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Title 3—

Proclamation 10880 of January 2, 2025

The President

Amending Proclamation 8336 To Read, “Establishment of the Pacific Islands Heritage Marine National Monument” and Amending Proclamation 9173 To Read, “Pacific Islands Heritage Marine National Monument Expansion”

By the President of the United States of America

A Proclamation

WHEREAS, Proclamation 8336 of January 6, 2009, established the Pacific Remote Islands Marine National Monument (Monument); and

WHEREAS, Proclamation 9173 of September 25, 2014, established the Pacific Remote Islands Marine National Monument Expansion (Monument Expansion);

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 section 320301 of title 54, United States Code, do amend Proclamation 8336 and Proclamation 9173 for the purposes of updating the name of the Monument and the Monument Expansion to recognize the connection of these areas with the cultural heritage of the Indigenous Peoples and communities of the Pacific Islands, and of making the following conforming changes and corrections:

Section 1. The title of Proclamation 8336 is amended to read, “Establishment of the Pacific Islands Heritage Marine National Monument.”

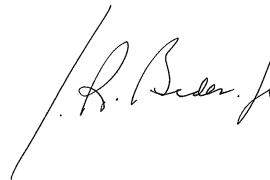
Sec. 2. The title of Proclamation 9173 is amended to read, “Pacific Islands Heritage Marine National Monument Expansion.”

Sec. 3. The phrase “Pacific Remote Islands Marine National Monument” is amended to read, “Pacific Islands Heritage Marine National Monument,” wherever it appears in Proclamation 8336 and Proclamation 9173.

Sec. 4. The titles of the maps of the Monument accompanying Proclamation 8336 are amended to read, “Pacific Islands Heritage Marine National Monument.”

Sec. 5. The titles of the maps of the Monument Expansion accompanying Proclamation 9173 are amended to read, “Pacific Islands Heritage Marine National Monument Expansion.”

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

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

Presidential Documents

Executive Order 14134 of January 3, 2025

Providing an Order of Succession Within the Department of Agriculture

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, as amended, 5 U.S.C. 3345 *et seq.* (the “Act”), it is hereby ordered that:

Section 1. Order of Succession. (a) Subject to the provisions of section 2 of this order, and to the limitations set forth in the Act, the following officials of the Department of Agriculture, in the order listed, shall act as and perform the functions and duties of the office of Secretary of Agriculture (Secretary) during any period in which both the Secretary and the Deputy Secretary of Agriculture have died, resigned, or otherwise become unable to perform the functions and duties of the office of Secretary:

- (i) Under Secretary of Agriculture for Farm Production and Conservation;
- (ii) Under Secretary of Agriculture for Food, Nutrition, and Consumer Services;
- (iii) Under Secretary of Agriculture for Natural Resources and Environment;
- (iv) Under Secretary of Agriculture for Research, Education, and Economics;
- (v) Under Secretary of Agriculture for Rural Development;
- (vi) Under Secretary of Agriculture for Food Safety;
- (vii) Under Secretary of Agriculture for Marketing and Regulatory Programs;
- (viii) Under Secretary of Agriculture for Trade and Foreign Agricultural Affairs;
- (ix) General Counsel of the Department of Agriculture;
- (x) Assistant Secretary of Agriculture (Congressional Relations and Intergovernmental Affairs);
- (xi) Chief Financial Officer, Department of Agriculture;
- (xii) Assistant Secretary of Agriculture (Civil Rights);
- (xiii) Assistant Secretary of Agriculture (Administration);
- (xiv) Chief of Staff, Office of the Secretary;
- (xv) State Executive Directors of the Farm Service Agency for the States of Kansas, Missouri, and Iowa, in order of seniority fixed by length of unbroken service as State Executive Director of that State;
- (xvi) Director, Office of Budget and Program Analysis; and
- (xvii) Chief, United States Forest Service.

(b) If any two or more individuals designated in subsection (a)(xv) of this section were sworn in to, or commenced service in, their respective offices on the same day, precedence shall be determined by the alphabetical order of the State in which the individual serves.

Sec. 2. Exceptions. (a) No individual who is serving in an office listed in section 1(a)(i)–(xvii) of this order in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.

(b) No individual who is serving in an office listed in section 1(a)(i)–(xvii) of this order shall act as Secretary unless that individual is otherwise eligible to so serve under the Act.

(c) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Secretary.

Sec. 3. *Revocation.* Executive Order 13612 of May 21, 2012 (Providing an Order of Succession Within the Department of Agriculture), is hereby revoked.

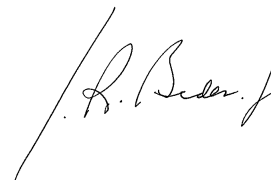
Sec. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 3, 2025.

Presidential Documents

Executive Order 14135 of January 3, 2025

Providing an Order of Succession Within the Department of Homeland Security

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, as amended, 5 U.S.C. 3345 *et seq.* (the “Act”), it is hereby ordered that:

Section 1. Order of Succession. Subject to the provisions of section 2 of this order, and to the limitations set forth in the Act, the following officials of the Department of Homeland Security, in the order listed, shall act as and perform the functions and duties of the office of Secretary of Homeland Security (Secretary) during any period in which the Secretary, the Deputy Secretary of Homeland Security, the Under Secretary for Management, and any officers designated by the Secretary pursuant to 6 U.S.C. 113 to act as Secretary have died, resigned, or otherwise become unable to perform the functions and duties of the office of Secretary, until such time as at least one of the officers mentioned above is able to perform the functions and duties of that office:

- (a) Administrator of the Transportation Security Administration;
- (b) Under Secretary for Intelligence and Analysis;
- (c) Director of the Federal Law Enforcement Training Centers; and
- (d) Region 3 Administrator, Federal Emergency Management Agency.

Sec. 2. Exceptions. (a) No individual who is serving in an office listed in section 1(a)–(d) of this order in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.

(b) No individual who is serving in an office listed in section 1(a)–(d) of this order shall act as Secretary pursuant to this order unless that individual is otherwise eligible to so serve under the Act.

(c) If any individual who is serving in an office listed in section 1(a)–(d) of this order is designated by the Secretary pursuant to 6 U.S.C. 113 to act as Secretary, they shall act as Secretary in accordance with their placement in the order established by the Secretary and not in accordance with their placement on the list in section 1 of this order.

(d) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Secretary.

Sec. 3. Revocation. (a) Executive Order 13753 of December 9, 2016 (Amending the Order of Succession in the Department of Homeland Security), is hereby revoked.

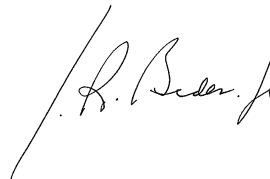
(b) Section 88 of Executive Order 13286 of February 28, 2003 (Amendment of Executive Orders, and Other Actions, in Connection With the Transfer of Certain Functions to the Secretary of Homeland Security), is hereby struck in its entirety and the subsequent sections are renumbered accordingly.

Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 3, 2025.

Presidential Documents

Executive Order 14136 of January 3, 2025

Providing an Order of Succession Within the Department of Justice

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, as amended, 5 U.S.C. 3345 *et seq.* (the “Act”), it is hereby ordered that:

Section 1. Order of Succession. Subject to the provisions of section 2 of this order, and to the limitations set forth in the Act, the following officials of the Department of Justice, in the order listed, shall act as and perform the functions and duties of the office of Attorney General during any period in which the Attorney General, the Deputy Attorney General, the Associate Attorney General, and any officers designated by the Attorney General pursuant to 28 U.S.C. 508 to act as Attorney General have died, resigned, or otherwise become unable to perform the functions and duties of the office of Attorney General, until such time as at least one of the officers mentioned above is able to perform the functions and duties of that office:

- (a) United States Attorney for the Southern District of New York;
- (b) United States Attorney for the District of Arizona;
- (c) United States Attorney for the Northern District of Illinois; and
- (d) United States Attorney for the District of Hawaii.

Sec. 2. Exceptions. (a) No individual who is serving in an office listed in section 1(a)–(d) of this order in an acting capacity shall, by virtue of so serving, act as Attorney General pursuant to this order.

(b) No individual who is serving in an office listed in section 1(a)–(d) of this order shall act as Attorney General unless that individual is otherwise eligible to so serve under the Act.

(c) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Attorney General.

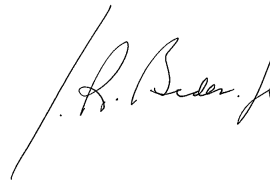
Sec. 3. Revocation. Executive Order 13787 of March 31, 2017 (Providing an Order of Succession Within the Department of Justice), is hereby revoked.

Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 3, 2025.

Presidential Documents

Executive Order 14137 of January 3, 2025

Providing an Order of Succession Within the Department of the Treasury

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, as amended, 5 U.S.C. 3345 *et seq.* (the “Act”), it is hereby ordered that:

Section 1. Order of Succession. Subject to the provisions of section 2 of this order, and to the limitations set forth in the Act, the following officials of the Department of the Treasury, in the order listed, shall act as and perform the functions and duties of the office of Secretary of the Treasury (Secretary) during any period in which both the Secretary and the Deputy Secretary of the Treasury have died, resigned, or otherwise become unable to perform the functions and duties of the office of Secretary:

(a) Any Under Secretary of the Treasury, in order of seniority based on date of appointment to such position;

(b) General Counsel for the Department of the Treasury;

(c) Any Deputy Under Secretary of the Treasury or any Assistant Secretary of the Treasury appointed by the President by and with the consent of the Senate, in order of seniority based on date of appointment to such position;

(d) Chief of Staff;

(e) Assistant Secretary of the Treasury for Management;

(f) Fiscal Assistant Secretary;

(g) Commissioner of Internal Revenue, Internal Revenue Service;

(h) Commissioner, Bureau of the Fiscal Service;

(i) Deputy Commissioner, Financing and Operations, Bureau of the Fiscal Service; and

(j) Deputy Commissioner, Internal Revenue Service.

Sec. 2. Exceptions. (a) No individual who is serving in an office listed in section 1(a)–(j) of this order in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.

(b) No individual who is serving in an office listed in section 1(a)–(j) of this order shall act as Secretary unless that individual is otherwise eligible to so serve under the Act.

(c) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Secretary.

