which reduces the impact of the fee increases on these entities. For example, when these discounts are taken into account, the total fees paid by discounted entities through issuance of a design application represent less than half of the USPTO's costs (small entities pay 46% of new design application costs and 35% of CPA costs, and micro entities pay 23% of new design application costs and 18% of CPA costs).

4. Excess Claims Fees

BILLING CODE 3510–16–P

Table 8: Excess Claims Fees

Description	Entity type	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Each independent claim in excess of three	Undiscounted	$480	$600	$120	25	n/a
Each independent claim in excess of three	Small	$192	$240	$48	25	n/a
Each independent claim in excess of three	Micro	$96	$120	$24	25	n/a
Each reissue independent claim in excess of three	Undiscounted	$480	$600	$120	25	n/a
Each reissue independent claim in excess of three	Small	$192	$240	$48	25	n/a
Each reissue independent claim in excess of three	Micro	$96	$120	$24	25	n/a
Each claim in excess of 20	Undiscounted	$100	$200	$100	100	n/a
Each claim in excess of 20	Small	$40	$80	$40	100	n/a
Each claim in excess of 20	Micro	$20	$40	$20	100	n/a
Each reissue claim in excess of 20	Undiscounted	$100	$200	$100	100	n/a
Each reissue claim in excess of 20	Small	$40	$80	$40	100	n/a
Each reissue claim in excess of 20	Micro	$20	$40	$20	100	n/a
Each reexamination independent claim in excess of three and also in excess of the number of such claims in the patent under reexamination	Undiscounted	$480	$600	$120	25	n/a

Description	Entity type	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Each reexamination independent claim in excess of three and also in excess of the number of such claims in the patent under reexamination	Small	$192	$240	$48	25	n/a
Each reexamination independent claim in excess of three and also in excess of the number of such claims in the patent under reexamination	Micro	$96	$120	$24	25	n/a
Each reexamination claim in excess of 20 and also in excess of the number of claims in the patent under reexamination	Undiscounted	$100	$200	$100	100	n/a
Each reexamination claim in excess of 20 and also in excess of the number of claims in the patent under reexamination	Small	$40	$80	$40	100	n/a
Each reexamination claim in excess of 20 and also in excess of the number of claims in the patent under reexamination	Micro	$20	$40	$20	100	n/a

BILLING CODE 3510–16–C

The USPTO charges a fee for filing, or later presenting at any other time, each independent claim in excess of three (referred to as an excess independent claim), as well as each claim (whether dependent or independent) in excess of 20 (referred to as an excess total claim). These thresholds for excess independent claims and excess total claims (collectively, ''excess claims'') are set in 35 U.S.C. 41(a)(2).

In this final rule, the USPTO is increasing the fee for each excess independent claim in an application (§ 1.16(h)), reissue application (§ 1.16(h)), reexamination proceeding (§ 1.20(c)(3)), or national stage application (§ 1.492(d)) to $600 for undiscounted entities. The USPTO is also increasing the fee for each excess total claim in an application (§ 1.16(i)), a reissue application (§ 1.16(i)), reexamination proceeding (§ 1.20(c)(4)), or national stage application (§ 1.492(e)) to $200 for undiscounted entities. The § 1.16(j) and § 1.492(f) multiple dependent claim fees are part of the across-the-board adjustment and not included in this targeted adjustment.

These changes will provide the agency with more revenue to help recover the additional search and examination costs associated with excess claims, as well as prosecution costs not covered by front-end fees. The USPTO notes that excess claiming can be a significant burden to the patent system and the agency. The number of claims impacts the complexity of examination and increases the demands placed on the examiner. For example, if each independent claim in an application requires a completely separate prior art patentability determination and an application contains six independent claims, the examiner must conduct six completely separate prior art patentability

determinations. Excess dependent claims also represent additional work, because a dependent claim may be allowable over the prior art even if the claim from which it depends is not. Dependent claims also require separate patentability determinations for non-prior-art issues such as enablement, subject matter eligibility, utility, and written description. Thus, applicants who include excess claims are using the patent system more extensively than those who do not.

Moreover, examination efficiency is promoted when there is a high frequency of applications with 20 claims or fewer. Thus, these fee changes will enhance prosecution, because the USPTO believes that applicants motivated by costs will be incentivized by the fee adjustments to not file excess claims. The agency has increased excess claims fees several times during the last 20 years, which has been very effective at reducing excess claims from their peak in the early 2000s. For instance, in FY 2023, 83% of applications did not contain any excess claims, and 17% contained excess total claims, excess independent claims, or both (10% contained excess total claims only, 3.1% contained excess independent claims only, and 3.5% contained both excess total claims and excess independent claims). These percentages are in line with historic values over the last decade.

The excess total claims fees are also designed to ensure that most applicants presenting excess claims will be able to do so for less than the cost of filing a second application. The front-end application fees (including the new continuing application fees discussed earlier) and excess claims fees are naturally linked and likely to have counterbalancing effects. For example, an increase in new or continuing applications could result from raising only excess claims fees, and an increase in excess claims could result from raising only the front-end application fees (even in specific, lesser-occurring situations). The increases in excess claims fees implemented in this final rule are intended to avert the latter scenario. Without these adjustments, the agency expects that excess claims numbers would increase in response to increased front-end fees, including the fees for certain continuing applications discussed previously.

In FY 2023, 86% of applications contained no excess total claims and therefore will not be affected by this fee adjustment, 11% paid excess claims fees but contained 10 or fewer excess claims, and only 3% contained more than 10 excess claims. For the 11% of applications containing 10 or fewer excess claims, it would remain either the same cost or be less expensive to pay the excess total claims fees as opposed to filing a second application. As an example, for an undiscounted entity, 10 excess total claims at $200 each would equal $2,000 in excess total claims fees, which is the same as the combined filing, search and examination fees for filing an application as adjusted by this final rule. Moreover, for applications containing from one to 10 excess claims, the average number of excess claims was 5, so on average, paying excess total claims fees would be much less expensive than a second application. As an example, for an undiscounted entity, 5 excess total claims at $200 each would equal $1,000 in excess total claims fees.

For the 3% of applications containing more than 10 excess total claims, the average was 34 excess claims. Thus, for this group of applications, it would be more expensive to pay the excess total claims fees as opposed to filing a second application, but this increased expense reflects that these applications are, on average, presenting more than the number of claims that would be covered by the fees for filing a second application. Notably, about one-third of these applications (10% of all applications containing excess total claims, or 1% of all applications) contained an average of 59 excess claims, which is more than would be covered by the fees for filing two additional applications.

5. Extension of Time for Provisional Application Fees

Table 9: Extension of Time for Provisional Application Fees

Description	Entity type	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Extension for response within first month, provisional application	Undiscounted	$220	$50	-$170	-77	n/a
Extension for response within first month, provisional application	Small	$88	$20	-$68	-77	n/a
Extension for response within first month, provisional application	Micro	$44	$10	-$34	-77	n/a
Extension for response within second month, provisional application	Undiscounted	$640	$100	-$540	-84	n/a
Extension for response within second month, provisional application	Small	$256	$40	-$216	-84	n/a
Extension for response within second month, provisional application	Micro	$128	$20	-$108	-84	n/a
Extension for response within third month, provisional application	Undiscounted	$1,480	$200	-$1,280	-86	n/a

Description	Entity type	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Extension for response within third month, provisional application	Small	$592	$80	-$512	-86	n/a
Extension for response within third month, provisional application	Micro	$296	$40	-$256	-86	n/a
Extension for response within fourth month, provisional application	Undiscounted	$2,320	$400	-$1,920	-83	n/a
Extension for response within fourth month, provisional application	Small	$928	$160	-$768	-83	n/a
Extension for response within fourth month, provisional application	Micro	$464	$80	-$384	-83	n/a
Extension for response within fifth month, provisional application	Undiscounted	$3,160	$800	-$2,360	-75	n/a
Extension for response within fifth month, provisional application	Small	$1,264	$320	-$944	-75	n/a
Extension for response within fifth month, provisional application	Micro	$632	$160	-$472	-75	n/a

The USPTO is implementing a standalone extension of time (EOT) fee structure for provisional applications in which fees will be decreased from current amounts by an average of 81%. Under EOT practice, if an applicant is

required to reply within a nonstatutory or shortened statutory time period, the applicant may normally petition to extend the time period for reply with the requisite fee. The time extension may be up to the earlier of the expiration of any maximum period set by statute or five months after the time period set for reply if a petition for an EOT under § 1.136(a), including the EOT fee set in § 1.17(a), is filed.

Currently, the EOT fees specified in § 1.17(a) apply equally to both provisional and nonprovisional applications. The USPTO is implementing an average 81% EOT fee decrease in provisional applications under a new paragraph (u) of § 1.17 and is additionally amending § 1.136(a) to refer to EOT fees under both § 1.17(a) and new § 1.17(u). For patent applications other than provisional applications, the EOT fees retained under § 1.17(a) will be increased in accordance with the across-the-board proposal.

With fees reduced by 81% on average, the separate EOT fee structure for provisional applications will benefit filers in all entity status categories. The agency envisions that micro entity provisional application filers will benefit most. As explained in the Director's April 20, 2023, letter to PPAC:

The USPTO's fee review concluded that applicants who have certified micro entity status in provisional applications are more than twice as likely to request EOT as compared to other applicants. Thus, we are proposing reduced EOT fees for provisional applications by an average of 81% to reduce financial and entry barriers and further foster inclusive innovation.

Some micro entity applicants need time extensions to accommodate attempts to meet additional formality requirements associated with establishing micro entity status. Another consideration favoring this change is that provisional applications are not examined; therefore, there is less urgency to expedite processing.

6. Information Disclosure Statement Size Fees

Table 10: Information Disclosure Statement Size Fees

Description	Entity type	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Filing an Information Disclosure Statement that causes the cumulative number of applicant-provided or patent owner-provided items of information to exceed 50 but not exceed 100	Undiscounted	New	$200	n/a	n/a	n/a
Filing an Information Disclosure Statement that causes the cumulative number of applicant-provided or patent owner-provided items of information to exceed 100 but not exceed 200	Undiscounted	New	$500, less any amount previously paid	n/a	n/a	n/a
Filing an Information Disclosure Statement that causes the cumulative number of applicant-provided or patent owner-provided items of information to exceed 200	Undiscounted	New	$800, less any amounts previously paid	n/a	n/a	n/a

Sections 1.97 and 1.555 provide applicants and patent owners the opportunity to submit an information disclosure statement (IDS) containing items of information for consideration by the examiner. To be considered in a

patent application, the IDS must meet the timing requirements of § 1.97 and the content requirements of § 1.98. In a reexamination proceeding, the IDS must meet the content requirements of § 1.98. There are no specific regulatory limits to the number of items of information that may be included in an IDS. Most applications contain relatively few items of information provided by applicants for consideration. Approximately 87% of applications contain 50 or fewer applicant-provided items of information, and approximately 77% contain fewer than 25.

The USPTO receives large IDS submissions that cause the cumulative number of applicant-provided items of information in an application to exceed 50 in a small percentage of applications. Based on the agency's most recent data, in approximately 13% of applications applicants provide over 50 total items of information. About 5% of applications contain 51 to 100 applicant-provided items of information, about 4% of applications contain 101 to 200 applicant-provided items of information, and only 4% of applications contain more than 200 applicant-provided items of information. In an even smaller subset of applications, the number of applicant-provided items can be quite large, sometimes in the thousands or even tens of thousands.

In many instances, these large IDS submissions contain clearly irrelevant, marginally relevant, or cumulative information. It is onerous for examiners and hinders the USPTO's statutory obligation to timely examine applications under 35 U.S.C. 154 to consider large numbers of clearly irrelevant, marginally relevant, or cumulative information. Additionally, large IDS submissions are costly for the agency to consider. Therefore, the USPTO suggests, as a best practice, that applicants and patent owners avoid filing large IDS submissions by eliminating clearly irrelevant, marginally relevant, or cumulative information. See MPEP 2004, item 13. If applicants or patent owners file a large IDS, the USPTO encourages them to ''highlight those documents which have been specifically brought to applicant's attention and/or are known to be of most significance.'' MPEP 2004, item 13.

In 2006, the USPTO attempted to address large IDS submissions by proposing new requirements, including that IDSs with more than twenty citations be accompanied by an explanation of relevance. See ''Changes To Information Disclosure Statement Requirements and Other Related Matters,'' 71 FR 38808 (July 10, 2006). The proposal was not adopted; instead, to provide some relief for examiners burdened with large IDS submissions, the agency began providing examiners additional time to consider large IDS submissions in applications.

On average, the USPTO provides examiners approximately 80,000 additional hours each year to consider large IDS submissions in applications, costing the agency $10 million annually. As there is currently no fee for large IDS submissions, this cost is subsidized generally by patent fees, primarily maintenance fees collected for patents that resulted from applications that did not contain large IDS submissions.

Accordingly, to have applicants and patent owners filing large IDS submissions cover more of their associated costs, the USPTO is amending § 1.17 by adding new paragraph (v) to implement a new IDS size fee based on the cumulative number of items of information provided by an applicant or patent owner during the pendency of the application or reexamination proceeding. ''Provided'' in this context refers to items cited on an IDS under § 1.98(a)(1) by an applicant or patent owner, whether or not an actual copy of the cited item is submitted by the applicant or patent owner to the agency.

The IDS size fee sets forth: a first amount ($200) in § 1.17(v)(1) for a cumulative number of applicant-provided or patent owner-provided items of information in excess of 50; a second amount ($500) in § 1.17(v)(2) for a cumulative number of applicant-provided or patent-owner-provided items of information in excess of 100 but not exceeding 200, less any amount previously paid under § 1.17(v)(1); and a third amount ($800) in § 1.17(v)(3) for a cumulative number of applicant-provided or patent owner-provided items of information in excess of 200, less any amounts previously paid under § 1.17(v)(1) and/or (v)(2).

Generally, each item provided (listed under § 1.98(a)(1) on an IDS filed under § 1.97) by an applicant or owner, including each instance of a particular item, will count toward the cumulative number of items of information. For example, if the applicant lists a particular item (*e.g.,* a journal article authored by Marie Curie) twice on the same IDS, each listing will count. Similarly, if the applicant lists the same item in multiple IDSs in the same application, each of those listings will count. However, if a particular item provided by an applicant or patent owner on an IDS was not considered because the item was non-compliant and that particular item is provided on an IDS a second time in the same application or patent, it will not be counted again. Applicants are reminded that when a U.S. application is listed on an IDS, the examiner will only consider the specification (including the claims) and drawings of the application. If the applicant seeks consideration of documents in the prosecution history of the application such as particular Office actions, they must list such documents separately. See MPEP 609.04(a)(I).

The cumulative count is determined for each application or patent separately. That is, the count from an application does not carry over to any continuing applications, CPAs, reissue applications, or any post-issuance proceedings such as supplemental examinations or reexamination proceedings. Instead, continuing, CPA, and reissue applications and post-issuance proceedings will start with a count of zero. Note, however, that a request for continued examination (RCE) is not the filing of a new application, and thus the count will not reset when an RCE is filed.

Under current IDS practice, an examiner will consider items of information that were considered in a parent application when examining a child application (*e.g.,* a continuation, continuation-in-part, or divisional application) without any action required on the applicant's part. See MPEP 609.02 for information about this practice. Examiners will continue to follow current IDS practice with respect to considering items of information that were cited in parent applications. To be clear, an item of information that an applicant cited in a parent application will not be counted in a child application for purpose of the IDS size fees unless it is resubmitted, *i.e.,* provided by the applicant on an IDS in the child application. Thus, applicants who wish to avoid paying the IDS size fees in a child application for items of information considered in a parent application may do so by not resubmitting the items. An item of information must be resubmitted in the continuing application if the applicant desires the item of information to be printed on the patent. See MPEP 609.02, subsection II.A.2.

Additionally, the USPTO is amending § 1.98(a) to include a new content requirement for an IDS that will facilitate implementation of the IDS size fee. Specifically, the USPTO is requiring that an IDS contain a clear written assertion by the applicant and patent owner that the IDS is accompanied by the appropriate IDS size fee or that no IDS size fee is required. This assertion is necessary because it ensures the

record is clear as to which fee the applicant or patent owner believes may be due (or that no fee may be due) with the IDS so the examiner can promptly ascertain whether the IDS is compliant. There is no specific language required for the written assertion, but it should be readily identifiable on the IDS and clearly convey the applicable IDS size fee by specifying the particular paragraph in § 1.17(v) that applies (*e.g.,* ''the fee due under 1.17(v)(2)''), if any.

The following examples illustrate some common situations anticipated to arise in connection with payment of the new fees under § 1.17(v):

Example 1: Single IDS submission with cumulative count less than fee threshold. If an applicant submits a single IDS during prosecution with 30 items of information, no IDS size fee would be due. At the time of submitting the IDS, the applicant certifies that no IDS size fee is required.

Example 2: Single IDS submission with cumulative count exceeding fee threshold. If an applicant submits a single IDS during prosecution with 101 items of information, the $500 fee under § 1.17(v)(2) for exceeding 100 items of information, but not exceeding 200, is due. At the time of submitting the IDS, the applicant must certify that the § 1.17(v)(2) fee is due and pay the fee.

Example 3: Re-submission of item previously refused consideration. If an applicant submits a first IDS with 49 items of information, no IDS size fee would be due. At the time of submitting the first IDS, the applicant certifies that no IDS size fee is required. When the examiner evaluates the first IDS, the examiner discovers that the copy of a particular item (a journal article authored by Marie Curie) provided by the applicant is blurry and illegible. Accordingly, the examiner does not consider the Curie article. Subsequently, in that same application, the applicant files a second IDS with two items of information, including the same Curie article previously listed and a newly cited item. Because the Curie article was previously before the examiner and refused consideration for being noncompliant, its resubmission in the second IDS is not counted again. Thus, the cumulative number of items of information in the application after submission of the second IDS is only 50 (the total of the 49 items from the first IDS and the newly cited item from the second IDS), and no IDS size fee would be due. At the time of submitting the second IDS, the applicant certifies that no IDS size fee is required.

Example 4: Multiple IDS submissions covered by the same fee. If an applicant files a first IDS with 61 items of information, the $200 fee under § 1.17(v)(1) for exceeding 50 items of information, but not exceeding 100, is due. At the time of submitting the first IDS, the applicant certifies that the § 1.17(v)(1) fee is due and pays the fee. Subsequently, in that same application, if the applicant files a second IDS with 10 items of information, the cumulative number of items of information in the application would be 71. No additional fee would be due, because the cumulative number of items is still in the range covered by the § 1.17(v)(1) fee that was previously paid. While the applicant must still include a certification with the second IDS, the applicant may certify that no IDS size fee is required with submission of the second IDS.

Example 5: Multiple IDS submissions requiring additional fees. If an applicant files a first IDS with 51 items of information, they would certify that the § 1.17(v)(1) fee for exceeding 50 items of information, but not exceeding 100, is due and pay the fee of $200. Subsequently, in that same application, if the applicant files a second IDS with 50 items of information, the cumulative number of items of information in the application would be 101. The applicant would then certify that the § 1.17(v)(2) fee for exceeding 100 items of information, but not exceeding 200, is due, and pay $300 (the $500 fee under § 1.17(v)(2) minus the $200 previously paid). Further, in that same application, if the applicant files a third IDS with 100 items of information, the cumulative number of items of information in the application would be 201. The applicant would then certify that the § 1.17(v)(3) fee for exceeding 200 items of information is due and pay $300 (the $800 fee under § 1.17(v)(3) minus the $500 previously paid). Thus, in this example, the applicant would pay a combined IDS size fee of $800 for the three IDSs filed during the pendency of the application.

With respect to the new content requirement under § 1.98(a), the agency envisions modifying USPTO Form PTO/SB/08 to include the requisite written assertion stylized as a set of check boxes corresponding to each IDS size fee, along with an additional box indicating that no IDS size fee is due. Since the form must be signed in accordance with § 1.33(b), certifications under §§ 1.4 and 11.18 will apply. Applicants and patent owners are strongly advised to use the PTO/SB/08 form, but it will not be required. An authorization to charge fees to a deposit account is not a compliant written assertion under the new § 1.98(a) requirement, unless the authorization clearly identifies the particular IDS size fee that should be charged for submission of a particular IDS. For example, language such as ''the Director is authorized to charge the § 1.17(v)(2) fee for the IDS submitted on July 1, 2026 to deposit account XX–XXXXX'' would be a compliant written assertion because reference to paragraph (v)(2) particularly identifies the IDS size fee due, but language such as ''the Director is authorized to charge any applicable IDS size fee to deposit account XX–XXXXX'' would not be a compliant written assertion because it fails to establish which IDS size fee is due. General authorizations to charge fees to a deposit account are not compliant written assertions under the new § 1.98(a) requirement. See 37 CFR 1.25 and MPEP 509.01 for more information about deposit account authorization practice.

It is the applicant's and patent owner's responsibility to track the cumulative number of items of information provided in the application and provide a written assertion of any applicable IDS size fee due. In accordance with § 1.97(i), an IDS filed in an application without the written assertion or the necessary IDS size fee will be placed in the file but not considered. The applicant may then file a new IDS accompanied by the written assertion or necessary IDS size fee, but the date the new IDS is filed will be the date of the IDS for purposes of determining compliance with § 1.97. See MPEP 609.05(a). An IDS filed in a reexamination proceeding without the written assertion or the necessary IDS size fee will be placed in the file and will remain of record, but the IDS will not be considered.

Applicants are reminded that the duty of disclosure under §§ 1.56 and 1.555 only requires the submission of information material to patentability. Material information is described in §§ 1.56(b) and 1.555(b) as information that is not cumulative to information already of record and (1) establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or (2) refutes or is inconsistent with a position the applicant takes in opposing an argument of unpatentability relied on by the USPTO or asserting an argument of patentability. The United States Court of Appeals for the Federal Circuit uses an even higher standard for materiality than the §§ 1.56(b) and 1.555(b) standards by requiring ''but-for'' materiality, such that the USPTO would not have allowed a claim had it been aware of the undisclosed information. *Therasense, Inc.* v. *Becton, Dickinson & Co.,* 649 F.3d 1276, 1288, 99 USPQ2d 1065, 1071 (Fed. Cir. 2011) (*en banc*). Neither the §§ 1.56(b) and 1.555(b) standards nor the Federal Circuit's ''but-for'' standard require the submission of clearly irrelevant or marginally relevant information.

By placing more of the cost for considering IDS submissions totaling over 50 items of information on the applicants who file such IDS submissions, less cost will be borne across the patent system. To the extent that the IDS size fees may encourage some applicants to filter out irrelevant or cumulative information prior to submission, the examiners of those applications will be able to focus on the more relevant information and perform a more efficient and effective

examination, thus benefiting the patent system as a whole.

The USPTO does not believe the IDS size fee will have a large impact on patent applicants or owners. As stated previously, a majority of applicants do not provide large amounts of information for consideration. Based on current IDS filing volume, the vast majority (approximately 87%) of applications will not be affected by these fees because they contain 50 or fewer applicant-provided items of information. Only 13% of applications contain more than 50 applicant-provided items of information. About 5% of applications contain 51 to 100 applicant-provided items of information and would incur only the first fee in § 1.17(v)(1), about 4% of applications contain 101 to 200 applicant-provided items of information and would incur the first and second fees in § 1.17(v)(1) and (v)(2), and only 4% of applications contain more than 200 applicant-provided items of information and would incur all three fees in § 1.17(v)(1), (v)(2), and (v)(3). Additionally, the fee should not disproportionately impact small and micro entities. During FY 2022, small entities accounted for only 25% of applications that would incur a fee, while micro entities made up less than 1%. When compared to all utility application filings that same year, only 1 in 62 applications filed by micro entities and 1 in 7.5 applications filed by small entities would incur an IDS size fee.

7. Patent Term Adjustment Fees

The USPTO considered the public feedback on the proposed increase from $210 to $300 for filing an application for patent term adjustment under § 1.705(b) and decided not to proceed with this proposal. Instead, the fee for this service will be increased in accordance with the across-the-board adjustment applied to most patent fees.

8. Patent Term Extension Fees

Table 11: Patent Term Extension Fees

Description	Entity type	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Application for extension of term of patent	Undiscounted	$1,180	$2,500	$1,320	119	$2,078
Initial application for interim extension (see 37 CFR 1.790)	Undiscounted	$440	$1,320	$880	200	$364
Subsequent application for interim extension (see 37 CFR 1.790)	Undiscounted	$230	$680	$450	196	$364
Supplemental redetermination after notice of final determination	Undiscounted	New	$1,440	n/a	n/a	n/a

The USPTO is increasing the fees for filing applications for patent term extensions (PTE) and applications for interim extensions under 35 U.S.C. 156 and implementing a new fee for requesting a supplemental redetermination of the PTE in a pending PTE application. These changes adjust the fee rates for inflation, reflect the full cost of these services, and support the agency's fee setting policy of aligning fees with the costs of providing the service. The fees for these services are set forth in § 1.20(j).

The PTE service and fee were introduced in October 1984 as part of initial operating guidelines established after enactment of the PTE provisions of 35 U.S.C. 156 in the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417, 98 Stat. 1585 (1984)) (Hatch-Waxman Act). See Guidelines for Extension of Patent Term under 35 U.S.C. 156, 1047 Off. Gaz. Pat. Office 16 (Oct. 9, 1984). Patent term extensions under 35 U.S.C. 156 enable owners of patents claiming certain products subject to premarket regulatory review to restore to the terms of those patents some of the time lost while awaiting premarket approval for the products from a regulatory agency. The products eligible for PTE services under 35 U.S.C. 156 include human drug products, medical devices, animal drugs, and food or color additive products, all of which are regulated by the FDA, and veterinary biological products, which are regulated by the United States Department of Agriculture (USDA). See MPEP 2750 for more information regarding the legislative history and scope of the Hatch-Waxman Act with respect to PTE.

In accordance with this law and its implementing regulations, the patent owner must file an application for PTE with the USPTO within a short time after the product receives permission for commercial marketing or use from the applicable regulatory agency (*i.e.,* the FDA or the USDA). See MPEP 2754 *et seq*. Upon receipt, the USPTO reviews the application, applicant, patent, and claimed product or process and then works with the applicable regulatory agency to evaluate compliance with the statutory requirements for PTE under 35 U.S.C. 156. While it is the USPTO's responsibility to decide whether an

applicant has satisfied statutory requirements and whether the patent qualifies for PTE, the applicable regulatory agency possesses expertise and records regarding some statutory requirements and has certain direct responsibilities under 35 U.S.C. 156 for determining length of the regulatory review period. See MPEP 2756 for a more detailed explanation of how the USPTO works with these regulatory agencies to determine a patent's eligibility for PTE under 35 U.S.C. 156. Once the USPTO has received the necessary information from the regulatory agency, it determines the applicable PTE (if any) and formulates a notice of final determination or determination of ineligibility, reviews any responses or reconsideration requests received from the patent owner, and prepares a final determination or certificate as appropriate. See MPEP 2755 through 2759 for an explanation of this process. Because of the coordination and communication required between the USPTO and the appropriate regulatory agency and the complexity of the legal determinations involved, it often takes two or more years to reach a final determination or determination of ineligibility. The time required varies greatly depending on the individual circumstances of each application.

When introduced in 1984, the fee for this service was set at $750 and has since increased to $1,180. See *e.g.,* ''Guidelines for Extension of Patent Term Under 35 U.S.C. 156,'' 1047 OG 16 (Oct. 9, 1984), ''Rules for Extension of Patent Term,'' 52 FR 9386 (Mar. 24, 1987), and FY 2020 Final Rule. If the original fee were adjusted for inflation as measured by the CPI, it would be $2,238 as of June 2024. Moreover, the complexity and cost of this service has increased over time due to the subject matter and legal expertise required to evaluate the statutory requirements. Thus, the USPTO proposed to raise the § 1.20(j)(1) fee for this service from $1,180 to $6,700.

While the proposed fee was greater than the reported unit cost in the NPRM ($2,581 for FY 2022), the USPTO did not begin formally tracking the unit cost of this specific service until midway through FY 2021. Prior to FY 2018, the service volume was quite low at about 42 applications each year. Since then, volume has averaged 100-plus applications each year. As previously noted, PTE services involve work that is performed over the course of multiple years, with individual applications varying widely in terms of their complexity and the length of time it requires to obtain the necessary information from the PTE applicant and the appropriate regulatory agency. The USPTO is exploring how it can improve its expense modeling for these services. For more information about how the USPTO determines fee unit expenses, see the document titled, ''USPTO Setting and Adjusting Patent Fees During Fiscal Year 2025—Activity Based Information and Patent Fee Unit Expense Methodology,'' available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting.*

The USPTO is also implementing a new service fee in § 1.20(j)(4) that applies to the approximately one-third of applications for PTE in which the user files a response that includes a terminal disclaimer after receiving the notice of final determination. The submission of terminal disclaimers at this late stage in the review process affects the patent term, requiring the USPTO to engage in a substantial amount of rework to recalculate the applicable PTE and make a supplemental redetermination of the appropriate extension in view of the disclaimer. These submissions became more common after the Federal Circuit's decision in *Gilead Sciences, Inc.* v. *Natco Pharma Ltd.,* 753 F.3d 1208 (Fed. Cir. 2014), which made it clear that the extended term of a patent can be affected by a terminal disclaimer filed against a later-issued but earlier-expiring reference patent.

These late-stage disclaimer submissions are expected to become more common in the future because of *In re Cellect,* 81 F.4th 1216 (Fed. Cir. 2023), in which the Federal Circuit explained that patent term adjustment and PTE are treated differently with respect to nonstatutory double patenting and terminal disclaimers. Currently, beneficiaries of this rework receive this additional service for free because the cost is subsidized by other users (*e.g.,* by unrelated fee collections from other patent applicants and owners). In accordance with user fee design principles, the USPTO is implementing a new fee of $1,440 to cover the costs of this service and to be paid by users who benefit from it. Because the notice of final determination is mailed at a late stage of the review process, most PTE service users will have a window of several years during the review process to submit terminal disclaimers without incurring this additional fee.

The USPTO is also increasing the § 1.20(j)(2) and (j)(3) fees for filing applications for interim PTE under § 1.790. This service and fees were introduced in 1994 in response to an amendment of the Hatch-Waxman Act that added 35 U.S.C. 156(d)(5). See MPEP 2750 and Guidelines for Interim Extension Under 35 U.S.C. 156(d)(5) of a Patent Term Prior To Regulatory Approval of a Product for Commercial Marketing or Use—Public Law 103–179 (Dec. 3, 1993), 1159 Off. Gaz. Pat. 12 (Feb. 1, 1994). Interim patent extension under 35 U.S.C. 156(d)(5) is available for a patent claiming a product that is undergoing the approval phase of regulatory review as defined in 35 U.S.C. 156(g) if the patent is expected to expire before approval is granted. The application of an interim patent extension is very similar to an application for PTE with a similar evaluation process, except the USPTO is not required to seek the advice of the regulatory agency. See MPEP 2755.02 for more information regarding this service.

The interim extension service has a very low volume of about 20 or fewer applications each year, but it is costly and requires special handling due to the subject matter and legal expertise required to evaluate the statutory requirements. The USPTO is raising the § 1.20(j)(2) fees from $440 to $1,320 for the initial (first) application for an interim extension of patent term and the § 1.20(j)(3) fees from $230 to $680 for each subsequent application. This fee increase will help recover the agency's costs of performing this service. Upon its introduction in 1994, the fees for this service were set at $400 for an initial application and $200 for subsequent applications, and they have increased by only $40 and $30, respectively, since. See FY 2020 Final Rule.

No PTE-related fees are eligible for entity discounts in this fee setting because section 10(b) of the AIA, as amended by the UAIA, only authorizes discounting six categories of fees (*i.e.,* fees for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents). PTE-related fees do not fall into any of the section 10 categories. Even without discounts, the USPTO expects that PTE service users will be financially able to pay for the PTE services they are requesting because the service is limited to certain patents on human drug products, medical devices, animal drugs, food or color additive products, and veterinary biological products.

Over the last 40 years, 81% of PTE applications concerned human drug products, 15% concerned medical devices, 3% concerned animal drugs, and about 1% concerned food or color additive products or veterinary biological products. See, *e.g.,* the USPTO website at *https://www.uspto.gov/patents/laws/patent-*

term-extension/patent-terms-extended-under-35-usc-156, which provides a list of patents that have been extended via this service. It costs companies millions or billions of dollars to research, develop, test, and obtain regulatory approval for the products and medical devices that are the subjects of PTE applications. Thus, when compared to either FDA user fees or the research and development costs required to develop a new drug and obtain marketing approval, the fees to obtain a PTE for the patent covering such a new drug are quite small.[1]

9. Request for Continued Examination Fees

Table 12: Request for Continued Examination Fees

Description	Entity type	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Request for continued examination (RCE) - 1st request (see 37 CFR 1.114)	Undiscounted	$1,360	$1,500	$140	10	$3,110
Request for continued examination (RCE) - 1st request (see 37 CFR 1.114)	Small	$544	$600	$56	10	$3,110
Request for continued examination (RCE) - 1st request (see 37 CFR 1.114)	Micro	$272	$300	$28	10	$3,110
Request for continued examination (RCE) - 2nd and subsequent request (see 37 CFR 1.114)	Undiscounted	$2,000	$2,860	$860	43	$2,258
Request for continued examination (RCE) - 2nd and subsequent request (see 37 CFR 1.114)	Small	$800	$1,144	$344	43	$2,258
Request for continued examination (RCE) - 2nd and subsequent request (see 37 CFR 1.114)	Micro	$400	$572	$172	43	$2,258

For utility and plant applications where prosecution is closed (*e.g.,* a final rejection has been mailed), the applicant may file a request for continued examination (RCE) and pay a specified fee within the requisite time period. Applicants typically file an RCE when they choose to continue prosecution before an examiner rather than appeal a rejection or abandon the application. Prior to application abandonment, applicants may also file a continuing application to extend prosecution rather than file an RCE.

Since FY 2013, the USPTO has split RCE fees into two parts: (1) a fee for a first RCE and (2) a second, higher fee for a second or subsequent RCE. ''See Setting and Adjusting Patent Fees,'' 78 FR 4212 (Jan. 18, 2013). Higher fees for RCEs filed after the first RCE are intended to help promote more compact prosecutions by reducing RCE filings in favor of appeal or reaching agreement with an examiner. Higher fees for successively filed RCEs also address the inequities of providing further subsidies to those applicants who use more USPTO resources per application than others. As explained in the USPTO's FY 2013 rulemaking, 78 FR at 4245, because the USPTO sets the fee for the first RCE below the costs to process it, the agency must recoup those costs elsewhere. Since most applicants resolve their issues with the first RCE, the agency determined that applicants who file more than one RCE are using the patent system more extensively than those who file zero or only one RCE. Therefore, the USPTO determined in the FY 2013 rulemaking that the cost to review applications with multiple RCEs should not be subsidized with other back-end fees to the same extent as applications with a first RCE, newly filed applications, or other continuing applications. This splitting of the fees promotes compact prosecution and more appropriately distributes the benefit of the low barrier to entry feature of below cost front-end fees.

The USPTO's FY 2017 fee setting rulemaking maintained the undiscounted fee for a first RCE well below cost but set the undiscounted fee for second and subsequent RCEs at 19% above cost. See ''Setting and Adjusting Patent Fees During Fiscal Year 2017,'' 82 FR 52780 (Nov. 14, 2017). The initial undiscounted RCE fee from FY 2017 would have required an applicant to file four RCEs for the USPTO to mostly recover the costs for treating all of the applicant's RCE filings. These costs have increased annually since FY 2017. In fact, the current undiscounted fee for second and subsequent RCEs is set so far below cost that no amount of RCE filings would result in the agency recapturing the costs of providing the service.

The bifurcated fee structure does not appear to have had much effect on RCE filing behavior. During FY 2011, when the agency's fee schedule set only one RCE fee, RCE filings comprised about 30% of all RCE and utility patent application filings collectively. In FY 2018, RCE filings comprised 29% of the total despite the bifurcated fee structure introduced in FY 2013. The RCE filing percentage declined to 25% in FY 2021 and 23% in FY 2022. It is unlikely these recent decreases resulted from the bifurcated fee structure, as the RCE filing percentage was hardly affected in the years immediately following FY 2013.

The USPTO had proposed in the NPRM to trifurcate the RCE fee structure, *i.e.,* to split the existing RCE fees into three parts—a fee for a first RCE, a higher fee for a second RCE, and a still higher fee for third and subsequent RCEs filed in a single patent application. Under the trifurcated structure, the undiscounted fee for a first RCE would have been more than 50% below cost, and the undiscounted fee for a second RCE would have been just above cost. As proposed, the undiscounted fee for third and subsequent RCEs would have been enough above current RCE costs that a third RCE from an applicant with no entity status discount, combined with the fees for filing the first two RCEs, would have covered agency costs for treating all three RCEs.

During the public comment period on the NPRM, the USPTO received a number of comments expressing concerns over the proposal to trifurcate the RCE fees. Having further considered the public feedback on this proposal, the USPTO decided against proceeding with this proposal. Instead, the USPTO will retain the existing bifurcated RCE fee structure in which the first RCE is charged at a lower rate than the second and subsequent RCEs.

In this final rule, the USPTO is increasing the § 1.17(e)(1) fee for a first RCE ($1,500 for undiscounted entities) only 10%, similar to the across-the-board adjustment applied to most patent fees. The undiscounted fee for a first RCE will thus remain more than 50% below cost ($3,110 in FY 2023). In accordance with the existing rationale for the bifurcated fee structure described above in connection with the FY 2013 and FY 2017 fee settings, the USPTO is increasing the undiscounted § 1.17(e)(2) fee for the second and subsequent RCEs to an amount ($2,860) that is above the agency's costs of processing those RCEs ($2,258 in FY 2023).

Even at the undiscounted rate, the fee for second and subsequent RCEs does not fully recoup the costs associated with the first RCE, and the agency must recoup those costs elsewhere (*e.g.,* for the second RCE, the USPTO has incurred $5,368 in RCE costs for the first and second RCEs, but has received only $4,360 in RCE fees from an undiscounted entity). It is not until the fourth and subsequent RCEs that the cumulative undiscounted RCE fees recover the cumulative RCE processing costs. Moreover, although RCEs in applications receiving entity discounts incur the same processing costs, the discounted fees are so far below cost that the agency would never recoup its costs regardless of the number of RCEs filed (*e.g.,* for the second RCE, the USPTO has incurred $5,368 in RCE costs for the first and second RCEs, but has received only $1,744 in RCE fees from a small entity and $872 from a micro entity). The final rule thus leaves the agency in essentially the same position financially as it has been since FY 2017, in that it will not recover its RCE processing costs from an applicant paying undiscounted RCE fees until the fourth or subsequent RCE filing and never recover its costs from applicants paying discounted RCE fees. For all RCEs (first, second, and subsequent), about 76% are filed by undiscounted entities, 22% by small entities, and 2% by micro entities.

10. Suspension of Action Fees

Table 13: Suspension of Action Fees

Description	Entity Type	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
First request for suspension of action	Undiscounted	$220	$300	$80	36	n/a
First request for suspension of action	Small	$88	$120	$32	36	n/a
First request for suspension of action	Micro	$44	$60	$16	36	n/a
Subsequent request for suspension of action	Undiscounted	$220	$450	$230	105	n/a
Subsequent request for suspension of action	Small	$88	$180	$92	105	n/a
Subsequent request for suspension of action	Micro	$44	$90	$46	105	n/a

Currently, § 1.103(a) permits applicants to request a suspension of action for a period not exceeding six months for good and sufficient cause. The patent examiner typically decides the first request for suspension. Second and subsequent requests require Technology Center director approval. Due to the heightened approval level, these requests cost the USPTO more to process. Additionally, the pendency of an application increases as more requests for suspension are requested and granted.