Sec. 3. Revocation. Executive Order 13735 of August 12, 2016 (Providing an Order of Succession Within the Department of the Treasury), is hereby revoked.

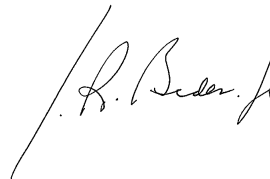
Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 3, 2025.

Presidential Documents

Executive Order 14138 of January 3, 2025

Providing an Order of Succession Within the Office of Management and Budget

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, as amended, 5 U.S.C. 3345 *et seq.* (the “Act”), it is hereby ordered that:

Section 1. *Order of Succession.* Subject to the provisions of section 2 of this order, and to the limitations set forth in the Act, the following officials of the Office of Management and Budget, in the order listed, shall act as and perform the functions and duties of the office of Director of the Office of Management and Budget (Director) during any period in which both the Director and the Deputy Director of the Office of Management and Budget have died, resigned, or otherwise become unable to perform the functions and duties of the office of Director:

- (a) Deputy Director for Management;
- (b) Executive Associate Director;
- (c) Associate Director (National Security Programs);
- (d) Associate Director (General Government Programs);
- (e) Associate Director (Education, Income Maintenance, and Labor Programs);
- (f) Associate Director (Health Programs);
- (g) Associate Director (Climate, Energy, Environment, and Science Programs);
- (h) General Counsel;
- (i) Administrator for Federal Procurement Policy;
- (j) Administrator of the Office of Information and Regulatory Affairs;
- (k) Controller, Office of Federal Financial Management; and
- (l) Administrator of the Office of Electronic Government.

Sec. 2. *Exceptions.* (a) No individual who is serving in an office listed in section 1(a)–(l) of this order in an acting capacity shall, by virtue of so serving, act as Director pursuant to this order.

(b) No individual who is serving in an office listed in section 1(a)–(l) of this order shall act as Director unless that individual is otherwise eligible to so serve under the Act.

(c) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Director.

Sec. 3. *Revocation.* Executive Order 13615 of May 21, 2012 (Providing an Order of Succession Within the Office of Management and Budget), is hereby revoked.

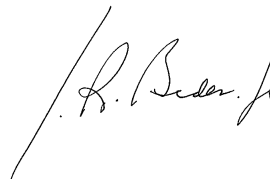
Sec. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 3, 2025.

Presidential Documents

Executive Order 14139 of January 3, 2025

Providing an Order of Succession Within the Office of the National Cyber Director

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, as amended, 5 U.S.C. 3345 *et seq.* (the “Act”), it is hereby ordered that:

Section 1. *Order of Succession.* Subject to the provisions of section 2 of this order, and to the limitations set forth in the Act, the following officials of the Office of the National Cyber Director, in the order listed, shall act as and perform the functions and duties of the office of the National Cyber Director (Director) during any period in which the Director has died, resigned, or otherwise become unable to perform the functions and duties of the office of Director:

- (a) Deputy National Cyber Director;
- (b) Chief of Staff;
- (c) Assistant National Cyber Director for Policy Development;
- (d) Assistant National Cyber Director for Policy Implementation;
- (e) Assistant National Cyber Director for Resource Management and Administration; and
- (f) General Counsel.

Sec. 2. *Exceptions.* (a) No individual who is serving in an office listed in section 1(a)–(f) of this order in an acting capacity shall, by virtue of so serving, act as Director pursuant to this order.

(b) No individual who is serving in an office listed in section 1(a)–(f) of this order shall act as Director unless that individual is otherwise eligible to so serve under the Act.

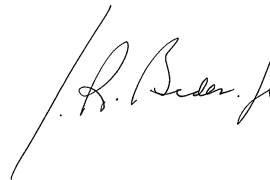
(c) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Director.

Sec. 3. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 3, 2025.

Presidential Documents

Executive Order 14140 of January 8, 2025

Taking Additional Steps With Respect to the Situation in the Western Balkans

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code,

I, JOSEPH R. BIDEN JR., President of the United States of America, in view of events in the Western Balkans, including continued attempts by individuals to challenge the sovereignty and territorial integrity of Western Balkans nations, to undermine post-war agreements and institutions, to engage in significant corruption that erodes the rule of law and trust in democratic governance, and to evade United States Government sanctions, and in order to take additional steps with respect to the national emergency declared in Executive Order 13219 of June 26, 2001 (Blocking Property of Persons Who Threaten International Stabilization Efforts in the Western Balkans), as amended by Executive Order 13304 of May 28, 2003 (Termination of Emergencies With Respect to Yugoslavia and Modification of Executive Order 13219 of June 26, 2001), and expanded in scope by Executive Order 14033 of June 8, 2021 (Blocking Property and Suspending Entry Into the United States of Certain Persons Contributing to the Destabilizing Situation in the Western Balkans), hereby order:

Section 1. Amendments to Executive Order 14033. Executive Order 14033 is hereby amended by striking section 1 and inserting, in lieu thereof, the following:

“**Section 1.** (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) to be responsible for or complicit in, or to have directly or indirectly engaged or attempted to engage in, actions or policies that threaten the peace, security, stability, or territorial integrity of any area or state in the Western Balkans;

(ii) to be responsible for or complicit in, including by involvement in developing, or to have directly or indirectly engaged or attempted to engage in, actions or policies that undermine democratic processes or institutions in the Western Balkans;

(iii) to be responsible for or complicit in, or to have directly or indirectly engaged or attempted to engage in, a violation of, or an act that has obstructed or threatened the implementation of, any regional security, peace, cooperation, or mutual recognition agreement or framework or accountability mechanism, or to pose a significant risk of committing such an act, related to the Western Balkans, including the Prespa Agreement of 2018; the Ohrid Framework Agreement of 2001; United Nations Security Council Resolution 1244; the Dayton Accords; or the Conclusions of the Peace Implementation Conference Council held in London in December

1995, including the decisions or conclusions of the High Representative, the Peace Implementation Council, or its Steering Board; or the International Criminal Tribunal for the former Yugoslavia, or, with respect to the former Yugoslavia, the International Residual Mechanism for Criminal Tribunals;

(iv) to be responsible for or complicit in, or to have directly or indirectly engaged or attempted to engage in, serious human rights abuse in the Western Balkans;

(v) to be responsible for or complicit in, or to have directly or indirectly engaged or attempted to engage in, corruption related to the Western Balkans, including corruption by, on behalf of, or otherwise related to a government in the Western Balkans, or a current or former government official at any level of government in the Western Balkans, such as the misappropriation of public assets, expropriation of private assets for personal gain or political purposes, or bribery;

(vi) to be a leader, official, or member of an entity, including a government entity, that has engaged in, or attempted to engage in, any of the activities described in subsections (1)(a)(i)–(v) of this order, or whose property and interests in property are blocked pursuant to this order;

(vii) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person whose property and interests in property are blocked pursuant to this order;

(viii) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order;

(ix) to own or control, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order; or

(x) to be a spouse or adult child of any person whose property and interests in property are blocked pursuant to subsections (1)(a)(i)–(v) of this order.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted before the date of this order.”

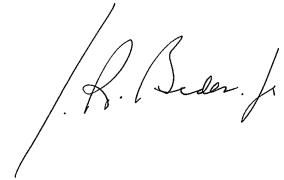
Sec. 2. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other persons.



THE WHITE HOUSE,
January 8, 2025.

Presidential Documents

Memorandum of January 3, 2025

Designation of Officials of the Council on Environmental Quality To Act as Chairman

Memorandum for the Chairman of the Council on Environmental Quality

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, as amended, 5 U.S.C. 3345 *et seq.* (the “Act”), it is hereby ordered that:

Section 1. Order of Succession. Subject to the provisions of section 2 of this memorandum, and to the limitations set forth in the Act, the following officials of the Council on Environmental Quality, in the order listed, shall act as and perform the functions and duties of the office of the Chairman of the Council on Environmental Quality (Chairman) during any period in which the Chairman has died, resigned, or otherwise become unable to perform the functions and duties of the office of Chairman:

(a) Chief of Staff;

(b) General Counsel;

(c) Deputy General Counsels, in the chronological order in which they were appointed as a Deputy General Counsel and, if Deputy General Counsels were appointed on the same day, in alphabetical order by last name;

(d) Senior Directors, in the chronological order in which they were appointed as a Senior Director and, if Senior Directors were appointed on the same day, in alphabetical order by last name; and

(e) Associate Director for the National Environmental Policy Act.

Sec. 2. Exceptions. (a) No individual who is serving in an office listed in section 1 of this memorandum in an acting capacity shall, by virtue of so serving, act as Chairman pursuant to this memorandum.

(b) No individual who is serving in an office listed in section 1 of this memorandum shall act as Chairman unless that individual is otherwise eligible to so serve under the Act.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Chairman.

Sec. 3. Revocation. The Presidential Memorandum of September 6, 2019 (Providing an Order of Succession Within the Council on Environmental Quality), is hereby revoked.

Sec. 4. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

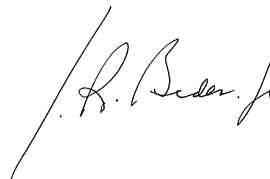
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by

any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) You are authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to read "R. B. Biden", is written over a horizontal line.

THE WHITE HOUSE,
Washington, January 3, 2025

Presidential Documents

Memorandum of January 3, 2025

Designation of Officials of the Office of Personnel Management To Act as Director

Memorandum for the Director of the Office of Personnel Management

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, as amended, 5 U.S.C. 3345 *et seq.* (the “Act”), it is hereby ordered that:

Section 1. Order of Succession. Subject to the provisions of section 2 of this memorandum, and to the limitations set forth in the Act, the following officials of the Office of Personnel Management (OPM), in the order listed, shall act as and perform the functions and duties of the office of the Director of OPM (Director) during any period in which both the Director and the Deputy Director have died, resigned, or otherwise become unable to perform the functions and duties of the office of Director:

- (a) Chief of Staff;
- (b) General Counsel;
- (c) Chief Management Officer;
- (d) Associate Director, Workforce Policy and Innovation;
- (e) Chief Financial Officer;
- (f) Associate Director, Retirement Services; and
- (g) other Associate Directors, in order of seniority based on date of appointment to such position.

Sec. 2. Exceptions. (a) No individual who is serving in an office listed in section 1 of this memorandum in an acting capacity shall, by virtue of so serving, act as Director pursuant to this memorandum.

(b) No individual who is serving in an office listed in section 1 of this memorandum shall act as Director unless that individual is otherwise eligible to so serve under the Act.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Director.

Sec. 3. Revocation. The Presidential Memorandum of December 10, 2020 (Providing an Order of Succession Within the Office of Personnel Management), is hereby revoked.

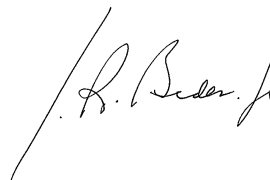
Sec. 4. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) You are authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to read "R. B. Biden" with a stylized flourish at the end.

THE WHITE HOUSE,
Washington, January 3, 2025

Presidential Documents

Memorandum of January 3, 2025

Designation of Officials of the Office of Science and Technology Policy To Act as Director

Memorandum for the Director of the Office of Science and Technology Policy

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, as amended, 5 U.S.C. 3345 *et seq.* (the “Act”), it is hereby ordered that:

Section 1. Order of Succession. Subject to the provisions of section 2 of this memorandum, and to the limitations set forth in the Act, the following officials of the Office of Science and Technology Policy (OSTP), in the order listed, shall act as and perform the functions and duties of the office of the Director of OSTP (Director) during any period in which the Director has died, resigned, or otherwise become unable to perform the functions and duties of the office of Director:

(a) Any Associate Director of OSTP (including any Associate Director designated as the United States Chief Technology Officer), in order of seniority based on date of appointment to such position;

(b) Chief of Staff of OSTP;

(c) Any Deputy Director of OSTP (including any Deputy Director designated Principal Deputy Director or Principal Deputy United States Chief Technology Officer), in order of seniority based on date of appointment to such position; and

(d) General Counsel of OSTP.

Sec. 2. Exceptions. (a) No individual who is serving in an office listed in section 1 of this memorandum in an acting capacity shall, by virtue of so serving, act as Director pursuant to this memorandum.

(b) No individual who is serving in an office listed in section 1 of this memorandum shall act as Director unless that individual is otherwise eligible to so serve under the Act.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Director.

Sec. 3. Revocation. The Presidential Memorandum of January 13, 2017 (Designation of Officers or Employees of the Office of Science and Technology Policy to Act as Director), is hereby revoked.

Sec. 4. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

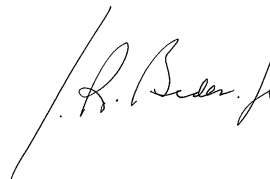
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by

any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) You are authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to read "R. B. Biden", is written on the right side of the page.

THE WHITE HOUSE,
Washington, January 3, 2025

[FR Doc. 2025-00673

Filed 1-10-25; 8:45 am]

Billing code 3170-W0-P

Presidential Documents

Memorandum of January 3, 2025

Designation of Officials of the United States Agency for Global Media To Act as Chief Executive Officer

Memorandum for the Chief Executive Officer of the United States Agency for Global Media

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, as amended, 5 U.S.C. 3345 *et seq.* (the “Act”), it is hereby ordered that:

Section 1. Order of Succession. Subject to the provisions of section 2 of this memorandum, and to the limitations set forth in the Act, the following officials of the United States Agency for Global Media (USAGM), in the order listed, shall act as and perform the functions and duties of the office of the Chief Executive Officer of USAGM (CEO) during any period in which the CEO has died, resigned, or otherwise become unable to perform the functions and duties of the office of CEO:

- (a) Director, Voice of America;
- (b) General Counsel;
- (c) Chief Financial Officer; and
- (d) Chief Management Officer.

Sec. 2. Exceptions. (a) No individual who is serving in an office listed in section 1 of this memorandum in an acting capacity shall, by virtue of so serving, act as CEO pursuant to this memorandum.

(b) No individual who is serving in an office listed in section 1 of this memorandum shall act as CEO unless that individual is otherwise eligible to so serve under the Act.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting CEO.

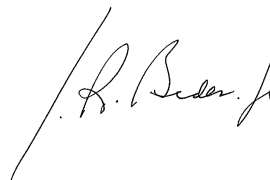
Sec. 3. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) You are authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to read "R. B. Biden" with a stylized flourish at the end.

THE WHITE HOUSE,
Washington, January 3, 2025

Presidential Documents

Memorandum of January 3, 2025

Designation of Officials of the United States Agency for International Development To Act as Administrator

Memorandum for the Administrator of the United States Agency for International Development

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, as amended, 5 U.S.C. 3345 *et seq.* (the “Act”), it is hereby ordered that:

Section 1. *Order of Succession.* Subject to the provisions of section 2 of this memorandum, and to the limitations set forth in the Act, the following officials of the United States Agency for International Development (USAID), in the order listed, shall act as and perform the functions and duties of the office of the Administrator of USAID (Administrator) during any period in which the Administrator has died, resigned, or otherwise become unable to perform the functions and duties of the office of Administrator:

(a) Deputy Administrator for Management and Resources;

(b) Deputy Administrator for Policy and Programming; and

(c) The Assistant Administrators for the Bureaus, in the chronological order in which they were appointed as an Assistant Administrator and, if Assistant Administrators were appointed on the same day, in alphabetical order by last name.

Sec. 2. *Exceptions.* (a) No individual who is serving in an office listed in section 1 of this memorandum in an acting capacity shall, by virtue of so serving, act as Administrator pursuant to this memorandum.

(b) No individual who is serving in an office listed in section 1 of this memorandum shall act as Administrator unless that individual is otherwise eligible to so serve under the Act.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Administrator.

Sec. 3. *Revocation.* The Presidential Memorandum of December 9, 2008 (Designation of Officers of the United States Agency for International Development to Act as Administrator), is hereby revoked.

Sec. 4. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

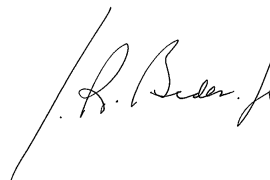
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, January 3, 2025

Presidential Documents

Memorandum of January 3, 2025

Designation of Officials of the United States International Development Finance Corporation To Act as Chief Executive Officer

Memorandum for the Chief Executive Officer of the United States International Development Finance Corporation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, as amended, 5 U.S.C. 3345 *et seq.* (the “Act”), it is hereby ordered that:

Section 1. Order of Succession. Subject to the provisions of section 2 of this memorandum, and to the limitations set forth in the Act, the following officials of the United States International Development Finance Corporation (DFC), in the order listed, shall act as and perform the functions and duties of the office of the Chief Executive Officer of DFC during any period in which the Chief Executive Officer has died, resigned, or otherwise become unable to perform the functions and duties of the office of Chief Executive Officer:

- (a) Deputy Chief Executive Officer;
 - (b) Head of Investment;
 - (c) Chief Operating Officer;
 - (d) Chief of Staff;
 - (e) Vice President and General Counsel;
 - (f) Senior Vice President for Investment;
 - (g) Senior Vice President for Management;
 - (h) Deputy General Counsel for Policy, Monitoring, and Corporate Affairs;
- and
- (i) Chief Financial Officer and Vice President, Finance.

Sec. 2. Exceptions. (a) No individual who is serving in an office listed in section 1 of this memorandum in an acting capacity shall, by virtue of so serving, act as Chief Executive Officer pursuant to this memorandum.

(b) No individual who is serving in an office listed in section 1 of this memorandum shall act as Chief Executive Officer unless that individual is otherwise eligible to so serve under the Act.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Chief Executive Officer.

Sec. 3. Revocation. The Presidential Memorandum of January 8, 2021 (Providing an Order of Succession Within the United States International Development Finance Corporation), is hereby revoked.

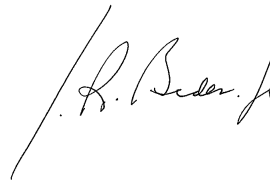
Sec. 4. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, January 3, 2025

Presidential Documents

Order of January 3, 2025

Regarding the Proposed Acquisition of United States Steel Corporation by Nippon Steel Corporation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 721 of the Defense Production Act of 1950, as amended (section 721), 50 U.S.C. 4565, it is hereby ordered as follows:

Section 1. Findings. I hereby make the following findings:

(a) There is credible evidence that leads me to believe that (1) Nippon Steel Corporation, a corporation organized under the laws of Japan (Nippon Steel); (2) Nippon Steel North America, Inc., a New York corporation (Nippon Steel NA); and (3) 2023 Merger Subsidiary, Inc., a Delaware corporation (together with Nippon Steel and Nippon Steel NA, the Purchasers), through the proposed acquisition by the Purchasers of United States Steel Corporation, a Delaware corporation (U.S. Steel), might take action that threatens to impair the national security of the United States; and

(b) Provisions of law, other than section 721 and the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), do not, in my judgment, provide adequate and appropriate authority for me to protect the national security in this matter.

Sec. 2. Actions Ordered and Authorized. On the basis of the findings set forth in section 1 of this order, considering the factors set forth in subsection 721(f) of the Defense Production Act of 1950, as appropriate, and pursuant to my authority under applicable law, including section 721, I hereby order that:

(a) The proposed acquisition of U.S. Steel by the Purchasers (Proposed Transaction) is prohibited, and any substantially similar transaction between the Purchasers and U.S. Steel, whether effected directly or indirectly by the Purchasers, through the Purchasers' shareholders or shareholders' immediate, intermediate, or ultimate foreign person beneficial owners, or through the Purchasers' partners, subsidiaries, or affiliates is also prohibited.

(b) The Purchasers and U.S. Steel shall take all steps necessary to fully and permanently abandon the Proposed Transaction no later than 30 days after the date of this order, unless such date is extended by the Committee on Foreign Investment in the United States (CFIUS), on such conditions as CFIUS may require. Immediately upon completion of all steps necessary to abandon the Proposed Transaction, the Purchasers and U.S. Steel shall certify in writing to CFIUS that such abandonment has been effected in accordance with this order and that all steps necessary to fully and permanently abandon the Proposed Transaction have been completed.

(c) From the date of this order until the Purchasers and U.S. Steel provide a certification of abandonment of the Proposed Transaction to CFIUS pursuant to subsection (b) of this section, the Purchasers and U.S. Steel shall certify to CFIUS on a weekly basis that they are in compliance with this order and include with that certification a description of all efforts to fully and permanently abandon the Proposed Transaction, and a timeline for projected completion of remaining actions necessary to effectuate the abandonment.