The USPTO is creating a new tiered fee structure for requests for suspension of action under § 1.103(a). Specifically, the agency is increasing the undiscounted fee for a first suspension request to $300 and establishing a new undiscounted fee of $450 for the second or subsequent requests in the same application. The fee increases strive to shift the costs of the service to those applicants who request suspensions, thereby reducing subsidization from other fees. This increase will not affect fees for suspensions of action requested at the time of filing a CPA under § 1.103(b) or an RCE under § 1.103(c).

To effect this change, the USPTO is amending § 1.17(g) by splitting it into two paragraphs, (g)(1) and (g)(2). Paragraph (g)(1) covers all fees formerly encompassed by § 1.17(g), other than those for suspension of action under § 1.103(a). Paragraph (g)(2) covers fees for suspension of action under § 1.103(a) and is bifurcated so that new paragraph (g)(2)(i) covers the fee for the first suspension request and new paragraph (g)(2)(ii) covers the fee for the second and subsequent requests. The § 1.17 (g)(2) fees are the tiered suspension of action fees proposed in the NPRM and shown above in table 13.

The USPTO receives approximately 2,500 requests for suspension under § 1.103(a) each year. Of those requests, 86% are filed by undiscounted entities, 12% by small entities, and 2% by micro entities. Given the availability of entity discounts, the USPTO believes this fee increase will generally have a negligible impact on small and micro entities.

11. Terminal Disclaimer Fees

In the NPRM, the USPTO proposed creating a new tiered fee structure for terminal disclaimers. The proposed fees for filing such terminal disclaimers would have increased and would have varied depending on the stage of examination of the application in which the terminal disclaimer was filed. In particular, the proposal would have created five tiers of fees for filing terminal disclaimers, beginning at $200 for the first tier and increasing by $300 for each subsequent tier. The proposed structure focused on encouraging applicants to promptly address double patenting issues that arise during prosecution.

However, during the public comment period, the USPTO received a number of comments expressing concerns over the proposed structure, particularly whether applicants would be able to make informed decisions on whether to file a terminal disclaimer before the fees escalated. The USPTO considered the public feedback and decided not to proceed with this proposal. Instead, the fee for this service will be increased in accordance with the across-the-board adjustment applied to most patent fees.

12. Unintentional Delay Petition Fees

BILLING CODE 3510–16–P

Table 14: Unintentional Delay Petition Fees

Description	Entity type	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Petition for the delayed payment of the fee for maintaining a patent in force, delay less than or equal to two years	Undiscounted	$2,100	$2,260	$160	8	$133
Petition for the delayed payment of the fee for maintaining a patent in force, delay less than or equal to two years	Small	$840	$904	$64	8	$133
Petition for the delayed payment of the fee for maintaining a patent in force, delay less than or equal to two years	Micro	$420	$452	$32	8	$133
Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years	Undiscounted	$2,100	$3,000	$900	43	n/a
Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years	Small	$840	$1,200	$360	43	n/a

Description	Entity type	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years	Micro	$420	$600	$180	43	n/a
Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding, delay less than or equal to two years	Undiscounted	$2,100	$2,260	$160	8	$372
Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding, delay less than or equal to two years	Small	$840	$904	$64	8	$372
Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding, delay less than or equal to two years	Micro	$420	$452	$32	8	$372

Description	Entity type	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding, delay greater than two years	Undiscounted	$2,100	$3,000	$900	43	n/a
Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding, delay greater than two years	Small	$840	$1,200	$360	43	n/a
Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding, delay greater than two years	Micro	$420	$600	$180	43	n/a
Petition for the delayed submission of a priority or benefit claim, delay less than or equal to two years	Undiscounted	$2,100	$2,260	$160	8	$376
Petition for the delayed submission of a priority or benefit claim, delay less than or equal to two years	Small	$840	$904	$64	8	$376

Description	Entity type	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Petition for the delayed submission of a priority or benefit claim, delay less than or equal to two years	Micro	$420	$452	$32	8	$376
Petition for the delayed submission of a priority or benefit claim, delay greater than two years	Undiscounted	$2,100	$3,000	$900	43	n/a
Petition for the delayed submission of a priority or benefit claim, delay greater than two years	Small	$840	$1,200	$360	43	n/a
Petition for the delayed submission of a priority or benefit claim, delay greater than two years	Micro	$420	$600	$180	43	n/a
Petition to excuse applicant's failure to act within prescribed time limits in an international design application, delay less than or equal to two years	Undiscounted	$2,100	$2,260	$160	8	n/a
Petition to excuse applicant's failure to act within prescribed time limits in an international design application, delay less than or equal to two years	Small	$840	$904	$64	8	n/a
Petition to excuse applicant's failure to act within prescribed time limits in an international design application, delay less than or equal to two years	Micro	$420	$452	$32	8	n/a

Description	Entity type	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Petition to excuse applicant's failure to act within prescribed time limits in an international design application, delay greater than two years	Undiscounted	$2,100	$3,000	$900	43	n/a
Petition to excuse applicant's failure to act within prescribed time limits in an international design application, delay greater than two years	Small	$840	$1,200	$360	43	n/a
Petition to excuse applicant's failure to act within prescribed time limits in an international design application, delay greater than two years	Micro	$420	$600	$180	43	n/a

BILLING CODE 3510–16–P

During FY 2020, the USPTO issued a notice to clarify when additional information is required to support a petition for unintentional delay. See ''Clarification of the Practice for Requiring Additional Information in Petitions Filed in Patent Applications and Patents Based on Unintentional Delay,'' 85 FR 12222 (March 2, 2020) (2020 Notice). Petitions based on unintentional delay include petitions seeking revival of an abandoned application, acceptance of a delayed maintenance fee payment, and acceptance of a delayed priority or benefit claim. The 2020 Notice clarified that ''any applicant filing a petition to revive an abandoned application under § 1.137 more than two years after the date of abandonment, any patentee filing a petition to accept a delayed maintenance fee under § 1.378 more than two years after the date of expiration for nonpayment of a maintenance fee, and any applicant or patent owner filing a petition to accept a delayed priority or benefit claim under § 1.55(e) or § 1.78(c) and (e) more than two years after the due date of the priority or benefit claim should expect to be required to provide an additional explanation of the circumstances surrounding the delay that establishes that the entire delay was unintentional.'' Id. at 12223.

As the evidentiary requirements for these petitions have increased, the costs to review and treat these petitions have also increased due to the higher level of review needed to consider the additional explanation. Accordingly, the USPTO is setting a new, higher fee for petitions based on unintentional delay over two years to recover their additional associated costs. The higher fee should encourage timely petition filings and avoid delays in the examination process. Timely filing of petitions based on unintentional delay benefits applicants because it avoids delays in the examination process, and it also benefits the patent system as a whole by reducing uncertainty and unpredictability relating to patent rights, inasmuch as the abandoned status of an application, the expired status of a patent, or an absence of the priority or benefit claim could be relied upon by other parties.

To effect this change, the USPTO is amending § 1.17(m) by splitting it into three paragraphs, (m)(1) through (m)(3). Paragraph (m)(1) implements the new higher fee ($3,000 for undiscounted entities) for petitions based on unintentional delay over two years. This higher fee will apply to petitions under § 1.78(c) and (e) to accept a delayed benefit claim submitted more than two years after the date the benefit claim was due, under § 1.55(e) to accept a delayed priority claim more than two years after the date the foreign priority claim was due, under § 1.137 to revive an abandoned application or reexamination proceeding more than two years after the date of abandonment, under § 1.378 to seek reinstatement of an expired patent more than two years after the date of expiration for nonpayment of a maintenance fee, and under § 1.1051 to excuse an applicant's failure to act within prescribed time limits in an international design application.

Paragraph (m)(2) implements the fee for petitions based on unintentional delay that is less than or equal to two years, and paragraph (m)(3) implements the fee for petitions requesting restoration of the right of priority, *i.e.,* petitions under § 1.55(c), § 1.78(b), or § 1.452 for the extension of the 12-month (6-month for designs) period for filing a subsequent application. These

fees are also increasing as compared to the current § 1.17(m) fee (from $2,100 to $2,260 for undiscounted entities) in accordance with the across-the-board adjustment applied to most patent fees.

The USPTO receives approximately 12,000 petitions each year based upon the unintentional standard (FY 2021, 12,752 petitions; FY 2022, 11,755 petitions; FY 2023, 11,304 petitions). About 10% of these petitions (1,200) have a delay of more than two years. Therefore, the higher cost for petitions having a delay of greater than two years should not have a significant impact on patent applicants overall. The increased fee will help ensure those applicants requesting the service pay its costs, thereby reducing subsidization from other patent applicants.

13. America Invents Act Trial Fees

Table 15: America Invents Act Trial Fees

Description	Entity type	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Inter partes review request fee - Up to 20 claims	Undiscounted	$19,000	$23,750	$4,750	25	$26,308
Inter partes review post-institution fee - Up to 20 claims	Undiscounted	$22,500	$28,125	$5,625	25	$36,371
Inter partes review request of each claim in excess of 20	Undiscounted	$375	$470	$95	25	n/a
Inter partes post-institution request of each claim in excess of 20	Undiscounted	$750	$940	$190	25	n/a
Post-grant or covered business method review request fee - Up to 20 claims	Undiscounted	$20,000	$25,000	$5,000	25	$40,100
Post-grant or covered business method review post-institution fee - Up to 20 claims	Undiscounted	$27,500	$34,375	$6,875	25	$51,832
Post-grant or covered business method review request of each claim in excess of 20	Undiscounted	$475	$595	$120	25	n/a
Post-grant or covered business method review post-institution request of each claim in excess of 20	Undiscounted	$1,050	$1,315	$265	25	n/a

As proposed, the USPTO is increasing existing fees for AIA trial proceedings by 25%. Under 35 U.S.C. 311(a) and 321(a), the USPTO Director must establish reasonable fees for inter partes review and post-grant review in relation to their aggregate costs. The fee increases will better align the fee rates charged to petitioners with the actual costs borne by the USPTO in providing these proceedings. This change will help the PTAB maintain the appropriate level of judicial and administrative resources to continue providing high-quality and timely decisions for AIA trials.

14. Request for Review of a PTAB Decision by the Director Fee

Table 16: Request for Review of a PTAB decision by the Director Fee

Description	Entity type	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Request for review of a PTAB decision by the Director	Undiscounted	New	$452	n/a	n/a	n/a

The USPTO is setting a new fee for parties requesting Director Review in AIA trial proceedings under part 42. The fee is set at the same rate as a petition to the Chief Judge in ex parte appeals (see 37 CFR 42.20(a)) and is designed to partially recover the USPTO's costs for conducting Director Reviews. The new fee is part of the agency's ongoing efforts to formalize the Director Review process developed in response to the Supreme Court's decision in *United States* v. *Arthrex, Inc.* and furthers the USPTO's goals of promoting innovation through consistent, transparent decision-making and the issuance and maintenance of reliable patents.

More specifically, *Arthrex* explained that ''constitutional principles chart a clear course: Decisions by [administrative patent judges (APJs)] must be subject to review by the Director.'' See 141 S. Ct. 1970, 1986 (2021). Following the statutory authority provided to the Director by Congress and the constitutional principles explained by the Supreme Court, the USPTO set forth an interim process for Director Review, which has been updated periodically. The agency sought public feedback on the interim process and is using feedback to promulgate rules. See ''Rules Governing Director Review of Patent Trial and Appeal Board Decisions,'' 89 FR 26807 (April 16, 2024); ''Request for Comments on Director Review, Precedential Opinion Panel Review, and Internal Circulation and Review of Patent Trial and Appeal Board Decisions,'' 87 FR 43249 (July 20, 2022).

As a part of the interim process, when the USPTO receives a Director Review request from a party to an AIA proceeding, the request is processed and routed to an advisory committee that assists with Director Review. The committee includes at least 11 representatives from various USPTO business units who serve at the Director's discretion. Members independently review each request and associated case materials, and the committee meets regularly to recommend which requests for review should be granted. The Director considers each request, its case materials, and the committee's recommendation in determining whether to grant or deny review. When the Director determines to grant review, personnel from various USPTO business units assist in case processing and in issuing and publicizing the Director Review decision.

Given the number of agency personnel involved in Director Review, the USPTO expects the new fee will be relatively small compared to the overall costs. The agency plans to formally capture and evaluate these costs after the fee takes effect.

D. Amendment to Obtaining a Refund Through Express Abandonment

The USPTO is amending paragraph (d) of § 1.138, which permits an applicant to obtain a refund of the search and excess claims fees that were paid in an application by submitting a petition and declaration of express abandonment before an examination has been made of the application. The current rule permits such refunds only in nonprovisional applications filed under 35 U.S.C. 111(a) and § 1.53(b). The amendment expands the applicability of the rule to permit such refunds in national stage applications filed under 35 U.S.C. 371.

The amendment also clarifies that refunds of search and excess claims fee payments under these provisions are limited to the search and excess claims fees set forth in § 1.16 (which apply to applications filed under 35 U.S.C. 111(a) and § 1.53(b)) and § 1.492 (which apply to national stage applications filed under 35 U.S.C. 371). No refunds will be permitted of any search fees paid under § 1.445 during the international stage of an application filed under the PCT, even if such an application later enters the national stage under 35 U.S.C. 371.

The petition process and the conditions under which a refund will be granted will not otherwise change. See MPEP 711.01, subsection III for more information. The amendment puts national stage applications on the same footing as applications filed under 35 U.S.C. 111(a) when an application is expressly abandoned prior to examination.

VI. Discussion of Comments

Comments and Responses

The USPTO published a proposed rule on April 3, 2024, soliciting comments on the proposed fee schedule. In response, the USPTO received comments from 28 associations and individuals including intellectual property organizations, law firms, corporations, attorneys, and others. These comments are available on *Regulations.gov* at *https://www.regulations.gov/docket/PTO-P-2022-0033.*

Summaries of comments and the agency's responses follow.

General Fee Setting Approach

Comment 1: One commenter stated that most of the fee proposals are necessary and appropriate. The commenter also urged Congress to appropriate previously diverted funds from the USPTO budget back to the agency to improve the patent examination process.

Response: The USPTO appreciates the feedback from the commenter and is committed to achieving the goals developed in consultation with the stakeholder community as set forth in the Strategic Plan. Comments directed to Congress are outside the scope of this rulemaking.

Comment 2: One commenter expressed their support of the proposals set forth in the NPRM in their entirety.

Response: The USPTO appreciates the commenter's support for the proposed fees. The fees in the final rule will give the agency sufficient financial resources to facilitate the effective administration of the U.S. patent system and implement the goals outlined in the Strategic Plan.

Comment 3: One commenter expressed their support of the

proposals, noting that the adjustments will allow the USPTO to come closer to recovering its aggregate costs for patent examination activities by better aligning fees with the costs of products and services, while also promoting more efficient patent prosecution.

Response: The USPTO appreciates the commenter's feedback. The agency carefully considered all comments it received about the proposals outlined in the NPRM and believes the fees in the final rule strike a balance between addressing commenter concerns and providing sufficient financial resources to recover the aggregate estimated costs of patent operations and support the goals described in the Strategic Plan.

Comment 4: Commenters stated that the proposed fee increases are severe and appear to represent a departure from the USPTO's historic practice of adjusting fees incrementally to reflect anticipated cost increases and agency priorities.

Response: The USPTO recognizes that higher fees will affect entities interacting with the agency. The USPTO is experiencing an increase in aggregate costs, and fee increases are necessary to maintain operations and deliver the priorities listed in the Strategic Plan. Most fees fall into the across-the-board and front-end adjustments and will increase around 7.5% or 10% respectively. It has been more than four years since the agency's last fee adjustment in October 2020 and these increases are well below the prevailing inflation rate since then. While some fees are increasing by larger percentages and new fees are being introduced, the rationales for these increases are explained in Part V(c): Targeted Adjustments to Patent Fees. Moreover, the time frame associated with the fee setting process inherently provides for the phasing in of fee changes. For example, this fee setting process began with a proposal presented to PPAC in April 2023, and the public has had two opportunities to review and comment on the fee proposals as part of the process since then. The USPTO refined the fee proposal in both the NPRM and this final rule based on feedback from the public and PPAC.

Comment 5: One commenter stated that the proposals run counter to the USPTO's stated goals and mission and could drive smaller companies and start-ups out of the U.S. patent process.

Response: Helping small businesses and independent inventors with limited resources is important to the USPTO. The agency provides several free or reduced-fee programs to assist independent inventors and small businesses in securing patent protection for their inventions, including the Patent Pro Bono Program, Pro Se Assistance Program, and Law School Clinic Certification Program, as well as tips to avoid scams. More information on these programs can be found on the USPTO website: *https://www.uspto.gov/ProBonoPatents, https://www.uspto.gov/ProSePatents,* and *https://www.uspto.gov/LawSchoolClinic.*

The USPTO also offers reduced fees for small and micro entities. Applicants qualifying as a micro entity under section 11(g) of the AIA are eligible for an 80% reduction on most fees, and applicants qualifying as a small entity under 35 U.S.C. 41(h)(1) are eligible for a 60% fee reduction. Many of the small and micro entity fees adjusted in this rule will continue to be lower than the fee rates that were in place prior to passage of the UAIA, which increased the percentages of these discounts.

Comment 6: One commenter suggested that several of the proposed fee adjustments are punitive charges.

Response: The USPTO has increased fees via this final rule because it is required by law to recover its aggregate estimated costs for processing, activities, services, and materials relating to the patent system, including administrative costs with respect to such patent fees. The agency set many of the targeted fee adjustments in this final rule to recover more costs directly from the users of services that increase the agency's costs of processing and examination. Setting fees lower than prescribed in the final rule would necessitate an offset by raising other fees, reducing spending on core mission and strategic priorities, or depleting the operating reserves, thereby significantly increasing agency financial risk. More information on why the USPTO is setting individual fees at the specified rates can be found in Part V: Individual Fee Rationale of this rule.

Comment 7: One commenter stated that an increase in the price of obtaining a patent can be expected to decrease patents and innovation. The commenter believed increasing fees to cover the agency's costs could lead to excessive spending and suggested reducing costs rather than increasing fees and potentially disincentivizing innovation.

Response: The USPTO recognizes its duty to stakeholders to be good stewards of the patent system and continues to pursue efforts to increase efficiency and control costs.

Additionally, the agency conducted an elasticity analysis (*i.e.,* an assessment of the degree to which changes in fee rates affect demand for services) as part of a prior rulemaking and found that patent fees are relatively inelastic. As such, increases of the nature contained in this rule would not be expected to significantly deter innovation. A description of elasticity estimates can be found on the fee setting and adjusting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting.*

The USPTO recognizes that fees cannot simply increase for every improvement it deems desirable. The USPTO's financial advisory board evaluates financial risk and determines which expenses are truly necessary to achieve performance outcomes and service level commitments to stakeholders. As noted in the FY 2023 AFR, available on the agency website at *https://www.uspto.gov/AnnualReport,* total costs for the patent program increased 13.8% from FY 2019 to FY 2023, well below the CPI–U, which grew by 19.9% over the same period.

Comment 8: One commenter stated that the patent system is not well suited to sudden changes and requested that the USPTO consider a more moderate, incremental approach to raising fees and adding new ones.

Response: The time frame associated with the fee setting process inherently provides for the phasing in of fee changes and intentionally incorporates multiple opportunities for public feedback. As part of the fee setting process, the public has had two opportunities to review and comment on the fee proposals. The agency refined the fee proposals in both the NPRM and this final rule based on feedback from the public and PPAC, including reducing some proposed fee increases.

Comment 9: Commenters stated that dramatic, controversial fee increases run the risk of the USPTO losing its fee setting authority or having it renewed only for another relatively short period of time. Commenters cautioned the USPTO against reopening the door to congressional interest in USPTO user fees and potential fee diversions from collecting excessive funds.

Response: The agency recognizes its responsibility to be a good steward of the fee setting authority granted by Congress, as well as its duty to its stakeholders. After considering the many public comments, the agency has removed or adjusted several fees proposed in the NPRM. These changes include removal of the AFCP 2.0, terminal disclaimer, patent term adjustment, and third and subsequent RCE proposals and the adjustment of the patent term extension and continuing applications proposals. The USPTO is committed to improving the fee schedule design to generate sufficient financial resources for effective

administration of the U.S. IP system while also remaining responsive to stakeholder feedback. The agency takes its responsibility to stakeholders seriously and appreciates the rigorous and open review process involved in adjusting fee rates.

Comment 10: One commenter stated that fees need to be set in such a way that patent applicants and holders do not overpay or underpay.

Response: With the exception of small and micro entity discounts, the agency is legally obligated to charge the same fees for applicants. As explained in this final rule, the revised fees strike the right balance between maintaining low barriers to entry to the patent system and providing sufficient financial resources to recover the aggregate costs of patent operations and support the goals described in the Strategic Plan.

Comment 11: One commenter stated the USPTO was effectively proposing a one-size-fits-all fee structure in the NPRM. The commenter believed the proposed fee structure would deny options to applicants by imposing cost-prohibitive fees.

Response: The USPTO is not adopting a one-size-fits-all fee structure. The fees in this final rule are intended to encourage efficient operations and filing options, but they do not eliminate other prosecution pathways. The USPTO agrees with the commenter that applicants may have diverse patenting needs and strategies. However, the current fee structure includes fees for many less-widely used services below unit cost, meaning their costs are subsidized by applicants who do not take advantage of the service. The fee structure in this final rule will help redistribute some of those costs to applicants who are directly requesting these services.

The agency realizes that fee increases will affect applicants. At the same time, the USPTO's costs for processing, activities, services, and materials relating to patents, including administrative costs with respect to such patent fees, have increased. The agency set many of the targeted fee adjustments in this final rule to recover more costs directly from the users of services that increase the agency's costs of processing and examination. Setting fees lower than prescribed in this final rule would require that the USPTO offset shortfalls by raising other fees, reducing spending on core mission and strategic priorities, and/or depleting the operating reserves, thereby significantly increasing agency financial risk. Additionally, the USPTO has continued its longstanding policy of charging patent applicants and holders lower filing, search, and examination (front-end) fees and higher issue and maintenance (back-end) fees, when an invention's relative value is better known.

In addition, the USPTO provides several programs to support independent inventors and small businesses. See the response to comment 5 for resources regarding free or reduced fee programs to assist these entities in securing patent protection for their inventions. The USPTO also offers reduced fee rates for many fees to small and micro entities. An applicant who meets micro entity requirements is eligible for an 80% reduction in most fees, and small entity status offers a 60% fee reduction. Many of the small and micro entity fees adjusted in this final rule will continue to be lower than the fee rates that were in place prior to passage of the UAIA, which increased the percentages of these discounts.

Comment 12: Commenters stated the proposal escalates fees at critical aspects of the patent process and for actions that many patent owners take to clarify rights or simplify litigation. The commenters cautioned against raising fees for common actions for valuable patents, which might disproportionately impact the most innovative companies, small businesses, and independent inventors who rely on patent protection in response to theft by efficient infringers.

Response: As a fee-funded agency, the law requires the USPTO to recover its aggregate costs for the services it provides. The agency set many of the targeted fee adjustments in this final rule to recover more costs directly from the users of services that increase the costs of processing and examination. Setting fees lower than prescribed in this final rule would require that the USPTO offset shortfalls by raising other fees, reducing spending on core mission and strategic priorities, and/or depleting the operating reserves, thereby significantly increasing agency financial risk. Also, the USPTO has continued its longstanding policy of charging patent applicants and holders lower filing, search, and examination (front-end) fees and higher issue and maintenance (back-end) fees when an invention's relative value is better known. For small businesses and independent inventors, applicants who meet the micro entity requirements are eligible for an 80% reduction on most fees, and applicants with small entity status receive a 60% fee reduction. The USPTO notes that many of the small and micro entity fees adjusted in this final rule will continue to be lower than the fee rates that were in place prior to passage of the UAIA, which increased the size of these discounts.

Comment 13: One commenter stated that patent fees should reflect the actual costs incurred by the USPTO rather than be used as a tool to incentivize specific behaviors. The commenter stated that this strategy could result in unintended consequences.

Response: Section 10(a) of the AIA grants the USPTO broad authority to set or adjust patent fees to generate the aggregate revenue required to recover the aggregate estimated costs of operations. As part of the Final Regulatory Flexibility Analysis (FRFA), the agency considered a unit cost recovery alternative that set most individual undiscounted fees at the historical cost of performing the activities related to that particular service in FY 2022. The USPTO ultimately opted against this alternative because it would reverse the agency's longstanding policy of setting front-end fees below cost and charging higher back-end fees when a patent holder has more information about a patent's value. The results of the FRFA are discussed further in Part VIII(b): Regulatory Flexibility Act of this final rule.

Comment 14: One commenter stated that the proposed fee rule does not appear to project that increased fees will result in any performance improvements. The commenter requests that the USPTO share information on how it will use the increased fees to address unexamined inventory and pendency rates.

Response: The fees included in this final rule will provide the agency with sufficient financial resources to facilitate the effective administration of the U.S. patent system, including implementing the Strategic Plan. The RIA associated with this rule uses the same production models for all alternatives simply for comparison. Aggregate revenue resulting from the current fee schedule, in absence of implementation of this rule, would require the USPTO to reduce planned spending, which would impede the agency's ability to achieve these performance levels (*i.e.,* pendency could increase) and other strategic priorities. The Strategic Plan, available on the agency website at *https://www.uspto.gov/StrategicPlan,* includes a description of several initiatives that will address quality, unexamined inventory, and pendency. Additionally, Part IV(C): Efficient Delivery of Reliable IP Rights: Quality, Unexamined Inventory, and Pendency of this rule includes discussion of some of these initiatives. To effect necessary changes in the examination process and ensure

the timely issuance of reliable patents, the USPTO must plan for potential increases in core operating costs for future years. The USPTO lays out spending plans in each year's congressional budget justification, available at *https://www.uspto.gov/about-us/performance-and-planning/budget-and-financial-information.* These strategic investments will enable the USPTO to identify and continue implementing improvements, guidelines, and best practices to serve the patent system, including reducing pendency in the future.

Comment 15: One commenter stated the proposed fee structure could result in decreased revenue. The commenter requested that the USPTO share any financial impact analysis of the proposed fee structure's net expected effect.

Response: The USPTO carefully considered the fee schedule in this final rule. As part of the fee setting process, the agency conducted both a regulatory flexibility analysis (IRFA for the NPRM and FRFA for this final rule) and RIA. These analyses relied in part on the results of an existing elasticity analysis (*i.e.,* an assessment of the degree to which changes in fee rates may affect demand for services), which found that patent fees are relatively inelastic and, therefore, fee increases will not reduce patenting activity enough to negatively impact overall revenue. The results of the FRFA are discussed in Part VIII(B): Regulatory Flexibility Act of this rule. The RIA and Description of Elasticity Estimates can be found at *https://www.uspto.gov/FeeSettingAndAdjusting.*

Comment 16: One commenter stated that the proposed fee structure is inconsistent with the goals and traditions of the U.S. patent system, as the fees will increase the financial hurdle to gain entry into the patent system.

Response: As discussed in Part I: Executive Summary of this final rule, the individual fee adjustments included in this final rule align with the USPTO's strategic goals and its fee structure philosophy, including the agency's four key fee setting policy factors: (1) promote innovation strategies, (2) align fees with the full costs of products and services, (3) facilitate effective administration of the U.S. patent system, and (4) offer application processing options. The fee adjustments will enable the USPTO to accomplish its mission of driving U.S. innovation, inclusive capitalism, and global competitiveness. While many fees will increase, the USPTO has long promoted a fee structure that fosters innovation by reducing barriers to entry into the patent system through lower front-end fees (set below cost) and higher back-end fees. Under the fee structure in the final rule, front-end fees will remain below cost to continue facilitating entry into the patent system and, in so doing, encourage the disclosure of information on new inventions and ideas to the public. For small businesses and independent inventors, applicants who meet the micro entity requirements are eligible for an 80% reduction on most fees, and applicants with small entity status receive a 60% fee reduction. The USPTO notes that many of the small and micro entity fees adjusted in this final rule will continue to be lower than the fee rates that were in place prior to passage of the UAIA, which increased the size of these discounts. The agency carefully considered many factors discussed in this final rule and determined that the fee increases are adequate to generate the aggregate revenue required to recover examination costs while continuing to foster innovation.

Comment 17: One commenter expressed their support of the USPTO's use of cost-cutting measures to limit the need for increasing or creating new fees but expressed concern regarding the flatlining of IT budgets, which they stated might be short-sighted.

Response: As outlined in the FY 2025 Budget, the agency will achieve this cost containment goal via modern equipment in a new data center that will cost less to maintain. In addition, by retiring legacy systems, the agency will reduce the required number of maintenance teams, reduce hardware and software costs, reduce storage and licensing costs, improve technical debt and patching efficiency, and improve cybersecurity. With respect to the impact these cost-cutting measures will have on operations, the USPTO remains committed to sustaining its planned levels of functionality and performance, and compliance with Federal laws, regulations, and directives. The agency's FY 2025 Budget is available on the USPTO website at *https://www.uspto.gov/about-us/performance-and-planning/budget-and-financial-information.*

Comment 18: One commenter stated that patent quality is a matter for the courts and issues could be resolved by awarding legal costs to prevailing parties in all but exceptional cases.

Response: Providing high-quality, efficient examination of patent applications is paramount to the USPTO's mission. With respect to shifting cost burdens in legal proceedings, such changes are beyond the scope of this rulemaking.

Across-the-Board Adjustment to Patent Fees

Comment 19: One commenter recognized the need for the USPTO to increase some patent fees and stated the across-the-board adjustment is reasonable.

Response: The USPTO appreciates the commenter's feedback. The across-the-board adjustment outlined in this final rule will help keep the UPSTO on a stable financial track sufficient to recover the aggregate costs of patent operations and support the agency's strategic objectives.

Comment 20: One commenter expressed disagreement with including the DOCX surcharge in the across-the-board adjustment since the agency implemented the fee less than a year ago.

Response: The USPTO is adjusting the DOCX surcharge as part of the across-the-board adjustment to help keep pace with inflationary cost increases. Although the DOCX surcharge was instituted recently, the agency is required by law to finance operations in the aggregate by recovering fees for its services. Setting fees lower than prescribed in this final rule would require that the USPTO offset shortfalls by raising other fees, reducing spending on core mission and strategic priorities, and/or depleting the operating reserves, thereby significantly increasing agency financial risk.

Front-End Adjustment to Patent Fees

Comment 21: One commenter stated that the current relationship between front-end and back-end fees should be maintained and noted that PPAC objected to adding or increasing up-front processing fees.

Response: To encourage innovation, the USPTO will continue to set front-end fees below its costs of providing these services. Further, while the USPTO increased the across-the-board adjustment in this final rule to ensure aggregate cost recovery in light of reductions to other proposals, it lowered the front-end increase relative to the across-the-board adjustment from 5% to 2.5%, keeping the total front-end increase at 10%. Therefore, the fees set in this final rule will have a smaller impact on the balance between front-end and back-end fees compared to the NPRM proposal while still allowing the USPTO to marginally recover some costs earlier in the patent life cycle.

Comment 22: One commenter expressed support for the USPTO recovering more of its costs through

front-end fees and encouraged the USPTO to consider an even larger shift towards cost recovery on the front-end.

Response: The USPTO appreciates the commenter's support. While this final rule slightly increases filing, search, and examination fees, the agency remains committed to promoting a fee structure that fosters innovation by maintaining low barriers to entry into the patent system. Lower front-end fees facilitate entry into the patent system and, in so doing, encourage the disclosure of information on new inventions and ideas to the public. Higher back-end fees not only help the agency recoup costs incurred at the front end of the process but also foster innovation by encouraging patent holders to assess the costs and benefits of maintaining their patent at various points over its 20-year term (*i.e.,* 3.5 years, 7.5 years, and 11.5 years) when maintenance fees are due. This strategy helps ensure that low-value patents are released back into the public domain for subsequent commercialization. The USPTO carefully considered many factors discussed in this final rule in determining that the increases to filing, search, and examination fees are adequate to generate the aggregate revenue needed to recover examination costs and continue fostering innovation.

Comment 23: One commenter suggested that undiscounted fees be decoupled from fees for small and micro entities to allow for further fee increases for large users.

Response: The agency does not have the legal authority to set fees for small and micro entities separately from undiscounted fees. The authority to reduce fees for small and micro entities under the USPTO's rulemaking authority is limited by the AIA as amended by the UAIA. These statutes prescribe that the USPTO must provide small and micro entity discounts based on a set percentage of the undiscounted fee rate. Further, these discounts apply to only the six fee categories under section 10(b) of the AIA. Helping small businesses and independent inventors is an important part of the USPTO's mission of driving U.S. innovation, inclusive capitalism, and global competitiveness. See the response to comment 5 for resources regarding free or reduced fee programs that assist these entities in securing patent protection for their inventions.

Targeted Fee Adjustments

After Final Consideration Pilot Program 2.0 Fee

Comment 24: Commenters expressed concerns about the AFCP 2.0 pilot program and the proposed participation fee. Commenters stated that the program's primary benefit is the opportunity to hold an interview with the examiner after the close of prosecution.

Response: The agency considered public feedback on AFCP 2.0 and the proposed fee and opted to allow the program to expire on December 14, 2024. As a reminder, under customary examination practice, after the close of prosecution, amendments that will place the application either in condition for allowance or in better form for appeal may be entered, and the applicant may also hold an interview with the examiner. See § 1.116(b) and section 714.12 of Manual of Patent Examining Procedure (MPEP) (9th ed., Rev. 01.2024, November 2024), which may be viewed on or downloaded from the USPTO website at *https://www.uspto.gov/MPEP* or *https://mpep.uspto.gov.* Thus, even without the program, applicants still have the opportunity to hold interviews with examiners after the close of prosecution.

Continuing Application Fees

Comment 25: One commenter stated that the meaning of the term ''earliest benefit date'' or ''EBD'' as used in the NPRM was not clear, particularly with regard to whether or how it differs from the ''effective filing date'' language in 35 U.S.C. 102. The commenter suggested that established statutory language be used instead of the ''earliest benefit date'' or ''EBD.''

Response: EBD is not a synonym for ''effective filing date.'' The USPTO has added additional examples and explanations in this final rule to further clarify the meaning of EBD.

''Effective filing date'' is a term defined in the statute and can refer to a priority date or a benefit date. The USPTO determines the effective filing date on a claim-by-claim basis. As set forth in 35 U.S.C. 100(i)(1), for a patent application, the effective filing date for a claimed invention is either (A) the actual filing date of the application containing a claim to the invention or (B) the filing date of the earliest application for which the application is ''entitled, as to such invention, to a right of priority under [35 U.S.C.] section 119, 365(a), 365(b), 386(a), or 386(b) or to the benefit of an earlier filing date under section 120, 121, 365(c), or 386(c).'' See MPEP 2152.01 for more information about the effective filing date.

The EBD is a term used in this rulemaking (the NPRM and this final rule) to refer to the earliest filing date for which benefit is claimed under 35 U.S.C. 120, 121, 365(c), or 386(c), and § 1.78(d). The EBD is determined on an application-by-application basis. The EBD cannot be the filing date of a foreign application or the filing date of a provisional application to which benefit is claimed under 35 U.S.C. 119(e).

In short, the effective filing date can be a priority date or a benefit date, and different claims in the same application can have different effective filing dates. The EBD, however, can only be a benefit date, and there is only one EBD per application. The difference is explained further in table 17.

Table 17: Comparison of Effective Filing Date and Earliest Benefit Date

	Effective filing date	Earliest benefit date (EBD)
Origin of term	35 U.S.C. 100(i)(1); used throughout patent statutes	This rulemaking, for purposes of explaining the application of § 1.17(w)
How determined	Claim-by-claim basis; different claims in the same application can have different effective filing dates	Application-by-application basis; there is only one EBD per application
Priority dates included	Filing date of the earliest application for which the application is "entitled, as to such invention, to a right of priority under [35 U.S.C.] section 119, 365(a), 365(b), 386(a), or 386(b)" and § 1.55	None
Benefit dates included	Filing date of the earliest application for which the application is "entitled, as to such invention, … to the benefit of an earlier filing date under [35 U.S.C.] section 120, 121, 365(c), or 386(c)" and § 1.78(d)	Filing date of the earliest application for which benefit is claimed under 35 U.S.C. 120, 121, 365(c), or 386(c), and § 1.78(d)

With respect to using statutory language, when the later-filed application is a utility or plant patent application, the EBD is also the date from which the 20-year patent term is calculated under 35 U.S.C. 154(a)(2), and thus for a utility or plant application the EBD is synonymous with the ''patent term filing date.'' See MPEP 804, subsection I.B.1(a) for more information about the patent term filing date. There is no preexisting statutory language to use for design applications, as the term of design patents is calculated differently than for utility and plant patents. See MPEP 2701 for more information about patent term.

Comment 26: One commenter questioned whether continuing application fees would actually be technology neutral since the USPTO stated in the NPRM that TC 3700 ''receives a much higher proportion of late-filed continuing application than other areas.''

Response: The fee will be assessed for all continuing applications in all technologies. Although TC 3700 has a higher proportion of continuing applications that would be subject to the new fee(s) as compared to other TCs, there is diverse subject matter examined within this TC, encompassing many technologies. For example, TC 3700 examines applications directed to mechanical engineering, machine and hand tools, manufacturing (all disciplines), gaming, amusement and educational devices (electrical and mechanical), combustion technology, fluid handling, refrigeration, medical and surgical instruments and processes, diagnostic equipment, and medical treatment devices. Therefore, its relative excess of late-filed continuations does not cause a significant difference when combined with data from the entire corps, and technology sectors are considered as a whole.

Comment 27: Commenters expressed concern about perceived unfairness of the continuing application fees for those applications that claim priority to foreign applications.

Response: As noted above in the response to comment 25, foreign priority dates are not included in the determination of an EBD. The EBD is limited to the earliest filing date for which benefit is claimed under 35 U.S.C. 120, 121, 365(c), or 386(c), and § 1.78(d). Thus, an application that claims a right of priority to a foreign application will not incur any fees set forth in § 1.17(w) based on that priority claim.

Comment 28: Commenters suggested that the continuing application fees will disproportionately affect national stage applications, discourage use of the Patent Cooperation Treaty (PCT) system, or prevent applicants from considering the merits of a bypass continuation application claiming benefit of a PCT application until after the applicable timing thresholds for the fees have passed.

Response: Applicants are free to choose whatever route they believe is more advantageous for obtaining patent protection in the United States, whether through the PCT or through a direct national filing under 35 U.S.C. 111(a). National stage applications filed under 35 U.S.C. 371 are unlikely to be affected by the continuing application fees because PCT time limits are much shorter than the timing thresholds that prompt the continuing application fees, and very few national stage applications contain benefit claims that could prompt the fees.

Consider the following illustrative example. An international application designating the U.S. is filed under the PCT on May 5, 2026. The international application claims priority to a single foreign patent application that was filed in the Canadian Intellectual Property

Office on June 6, 2025. This international application has an international filing date of May 5, 2026, and a priority date of June 6, 2025 (the ''priority date'' for an international application is defined in PCT Article 2(xi)).

The PCT time limit to commence the U.S. national stage is 30 months (2.5 years) from the priority date. Assume the exemplary application commences the U.S. national stage on the last possible day, which is December 6, 2027 (the day that is 30 months from the June 6, 2025, priority date). See MPEP 1893.01 for more information about national stage commencement time limits. When the U.S. national stage is commenced, the USPTO will determine the EBD of the national stage application to evaluate whether any continuing application fees are due. As explained in the response to comment 25, foreign priority dates are not included in the determination of an EBD, and thus the filing date of the Canadian patent application is not the EBD. Instead, the exemplary national stage application would have an EBD that is the same as its international filing date, *i.e.,* May 5, 2026. Because the EBD is the same as the actual filing date (the international filing date), no continuing application fees would be due upon national stage commencement of this application.