(d) Any transaction or other instrument entered into or method employed for the purpose of, or with the effect of, evading or circumventing this order is prohibited.

(e) Without limitation on the exercise of authority by any agency under other provisions of law, and until such time as the Purchasers and U.S. Steel provide a certification of abandonment of the Proposed Transaction and such certification is verified to the satisfaction of CFIUS, CFIUS is further authorized to implement measures it determines necessary and appropriate with regard to the Proposed Transaction to protect the national security of the United States, including measures available to it under section 721 and its implementing regulations, which include the remedies available for violations of any order, agreement or condition entered into or imposed under section 721.

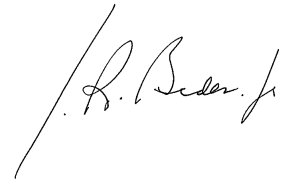
(f) If any provision of this order, or the application of any provision to any person or circumstances, is held to be invalid, the remainder of this order and the application of its other provisions to any other persons or circumstances shall not be affected thereby. If any provision of this order, or the application of any provision to any person or circumstances, is held to be invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements.

(g) The Attorney General is authorized to take any steps necessary to enforce this order.

Sec. 3. *Reservation.* I hereby reserve my authority to issue further orders with respect to the Purchasers or U.S. Steel as shall in my judgment be necessary to protect the national security of the United States.

Sec. 4. *Publication and Transmittal.* (a) This order shall be published in the *Federal Register*.

(b) I hereby direct the Secretary of the Treasury to transmit a copy of this order to the parties to the Proposed Transaction named in section 1 of this order.



THE WHITE HOUSE,
January 3, 2025.

Rules and Regulations

Federal Register

Vol. 90, No. 7

Monday, January 13, 2025

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.

FEDERAL RESERVE SYSTEM

12 CFR Part 263

[Docket No. R-1864]

RIN 7100-AG91

Rules of Practice for Hearings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (the “Board”) is issuing a final rule amending its rules of practice and procedure to adjust the amount of each civil money penalty (“CMP”) provided by law within its jurisdiction to account for inflation as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: This final rule is effective on January 13, 2025.

FOR FURTHER INFORMATION CONTACT: Thomas O. Kelly, Senior Counsel (202/974-7059), Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Ave. NW, Washington, DC 20551. For users of Telecommunication Device for the Deaf (TDD) only, contact 202/263-4869.

SUPPLEMENTARY INFORMATION:

Federal Civil Penalties Inflation Adjustment Act

The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note (“FCPIA Act”), requires federal agencies to adjust, by regulation, the CMPs within their jurisdiction to account for inflation. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the “2015 Act”) ¹ amended the FCPIA Act to require federal agencies to make annual adjustments not later than January 15 of every year.² The Board is now issuing a

new final rule to set the CMP levels pursuant to the required annual adjustment for 2025. The Board will apply these adjusted maximum penalty levels to any penalties assessed on or after January 13, 2025, whose associated violations occurred on or after November 2, 2015. Penalties assessed for violations occurring prior to November 2, 2015, will be subject to the amounts set in the Board’s 2012 adjustment pursuant to the FCPIA Act.³

Under the 2015 Act, the annual adjustment to be made for 2025 is the percentage by which the Consumer Price Index for the month of October 2024 exceeds the Consumer Price Index for the month of October 2023. On December 17, 2024, as directed by the 2015 Act, the Office of Management and Budget (OMB) issued guidance to affected agencies on implementing the required annual adjustment which included the relevant inflation multiplier.⁴ Using OMB’s multiplier, the Board calculated the adjusted penalties for its CMPs, rounding the penalties to the nearest dollar.⁵

Administrative Procedure Act

The 2015 Act states that agencies shall make the annual adjustment “notwithstanding section 553 of title 5, United States Code.” Therefore, this rule is not subject to the provisions of the Administrative Procedure Act (the “APA”), 5 U.S.C. 553, requiring notice, public participation, and deferred effective date.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires a regulatory flexibility analysis only for rules for which an agency is required to publish a general notice of proposed rulemaking. Because the 2015 Act states that agencies’ annual adjustments are to be made notwithstanding section 553 of title 5 of United States Code—the APA

section requiring notice of proposed rulemaking—the Board is not publishing a notice of proposed rulemaking. Therefore, the Regulatory Flexibility Act does not apply.

Paperwork Reduction Act

There is no collection of information required by this final rule that would be subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

List of Subjects in 12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal access to justice, Lawyers, Penalties.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends 12 CFR part 263 as follows:

PART 263—RULES OF PRACTICE FOR HEARINGS

■ 1. The authority citation for part 263 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 248, 324, 334, 347a, 504, 505, 1464, 1467, 1467a, 1817(j), 1818, 1820(k), 1829, 1831o, 1831p–1, 1832(c), 1847(b), 1847(d), 1884, 1972(2)(F), 3105, 3108, 3110, 3349, 3907, 3909(d), 4717, 5323, 5362, 5365, 5463, 5464, 5466, 5467; 15 U.S.C. 21, 78l(i), 78o–4, 78o–5, 78u–2; 1639e(k); 28 U.S.C. 2461 note; 31 U.S.C. 5321; and 42 U.S.C. 4012a.

■ 2. Section 263.65 is revised to read as follows:

§ 263.65 Civil money penalty inflation adjustments.

(a) *Inflation adjustments.* In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990, the Board has set forth in paragraph (b) of this section the adjusted maximum amounts for each civil money penalty provided by law within the Board’s jurisdiction. The authorizing statutes contain the complete provisions under which the Board may seek a civil money penalty. The adjusted civil money penalties apply only to penalties assessed on or after January 13, 2025, whose associated violations occurred on or after November 2, 2015.

(b) *Maximum civil money penalties.* The maximum (or, in the cases of 12 U.S.C. 334 and 1832(c), fixed) civil money penalties as set forth in the

³ 77 FR 68680 (Nov. 16, 2012).

⁴ OMB Memorandum M-25-02, *Implementation of Penalty Inflation Adjustments for 2025, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (Dec. 17, 2024).

⁵ Under the 2015 Act and implementing OMB guidance, agencies are not required to make an adjustment to a CMP if, during the 12 months preceding the required adjustment, such penalty increased due to a law other than the 2015 Act by an amount greater than the amount of the required adjustment. No other laws have adjusted the CMPs within the Board’s jurisdiction during the preceding 12 months.

¹ Public Law 114–74, 129 Stat. 599 (2015) (codified at 28 U.S.C. 2461 note).

² 28 U.S.C. 2461 note, sec. 4(b)(1).

referenced statutory sections are set forth in the table in this paragraph (b).

TABLE 1 TO PARAGRAPH (b)

Statute	Adjusted civil money penalty
12 U.S.C. 324:	
Inadvertently late or misleading reports, inter alia	\$5,026
Other late or misleading reports, inter alia	50,265
Knowingly or reckless false or misleading reports, inter alia	2,513,215
12 U.S.C. 334	365
12 U.S.C. 374a	365
12 U.S.C. 504:	
First Tier	12,567
Second Tier	62,829
Third Tier	2,513,215
12 U.S.C. 505:	
First Tier	12,567
Second Tier	62,829
Third Tier	2,513,215
12 U.S.C. 1464(v)(4)	5,026
12 U.S.C. 1464(v)(5)	50,265
12 U.S.C. 1464(v)(6)	2,513,215
12 U.S.C. 1467a(i)(2)	62,829
12 U.S.C. 1467a(i)(3)	62,829
12 U.S.C. 1467a(r):	
First Tier	5,026
Second Tier	50,265
Third Tier	2,513,215
12 U.S.C. 1817(j)(16):	
First Tier	12,567
Second Tier	62,829
Third Tier	2,513,215
12 U.S.C. 1818(i)(2):	
First Tier	12,567
Second Tier	62,829
Third Tier	2,513,215
12 U.S.C. 1820(k)(6)(A)(ii)	413,388
12 U.S.C. 1832(c)	3,650
12 U.S.C. 1847(b)	62,829
12 U.S.C. 1847(d):	
First Tier	5,026
Second Tier	50,265
Third Tier	2,513,215
12 U.S.C. 1884	365
12 U.S.C. 1972(2)(F):	
First Tier	12,567
Second Tier	62,829
Third Tier	2,513,215
12 U.S.C. 3110(a)	57,435
12 U.S.C. 3110(c):	
First Tier	4,596
Second Tier	45,946
Third Tier	2,297,385
12 U.S.C. 3909(d)	3,126
15 U.S.C. 78u-2(b)(1):	
For a natural person	11,823
For any other person	118,225
15 U.S.C. 78u-2(b)(2):	
For a natural person	118,225
For any other person	591,127
15 U.S.C. 78u-2(b)(3):	
For a natural person	236,451
For any other person	1,182,251
15 U.S.C. 1639e(k)(1)	14,435
15 U.S.C. 1639e(k)(2)	28,866
42 U.S.C. 4012a(f)(5)	2,730

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2025–00419 Filed 1–10–25; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 653 and 655

Wage and Hour Division

29 CFR Part 501

[DOL Docket No. ETA–2009–0004]

Temporary Agricultural Employment of H–2A Aliens in the United States; Ratification of Department's Actions

AGENCY: Employment and Training Administration and Wage and Hour Division, Department of Labor.

ACTION: Ratification.

SUMMARY: The Department of Labor is publishing notification of the Assistant Secretary for Employment and Training's and the Administrator of the Wage and Hour Division's ratification of the rule published February 10, 2010, titled *Temporary Agricultural Employment of H–2A Aliens in the United States*.

DATES: This ratification was signed on January 7, 2025.

FOR FURTHER INFORMATION CONTACT:

For further information regarding 20 CFR part 655, contact Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5311, Washington, DC 20210, telephone: (202) 693–8200 (this is not a toll-free number).

For further information regarding 29 CFR part 501, contact Daniel Navarrete, Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210, telephone: (202) 693–0406 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone numbers above via Teletypewriter (TTY)/Telecommunications Device for the Deaf (TDD) by calling the toll-free Federal Information Relay Service at 1 (877) 889–5627.

SUPPLEMENTARY INFORMATION:

I. Background

On September 4, 2009, the Department of Labor (“DOL” or “Department”) issued a notice of proposed rulemaking (“NPRM”) in the **Federal Register** (“FR”) to amend its regulations regarding the certification of temporary employment of nonimmigrant workers employed in temporary or seasonal agricultural employment and the enforcement of the obligations applicable to employers of such nonimmigrant workers. See *Temporary Agricultural Employment of H–2A Aliens in the United States*, 74 FR 45906 (Sept. 4, 2009) (“NPRM”). The NPRM was open for public comment for 45 days until October 5, 2009. See *Temporary Agricultural Employment of H–2A Aliens in the United States*, 75 FR 6884 (Feb. 12, 2010) (“Final Rule”).

On February 12, 2010, DOL published a final rule in the FR that adopted much of the regulatory text proposed in the NPRM, with some important changes. See Final Rule, 75 FR at 6884. The Final Rule included improvements to the application processing procedures, worker protections, and program integrity measures. The Final Rule went into effect on March 15, 2010.

Since publication of the Final Rule, a question has been raised in litigation concerning whether a separate rule, *Adverse Effect Wage Rate Methodology for the Temporary Employment of H–2A Nonimmigrants in the Non-Range Occupations in the United States*, 88 FR 12760 (Feb. 28, 2023), was approved by the Attorney General in consultation with the Secretary of Labor and the Secretary of Agriculture. 8 U.S.C. 1188, Statutory Note.¹ Further, on November 25, 2024, the Secretary of Homeland Security, in consultation with the Secretary of Labor and Secretary of Agriculture, approved the Final Rule.

To resolve any possible uncertainty with respect to the Final Rule, the Department, through its Assistant Secretary for Employment and Training and its Administrator of the Wage and Hour Division, is ratifying the Final Rule. Under established case law, an agency may, through ratification, “purge[] any residual taint or prejudice left over from” a potential defect in a prior governmental action.² The Department is issuing this ratification out of an abundance of caution, and this

ratification is not a statement that the Final Rule is invalid absent this ratification.

II. Ratification

By virtue of the authority vested in the Secretary of Labor by law, including by the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1101 *et seq.* (“INA”), and as delegated to the Assistant Secretary for Employment and Training, 75 FR 66268, and the Administrator of the Wage and Hour Division, 75 FR 55352, we are affirming and ratifying a prior action by Jane Oates, Assistant Secretary for Employment and Training, and Nancy Leppink, Deputy Administrator of the Wage and Hour Division. On February 12, 2010, the Employment and Training Administration and the Wage and Hour Division published in the FR the Final Rule codifying amendments to the Department's regulations regarding the certification of temporary employment of nonimmigrant workers employed in temporary or seasonal agricultural employment and the enforcement of the obligations applicable to employers of such nonimmigrant workers. 75 FR 6884 (Feb. 12, 2010).

The Final Rule was signed by Assistant Secretary Oates and Deputy Administrator Leppink. We have full and complete knowledge of the Final Rule action taken by former Assistant Secretary Oates and former Deputy Administrator Leppink. Subsequent to the Secretary of Homeland Security's documented approval of the Final Rule dated November 25, 2024, in consultation with the Secretary of Labor and Secretary of Agriculture, and out of an abundance of caution and to avoid any doubt as to its validity, we have independently evaluated the Final Rule and the basis for adopting it. We have determined that the amendments to the regulations in the Final Rule are consistent with the Secretary of Labor's statutory responsibility to certify that there are insufficient able, willing, and qualified U.S. workers available to perform the needed work and that the employment of H–2A workers will not adversely affect the wages and working conditions of workers in the United States similarly employed. We have also determined that the changes adopted in the Final Rule strike an appropriate balance between the statute's competing goals of providing employers with an adequate supply of legal agricultural labor and protecting the wages of workers in the United States similarly employed by improving the H–2A application and temporary labor certification process, strengthening protections for workers, and enhancing

¹ Although this provision vests approval authority in the “Attorney General,” the Secretary of Homeland Security now may exercise this authority. See 6 U.S.C. 202(3)–(4), 251, 271(b), 291, 551(d)(2), 557; 8 U.S.C. 1103(c) (2000).

² *Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 920 F.3d 1, 13 (D.C. Cir. 2019).

program integrity measures. We also agree with the Department's certification that the Final Rule does not have a significant economic impact on a substantial number of small entities. See Final Rule, 75 FR at 6953.

Therefore, pursuant to our authorities as the Assistant Secretary for Employment and Training and the Administrator of the Wage and Hour Division, and based on our independent review of the action and the reasons for taking it, we hereby affirm and ratify the Final Rule, as of January 7, 2025, including all regulatory analysis certifications contained therein. This action is taken without prejudice to any right to litigate the validity of the Final Rule as approved and published on February 12, 2010. Nothing in this action is intended to suggest any legal defect or infirmity in the approval or publication of the Final Rule.

José Javier Rodríguez,

Assistant Secretary, Employment and Training Administration, Labor.

Jessica Looman,

Administrator, Wage and Hour Division, Labor.

[FR Doc. 2025-00525 Filed 1-8-25; 4:15 pm]

BILLING CODE 4510-FP-P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 653 and 655

Wage and Hour Division

29 CFR Part 501

[DOL Docket No. ETA-2019-0007]

Temporary Agricultural Employment of H-2A Nonimmigrants in the United States; Ratification of Department's Actions

AGENCY: Employment and Training Administration and Wage and Hour Division, Department of Labor.

ACTION: Ratification.

SUMMARY: The Department of Labor is publishing notification of the Assistant Secretary for Employment and Training's and the Administrator of the Wage and Hour Division's ratification of the rule published October 12, 2022, titled *Temporary Agricultural Employment of H-2A Nonimmigrants in the United States*.

DATES: This ratification was signed on January 7, 2025.

FOR FURTHER INFORMATION CONTACT:

For further information regarding 20 CFR part 653, contact Kimberly Vitelli, Administrator, Office of Workforce Investment, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, telephone: (202) 693-3980 (this is not a toll-free number).

For further information regarding 20 CFR part 655, contact Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-5311, Washington, DC 20210, telephone: (202) 693-8200 (this is not a toll-free number).

For further information regarding 29 CFR part 501, contact Daniel Navarrete, Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, Department of Labor, Room S-3502, 200 Constitution Avenue NW, Washington, DC 20210, telephone: (202) 693-0406 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone numbers above via Teletypewriter (TTY)/Telecommunications Device for the Deaf (TDD) by calling the toll-free Federal Information Relay Service at 1 (877) 889-5627.

SUPPLEMENTARY INFORMATION:

I. Background

On July 26, 2019, the Department of Labor ("DOL" or "Department") issued a notice of proposed rulemaking ("NPRM") in the *Federal Register* ("FR") to amend its regulations regarding the certification of temporary employment of nonimmigrant workers employed in temporary or seasonal agricultural employment and the enforcement of the obligations applicable to employers of such nonimmigrant workers. See *Temporary Agricultural Employment of H-2A Nonimmigrants in the United States*, 84 FR 36168 (July 26, 2019) ("NPRM"). The NPRM was open for public comment for 60 days from July 26, 2019 until September 24, 2019. See *id.* at 36168.

On October 12, 2022, DOL published a final rule in the FR that adopted much of the regulatory text proposed in the NPRM, with some significant changes. *Temporary Agricultural Employment of H-2A Nonimmigrants in the United States*, 87 FR 61660 (Oct. 12, 2022) ("Final Rule").¹ The Final Rule

¹ On January 11, 2021, DOL transmitted to the Office of the Federal Register ("OFR") a draft of an unpublished draft final rule covering certain aspects of the NPRM. On January 20, 2021, prior to the draft final rule being published in the FR and

included improvements to the minimum standards and conditions of employment that employers must offer to workers, improvements to program integrity measures, such as program debarment for substantial violations of program requirements, revisions to the standards and procedures for determining prevailing wage rates, and revisions to modernize and simplify the temporary employment certification process. The Final Rule went into effect on November 14, 2022.

Since publication of the Final Rule, a question has been raised in litigation concerning whether a separate rule, *Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in the Non-Range Occupations in the United States*, 88 FR 12760 (Feb. 28, 2023), was approved by the Attorney General in consultation with the Secretary of Labor and the Secretary of Agriculture. 8 U.S.C. 1188, Statutory Note.² With respect to the Final Rule, prior to its issuance in October 2022, the Final Rule was provided to the Departments of Homeland Security and Agriculture through the interagency review process prescribed by Executive Order 12866. On November 7, 2024, the Secretary of Homeland Security, in consultation with the Secretary of Labor and Secretary of Agriculture, approved the Final Rule.

To resolve any possible uncertainty with respect to the Final Rule, the Department, through its Assistant Secretary for Employment and Training and its Administrator of the Wage and Hour Division, is ratifying the Final Rule. Under established case law, an agency may, through ratification, "purge[] any residual taint or prejudice left over from" a potential defect in a prior governmental action.³ The Department is issuing this ratification out of an abundance of caution, and this ratification is not a statement that the Final Rule is invalid absent this ratification.

II. Ratification

By virtue of the authority vested in the Secretary of Labor by law, including

prior to OFR making it available for public inspection, DOL requested that OFR withdraw the document from processing "for the purpose of reviewing issues of law, fact, and policy raised by the rule." See *Announcement, U.S. Department of Labor Withdraws Forthcoming H-2A Temporary Agricultural Program Rule for Review*, (Jan. 20, 2021), <https://perma.cc/CTW2-VH2U>.

² Although this provision vests approval authority in the "Attorney General," the Secretary of Homeland Security now may exercise this authority. See 6 U.S.C. 202(3)-(4), 251, 271(b), 291, 551(d)(2), 557; 8 U.S.C. 1103(c) (2000).

³ *Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 920 F.3d 1, 13 (D.C. Cir. 2019).

by the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1101 *et seq.* (“INA”), and as delegated to the Assistant Secretary for Employment and Training, 75 FR 66268, and the Administrator of the Wage and Hour Division, 75 FR 55352, we are affirming and ratifying a prior action by Martin J. Walsh, Secretary of Labor. On October 12, 2022, the Employment and Training Administration and the Wage and Hour Division published in the FR the Final Rule codifying amendments to the Department’s regulations regarding the certification of temporary employment of nonimmigrant workers employed in temporary or seasonal agricultural employment and the enforcement of the obligations applicable to employers of such nonimmigrant workers. 87 FR 61660 (Oct. 12, 2022).