Even if the international application had also included a benefit claim to an earlier-filed U.S. application, it is very unlikely that the national stage application would be affected by the continuing application fees. USPTO data from FY 2020 through FY 2023 indicates that very few (less than 1%) U.S. national stage applications include a benefit claim to an earlier-filed application such that their EBD would be earlier than the international filing date, let alone an EBD that is more than six years prior to the international filing date as would be required to incur the continuing application fee. Given that the primary purpose of filing an international application is usually to pursue international patent protection, this data is not surprising.

Similarly, a so-called bypass continuing application of an international application is unlikely to be affected by the continuing application fees for any benefit claim to the international application or any benefit or priority claim made through the PCT system (*e.g.,* where the international application serves as an intermediate application to establish copendency between the bypass application and an earlier-filed application). See MPEP 1895 *et seq.* for more information about bypass applications. Even if such an application were affected, the effects would be similar to those for an application where the benefit ''chain'' did not include an international application.

Consider another illustrative example. On January 8, 2032, an applicant files two applications: an international application designating the U.S.; and application D, which is a U.S. nonprovisional application. Both applications claim priority to a single foreign patent application that was filed in the Instituto Mexicano de la Propiedad Industrial (IMPI) on January 10, 2031, and also claim benefit as a continuation of U.S. nonprovisional applications A, B, and C under 35 U.S.C. 120, with the earliest-filed application being A, which was filed on July 11, 2025. The international application would not incur any fees under § 1.17(w) unless and until it commences the U.S. national stage. Application D will incur the § 1.17(w)(1) fee because its actual filing date (January 8, 2032) is more than six years after its EBD (A's filing date of July 11, 2025).

On July 7, 2033, 30 months after the priority date (the filing date of the Mexican patent application), the applicant commences the U.S. national stage of the international application. At this time, the USPTO will determine the EBD of the national stage application to evaluate whether any continuing application fees are due. As previously noted, the foreign priority date is not included, but benefit claims under 35 U.S.C. 120 are included. The earliest benefit date to which the national stage application claims benefit is A's filing date, and thus the national stage application has an EBD of July 11, 2025. Because the actual filing date of the national stage application (the international filing date of January 8, 2032) is more than six years after its EBD (A's filing date of July 11, 2025), the § 1.17(w)(1) fee will be due upon national stage commencement of this application.

The applicant files two additional applications on July 7, 2033. The first is a bypass application that claims benefit of the international application and the earlier-filed applications A, B, C, and D. The second is a nonprovisional application E that claims benefit to A, B, C, and D. Both the bypass application and E will incur the § 1.17(w)(1) fee, because their actual filing date (July 7, 2033) is more than six years after their EBD (A's filing date of July 11, 2025).

In this example, all three of these latter applications (the national stage application, the bypass application, and E) are in essentially the same position with respect to being able to evaluate their merits based on the history of the prior applications. Over the last few years, the USPTO's Traditional Total Pendency (which the USPTO defines as the average number of months from the patent application filing date to the date the application has reached final disposition (*e.g.,* issued as a patent or abandoned)) has ranged between 24 and 26 months. More data on Traditional Total Pendency is available on the USPTO's Patents pendency data web page at *https://www.uspto.gov/dashboard/patents/pendency.html.*

Thus, assuming a Traditional Total Pendency of 26 months, in this example the applicant easily could have completed the prosecution of their earlier-filed applications A, B, and C by July 2033 and would also have progressed with the prosecution of application D. The applicant would thus have the benefit of reviewing the patentability issues that arose during prosecution of A, B, C, and D before filing the applications in July 2033 that would incur the continuing application fees.

In addition, applicants using the PCT system can consider the international search report (ISR) and the optional international preliminary examination report (IPER) during the international stage before filing either a national stage or a bypass application.

While there may be outlier situations, this discussion illustrates that the commenters' concerns about disproportionate effects on national stage applications and being unable to consider the merits of a bypass application until after the due date for the continuing application fees are largely unfounded.

Comment 29: One commenter stated that the continuing application fees limit applicants' rights to file continuing applications under 35 U.S.C. 120 and thus are punitive in nature.

Response: The continuing application fees do not prevent applicants from filing as many continuing applications as they want at any time during the pendency of the parent application, nor are they punitive in nature. Instead, they are designed to recover more of the costs of examining continuing applications where maintenance fees on the issued patent are unlikely to be paid as a result of insufficient term.

This final rule does not impose a fee under § 1.17(w) for continuing applications filed within six years of their EBD. About 80.3% of continuing applications are filed within six years of their EBD and thus will not incur the

fees. Only continuing applications filed more than six years after their EBD (about 19.7% of continuing applications or about 6.5% of all applications) will incur a continuing application fee based on today's filing patterns.

As explained in the response to comment 33, the continuing application fees reduce, but do not eliminate, the existing subsidy of front-end fees (*i.e.,* filing, search, and examination fees) that patent applicants are currently receiving. As explained in Part V. Individual Fee Rationale of this rule, the agency maintains a low barrier to entry into the patent system by setting front-end fees below the unit cost of the corresponding front-end services (*i.e.,* preexamination, search, and examination). The difference between front-end fees and front-end unit costs are subsidized by other fees (*e.g.,* maintenance fees) that are set above their unit cost.

As of FY 2023, this front-end subsidy amounted to $4,345 for an undiscounted entity. The subsidy was substantially higher for applicants paying discounted fee rates because their front-end fees are discounted 60% or more as compared to undiscounted rates while the unit costs of the corresponding services remain the same. For undiscounted entities, based on FY 2023 unit costs, the final rule's increase of the front-end fee rates will reduce the subsidy to $4,165 for applications that are not subject to continuing application fees, $1,465 for continuing applications subject to the $2,700 fee under § 1.17(w)(1), and $165 for continuing applications subject to the $4,000 fee under § 1.17(w)(2) fee. Thus, applications subject to continuing application fees will still receive a subsidy on their front-end fees, albeit lower than that given to non-continuing applications and continuing applications filed six or fewer years after their EBD. In addition to this subsidy of front-end fees, those applicants who are resource-constrained likely will also qualify for entity discounts, which afford a 60% (for small entity status) or 80% (for micro entity status) discount on most patent fees, further reducing the financial burden on such applicants.

Comment 30: Commenters expressed their support for the proposed fees for continuing applications. One commenter noted that continuations are more likely to be litigated, and the fees will allow for comprehensive review of these applications. Other commenters stated that the continuing application fees were inappropriate, asserting that the USPTO's costs of examining continuing applications are lower than the cost of examining non-continuing applications.

Response: The agency's costs for examining continuing applications are not necessarily lower than the costs of examining non-continuing applications. Examiners are provided the same amount of time to examine a continuing application as a non-continuing application; equal time equates to equal cost to the agency. Certain continuing applications, particularly divisional and continuation-in-part applications, may present different claimed inventions or more complex issues than a non-continuing application. For example, as an applicant grows their application family by filing additional continuing applications over time, the determinations of which claims in the child application are supported under 35 U.S.C. 112(a) by which parent applications may be more complex, and double patenting concerns may be more frequent and time-consuming to analyze. Moreover, as explained in the response to comment 29, even those applicants paying the continuing application fees are the beneficiaries of subsidized front-end fees that are set below front-end costs.

Comment 31: Commenters expressed concerns about the timing thresholds for the continuing application fees, asserting there are substantial delays at the USPTO preventing applicants from being able to determine the scope of their first application's claims before filing a continuing application subject to the fees. Thus, the commenters stated they would be unable to file a continuing application without having to pay the continuing application fees. The commenters pointed to the USPTO's Patents Dashboard for patent pendency data in support of their comments. One commenter asserted that average pendency was about 2.5 years for non-continuing applications and five to six years for continuation and divisional applications.

Response: The continuing application fees do not prevent applicants from filing as many continuing applications as they want at any time during the pendency of the parent application. See MPEP 211.01(b), which explains the copendency requirement for claiming the benefit of a nonprovisional application under 35 U.S.C. 120, 121, 365(c) or 386(c). Applicants are not required to wait until their first application has been examined or allowed before filing a continuing application. Many applicants choose not to wait, as evidenced by the fact that about 38% of continuing applications are filed within two years of their EBD.

Regarding concerns about timeliness of application examination, the commenter setting forth the 2.5 and 5–6 year time periods appears to have misunderstood the data provided on the Patents Dashboard, available on the USPTO website at *https://www.uspto.gov/dashboard/patents/.* The dashboard reports data on Patents operations on an ongoing basis. Several different pendency metrics are reported and defined on the USPTO's Patents pendency data web page, *https://www.uspto.gov/dashboard/patents/pendency.html,* including a metric called ''Traditional Total Pendency'' and two other metrics called ''Pendency for Continuation Applications'' and ''Pendency for Divisional Applications.''

As noted in response to comment 28, Traditional Total Pendency is defined as the average number of months from the patent application filing date to the date the application has reached final disposition (*e.g.,* issued as a patent or abandoned) and is inclusive of both continuing and non-continuing applications. As reported on the Patents Dashboard, over the two-year period ending in June 2024, Traditional Total Pendency fluctuated between 24 and 26 months and as of June 2024 was 25.9 months. In other words, the USPTO is reporting an average pendency from actual filing date to final disposition for both continuing and non-continuing applications of 25.9 months. The reported pendency of 25.9 months is several months shorter than the 30 months suggested by the commenter.

In contrast to Traditional Total Pendency, the Pendency for Continuation Applications and Pendency for Divisional Applications metrics reflect the total elapsed time from the filing of the first parent application through any intermediate parent applications to the final disposition of the continuation or divisional application. In other words, these latter two metrics are measuring the elapsed time from the EBD of a continuing application to the final disposition of the continuing application. It is expected that these latter two metrics would have higher results than Traditional Total Pendency because they reflect the pendency of an entire chain of continuing applications, not a single application.

Thus, for an exemplary application Z, which is a continuation of Y, which is a continuation of X, the Traditional Total Pendency would be the time from Z's filing to Z's final disposition, but the Pendency for Continuation Applications would be the time from X's filing to the final disposition of Z. The USPTO stopped reporting the Pendency for

Continuation Applications and Pendency for Divisional Applications metrics on its Patents Dashboard in April 2023. The last reported numbers for these metrics were 61.7 months for continuations and 69.1 months for divisionals, which reflect the elapsed time from the EBDs of the continuations or divisionals until their final dispositions.

Based on the currently reported Traditional Total Pendency of approximately 26 months (as of June 2024, the USPTO's average Traditional Total Pendency was 25.9 months), even if there were delays on either or both the agency's or the applicant's side, applicants typically would still have several years to file continuing applications before the continuing application fees would apply, even if they delay filing of a continuing application until just before the final disposition of its parent. See the discussion of example applications A through F in the response to comment 32.

Comment 32: Commenters expressed concerns about the timing thresholds for the continuing application fees, particularly the threshold of five years after the EBD. Commenters stated that five years was insufficient time to benefit from the examination of a parent application, and thus the continuing application fees would negatively impact industries such as medical devices or biotechnology by encouraging applicants to file applications too early in the innovation process. Some commenters also expressed concern that the continuing application fees would stifle innovation by independent inventors, small businesses, or resource-constrained applicants.

Response: The USPTO decided to modify the timing thresholds for the continuing application fees so they now apply only to those continuing applications having an actual filing date more than six or nine years after their EBD. These revised thresholds will afford applicants more time to benefit from examination of the parent applications and to file continuing applications without incurring the § 1.17(w) fees before being faced with the decision of whether to file a continuing application that would incur the fees.

This final rule does not impose a fee under § 1.17(w) for continuing applications filed within six years of their EBD. As about 80% of continuing applications are filed within six years of their EBD, the majority of continuing applications will not incur the fees. Moreover, applicants will now have six full years to consider the examination of the original non-continuing application and any intermediate applications before deciding whether to file a continuing application that would incur the fees.

The USPTO is not aware of data that supports the commenters' concerns about not having sufficient time to benefit from the examination of a parent application before incurring the fees or that certain industries or applicants will be negatively impacted because the fees will encourage them to file continuing applications too early or not at all. As previously noted, about 80% of continuing applications are filed within six years of their EBD, over half of which are filed within three years of their EBD. Thus, the majority of continuing applications, including those filed by independent inventors, small businesses, or resource-constrained applicants, will be unaffected by this rulemaking.

For the approximately 19.7% of continuing applications filed more than six years after their EBD, this final rule is not expected to change applicant behavior to any significant degree. Some applicants may be encouraged to file and prosecute their portfolios more efficiently, perhaps by shifting a continuing application filing a few months earlier to avoid the fees or to reduce the fee amount. Other applicants may choose to present additional claims in earlier applications instead of filing additional continuing applications. As explained in the NPRM, the USPTO is not seeking to change applicant behavior with these fees but instead is motivated by the need to generate sufficient aggregate revenue to cover the aggregate cost of patent operations. The continuing application fees are thus designed to recover more costs related to continuing applications filed long after their EBD from the filers of such applications.

Given that Traditional Total Pendency has ranged between 24 and 26 months over the last few years, typically an applicant can be at the point of filing their third or subsequent continuing application by the time the fees under § 1.17(w) would apply. Consider the following examples, which show how a typical applicant can file and prosecute multiple applications (applications A, B, and C) before being faced with the decision of whether the filing of application D more than six years after its EBD is worth the additional cost of the § 1.17(w)(1) fee. For simplicity's sake, the examples assume a Traditional Total Pendency of 26 months that remains the same throughout the examples and also assumes that all applications are utility applications.

Example 1: Applications A, B, and C: Applicant files non-continuing application A on July 11, 2025. Application A issues 26 months later in September 2027. On September 10, 2027, just prior to A's issuance, applicant files continuing application B, which claims the benefit of A's filing date under 35 U.S.C. 120. B issues 26 months later in November 2029. On November 9, 2029, just prior to B's issuance, applicant files continuing application C, which claims the benefit of A and B's filing dates under 35 U.S.C. 120. C issues 26 months later in January 2032. None of applications A, B, or C will owe a continuing application fee. A is not a continuing application, and B and C have actual filing dates that are less than six years after their EBD of July 11, 2025 (the filing date of A, which is the EBD to which B and C claim benefit under 35 U.S.C. 120).

Example 2: Applications D and E: On January 8, 2032, just prior to C's issuance, applicant files continuing application D, which claims the benefit of A, B, and C's filing dates under 35 U.S.C. 120. D issues 26 months later in March 2034. On March 7, 2034, just prior to D's issuance, applicant files continuing application E, which claims the benefit of A, B, C, and D's filing dates under 35 U.S.C. 120. E issues 26 months later in May 2036. Applications D and E will owe the § 1.17(w)(1) fee, because their actual filing dates in January 2032 and May 2034 are more than six years after their EBD of July 11, 2025 (the filing date of A, which is the EBD to which D and E claim benefit under 35 U.S.C. 120).

Example 3: Application F: On May 6, 2036, just prior to E's issuance, applicant files continuing application F, which claims the benefit of A, B, C, D, and E's filing dates under 35 U.S.C. 120. F issues 26 months later in July 2038. Application F will owe the § 1.17(w)(2) fee because its actual filing date in May 2036 is more than nine years after its EBD of July 11, 2025 (the filing date of A, which is the earliest benefit date to which F claims benefit under 35 U.S.C. 120).

As these examples illustrate, a typical applicant can file at least two continuations in series without paying the continuing application fees, even if they wait until the last possible moment (*e.g.,* issuance of the parent) before filing each continuing application. In reality, applicants need not wait until the last possible moment and may file multiple continuing applications at any point in time during the pendency of the immediate parent application. Further, when an applicant considers their innovation economically valuable enough to file multiple continuing applications over the course of many years, it is unlikely that they would consider the § 1.17(w) fees as an obstacle to filing the additional applications they consider necessary.

Comment 33: Commenters suggested that the timing thresholds for the

continuing application fees were arbitrary or unfair or that the USPTO should exempt certain types of applications (*e.g.,* divisional, continuation-in-part, or design applications) from the continuing application fees.

Response: As explained in the NPRM, the continuing application fees will apply to all utility, plant, and design continuing applications, *i.e.,* continuation, divisional, and continuation-in-part applications, which have an actual filing date that is more than a set number of years after their EBD. The continuing application fees are motivated by the need to generate sufficient aggregate revenue to cover the aggregate cost of patent operations and are designed to recover more costs related to continuing applications filed long after their EBD from the filers of such applications.

The patent fee structure is designed to encourage innovation by maintaining low barriers to entry, which the agency accomplishes by keeping the front-end fees (filing, search, and examination fees) below the costs for the corresponding front-end services (preexamination, search, and examination). For example, for a utility application, current front-end fees ($1,820 for undiscounted entities in FY 2023) are set far below the USPTO's average costs for filing, search, and examination activities ($6,165 in FY 2023), and the difference is subsidized by other fee collections, primarily issue fees and maintenance fees. As of FY 2023, for the average application, this subsidy (the difference between the USPTO's costs and what an applicant pays) was $4,345 for an undiscounted entity, and even higher for those applicants paying discounted fee rates ($5,501 for a small entity filing electronically, and $5,801 for a micro entity).

After weighing public feedback and considering the effects on the patent system as a whole, the USPTO has decided to retain this existing subsidy amount and the resultant low barrier to entry for most continuing applications. The USPTO has adjusted the timing thresholds for the continuing application fees, which will now be prompted when the actual filing date of an application is more than six or nine years after its EBD.

The USPTO notes that continuing applications filed long after their EBD have a direct impact on the agency's ability to generate sufficient aggregate revenue. As explained in the NPRM, such applications are less likely to have a patent term long enough for the USPTO to recover the costs of their search and examination from maintenance fees. While not all patentees choose to maintain their patents for their full term, the USPTO's ability to subsidize front-end fees is dependent on a sufficient number of patentees paying all three maintenance fees so that the aggregate revenue generated by patent fees will cover the aggregate costs of patent operations.

As an example of how continuing applications filed long after their EBD are less likely to have a patent term long enough for the USPTO to recover the costs of their search and examination from maintenance fees, table 18 below shows the patent terms for each member of the exemplary patent family discussed in the response to comment 32. As explained in the prior response, all of these patents have an EBD of July 11, 2025, and a patent term that will expire in July 2045 (20 years after the EBD) assuming no patent term adjustments, patent term extensions, or terminal disclaimers apply. Due dates are expressed in months and years only and reflect the statutory due dates set forth in 35 U.S.C. 41(b). See MPEP 2506 for more information about maintenance fee due dates. As shown in table 18 below, applications D and E (which will incur the § 1.17(w)(1) fee for the reasons explained in the prior response) will not have a term long enough to require payment of the third maintenance fee to avoid expiration prior to the maximum statutory term, and application F (which will incur the § 1.17(w)(2) fee for the reasons explained in the prior response) will not have a term long enough to require payment of the second or third maintenance fee to avoid expiration prior to the maximum statutory term.

Table 18: Due Date for Exemplary Applications

Application	§ 1.17(w) fee due	Issue date	First maintenance fee due date	Second maintenance fee due date	Third maintenance fee due date
A	None	September 2027	March 2031	March 2035	March 2039
B	None	November 2029	May 2033	May 2037	May 2041
C	None	January 2032	July 2035	July 2039	July 2043
D	§ 1.17(w)(1) fee	March 2034	September 2037	September 2041	n/a; patent expired
E	§ 1.17(w)(1) fee	May 2036	November 2039	November 2043	n/a; patent expired
F	§ 1.17(w)(2) fee	July 2038	January 2042	n/a; patent expired	n/a; patent expired

As noted previously, the § 1.17(w) fees are designed so that continuing applications filed six or fewer years after their EBD will continue to receive a front-end fee subsidy that is equal to that received by non-continuing applications. Thus, low barriers to entry into the patent system are preserved for non-continuing applications and for approximately 80% of continuing applications. For those continuing applications filed more than six years after their EBD, the § 1.17(w) fee will essentially reduce the amount of the front-end fee subsidy, in recognition that such applications are less likely to have a patent term long enough for the USPTO to recover the costs of their search and examination from maintenance fees. The § 1.17(w) fees are set at a rate that is both less than the front-end fee subsidy and substantially less than the third maintenance fee amount. For example, under the undiscounted fee rates as adjusted by this final rule, exemplary application D would pay the undiscounted § 1.17(w)(1) fee of $2,700, and application F would pay the undiscounted § 1.17(w)(2) fee of $4,000, as compared to a front-end subsidy of approximately $4,165 (with front-end fees of $2,000 and combined FY 2023 unit costs of $6,165 for filing, search, and examination activities) and an undiscounted third maintenance fee of $8,280. If these applications paid discounted fees, the difference would be even greater, *e.g.,* if application D paid small entity fees, the § 1.17(w)(1) fee would be $1,080, as compared to a front-end subsidy of approximately $5,435 and a third maintenance fee of $3,312.

Comment 34: Commenters expressed concern that the continuing application fees, particularly the higher fee proposed for applications filed more than eight years after the EBD, may encourage applicants to shift from filing continuing applications to filing appeals. They asserted that this shift could potentially overwhelm the appeal system or incur significant delays.

Response: The USPTO modified the timing thresholds for the continuing application fees so they now will apply only to those continuing applications having an actual filing date more than six or nine years after their EBD. These revised thresholds will afford applicants more time to benefit from the examination of the parent applications and file continuing applications without incurring the § 1.17(w) fees before being faced with the decision of whether to file a continuing application that would incur the fees.

The USPTO disagrees that the continuing application fees will result in the appeal system being overwhelmed or significantly delayed. If an applicant feels that an examiner has unjustly rejected their claim(s) and the differences in opinion can be justly resolved only upon appeal, then appealing may be the better choice for applicant and the overall patent system as compared to refiling the rejected claims in a continuing application. See MPEP 1201 *et seq.* for a discussion of appeal practice. As noted in the NPRM, continuations make up the majority of continuing applications, and about 80% of continuations have a patented parent, which is indicative that applicants are both obtaining allowable subject matter in a parent application and also filing continuing applications.

Comment 35: Commenters asserted that the USPTO did not consider increases to the maintenance fees instead of introducing the continuing application fees.

Response: As explained in the NPRM, the agency considered such an option. See, *e.g.,* fee alternative 3 discussed in the NPRM at Part VII(B): Regulatory Flexibility Act. The USPTO decided not to pursue that alternative, choosing instead to increase maintenance fees in addition to introducing the continuing application fees. In particular, each maintenance fee amount is being increased about 7% to 8%; for instance, the undiscounted third maintenance fee is increasing from $7,700 to $8,280. The combined effect of the increased maintenance fees and the continuing application fees will help provide sufficient aggregate revenue to cover the aggregate costs of patent operations, while also enabling the agency to keep front-end fees below unit cost for all applications. If the USPTO did not charge the continuing application fees, it would need to raise other fees (particularly the issue and maintenance fees) even higher to offset costs and to generate sufficient aggregate revenue to cover the aggregate costs of patent operations, which would burden all applicants, not just those filing continuing applications long after their EBD.

Design Application Fees

Comment 36: Commenters expressed concern about the increased fees for design applications and questioned the cost rationale for the increases. Several commenters asserted that the fee increases will discourage applicants (particularly independent inventors, small businesses, or resource-constrained applicants) from filing design applications. One commenter stated that the fee increases are punitive because design examination is less complicated than utility examination, and one commenter stated that the fees should not be increased until design pendency is lowered.

Response: In setting the fee rates, the USPTO's goal is not to dissuade design applications but to more closely align the fee rates with the costs of examining and issuing these applications and to support the hiring of additional design examiners to meet the agency's pendency goals.

While examination of design applications is less costly than examination of utility applications, the agency still incurs significant costs to provide design services. In FY 2023, the cost for preexamination, search, examination, and issuance activities, was $2,252 per design application, not including continued prosecution applications (CPAs), which have a higher cost of $2,947. The FY 2023 fees for an undiscounted applicant ($1,760 in combined filing, search, examination, and issue fees) were far below these costs. Further, because the majority of design applications qualify for discounted fees (in FY 2023, 26% of applicants paid the micro entity fee amount, 37% paid the small entity fee amount, and only 37% paid the undiscounted fee amount), the design fee collections in the same year averaged only $1,013 per application. This imbalance resulted in a shortfall of $1,239 per application, representing 55% of the cost, and design examination was subsidized by other fee collections, primarily utility maintenance fees.

Historically, this difference between design fees and design costs did not result in a significant subsidy because the design fees were much higher relative to their costs, the annual volume of design applications was much lower than the annual volume of issued utility patents, and a greater proportion of design applicants were paying undiscounted fees. For example, in FY 2013, the subsidy was only 14%, because design costs were $1,446, the undiscounted design fees were $1,780, and about half of design applications were filed by undiscounted entities, resulting in an average shortfall/subsidy of about $200. Since that time, design costs have increased significantly, and design fees decreased sharply in 2014 and have only recently come back to 2013 levels (undiscounted design fees were only $1,320 in FY 2014, $1,660 in FY 2018, and $1,760 in FY 2023). Meanwhile, the number of design applications has surged 50%, virtually all from discounted entities. Notably, the total undiscounted design fees in FY

2023 were $20 less than in 2013 before adjusting for inflation and 27% less when adjusted for inflation as of June 2024. See CPI Inflation Calculator, U.S. Bureau of Labor Statistics, *https://www.bls.gov/data/inflation_calculator.htm* (comparing March 2013 to June 2024 to calculate buying power).

With the fee increases, design fees for an undiscounted applicant ($2,600 in combined filing, search, examination, and issue fees) are now in between the cost of new design applications and CPA design applications, while the fees for discounted entities ($1,040 for a small entity, and $520 for a micro entity) remain far below cost. The increased fees should reduce the subsidy amount by about a third if all other variables remain the same. For example, if the application filing volume, entity spread, and cost remain the same as in FY 2023, the increased fees would result in design fee collections averaging $1,462 per application, thus reducing the shortfall to about $790 per application, which is about 35% of the cost. This expected decrease in the shortfall amount will reduce the subsidy from $1,239 to $790, which is a 36% decrease.

The USPTO is conscious that fee increases affect resource-constrained applicants, and the agency will continue to offer the 60% discount for small entities and the 80% discount for micro entities, which reduces the impact of the fee increases on these entities. When these discounts are taken into account, the total fees paid by discounted entities through issuance of a design application under this final rule represent less than half of the USPTO's FY 2023 cost per design application, including preexamination, search, examination, and issuance activities (small entities pay 46% of new design application costs and 35% of CPA costs, and micro entities pay 23% of new design application costs and 18% of CPA costs).

The design fees maintain a low barrier to entry into the patent system while bringing in increased revenue to recover more design costs from design applicants. The USPTO has accomplished these goals by balancing relatively low front-end fees against the higher design issue fee and the reduced, but still large, subsidy from utility maintenance fees. While the front-end fees are set below cost, both the design issue fee and the utility maintenance fees are set above their unit cost. As a result of this balancing, the USPTO has managed to keep the front-end fees only $5 to $10 higher than they were set in 2020 for design applicants qualifying for small or micro entity discounts. When the issue fee is included, the total fees paid by discounted entities are 13% more than inflation-adjusted 2013 fees would be. See CPI Inflation Calculator, U.S. Bureau of Labor Statistics, *https://www.bls.gov/data/inflation_calculator.htm* (comparing March 2013 to June 2024 to calculate buying power).

Comment 37: Commenters questioned why the design issue fee increase was greater than for other design fees, particularly in view of the switch to electronic patent issuance.

Response: In FY 2023, the front-end costs (*i.e.,* costs for the preexamination, search, and examination) of a design application were $1,713 for a new design application and $2,408 for a CPA, but the front-end fees were only $1,300 for an undiscounted entity, $520 for a small entity, and $260 for a micro entity. In order to recover these costs plus the additional cost of issuance while also recovering a greater percentage of design costs from design applicants, the issue fee is set above its cost for undiscounted entities. Thus, while the design issue cost is $539, the design issue fees are $1,300 for an undiscounted entity, $520 for a small entity, and $260 for a micro entity. As of June 2024, the undiscounted issue fee of $1,300 is 6% lower than the inflation-adjusted 2013 issue fee would be. See CPI Inflation Calculator, U.S. Bureau of Labor Statistics, *https://www.bls.gov/data/inflation_calculator.htm* (comparing March 2013 to June 2024, to calculate buying power). As explained in other responses, these fees maintain a lower barrier to entry into the patent system while also increasing design fee collections and reducing the subsidy required for the average design application. Moreover, despite the switch to electronic patent issuance in April 2023 the unit cost for issuing a patent decreased only slightly from $574 in FY 2022 to $539 in FY 2023.

Comment 38: Commenters suggested that the USPTO should increase utility maintenance fees to pay for design costs or should seek legislative solutions such as maintenance fees for design patents instead of increasing design patent fees.

Response: The agency already relies on utility maintenance fees, which are increased in this final rule, to subsidize a significant portion of design costs. As explained in other responses, assuming that the application filing volume, entity spread, and cost remain the same as in FY 2023, the average subsidy for design applications will be about $790 per application, which is about 35% of the cost. The subsidy amount is even higher for discounted entities, *e.g.,* about $1,212 or 54% of the cost for small entities, and $1,732 or 77% of the cost for micro entities. As explained in the NPRM and this final rule, the design fee increases will more closely align the fee rates with the agency's costs, which should reduce the current imbalance between fees and costs. The design fees will also support the hiring of additional design examiners to meet the agency's pendency goals. With respect to legislative solutions such as maintenance fees for design patents, such changes are beyond the scope of this rulemaking.

Comment 39: One commenter suggested that the USPTO could reduce costs instead of raising fees by allowing applicants to submit design patent applications with multiple designs per application instead of a single design per application, as required under current practice.

Response: Changes to design application practice are beyond the scope of this rulemaking. Currently, more than one embodiment of a design may be claimed so long as such embodiments involve a single inventive concept according to the obviousness-type double patenting practice for designs.

Comment 40: One commenter stated that USPTO design fees are much higher than those in other jurisdictions such as the European Union.

Response: The agency conducts substantive examination of design applications, whereas most other national or regional IP offices do not. Substantive examination requires significant time from a highly trained patent examiner. Additionally, most other national or regional IP offices require design patent holders to pay annuity or renewal fees to maintain their property rights, which drives up the cost of obtaining and maintaining a design patent. When these annuity or renewal fees are taken into account, USPTO fees for undiscounted entities are comparable to, or less expensive than, the fees charged by other large patent offices and, for discounted entities, the USPTO fees are much lower.

Comment 41: Commenters suggested that the USPTO could reduce costs instead of raising fees by addressing improper micro entity assertions.

Response: The agency has robust diligence procedures in place to identify anomalies in patent filings and in the last several years has identified questionable or apparently erroneous certifications of eligibility for micro entity status in applications, particularly in the design area. See, *e.g.,* the USPTO Director's blog entry from September 2021, titled ''Ensuring the validity of micro entity certifications—

which provide reduced fees to eligible inventors and small businesses,'' available on the USPTO website at *https://www.uspto.gov/blog/ensuring-the-validity-of-micro.* As explained in that blog entry, when the agency becomes aware of such questionable certifications, it takes remedial actions including mailing Notices of Additional Fees Due in the applications. However, because applications with questionable certifications remain a small fraction of incoming filings, addressing these issues does not negate the need for additional fee revenue that will be provided by this final rule.

Excess Claims Fees

Comment 42: One commenter expressed support for the increased fees for excess claims, noting that as larger numbers of claims are filed in a single application, examiners need to spend additional time reviewing the claims, conducting prior art searches, and assessing patentability. Other commenters expressed concern about the increased fees for excess claims and asserted that the USPTO did not provide a sufficient cost-based rationale for the increases.

Response: The agency incurs additional costs associated with examining excess claims. The USPTO has determined the resources necessary to carry out search and examination of applications based on the statutory thresholds for excess claims (no more than 20 total claims, of which no more than three are independent) and on applicant claiming trends, which indicate that the majority of applications do not contain excess claims. In FY 2023, 83% of applications did not contain any excess claims and 17% contained excess total claims, excess independent claims, or both (10% contained excess total claims only, 3.1% contained excess independent claims only, and 3.5% contained both excess total claims and excess independent claims). These percentages are in line with historical values over the last decade.

The USPTO notes that excess claiming can be a significant burden to the patent system and the agency. The number of claims impacts the complexity of examination and increases the demands placed on the examiner. For example, if each independent claim in an application requires a completely separate prior art patentability determination and if an application contains six independent claims, the examiner must conduct six completely separate prior art patentability determinations. Excess dependent claims also represent additional work, as a dependent claim may be allowable over the prior art even if the claim from which it depends is not, and dependent claims also require separate patentability determinations for non-prior art based issues such as enablement, subject matter eligibility, utility, and written description. Thus, applicants who include excess claims are using the patent system more extensively than those who do not.

The USPTO accordingly determined that the cost to review applications containing excess claims should not be subsidized with other back-end fees to the same extent as applications that do not contain excess claims. While the subsidization of front-end fees is important for promoting innovation, it is also important to align fees with the full costs of products and services, because some applicants (here, applicants presenting excess claims) are using particular services in a more costly manner than other applicants. As explained in the NPRM, current front-end fees ($1,820 for undiscounted entities in FY 2023) are set far below the USPTO's average costs for filing, search, and examination activities ($6,165 in FY 2023), and the difference is subsidized by other fee collections, primarily issue fees and maintenance fees. As of FY 2023, for an average application that does not contain excess claims, this subsidy (the difference between the agency's costs and what an individual applicant pays) is $4,345 for an undiscounted entity and even higher for applicants paying discounted fee rates ($5,501 for a small entity filing electronically, and $5,801 for a micro entity). Applications containing excess claims have higher costs, and if those costs are not recouped by excess claims fees paid by the applicants presenting the excess claims, they will be subsidized by other applicants who must, in turn, pay higher fees for other services, thus driving the subsidy for applications containing excess claims higher than the current $4,345–$5,801 amounts. The excess claims fees account for the increased subsidy.

The excess claims fees are also designed to ensure that most applicants presenting excess claims will be able to do so for less than the cost of filing a second application. In FY 2023, 86% of applications contained no excess total claims, 11% contained 10 or fewer excess claims, and only 3% contained more than 10 excess claims.

For the 11% of applications containing 10 or fewer excess claims, the average was five excess claims. In these applications, it would remain either the same cost or be less expensive to pay the excess total claims fees as opposed to filing a second application. For example, for an undiscounted entity, 10 excess total claims at $200 each would be $2,000 in excess total claims fees, which will be the same as the combined filing, search, and examination fees for filing an application as adjusted by this final rule. The average number of excess claims for these applications was only five, so paying the excess total claim fees would be much less expensive than a second application. As an example, for an undiscounted entity, five excess total claims at $200 each would be $1,000 in excess total claims fees.

For the 3% of applications containing more than 10 excess total claims, the average was 34 excess claims. Thus, for this group of applications, it would be more expensive to pay the excess total claims fees as opposed to filing a second application. This increased expense reflects that these applications are, on average, presenting more than the number of claims that would be covered by the fees for filing a second application. Notably, about one-third of these applications (10% of all applications containing excess total claims, or 1% of all applications) contained an average of 59 excess claims, which is more than would be covered by the fees for filing two additional applications.

The USPTO's goal is to more closely align the fee rates with the cost of examining excess claims. Higher fees for excess claims will provide more revenue to help recover the additional search and examination costs associated with excess claims as well as prosecution costs not covered by front-end fees. These fees will also promote compact prosecution and address the inequities of providing further subsidies to those who make greater use of the patent system. If the USPTO does not increase the excess claims fees, it would, in effect, increase the subsidization of excess claims by other fees, requiring increases in other fees (particularly issue and maintenance fees) to offset the costs associated with excess claims at lower fee rates and to generate sufficient aggregate revenue to recover the aggregate costs of patent operations.

Comment 43: Commenters stated that the increased fees for excess claims will discourage applicants from filing applications, particularly continuations or applications with broad disclosures, thereby weakening patent rights and limiting applicants' freedom to pursue additional patent claims.

Response: The agency is not limiting the number of claims that applicants may file in their applications. The

USPTO notes that excess claiming can be a significant burden to the patent system and the agency. As discussed in other responses, the number of claims impacts the complexity of examination and increases the demands placed on the examiner. Applicants continue to have the opportunity to include excess claims when they consider it necessary to obtain an appropriate scope of coverage for an invention. The increased fees ensure that applicants who make greater use of the patent system bear more of the cost of the additional burden they are placing on the USPTO.

The vast majority of applications contain either no excess total claims (86% of applications), or up to 10 excess claims (11% of applications, which on average contain five excess claims), and thus the increased fees for excess claims are unlikely to negatively impact the patent system as a whole. As explained in other responses, there is additional burden on the USPTO associated with examining excess claims; thus, the excess claims fee revenue will at least, in part, recover costs for this additional burden. Filing applications with the most prudent number of unambiguous claims enables prompt conclusion of application processing because more succinct applications facilitate faster examination. Therefore, the USPTO is increasing excess claims fee rates to facilitate an efficient and compact application examination process, which benefits the applicant and the USPTO through more effective administration of patent prosecution.

Comment 44: Commenters stated that the increased fees for excess claims did not reflect the realities of prosecution practices. For example, some applicants may choose to recite different species in separate claims rather than as alternatives in a single claim, or some applicants may choose to present multiple inventions in the same application. One commenter also suggested a refund system in which excess claims fees are returned when claims are canceled in response to a restriction requirement or when claims are canceled by an applicant.

Response: As set forth in MPEP 804, claims that are unrelated (*e.g.,* unconnected in design, operation, and effect) are generally subject to restriction. Because independent claims in most applications are at least related, restriction requirements are usually based on a determination by the examiner that the claims are distinct. Therefore, the commenter's observation offers little relief from the burden imposed by excess claims, particularly excess independent claims. With regard to refunds, the USPTO already refunds excess claims fees when the application is abandoned prior to examination. See § 1.138(d) and MPEP 607.02, subsection V & 711.01, subsection III. Canceling claims after restriction impacts an applicant's rights to rejoinder, and it is common for applicants who receive a restriction requirement to leave non-elected claims pending. In addition, allowing applicants to obtain a refund if they cancel claims after rejoinder is considered requires examiners to consider rejoinder as to the withdrawn claims, which can be costly.

Comment 45: Commenters expressed concern about which USPTO activities would be funded by the excess claims fees and asserted that these fees should be used to fund the examination process only and not for any other activities.

Response: As explained in the NPRM in parts IV(B): Fee Setting Considerations and V: Individual Fee Rationale, the USPTO sets or adjusts patent fees to recover the aggregate estimated costs for processing, activities, services, and materials relating to patents, including administrative costs with respect to such patent fees. The patent fees will recover the aggregate estimated costs of patent operations while enabling the USPTO to predictably finance the agency's daily operations and mitigate financial risks. As explained in the NPRM, some proposed fees are set at, above, or below their unit costs to balance four key fee setting policy factors: (1) promoting innovation strategies, (2) aligning fees with the full costs of products and services, (3) facilitating effective administration of the U.S. patent system, and (4) offering application processing options. For example, the agency sets many initial filing fees below unit cost to promote innovation strategies by removing barriers to entry to the patent system. To balance the aggregate revenue loss of fees set below cost, the USPTO must set other fees above cost in areas less likely to reduce inventorship (*e.g.,* maintenance).

For some fees proposed in the NPRM and set in this final rule, such as excess claims fees, the USPTO does not maintain individual historical cost data for services provided; instead, the agency considers the policy factors described in Part IV: Rulemaking Goals and Strategies of this rule to inform fee setting. For example, facilitating effective administration of the U.S. patent system enables the USPTO to foster an environment where USPTO personnel can provide and applicants can receive prompt, quality interim and final decisions; encourage the prompt conclusion of prosecuting an application, resulting in pendency reduction and faster dissemination of patented information; and help recover costs for activities that strain the patent system. As explained in other responses, there is additional burden on the USPTO associated with examining excess claims; thus, the excess claims fee revenue will at least, in part, recover costs for this additional burden. To the extent that the excess claims fee revenue might exceed the direct cost of examining excess claims, such revenue will be used to recover the aggregate estimated costs of other processing, activities, services, and materials relating to patents.