The Final Rule was signed by Secretary Walsh. We have full and complete knowledge of the Final Rule action taken by former Secretary Walsh. Subsequent to the Secretary of Homeland Security’s documented approval of the Final Rule dated November 7, 2024, in consultation with the Secretary of Labor and Secretary of Agriculture, and out of an abundance of caution and to avoid any doubt as to its validity, we have independently evaluated the Final Rule and the basis for adopting it. We have determined that the amendments to the regulations in the Final Rule are consistent with the Secretary of Labor’s statutory responsibility to certify that there are insufficient able, willing, and qualified U.S. workers available to perform the needed work and that the employment of H–2A workers will not adversely affect the wages and working conditions of workers in the United States similarly employed. We have also determined that the changes adopted in the Final Rule strike an appropriate balance between the statute’s competing goals of providing employers with an adequate supply of legal agricultural labor and protecting the wages of workers in the United States similarly employed by strengthening protections for workers, modernizing and simplifying the H–2A application and temporary labor certification process, and easing regulatory burdens on employers. We also agree with the Department’s certification that the Final Rule does not have a significant economic impact on a substantial number of small entities. See 87 FR 61660, 61787.

Therefore, pursuant to our authorities as the Assistant Secretary for Employment and Training and the Administrator of the Wage and Hour Division, and based on our independent review of the action and the reasons for

taking it, we hereby affirm and ratify the Final Rule, as of January 7, 2025, including all regulatory analysis certifications contained therein. This action is taken without prejudice to any right to litigate the validity of the Final Rule as approved and published on October 12, 2022. Nothing in this action is intended to suggest any legal defect or infirmity in the approval or publication of the Final Rule.

José Javier Rodríguez,

Assistant Secretary, Employment and Training Administration, Labor.

Jessica Looman,

Administrator, Wage and Hour Division, Labor.

[FR Doc. 2025–00526 Filed 1–8–25; 4:15 pm]

BILLING CODE 4510–FP–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Parts 550 and 553

[Docket ID: BOEM–2025–0001]

RIN 1010–AE22

2025 Civil Penalties Inflation Adjustments for Oil, Gas, and Sulfur Operations in the Outer Continental Shelf

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule implements the 2025 inflation adjustments to the maximum daily civil monetary penalties in the Bureau of Ocean Energy Management’s (BOEM) regulations for violations of the Outer Continental Shelf Lands Act (OCSLA) and the Oil Pollution Act of 1990 (OPA). These inflation adjustments are made pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Improvements Act) and Office of Management and Budget (OMB) memorandum M–25–02. The 2025 adjustment multiplier of 1.02598 accounts for 1 year of inflation from October 2023 through October 2024.

DATES: This rule is effective on January 13, 2025.

FOR FURTHER INFORMATION CONTACT:

Questions regarding the inflation adjustment methodology or amount should be directed to Jayson Pollock, Economics Division, BOEM, at jayson.pollock@boem.gov or at (703) 787–1537. Questions regarding the timing of this adjustment or the applicability of the regulations should be directed to Karen Thundiyl,

Director, Office of Regulatory Affairs, BOEM at karen.thundiyl@boem.gov or at (202) 742–0970.

SUPPLEMENTARY INFORMATION:

- I. Legal Authority
- II. Background and Purpose
- III. Calculation of the 2025 Adjustments
- IV. Statutory and Executive Order Reviews
 - A. Statutes
 1. National Environmental Policy Act
 2. Regulatory Flexibility Act
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 - B. Executive Orders (E.O.)
 1. Governmental Actions and Interference With Constitutionally Protected Property Rights (E.O. 12630)
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 5. Consultation and Coordination With Indian Tribal Governments (E.O. 13175)
 6. Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (E.O. 13211)

I. Legal Authority

OCSLA authorizes the Secretary of the Interior (the Secretary) to impose a daily civil monetary penalty for a violation of OCSLA or its implementing regulations, leases, permits, or orders. It also directs the Secretary to adjust the maximum penalty at least every 3 years to reflect any inflation increase in the Consumer Price Index. 43 U.S.C. 1350(b)(1). Similarly, OPA authorizes civil monetary penalties for failure to comply with OPA’s financial responsibility provisions or its implementing regulations. 33 U.S.C. 2716a(a). OPA does not include a maximum daily civil penalty inflation adjustment provision, but such adjustment is authorized by the Improvements Act. See 28 U.S.C. 2461 note.

The Improvements Act¹ requires that Federal agencies publish inflation adjustments to their civil monetary penalties in the **Federal Register** not later than January 15 annually.² The purposes of these inflation adjustments are to maintain the deterrent effect of civil penalties and to further the policy

¹ The Improvements Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990. See Public Law 101–410 (codified at 28 U.S.C. 2461 note).

² Under the Improvements Act, Federal agencies were required to adjust their civil monetary penalties for inflation with an initial “catch-up” adjustment through an interim final rulemaking in 2016 and must make subsequent inflation adjustments not later than January 15 annually, beginning in 2017. Public Law 114–74, sec. 701(b)(1).

goals of the underlying statutes. Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, sec. 2 (codified at 28 U.S.C. 2461 note).

II. Background and Purpose

BOEM implemented the 2024 inflation adjustment for its civil monetary penalties through a final rule entitled, “2024 Civil Penalties Inflation Adjustments for Oil, Gas, and Sulfur Operations in the Outer Continental Shelf,” which was published in the **Federal Register** on January 25, 2024 at 89 FR 4815. That rule accounted for inflation for the 12-month period between October 2022 and October 2023.

OMB memorandum M–25–02³ reiterates agency responsibilities under the Improvements Act. Such responsibilities include identifying applicable penalties and performing the annual adjustment; publishing revisions to regulations to implement the adjustment in the **Federal Register**; applying adjusted penalty dollar amounts; and performing agency oversight of inflation adjustments.

Pursuant to the Improvements Act and OMB M–25–02, this final rule implements BOEM’s 2025 inflation adjustments to OCSLA and OPA maximum daily civil monetary penalties. A proposed rule is unnecessary as the Improvements Act expressly exempts annual civil penalty inflation adjustments from the Administrative Procedure Act’s (APA) notice of proposed rulemaking, public comment, and standard effective date provisions. Improvements Act, Public

Law 114–74, sec. 701(b)(1)(D); APA, 5 U.S.C. 553.⁴
On July 22, 2021, BOEM issued a final rule entitled, “Maximum Daily Civil Penalty Amounts for Violations of the Federal Oil and Gas Royalty Management Act” (86 FR 38557). The rule amended BOEM’s regulations that set maximum daily civil penalty (MDCP) amounts for violations of the Federal Oil and Gas Royalty Management Act (FOGRMA). The amendment cross-referenced BOEM’s regulations to the Office of Natural Resources Revenue (ONRR) regulations that also set MDCP amounts for FOGRMA violations. This cross-reference ensured consistency between BOEM’s FOGRMA MDCP amounts and ONRR’s FOGRMA MDCP amounts. Because ONRR annually adjusts its MDCP for inflation, the cross-referencing rule also ensured consistent compliance with the Improvements Act and related OMB guidance while reducing possible confusion among regulated parties and unnecessary duplication of effort and costs to the Federal Government. The cross-reference to ONRR’s regulations relieves BOEM of the necessity to adjust its FOGRMA MDCP.

III. Calculation of the 2025 Adjustments

In accordance with the Improvements Act, BOEM determined that OCSLA and OPA maximum daily civil monetary penalties require annual inflation adjustments. BOEM issues this final rule adjusting those penalty amounts for inflation through October 2024. The annual inflation adjustment is based on the percent change between the

Consumer Price Index for All Urban Consumers (CPI–U) for the October preceding the date of the adjustment and the prior year’s October CPI–U. Consistent with OMB M–25–02, the 2025 inflation adjustment multiplier can be calculated by dividing the October 2024 CPI–U by the October 2023 CPI–U. In this case, October 2024 CPI–U (315.664)/October 2023 CPI–U (307.671) = 1.02598.
For 2025, BOEM multiplied the current OCSLA maximum daily civil monetary penalty of \$54,352 by the multiplier 1.02598, which equals \$55,764.06. The Improvements Act requires that the resulting amount be rounded to the nearest dollar. Accordingly, the 2025 adjusted OCSLA maximum daily civil monetary penalty is \$55,764.
For 2025, BOEM multiplied the current OPA maximum daily civil penalty amount of \$57,617 by the multiplier 1.02598, which equals \$59,113.89. The Improvements Act requires that the resulting amount be rounded to the nearest dollar. Accordingly, the 2025 adjusted OPA maximum daily civil monetary penalty is \$59,114.
The adjusted penalty amounts take effect immediately upon publication of this rule. Under the Improvements Act, the adjusted amounts apply to civil penalties assessed after the date the increase takes effect, even if the associated violation predates the increase.
Table 1 summarizes BOEM’s 2025 maximum daily civil monetary penalties for each OCSLA and OPA violation.

TABLE 1—BOEM CIVIL PENALTIES ADJUSTMENTS

CFR citation	Description of the penalty	Current maximum penalty	Multiplier	2025 maximum penalty
30 CFR 550.1403 (OCSLA)	Failure to comply per day per violation	\$54,352	1.02598	\$55,764
30 CFR 553.51(a) (OPA)	Failure to comply per day per violation	57,617	1.02598	59,114

IV. Statutory and Executive Order Reviews

A. Statutes

1. National Environmental Policy Act

This rule does not constitute a major Federal action under the National

Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) because the civil penalty adjustments are required by law and the Bureau has no control or responsibility for the action other than ministerial (*see* 43 CFR 46.100(a); *see also* 40 CFR 1508.1(w)(2)). The Improvements Act requires BOEM

to annually adjust the amounts of its civil penalties to account for inflation as measured by the Department of Labor’s Consumer Price Index. Accordingly, BOEM has no discretion in the execution of the civil penalty adjustments reflected in this final rule. Because this rule is not a major Federal

³OMB Memorandum M–25–02 “Implementation of Penalty Inflation Adjustments for 2025, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015” is available at <https://www.whitehouse.gov/wp-content/uploads/2024/12/M-25-02.pdf>.