Comment 46: One commenter suggested that the USPTO implement a tiered approach to excess claims fees instead of the current approach under which each excess claim incurs the same fee.

Response: This rulemaking does not modify the statutory thresholds for excess claims, which are set in 35 U.S.C. 41(a)(2). The rulemaking simply adjusts the fee for submitting claims in excess of those thresholds (more than 20 claims total or more than three independent claims).

Information Disclosure Statement Size Fees

Comment 47: One commenter expressed support for the IDS size fees as necessary to support the additional examination resources needed to review large numbers of references submitted by applicants. The commenter also stated that the IDS size fees will incentivize applicants to be more selective in submitting references, which will benefit clarity of the record. Other commenters also stated the fees may encourage applicants to submit fewer references but asserted that this result will be detrimental to patent quality and will potentially disparately affect small and micro entities, applicants who file families of applications, or applicants who file applications in certain technology areas.

Response: Reviewing large numbers of references imposes an additional burden on the agency. As noted in the NPRM, the vast majority (approximately 87%) of applications will not be affected by these fees because they contain 50 or fewer applicant-provided items of information. Based on FY 2021 data, only 13% of applications contained more than 50 applicant-provided items of information: about 5% of applications contained 51 to 100 applicant-provided items of information, about 4% of applications contained 101 to 200 applicant-provided items of information, and only 4% of

applications contained more than 200 applicant-provided items of information.

As noted in the NPRM, small and micro entities should not be disproportionately impacted by these fees, as small entities accounted for only 25% of applications that would incur a fee in FY 2022, while micro entities made up less than 1%. One commenter apparently misunderstood this statement as implying that 1 in 4 small and micro entities would be affected by the new fee. The NPRM was referring to the entity spread, *i.e.,* what proportion of applications that would incur an IDS size fee were filed by undiscounted entities (about 74%), small entities (about 25%), or micro entities (less than 1%). When compared to all utility application filings in FY 2022, only 1 in 62 applications filed by micro entities and 1 in 7.5 applications filed by small entities would incur an IDS size fee.

With respect to families of applications, under current IDS practice an examiner will consider items of information that were considered in a parent application when examining a child application (*e.g.,* a continuation, continuation-in-part, or divisional application) without any action required on applicant's part. See MPEP 609.02 for information about this practice. Thus, for an application family that comprises a parent application and a child application, an item of information that the applicant cited in the parent application will not be counted in the child application for purpose of the IDS size fees unless it is resubmitted by the applicant on an IDS in the child application.

Additionally, for both large families of applications and for those in certain technologies where applicants tend to cite more references than others, the USPTO notes that although § 1.56 clearly imposes a duty to disclose material information, that rule neither authorizes nor requires filing unreviewed or irrelevant documents with the USPTO. Such documents add little to the effectiveness of the examination process and could negatively impact the quality of the resulting examination. The USPTO encourages applicants to avoid submitting long lists of documents if possible, such as by eliminating clearly irrelevant and marginally pertinent cumulative information. MPEP 2004, item 13. If the applicant or patent owner does submit a long list of references, the USPTO encourages them to ''highlight those documents which have been specifically brought to applicant's attention and/or are known to be of most significance.'' MPEP 2004, item 13. To the extent that the IDS size fees may encourage some applicants to filter out irrelevant or cumulative information prior to submission, the examiners of those applications will be able to focus on the more relevant information and perform a more efficient and effective examination, thus benefiting the patent system as a whole.

Large IDS submissions are a significant burden to the patent system and the agency. The number of items of information submitted impacts the complexity of examination and increases the demands placed on the examiner. It costs the agency millions of dollars each year to provide examiners the additional time necessary to review large IDS submissions. Thus, applicants who submit large IDS submissions are using more USPTO resources than those who do not. The IDS size fees will provide more revenue to help recover the additional costs associated with large IDS submissions and address the inequities of providing subsidies to those who use more resources. If the USPTO did not charge these IDS size fees, it would in effect be increasing the subsidization of large IDS submissions by other fees and be required to raise other fees (particularly issue and maintenance fees) to offset the costs and generate sufficient aggregate revenue to cover the aggregate estimated costs of patent operations.

Comment 48: Commenters suggested that legislative solutions such as inequitable conduct reform would be preferable to IDS size fees when addressing the issue of applicants who submit more than 50 cumulative items of information in an application.

Response: The suggestion of legislative solutions is beyond the scope of this rulemaking.

Comment 49: Commenters suggested that it is not or should not be burdensome for the USPTO to review large numbers of references because the agency could use search and analysis tools to determine which references are most relevant.

Response: The agency is actively pursuing a number of initiatives involving advanced technologies and tools for increasing patent examination quality and efficiency such as the AI-based ''More Like This'' and ''Similarity Search'' features in the PE2E search suite, available on the USPTO website at *https://www.uspto.gov/web/offices/com/sol/og/2022/week02/TOC.htm#ref10* and *https://www.uspto.gov/sites/default/files/documents/ai-sim-search.pdf.* The development and refinement of these technologies and tools require substantial investment by the agency and even when completed will not eliminate the need for an examiner to consider an applicant's cited references.

Comment 50: One commenter objected to the new content requirement in § 1.98(a) that an IDS contain a clear written assertion that the IDS is either accompanied by the appropriate IDS size fee or that no IDS size fee is required, stating that this requirement places a high burden on applicants.

Response: As noted in the NPRM, this assertion is necessary to implement the IDS size fee because it ensures the record is clear as to which fee the applicant or patent owner believes may be due (or that no fee may be due), allowing the examiner to promptly ascertain whether the IDS is compliant. Including this assertion will greatly reduce the need for the USPTO to spend additional funds developing tools specifically to detect whether an IDS size fee is due in a particular application. The vast majority of applications (approximately 87%) contain fewer than 50 applicant-cited items of information, and 77% contain fewer than 25. Thus, it should not be burdensome for most applicants to check the appropriate box on the PTO form or to include a short statement saying that no IDS size fee is due. For those applications containing more than 50 applicant-cited items of information, it should not be unduly burdensome for an applicant to keep track of how many items of information they have submitted in a particular application and to make the appropriate assertion when submitting an IDS.

Comment 51: One commenter suggested that the USPTO should eliminate the requirement for applicants to provide copies of the items of information cited in an IDS.

Response: Changes to IDS practice are beyond the scope of this rulemaking. Currently, applicants are not required to submit copies of U.S. patent application publications or U.S. patents because these documents are already available to the USPTO. See § 1.98 and MPEP 609 for more information about the required contents of an IDS.

Comment 52: One commenter suggested that the IDS size fees will undermine clarity of the record unless the USPTO exempts items of information that were cited in parent applications and that are resubmitted by applicants in the child application from being counted in the cumulative number of applicant-provided items of information.

Response: Changes to IDS practice are beyond the scope of this rulemaking. Under current IDS practice, an examiner will consider items of information that

were considered in a parent application when examining a child application (*e.g.,* a continuation, continuation-in-part, or divisional application) without any action required from the applicant. See MPEP 609.02 for information about this practice. The IDS size fees will not undermine the clarity of the record because examiners will continue to follow current IDS practice with respect to considering items of information that were cited in parent applications. An item of information that an applicant cited in a parent application will not count towards the number of information items in a child application for purposes of the IDS size fees unless it is resubmitted by the applicant on an IDS in the child application. Thus, applicants who wish to avoid paying the IDS size fees in a child application for items of information considered in a parent application may do so by not resubmitting the items.

Patent Term Adjustment Fees

Comment 53: Commenters stated the proposed targeted increase from $210 to $300 for filing an application for patent term adjustment (PTA) under § 1.705(b) was too large.

Response: The agency considered public feedback on the proposed targeted increase and opted not to proceed with this proposal. Instead, the PTA fee is increasing from $210 to $226 in this final rule in accordance with the across-the-board adjustment applied to most patent fees.

Patent Term Extension Fees

Comment 54: Commenters requested that the USPTO offer entity discounts for patent term extension (PTE) fees because the proposed fee increases were substantial.

Response: While the USPTO is committed to helping small and micro entity filers, the agency's authority to reduce fees for small and micro entities is limited to the six categories specified in section 10(b) of the AIA (*i.e.,* filing, searching, examining, issuing, appealing, and maintaining patent applications and patents). Since PTE services are outside of the six categories, those fees are not eligible for discounts absent a change in statutory authority.

Comment 55: Commenters stated that the USPTO should not propose such a large increase to PTE fees without the supporting cost data to justify the proposal. One commenter suggested that the USPTO wait to propose an increase to PTE fees until there is data to back up the expectation that the unit cost determined by the ABI program will more closely align with the actual cost.

Response: After considering the comments, the agency has chosen not to implement the proposed fee of $6,700 for filing a PTE application. Instead, the fee for an application for extension will be set at $2,500. This amount is between the FY 2022 unit cost and FY 2023 unit cost for the service. All other PTE fees will be adjusted in accordance with the levels outlined in the NPRM.

Comment 56: Commenters expressed concerns about the increased fee for filing a PTE application.

Response: The agency considered the public feedback on the proposed increase of the fee for filing a PTE application as set forth in § 1.20(j)(1) and determined that the fee for this service should be increased to cover the costs of providing this service. The USPTO carefully considered all of the comments and, in response, opted not to implement the proposed fee of $6,700, instead setting the fee at $2,500. This new amount is in line with the reported unit costs for this service, which were $2,581 in FY 2022 and $2,078 in FY 2023. This new fee will improve the agency's cost recovery for this service and reduce the current subsidization of this service by other patent fees.

Comment 57: One commenter stated that the fee for supplemental redetermination after a notice of final determination should be refunded if the USPTO's initial determination was deemed to be incorrect.

Response: The comment indicates a misunderstanding of the nature of this service. The new fee for supplemental redetermination after a notice of final determination is not related to correcting errors. Instead, the fee will recover the additional costs the USPTO incurs when a PTE applicant chooses to wait to file a response that includes a terminal disclaimer until after the agency has issued its notice of final determination. The submission of terminal disclaimers affects the patent term, and submission at this late stage in the PTE process requires the USPTO to engage in a substantial amount of rework to recalculate the applicable PTE and make a supplemental redetermination of the appropriate extension in view of the disclaimer. If a PTE applicant wishes to avoid this fee, they are encouraged to submit terminal disclaimers earlier in the PTE process.

Comment 58: Commenters objected to increases to PTE fees, asserting the proposal would disproportionately impact the life sciences industry.

Response: By statute, the products eligible for PTE services under 35 U.S.C. 156 are limited to human drug products, medical devices, animal drugs, and food or color additive products, all of which are regulated by the FDA, and veterinary biological products, which are regulated by the USDA. While PTE fees are only relevant for certain products, the costs of providing PTE services are currently subsidized by other patent fees paid by non-PTE service users. These increases will improve the agency's cost recovery and recover PTE costs directly from PTE service users, thus reducing the burden of these fees on other entities. Further, the costs for regulatory approval of these products are extremely high. When compared to either FDA user fees or the research and development costs required to develop a new drug and obtain marketing approval, the proposed fees to obtain a patent term extension for the patent covering such a new drug are quite small, and therefore higher PTE fees should not impact the level of innovation in this industry.[2]

Request for Continued Examination Fees

Comment 59: Commenters expressed concerns about the increased fees for RCEs, particularly the proposal to trifurcate the RCE fees, and disagreed with the USPTO's cost rationale. One commenter stated that all prosecution costs after the initial final rejection are relatively low, and one commenter asserted that examination costs decrease with subsequent RCEs. Another commenter stated that the USPTO does not incur any additional costs for subsequent RCEs, and several commenters asserted that the increased fees were an attempt to dissuade applicants from filing RCEs, rather than a means to recoup costs.

Response: The agency considered the public feedback on the proposed trifurcation of the RCE fees and decided not to proceed with this proposal. Instead, the USPTO will retain the existing bifurcated RCE fee structure, in which the first RCE is charged at a lower rate than the second and subsequent RCEs. For more information on the adjusted fee rates for the first RCE and second and subsequent RCEs, see Part V: Individual Fee Rationale of this rule.

Comment 60: One commenter expressed support for the increased RCE fees, stating that the increases will incentivize applicants to seek an earlier close to patent prosecution, including through appeals. Other commenters also stated the fees might encourage applicants to shift from filing RCEs to filing appeals. They stated that this shift could overwhelm the appeal system or cause significant delays. Another commenter stated that the fees might encourage applicants to file more continuation applications instead of RCEs.

Response: The agency agrees with the commenters that increased fees for second and subsequent RCEs might encourage some applicants to shift from filing successive RCEs in favor of appeal or reaching agreement with an examiner. However, the USPTO disagrees that the increased fees will result in the appeal system being overwhelmed or significantly delayed.

The appeal process at the USPTO begins with an applicant's filing of a notice of appeal and payment of an appeal fee. Currently, an applicant may request a pre-appeal brief conference review and, if so, may include a short paper presenting arguments on the appealable issues with their request. The pre-appeal brief conference program provides a relatively prompt review of the appealable issues in the application by a panel of examiners at no additional cost to the applicant (other than the notice of appeal fee that is required for all appeals). If prosecution of the application is reopened after the conference, the applicant will have a further opportunity to prosecute in front of the examiner and would not need to file an appeal brief. If the application remains under appeal, the applicant would then file an appeal brief if they wish to continue with the appeal. Upon receipt of an appeal brief, USPTO personnel conduct an internal appeal conference to determine whether to proceed with an examiner's answer, allow the application, or reopen prosecution. Based on historical data from FY 2010 to 2020, only 43% of applications in which a notice of appeal is filed result in an examiner's answer. After the examiner's answer, the applicant has the opportunity to file a reply brief, and upon payment of the appeal forwarding fee, the application is forwarded to the Board for decision on the appeal. The applicant may also exit the appeal process by withdrawing the appeal, filing an RCE, or abandoning the application.

Currently, the pendency of an appeal is relatively short, and the inventory of pending appeals is at historically low levels. As of the second quarter of FY 2024, pendency of a decided appeal—the period between the assignment of an appeal number and the mailing date of the decision—was 11.9 months. In addition, since the USPTO first bifurcated RCE fees in FY 2013, the PTAB has reduced the inventory of pending appeals from 25,437 to 4,231 at the close of FY 2023. If each of the 9,863 third and subsequent RCEs expected to be filed in FY 2025 (as estimated in the aggregate revenue tables prepared for the NPRM) were instead a notice of appeal, this would result in approximately 4,241 additional examiner's answers being mailed (based on the historical 43% rate) and a somewhat lower number of applications eventually forwarded to the Board. While this scenario would noticeably increase the PTAB's workload, the resultant number of appeals would still be far below historical levels even if every applicant who would otherwise have filed a third or subsequent RCE chooses to enter the appeal process instead of paying an increased RCE fee.

It is unlikely that an applicant motivated primarily by costs would necessarily file an appeal instead of paying the RCE fees. The undiscounted fee for a second and subsequent RCE is $2,860, and an applicant's non-USPTO costs for the RCE may be very low, as many RCEs are filed with only an IDS or a request to reconsider a previously submitted response. In contrast, the undiscounted appeal fees are $3,440, including the notice of appeal and appeal forwarding fee; in addition, the applicant's non-USPTO costs for an appeal are likely significantly higher than for an RCE. For example, the 2023 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA) and available at *https://www.aipla.org/home/news-publications/economic-survey,* indicates that the mean cost (exclusive of USPTO fees) for an appeal without oral argument is $5,269, while fees for an amendment and/or argument responding to an Office action range from $2,364 to $3,972 (depending on the technology and complexity of the invention), and the fee for an IDS with less than 50 references is $473. When these non-USPTO costs are taken into consideration, a subsequent RCE might be significantly less expensive than an appeal. Compare, for example, the total of $8,709 for an appeal without an oral argument ($3,440 in USPTO fees plus $5,269 in other costs) with the total of $3,333 for a second RCE with an IDS ($2,860 in USPTO fees plus $473 in other costs), or even $5,224 to $6,832 for a second RCE with a new amendment and/argument ($2,860 in USPTO fees plus $2,364 to $3,972 in other costs).

Moreover, some applicants might see value in filing successive RCEs as opposed to appealing or reaching agreement with an examiner. As noted in the NPRM, the scope of an issued patent is fixed, and competitors may accordingly assess how to avoid infringement. The scope of a patent that results in the future from a pending application is harder to assess. These applicants may be less cost-sensitive than other applicants, given the value to them in prolonging prosecution. Other applicants may be more willing to consider appeals despite their higher cost because if the applicant still disagrees with the examiner's rejections after filing two RCEs, it may be more effective to appeal than to file a continuing application or another RCE because the appeal process ends with a resolution of the disputed rejections.

The USPTO does not see continuing applications as completely interchangeable with an RCE. While there is an $860 fee differential between the fees to file a continuing application ($2,000 combined filing, search, and examination fees for an undiscounted application) and subsequent RCEs ($2,860 for an undiscounted application), the agency believes the different characteristics of these filings would be the overriding factor in an applicant's choice. Additionally, RCEs are not subject to excess claim or excess page fees and thus might cost less than continuing applications in many instances.

In setting these fee rates, the USPTO's goal is not to steer applicants away from RCEs but to more closely align the fee rates with the costs of processing RCEs, as discussed in other responses. Higher fees for successively filed RCEs also address the inequities of providing further subsidies to those applicants who make greater use of the patent system. If the USPTO does not increase RCE fees, it would in effect be increasing the subsidization of RCEs by other fees, which would then require increases in other fees (particularly issue and maintenance fees) to offset the cost of processing RCEs at lower fee rates.

Comment 61: Commenters asserted that the proposed fee increases were based on assumptions that multiple RCEs filed in the same application reflect dilatory or otherwise undesirable applicant behavior. Commenters described other prosecution scenarios as a reason why applicants file multiple RCEs, including filing an IDS after the close of prosecution when an applicant is unable to make the required certification under § 1.97(e) and responding to new rejections in final Office actions.

Response: The agency's goal is not to dissuade RCE filings but to more closely align the fee rates with the cost of processing RCEs, as discussed in other responses. The USPTO understands that applicants may file multiple RCEs for a variety of valid reasons and has determined that the cost to review applications with multiple RCEs should

not be subsidized with other back-end fees to the same extent as applications with a first RCE, newly filed applications, or continuing applications. Higher fees for successively filed RCEs also address the inequities of providing further subsidies to those applicants who make greater use of the patent system.

With respect to filing an IDS after the close of prosecution when an applicant is unable to make the required certification under § 1.97(e), the USPTO notes that the requirement for a certification may be avoided by filing the IDS earlier, *e.g.,* prior to the close of prosecution (in which case the applicant has the option to pay a small fee instead of making the certification) or within three months of the item(s) of information being cited in a communication from a foreign office in a counterpart foreign application or otherwise becoming known to individuals designated in § 1.56(c). More information about certifications under § 1.97(e) is provided in section 609.04(b) of the MPEP. Thus, applicants who wish to avoid paying the increased fees for second and subsequent RCEs have other options available to submit an IDS in an application.

With respect to an applicant's need to respond to new rejections in final Office actions, the USPTO notes that second Office actions are not automatically made final and that new rejections in final Office actions are ordinarily necessitated by the applicant's amendment of the claims or based on information submitted by the applicant in an IDS filed during the period set forth in § 1.97(c) with the fee set forth in § 1.17(p). See MPEP 706.07(a) for more information about when final rejections are proper. Furthermore, after the close of prosecution, amendments that will place the application either in condition for allowance or in better form for appeal may be entered, and the applicant may also hold an interview with the examiner. See § 1.116(b) and MPEP 714.12. Thus, applicants who wish to avoid paying the increased fees for second and subsequent RCEs have other options available to respond to rejections in an application.

Terminal Disclaimer Fees

Comment 62: One commenter expressed support and several commenters objected to the proposed tiered fee structure for terminal disclaimers.

Response: The agency considered this feedback on the proposed tiered fee structure for terminal disclaimers and decided not to proceed with this proposal. Instead, the fee for this service is increasing from $170 to $183 in accordance with the across-the-board adjustment applied to most patent fees.

Comment 63: One commenter requested data on the costs of processing terminal disclaimers.

Response: The agency's ABI program cannot calculate a specific unit expense for statutory disclaimers, including terminal disclaimers, because the service does not lend itself to unit costing as related costs are not easily severable from larger activity costs.

Unintentional Delay Petition Fees

Comment 64: One commenter expressed concern with charging a higher fee for petitions based on unintentional delays of more than two years and asserted that the higher fee has an implicit purpose of discouraging the submission of such petitions.

Response: The purpose of the higher fee for petitions based on unintentional delays of more than two years is to recover their additional associated costs. As noted in the NPRM, the USPTO requires additional information regarding the facts and circumstances surrounding such extended delays to ensure that the USPTO can support a conclusion that the entire delay was unintentional. As the evidentiary requirements for these petitions have increased, the costs to review and decide these petitions have also increased due to the higher level of review needed to consider the additional explanation. While the agency's primary goal in setting this fee rate is to recover the additional costs of these petitions, the higher fee also should encourage timely petition filings. Timely filing of petitions based on unintentional delay benefits applicants because it avoids delays in the examination process and also benefits the patent system as a whole by reducing uncertainty and unpredictability relating to patent rights. For example, the abandoned status of an application, the expired status of a patent, or an absence of the priority or benefit claim may be relied upon by other parties.

America Invents Act Trial Fees

Comment 65: Commenters requested more information on historical costs associated with trial proceedings to better understand the cost data and support the claim that AIA trial costs have continued to increase.

Response: The Table of Patent Fees, available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting,* provides three years of historical cost data for most current fees, including AIA trial proceedings. In addition to the Table of Patent Fees, the fee setting section of the agency's website also includes a document titled ''Setting and Adjusting Patent Fees during Fiscal Year 2025—Activity Based Information and Patent Fee Unit Expense Methodology,'' which provides additional details on the cost methodologies used to derive the historical fee unit expenses outlined in the Table of Patent Fees. In response to this comment, the agency has provided additional details on PTAB activity costs in the methodology compared to the version published as part of the NPRM.

Comment 66: One commenter stated that word counts are an ineffective strategy to address problems associated with AIA trial petitions. The commenter stated regular petition fees already disincentivize filing a parallel petition.

Response: The agency elected not to move forward with setting fees based on word counts after considering the PPAC report and public comments received following the public hearing in May 2023, and the proposal was not included in the NPRM.

Comment 67: One commenter requested reassurances that AIA trial fees would not be discounted for small and micro entities in the future.

Response: Currently, AIA trial fees are not subject to small or micro entity discounts under section 10(b) of the AIA. Any expansion of small or micro entity discounts under section 10 would require statutory changes.

Comment 68: One commenter stated that raising fees for AIA trials runs counter to congressional intent to make them cost-efficient.

Response: The agency is committed to maintaining the PTAB's ability to provide fair, timely, and high-quality decisions. Under 35 U.S.C. 311(a) and 321(a), the USPTO Director must establish reasonable fees for inter partes review and post-grant review in consideration of their total costs. The fee increases better align the fee rates charged to petitioners with the actual costs borne by the USPTO in providing these proceedings.

Comment 69: One commenter stated that administrative post-grant proceedings have become a permanent part of the patent system and that the administrative costs of the USPTO for these services should not be subsidized by all patent applicants.

Response: The increase in existing fees for AIA trial proceedings will better align the fee rates charged to petitioners with the actual costs borne by the USPTO in providing these proceedings.

Request for Review of a PTAB Decision by the Director Fee

Comment 70: One commenter requested more information on historical costs associated with Director Review.

Response: Unfortunately, the USPTO cannot calculate a specific unit expense for Director Review because it is a new fee code with no historical cost data. As noted in Part V: Individual Fee Rationale of this rule, many staff assist the Director in reviewing requests and associated case materials, as well as publicizing decisions. The agency plans to formally capture and evaluate the costs associated with Director Review after the fee takes effect.

Comment 71: One commenter suggested that the Director Review process is a tool for ensuring consistency across cases and for the Director to set policy. The commenter objected to the proposed fee asserting private parties should not be required to pay for consistency across cases or for the Director to set policy.

Response: The new fee is expected to be nominal compared to the overall cost of Director Review and is merely designed to recover some of the processing costs.

Comment 72: One commenter stated that Director Review should be free because it is an alternative to seeking rehearing, and the cost of requesting rehearing is $0.

Response: The fee for AIA proceedings already accounts for the agency's costs of handling panel rehearing requests; it does not account for the additional costs of Director Review.

Comment 73: One commenter suggested that the USPTO should refund the proposed fee if the Director grants a review.

Response: The agency's refund authority is limited to refunds of fees ''paid by mistake or in excess of that required'' under § 1.26(a). Because the fee provides partial recovery of costs that are incurred regardless of whether the Director Review request is granted, no refund is legally authorized.

Legal Considerations

Comment 74: Commenters stated the proposed fee schedule violated the U.S. Constitution because setting fees to encourage or discourage behavior falls under the definition of a tax set forth by the U.S Constitution and the Supreme Court, and the USPTO does not have taxing authority.

Response: Patent fees are paid for receiving and maintaining a patent grant. Such fees are payments for a service and not a tax.

Comment 75: One commenter stated that the USPTO does not have the statutory authority to set fees that fall under 35 U.S.C. 41(d)(2) at more than their estimated unit cost.

Response: Under section 10 of the AIA, the USPTO has specific authority to ''set or adjust by rule any fee established, authorized, or charged under title 35, United States Code, or the Trademark Act of 1946 (15 U.S.C. 1051 *et seq.*), for any services performed by or materials furnished by, the Office'' so long as the aggregate revenues for all patent fees recover the aggregate estimated costs of the patent operation. The comment would interpret the AIA to include limitations that do not exist in the AIA.

Comment 76: One commenter stated that the text of the Patent Act makes it clear that the USPTO cannot use fee setting to implement policy. The commenter asserted that the USPTO can advise others and can set policy for the agency but has no general authority to set or exercise policy.

Response: The Patent Act, 35 U.S.C. 41(d), limits the USPTO to setting fees only to levels necessary to recover the estimated average cost of the service, prohibiting any other policy consideration from factoring into the calculation of fee levels. However, in 2011, Congress provided the USPTO with additional and broader fee setting authority under section 10 of the AIA, which co-exists with those authorities provided under the Patent Act. Section 10 of the AIA, provides the USPTO specific authority to ''set or adjust by rule any fee established, authorized, or charged under title 35, United States Code, or the Trademark Act of 1946 (15 U.S.C. 1051 *et seq.*), for any services performed by or materials furnished by, the Office'' so long as the aggregate revenues for all patent fees recover the aggregate estimated costs of the patent operation. When it enacted this language, Congress was aware that USPTO's existing fee setting authority under the Patent Act allowed only for fee setting based on cost recovery. But the language Congress enacted in section 10 imposes no limitations on how the Office can set any individual fee, so long as in the aggregate patent revenues are balanced against patent costs. The USPTO has interpreted this authority to allow it to set individual fees at, below, or above their respective cost, so long as the USPTO recovers the aggregate costs of providing services through aggregate fee collections as provided by the statutory language. In the 13 years since its enactment, the USPTO has exercised its section 10 fee setting authority multiple times (final rules published in 2013, 2015, 2016, 2017, and 2020). Congress demonstrated support of the USPTO's interpretation, and USPTO's repeated implementation of section 10 authority in fee rulemaking in part to make policy changes, when Congress reauthorized the authority, with no change to its terms, in 2018 under the Study of Underrepresented Classes Chasing Engineering and Science Success (SUCCESS) Act of 2018 (Pub. L. 115–273). Thus, the commenter's assertions regarding the USPTO's fee setting authority would interpret the AIA to include limitations that do not exist in the AIA.

Comment 77: One commenter asserted that Congress explicitly specified where the USPTO has fee setting discretion, and the USPTO does not have broad authority outside of what was specified.

Response: The AIA expressly provides the agency with broad fee setting authority. Specifically, section 10(a)(1) provides that, ''[t]he Director may set or adjust by rule any fee established, authorized, or charged under title 35, United States Code, or the Trademark Act of 1946 (15 U.S.C. 1051 *et seq.*), for any services performed by or materials furnished by, the Office.'' The fees set and adjusted in this rule fall within the subject matter identified by the AIA. See also discussion on fee setting authority in response to Comment 76.

Comment 78: Commenters stated the consideration of policy factors and objectives beyond ''aggregate estimated costs to the Office'' is a violation of the USPTO's section 10 fee setting authority.

Response: The AIA permits individual patent fees to be set or adjusted above, below, or equal to the cost of particular services, so long as the aggregate revenues for all patent fees recover the aggregate estimated costs of the patent operation. The comment would interpret the AIA to include limitations that do not exist in the AIA. See also discussion on fee setting authority in response to Comment 76.

Comment 79: Commenters objected to the USPTO's statement in the NPRM that ''[s]ection 10 authority includes flexibility to set individual fees in a way that furthers key policy factors, while considering the cost of the respective services,'' stating language on flexibility is absent from the statute.

Response: The AIA permits individual patent fees to be set or adjusted above, below, or equal to the cost of particular services, so long as the aggregate revenues for all patent fees recover the aggregate estimated costs of the patent operation. The comment

would interpret the AIA to include limitations that do not exist in the AIA. See also discussion on fee setting authority in response to Comment 76.

Comment 80: Commenters stated that the USPTO does not have the authority to engage in substantive rulemaking. They asserted that proposals for new fees for continuing applications and terminal disclaimers and substantial increases to patent term extension fees were impermissible because the purpose of those proposals was to change applicant behavior and set policy.

Response: The agency is undertaking this rulemaking action consistent with the requirements and authority under section 10 of the AIA. The AIA permits individual patent fees to be set or adjusted above, below, or equal to the cost of particular services, so long as the aggregate revenues for all patent fees recover the aggregate estimated costs of the patent operation. The comment would interpret the AIA to include limitations that do not exist in the AIA. See also discussion on fee setting authority in response to Comment 76.

Comment 81: Commenters stated that in the absence of cost data, *i.e.,* where a unit cost is not available (*e.g.,* excess claims fees), the USPTO has no authority to impose any fee other than those provided in 35 U.S.C. 41. Commenters also stated any proposed adjustments must be in proportion to the original fees set by Congress in 2011 when the AIA was enacted, with any changes limited to the amount of inflation since then.

Response: Section 10 of the AIA gives the agency authority to ''set or adjust by rule any fee established, authorized, or charged under title 35, United States Code, or the Trademark Act of 1946 (15 U.S.C. 1051 *et seq.*), for any services performed by or materials furnished by, the Office'' so long as the aggregate revenues for all patent fees recover the aggregate estimated costs of the patent operation. The comment would interpret the AIA to include limitations that do not exist in the AIA.

Comment 82: One commenter stated that the revenue split between front-end fees (filing, search, and examination) and back-end fees (maintenance and issue) must remain roughly 50/50 based on the historical proportions at the time Congress first enacted maintenance fees in 1980–82.

Response: Under section 10 of the AIA, the agency has specific authority to ''set or adjust by rule any fee established, authorized, or charged under title 35, United States Code, or the Trademark Act of 1946 (15 U.S.C. 1051 *et seq.*), for any services performed by or materials furnished by, the Office,'' so long as the aggregate revenues for all patent fees recover the aggregate estimated costs of the patent operation. The comment would interpret the AIA to include limitations that do not exist and are inconsistent with the AIA. The USPTO also notes that the fee schedule set forth in this rule continues the longstanding practice of setting basic filing, search, and examination (''front-end'') fees below the actual costs of processing and examining applications, and subsidizing these services by setting undiscounted issue and maintenance (''back-end'') fees above unit cost.

Comment 83: One commenter asserted that setting AIA trial fees below cost was unlawful because the AIA requires the USPTO to set inter partes review and post-grant review fees ''to be reasonable, considering the aggregate cost of the review.'' This commenter also stated that claiming the increase supported ''aggregate cost recovery'' was purposefully misleading and less than candid.

Response: The comment would interpret the AIA to include limitations that do not exist in the AIA. Under section 10 of the AIA, the USPTO has specific authority to ''set or adjust by rule any fee established, authorized, or charged under title 35, United States Code, or the Trademark Act of 1946 (15 U.S.C. 1051 *et seq.*), for any services performed by or materials furnished by, the Office,'' so long as the aggregate revenues for all patent fees recover the aggregate estimated costs of the patent operation. The USPTO is increasing the fee rate for this service as part of the overall package that balances aggregate costs of the Patents business line with aggregate revenues. Moreover, the USPTO has determined that the inter partes review and post-grant review fees are reasonable.

Comment 84: Commenters asserted that the legislative history of the AIA makes it clear that the USPTO cannot use fee setting to implement policy.

Response: The AIA permits individual patent fees to be set or adjusted above, below, or equal to the cost of particular services, so long as the aggregate revenues for all patent fees recover the aggregate estimated costs of the patent operation. The comment would interpret the AIA to include limitations that do not exist in the AIA.

Comment 85: One commenter stated the USPTO violated the Administrative Procedure Act (APA) by proposing fee adjustments in instances where no individual cost data was available.

Response: The USPTO disagrees with the assertion that it violated the APA in proposing its fee adjustments. The preamble and regulatory text clearly set forth the new costs and explain the rationale for each change in compliance with the requirements of the APA.

Comment 86: One commenter asserted that the USPTO's RCE proposal impairs incentives for innovation and therefore an explanation of the regulation is required under E.O. 12866.

Response: The preamble and regulatory text in the proposed rule and this final rule, as well as the accompanying RIA, clearly set forth the new costs and explain the rationale for the change in fees for RCEs in compliance with the requirements of the APA and E.O. 12866. Based on further consideration of the merits of the proposed rule in light of feedback from the public, the USPTO has decided not to move forward with creating a new tier for third and subsequent RCEs; instead, this final rule adjusts the existing RCE fees as discussed in Part V: Individual Fee Rationale of this rule.

Comment 87: One commenter questioned why the last document published in the **Federal Register** as part of the FY 2020 patent final rule was not classified as economically significant and accused the USPTO of attempting to evade cost-benefit review under E.O. 12866 and the ''two for one'' provision of E.O. 13771 (in effect at the time).

Response: The document referenced by the commenter, which published on September 18, 2020 (85 FR 58282), was a correction rule issued to fix typographical errors and makes other nonsubstantive changes. OMB determined that action was not significant pursuant to E.O. 12866 and thus did not require an RIA, nor was it subject to E.O. 13771. The final rule being corrected was published on August 3, 2020 (85 FR 46932). That rule was determined to be economically significant and was accompanied by a Regulatory Impact Analysis that satisfied the requirements of E.O. 12866. The final rule was not subject to the requirements of E.O. 13771 because it involved a transfer payment, as detailed in part VIII(E) of that rule.

Comment 88: Commenters stated the USPTO violated the Independent Offices Appropriations Act (IOAA), asserting the AIA must be construed in pari materia (a Latin phrase meaning ''on the same subject or matter'') with the IOAA, and a commentator objected to previous responses the USPTO gave in fee setting rulemakings regarding the IOAA.

Response: The IOAA provides Federal agencies the authority to charge user fees where the agencies do not have their own specific statutory authority to

charge fees. Fees collected under the IOAA are deposited in the general fund of the U.S. Treasury and not available to the charging agency for its use. OMB Circular A–25, ''User Charges,'' provides guidance on IOAA authority. The IOAA has no relevance to the fee setting undertaken by the USPTO, as the agency has specific statutory authority to charge fees under 35 U.S.C. and the Trademark Act of 1946. The USPTO further has specific authority to set and adjust those fees as in the current rulemaking under section 10 of the AIA. Fees collected by the USPTO are made available to the agency through annual appropriations and are available to use for the activities that generated the fee (patent and trademark examination and proportionate administrative expenses). Thus, the general authority described in the IOAA and OMB Circular A–25 is not relevant to the USPTO's fee setting.

Comment 89: One commenter stated the USPTO violated the Information Quality Act by proposing fee adjustments in instances where no individual cost data is available.

Response: The USPTO disagrees with the assertion that it has violated the IQA in its fee proposals. The USPTO's information quality guidelines are intended to improve the quality of the information disseminated by the agency to the public by formalizing the existing pre-dissemination review processes and establishing mechanisms ''allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency.'' The USPTO's IQA Guidelines may be found at: *https://www.uspto.gov/learning-and-resources/information-quality-guidelines.* The USPTO does not calculate a specific unit expense for some fee codes since they may be: (1) a new fee code with no historical cost data, (2) a fee code with zero or very low workload or usage, and/or (3) a fee code which does not lend itself to unit costing as related costs are not easily severable from larger activity costs. Where the USPTO has historical data, it provides that data to the public for comment during the rulemaking. The IQA does not require the creation of new data for every action undertaken in this rulemaking.

Comment 90: Commenters asserted that several of the USPTO's proposals violated the Paperwork Reduction Act (PRA). According to the commenters, the proposed fees, including those for continuing applications, terminal disclaimers, and IDSs, create an additional burden for applicants and that the collection of information for these fees is new and has not been previously reviewed or approved by the OMB as required.

Response: The USPTO has complied with the PRA in considering the paperwork burdens associated with this final rule. The USPTO has previously received OMB approval for associated burdens and submitted additional statements to address revisions made by this final rule. Some of the proposals cited by the commenter have been adjusted since the NPRM after careful consideration of stakeholder feedback.

Comment 91: One commenter stated the USPTO is violating the PRA by proposing fee adjustments in instances where no individual cost data is available.

Response: The USPTO has complied with the PRA in considering the paperwork burdens associated with this final rule. The USPTO has submitted additional statements to the OMB to address revisions made by this final rule.

Comment 92: One commenter stated a USPTO rulemaking cannot override or rewrite existing laws and asserted that the proposed fee increases undermine enacted laws to the extent that they will strongly discourage applicants from taking advantage of patent prosecution options created by Congress.

Response: The USPTO disagrees with the assertion that it is overriding or undermining any existing laws in this fee setting. The preceding discussion of each fee contains extensive explanation for why fees have been established or adjusted, the potential impacts on filers and other stakeholders, and the consistency of the final rule with applicable law.

Comment 93: One commenter stated terminal disclaimer fees should be eligible for a discount under 35 U.S.C. 41(h)(1) because they are included under 35 U.S.C. 41(a).

Response: The fees in this final rule are set or adjusted under section 10 of the AIA. As previously discussed in ''Setting and Adjusting Patent Fees,'' 78 FR 4212, 4223 (Jan. 18, 2013), prior to the enactment of discounted fees under section 10 of the AIA, the small entity discount was available only for statutory fees provided under 35 U.S.C. 41(a), (b), and (d)(1), which included terminal disclaimers. Section 10(a) of the AIA provides the agency authority to adjust all fees charged under 35 U.S.C., but section 10(b) provides that fees adjusted using section 10(a) authority only receive small entity (as defined by 35 U.S.C. 41(h)) and micro entity (as defined by section 10(g) of the AIA) discounts if they are fees for ''filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.'' As noted in ''Setting and Adjusting Patent Fees,'' 78 FR 4212, 4223, the disclaimer fee does not fall under one of the six categories of discount-eligible patent fees set forth in section 10(b).

Comment 94: One commenter stated the term ''original patent'' is a single term used in 35 U.S.C. 41(a)(1)(A), 41(a)(3)(A), and 41(a)(4)(A) to describe a group inclusive of both initial applications and any continuing applications, and the USPTO does not have the authority to further subdivide fees for specific subgroups (*e.g.,* continuing applications) falling within the original patent.

Response: The comment suggests the commenter understood the proposed rule to be subdividing certain statutory fees: the filing fees in 35 U.S.C. 41(a)(1)(A), the examination fees in 35 U.S.C. 41(a)(3)(A), and the issue fees in 35 U.S.C. 41(a)(4)(A). The USPTO is not subdividing these fees. The filing, examination, and issue fees continue to be due in original applications, and while the rates for these fees are increased in this final rule, the rates remain the same for continuing and non-continuing applications. The rules implementing the adjustments to these fees are §§ 1.16(a)–(e) and 1.492(a) for filing fees, §§ 1.16(o)–(r) and 1.492(c) for examination fees, and §§ 1.18(a)–(c) for issue fees. The commenter's reference to continuing applications relates to a different fee under § 1.16(w), which is a new fee for presenting certain benefit claims in continuing applications. This new fee under § 1.16(w) is a distinct fee, and, when due, it is due in addition to the filing, examination, and issue fees. Filing and examination fees are always due upon filing of the application, and issue fees are always due after allowance of an application. The new fee under § 1.16(w) is due when certain benefit claims are made, which can occur upon filing, at any time during pendency, or even after a patent is granted.

Comment 95: One commenter stated the USPTO does not have the authority to set fees for continuing applications at levels contained in the proposed rule because doing so would be cost prohibitive and effectively take away applicants' statutory rights to file continuing applications.

Response: The AIA permits individual patent fees to be set or adjusted above, below, or equal to the cost of particular services, so long as the aggregate revenues for all patent fees recover the aggregate estimated costs of the patent operation. The comment would interpret the AIA to include limitations that do not exist in the AIA.

Comment 96: One commenter asserted that the continuing applications proposal was designed solely to suppress continuing application filings and that such a purpose is not within the USPTO's authority under section 10.

Response: The continuing application fees do not prevent applicants from filing as many continuing applications as they want at any time during the pendency of the parent application. Instead, they are designed to recover more of the costs of examining continuing applications where maintenance fees on the issued patent are unlikely to be paid as a result of insufficient term. Further, the AIA permits individual patent fees to be set or adjusted above, below, or equal to the cost of particular services, so long as the aggregate revenues for all patent fees recover the aggregate estimated costs of the patent operation. The comment would interpret the AIA to include limitations that do not exist in the AIA.

VII. Discussion of Specific Rules

The discussion below includes all fee amendments and all changes to the Code of Federal Regulations (CFR) text.

Title 37 of the CFR, parts 1, 41, and 42, are proposed to be amended as follows:

Section 1.16

Section 1.16 is amended by revising paragraphs (a) through (s) and (u) to set forth national application filing, search, examination, and related fees as authorized under section 10 of the AIA. The changes to the fee amounts in § 1.16 are shown in table 19.

BILLING CODE 3510–16–P

Table 19: § 1.16 Fee Changes

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.16(a)	1011	Basic filing fee - Utility (paper filing also requires non-electronic filing fee under 1.16(t))	Undiscounted	$320	$350
1.16(a)	2011	Basic filing fee - Utility (paper filing also requires non-electronic filing fee under 1.16(t))	Small	$128	$140
1.16(a)	3011	Basic filing fee - Utility (paper filing also requires non-electronic filing fee under 1.16(t))	Micro	$64	$70
1.16(a)	4011	Basic filing fee - Utility (electronic filing for small entities)	Small	$64	$70
1.16(b)	1012	Basic filing fee - Design	Undiscounted	$220	$300
1.16(b)	2012	Basic filing fee - Design	Small	$88	$120
1.16(b)	3012	Basic filing fee - Design	Micro	$44	$60
1.16(b)	1017	Basic filing fee - Design CPA	Undiscounted	$220	$300
1.16(b)	2017	Basic filing fee - Design CPA	Small	$88	$120
1.16(b)	3017	Basic filing fee - Design CPA	Micro	$44	$60
1.16(c)	1013	Basic filing fee - Plant	Undiscounted	$220	$240
1.16(c)	2013	Basic filing fee - Plant	Small	$88	$96
1.16(c)	3013	Basic filing fee - Plant	Micro	$44	$48
1.16(d)	1005	Provisional application filing fee	Undiscounted	$300	$325
1.16(d)	2005	Provisional application filing fee	Small	$120	$130
1.16(d)	3005	Provisional application filing fee	Micro	$60	$65
1.16(e)	1014	Basic filing fee - Reissue	Undiscounted	$320	$350
1.16(e)	2014	Basic filing fee - Reissue	Small	$128	$140
1.16(e)	3014	Basic filing fee - Reissue	Micro	$64	$70
1.16(e)	1019	Basic filing fee - Reissue (Design CPA)	Undiscounted	$320	$350
1.16(e)	2019	Basic filing fee - Reissue (Design CPA)	Small	$128	$140
1.16(e)	3019	Basic filing fee - Reissue (Design CPA)	Micro	$64	$70

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.16(f)	1051	Surcharge - Late filing fee, search fee, examination fee, inventor's oath or declaration, or application filed without at least one claim or by reference	Undiscounted	$160	$170
1.16(f)	2051	Surcharge - Late filing fee, search fee, examination fee, inventor's oath or declaration, or application filed without at least one claim or by reference	Small	$64	$68
1.16(f)	3051	Surcharge - Late filing fee, search fee, examination fee, inventor's oath or declaration, or application filed without at least one claim or by reference	Micro	$32	$34
1.16(g)	1052	Surcharge - Late provisional filing fee or cover sheet	Undiscounted	$60	$65
1.16(g)	2052	Surcharge - Late provisional filing fee or cover sheet	Small	$24	$26
1.16(g)	3052	Surcharge - Late provisional filing fee or cover sheet	Micro	$12	$13
1.16(h)	1201	Each independent claim in excess of three	Undiscounted	$480	$600
1.16(h)	2201	Each independent claim in excess of three	Small	$192	$240
1.16(h)	3201	Each independent claim in excess of three	Micro	$96	$120
1.16(h)	1204	Each reissue independent claim in excess of three	Undiscounted	$480	$600
1.16(h)	2204	Each reissue independent claim in excess of three	Small	$192	$240
1.16(h)	3204	Each reissue independent claim in excess of three	Micro	$96	$120

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.16(i)	1202	Each claim in excess of 20	Undiscounted	$100	$200
1.16(i)	2202	Each claim in excess of 20	Small	$40	$80
1.16(i)	3202	Each claim in excess of 20	Micro	$20	$40
1.16(i)	1205	Each reissue claim in excess of 20	Undiscounted	$100	$200
1.16(i)	2205	Each reissue claim in excess of 20	Small	$40	$80
1.16(i)	3205	Each reissue claim in excess of 20	Micro	$20	$40
1.16(j)	1203	Multiple dependent claim	Undiscounted	$860	$925
1.16(j)	2203	Multiple dependent claim	Small	$344	$370
1.16(j)	3203	Multiple dependent claim	Micro	$172	$185
1.16(k)	1111	Utility search fee	Undiscounted	$700	$770
1.16(k)	2111	Utility search fee	Small	$280	$308
1.16(k)	3111	Utility search fee	Micro	$140	$154
1.16(l)	1112	Design search fee or Design CPA search fee	Undiscounted	$160	$300
1.16(l)	2112	Design search fee or Design CPA search fee	Small	$64	$120
1.16(l)	3112	Design search fee or Design CPA search fee	Micro	$32	$60
1.16(m)	1113	Plant search fee	Undiscounted	$440	$485
1.16(m)	2113	Plant search fee	Small	$176	$194
1.16(m)	3113	Plant search fee	Micro	$88	$97
1.16(n)	1114	Reissue search fee or Reissue (Design CPA) search fee	Undiscounted	$700	$770
1.16(n)	2114	Reissue search fee or Reissue (Design CPA) search fee	Small	$280	$308
1.16(n)	3114	Reissue search fee or Reissue (Design CPA) search fee	Micro	$140	$154
1.16(o)	1311	Utility examination fee	Undiscounted	$800	$880
1.16(o)	2311	Utility examination fee	Small	$320	$352
1.16(o)	3311	Utility examination fee	Micro	$160	$176
1.16(p)	1312	Design examination fee or Design CPA examination fee	Undiscounted	$640	$700

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.16(p)	2312	Design examination fee or Design CPA examination fee	Small	$256	$280
1.16(p)	3312	Design examination fee or Design CPA examination fee	Micro	$128	$140
1.16(q)	1313	Plant examination fee	Undiscounted	$660	$725
1.16(q)	2313	Plant examination fee	Small	$264	$290
1.16(q)	3313	Plant examination fee	Micro	$132	$145
1.16(r)	1314	Reissue examination fee or Reissue (Design CPA) examination fee	Undiscounted	$2,320	$2,550
1.16(r)	2314	Reissue examination fee or Reissue (Design CPA) examination fee	Small	$928	$1,020
1.16(r)	3314	Reissue examination fee or Reissue (Design CPA) examination fee	Micro	$464	$510
1.16(s)	1082	Design application size fee - for each additional 50 sheets that exceeds 100 sheets	Undiscounted	$420	$450
1.16(s)	2082	Design application size fee - for each additional 50 sheets that exceeds 100 sheets	Small	$168	$180
1.16(s)	3082	Design application size fee - for each additional 50 sheets that exceeds 100 sheets	Micro	$84	$90
1.16(s)	1083	Plant application size fee - for each additional 50 sheets that exceeds 100 sheets	Undiscounted	$420	$450
1.16(s)	2083	Plant application size fee - for each additional 50 sheets that exceeds 100 sheets	Small	$168	$180
1.16(s)	3083	Plant application size fee - for each additional 50 sheets that exceeds 100 sheets	Micro	$84	$90
1.16(s)	1085	Provisional application size fee - for each	Undiscounted	$420	$450

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
		additional 50 sheets that exceeds 100 sheets			
1.16(s)	2085	Provisional application size fee - for each additional 50 sheets that exceeds 100 sheets	Small	$168	$180
1.16(s)	3085	Provisional application size fee - for each additional 50 sheets that exceeds 100 sheets	Micro	$84	$90
1.16(s)	1084	Reissue application size fee - for each additional 50 sheets that exceeds 100 sheets	Undiscounted	$420	$450
1.16(s)	2084	Reissue application size fee - for each additional 50 sheets that exceeds 100 sheets	Small	$168	$180
1.16(s)	3084	Reissue application size fee - for each additional 50 sheets that exceeds 100 sheets	Micro	$84	$90
1.16(s)	1081	Utility application size fee - for each additional 50 sheets that exceeds 100 sheets	Undiscounted	$420	$450
1.16(s)	2081	Utility application size fee - for each additional 50 sheets that exceeds 100 sheets	Small	$168	$180
1.16(s)	3081	Utility application size fee - for each additional 50 sheets that exceeds 100 sheets	Micro	$84	$90
1.16(u)	1054	Non-DOCX filing surcharge fee	Undiscounted	$400	$430
1.16(u)	2054	Non-DOCX filing surcharge fee	Small	$160	$172
1.16(u)	3054	Non-DOCX filing surcharge fee	Micro	$80	$86

BILLING CODE 3510–16–C

Section 1.17

Section 1.17 is amended by revising paragraphs (a), (c) through (i), (k), (m), and (o) through (t) and adding paragraphs (u), (v), and (w) to set forth application processing fees as authorized under section 10 of the AIA. The changes to the fee amounts in § 1.17 are shown in table 20.

The USPTO revises the introductory text of paragraph (a) to exclude

provisional applications filed under 1.53(c).

The USPTO revises paragraph (g) by splitting it into two paragraphs (g)(1) and (2). Paragraph (g)(1) is the same as existing paragraph (g) except for the removal of § 1.103(a) from its coverage. New paragraphs (g)(2)(i) and (ii) specify the fees for filing a first request pursuant to § 1.103(a) respectively. The USPTO adds paragraphs (m)(1) through (3) to create tiered fees for unintentionally delayed petitions based on the length of the delay.

The USPTO adds paragraphs (u) through (w). Paragraph (u) creates a lower fee for extension fees pursuant to § 1.136(a) in provisional applications filed under § 1.53(c). Paragraph (v) creates fees for information disclosure statements filed under § 1.97. Paragraph (w) creates fees for presenting a benefit claim in a nonprovisional application under 35 U.S.C. 120, 121, 365(c), or 386(c) and § 1.78(d).

BILLING CODE 3510–16–P

Table 20: § 1.17 Fee changes

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.17(a)(1)	1251	Extension for response within first month, except provisional applications	Undiscounted	$220	$235
1.17(a)(1)	2251	Extension for response within first month, except provisional applications	Small	$88	$94
1.17(a)(1)	3251	Extension for response within first month, except provisional applications	Micro	$44	$47
1.17(a)(2)	1252	Extension for response within second month, except provisional applications	Undiscounted	$640	$690
1.17(a)(2)	2252	Extension for response within second month, except provisional applications	Small	$256	$276
1.17(a)(2)	3252	Extension for response within second month, except provisional applications	Micro	$128	$138
1.17(a)(3)	1253	Extension for response within third month, except provisional applications	Undiscounted	$1,480	$1,590
1.17(a)(3)	2253	Extension for response within third month, except provisional applications	Small	$592	$636
1.17(a)(3)	3253	Extension for response within third month, except provisional applications	Micro	$296	$318

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.17(a)(4)	1254	Extension for response within fourth month, except provisional applications	Undiscounted	$2,320	$2,495
1.17(a)(4)	2254	Extension for response within fourth month, except provisional applications	Small	$928	$998
1.17(a)(4)	3254	Extension for response within fourth month, except provisional applications	Micro	$464	$499
1.17(a)(5)	1255	Extension for response within fifth month, except provisional applications	Undiscounted	$3,160	$3,395
1.17(a)(5)	2255	Extension for response within fifth month, except provisional applications	Small	$1,264	$1,358
1.17(a)(5)	3255	Extension for response within fifth month, except provisional applications	Micro	$632	$679
1.17(c)	1817	Request for prioritized examination	Undiscounted	$4,200	$4,515
1.17(c)	2817	Request for prioritized examination	Small	$1,680	$1,806
1.17(c)	3817	Request for prioritized examination	Micro	$840	$903
1.17(d)	1819	Correction of inventorship after first action on merits	Undiscounted	$640	$690
1.17(d)	2819	Correction of inventorship after first action on merits	Small	$256	$276
1.17(d)	3819	Correction of inventorship after first action on merits	Micro	$128	$138
1.17(e)(1)	1801	Request for continued examination (RCE) - 1st request (see 37 CFR 1.114)	Undiscounted	$1,360	$1,500
1.17(e)(1)	2801	Request for continued examination (RCE) - 1st request (see 37 CFR 1.114)	Small	$544	$600
1.17(e)(1)	3801	Request for continued examination (RCE) - 1st request (see 37 CFR 1.114)	Micro	$272	$300

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.17(e)(2)	1820	Request for continued examination (RCE) - 2nd and subsequent request (see 37 CFR 1.114)	Undiscounted	$2,000	$2,860
1.17(e)(2)	2820	Request for continued examination (RCE) - 2nd and subsequent request (see 37 CFR 1.114)	Small	$800	$1,144
1.17(e)(2)	3820	Request for continued examination (RCE) - 2nd and subsequent request (see 37 CFR 1.114)	Micro	$400	$572
1.17(f)	1462	Petitions requiring the petition fee set forth in 37 CFR 1.17(f) (Group I)	Undiscounted	$420	$450
1.17(f)	2462	Petitions requiring the petition fee set forth in 37 CFR 1.17(f) (Group I)	Small	$168	$180
1.17(f)	3462	Petitions requiring the petition fee set forth in 37 CFR 1.17(f) (Group I)	Micro	$84	$90
1.17(g)(1)	1463	Petitions requiring the petition fee set forth in 37 CFR 1.17(g) (Group II), except suspension of action	Undiscounted	$220	$235
1.17(g)(1)	2463	Petitions requiring the petition fee set forth in 37 CFR 1.17(g) (Group II), except suspension of action	Small	$88	$94
1.17(g)(1)	3463	Petitions requiring the petition fee set forth in 37 CFR 1.17(g) (Group II), except suspension of action	Micro	$44	$47
1.17(g)(2)(i)	New	First request for suspension of action	Undiscounted	$220	$300
1.17(g)(2)(i)	New	First request for suspension of action	Small	$88	$120
1.17(g)(2)(i)	New	First request for suspension of action	Micro	$44	$60
1.17(g)(2)(ii)	New	Subsequent request for suspension of action	Undiscounted	$220	$450

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.17(g)(2)(ii)	New	Subsequent request for suspension of action	Small	$88	$180
1.17(g)(2)(ii)	New	Subsequent request for suspension of action	Micro	$44	$90
1.17(h)	1464	Petitions requiring the petition fee set forth in 37 CFR 1.17(h) (Group III)	Undiscounted	$140	$150
1.17(h)	2464	Petitions requiring the petition fee set forth in 37 CFR 1.17(h) (Group III)	Small	$56	$60
1.17(h)	3464	Petitions requiring the petition fee set forth in 37 CFR 1.17(h) (Group III)	Micro	$28	$30
1.17(i)(1)	1053	Non-English translation	Undiscounted	$140	$150
1.17(i)(1)	2053	Non-English translation	Small	$56	$60
1.17(i)(1)	3053	Non-English translation	Micro	$28	$30
1.17(i)(1)	1830	Processing fee, except in provisional applications	Undiscounted	$140	$150
1.17(i)(1)	2830	Processing fee, except in provisional applications	Small	$56	$60
1.17(i)(1)	3830	Processing fee, except in provisional applications	Micro	$28	$30
1.17(i)(2)	1808	Other publication processing fee	Undiscounted	$140	$151
1.17(i)(2)	2808	Other publication processing fee	Small	$140	$151
1.17(i)(2)	3808	Other publication processing fee	Micro	$140	$151
1.17(i)(2)	1803	Request for voluntary publication or republication	Undiscounted	$140	$151
1.17(i)(2)	2803	Request for voluntary publication or republication	Small	$140	$151
1.17(i)(2)	3803	Request for voluntary publication or republication	Micro	$140	$151
1.17(k)	1802	Request for expedited examination of a design application	Undiscounted	$1,600	$1,720
1.17(k)	2802	Request for expedited examination of a design application	Small	$640	$688

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.17(k)	3802	Request for expedited examination of a design application	Micro	$320	$344
1.17(m)(1)	New	Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years	Undiscounted	$2,100	$3,000
1.17(m)(1)	New	Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years	Small	$840	$1,200
1.17(m)(1)	New	Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years	Micro	$420	$600
1.17(m)(2)	1558	Petition for the delayed payment of the fee for maintaining a patent in force, delay less than or equal to two years	Undiscounted	$2,100	$2,260
1.17(m)(2)	2558	Petition for the delayed payment of the fee for maintaining a patent in force, delay less than or equal to two years	Small	$840	$904
1.17(m)(2)	3558	Petition for the delayed payment of the fee for maintaining a patent in force, delay less than or equal to two years	Micro	$420	$452
1.17(m)(1)	New	Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding, delay greater than two years	Undiscounted	$2,100	$3,000

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.17(m)(1)	New	Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding, delay greater than two years	Small	$840	$1,200
1.17(m)(1)	New	Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding, delay greater than two years	Micro	$420	$600
1.17(m)(2)	1453	Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding, delay less than or equal to two years	Undiscounted	$2,100	$2,260
1.17(m)(2)	2453	Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding, delay less than or equal to two years	Small	$840	$904

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.17(m)(2)	3453	Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding, delay less than or equal to two years	Micro	$420	$452
1.17(m)(1)	New	Petition for the delayed submission of a priority or benefit claim, delay greater than two years	Undiscounted	$2,100	$3,000
1.17(m)(1)	New	Petition for the delayed submission of a priority or benefit claim, delay greater than two years	Small	$840	$1,200
1.17(m)(1)	New	Petition for the delayed submission of a priority or benefit claim, delay greater than two years	Micro	$420	$600
1.17(m)(2)	1454	Petition for the delayed submission of a priority or benefit claim, delay less than or equal to two years	Undiscounted	$2,100	$2,260
1.17(m)(2)	2454	Petition for the delayed submission of a priority or benefit claim, delay less than or equal to two years	Small	$840	$904
1.17(m)(2)	3454	Petition for the delayed submission of a priority or benefit claim, delay less than or equal to two years	Micro	$420	$452
1.17(m)(1)	New	Petition to excuse applicant's failure to act within prescribed time limits in an international design application, delay greater than two years	Undiscounted	$2,100	$3,000
1.17(m)(1)	New	Petition to excuse applicant's failure to act within prescribed time limits in an international design application, delay greater than two years	Small	$840	$1,200

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.17(m)(1)	New	Petition to excuse applicant's failure to act within prescribed time limits in an international design application, delay greater than two years	Micro	$420	$600
1.17(m)(2)	1784	Petition to excuse applicant's failure to act within prescribed time limits in an international design application, delay less than or equal to two years	Undiscounted	$2,100	$2,260
1.17(m)(2)	2784	Petition to excuse applicant's failure to act within prescribed time limits in an international design application, delay less than or equal to two years	Small	$840	$904
1.17(m)(2)	3784	Petition to excuse applicant's failure to act within prescribed time limits in an international design application, delay less than or equal to two years	Micro	$420	$54
1.17(m)(3)	1628	Petition for the extension of the twelve-month (six-month for designs) period for filing a subsequent application	Undiscounted	$2,100	$2,260
1.17(m)(3)	2628	Petition for the extension of the twelve-month (six-month for designs) period for filing a subsequent application	Small	$840	$904
1.17(m)(3)	3628	Petition for the extension of the twelve-month (six-month for designs) period for filing a subsequent application	Micro	$420	$452
1.17(o)	1818	Document fee for third-party submissions (see 37 CFR 1.290(f))	Undiscounted	$180	$195

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.17(o)	2818	Document fee for third-party submissions (see 37 CFR 1.290(f))	Small	$72	$78
1.17(p)	1806	Submission of an Information Disclosure Statement	Undiscounted	$260	$280
1.17(p)	2806	Submission of an Information Disclosure Statement	Small	$104	$112
1.17(p)	3806	Submission of an Information Disclosure Statement	Micro	$52	$56
1.17(q)	1807	Processing fee for provisional applications	Undiscounted	$50	$54
1.17(q)	2807	Processing fee for provisional applications	Small	$50	$54
1.17(q)	3807	Processing fee for provisional applications	Micro	$50	$54
1.17(r)	1809	Filing a submission after final rejection (see 37 CFR 1.129(a))	Undiscounted	$880	$945
1.17(r)	2809	Filing a submission after final rejection (see 37 CFR 1.129(a))	Small	$352	$378
1.17(r)	3809	Filing a submission after final rejection (see 37 CFR 1.129(a))	Micro	$176	$189
1.17(s)	1810	For each additional invention to be examined (see 37 CFR 1.129(b))	Undiscounted	$880	$945
1.17(s)	2810	For each additional invention to be examined (see 37 CFR 1.129(b))	Small	$352	$378
1.17(s)	3810	For each additional invention to be examined (see 37 CFR 1.129(b))	Micro	$176	$189
1.17(t)	1783	Petition to convert an international design application to a design application under 35 U.S.C. chapter 16	Undiscounted	$180	$195

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.17(t)	2783	Petition to convert an international design application to a design application under 35 U.S.C. chapter 16	Small	$72	$78
1.17(t)	3783	Petition to convert an international design application to a design application under 35 U.S.C. chapter 16	Micro	$36	$39
1.17(u)(1)	New	Extension for response within first month, provisional application	Undiscounted	$220	$50
1.17(u)(1)	New	Extension for response within first month, provisional application	Small	$88	$20
1.17(u)(1)	New	Extension for response within first month, provisional application	Micro	$44	$10
1.17(u)(2)	New	Extension for response within second month, provisional application	Undiscounted	$640	$100
1.17(u)(2)	New	Extension for response within second month, provisional application	Small	$256	$40
1.17(u)(2)	New	Extension for response within second month, provisional application	Micro	$128	$20
1.17(u)(3)	New	Extension for response within third month, provisional application	Undiscounted	$1,480	$200
1.17(u)(3)	New	Extension for response within third month, provisional application	Small	$592	$80
1.17(u)(3)	New	Extension for response within third month, provisional application	Micro	$296	$40
1.17(u)(4)	New	Extension for response within fourth month, provisional application	Undiscounted	$2,320	$400
1.17(u)(4)	New	Extension for response within fourth month, provisional application	Small	$928	$160

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.17(u)(4)	New	Extension for response within fourth month, provisional application	Micro	$464	$80
1.17(u)(5)	New	Extension for response within fifth month, provisional application	Undiscounted	$3,160	$800
1.17(u)(5)	New	Extension for response within fifth month, provisional application	Small	$1,264	$320
1.17(u)(5)	New	Extension for response within fifth month, provisional application	Micro	$632	$160
1.17(v)(1)	New	Filing an Information Disclosure Statement that causes the cumulative number of applicant-provided or patent owner-provided items of information to exceed 50 but not exceed 100	Undiscounted	n/a	$200
1.17(v)(1)	New	Filing an Information Disclosure Statement that causes the cumulative number of applicant-provided or patent owner-provided items of information to exceed 50 but not exceed 100	Small	n/a	$200
1.17(v)(1)	New	Filing an Information Disclosure Statement that causes the cumulative number of applicant-provided or patent owner-provided items of information to exceed 50 but not exceed 100	Micro	n/a	$200
1.17(v)(2)	New	Filing an Information Disclosure Statement that causes the cumulative number of applicant-provided or patent owner-provided items of information to exceed 100 but not exceed 200	Undiscounted	n/a	$500, less any amount previously paid

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.17(v)(2)	New	Filing an Information Disclosure Statement that causes the cumulative number of applicant-provided or patent owner-provided items of information to exceed 100 but not exceed 200	Small	n/a	$500, less any amount previously paid
1.17(v)(2)	New	Filing an Information Disclosure Statement that causes the cumulative number of applicant-provided or patent owner-provided items of information to exceed 100 but not exceed 200	Micro	n/a	$500, less any amount previously paid
1.17(v)(3)	New	Filing an Information Disclosure Statement that causes the cumulative number of applicant-provided or patent owner-provided items of information to exceed 200	Undiscounted	n/a	$800, less any amounts previously paid
1.17(v)(3)	New	Filing an Information Disclosure Statement that causes the cumulative number of applicant-provided or patent owner-provided items of information to exceed 200	Small	n/a	$800, less any amounts previously paid
1.17(v)(3)	New	Filing an Information Disclosure Statement that causes the cumulative number of applicant-provided or patent owner-provided items of information to exceed 200	Micro	n/a	$800, less any amounts previously paid
1.17(w)(1)	New	Filing an application or presentation of benefit claim more than six years after earliest benefit date	Undiscounted	n/a	$2,700
1.17(w)(1)	New	Filing an application or presentation of benefit claim more than six years after earliest benefit date	Small	n/a	$1,080

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.17(w)(1)	New	Filing an application or presentation of benefit claim more than six years after earliest benefit date	Micro	n/a	$540
1.17(w)(2)	New	Filing an application or presentation of benefit claim more than nine years after earliest benefit date	Undiscounted	n/a	$4,000
1.17(w)(2)	New	Filing an application or presentation of benefit claim more than nine years after earliest benefit date	Small	n/a	$1,600
1.17(w)(2)	New	Filing an application or presentation of benefit claim more than nine years after earliest benefit date	Micro	n/a	$800

Section 1.18

Section 1.18 is amended by revising paragraphs (a) through (f) to set forth patent issue fees as authorized under section 10 of the AIA. The changes to the fee amounts in § 1.18 are shown in table 21.

Table 21: § 1.18 Fee Changes

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.18(a)	1511	Reissue issue fee	Undiscounted	$1,200	$1,290
1.18(a)	2511	Reissue issue fee	Small	$480	$516
1.18(a)	3511	Reissue issue fee	Micro	$240	$258
1.18(a)	1501	Utility issue fee	Undiscounted	$1,200	$1,290
1.18(a)	2501	Utility issue fee	Small	$480	$516
1.18(a)	3501	Utility issue fee	Micro	$240	$258
1.18(b)(1)	1502	Design issue fee	Undiscounted	$740	$1,300
1.18(b)(1)	2502	Design issue fee	Small	$296	$520
1.18(b)(1)	3502	Design issue fee	Micro	$148	$260
1.18(b)(1)	1509	Hague design issue fee	Undiscounted	$740	$1,300
1.18(b)(1)	2509	Hague design issue fee	Small	$296	$520
1.18(b)(1)	3509	Hague design issue fee	Micro	$148	$260
1.18(c)	1503	Plant issue fee	Undiscounted	$840	$905
1.18(c)	2503	Plant issue fee	Small	$336	$362
1.18(c)	3503	Plant issue fee	Micro	$168	$181
1.18(d)(3)	1505	Publication fee for republication	Undiscounted	$320	$344
1.18(d)(3)	2505	Publication fee for republication	Small	$320	$344
1.18(d)(3)	3505	Publication fee for republication	Micro	$320	$344
1.18(e)	1455	Filing an application for patent term adjustment	Undiscounted	$210	$226
1.18(e)	2455	Filing an application for patent term adjustment	Small	$210	$226
1.18(e)	3455	Filing an application for patent term adjustment	Micro	$210	$226
1.18(f)	1456	Request for reinstatement of term reduced	Undiscounted	$420	$452
1.18(f)	2456	Request for reinstatement of term reduced	Small	$420	$452
1.18(f)	3456	Request for reinstatement of term reduced	Micro	$420	$452

Section 1.19

Section 1.19 is amended by revising paragraphs (a), (b), and (f) to set forth document supply fees as authorized under section 10 of the AIA. The changes to the fee amounts in § 1.19 are shown in table 22.

Table 22: § 1.19 Fee changes

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.19(a)(2)	8003	Printed copy of plant patent in color	Undiscounted	$15	$16
1.19(b)(1)(i)(A) and (ii)(A)	8007	Copy of patent application as filed	Undiscounted	$35	$38
1.19(b)(1)(i)(B)	8051	Copy patent file wrapper, paper medium, any number of sheets	Undiscounted	$290	$312
1.19(b)(1)(i)(D)	8010	Individual application documents, other than application as filed, per document	Undiscounted	$25	$27
1.19(b)(1)(ii)(B)	8052	Copy patent file wrapper, electronic medium, any size or provided electronically	Undiscounted	$60	$65
1.19(b)(3)	8013	Copy of office records, except copies of applications as filed	Undiscounted	$25	$27
1.19(b)(4)	8014	For assignment records, abstract of title and certification, per patent	Undiscounted	$35	$38
1.19(f)	8017	Copy of non-U.S. document	Undiscounted	$25	$27

Section 1.20

Section 1.20 is amended by revising paragraphs (a) through (h), (j), and (k) to set forth post issuance fees as authorized under section 10 of the AIA. The changes to the fee amounts in § 1.20 are shown in table 23.

The USPTO adds paragraph (j)(4) to create a fee for requesting supplemental redetermination after Notice of Final Determination.

Table 23: § 1.20 Fee Changes

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.20(a)	1811	Certificate of correction	Undiscounted	$160	$172
1.20(a)	2811	Certificate of correction	Small	$160	$172
1.20(a)	3811	Certificate of correction	Micro	$160	$172
1.20(b)	1816	Processing fee for correcting inventorship in a patent	Undiscounted	$160	$172
1.20(b)	2816	Processing fee for correcting inventorship in a patent	Small	$160	$172
1.20(b)	3816	Processing fee for correcting inventorship in a patent	Micro	$160	$172
1.20(c)(1)(i)	1831	Ex parte reexamination (§1.510(a)) streamlined	Undiscounted	$6,300	$6,775
1.20(c)(1)(i)	2831	Ex parte reexamination (§1.510(a)) streamlined	Small	$2,520	$2,710
1.20(c)(1)(i)	3831	Ex parte reexamination (§1.510(a)) streamlined	Micro	$1,260	$1,355
1.20(c)(2)	1812	Ex parte reexamination (§1.510(a)) non-streamlined	Undiscounted	$12,600	$13,545
1.20(c)(2)	2812	Ex parte reexamination (§1.510(a)) non-streamlined	Small	$5,040	$5,418
1.20(c)(2)	3812	Ex parte reexamination (§1.510(a)) non-streamlined	Micro	$2,520	$2,709
1.20(c)(3)	1821	Each reexamination independent claim in excess of three and also in excess of the number of such claims in the patent under reexamination	Undiscounted	$480	$600
1.20(c)(3)	2821	Each reexamination independent claim in excess of three and also in excess of the number of such claims in the patent under reexamination	Small	$192	$240

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.20(c)(3)	3821	Each reexamination independent claim in excess of three and also in excess of the number of such claims in the patent under reexamination	Micro	$96	$120
1.20(c)(4)	1822	Each reexamination claim in excess of 20 and also in excess of the number of claims in the patent under reexamination	Undiscounted	$100	$200
1.20(c)(4)	2822	Each reexamination claim in excess of 20 and also in excess of the number of claims in the patent under reexamination	Small	$40	$80
1.20(c)(4)	3822	Each reexamination claim in excess of 20 and also in excess of the number of claims in the patent under reexamination	Micro	$20	$40
1.20(c)(6)	1824	Petitions in a reexamination proceeding, except for those specifically enumerated in 37 CFR 1.550(i) and 1.937(d)	Undiscounted	$2,040	$2,195
1.20(c)(6)	2824	Petitions in a reexamination proceeding, except for those specifically enumerated in 37 CFR 1.550(i) and 1.937(d)	Small	$816	$878
1.20(c)(6)	3824	Petitions in a reexamination proceeding, except for those specifically enumerated in 37 CFR 1.550(i) and 1.937(d)	Micro	$408	$439
1.20(d)	1814	Statutory disclaimer, including terminal disclaimer	Undiscounted	$170	$183

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.20(d)	2814	Statutory disclaimer, including terminal disclaimer	Small	$170	$183
1.20(d)	3814	Statutory disclaimer, including terminal disclaimer	Micro	$170	$183
1.20(e)	1551	For maintaining an original or any reissue patent, due at 3.5 years	Undiscounted	$2,000	$2,150
1.20(e)	2551	For maintaining an original or any reissue patent, due at 3.5 years	Small	$800	$860
1.20(e)	3551	For maintaining an original or any reissue patent, due at 3.5 years	Micro	$400	$430
1.20(f)	1552	For maintaining an original or any reissue patent, due at 7.5 years	Undiscounted	$3,760	$4,040
1.20(f)	2552	For maintaining an original or any reissue patent, due at 7.5 years	Small	$1,504	$1,616
1.20(f)	3552	For maintaining an original or any reissue patent, due at 7.5 years	Micro	$752	$808
1.20(g)	1553	For maintaining an original or any reissue patent, due at 11.5 years	Undiscounted	$7,700	$8,280
1.20(g)	2553	For maintaining an original or any reissue patent, due at 11.5 years	Small	$3,080	$3,312
1.20(g)	3553	For maintaining an original or any reissue patent, due at 11.5 years	Micro	$1,540	$1,656
1.20(h)	1554	Surcharge - 3.5 year - late payment within six months	Undiscounted	$500	$540
1.20(h)	2554	Surcharge - 3.5 year - late payment within six months	Small	$200	$216
1.20(h)	3554	Surcharge - 3.5 year - late payment within six months	Micro	$100	$108

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.20(h)	1555	Surcharge - 7.5 year - late payment within six months	Undiscounted	$500	$540
1.20(h)	2555	Surcharge - 7.5 year - late payment within six months	Small	$200	$216
1.20(h)	3555	Surcharge - 7.5 year - late payment within six months	Micro	$100	$108
1.20(h)	1556	Surcharge - 11.5 year - late payment within six months	Undiscounted	$500	$540
1.20(h)	2556	Surcharge - 11.5 year - late payment within six months	Small	$200	$216
1.20(h)	3556	Surcharge - 11.5 year - late payment within six months	Micro	$100	$108
1.20(j)(1)	1457	Application for extension of term of patent	Undiscounted	$1,180	$2,500
1.20(j)(1)	2457	Application for extension of term of patent	Small	$1,180	$2,500
1.20(j)(1)	3457	Application for extension of term of patent	Micro	$1,180	$2,500
1.20(j)(2)	1458	Initial application for interim extension (see 37 CFR 1.790)	Undiscounted	$440	$1,320
1.20(j)(2)	2458	Initial application for interim extension (see 37 CFR 1.790)	Small	$440	$1,320
1.20(j)(2)	3458	Initial application for interim extension (see 37 CFR 1.790)	Micro	$440	$1,320
1.20(j)(3)	1459	Subsequent application for interim extension (see 37 CFR 1.790)	Undiscounted	$230	$680
1.20(j)(3)	2459	Subsequent application for interim extension (see 37 CFR 1.790)	Small	$230	$680
1.20(j)(3)	3459	Subsequent application for interim extension (see 37 CFR 1.790)	Micro	$230	$680

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.20(j)(4)	New	Supplemental redetermination after notice of final determination	Undiscounted	n/a	$1,440
1.20(j)(4)	New	Supplemental redetermination after notice of final determination	Small	n/a	$1,440
1.20(j)(4)	New	Supplemental redetermination after notice of final determination	Micro	n/a	$1,440
1.20(k)(1)	1826	Request for supplemental examination	Undiscounted	$4,620	$4,965
1.20(k)(1)	2826	Request for supplemental examination	Small	$1,848	$1,986
1.20(k)(1)	3826	Request for supplemental examination	Micro	$924	$993
1.20(k)(2)	1827	Reexamination ordered as a result of supplemental examination	Undiscounted	$12,700	$13,655
1.20(k)(2)	2827	Reexamination ordered as a result of supplemental examination	Small	$5,080	$5,462
1.20(k)(2)	3827	Reexamination ordered as a result of supplemental examination	Micro	$2,540	$2,731
1.20(k)(3)(i)	1828	Supplemental examination document size fee - for nonpatent document having between 21 and 50 sheets	Undiscounted	$180	$195
1.20(k)(3)(i)	2828	Supplemental examination document size fee - for nonpatent document having between 21 and 50 sheets	Small	$72	$78

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.20(k)(3)(i)	3828	Supplemental examination document size fee - for nonpatent document having between 21 and 50 sheets	Micro	$36	$39
1.20(k)(3)(ii)	1829	Supplemental examination document size fee - for each additional 50 sheets or a fraction thereof in a nonpatent document	Undiscounted	$300	$325
1.20(k)(3)(ii)	2829	Supplemental examination document size fee - for each additional 50 sheets or a fraction thereof in a nonpatent document	Small	$120	$130
1.20(k)(3)(ii)	3829	Supplemental examination document size fee - for each additional 50 sheets or a fraction thereof in a nonpatent document	Micro	$60	$65

Section 1.21

Section 1.21 is amended by revising paragraphs (a), (e), (h), (i), and (n) through (q) to set forth miscellaneous fees and charges as authorized under section 10 of the AIA. The changes to the fee amounts in § 1.21 are shown in table 24.