⁴Specifically, Congress directed that agencies adjust civil monetary penalties “notwithstanding

section 553 of title 5, United States Code [Administrative Procedure Act (APA)],” which generally requires prior notice of proposed rulemaking, opportunity for public comment on proposed rulemaking, and publication of a final rule at least 30 days before its effective date. Improvements Act, sec. 701(b)(1)(D); APA, 5 U.S.C. 553. OMB confirmed this interpretation of the

Improvements Act. OMB M–25–02 at 4 (“This means that the notice and comment process the APA generally requires—*i.e.*, notice, an opportunity for comment, and a delay in effective date—is not required for agencies to issue regulations implementing the annual adjustment.”).

action, it is therefore not subject to the requirements of NEPA. Even if this were a discretionary action subject to NEPA, which it is not, a detailed statement under NEPA would not be required because, as a regulation of an administrative nature, this rule would be covered by a categorical exclusion (*see* 43 CFR 46.210(i)). Moreover, BOEM determined that the rule does not implicate any of the extraordinary circumstances listed in 43 CFR 46.215 that would prevent reliance on the categorical exclusion. Therefore, a detailed statement under NEPA is not required.

2. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. However, the RFA applies only to rules for which an agency is required to first publish a proposed rule. *See* 5 U.S.C. 603(a) and 604(a). The Improvements Act expressly exempts these annual inflation adjustments from the requirement to publish a proposed rule for notice and comment. Improvements Act, Public Law 114–74, sec. 701(b)(1)(D); OMB M–25–02 at 3–4. Thus, the RFA does not apply to this rulemaking.

3. Paperwork Reduction Act

This rule does not contain information collection requirements, and, therefore, a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. The rule does not have a significant or unique effect on State, local, or Tribal governments, or on the private sector. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2). This rule:

- (a) will not have an annual effect on the economy of \$100 million or more;
- (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or

local government agencies, or geographic regions; and

(c) will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

6. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*) and OMB guidance,⁵ this rule is not a major rule, as defined by that act. 5 U.S.C. 804(2).

B. Executive Orders (E.O.)

1. Governmental Actions and Interference With Constitutionally Protected Property Rights (E.O. 12630)

This rule does not effect a taking of private property or otherwise have takings implications under E.O. 12630. Therefore, a takings implication assessment is not required.

2. Regulatory Planning and Review (E.O. 12866); Modernizing Regulatory Review (E.O. 14094); Improving Regulation and Regulatory Review (E.O. 13563)

E.O. 12866, as amended by E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA determined that annual civil penalty inflation adjustment rules are not significant if they exclusively implement the annual inflation adjustment consistent with OMB guidance and have an annual impact of less than \$200 million. *See* OMB Memorandum M–25–02 at 3–4. This rule meets those conditions and, thus, is not a significant rule.

E.O. 13563 reaffirms the principles of E.O. 12866, as amended by E.O. 14094, while calling for improvements in the Nation's regulatory system to reduce uncertainty and to promote predictability and for the use of the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 further emphasizes that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. However, BOEM is using neither science nor public

participation in this rulemaking. Congress directed agencies to adjust the maximum daily civil penalty amounts using a particular equation without public participation. BOEM does not have discretion to use any other factor in the adjustment. BOEM has developed this rule in a manner consistent with the requirements in E.O. 13563 to the extent relevant and feasible given the limited discretion provided to agencies under the Improvements Act.

3. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

- (a) meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

4. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule merely adjusts the dollar amount of civil monetary penalties that BOEM may impose on oil and gas lessees, grant holders, and operators on the Outer Continental Shelf and has no effects on any actions of State or local governments. Therefore, a federalism summary impact statement is not required.

5. Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

The Department of the Interior and BOEM strive to strengthen their government-to-government relationships with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of the Tribes' right to self-governance and Tribal sovereignty. BOEM evaluated this rule under the Department of the Interior's consultation policy, Departmental Manual part 512, chapters 4 and 5, and E.O. 13175. BOEM determined that this rule has no substantial direct effects on federally recognized Indian Tribes or Alaska Native Claims Settlement Act Corporations and that consultation under existing Department and BOEM policies is not required.

⁵ *See* Office of Mgmt. & Budget, Exec. Office of the President, OMB M–19–14, Guidance on Compliance with the Congressional Review Act (2019), available at <https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-14.pdf>; OMB Memorandum M–25–02 at 3–4.

6. Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (E.O. 13211)

This rule is not a “significant energy action” under the definition of that term found in E.O. 13211. Therefore, a statement of energy effects is not required.

List of Subjects

30 CFR Part 550

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Federal lands, Government contracts, Investigations, Mineral resources, Oil and gas exploration, Outer continental shelf, Penalties, Pipelines, Reporting and recordkeeping requirements, Rights-of-way, Sulfur.

30 CFR Part 553

Administrative practice and procedure, Continental shelf, Financial responsibility, Liability, Limit of liability, Oil and gas exploration, Oil pollution, Outer continental shelf, Penalties, Pipelines, Reporting and recordkeeping requirements, Rights-of-way, Surety bonds, Treasury securities.

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

Steven H. Feldgus,

Principal Deputy Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, BOEM amends 30 CFR parts 550 and 553 as follows:

PART 550—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

- 1. The authority citation for part 550 is revised to read as follows:

Authority: 30 U.S.C. 1751; 31 U.S.C. 9701; 43 U.S.C. 1334.

- 2. Revise § 550.1403 to read as follows:

§ 550.1403 What is the maximum civil penalty?

The maximum civil penalty is \$55,764 per day per violation.

PART 553—OIL SPILL FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES

- 3. The authority citation for part 553 continues to read as follows:

Authority: 33 U.S.C. 2704, 2716; 2716a; E.O. 12777, as amended.

- 4. Revise § 553.51(a) to read as follows:

§ 553.51 What are the penalties for not complying with this part?

(a) If you fail to comply with the financial responsibility requirements of OPA at 33 U.S.C. 2716 or with the requirements of this part, then you may be liable for a civil penalty of up to \$59,114 per COF per day of violation (that is, each day a COF is operated without acceptable evidence of OSFR).

* * * * *

[FR Doc. 2025–00257 Filed 1–10–25; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[SATS No. WY–049–FOR; Docket No. OSM–2021–0003; S1D1S SS08011000 SX064A000 245S180110; S1D1S SS08011000 SX064A000 24XS501520]

Wyoming Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Wyoming regulatory program (hereinafter, the Wyoming Program or Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). On its own initiative, the Wyoming Land Quality Division (LQD), in response to State legislative changes enacted in 2020, proposed rules to its Program that facilitate the disposal of inert decommissioned wind turbine blades and towers as backfill in end walls or the final pit voids in surface coal mining operations. In addition, Wyoming has updated Chapter 2 of its Coal Rules, titled “Permit Application Requirements for Surface Coal Mining Operations,” to provide consistency with the Wyoming Secretary of State’s Rules on Rules, as well as correct grammatical errors.

DATES: Effective February 12, 2025.

FOR FURTHER INFORMATION CONTACT: Attn: Jeffrey Fleischman, Field Office Director, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Casper, Wyoming 82602, Telephone: (307) 261–6550, Email: jfleischman@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Wyoming Program
- II. Submission of the Amendment
- III. OSMRE’s Findings

- IV. Summary and Disposition of Comments
- V. OSMRE’s Decision
- VI. Statutory and Executive Order Reviews

I. Background on the Wyoming Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7).

On the basis of these criteria, the Secretary of the Interior conditionally approved the Wyoming program on November 26, 1980. You can find background information on the Wyoming program, including the Secretary’s findings, the disposition of comments, and conditions of approval in the November 26, 1980, **Federal Register** (45 FR 78637). You can also find later actions concerning Wyoming’s program and program amendments at 30 CFR 950.11, 950.12, 950.15, 950.16, and 950.20.

II. Submission of the Amendment

By letter dated June 4, 2021 (Administrative Record No. WY–49–01), Wyoming LQD sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming submitted the amendment in response to legislative changes made through Wyoming House Bill HB0129 during the 2020 legislative session, to Wyoming Statute (W.S.) § 35–11–402(a)(xiii). These changes outlined rules regarding how noncoal, non-mining waste, in the form of inert decommissioned wind turbine blades and towers, could be used as backfill in open surface coal mine pits in order to facilitate disposal of those materials. The proposed revisions to Chapter 2 of the Program allow for inert wind turbine blades and towers to be placed in the final pit voids or end walls of surface coal mining operations during reclamation. In addition, Wyoming has proposed grammatical changes to Chapter 2 as well as minor edits to provide consistency with the Wyoming Secretary of State’s Rules on Rules.

Wyoming stated in its submission that the Wyoming Legislature tasked LDQ with developing rules and regulations about the disposal of noncoal, non-mining-generated solid wastes at surface coal mining and reclamation operations because of the large volume of decommissioned wind turbine blades and towers, a lack of scalable recycling

methods to facilitate their disposal, and limited guidance in SMCRA about this type of disposal. Wyoming's submission seeks to address issues associated with the resulting stockpile of decommissioned wind turbine blades and towers as a result of wind energy generation, upgrades, and routine maintenance.

We announced receipt of the proposed amendment in the August 4, 2021, **Federal Register** (86 FR 41907). With that announcement, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. We did not hold a public hearing or meeting because none was requested. We did not receive any comments regarding the amendment. The public comment period ended on September 3, 2021.

On September 27, 2024, OSMRE sent a letter to the Environmental Protection Agency's Office of Land and Emergency Management (EPA) for comment on Wyoming's proposed amendment. On October 24, 2024, EPA responded that it does not see a conflict between Wyoming's proposed revisions and the Resource Conservation and Recovery Act (RCRA) as long as the facilities are permitted and subject to Wyoming's Construction and Demolition Landfill Regulations under Chapter 4 of Wyoming's Solid Waste Division Rules, and meet the Federal criteria at 40 CFR 257, Subpart A. To further assist us in making a final determination on Wyoming's submission, by letter dated November 26, 2024, OSMRE sent Wyoming a letter requesting clarification on certain issues (Administrative Record No. WY-049-12; www.regulations.gov Docket No. OSM-2021-0003-0009). Wyoming responded by letter dated December 3, 2024 ("Clarification Letter") (Administrative Record No. WY-049-13; www.regulations.gov Docket No. OSM-2021-0003-0010).