Table 24: § 1.21 Fee Changes

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.21(a)(1)(i)	9001	Application fee (non-refundable)	Undiscounted	$110	$118
1.21(a)(1)(ii)(A)	9010	For test administration by commercial entity	Undiscounted	$210	$226
1.21(a)(1)(iii)	9029	For USPTO-administered review of registration examination	Undiscounted	$470	$505
1.21(a)(1)(iv)	9030	Request for extension of time in which to schedule examination for registration to practice (non-refundable)	Undiscounted	$115	$124
1.21(a)(2)(i)	9003	On registration to practice under §11.6	Undiscounted	$210	$226
1.21(a)(2)(ii)	9026	On grant of limited recognition under §11.9(b)	Undiscounted	$210	$226
1.21(a)(4)(i)	9005	Certificate of good standing as an attorney or agent, standard	Undiscounted	$40	$43
1.21(a)(4)(ii)	9006	Certificate of good standing as an attorney or agent, suitable for framing	Undiscounted	$50	$54
1.21(a)(5)(i)	9012	Review of decision by the Director of Enrollment and Discipline under §11.2(c)	Undiscounted	$420	$452
1.21(a)(5)(ii)	9013	Review of decision of the Director of Enrollment and Discipline under §11.2(d)	Undiscounted	$420	$452
1.21(a)(6)(ii)	9028	For USPTO-assisted change of address within the Office of Enrollment and Discipline Information System	Undiscounted	$70	$75
1.21(a)(9)(i)	9020	Delinquency fee	Undiscounted	$50	$54
1.21(a)(9)(ii)	9004	Administrative reinstatement fee	Undiscounted	$210	$226

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.21(a)(10)	9014	On petition for reinstatement by a person excluded or suspended on ethical grounds, or excluded on consent from practice before the Office	Undiscounted	$1,680	$1,806
1.21(e)	8020	International type search report	Undiscounted	$40	$43
1.21(h)(2)	8021	Recording each patent assignment, agreement or other paper, per property – if not submitted electronically	Undiscounted	$50	$54
1.21(i)	8022	Publication in Official Gazette	Undiscounted	$25	$27
1.21(n)	8026	Handling fee for incomplete or improper application	Undiscounted	$140	$151
1.21(o)(1)	1091	Submission of sequence listings of 300MB to 800MB	Undiscounted	$1,060	$1,140
1.21(o)(1)	2091	Submission of sequence listings of 300MB to 800MB	Small	$424	$456
1.21(o)(1)	3091	Submission of sequence listings of 300MB to 800MB	Micro	$212	$228
1.21(o)(2)	1092	Submission of sequence listings of more than 800MB	Undiscounted	$10,500	$11,290
1.21(o)(2)	2092	Submission of sequence listings of more than 800MB	Small	$4,200	$4,516
1.21(o)(2)	3092	Submission of sequence listings of more than 800MB	Micro	$2,100	$2,258
1.21(p)	8053	Additional fee for overnight delivery	Undiscounted	$40	$43
1.21(q)	8054	Additional fee for expedited service	Undiscounted	$170	$183

BILLING CODE 3510–16–C

Section 1.78

Section 1.78 is amended by revising paragraph (d)(3)(i) to include the fee cited in § 1.17(w) as one of the requirements that must be submitted during the pendency of the later-filed application.

The USPTO revises paragraph (e)(2) to add the applicable fee in § 1.17(w) to the list of required items that must accompany a petition to accept an unintentionally delayed claim under 35

U.S.C. 120, 121, 365(c), or 386(c) for the benefit of a prior-filed application.

Section 1.97

Section 1.97 is amended by revising paragraph (a) to require the information disclosure statement size fee under § 1.17(v) for an information disclosure statement in compliance with § 1.98 to be considered by the USPTO during the pendency of the application.

Section 1.98

Section 1.98 is amended by revising the introductory text in paragraph (a) to include paragraph (a)(4) in the items that shall be included with any information disclosure statement.

The USPTO adds paragraph (a)(4), which will require a clear written assertion that the information disclosure statement is accompanied by the applicable information disclosure statement size fee under § 1.17(v) or a clear written assertion that no information disclosure statement size fee under § 1.17(v) is required.

Section 1.136

Section 1.136 is amended by revising paragraph (a)(1) to include the addition of the fee set in § 1.17(u) in extensions of time.

Section 1.138

Section 1.138 is amended by revising paragraph (d) to expand the applicability of the express abandonment rule to permit such refunds in national stage applications filed under 35 U.S.C. 371. The current rule permits such refunds only in nonprovisional applications filed under 35 U.S.C. 111(a) and § 1.53(b). Paragraph (d) is also amended to clarify that refunds of search and excess claims fee payments under these provisions are limited to the search and excess claims fees set forth in § 1.16 (which apply to applications filed under 35 U.S.C. 111(a) and § 1.53(b)) and search and excess claims fees set forth in § 1.492 (which apply to national stage applications filed under 35 U.S.C. 371). Paragraph (d) is also amended to clarify that refunds of search and excess claims fee payments under these provisions are limited to the search and excess claims fees set forth in § 1.16 (which apply to applications filed under 35 U.S.C. 111(a) and § 1.53(b)) and search and excess claims fees set forth in § 1.492 (which apply to national stage applications filed under 35 U.S.C. 371).

Section 1.445

Section 1.445 is amended by revising and republishing paragraph (a) to set forth international filing, processing, and search fees as authorized under section 10 of the AIA. The changes to the fee amounts in § 1.445 are shown in table 25. The fees are for or an international application having a receipt date that is on or after the effective date of the final rule. Fees previously provided for in paragraphs (a)(1)(i)(A), (a)(2)(i), and (a)(3)(i) for international applications having a receipt date that is on or after December 29, 2023, will be redesignated as (a)(1)(i)(B), (a)(2)(ii), and (a)(3)(ii) and will apply to international applications having a receipt date that is on or after December 29, 2022, and before the effective date of the final rule. Other paragraphs under paragraphs (a)(1) through (3) are to be redesignated to accommodate these proposed changes.

BILLING CODE 3510–16–P

Table 25: § 1.445 Fee Changes

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.445(a)(1)(i)(A)	1601	Transmittal fee	Undiscounted	$260	$285
1.445(a)(1)(i)(A)	2601	Transmittal fee	Small	$104	$114
1.445(a)(1)(i)(A)	3601	Transmittal fee	Micro	$52	$57
1.445(a)(2)(i)	1602	Search fee - regardless of whether there is a corresponding application (see 35 U.S.C. 361(d) and PCT Rule 16)	Undiscounted	$2,180	$2,400
1.445(a)(2)(i)	2602	Search fee - regardless of whether there is a corresponding application (see 35 U.S.C. 361(d) and PCT Rule 16)	Small	$872	$960
1.445(a)(2)(i)	3602	Search fee - regardless of whether there is a corresponding application (see 35 U.S.C. 361(d) and PCT Rule 16)	Micro	$436	$480
1.445(a)(3)(i)	1604	Supplemental search fee when required, per additional invention	Undiscounted	$2,180	$2,400
1.445(a)(3)(i)	2604	Supplemental search fee when required, per additional invention	Small	$872	$960
1.445(a)(3)(i)	3604	Supplemental search fee when required, per additional invention	Micro	$436	$480
1.445(a)(4)	1621	Transmitting application to Intl. Bureau to act as receiving office	Undiscounted	$260	$285
1.445(a)(4)	2621	Transmitting application to Intl. Bureau to act as receiving office	Small	$104	$114
1.445(a)(4)	3621	Transmitting application to Intl. Bureau to act as receiving office	Micro	$52	$57
1.445(a)(5)	1627	Late furnishing fee for providing a sequence listing in response to an invitation under PCT rule 13ter	Undiscounted	$320	$345

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.445(a)(5)	2627	Late furnishing fee for providing a sequence listing in response to an invitation under PCT rule 13ter	Small	$128	$138
1.445(a)(5)	3627	Late furnishing fee for providing a sequence listing in response to an invitation under PCT rule 13ter	Micro	$64	$69

Section 1.482

Section 1.482 is amended by revising paragraphs (a) and (c) to set forth international preliminary examination and processing fees for international patent applications entering the international stage as authorized under section 10 of the AIA. The changes to the fee amounts in § 1.482 are shown in table 26.

Table 26: § 1.482 Fee Changes

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.482(a)(1)(i)	1605	Preliminary examination fee - U.S. was the ISA	Undiscounted	$640	$705
1.482(a)(1)(i)	2605	Preliminary examination fee - U.S. was the ISA	Small	$256	$282
1.482(a)(1)(i)	3605	Preliminary examination fee - U.S. was the ISA	Micro	$128	$141
1.482(a)(1)(ii)	1606	Preliminary examination fee - U.S. was not the ISA	Undiscounted	$800	$880
1.482(a)(1)(ii)	2606	Preliminary examination fee - U.S. was not the ISA	Small	$320	$352
1.482(a)(1)(ii)	3606	Preliminary examination fee - U.S. was not the ISA	Micro	$160	$176
1.482(a)(2)	1607	Supplemental examination fee per additional invention	Undiscounted	$640	$705
1.482(a)(2)	2607	Supplemental examination fee per additional invention	Small	$256	$282
1.482(a)(2)	3607	Supplemental examination fee per additional invention	Micro	$128	$141
1.482(c)	1627	Late furnishing fee for providing a sequence listing in response to an invitation under PCT rule 13ter	Undiscounted	$320	$345
1.482(c)	2627	Late furnishing fee for providing a sequence listing in response to an invitation under PCT rule 13ter	Small	$128	$138
1.482(c)	3627	Late furnishing fee for providing a sequence listing in response to an invitation under PCT rule 13ter	Micro	$64	$69

Section 1.492

Section 1.492 is amended by revising paragraphs (a) through (f) and (h) through (j) to set forth national stage fees for international patent applications as authorized under section 10 of the AIA. The changes to the fee amounts in § 1.492 are shown in table 27.

Table 27: § 1.492 Fee Changes

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.492(a)	1631	Basic national stage fee	Undiscounted	$320	$350
1.492(a)	2631	Basic national stage fee	Small	$128	$140
1.492(a)	3631	Basic national stage fee	Micro	$64	$70
1.492(b)(2)	1641	National stage search fee - U.S. was the ISA	Undiscounted	$140	$150
1.492(b)(2)	2641	National stage search fee - U.S. was the ISA	Small	$56	$60
1.492(b)(2)	3641	National stage search fee - U.S. was the ISA	Micro	$28	$30
1.492(b)(3)	1642	National stage search fee - search report prepared and provided to USPTO	Undiscounted	$540	$580
1.492(b)(3)	2642	National stage search fee - search report prepared and provided to USPTO	Small	$216	$232
1.492(b)(3)	3642	National stage search fee - search report prepared and provided to USPTO	Micro	$108	$116
1.492(b)(4)	1632	National stage search fee - all other situations	Undiscounted	$700	$770
1.492(b)(4)	2632	National stage search fee - all other situations	Small	$280	$308
1.492(b)(4)	3632	National stage search fee - all other situations	Micro	$140	$154
1.492(c)(2)	1633	National stage examination fee - all other situations	Undiscounted	$800	$880
1.492(c)(2)	2633	National stage examination fee - all other situations	Small	$320	$352
1.492(c)(2)	3633	National stage examination fee - all other situations	Micro	$160	$176
1.492(d)	1614	Each independent claim in excess of three	Undiscounted	$480	$600
1.492(d)	2614	Each independent claim in excess of three	Small	$192	$240
1.492(d)	3614	Each independent claim in excess of three	Micro	$96	$120
1.492(e)	1615	Each claim in excess of 20	Undiscounted	$100	$200
1.492(e)	2615	Each claim in excess of 20	Small	$40	$80
1.492(e)	3615	Each claim in excess of 20	Micro	$20	$40
1.492(f)	1616	Multiple dependent claim	Undiscounted	$860	$925

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.492(f)	2616	Multiple dependent claim	Small	$344	$370
1.492(f)	3616	Multiple dependent claim	Micro	$172	$185
1.492(h)	1617	Search fee, examination fee or oath or declaration after the date of commencement of the national stage	Undiscounted	$160	$170
1.492(h)	2617	Search fee, examination fee or oath or declaration after the date of commencement of the national stage	Small	$64	$68
1.492(h)	3617	Search fee, examination fee or oath or declaration after the date of commencement of the national stage	Micro	$32	$34
1.492(i)	1618	English translation after thirty months from priority date	Undiscounted	$140	$150
1.492(i)	2618	English translation after thirty months from priority date	Small	$56	$60
1.492(i)	3618	English translation after thirty months from priority date	Micro	$28	$30
1.492(j)	1681	National stage application size fee - for each additional 50 sheets that exceeds 100 sheets	Undiscounted	$420	$450
1.492(j)	2681	National stage application size fee - for each additional 50 sheets that exceeds 100 sheets	Small	$168	$180
1.492(j)	3681	National stage application size fee - for each additional 50 sheets that exceeds 100 sheets	Micro	$84	$90

Section 1.555

Section 1.555 is amended by revising paragraph (a) to require the information disclosure statement size fee under § 1.17(v) for an information disclosure statement in compliance with § 1.98 to be considered by the USPTO during the pendency of the reexamination proceeding.

Section 1.1031

Section 1.1031 is amended by revising paragraph (a) to set forth international design application fees as authorized under section 10 of the AIA. The

changes to the fee amounts in § 1.1031 are shown in table 28.

Table 28: § 1.1031 Fee Changes

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
1.1031(a)	1781	Hague international design application - transmittal fee	Undiscounted	$120	$130
1.1031(a)	2781	Hague international design application - transmittal fee	Small	$48	$52
1.1031(a)	3781	Hague international design application - transmittal fee	Micro	$24	$26

Section 41.20

Section 41.20 is amended by revising paragraphs (a) and (b) to set forth petition and appeal fees as authorized under section 10 of the AIA. The changes to the fee amounts in § 41.20 are shown in table 29.

Table 29: § 41.20 Fee Changes

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
41.20(a)	1405	Petitions to the Chief Administrative Patent Judge under 37 CFR 41.3	Undiscounted	$420	$452
41.20(a)	2405	Petitions to the Chief Administrative Patent Judge under 37 CFR 41.3	Small	$420	$452
41.20(a)	3405	Petitions to the Chief Administrative Patent Judge under 37 CFR 41.3	Micro	$420	$452
41.20(b)(1)	1401	Notice of appeal	Undiscounted	$840	$905
41.20(b)(1)	2401	Notice of appeal	Small	$336	$362
41.20(b)(1)	3401	Notice of appeal	Micro	$168	$181
41.20(b)(2)(ii)	1404	Filing a brief in support of an appeal in an inter partes reexamination proceeding	Undiscounted	$2,100	$2,260
41.20(b)(2)(ii)	2404	Filing a brief in support of an appeal in an inter partes reexamination proceeding	Small	$840	$904
41.20(b)(2)(ii)	3404	Filing a brief in support of an appeal in an inter partes reexamination proceeding	Micro	$420	$452
41.20(b)(3)	1403	Request for oral hearing	Undiscounted	$1,360	$1,460
41.20(b)(3)	2403	Request for oral hearing	Small	$544	$584
41.20(b)(3)	3403	Request for oral hearing	Micro	$272	$292
41.20(b)(4)	1413	Forwarding an appeal in an application or ex parte reexamination proceeding to the Board	Undiscounted	$2,360	$2,535
41.20(b)(4)	2413	Forwarding an appeal in an application or ex parte reexamination proceeding to the Board	Small	$944	$1,014
41.20(b)(4)	3413	Forwarding an appeal in an application or ex parte reexamination proceeding to the Board	Micro	$472	$507

Section 42.15

Section 42.15 is amended by revising paragraphs (a) through (e) and adding paragraph (f) to set forth inter partes review and post-grant review or covered business method patent review of a patent fees as authorized under section 10 of the AIA. The changes to the fee amounts in § 42.15 are shown in table 30.

Table 30: § 42.15 Fee Changes

CFR section	Fee code	Description	Entity type	Current fee	Final rule fee
42.15(a)(1)	1406	Inter partes review request fee - Up to 20 claims	Undiscounted	$19,000	$23,750
42.15(a)(2)	1414	Inter partes review post-institution fee - Up to 20 claims	Undiscounted	$22,500	$28,125
42.15(a)(3)	1407	Inter partes review request of each claim in excess of 20	Undiscounted	$375	$470
42.15(a)(4)	1415	Inter partes post-institution request of each claim in excess of 20	Undiscounted	$750	$940
42.15(b)(1)	1408	Post-grant or covered business method review request fee - Up to 20 claims	Undiscounted	$20,000	$25,000
42.15(b)(2)	1416	Post-grant or covered business method review post-institution fee - Up to 20 claims	Undiscounted	$27,500	$34,375
42.15(b)(3)	1409	Post-grant or covered business method review request of each claim in excess of 20	Undiscounted	$475	$595
42.15(b)(4)	1417	Post-grant or covered business method review post-institution request of each claim in excess of 20	Undiscounted	$1,050	$1,315
42.15(c)(1)	1412	Petition for a derivation proceeding	Undiscounted	$420	$452
42.15(d)	1411	Request to make a settlement agreement available and other requests filed in an AIA trial proceeding	Undiscounted	$420	$452
42.15(e)	1418	Pro hac vice admission fee	Undiscounted	$250	$269
42.15(f)	New	Request for review of a PTAB decision by the Director	Undiscounted	n/a	$452

BILLING CODE 3510–16–C

VIII. Rulemaking Considerations

A. America Invents Act

This rule sets or adjust fees under section 10(a) of the AIA as amended by the SUCCESS Act, Pub. L. 115–273, 132 Stat. 4158. Section 10(a) of the AIA authorizes the Director to set or adjust by rule any patent fee established, authorized, or charged under 35 U.S.C. for any services performed or materials furnished by the USPTO. The SUCCESS Act extends the USPTO fee setting authority until September 2026. Section 10 prescribes that fees may be set or adjusted only to recover the aggregate estimated cost to the USPTO for processing, activities, services, and materials relating to patents, including administrative costs of the agency with respect to such patent fees. Section 10 authority includes flexibility to set individual fees in a way that furthers key policy factors, while taking into account the cost of the respective services. Section 10(e) of the AIA sets forth the general requirements for rulemakings that set or adjust fees under this authority. In particular, section 10(e)(1) requires the Director to publish in the **Federal Register** any proposed fee change under section 10 and include in such publication the specific rationale and purpose for the proposal, including the possible expectations or benefits resulting from the proposed change. For such rulemakings, the AIA requires that the USPTO provide a public comment period of not less than 45 days.

PPAC advises the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on the management, policies, goals, performance, budget, and user fees of patent operations. When proposing fees under section 10 of the AIA, the Director must provide PPAC with the proposed fees at least 45 days prior to publishing the proposed fees in the **Federal Register**. PPAC then has at least 30 days within which to deliberate, consider, and comment on the proposal, as well as hold public hearings on the proposed fees. PPAC must provide a written report to the public detailing the committee's comments, advice, and recommendations regarding the proposed fees before the USPTO issues a final rule. The USPTO must consider and analyze any comments, advice, or recommendations received from PPAC before setting or adjusting fees.

Consistent with this framework, on April 20, 2023, the Director notified PPAC of the USPTO's intent to set or adjust patent fees and submitted a preliminary patent fee proposal with supporting materials. The preliminary patent fee proposal and associated materials are available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting.* PPAC held a public hearing at the USPTO's headquarters in Alexandria, Virginia, on May 18, 2023, where members of the public were given the opportunity to provide oral testimony. Transcripts of the hearing are available for review on the USPTO website at *https://www.uspto.gov/sites/default/files/documents/PPAC_Hearing_Transcript-20230518.pdf.* Members of the public were also given the opportunity to submit written comments for PPAC to consider, and these comments are available on *Regulations.gov* at *https://www.regulations.gov/document/PTO-P-2023-0017-0001.* On August 14, 2023, PPAC released a written report setting forth in detail their comments, advice, and recommendations regarding the preliminary proposed fees. The PPAC Report is available on the USPTO website at *https://www.uspto.gov/sites/default/files/documents/PPAC-Report-on-2023-Fee-Proposal.docx.* The USPTO considered and analyzed all comments, advice, and recommendations received from PPAC before publishing the NPRM on April 3, 2024 (89 FR 23226). The NPRM comment period closed on June 3, 2024. Section 10(e) of the AIA requires the director to publish the final fee rule in the **Federal Register** and the *Official Gazette* of the USPTO at least 45 days before the final fees become effective. Pursuant to this requirement, this rule is effective on January 19, 2025.

B. Regulatory Flexibility Act (RFA)

The USPTO publishes this Final Regulatory Flexibility Analysis (FRFA) as required by the RFA (5 U.S.C. 601 *et seq.*) to examine the impact of this final rule on small entities. Under the RFA, whenever an agency is required by 5 U.S.C. 553 (or any other law) to publish an NPRM, the agency must prepare and make available for public comment an Initial Regulatory Flexibility Analysis (IRFA), unless the agency certifies under 5 U.S.C. 605(b) that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities. The USPTO published an IRFA, along with the NPRM, on April 3, 2024 (89 FR 23226). Given that the final patent fee schedule, based on the assumptions found in the FY 2025 Budget, is projected to result in $2,053 million in additional aggregate revenue over the current fee schedule (baseline) for the period including FY 2025 to FY 2029, the USPTO acknowledges that the fee adjustments will impact all entities seeking patent protection and could have a significant impact on small and micro entities. The $2,053 million in additional aggregate revenue results from an additional $292 million in FY 2025, $435 million in FY 2026, $442 million in FY 2027, $441 million in FY 2028, and $444 million in FY 2029. This implies annualized effects of $406.3 million using a 3% discount rate and $408.5 million using a 7% discount rate.

Items 1–6 below discuss the six items specified in 5 U.S.C. 604(a)(1)–(6) to be addressed in an FRFA. Item 6 below discusses the alternatives to this final rule that were considered.

1. A statement of the need for, and objectives of, the rule.

Section 10 of the AIA authorizes the Director to set or adjust by rule any patent fee established, authorized, or charged under 35 U.S.C. for any services performed or materials furnished by the USPTO. The objective of this final patent fee schedule is for patent fees to recover the aggregate cost of patent operations, including administrative costs, while facilitating effective administration of the U.S. patent system. Since its inception, the AIA strengthened the patent system by affording the USPTO the ''resources it requires to clear the still sizeable unexamined inventory of patent applications and move forward to deliver to all American inventors the first rate service they deserve.'' H.R. Rep. No. 112–98(I), at 163 (2011). In setting and adjusting fees under the AIA, the agency will secure a sufficient amount of aggregate revenue to recover the aggregate cost of patent operations, including revenue needed to achieve strategic and operational goals. Additional information on the USPTO's strategic goals may be found in the Strategic Plan, available at *www.uspto.gov/StrategicPlan.* Additional information on the agency's operating requirements to achieve the strategic goals may be found in the ''USPTO FY 2025 President's Budget Request,'' available at *https://www.uspto.gov/about-us/performance-and-planning/budget-and-financial-information.*

2. 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 final rule as a result of such comments.

The USPTO did not receive any public comments in response to the IRFA. However, the agency received comments about fees in general, as well as particular fees, and their impact on

small entities, which are discussed above in Part VI. Discussion of Comments.

3. 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 USPTO did not receive any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the NPRM.

4. A description of and, where feasible, an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

a. SBA Size Standard

The SBA size standards applicable to most analyses conducted to comply with the RFA are set forth in 13 CFR 121.201. These regulations generally define small businesses as those with less than a specified maximum number of employees or less than a specified level of annual receipts for the entity's industrial sector or North American Industry Classification System (NAICS) code. As provided by the RFA, and after consulting with the SBA, the USPTO formally adopted an alternate size standard for the purpose of conducting an analysis or making a certification under the RFA for patent-related regulations. See ''Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations,'' 71 FR 67109, 67109 (Nov. 20, 2006), 1313 Off. Gaz. Pat. Office 37, 60 (Dec. 12, 2006). The USPTO's alternate small business size standard consists of the SBA's previously established size standard for entities entitled to pay reduced patent fees. See 13 CFR 121.802.

Unlike the SBA's generally applicable small business size standards, the size standard for the USPTO is not industry-specific. The USPTO's definition of a small business concern for RFA purposes is a business or other concern that meets the SBA's definition of a ''business concern or concern'' set forth in § 121.105 and meets the size standards set forth in § 121.802 for the purpose of paying reduced patent fees, namely, an entity (a) whose number of employees, including affiliates, does not exceed 500 persons; and (b) that has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor or to any concern that would not qualify as a nonprofit organization or a small business concern under this definition. See 71 FR at 67109, 1313 Off. Gaz. Pat. Office 60.

A patent applicant can self-identify on a patent application as qualifying as a small entity or may provide certification of micro entity status for reduced patent fees under the USPTO's alternative size standard. The data is captured and tracked for each patent application submitted.

b. Small Entity Defined

The AIA, as amended by the UAIA, provides that fees set or adjusted under section 10(a) ''for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents shall be reduced by 60 percent'' with respect to the application of such fees to any ''small entity'' (as defined in § 1.27) that qualifies for reduced fees under 35 U.S.C. 41(h)(1). In turn, 125 Stat. at 316–17. 35 U.S.C. 41(h)(1) provides that certain patent fees ''shall be reduced by 60 percent'' for a small business concern as defined by section 3 of the Small Business Act and for any independent inventor or nonprofit organization as defined in regulations described by the Director.

c. Micro Entity Defined

Section 10(g) of the AIA created a new category of entity called a ''micro entity.'' 35 U.S.C. 123; see also 125 Stat. at 318–19. Section 10(b) of the AIA, as amended by the UAIA, provides that the fees set or adjusted under section 10(a) ''for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents shall be reduced by 80 percent with respect to the application of such fees to any micro entity as defined by 35 U.S.C. 123.'' 125 Stat. at 315–17. 35 U.S.C. 123(a) defines a ''micro entity'' as an applicant who makes a certification that the applicant (1) qualifies as a small entity as defined in § 1.27; (2) has not been named as an inventor on more than four previously filed patent applications, other than applications filed in another country, provisional applications under 35 U.S.C. 111(b), 35 U.S.C. 111(b), or Patent Cooperation Treaty (PCT) applications for which the basic national fee under 35 U.S.C. 41(a) was not paid; (3) did not, in the calendar year preceding the calendar year in which the applicable fee is being paid, have a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986 (26 U.S.C. 61(a)), exceeding three times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census; and (4) has not assigned, granted, or conveyed, and is not under an obligation by contract or law, to assign, grant, or convey, a license or other ownership interest in the application concerned to an entity exceeding the income limit set forth in (3) above. See 125 Stat. at 318; see also *https://www.uspto.gov/PatentMicroEntity.* 35 U.S.C. 123(d) also defines a ''micro'' as an applicant who certifies that the applicant's employer, from which the applicant obtains the majority of the applicant's income, is an institution of higher education as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); or the applicant has assigned, granted, conveyed, or is under an obligation by contract or law, to assign, grant, or convey, a license or other ownership interest in the particular applications to such an institution of higher education.

d. Estimate of Number of Small Entities Affected

The changes in this final rule will apply to any entity, including small and micro entities, that pays any patent fee set forth in the final rule. The reduced fee rates (60% for small entities and 80% for micro entities) will continue to apply to any small entity asserting small entity status and to any micro entity certifying micro entity status for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.

The USPTO reviews historical data to estimate the percentages of application filings asserting small entity status. Table 31 presents a summary of such small entity filings by type of application (utility, reissue, plant, design) over the last five years.

BILLING CODE 3510–16–P

Table 31: Number of Patent Applications Filed in the Last Five Years*

		FY 2019	FY 2020	FY 2021	FY 2022	FY 2023**	Average
Utility	All	619,463	607,501	594,090	590,096	594,922	601,214
	Small	134,686	137,610	141,314	140,387	143,409	139,481
	% Small	21.7%	22.7%	23.8%	23.8%	24.1%	23.2%
	Micro	19,724	19,317	19,798	18,406	17,562	18,961
	% Micro	3.2%	3.2%	3.3%	3.1%	3.0%	3.2%
Reissue	All	714	727	706	755	615	703
	Small	160	181	190	200	188	184
	% Small	22.4%	24.9%	26.9%	26.5%	30.6%	26.2%
	Micro	19	28	11	27	6	18
	% Micro	2.7%	3.9%	1.6%	3.6%	1.0%	2.6%
Plant	All	1,160	1,043	945	934	865	989
	Small	589	504	424	445	403	473
	% Small	50.8%	48.3%	44.9%	47.6%	46.6%	47.8%
	Micro	8	7	6	10	5	7
	% Micro	0.7%	0.7%	0.6%	1.1%	0.6%	0.7%
Design	All	46,061	50,002	56,085	55,678	54,655	52,496
	Small	18,628	19,001	19,913	18,972	20,421	19,387
	% Small	40.4%	38.0%	35.5%	34.1%	37.4%	36.9%
	Micro	6,367	9,033	15,088	14,337	14,203	11,806
	% Micro	13.8%	18.1%	26.9%	25.7%	26.0%	22.5%

* The patent application filing data in this table includes RCEs.
** FY 2023 application filing data are preliminary.

BILLING CODE 3510–16–C

Because the percentage of small entity filings varies widely between application types, the USPTO has averaged the small entity filing rates

over the past five years for those application types to estimate future filing rates by small and micro entities. Those average rates appear in the last column of table 31. The USPTO estimates that small entity filing rates will continue for the next five years at these average historic rates.

The USPTO forecasts the number of projected patent applications (*i.e.,* workload) for the next five years using a combination of historical data, economic analysis, and subject matter expertise. The USPTO estimates that utility, plant, and reissue (UPR) patent application filings will grow by 0.4% in FY 2024 and about 1.5% per year on average from FY 2025 to FY 2029. Design patent applications are forecast independently of UPR applications because they exhibit different filing behaviors.

Using the estimated filings for the next five years, and the average historic rates of small entity filings, table 32 presents the USPTO's estimates of the number of patent application filings by all applicants, including small and micro entities, over the next five fiscal years by application type.

The USPTO has previously undertaken an elasticity analysis to examine if fee adjustments may impact small entities and whether increases in fees would result in some such entities not submitting applications. Elasticity measures how sensitive demand for services by patent applicants and patentees is to fee changes. If elasticity is low enough (demand is *inelastic*), then fee increases will not reduce patenting activity enough to negatively impact overall revenues. If elasticity is high enough (demand is *elastic*), then increasing fees will decrease patenting activity enough to decrease revenue. The USPTO analyzed elasticity at the overall filing level across all patent applicants with regard to entity size and estimated the potential impact to patent application filings across entities. Additional information about how the USPTO estimates elasticity is provided in ''Setting and Adjusting Patent Fees during Fiscal Year 2020—Description of Elasticity Estimates,'' available on the USPTO website at *https://www.uspto.gov/sites/default/files/documents/Elasticity_Appendix.docx.*

Table 32: Estimated Numbers of Patent Applications, FY 2024–29

		FY 2024 (Current)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Utility	All	595,315	607,897	613,902	622,038	628,036	641,784
Reissue	All	640	660	680	700	700	700
Plant	All	860	860	860	860	860	860
Design	All	54,986	57,185	59,472	62,446	65,568	68,847
Total	All	651,801	666,602	674,914	686,044	695,164	712,191

5. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and type of professional skills necessary for preparation of the report or record.

When implemented, this rule will not change the burden of existing reporting and recordkeeping requirements for payment of fees. The current requirements for small and micro entities will continue to apply. Therefore, the professional skills necessary to file and prosecute an application through issue and maintenance remain unchanged under this rule. This action only adjusts patent fees and does not set procedures for asserting small entity status or certifying micro entity status, as previously discussed. There are no new compliance requirements in this rule.

The full fee schedule (see Part VII: Discussion of Specific Rules) is set forth in this final rule. The fee schedule sets or adjusts 433 patent fees in total, including 52 new fees.

6. 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.

The USPTO considered several alternative approaches to this final rule, discussed below, including full cost recovery for individual services, an across-the-board adjustment to fees, and a baseline (current fee rates). The discussion here begins with a description of the fee schedule adopted for this final rule. A full discussion of the costs and benefits of all four alternatives and the methodology used for that analysis is contained in the RIA, available at *https://www.uspto.gov/FeeSettingAndAdjusting.*

a. Alternative 1: Final Patent Fee Schedule—Setting and Adjusting Patent Fees During Fiscal Year 2025

The final patent fee schedule secures the USPTO's required revenue to facilitate the effective administration of the U.S. patent system, including implementing the Strategic Plan. The revenue will allow the USPTO to continue to balance timely examination—to help innovators bring their ideas and products to impact more quickly and efficiently—with improvements in patent quality—particularly, the robustness and reliability of issued patents—and ensure the USPTO can resource mission

success. Adequate resources will benefit all applicants, including small and micro entities, without undue burden or barriers to entry to patent applicants and holders or reduced incentives to innovate. This alternative maintains small and micro entity discounts. Compared to the current fee schedule, there are no new small or micro entity fee codes being extended to existing undiscounted fee rates and none are being eliminated.

As discussed throughout this document, the fee changes in this alternative are moderate compared to other alternatives. Given that the final patent fee schedule will result in increased aggregate revenue, small and micro entities will pay higher fees when compared to the current fee schedule (Alternative 4).

In summary, the fees to obtain a patent will increase. All fees are subject to the 7.5% across-the-board adjustment. In addition to the across-the-board adjustment, some fees will be subject to a larger increase. For example, the fee rate for a first RCE will increase by 10%, and second and subsequent RCEs will increase by 43%, respectively. Also, AIA trial fees will increase 25% to better align the fee rates charged with the actual costs borne by the USPTO to provide these proceedings and so PTAB can continue to maintain the appropriate level of judicial and administrative resources to continue to provide high-quality and timely decisions for AIA trials.

Adjusting the patent fee schedule as prescribed in this alternative allows the USPTO to implement the patent-related strategic goals and objectives documented in the Strategic Plan and to carry out requirements as described in the FY 2025 Budget. Specifically, the revenue from this final patent fee schedule is sufficient to recover the aggregate estimated costs of patent operations and to support the strategic objectives to issue and maintain robust and reliable patents, improve patent application pendency, optimize the patent application process to enable efficiencies for applicants and other stakeholders, and enhance internal processes to prevent fraudulent and abusive behaviors that do not embody the USPTO's mission. The final patent fee schedule focuses on building resiliency against financial shocks by maintaining the minimum operating reserve balance (approximately one month of operating expenses) while building the operating reserve balance to the optimal reserve target (approximately three months of operating expenses). While the other alternatives discussed facilitate progress toward some of the USPTO's goals, the final patent fee schedule is the only one that does so in a way that does not impose undue costs on patent applicants and holders.

The fee schedule under this final rule is available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting,* in the document titled ''Setting and Adjusting Patent Fees During Fiscal Year 2025–FRFA Tables.''

b. Other Alternatives Considered

In addition to the final fee schedule set forth in Alternative 1, the USPTO considered three other alternative approaches. The agency calculated proposed fees and the resulting revenue derived from each alternative scenario. The proposed fees and their corresponding revenue tables are available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting.* Only the fees outlined in Alternative 1 are set or adjusted in this final rule; other alternative scenarios are shown only to demonstrate the analysis of other options.

Alternative 2: Unit Cost Recovery

It is common practice in the Federal Government to set individual fees at a level sufficient to recover the cost of that single service. In fact, official guidance on user fees, as cited in OMB Circular A–25, ''User Charges,'' states that user charges (fees) should be sufficient to recover the full cost to the Federal Government of providing the particular service, resource, or good when the government is acting in its capacity as sovereign.

As such, the USPTO considered setting most individual undiscounted fees at the historical cost of performing the activities related to the particular service in FY 2022. While more recent FY 2023 cost data is now available, for consistency with information presented in the NPRM, the agency continues to base the fee rates displayed under Alternative 2 in the FRFA and the RIA on FY 2022 unit cost data. The USPTO recognizes that using FY 2022 costs to set fee rates beginning in FY 2025 does not account for inflationary factors that would likely increase costs and necessitate higher fees in the out-years. However, the USPTO contends that the FY 2022 data is the best unit cost data available to inform this analysis.

There are several complexities in achieving individual fee unit cost recovery for the patent fee schedule. The most significant is the AIA requirement to provide a 60% discount on fees to small entities and an 80% discount on fees to micro entities. To account for this requirement, this alternative retains existing small and micro entity discounts where eligible under AIA authority. To provide these discounts and still generate sufficient revenue to recover the anticipated budgetary requirements over the five-year period, maintenance fees must be set significantly above unit cost under this alternative. Note that the USPTO no longer collects activity-based information for maintenance fees, and previous year unit costs were negligible.

Except for maintenance fees, this alternative sets fees for which there is no FY 2022 cost data at current rates. For the small number of services that have a variable fee, the aggregate revenue table does not list a fee. Instead, for those services with an estimated workload, the workload is listed in dollars rather than units to develop revenue estimates. Fees without either a fixed fee rate or a workload estimate are assumed to provide zero revenue.

Alternative 2 does not align well with the agency's strategic and policy goals. Front-end services (*i.e.,* filing, search, and examination) are costlier for the USPTO to perform than back-end services (*i.e.,* issuance and maintenance), but both the current (the Baseline) and final patent fee schedule (Alternative 1) are structured to collect fees at filing below the cost and more fees further along in the process, when the patent owner has better information about a patent's value, rather than at the time of filing, when applicants are less certain about the value of their invention. Setting fees at the cost of the service under Alternative 2 would reverse the long-established policy to set front-end fees below cost to foster innovation and would create a barrier for entry into the patent system.

The USPTO has estimated the potential quantitative elasticity impacts for application filings (*e.g.,* filing, search, and examination fees), maintenance renewals (all three stages), and other major fee categories. Results of this analysis indicate that a high cost of entry into the patent system could lead to a significant decrease in the incentives to invest in innovative activities among all entities, especially for small and micro entities. Under the current fee schedule, maintenance fees subsidize all applications. By setting fees to recover the cost of each service at each point in the application process, the USPTO would effectively charge high fees for every patent application, meaning those applicants who have less information about the patentability of

their claims or the market value of their invention may be less likely to pursue patent prosecution. The ultimate effect of these changes in behavior is likely to stifle innovation. While the loss of the front-end subsidy designed to promote innovation strategies is the most obvious cost of this alternative, the impacts of much costlier patent processing options (*e.g.,* RCEs and appeals) are also noticeable.

Similarly, the USPTO suspects that patent renewal rates could change as well, given fee reductions for maintenance fees at each of the three stages. While some innovators and firms may choose to file fewer applications given the higher front-end costs, others whose claims are allowed or upheld may seek to fully maximize the benefits of obtaining a patent by keeping those patents in force for longer than they would have previously (*i.e.,* under the baseline). In the aggregate, patents that are maintained beyond their useful life weaken the IP system by slowing the rate of public accessibility and follow-on inventions, which is contrary to the USPTO's policy factor of promoting innovation strategies. In sum, this alternative is inadequate to accomplish the goals as stated in Part IV: Rulemaking Goals and Strategies of this rule.

The fee schedule for this alternative is available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting,* in the document titled ''Setting and Adjusting Patent Fees During Fiscal Year 2025—FRFA Tables.''

Alternative 3: Across-the-Board Adjustment

In years past, the USPTO used its authority to adjust statutory fees annually according to increases in the consumer price index (CPI), which is a commonly used measure of inflation. Building on this prior approach and incorporating the additional authority under the AIA to set small and micro entity fees, Alternative 3 would set fees by applying a one-time 12.5%, across-the-board increase to the baseline (current fees) beginning in FY 2025. A 12.5% increase represents the change in revenue needed to achieve the aggregate revenue necessary to recover the aggregate estimated costs laid out in the FY 2025 Budget.

Under this alternative, nearly every existing fee would be increased, no new fees would be introduced, and no fees would be discontinued or reduced. This alternative maintains the status quo ratio of front-end and back-end fees, given that all fees would be adjusted by the same escalation factor, thereby promoting innovation strategies and allowing applicants to gain access to the patent system through fees set below cost while patent holders pay issue and maintenance fees above cost to subsidize the below-cost front-end fees. Alternative 3 nevertheless fails to implement policy factors and deliver benefits beyond what exists in the Baseline fee schedule (*e.g.,* no fee adjustments to offer new patent prosecution options or facilitate more effective administration of the patent system).

The fee schedule for this alternative is available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting,* in the document titled ''Setting and Adjusting Patent Fees During Fiscal Year 2025—FRFA Tables.''

Alternative 4: Baseline (Current Fee Schedule)

The USPTO considered a no-action alternative. This alternative would retain the status quo, meaning that the USPTO would continue the small and micro entity discounts that the Congress provided in section 10 of the AIA, as amended by the UAIA, and maintain the fees that became effective on December 29, 2022.

Alternative 4 would not secure aggregate revenue to recover the aggregate estimated costs laid out in the FY 2025 Budget. Under this alternative, the USPTO would only expect to collect sufficient revenue to continue executing some, not all, of the patent priorities. For example, the USPTO plans to hire approximately 800 to 850 patent examiners in FY 2024 through FY 2025, and between 700 and 900 patent examiners in FY 2026 through FY 2029 (averaging 350 over estimated attrition levels) during the five-year planning horizon. This additional examination capacity will allow the agency to improve patent reliability and maintain patent term adjustment (PTA) compliance rates. Alternative 4 provides neither sufficient resources to hire the same number of examiners nor sufficient resources to continue building the patent operating reserve to its optimal level in the five-year planning horizon. In fact, current estimates project that under the Baseline fee schedule, the USPTO would withdraw funds from the patent operating reserve in every year until the reserve is exhausted during FY 2027. This approach would not provide sufficient aggregate revenue to accomplish the USPTO's rulemaking goals as stated in Part IV: Rulemaking Goals and Strategies of this rule. IT improvements, progress on timely processing and quality, and other improvement activities would continue, but at a significantly slower rate as increases in core patent examination costs crowd out funding for other improvements. Likewise, without a fee increase, the USPTO would deplete its operating reserves, leaving the USPTO vulnerable to fiscal and economic events. This approach would expose core operations to unacceptable levels of financial risk and would position the USPTO to have to return to making inefficient, short-term funding decisions.

The fee schedule for this alternative is available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting,* in the document titled ''Setting and Adjusting Patent Fees During Fiscal Year 2025—FRFA Tables.''

Alternatives Specified by the RFA

The RFA provides that an agency also consider four specified ''alternatives'' or approaches, namely: (i) establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) clarifying, consolidating, or simplifying compliance and reporting requirements under the rule for small entities; (iii) using performance rather than design standards; and (iv) exempting small entities from coverage of the rule or any part thereof. 5 U.S.C. 604(c). The USPTO discusses each of these specified alternatives or approaches below and describes how this final rule is adopting these approaches.

i. Differing Requirements

As discussed above, the changes in this final rule would continue existing fee discounts for small and micro entities that take into account the reduced resources available to them as well as offer new discounts when applicable under AIA authority. Specifically, micro entities would continue to receive an 80% reduction in most patent fees under this final rule, and small entities that do not qualify as micro entities would continue to receive a 60% reduction in most patent fees.

This final rule sets fee levels but does not set or alter procedural requirements for asserting small or micro entity status. Small entities must merely assert small entity status to pay reduced patent fees. The small entity may make this assertion by either checking a box on the transmittal form, ''Applicant claims small entity status,'' or by paying the basic filing or basic national small entity

fee exactly. The process to claim micro entity status is similar in that eligible entities need only submit a written certification of their status prior to or at the time a reduced fee is paid. This final rule does not change any reporting requirements for any small or micro entity. For both small and micro entities, the burden to establish their status is nominal (making an assertion or submitting a certification) and the benefit of the fee reductions (60% for small entities and 80% for micro entities) is significant.

This final rule makes the best use of differing requirements for small and micro entities. It also makes the best use of the redesigned fee structure, as discussed further below.

ii. Clarification, Consolidation, or Simplification of Requirements

This final rule pertains to setting or adjusting patent fees. Any compliance or reporting requirements in this rule are de minimis and necessary to implement lower fees. Therefore, any clarifications, consolidations, or simplifications to compliance and reporting requirements for small entities are not applicable or would not achieve the objectives of this rulemaking.

iii. Performance Standards

Performance standards do not apply to this final rule.

iv. Exemption for Small and Micro Entities

This final rule maintains a 60% reduction in fees for small entities and an 80% reduction in fees for micro entities. The USPTO considered exempting small and micro entities from paying increased patent fees but determined that the USPTO would lack statutory authority for this approach. Section 10(b) of the AIA, as amended by the UAIA, provides that ''fees set or adjusted under subsection (a) for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents *shall* be reduced by 60 percent [for small entities] and *shall* be reduced by 80 percent [for micro entities]'' (emphasis added). Neither the AIA, UAIA, nor any other statute authorizes the USPTO to exempt small or micro entities, as a class of applicants, from paying increased patent fees.

C. Executive Order 12866 (Regulatory Planning and Review)

This final rule has been determined to be 3(f)(1) significant for purposes of Executive Order (E.O.) 12866 (Sept. 30, 1993), as amended by E.O. 14094 (April 6, 2023), Modernizing Regulatory Review. The USPTO has developed an RIA as required for rulemakings deemed to be 3(f)(1) significant. The complete RIA is available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting.*

D. Executive Order 13563 (Improving Regulation and Regulatory Review)

The USPTO has complied with E.O. 13563 (Jan. 18, 2011). Specifically, the USPTO has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of the final rule; (2) tailored the final rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism)

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation)

This rulemaking will not: (1) have substantial direct effects on one or more Indian Tribes; (2) impose substantial direct compliance costs on Indian Tribal governments; or (3) preempt Tribal law. Therefore, a Tribal summary impact statement is not required under E.O. 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects)

This rulemaking is not a significant energy action under E.O. 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under E.O. 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform)

This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of E.O. 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children)

This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under E.O. 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property)

This rulemaking will not affect a taking of private property or otherwise have taking implications under E.O. 12630 (Mar. 15, 1988).

K. Congressional Review Act

Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the USPTO will submit a report containing the rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this final rule are expected to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this final rule meets the criteria in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995

The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, of $100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of $100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act

This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from

review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

O. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. The collection of information involved in this final rule has been reviewed and previously approved by OMB under control numbers 0651–0012, 0651–0016, 0651–0017, 0651–0020, 0651–0021, 0651–0024, 0651–0027, 0651–0031, 0651–0032, 0651–0033, 0651–0034, 0651–0035, 0651–0059, 0651–0062, 0651–0063, 0651–0064, 0651–0069, 0651–0075 and 0651–0089. In addition, updates to the aforementioned information collections as a result of this final rule will be submitted to the OMB as non-substantive change requests.

Notwithstanding any other provision of law, no person is required to respond to nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

P. E-Government Act Compliance

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

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Biologics, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

37 CFR Part 42

Administrative practice and procedure, Inventions and patents, Lawyers.

For the reasons set forth in the preamble, 37 CFR parts 1, 41, and 42 are amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

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

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. Section 1.16 is amended by revising the tables 1 through 19 in paragraphs (a) through (s) and table 21 in paragraph (u) to read as follows:

§ 1.16 National application filing, search, and examination fees.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

By a micro entity (§ 1.29)	$70.00
By a small entity (§ 1.27(a))	140.00
By a small entity (§ 1.27(a)) if the application is submitted in compliance with the USPTO electronic filing system (§ 1.27(b)(2))	70.00
By other than a small or micro entity	350.00

(b) * * *

TABLE 2 TO PARAGRAPH (b)

By a micro entity (§ 1.29)	$60.00
By a small entity (§ 1.27(a))	120.00
By other than a small or micro entity	300.00

(c) * * *

TABLE 3 TO PARAGRAPH (c)

By a micro entity (§ 1.29)	$48.00
By a small entity (§ 1.27(a))	96.00
By other than a small or micro entity	240.00

(d) * * *

TABLE 4 TO PARAGRAPH (d)

By a micro entity (§ 1.29)	$65.00
By a small entity (§ 1.27(a))	130.00
By other than a small or micro entity	325.00

(e) * * *

TABLE 5 TO PARAGRAPH (e)

By a micro entity (§ 1.29)	$70.00
By a small entity (§ 1.27(a))	140.00
By other than a small or micro entity	350.00

(f) * * *

TABLE 6 TO PARAGRAPH (f)

By a micro entity (§ 1.29)	$34.00
By a small entity (§ 1.27(a))	68.00
By other than a small or micro entity	170.00

(g) * * *

TABLE 7 TO PARAGRAPH (g)

By a micro entity (§ 1.29)	$13.00
By a small entity (§ 1.27(a))	26.00
By other than a small or micro entity	65.00

(h) * * *

TABLE 8 TO PARAGRAPH (h)

By a micro entity (§ 1.29)	$120.00
By a small entity (§ 1.27(a))	240.00
By other than a small or micro entity	600.00

(i) * * *

TABLE 9 TO PARAGRAPH (i)

By a micro entity (§ 1.29)	$40.00
By a small entity (§ 1.27(a))	80.00
By other than a small or micro entity	200.00

(j) * * *

TABLE 10 TO PARAGRAPH (j)

By a micro entity (§ 1.29)	$185.00
By a small entity (§ 1.27(a))	370.00
By other than a small or micro entity	925.00

(k) * * *

TABLE 11 TO PARAGRAPH (k)

By a micro entity (§ 1.29)	$154.00
By a small entity (§ 1.27(a))	308.00
By other than a small or micro entity	770.00

(l) * * *

TABLE 12 TO PARAGRAPH (l)

By a micro entity (§ 1.29)	$60.00
By a small entity (§ 1.27(a))	120.00
By other than a small or micro entity	300.00

(m) * * *

TABLE 13 TO PARAGRAPH (m)

By a micro entity (§ 1.29)	$97.00
By a small entity (§ 1.27(a))	194.00
By other than a small or micro entity	485.00

(n) * * *

TABLE 14 TO PARAGRAPH (n)

By a micro entity (§ 1.29)	$154.00
By a small entity (§ 1.27(a))	308.00
By other than a small or micro entity	770.00

(o) * * *

TABLE 15 TO PARAGRAPH (o)

By a micro entity (§ 1.29)	$176.00
By a small entity (§ 1.27(a))	352.00
By other than a small or micro entity	880.00

(p) * * *

TABLE 16 TO PARAGRAPH (p)

By a micro entity (§ 1.29)	$140.00
By a small entity (§ 1.27(a))	280.00
By other than a small or micro entity	700.00

(q) * * *

TABLE 17 TO PARAGRAPH (q)

By a micro entity (§ 1.29)	$145.00
By a small entity (§ 1.27(a))	290.00
By other than a small or micro entity	725.00

(r) * * *

TABLE 18 TO PARAGRAPH (r)

By a micro entity (§ 1.29)	$510.00
By a small entity (§ 1.27(a))	1,020.00
By other than a small or micro entity	2,550.00

(s) * * *

TABLE 19 TO PARAGRAPH (s)

By a micro entity (§ 1.29)	$90.00
By a small entity (§ 1.27(a))	180.00
By other than a small or micro entity	450.00

* * * * *

(u) * * *

TABLE 21 TO PARAGRAPH (u)

By a micro entity (§ 1.29)	$86.00
By a small entity (§ 1.27(a))	172.00
By other than a small or micro entity	430.00

■ 3. Section 1.17 is amended by:
■ a. Revising paragraph (a) introductory text;
■ b. Revising tables 1 through 10 in paragraphs (a)(1) through (5), (c), (d), (e)(1) and (2), and (f);
■ c. Revising paragraph (g);
■ d. Redesignating tables 12 through 15 in paragraphs (h), (i)(1) and (2), and (k) as tables 14 through 17 to paragraphs (h), (i)(1) and (2), and (k) and revising them;
■ e. Revising paragraph (m);
■ f. Redesignating tables 17 and 18 in paragraphs (o) and (p) as table 21 and 22 to paragraphs (o) and (p) and revising them;
■ g. Revising paragraph (q);
■ h. Redesigning tables 19 through 21 in paragraphs (r) through (t) as tables 23 through 25 to paragraphs (r) through (t) and revising them; and
■ i. Adding paragraphs (u) through (w).

The revisions and additions read as follows:

§ 1.17 Patent application and reexamination processing fees.

(a) Extension fees pursuant to § 1.136(a), except in provisional applications filed under § 1.53(c):

(1) * * *

TABLE 1 TO PARAGRAPH (a)(1)

By a micro entity (§ 1.29)	$47.00
By a small entity (§ 1.27(a))	94.00
By other than a small or micro entity	235.00

(2) * * *

TABLE 2 TO PARAGRAPH (a)(2)

By a micro entity (§ 1.29)	$138.00
By a small entity (§ 1.27(a))	276.00
By other than a small or micro entity	690.00

(3) * * *

TABLE 3 TO PARAGRAPH (a)(3)

By a micro entity (§ 1.29)	$318.00
By a small entity (§ 1.27(a))	636.00
By other than a small or micro entity	1,590.00

(4) * * *

TABLE 4 TO PARAGRAPH (a)(4)

By a micro entity (§ 1.29)	$499.00
By a small entity (§ 1.27(a))	998.00
By other than a small or micro entity	2,495.00

(5) * * *

TABLE 5 TO PARAGRAPH (a)(5)

By a micro entity (§ 1.29)	$679.00
By a small entity (§ 1.27(a))	1,358.00
By other than a small or micro entity	3,395.00

* * * * *

(c) * * *

TABLE 6 TO PARAGRAPH (c)

By a micro entity (§ 1.29)	$903.00
By a small entity (§ 1.27(a))	1,806.00
By other than a small or micro entity	4,515.00

(d) * * *

TABLE 7 TO PARAGRAPH (d)

By a micro entity (§ 1.29)	$138.00
By a small entity (§ 1.27(a))	276.00
By other than a small or micro entity	690.00

(e) * * *

(1) * * *

TABLE 8 TO PARAGRAPH (e)(1)

By a micro entity (§ 1.29)	$300.00
By a small entity (§ 1.27(a))	600.00
By other than a small or micro entity	1,500.00

(2) * * *

TABLE 9 TO PARAGRAPH (e)(2)

By a micro entity (§ 1.29)	$572.00
By a small entity (§ 1.27(a))	1,144.00
By other than a small or micro entity	2,860.00

(f) * * *

TABLE 10 TO PARAGRAPH (f)

By a micro entity (§ 1.29)	$90.00
By a small entity (§ 1.27(a))	180.00
By other than a small or micro entity	450.00

Note 1 to table 10 to paragraph (f):

1.36(a)—for revocation of a power of attorney by fewer than all of the applicants.

§ 1.53(e)—to accord a filing date.

§ 1.182—for decision on a question not specifically provided for in an application for patent.

§ 1.183—to suspend the rules in an application for patent.

§ 1.741(b)—to accord a filing date to an application under § 1.740 for extension of a patent term.

§ 1.1023—to review the filing date of an international design application.

(g)(1) For filing a petition under one of the following sections which refers to this paragraph (g):

TABLE 11 TO PARAGRAPH (g)(1)

By a micro entity (§ 1.29)	$47.00
By a small entity (§ 1.27(a))	94.00
By other than a small or micro entity	235.00

Note 2 to table 11 to paragraph (g)(1):

§ 1.12—for access to an assignment record.

§ 1.14—for access to an application.

§ 1.46—for filing an application on behalf of an inventor by a person who otherwise shows sufficient proprietary interest in the matter.

§ 1.55(f)—for filing a belated certified copy of a foreign application.

§ 1.55(g)—for filing a belated certified copy of a foreign application.

§ 1.57(a)—for filing a belated certified copy of a foreign application.

§ 1.59—for expungement of information.

§ 1.136(b)—for review of a request for extension of time when the provisions of § 1.136(a) are not available.

§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.

§ 1.550(c)—for patent owner requests for extension of time in *ex parte* reexamination proceedings.

§ 1.956—for patent owner requests for extension of time in *inter partes* reexamination proceedings.

§ 5.12 of this chapter—for expedited handling of a foreign filing license.

§ 5.15 of this chapter—for changing the scope of a license.

§ 5.25 of this chapter—for retroactive license.

(2) For filing a petition to suspend action in an application under § 1.103(a):

(i) For filing a first request for suspension pursuant to § 1.103(a) in an application:

TABLE 12 TO PARAGRAPH (g)(2)(i)

By a micro entity (§ 1.29)	$60.00
By a small entity (§ 1.27(a))	120.00
By other than a small or micro entity	300.00

(ii) For filing a second or subsequent request for suspension pursuant to § 1.103(a) in an application:

TABLE 13 TO PARAGRAPH (g)(2)(ii)

By a micro entity (§ 1.29)	$90.00
By a small entity (§ 1.27(a))	180.00
By other than a small or micro entity	450.00

(h) * * *

TABLE 14 TO PARAGRAPH (h)

By a micro entity (§ 1.29)	$30.00
By a small entity (§ 1.27(a))	60.00
By other than a small or micro entity	150.00

Note 3 to table 14 to paragraph (h):

1.84—for accepting color drawings or photographs.

§ 1.91—for entry of a model or exhibit.

§ 1.102(d)—to make an application special.

§ 1.138(c)—to expressly abandon an application to avoid publication.

§ 1.313—to withdraw an application from issue.

§ 1.314—to defer issuance of a patent.

(i) * * *

(1) * * *

TABLE 15 TO PARAGRAPH (i)(1)

By a micro entity (§ 1.29)	$30.00
By a small entity (§ 1.27(a))	60.00
By other than a small or micro entity	150.00

Note 4 to table 15 to paragraph (i)(1):

§ 1.28(c)(3)—for processing a non-itemized fee deficiency based on an error in small entity status.

§ 1.29(k)(3)—for processing a non-itemized fee deficiency based on an error in micro entity status.

§ 1.41(b)—for supplying the name or names of the inventor or joint inventors in an application without either an application data sheet or the inventor's oath or declaration, except in provisional applications.

§ 1.48—for correcting inventorship, except in provisional applications.

§ 1.52(d)—for processing a nonprovisional application filed with a specification in a language other than English.

§ 1.53(c)(3)—to convert a provisional application filed under § 1.53(c) into a nonprovisional application under § 1.53(b).

§ 1.71(g)(2)—for processing a belated amendment under § 1.71(g).

§ 1.102(e)—for requesting prioritized examination of an application.

§ 1.103(b)—for requesting limited suspension of action, continued prosecution application for a design patent (§ 1.53(d)).

§ 1.103(c)—for requesting limited suspension of action, request for continued examination (§ 1.114).

§ 1.103(d)—for requesting deferred examination of an application.

§ 1.291(c)(5)—for processing a second or subsequent protest by the same real party in interest.

§ 3.81 of this chapter—for a patent to issue to assignee, assignment submitted after payment of the issue fee.

(2) * * *

TABLE 16 TO PARAGRAPH (i)(2)

By a micro entity (§ 1.29)	$151.00
By a small entity (§ 1.27(a))	151.00
By other than a small or micro entity	151.00

Note 5 to table 16 to paragraph (i)(2):

§ 1.217—for processing a redacted copy of a paper submitted in the file of an application in which a redacted copy was submitted for the patent application publication.

§ 1.221—for requesting voluntary publication or republication of an application.

* * * * *

(k) * * *

TABLE 17 TO PARAGRAPH (k)

By a micro entity (§ 1.29)	$344.00
By a small entity (§ 1.27(a))	688.00

TABLE 17 TO PARAGRAPH (k)—Continued

By other than a small or micro entity	1,720.00

* * * * *

(m)(1) For filing a petition under one of the following sections which refers to this paragraph (m), when the petition is filed more than two years after the date when the required action was due:

TABLE 18 TO PARAGRAPH (m)(1)

By a micro entity (§ 1.29)	$600.00
By a small entity (§ 1.27(a))	1,200.00
By other than a small or micro entity	3,000.00

Note 6 to table 18 to paragraph (m)(1):

§ 1.55(e)—for the delayed submission of a priority claim, when the petition is filed more than two years after the date when the priority claim was due.

§ 1.78(c) or (e)—for the delayed submission of a benefit claim, when the petition is filed more than two years after the date when the benefit claim was due.

§ 1.137—for filing a petition for the revival of an abandoned application for a patent, or for the delayed payment of the fee for issuing each patent, when the petition is filed more than two years after the abandonment of the application.

§ 1.137—for filing a petition for the revival of a reexamination proceeding that was terminated or limited due to a delayed response by the patent owner, when the petition is filed more than two years after the termination or limitation of the reexamination proceeding.

§ 1.378—for filing a petition to accept a delayed payment of the fee for maintaining a patent in force, when the petition is filed more than two years after the patent expiration date.

§ 1.1051—for filing a petition to excuse an applicant's failure to act within prescribed time limits in an international design application, when the petition is filed more than two years after the abandonment of the application.

(2) For filing a petition under § 1.55(e), § 1.78(c), § 1.78(e), § 1.137, § 1.1051, or § 1.378, when the petition is filed before the time period specified in paragraph (m)(1) of this section:

TABLE 19 TO PARAGRAPH (m)(2)

By a micro entity (§ 1.29)	$452.00
By a small entity (§ 1.27(a))	904.00
By other than a small or micro entity	2,260.00

(3) For filing a petition under § 1.55(c), § 1.78(b), or § 1.452 for the extension of the 12-month (six-month for designs) period for filing a subsequent application:

TABLE 20 TO PARAGRAPH (m)(3)

By a micro entity (§ 1.29)	$452.00
By a small entity (§ 1.27(a))	904.00
By other than a small or micro entity	2,260.00

* * * * *

(o) * * *

TABLE 21 TO PARAGRAPH (o)

By a small entity (§ 1.27(a)) or micro entity (§ 1.29)	$78.00
By other than a small or micro entity	195.00

(p) * * *

TABLE 22 TO PARAGRAPH (p)

By a micro entity (§ 1.29)	$56.00
By a small entity (§ 1.27(a))	112.00
By other than a small or micro entity	280.00

(q) Processing fee for taking action under one of the following sections which refers to this paragraph (q): $54.00.

(1) Section 1.41—to supply the name or names of the inventor or inventors after the filing date without a cover sheet as prescribed by § 1.51(c)(1) in a provisional application.

(2) Section 1.48—for correction of inventorship in a provisional application.

(3) Section 1.53(c)(2)—to convert a nonprovisional application filed under § 1.53(b) to a provisional application under § 1.53(c).

(r) * * *

TABLE 23 TO PARAGRAPH (r)

By a micro entity (§ 1.29)	$189.00
By a small entity (§ 1.27(a))	378.00
By other than a small or micro entity	945.00

(s) * * *

TABLE 24 TO PARAGRAPH (s)

By a micro entity (§ 1.29)	$189.00
By a small entity (§ 1.27(a))	378.00
By other than a small or micro entity	945.00

(t) * * *

TABLE 25 TO PARAGRAPH (t)

By a micro entity (§ 1.29)	$39.00
By a small entity (§ 1.27(a))	78.00
By other than a small or micro entity	195.00

(u) Extension fees pursuant to § 1.136(a) in provisional applications filed under § 1.53(c):

(1) For reply within first month:

TABLE 26 TO PARAGRAPH (u)(1)

By a micro entity (§ 1.29)	$10.00
By a small entity (§ 1.27(a))	20.00

TABLE 26 TO PARAGRAPH (u)(1)—Continued

By other than a small or micro entity	50.00

(2) For reply within second month:

TABLE 27 TO PARAGRAPH (u)(2)

By a micro entity (§ 1.29)	$20.00
By a small entity (§ 1.27(a))	40.00
By other than a small or micro entity	100.00

(3) For reply within third month:

TABLE 28 TO PARAGRAPH (u)(3)

By a micro entity (§ 1.29)	$40.00
By a small entity (§ 1.27(a))	80.00
By other than a small or micro entity	200.00

(4) For reply within fourth month:

TABLE 29 TO PARAGRAPH (u)(4)

By a micro entity (§ 1.29)	$80.00
By a small entity (§ 1.27(a))	160.00
By other than a small or micro entity	400.00

(5) For reply within fifth month:

TABLE 30 TO PARAGRAPH (u)(5)

By a micro entity (§ 1.29)	$160.00
By a small entity (§ 1.27(a))	320.00
By other than a small or micro entity	800.00

(v) Information disclosure statement size fee for an information disclosure statement filed under § 1.97 that, inclusive of the number of applicant-provided or patent owner-provided items of information listed under § 1.98(a)(1) on the information disclosure statement, causes the cumulative number of applicant-provided or patent owner-provided items of information under § 1.98(a)(1) during the pendency of the application or reexamination proceeding to:

(1) Exceed 50 but not exceed 100. . . . . .$200;

(2) Exceed 100 but not exceed 200. . . . . .$500, less any amount previously paid under paragraph (v)(1) of this section; and

(3) Exceed 200. . . . . .$800, less any amounts previously paid under paragraphs (v)(1) and/or (2) of this section.

(w) Additional fee for presenting a benefit claim in a nonprovisional application under 35 U.S.C. 120, 121, 365(c), or 386(c) and § 1.78(d):

(1) When the actual filing date of the nonprovisional application in which the benefit claim is presented is more than six years and no more than nine years from the earliest filing date for which benefit is claimed under 35 U.S.C. 120, 121, 365(c), or 386(c) and § 1.78(d):

TABLE 31 TO PARAGRAPH (w)(1)

By a micro entity (§ 1.29)	$540.00
By a small entity (§ 1.27(a))	1,080.00
By other than a small or micro entity	2,700.00

(2) When the actual filing date of the nonprovisional application in which the benefit claim is presented is more than nine years from the earliest filing date for which benefit is claimed under 35 U.S.C. 120, 121, 365(c), or 386(c) and § 1.78(d), the amount shown in this paragraph is due, less any amount previously paid under paragraph (w)(1) of this section:

TABLE 32 TO PARAGRAPH (w)(2)

By a micro entity (§ 1.29)	$800.00
By a small entity (§ 1.27(a))	1,600.00
By other than a small or micro entity	4,000.00

■ 4. Section 1.18 is amended by:

■ a. Revising tables 1 through 3 in paragraphs (a), (b)(1), and (c); and

■ b. Revising paragraphs (d)(2) and (3), (e), and (f).

The revisions read as follows:

§ 1.18 Patent post allowance (including issue) fees.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

By a micro entity (§ 1.29)	$258.00
By a small entity (§ 1.27(a))	516.00
By other than a small or micro entity	1,290.00

(b)(1) * * *

TABLE 2 TO PARAGRAPH (b)(1)

By a micro entity (§ 1.29)	$260.00
By a small entity (§ 1.27(a))	520.00
By other than a small or micro entity	1,300.00

* * * * *

(c) * * *

TABLE 3 TO PARAGRAPH (c)

By a micro entity (§ 1.29)	$181.00
By a small entity (§ 1.27(a))	362.00
By other than a small or micro entity	905.00

(d) * * *

(2) Publication fee before January 1, 2014: $320.00.

(3) Republication fee (§ 1.221(a)): $344.00.

(e) For filing an application for patent term adjustment under § 1.705: $226.00

(f) For filing a request for reinstatement of all or part of the term reduced pursuant to § 1.704(b) in an application for patent term adjustment under § 1.705: $452.00.

■ 5. Section 1.19 is amended by revising paragraphs (a)(2), (b)(1)(i)(A), (B), and (D), (b)(1)(ii)(A) and (B), (b)(3) and (4), and (f) to read as follows:

§ 1.19 Document supply fees.

* * * * *

(a) * * *

(2) Printed copy of a plant patent in color: $16.00.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(A) Application as filed: $38.00.

(B) Copy Patent File Wrapper, Paper Medium, Any Number of Sheets: $312.00.

* * * * *

(D) Individual application documents, other than application as filed, per document: $27.00.

(ii) * * *

(A) Application as filed: $38.00.

(B) Copy Patent File Wrapper, Electronic, Any Medium, Any Size: $65.00.

* * * * *

(3) Copy of Office records, except copies available under paragraph (b)(1) or (2) of this section: $27.00.

(4) For assignment records, abstract of title and certification, per patent: $38.00.

* * * * *

(f) Uncertified copy of a non-United States patent document, per document: $27.00.

* * * * *

■ 6. Section 1.20 is amended by:

■ a. Revising paragraphs (a) and (b);

■ b. Revising tables 1 through 5 in paragraphs (c)(1)(i) through (c)(4) and (c)(6);

■ c. Revising paragraph (d);

■ d. Revising tables 7 through 10 in paragraphs (e) through (h);

■ e. Revising paragraph (j); and

■ f. Redesignating tables 12 through 15 in paragraphs (k)(1) and (2) and (k)(3)(i) and (ii) as tables 11 through 14 in paragraphs (k)(1) and (2) and (k)(3)(i) and (ii) and revising them.

The revisions read as follows:

§ 1.20 Post-issuance fees.

(a) For providing a certificate of correction for an applicant's mistake (§ 1.323): $172.00.

(b) Processing fee for correcting inventorship in a patent (§ 1.324): $172.00.

(c) * * *

(1)(i) * * * * *

TABLE 1 TO PARAGRAPH (c)(1)(i)

By a micro entity (§ 1.29)	$1,355.00
By a small entity (§ 1.27(a))	2,710.00
By other than a small or micro entity	6,775.00

* * * * *

(2) * * *

TABLE 2 TO PARAGRAPH (c)(2)

By a micro entity (§ 1.29)	$2,709.00
By a small entity (§ 1.27(a))	5,418.00
By other than a small or micro entity	13,545.00

(3) * * *

TABLE 3 TO PARAGRAPH (c)(3)

By a micro entity (§ 1.29)	$120.00
By a small entity (§ 1.27(a))	240.00
By other than a small or micro entity	600.00

(4) * * *

TABLE 4 TO PARAGRAPH (c)(4)

By a micro entity (§ 1.29)	$40.00
By a small entity (§ 1.27(a))	80.00
By other than a small or micro entity	200.00

* * * * *

(6) * * *

TABLE 5 TO PARAGRAPH (c)(6)

By a micro entity (§ 1.29)	$439.00
By a small entity (§ 1.27(a))	878.00
By other than a small or micro entity	2,195.00

* * * * *

(d) For filing each statutory disclaimer (§ 1.321): $183.00.

(e) * * *

TABLE 7 TO PARAGRAPH (e)

By a micro entity (§ 1.29)	$430.00
By a small entity (§ 1.27(a))	860.00
By other than a small or micro entity	2,150.00

(f) * * *

TABLE 8 TO PARAGRAPH (f)

By a micro entity (§ 1.29)	$808.00
By a small entity (§ 1.27(a))	1,616.00
By other than a small or micro entity	4,040.00

(g) * * *

TABLE 9 TO PARAGRAPH (g)

By a micro entity (§ 1.29)	$1,656.00
By a small entity (§ 1.27(a))	3,312.00
By other than a small or micro entity	8,280.00

(h) * * *

TABLE 10 TO PARAGRAPH (h)

By a micro entity (§ 1.29)	$108.00
By a small entity (§ 1.27(a))	216.00
By other than a small or micro entity	540.00

* * * * *

(j) For filing an application for extension of the term of a patent:

(1) Application for extension under § 1.740: $2,500.00.

(2) Initial application for interim extension under § 1.790: $1,320.00.

(3) Subsequent application for interim extension under § 1.790: $680.00.

(4) Requesting supplemental redetermination after notice of final determination: $1,440.00.

(k) * * *

(1) * * *

TABLE 11 TO PARAGRAPH (k)(1)

By a micro entity (§ 1.29)	$993.00
By a small entity (§ 1.27(a))	1,986.00
By other than a small or micro entity	4,965.00

(2) * * *

TABLE 12 TO PARAGRAPH (k)(2)

By a micro entity (§ 1.29)	$2,731.00
By a small entity (§ 1.27(a))	5,462.00
By other than a small or micro entity	13,655.00

(3) * * *

(i) * * *

TABLE 13 TO PARAGRAPH (k)(3)(i)

By a micro entity (§ 1.29)	$39.00
By a small entity (§ 1.27(a))	78.00
By other than a small or micro-entity	195.00

(ii) * * *

TABLE 14 TO PARAGRAPH (k)(3)(ii)

By a micro entity (§ 1.29)	$65.00
By a small entity (§ 1.27(a))	130.00
By other than a small or micro entity	325.00

■ 7. Section 1.21 is amended by:

■ a. Revising paragraphs (a)(1)(i), (a)(1)(ii)(A), (a)(1)(iii) and (iv), (a)(2)(i)

and (ii), (a)(4)(i) and (ii), (a)(5)(i) and (ii), (a)(6)(ii), (a)(9)(i) and (ii), (a)(10), (e), (h)(2), (i), and (n);

■ b. Revising tables 1 and 2 in paragraphs (o)(1) and (2); and

■ c. Revising paragraphs (p) and (q).

The revisions read as follows:

§ 1.21 Miscellaneous fees and charges.

* * * * *

(a) * * *

(l) * * *

(i) Application Fee (non-refundable): $118.00.

(ii) * * *

(A) For test administration by commercial entity: $226.00.

* * * * *

(iii) For USPTO-administered review of registration examination: $505.00.

(iv) Request for extension of time in which to schedule examination for registration to practice (non-refundable): $124.00.

(2) * * *

(i) On registration to practice under § 11.6 of this chapter: $226.00.

(ii) On grant of limited recognition under § 11.9(b) of this chapter: $226.00.

* * * * *

(4) * * *

(i) Standard: $43.00.

(ii) Suitable for framing: $54.00.

(5) * * *

(i) By the Director of Enrollment and Discipline under § 11.2(c) of this chapter: $452.00.

(ii) Of the Director of Enrollment and Discipline under § 11.2(d) of this chapter: $452.00.

(6) * * *

(ii) For USPTO-assisted change of address: $75.00.

* * * * *

(9) * * *

(i) Delinquency fee: $54.00.

(ii) Administrative reinstatement fee: $226.00.

(10) On application by a person for recognition or registration after disbarment or suspension on ethical grounds, or resignation pending disciplinary proceedings in any other jurisdiction; on application by a person for recognition or registration who is asserting rehabilitation from prior conduct that resulted in an adverse decision in the Office regarding the person's moral character; on application by a person for recognition or registration after being convicted of a felony or crime involving moral turpitude or breach of fiduciary duty; and on petition for reinstatement by a person excluded or suspended on ethical grounds, or excluded on consent from practice before the Office: $1,806.00.

* * * * *

(e) International type search reports: For preparing an international type search report of an international type search made at the time of the first action on the merits in a national patent application: $43.00

* * * * *

(h) * * *

(2) If not submitted electronically: $54.00

(i) Publication in Official Gazette: For publication in the Official Gazette of a notice of the availability of an application or a patent for licensing or sale: Each application or patent: $27.00.

* * * * *

(n) For handling an application in which proceedings are terminated pursuant to § 1.53(e): $151.00.

(o) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (o)(1)

By a micro entity (§ 1.29)	$228.00
By a small entity (§ 1.27(a))	456.00
By other than a small or micro entity	1,140.00

(2) * * *

TABLE 2 TO PARAGRAPH (o)(2)

By a micro entity (§ 1.29)	$2,258.00
By a small entity (§ 1.27(a))	4,516.00
By other than a small or micro entity	11,290.00

(p) Additional Fee for Overnight Delivery: $43.00.

(q) Additional fee for expedited service: $183.00.

■ 8. Section 1.78 is amended by revising paragraphs (d)(3)(i) and (e)(2) to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross-references to other applications.

* * * * *

(d) * * *

(3)(i) The reference required by 35 U.S.C. 120 and paragraph (d)(2) of this section, and the applicable fee set forth in § 1.17(w), must be submitted during the pendency of the later-filed application.

* * * * *

(e) * * *

(2) The petition fee as set forth in § 1.17(m), and the applicable fee set forth in § 1.17(w); and

* * * * *

■ 9. Section 1.97 is amended by revising paragraph (a) to read as follows:

§ 1.97 Filing of information disclosure statement.

(a) In order for an applicant for a patent or for a reissue of a patent to have an information disclosure statement in compliance with § 1.98 considered by the Office during the pendency of the application, the information disclosure statement must satisfy one of paragraph (b), (c), or (d) of this section and be accompanied by any applicable information disclosure statement size fee under § 1.17(v).

* * * * *

■ 10. Section 1.98 is amended by revising paragraph (a) introductory text and adding paragraph (a)(4) to read as follows:

§ 1.98 Content of information disclosure statement.

(a) Any information disclosure statement filed under § 1.97 shall include the items listed in paragraphs (a)(1) through (4) of this section.

* * * * *

(4) A clear written assertion that the information disclosure statement is accompanied by the applicable information disclosure statement size fee under § 1.17(v) or a clear written assertion that no information disclosure statement size fee under § 1.17(v) is required.

* * * * *

■ 11. Section 1.136 is amended by revising paragraph (a)(1) introductory text to read as follows:

§ 1.136 Extensions of time.

(a)(1) If an applicant is required to reply within a nonstatutory or shortened statutory time period, applicant may extend the time period for reply up to the earlier of the expiration of any maximum period set by statute or five months after the time period set for reply, if a petition for an extension of time and the fee set in § 1.17(a) or (u) are filed, unless:

* * * * *

■ 12. Section 1.138 is amended by revising paragraph (d) to read as follows:

§ 1.138 Express abandonment.

* * * * *

(d) An applicant seeking to abandon an application filed under 35 U.S.C. 111(a) and § 1.53(b) on or after December 8, 2004, or a national stage application under 35 U.S.C. 371 in which the basic national fee was paid on or after December 8, 2004 to obtain a refund of the search fee and excess claims fee paid in the application, must submit a declaration of express abandonment by way of a petition under this paragraph before an examination has been made of the application. The date indicated on any certificate of mailing or transmission under § 1.8 will

not be taken into account in determining whether a petition under this paragraph (d) was filed before an examination has been made of the application. Refunds under this paragraph are limited to the search fees and excess claims fees set forth in §§ 1.16 and 1.492. If a request for refund of the search fee and excess claims fee paid in the application is not filed with the declaration of express abandonment under this paragraph or within two months from the date on which the declaration of express abandonment under this paragraph was filed, the Office may retain the entire search fee and excess claims fee paid in the application. This two-month period is not extendable. If a petition and declaration of express abandonment under this paragraph are not filed before an examination has been made of the application, the Office will not refund any part of the search fee and excess claims fee paid in the application except as provided in § 1.26.

■ 13. Section 1.445 is amended by revising and republishing paragraph (a) to read as follows:

§ 1.445 International application filing, processing and search fees.

(a) The following fees and charges for international applications are established by law or by the director under the authority of 35 U.S.C. 376:

(1) A transmittal fee (see 35 U.S.C. 361(d) and PCT Rule 14) consisting of:

(i) A basic portion:

(A) For an international application having a receipt date that is on or after January 19, 2025:

TABLE 1 TO PARAGRAPH (a)(1)(i)(A)

By a micro entity (§ 1.29)	$57.00
By a small entity (§ 1.27(a))	114.00
By other than a small or micro entity	285.00

(B) For an international application having a receipt date that is on or after December 29, 2022, and before January 19, 2025:

TABLE 2 TO PARAGRAPH (a)(1)(i)(B)

By a micro entity (§ 1.29)	$52.00
By a small entity (§ 1.27(a))	104.00
By other than a small or micro entity	260.00

(C) For an international application having a receipt date that is on or after October 2, 2020, and before December 29, 2022:

TABLE 3 TO PARAGRAPH (a)(1)(i)(C)

By a micro entity (§ 1.29)	$65.00
By a small entity (§ 1.27(a))	130.00
By other than a small or micro entity	260.00

(D) For an international application having a receipt date that is on or after January 1, 2014, and before October 2, 2020:

TABLE 4 TO PARAGRAPH (a)(1)(i)(D)

By a micro entity (§ 1.29)	$60.00
By a small entity (§ 1.27(a))	120.00
By other than a small or micro entity	240.00

(E) For an international application having a receipt date that is before January 1, 2014: $240.00.

(ii) A non-electronic filing fee portion for any international application designating the United States of America that is filed on or after November 15, 2011, other than by the USPTO patent electronic filing system, except for a plant application:

TABLE 5 TO PARAGRAPH (a)(1)(ii)

By a small entity (§ 1.27(a))	$200
By other than a small entity	400.00

(2) A search fee (see 35 U.S.C. 361(d) and PCT Rule 16):

(i) For an international application having a receipt date that is on or after January 19, 2025:

TABLE 6 TO PARAGRAPH (a)(2)(i)

By a micro entity (§ 1.29)	$480.00
By a small entity (§ 1.27(a))	960.00
By other than a small or micro entity	2,400.00

(ii) For an international application having a receipt date that is on or after April 1, 2023, and before January 19, 2025:

TABLE 7 TO PARAGRAPH (a)(2)(ii)

By a micro entity (§ 1.29)	$436.00
By a small entity (§ 1.27(a))	872.00
By other than a small or micro entity	2,180.00

(iii) For an international application having a receipt date that is on or after October 2, 2020, and before April 1, 2023:

TABLE 8 TO PARAGRAPH (a)(2)(iii)

By a micro entity (§ 1.29)	$545.00
By a small entity (§ 1.27(a))	1,090.00
By other than a small or micro entity	2,180.00

(iv) For an international application having a receipt date that is on or after January 1, 2014, and before October 2, 2020:

TABLE 9 TO PARAGRAPH (a)(2)(iv)

By a micro entity (§ 1.29)	$520.00
By a small entity (§ 1.27(a))	1,040.00
By other than a small or micro entity	2,080.00.

(v) For an international application having a receipt date that is before January 1, 2014: $2,080.00.

(3) A supplemental search fee when required, per additional invention:

(i) For an international application having a receipt date that is on or after January 19, 2025:

TABLE 10 TO PARAGRAPH (a)(3)(i)

By a micro entity (§ 1.29)	$480.00
By a small entity (§ 1.27(a))	960.00
By other than a small or micro entity	2,400.00

(ii) For an international application having a receipt date that is on or after April 1, 2023, and before January 19, 2025:

TABLE 11 TO PARAGRAPH (a)(3)(ii)

By a micro entity (§ 1.29)	$436.00
By a small entity (§ 1.27(a))	872.00
By other than a small or micro entity	2,180.00

(iii) For an international application having a receipt date that is on or after October 2, 2020, and before April 1, 2023:

TABLE 12 TO PARAGRAPH (a)(3)(iii)

By a micro entity (§ 1.29)	$545.00
By a small entity (§ 1.27(a))	1,090.00
By other than a small or micro entity	2,180.00

(iv) For an international application having a receipt date that is on or after January 1, 2014, and before October 2, 2020:

TABLE 13 TO PARAGRAPH (a)(3)(iv)

By a micro entity (§ 1.29)	$520.00
By a small entity (§ 1.27(a))	1,040.00
By other than a small or micro entity	2,080.00

(v) For an international application having a receipt date that is before January 1, 2014: $2,080.00.

(4) A fee equivalent to the transmittal fee in paragraph (a)(1) of this section that would apply if the USPTO was the Receiving Office for transmittal of an international application to the International Bureau for processing in its capacity as a Receiving Office (PCT Rule 19.4).

(5) Late furnishing fee for providing a sequence listing in response to an invitation under PCT Rule 13*ter:*

TABLE 14 TO PARAGRAPH (a)(5)

By a micro entity (§ 1.29)	$69.00
By a small entity (§ 1.27(a))	138.00
By other than a small or micro entity	345.00

(6) Late payment fee pursuant to PCT Rule 16*bis*.2.

* * * * *

■ 14. Section 1.482 is amended by revising tables 1 through 4 in paragraphs (a)(1)(i) and (ii), (a)(2), and (c) to read as follows:

§ 1.482 International preliminary examination and processing fees.

(a) * * *

(1) * * *

(i) * * *

TABLE 1 TO PARAGRAPH (a)(1)(i)

By a micro entity (§ 1.29)	$141.00
By a small entity (§ 1.27(a))	282.00
By other than a small or micro entity	705.00

(ii) * * *

TABLE 2 TO PARAGRAPH (a)(1)(ii)

By a micro entity (§ 1.29)	$176.00
By a small entity (§ 1.27(a))	352.00
By other than a small or micro entity	880.00

(2) * * *

TABLE 3 TO PARAGRAPH (a)(2)

By a micro entity (§ 1.29)	$141.00
By a small entity (§ 1.27(a))	282.00
By other than a small or micro entity	705.00

* * * * *

(c) * * *

TABLE 4 TO PARAGRAPH (c)

By a micro entity (§ 1.29)	$69.00
By a small entity (§ 1.27(a))	138.00
By other than a small or micro entity	345.00

■ 15. Section 1.492 is amended by revising table 1 in paragraph (a), tables 2 through 5 in paragraphs (b)(2) through (4), tables 7 through 10 in paragraphs (c)(2) and (d) through (f), and tables 11 through 13 in paragraphs (h) through (j) to read as follows.

§ 1.492 National stage fees.

* * * * *

(a) * * *

TABLE 1 TO PARAGRAPH (a)

By a micro entity (§ 1.29)	$70.00
By a small entity (§ 1.27(a))	140.00
By other than a small or micro entity	350.00

(b) * * *

(2) * * *()

TABLE 3 TO PARAGRAPH (b)(2)

By a micro entity (§ 1.29)	$30.00
By a small entity (§ 1.27(a))	60.00
By other than a small or micro entity	150.00

(3) * * *

TABLE 4 TO PARAGRAPH (b)(3)

By a micro entity (§ 1.29)	$116.00
By a small entity (§ 1.27(a))	232.00
By other than a small or micro entity	580.00

(4) * * *

TABLE 5 TO PARAGRAPH (b)(4)

By a micro entity (§ 1.29)	$154.00
By a small entity (§ 1.27(a))	308.00
By other than a small or micro entity	770.00

(c) * * *

(2) * * *

TABLE 7 TO PARAGRAPH (c)(2)

By a micro entity (§ 1.29)	$176.00
By a small entity (§ 1.27(a))	352.00
By other than a small or micro entity	880.00

(d) * * *

TABLE 8 TO PARAGRAPH (d)

By a micro entity (§ 1.29)	$120.00
By a small entity (§ 1.27(a))	240.00
By other than a small or micro entity	600.00

(e) * * *

TABLE 9 TO PARAGRAPH (e)

By a micro entity (§ 1.29)	$40.00
By a small entity (§ 1.27(a))	80.00
By other than a small or micro entity	200.00

(f) * * *

TABLE 10 TO PARAGRAPH (f)

By a micro entity (§ 1.29)	$185.00
By a small entity (§ 1.27(a))	370.00
By other than a small or micro entity	925.00

* * * * *

(h) * * *

TABLE 11 TO PARAGRAPH (h)

By a micro entity (§ 1.29)	$34.00
By a small entity (§ 1.27(a))	68.00
By other than a small or micro entity	170.00

(i) * * *

TABLE 12 TO PARAGRAPH (i)

By a micro entity (§ 1.29)	$30.00
By a small entity (§ 1.27(a))	60.00
By other than a small or micro entity	150.00

(j) * * *

TABLE 13 TO PARAGRAPH (j)

By a micro entity (§ 1.29)	$90.00
By a small entity (§ 1.27(a))	180.00
By other than a small or micro entity	450.00

■ 16. Section 1.555 is amended by revising paragraph (a) to read as follows:

§ 1.555 Information material to patentability in *ex parte* reexamination and *inter partes* reexamination proceedings.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective reexamination occurs when, at the time a reexamination proceeding is being conducted, the Office is aware of and evaluates the teachings of all information material to patentability in a reexamination proceeding. Each individual associated with the patent owner in a reexamination proceeding has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability in a reexamination proceeding. The individuals who have a duty to disclose to the Office all information known to them to be material to patentability in a

reexamination proceeding are the patent owner, each attorney or agent who represents the patent owner, and every other individual who is substantively involved on behalf of the patent owner in a reexamination proceeding. The duty to disclose the information exists with respect to each claim pending in the reexamination proceeding until the claim is cancelled. Information material to the patentability of a cancelled claim need not be submitted if the information is not material to patentability of any claim remaining under consideration in the reexamination proceeding. The duty to disclose all information known to be material to patentability in a reexamination proceeding is deemed to be satisfied if all information known to be material to patentability of any claim in the patent after issuance of the reexamination certificate was cited by the Office or submitted to the Office in an information disclosure statement. However, the duties of candor, good faith, and disclosure have not been complied with if any fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct by, or on behalf of, the patent owner in the reexamination proceeding. Any information disclosure statement must be filed with the items listed in § 1.98(a) as applied to individuals associated with the patent owner in a reexamination proceeding, should be filed within two months of the date of the order for reexamination, or as soon thereafter as possible, and be accompanied by any applicable information disclosure statement size fee under § 1.17(v).

* * * * *

■ 16. Section 1.1031 is amended by revising the table 1 to paragraph (a) to read as follows:

§ 1.1031 International design application fees.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

By a micro entity (§ 1.29)	$26.00
By a small entity (§ 1.27(a))	52.00
By other than a small or micro entity	130.00

* * * * *

PART 41—PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

Authority: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 134, 135, and Pub. L. 112–29.

■ 18. Section 41.20 is amended by revising paragraph (a) and tables 1 through 4 in paragraphs (b)(1), (b)(2)(ii), and (b)(3) and (4) to read as follows:

§ 41.20 Fees.

(a) *Petition fee.* The fee for filing petitions to the Chief Administrative Patent Judge under § 41.3 is: $452.00.

(b) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (b)(1)

By a micro entity (§ 1.29)	$181.00
By a small entity (§ 1.27(a))	362.00
By other than a small or micro entity	905.00

(2) * * *

(ii) * * *

TABLE 2 TO PARAGRAPH (b)(2)(ii)

By a micro entity (§ 1.29)	$452.00
By a small entity (§ 1.27(a))	904.00
By other than a small or micro entity	2,260.00

(3) * * *

TABLE 3 TO PARAGRAPH (b)(3)

By a micro entity (§ 1.29)	$292.00
By a small entity (§ 1.27(a))	584.00
By other than a small or micro entity	1,460.00

(4) * * *

TABLE 4 TO PARAGRAPH (b)(4)

By a micro entity (§ 1.29)	$507.00
By a small entity (§ 1.27(a))	1,014.00
By other than a small or micro entity	2,535.00

PART 42—TRIAL PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 19. The authority citation for part 42 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 6, 21, 23, 41, 135, 311, 312, 316, 321–326; Pub. L. 112–29, 125 Stat. 284; and Pub. L. 112–274, 126 Stat. 2456.

■ 20. Section 42.15 is amended by revising paragraphs (a)(1) through (4), (b)(1) through (4), (c)(1), (d), and (e) and adding paragraph (f) to read as follows:

§ 42.15 Fees.

(a) * * *

(1) *Inter Partes* Review request fee—up to 20 claims: $23,750.00.

(2) *Inter Partes* Review Post-Institution fee—up to 20 claims: $28,125.00.

(3) In addition to the *Inter Partes* Review request fee, for requesting a review of each claim in excess of 20: $470.00.

(4) In addition to the *Inter Partes* Post-Institution request fee, for requesting a review of each claim in excess of 20: $940.00.

(b) * * *

(1) Post-Grant or Covered Business Method Patent Review request fee—up to 20 claims: $25,000.00.

(2) Post-Grant or Covered Business Method Patent Review Post-Institution fee—up to 20 claims: $34,375.00.

(3) In addition to the Post-Grant or Covered Business Method Patent Review request fee, for requesting a review of each claim in excess of 20: $595.00.

(4) In addition to the Post-Grant or Covered Business Method Patent Review Post-Institution fee, for requesting a review of each claim in excess of 20: $1,315.00.

(c) * * *

(1) Derivation petition fee: $452.00.

* * * * *

(d) Any request requiring payment of a fee under this part, including a written request to make a settlement agreement available: $452.00.

(e) Fee for non-registered practitioners to appear *pro hac vice* before the Patent Trial and Appeal Board: $269.00.

(f) Fee for requesting a review of a Patent Trial and Appeal Board decision by the Director: $452.

Endnotes

[1] As reported by the CBO, three recent studies estimated the average research and development costs per new drug to range from $0.8 billion to $2.3 billion. See ''Research and Development in the Pharmaceutical Industry,'' Report No. 57126 pp. 15 and 16 (April 2021), available at *https://www.cbo.gov/publication/57126.* FDA user fees applicable to prescription drugs are currently between $2.16 million and $4.31 million as a one-time sum, with an additional annual program fee of $403,889. See *e.g.,* the FDA's user fee page for prescription drugs at *https://www.fda.gov/industry/fda-user-fee-programs/prescription-drug-user-fee-amendments.*

[2] See note 1, supra.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2024–26821 Filed 11–19–24; 8:45 am]

BILLING CODE 3510–16–P

FEDERAL REGISTER

Vol. 89 Wednesday,

No. 224 November 20, 2024

Part III

The President

Proclamation 10857—To Facilitate Positive Adjustment to Competition From Imports of Fine Denier Polyester Staple Fiber

Federal Register
Vol. 89, No. 224
Wednesday, November 20, 2024

Presidential Documents

Title 3—

The President

Proclamation 10857 of November 8, 2024

To Facilitate Positive Adjustment to Competition From Imports of Fine Denier Polyester Staple Fiber

By the President of the United States of America

A Proclamation

[Editorial Note: Proclamation 10857, originally published on pages 89909–89916 in the *Federal Register* of November 14, 2024, is being reprinted with a White House correction to the annex.]

1. On August 26, 2024, the United States International Trade Commission (USITC) transmitted to the President a report (USITC Report) on its investigation under section 202 of the Trade Act of 1974, as amended (the ''Trade Act'') (19 U.S.C. 2252), with respect to imports of fine denier polyester staple fiber (fine denier PSF). The product subject to the USITC's investigation and determination excluded certain fine denier PSF described in the USITC's Notice of Institution, 89 *FR* 18435 (March 13, 2024), and listed in subdivision (c)(ii) of Note 32 in the Annex to this proclamation.

2. The USITC reached an affirmative determination under section 202(b) of the Trade Act (19 U.S.C. 2252(b)) that fine denier PSF is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing an article like or directly competitive with the imported article.

3. Pursuant to section 301(a) of the United States-Mexico-Canada Agreement Implementation Act (the ''USMCA Implementation Act'') (19 U.S.C. 4551(a)), the USITC made findings as to whether imports of Canada and Mexico, considered individually, account for a substantial share of total imports and contribute importantly to the serious injury caused by imports. The USITC made negative findings of substantial share and contribution to injury with respect to imports of fine denier PSF from Canada and Mexico, considered individually.

4. Pursuant to statutes implementing certain free trade agreements to which the United States is a party, the USITC further found that imports of fine denier PSF that are a product of Australia, each Dominican Republic-Central America-United States Free Trade Agreement country (*i.e.,* Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua) (CAFTA–DR countries), Colombia, Jordan, the Republic of Korea, Panama, Peru, and Singapore, individually, are not a substantial cause of serious injury or threat thereof.

5. Furthermore, pursuant to section 403 of the Trade and Tariff Act of 1984 (Public Law 98–573, 98 Stat. 2948, 3016 (1984)) (19 U.S.C. 2112 note), the USITC found that the serious injury substantially caused by imports to the domestic industry producing a like or directly competitive article does not result from the reduction or elimination of any duty provided for under the United States-Israel Free Trade Agreement. The USITC also found, pursuant to 19 U.S.C. 2703(e), that the serious injury substantially caused by imports to the domestic industry producing a like or directly competitive article does not result from duty-free treatment provided for under the Caribbean Basin Economic Recovery Act (CBERA) provisions of the Caribbean Basin Initiative trade program or the Generalized System of Preferences (GSP) program.

6. The USITC Commissioners transmitted to the President their individual recommendations that each of them considered would address the serious injury to the domestic industry and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition.

7. On September 10, 2024, the United States Trade Representative (USTR) requested additional information from the USITC under section 203(a)(5) of the Trade Act (19 U.S.C. 2253(a)(5)). On October 10, 2024, the USITC provided a response that identified unforeseen developments that led to the importation of fine denier PSF into the United States in such increased quantities as to be a substantial cause of serious injury (USITC Supplemental Report). The USITC Supplemental Report also reported, inter alia, that increased imports of fine denier PSF products of all countries other than Australia, Canada, the CAFTA–DR countries, Colombia, Israel, Jordan, the Republic of Korea, Mexico, Panama, Peru, and Singapore are a substantial cause of serious injury to the domestic industry.

8. Pursuant to section 203 of the Trade Act (19 U.S.C. 2253), and after taking into account the considerations specified in section 203(a)(2) of the Trade Act (19 U.S.C. 2253(a)(2)), the USITC Report, and the USITC Supplemental Report, I have determined to implement action of a type described in section 203(a)(3) (19 U.S.C. 2253(a)(3)) (safeguard measure), with regard to the following fine denier PSF: fine denier PSF, not carded or combed, measuring less than 3.3 decitex (3 denier) in diameter, whether coated or uncoated. Fine denier PSF is classifiable in the Harmonized Tariff Schedule of the United States (HTS) in subheading 5503.20.00 and described in statistical reporting number 5503.20.0025 or 9813.00.0520.

9. Pursuant to section 203 of the Trade Act (19 U.S.C. 2253), the action I have determined to take shall be a safeguard measure in the form of a quantitative restriction on imports of fine denier PSF described in paragraph 8 of this proclamation, admitted temporarily free of duty under bond and entered under subheading 5503.20.00 and described in statistical reporting number 5503.20.0025 or 9813.00.0520, imposed for a period of 4 years, with annual reductions in the within-quota quantities in the second, third, and fourth years. Admission of certain imported articles free of duty under bond is commonly known as a Temporary Importation under Bond (TIB). TIB entries are subject to the conditions appearing in Chapter 98, Subchapter XIII, of the HTS (19 U.S.C. 1202) as well as regulations promulgated by U.S. Customs and Border Protection and the Department of the Treasury.

10. The quantitative restriction of TIB entries described in paragraph 9 of this proclamation shall be allocated among all countries except those countries the products of which are excluded from such quantitative restriction, pursuant to paragraphs 13 through 16 of this proclamation.

11. This safeguard measure shall apply to imports of all countries, except as provided in paragraphs 13 through 16 of this proclamation.

12. I have found, pursuant to section 203(e)(4) of the Trade Act (19 U.S.C. 2253(e)(4)), that the most recent 3 years that are representative of imports of fine denier PSF and for which data are available are 2018 through 2020, because that period covers the 3 most recent years before the surge in imports, particularly under TIB entry, from 2021 to 2023. Setting a quantitative restriction of zero pounds for the first year of this action is consistent with this representative period because the USITC Report indicates that there were no imports of fine denier PSF under TIB entry during 2018 through 2020.

13. This safeguard measure shall not apply to imports of any product described in paragraph 8 of this proclamation of a developing country, as listed in subdivision (b)(iii) of Note 32 in the Annex to this proclamation, as long as such a country's share of total imports of the product, based on imports during a recent representative period, does not exceed 3 percent, provided that imports that are the product of all such countries with less

than 3 percent import share collectively account for not more than 9 percent of total imports of the product. If I determine that a surge in imports of a product described in paragraph 8 of this proclamation of a developing country that is a World Trade Organization (WTO) Member results in imports of that product from that developing country exceeding either of the thresholds described in this paragraph, I may modify this action to apply to such product of such country.

14. Pursuant to section 302(a) of the USMCA Implementation Act (19 U.S.C. 4552(a)), I have determined after considering the USITC Report and the USITC Supplemental Report that imports of fine denier PSF that are the product of Canada and Mexico, considered individually, do not account for a substantial share of total imports and do not contribute importantly to the serious injury found by the USITC. Accordingly, pursuant to section 302(b) of the USMCA Implementation Act (19 U.S.C. 4552(b)), I have excluded fine denier PSF that is the product of Canada or Mexico from the action I am taking under section 203 of the Trade Act (19 U.S.C. 2253).

15. After considering the USITC Report and the USITC Supplemental Report, I have also made the following determinations with regard to fine denier PSF that is the product of the following trading partners:

(a) I have determined that imports of fine denier PSF that are the product of Australia are not a substantial cause of the serious injury found by the USITC, and I have therefore determined to exclude such imports that are the product of Australia from the action I am taking under section 203 of the Trade Act (19 U.S.C. 2253), pursuant to section 331(b) of the United States-Australia Free Trade Agreement Implementation Act (Public Law 108–286, 118 Stat. 919, 949 (2004)) (19 U.S.C. 3805 note);

(b) In light of the USITC's finding that imports of fine denier PSF that are the product of each CAFTA–DR country individually are not a substantial cause of serious injury or threat thereof, I have determined to exclude such imports that are the product of each of the CAFTA–DR countries from the action I am taking under section 203 of the Trade Act (19 U.S.C. 2253), pursuant to section 331(b) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (the ''CAFTA–DR Act'') (Public Law 109–53, 119 Stat. 462, 495 (2005)) (19 U.S.C. 4101(b));

(c) In light of the USITC's finding that imports of fine denier PSF that are the product of Colombia are not a substantial cause of serious injury or threat thereof, I have determined to exclude such imports that are the product of Colombia from the action I am taking under section 203 of the Trade Act (19 U.S.C. 2253), pursuant to section 331(b) of the United States-Colombia Trade Promotion Agreement Implementation Act (Public Law 112–42, 125 Stat. 462, 493–94 (2011)) (19 U.S.C. 3805 note);

(d) In light of the USITC's finding that the serious injury substantially caused by imports to the domestic industry producing a like or directly competitive article does not result from the reduction or elimination of any duty provided for under the United States-Israel Free Trade Agreement, I have determined, as part of the action I am taking under section 203 of the Trade Act (19 U.S.C. 2253), not to suspend the reduction or elimination of any duty on imports of fine denier PSF that are the product of Israel, pursuant to section 403 of the Trade and Tariff Act of 1984 (19 U.S.C. 2112 note);

(e) In light of the USITC's finding that imports of fine denier PSF that are the product of Panama are not a substantial cause of serious injury or threat thereof, I have determined to exclude such imports that are the product of Panama from the action I am taking under section 203 of the Trade Act (19 U.S.C. 2253), pursuant to section 331(b) of the United States-Panama Trade Promotion Agreement Implementation Act (Public Law 112–43, 125 Stat. 497, 529 (2011)) (19 U.S.C. 3805 note);

(f) In light of the USITC's finding that imports of fine denier PSF that are the product of Peru are not a substantial cause of serious injury or threat thereof, I have determined to exclude such imports that are the product of Peru from the action I am taking under section 203 of the Trade Act (19 U.S.C. 2553), pursuant to section 331(b) of the United States-Peru Trade Promotion Agreement Implementation Act (Public Law 110–138, 121 Stat. 1455, 1486 (2007)) (19 U.S.C. 3805 note);

(g) I have determined that imports of fine denier PSF that are the product of Singapore are not a substantial cause of the serious injury found by the USITC, and I have therefore determined to exclude such imports that are the product of Singapore from the action I am taking under section 203 of the Trade Act (19 U.S.C. 2253), pursuant to section 331(b) of the United States-Singapore Free Trade Agreement Implementation Act (Public Law 108–78, 117 Stat. 948, 970 (2003)) (19 U.S.C. 3805 note); and

(h) In light of the USITC's finding that the serious injury substantially caused by imports to the domestic industry producing a like or directly competitive article does not result from duty-free treatment provided for under the CBERA provisions of the Caribbean Basin Initiative trade program, I have determined, as part of the action I am taking under section 203 of the Trade Act (19 U.S.C. 2253), not to suspend duty-free treatment pursuant to subsection 1 of 19 U.S.C. 2703(e), with respect to imports of fine denier PSF that are the product of any CBERA beneficiary country or territory.

16. Although the USITC found that imports of fine denier PSF that are a product of the Republic of Korea are not a substantial cause of serious injury or threat thereof, I have determined to include imports of fine denier PSF that are the product of the Republic of Korea in the action I am taking under section 203 of the Trade Act (19 U.S.C. 2253). Specifically, consistent with the recommendations of certain USITC Commissioners, I have found that excluding imports of the Republic of Korea from the quantitative restriction could significantly undermine this action.

17. While the USITC recommended excluding Jordan from this action under the United States-Jordan Free Trade Area Implementation Act (Public Law 107–43, 115 Stat. 243 (2001)) (19 U.S.C. 2112 note), I have instead determined to exclude such imports that are the product of Jordan as imports of a developing country from the action I am taking, pursuant to paragraph 13 of this proclamation.

18. While the USITC Commissioners recommended that I impose a tariff-rate quota on fine denier PSF imports, I have determined not to do so. The USITC Report indicates that TIB entries of fine denier PSF contributed significantly to the serious injury to the domestic industry. In addition, such TIB entries are undermining the effectiveness of existing trade actions on fine denier PSF. Therefore, I have decided to tailor this safeguard remedy to TIB entries of fine denier PSF. Furthermore, I have determined not to impose a tariff-rate quota on imports of fine denier PSF in the interest of balancing the competing interests of domestic fine denier PSF manufacturers and the impact of the safeguard remedy on downstream United States producers, including manufacturers of textiles, defense products, and consumer products, that rely on fine denier PSF.

19. Pursuant to section 203(a)(1)(A) of the Trade Act (19 U.S.C. 2253(a)(1)(A)), I have determined that this safeguard measure will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs. If I determine that further action is appropriate and feasible to facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs, or if I determine that the conditions under section 204(b)(1) of the Trade Act (19 U.S.C. 2254(b)(1)) are met, I shall reduce, modify, or terminate the action established in this proclamation accordingly. In addition, if I determine within 30 days of the date of this proclamation, as a result of consultations between the United States and other WTO Members pursuant to Article 12.3 of the

WTO Agreement on Safeguards, that it is necessary to reduce, modify, or terminate the safeguard measure, I shall proclaim the corresponding reduction, modification, or termination of the safeguard measure within 40 days of the date of this proclamation.

20. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, including sections 203 and 604 of the Trade Act (19 U.S.C. 2253 and 2483), section 302 of the USMCA Implementation Act (19 U.S.C. 4552), section 331(b) of the United States-Australia Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), section 331(b) of the CAFTA–DR Act (19 U.S.C. 4101(b)), section 331(b) of the United States-Colombia Free Trade Promotion Agreement Implementation Act (19 U.S.C. 3805 note), section 403 of the Trade and Tariff Act of 1984 (19 U.S.C. 2112 note), section 331(b) of the United States-Panama Trade Promotion Agreement Implementation Act (19 U.S.C. 3805 note), section 331(b) of the United States-Peru Trade Promotion Agreement Implementation Act (19 U.S.C. 3805 note), section 331(b) of the United States-Singapore Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), and 19 U.S.C. 2703(e), do proclaim that:

(1) In order to establish a quantitative restriction on imports of fine denier PSF described in paragraph 9 of this proclamation, subchapter III of chapter 99 of the HTS is modified as provided in the Annex to this proclamation.

(2) The modifications to the HTS made by this proclamation, included in the Annex to this proclamation, shall be effective with respect to goods admitted temporarily free of duty under bond which are entered under HTS statistical reporting number 9813.00.0520, on or after 12:01 a.m. eastern standard time 15 days after the date of this proclamation, and shall continue in effect as provided in the Annex to this proclamation, unless such action is earlier expressly reduced, modified, or terminated.

(3) Imports of fine denier PSF that are the product of Australia, Canada, the CAFTA–DR countries, CBERA beneficiary countries and territories, Colombia, Israel, Mexico, Panama, Peru, or Singapore shall be excluded from the safeguard measure established in this proclamation, and such imports shall not be counted toward the quantitative restriction.

(4) Except as provided in clause (5) below, imports of fine denier PSF that are the product of developing countries, as listed in subdivision (b)(iii) of Note 32 in the Annex to this proclamation, shall be excluded from the safeguard measure established in this proclamation, and such imports shall not be counted toward the quantitative restriction.

(5) If, after the safeguard measure established in this proclamation takes effect, I determine that:

(a) the share of total imports of the product of a country listed in subdivision (b)(iii) of Note 32 in the Annex to this proclamation, based on imports during a recent representative period, exceeds 3 percent;

(b) imports of the product from all listed countries with less than 3 percent import share collectively account for more than 9 percent of total imports of the product; or

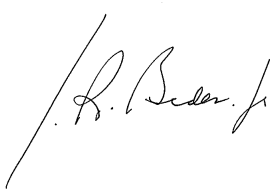
(c) a country listed in subdivision (b)(iii) of Note 32 in the Annex to this proclamation is no longer a developing country for purposes of this proclamation;

then I may revise subdivision (b)(iii) of Note 32 in the Annex to this proclamation to remove the relevant country from the list or suspend operation of that subdivision, as appropriate.

(6) One year from the termination of the safeguard measure established in this proclamation, the United States note and tariff provisions established in the Annex to this proclamation shall be deleted from the HTS.

(7) Any provision of previous proclamations and Executive Orders that is inconsistent with the action taken in this proclamation is superseded to the extent of such inconsistency.

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



Billing code 3395–F4–P

ANNEX I

TO MODIFY CHAPTER 99 OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods admitted temporarily free of duty under bond which are entered under subheading 9813.00.0520, on or after 12:01 a.m. eastern standard time on November 23, 2024, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) is hereby modified by inserting in numerical sequence the following new U.S. note and provisions:

"32. Action Applicable to Imports of Fine Denier Polyester Staple Fiber.

(a) For the purposes of subheading 9903.55.01 of this subchapter, the maximum annual aggregate quantity of all fine denier PSF products as defined in paragraph (c) below, that are admitted into the United States temporarily free of duty under bond and entered under statistical reporting number 9813.00.0520, when such goods are not the product of a country subject to exclusion as defined in paragraph (b), in any of the periods enumerated below shall be as follows:

If entered during the period from November 23, 2024, through November 22, 2025 ..... 0 kilograms
If entered during the period from November 23, 2025, through November 22, 2026 ..... 453,592 kilograms
If entered during the period from November 23, 2026, through November 22, 2027 ..... 907,185 kilograms
If entered during the period from November 23, 2027, through November 22, 2028 ..... 1,360,777 kilograms

(b) For the purposes of this note and the application of subheading 9903.55.01, the following countries shall not be subject to the quantitative restriction for goods admitted into the United States temporarily free of duty under bond which are entered under statistical reporting number 9813.00.0520 provided for herein:

(i) Canada and Mexico;

(ii) Australia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Colombia, Israel, Panama, Peru, and Singapore;

(iii) The following developing countries:

Afghanistan, Albania, Algeria, Angola, Armenia, Azerbaijan, Belize, Benin, Bhutan, Bolivia, Bosnia and Hercegovina, Botswana, Brazil, Burkina Faso, Burma, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo (Brazzaville), Congo (Kinshasa), Côte d'Ivoire, Djibouti, Dominica, Ecuador, Egypt, Eritrea, Eswatini, Ethiopia, Fiji, Gabon, The Gambia, Georgia, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, Iraq, Jamaica, Jordan, Kazakhstan, Kenya, Kiribati, Kosovo, Kyrgyzstan, Lebanon, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mauritius, Moldova, Mongolia, Montenegro, Mozambique, Namibia, Nepal, Niger, Nigeria, North Macedonia, Pakistan, Papua New Guinea, Paraguay, Philippines, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tomé and Principe, Senegal, Serbia, Sierra Leone, Solomon Islands, Somalia, South Africa, South Sudan, Sri Lanka, Suriname, Tanzania, Timor-Leste, Togo, Tonga, Tunisia, Tuvalu, Uganda, Ukraine, Uzbekistan, Vanuatu, Yemen (Republic of), Zambia and Zimbabwe; and

(iv) The following Caribbean Basin Economic Recovery Act beneficiary countries and territories:

Antigua and Barbuda, Aruba, the Bahamas, Barbados, Belize, British Virgin Islands, Curaçao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago.

(c) Scope.

(i) For the purposes of subheading 9903.55.01 of this subchapter, the term "fine denier polyester staple fiber" ("fine denier PSF") means fine denier polyester staple fiber, not carded or combed, measuring less than 3.3 decitex (3 denier) in diameter, whether coated or uncoated. The scope covers products classifiable in subheading 5503.20.00 and described in statistical reporting number 5503.20.0025 or 9813.00.0520.

(ii) Subheading 9903.55.01 shall not cover—

(1) PSF equal to or greater than 3.3 decitex (more than 3 denier, inclusive) currently classifiable under HTS subheading 5503.20.00 and described in statistical reporting numbers 5503.20.0045 and 5503.20.0065; and

(2) Low-melt PSF defined as a bi-component polyester fiber having a polyester fiber component that melts at a lower temperature than the other polyester fiber component, which is currently classifiable in HTS statistical reporting number 5503.20.0015."

The following new tariff subheading and superior text thereto are inserted in numerical sequence in subchapter III of chapter 99, with the material inserted in the columns titled "Heading/Subheading", "Article Description", "Rates of Duty 1-General", and "Rates of Duty 2", respectively:

Heading/ Subheading	Article Description	Rates of Duty		
		1		2
		General	Special	
	"Fine denier polyester staple fiber, as defined in U.S. note 32(c) to this subchapter:			
9903.55.01	Entered under temporary importation bond in aggregate quantities not exceeding the amount specified in U.S. note 32(a) to this subchapter for any period specified in such note, when the product of any country not exempt under U.S. note 32(b) to this subchapter	Free		No change"

[FR Doc. R1–2024–26714
Filed 11–19–24; 11:15 am]
Billing code 7020–02–C

Reader Aids

Federal Register

Vol. 89, No. 224

Wednesday, November 20, 2024

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–741–6000**

Laws **741–6000**

Presidential Documents

Executive orders and proclamations **741–6000**

The United States Government Manual **741–6000**

Other Services

Electronic and on-line services (voice) **741–6020**

Privacy Act Compilation **741–6050**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, NOVEMBER

87259–87460 1
87461–87762 4
87763–87930 5
87931–88114 6
88115–88630 7
88631–88870 8
88871–89476 12
89477–89906 13
89907–90220 14
90221–90546 15
90547–91246 18
91247–91524 19
91525–92022 20

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
10845 87259
10846 87763
10847 87765
10848 87767
10849 87769
10850 87771
10851 87773
10852 87775
10853 87777
10854 87781
10855 88871
10856 89907
10857 ..... 89909, 92015
10858 91523
10859 91525
10860 91527

Administrative Orders:
Memorandums:
Memorandum of October 16, 2024 87461
Memorandum of October 21, 2024 87463
Notices:
Notice of November 1, 2024 87761
Notice of November 7, 2024 88867
Notice of November 7, 2024 88869

6 CFR

5 91247

7 CFR

1 91529
271 90547
273 ..... 90547, 91198
1220 90569
1773 88631
4284 89917
3560 90221

Proposed Rules:
981 88661
3565 87801

10 CFR

Proposed Rules:
430 ..... 87803, 88661

12 CFR

201 91532
204 ..... 91533, 91534
209 88877
Ch. X 88875
1001 90838
1033 90838

Proposed Rules:
375 91586
1239 87730
1261 87730
1273 87730

13 CFR

123 91536

Proposed Rules:
115 91284

14 CFR

11 90572
33 91539
39 ..... 88115, 88878, 88881, 88884, 88886, 91248, 91541
61 90572
68 90572
71 ..... 87465, 87466, 89477, 90578, 91251
91 90572
93 91544
97 ..... 89478, 89480

Proposed Rules:
39 ..... 87311, 87314, 87317, 87821, 88173, 88174, 88681, 88906, 88908, 88910, 88913, 89938, 91291
71 ..... 87985, 87988, 87989, 88177, 88178, 88181, 88182, 88184, 88683, 88915, 89505, 91293
77 90627

15 CFR

734 ..... 87783, 91251
740 ..... 87783, 91251
742 87783
744 ..... 87261, 87279, 87783, 91251
746 ..... 87279, 87783, 91251
774 ..... 87783, 91251

Proposed Rules:
734 87825
740 ..... 87825, 91295
742 87825
744 87825
746 87825
774 ..... 87825, 91295

16 CFR

425 90476
801 89216
803 89216
1112 87467
1130 87467
1226 91545
1243 87467

Proposed Rules:
1112 91586
1250 ..... 88684, 91586

17 CFR

37 88594
38 88594
40 88594

200.....90579
230.....90579
240.....91000
274.....90579
275.....90579, 91252

20 CFR

Proposed Rules:
655.....90646

21 CFR

80.....88635
1307.....91253

22 CFR

Proposed Rules:
120.....91296
121.....91296
126.....91296

23 CFR

624.....88118
630.....87282

Proposed Rules:
500.....89506
515.....89506

24 CFR

581.....89870

Proposed Rules:
5.....87518
902.....87518

26 CFR

1.....91522
54.....88642
301.....87784

Proposed Rules:
1.....88686, 91617
301.....88686

27 CFR

1.....87931
4.....87931
5.....87931
6.....87931
8.....87931
9.....87931
10.....87931
11.....87931
13.....87931
16.....87931
17.....87931
18.....87931
19.....87931
20.....87931
21.....87931
22.....87931
24.....87931
25.....87931
26.....87931
27.....87931
28.....87931
29.....87931
30.....87931
31.....87931
40.....87931
41.....87931
44.....87931
45.....87931
46.....87931
53.....87931
70.....87931
71.....87931
72.....87931

29 CFR

2560.....88642
2590.....88642

30 CFR

250.....89922
290.....89922
926.....91257

Proposed Rules:
117.....87990

31 CFR

525.....89481
548.....89926
587.....89926
560.....91261
562.....91262
594.....91261
802.....88128, 90592
850.....90398

33 CFR

100 .....87787, 88646, 90592, 91563
117.....87498
165 .....87299, 87789, 87791, 87953, 88137, 88648, 91565, 91567, 91569

Proposed Rules:
165.....89940
166.....91296

34 CFR

685.....90221

Proposed Rules:
Ch. III.....88185

36 CFR

242.....89493

37 CFR

1.....91898
2.....91062
7.....91062
41.....91898
42.....91898
70.....88888
79.....89494

Proposed Rules:
1.....88686
3.....88917
4.....88917
14.....88192
17.....89519
36.....88192
84.....89519

38 CFR

Proposed Rules:
36.....91624

39 CFR

Proposed Rules:
121.....90241
3050.....87319

40 CFR

2.....91094
9.....88650
51.....88653
52 .....87500, 87505, 87955, 87960, 88139, 90230, 90592, 91263, 91269, 91572
60.....89928
79.....88653
80.....88653
85.....88653
97.....87960
98.....91094
99.....91094
122.....88653
180.....87509, 88657
257.....88650
271.....87512, 91574
300.....88653
372.....88653
501.....88653
704.....88653
745.....88653, 89416
751.....91486
763.....88653
790.....88653
1036.....88653
1037.....88653

Proposed Rules:
51.....88940
52 .....87320, 87826, 87828, 88688, 88690, 89942, 90249
81.....87828
180.....87321, 88948
257.....88694
271.....91635
751.....91299

41 CFR

102–75.....89870
300–2.....89501
302–2.....89501
302–15.....89501

42 CFR

12.....91253
410.....89084
413.....89084
424.....88354
483.....88354
484.....88354
494.....89084
512.....89084

43 CFR

8360.....89933

44 CFR

61.....87299
62.....87299

45 CFR

12a.....89870
98.....90605
1304.....87977
2584.....88147

47 CFR

0.....91578
8.....87309
20.....89832
52.....88890
54.....87516
64.....87982
76.....87543
90.....91578

Proposed Rules:
14.....88695
52.....91636
64.....88695
76.....87322, 89543

48 CFR

Ch. 1.....89464, 89475
4.....89464
13.....89464
39.....89464
40.....89464
52.....89464, 89472
Ch. 9.....89720
202.....90232
203.....90233
204.....90233
205.....90233
212.....90233
215.....90233, 90237
225.....90233, 90238
501.....90238
552.....90238
570.....90238

Proposed Rules:
212.....90254
213.....90254
217.....90254
239.....90254
252.....90254
570.....87993

49 CFR

40.....87792
Ch. III.....90608

Proposed Rules:
371.....91648
386.....87532
387.....87532
571.....91670
1500.....88488
1503.....88488
1520.....88488
1570.....88488
1580.....88488
1582.....88488
1584.....88488
1586.....88488

50 CFR

32.....88147
100.....89493
622.....90625
635.....91275
648 .....87309, 90626, 91277
665.....88170
679.....87798, 87799

Proposed Rules:
18.....88216
217.....89543
229.....87322
665.....87838

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List October 8, 2024

Public Laws Electronic Notification Service (PENS)

PENS is a free email notification service of newly enacted public laws. To subscribe, go to *https://portalguard.gsa.gov/__layouts/PG/register.aspx*.

Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.