III. OSMRE's Findings

We are approving the revisions to Wyoming's State program. We made the following findings about Wyoming's amendment as provided under SMCRA and the Federal regulations at 30 CFR 730.5, 732.15, and 732.17.

1. Discussion of Regulatory Changes Submitted by Wyoming

a. WCWR 020-0006-2 Section 1(a); Section 2(a); Section 3 (b)-(d), (f), (j)-(k); Section 4(a); and Section 5(a)—Minor corrections

In these sections, Wyoming proposed grammatical changes to Chapter 2 as

well as minor edits to provide consistency with the Wyoming Secretary of State's Rules on Rules. These revisions were non-substantive changes. Therefore, we are approving Wyoming's proposed changes to WCWR 020-0006-2 Section 1(a); Section 2(a); Section 3 (b)-(d), (f), (j)-(k); Section 4(a); and Section 5(a) because they are consistent with SMCRA and no less effective than the Federal regulations.

b. WCWR 020-0006-2 Section 6—Wind Turbine Blades and Towers as Backfill

Wyoming's proposed rule changes WCWR 020-0006-2 Section 6(b)(ii), primarily by adding paragraph (F), which describes what information is required in the reclamation plan where an operator intends to dispose of "inert decommissioned wind turbine blades and towers" as backfill. Neither SMCRA nor the Federal regulations expressly provide for the disposal of noncoal, non-mining solid waste, such as inert decommissioned wind turbine blades and towers, on surface coal mining and reclamation operations as part of reclamation. The lack of Federal counterpart, however, does not automatically determine whether Wyoming's proposed changes to its State program are consistent with SMCRA and no less effective than the Federal regulations. Any material placed in mine pits or otherwise used to reclaim a permitted mine site must comply with SMCRA permitting requirements and performance standards, regardless of whether the material originates within the permit area or whether it is imported from outside the permit area, and the regulatory authority has the authority to establish monitoring and analysis requirements for those materials. *See, e.g., Pacific Coal Co. v. OSM*, Civ. No. 03-0260Z, (W.D. Wash. Feb. 2, 2004). So, to ensure Wyoming's proposed amendment meets our approval standards, we must conduct a comparison of Wyoming's proposed rules to SMCRA and the Federal regulations.

WCWR 020-0006-2 Section 6(b)(ii)(F) has six requirements, which specify: (I) that "only inert base material from decommissioned wind turbine blades and towers" are allowed to be disposed of in the backfill; (II) "[n]acelles and nacelle housings" and "mechanical, electrical, and other materials" are not permitted to be disposed of in the backfill and must be removed before disposal; (III) as described in more detail below, the material disposed of may only be placed in approved locations that meet certain criteria with certain disclosures; (IV) certain

placement requirements, including how the material must be placed in the pits and groundwater monitoring; (V) final surface reclamation requirements; and (IV) the operator pay Wyoming, on a quarterly basis, 25 percent of any revenues collected by the operator for disposal of this material.

WCWR 020-0006-2 Section 6(b)(ii)(F)(I) and (II) simply describe the types of noncoal, non-mining solid wastes that may be placed in the backfill under this section. As proposed, WCWR 020-0006-2 Section 6(b)(ii)(F)(III) contains six requirements for locations where inert decommissioned wind turbine blades and towers are authorized as part of the backfill. The first two requirements provide the location within the backfill area in which inert decommissioned wind turbine blades and towers may be placed. Specifically, these materials can be placed in "end walls" or "final pit voids" and placed "a minimum of twenty feet above the pre-mining potentiometric surface of the coal aquifer and a minimum of twenty feet below the final regraded spoils surface[.]" WCWR 020-0006-2 Section 6(b)(ii)(F)(III)(1.) and (2.)

Neither SMCRA nor the Federal regulations nor Wyoming's regulations contain definitions of "end wall" or "final pit voids." However, the end wall and final pit are commonly understood to refer to the final cut of an open pit or the last pit excavation in a mining area. Therefore, OSMRE interprets this to mean that Wyoming intends to allow disposal of certain types of inert decommissioned wind turbine blades and towers in the open space, or void, left in the final mining cut and not the first or middle cuts on a mine site.

Similarly, SMCRA, the Federal regulations, and Wyoming's regulations do not contain a definition or explanation of the phrase "pre-mining potentiometric surface of the coal aquifer." OSMRE interprets this to mean that any disposal would only be allowed in the area 20 feet above the pre-mining potentiometric surface of the coal aquifer. If the disposal is occurring above a pre-mining unconfined coal aquifer, OSMRE interprets this to mean that the material would be placed at least 20 feet above the top of the coal seam aquifer. It is OSMRE's understanding that this is designed to ensure that when groundwater returns to the backfilled area, the wind turbines and blades will not come in contact with groundwater. As such, we find that these provisions are in accordance with SMCRA and consistent with the Federal regulations; any implementation of this phrase by Wyoming that is inconsistent

with this interpretation may require OSMRE to reevaluate this approval.

Because SMCRA and the Federal regulations do not contemplate disposal of any noncoal, non-mine waste in backfill areas on SMCRA sites, there are no existing corresponding statutory or regulatory requirements for this type of disposal. While this type of disposal is not explicitly authorized under SMCRA, the fact that Wyoming's proposed changes do not exempt the areas accepting this waste material from any other requirements of either SMCRA or the Federal regulations indicates that the practice should not result in mining or reclamation that is not in accordance with the minimum requirements of SMCRA or inconsistent with the Federal regulations. Furthermore, the proposed changes requiring that the specific types of waste be placed only in limited areas, a minimum of 20 feet above the pre-mining potentiometric surface of the coal aquifer and a minimum of 20 feet below the final regraded spoils surface should reduce the potential for this material to come into contact with water. This requirement should reduce the potential for leachate and not conflict with the existing SMCRA performance standards.

WCWR 020-0006-2 Section 6(b)(ii)(F)(III) sections (3.) and (5.) require that the backfill disposal location be mapped with a legal description, with backfill locations and groundwater monitoring locations updated annually, and that a disclosure be placed on the real property deed for the described lands before final bond release. Again, because SMCRA and the Federal regulations do not contemplate disposal of such noncoal, non-mine waste in backfill areas on SMCRA sites, there are no corresponding Federal statutory or regulatory requirements for this type of disposal under SMCRA. Instead, OSMRE evaluated this proposal to ensure that Wyoming's proposed changes are in accordance with SMCRA and consistent with the Federal regulations, which raised two potential concerns.

First, the wording of WCWR 020-0006-2 Section 6(b)(ii)(F) appears to require all applicants to include a plan to dispose of inert decommissioned towers and blades in their reclamation plan. For example, WCWR 020-0006-2 Section 6(b)(ii)(B) and (C) each contain a preface that reclamation plans for terraces & benches and permanent water impoundments are required only when those features "are proposed" by the applicant; in contrast, WCWR 020-0006-2 Section 6(b)(ii)(F) has no such preface. In the Clarification Letter, Wyoming stated that disposal of inert

decommissioned wind turbine blades and towers on a SMCRA mine site is "a voluntary requirement" and will only be included in the reclamation plan if "the operator chooses to accept and use the towers and blades as backfill."

Second, the proposed rules do not address what would happen if a mineral or surface owner does not consent to a proposal to place inert decommissioned wind turbine blades and towers in the excavated pits. In the Clarification Letter, Wyoming responded that: "[t]he rules apply regardless of surface ownership (private, state or federal) but surface owner consent would be required before the disposal of any wind turbine blades or towers would be allowed under WS § 35-11-406(b)(xi) and (xii)." See, e.g., WS § 35-11-406(b)(xii) (which "requires an instrument of consent from the surface landowner, if different from the owner of the mineral estate, be included to the mining and reclamation plans. If consent cannot be obtained, the applicant can request a hearing on the issue before the Environmental Quality Council. The Council is required to issue an order in lieu of consent if certain findings are made."). Wyoming also noted that WCWR 020-0006-2 Section 6(b)(ii)(F)(III)(5.) would require that where inert decommissioned wind turbine blades and towers have been disposed of on a SMCRA site, a disclosure of such must be placed on the real property deed, "which would also require surface owner consent." Furthermore, Wyoming has clarified that consent from surface owners, including the Federal government, is required before such disposal can occur. We note, however, that Federal lands, as defined in SMCRA, applies to "any land, including mineral interests, owned by the United States" 30 U.S.C. 1291(4). To the extent that Wyoming seeks to apply this rule to Federal lands (including lands with either Federal surface or mineral ownership) through its State-Federal Cooperative Agreement (30 CFR 950.20), Wyoming must receive all necessary Federal agency approvals before any disposal occurs.

After clarification of these two points, we find that these provisions are in accordance with SMCRA and consistent with the Federal regulations; any implementation of this regulations by Wyoming that is inconsistent with these clarifications may require OSMRE to reevaluate this approval.

WCWR 020-0006-2 Section 6(b)(ii)(F)(III)(4.) allows the reclaimed land above an approved backfill disposal location to be designated as a joint or alternative land use as long as

the applicant provides the required demonstration in Section 6(b)(x)(C) of the same Chapter and the disposal supports the approved land use as required in Section 6(b)(x).

Under the Federal regulations at 30 CFR 816.133, all disturbed lands are required to be restored in a timely manner to conditions capable of supporting the uses they were capable of supporting before any mining or to a higher or better use. If the postmining land use is different than the pre-mining uses of land, a regulatory authority may approve an "alternative land use" if it is a higher or better use. Wyoming's currently approved regulations at WCWR 020-0006-2 Section 6(b)(x)(B)-(C) are substantially similar to the Federal regulations. Wyoming's proposed amendment states that "[t]he approved backfill disposal location may be designed as a joint or alternative land use in the approved reclamation plan (WCWR 020-0006-2 Sec. 6(b)(x)(B)). Approval of alternative land uses requires a demonstration as required in WCWR 020-0006-2 Sec. 6(b)(x)(C) [of WYDEQ's Coal Rules]. The disposal of inert towers and blades must support the postmining land use identified in accordance with the requirements of Section 6(x) of this Chapter." In its Clarification Letter, Wyoming confirmed that the inert decommissioned wind turbine tower and blade disposal will occur contemporaneously with reclamation and that it is not creating a new postmining land use for waste disposal areas. Specifically, Wyoming noted that the wind turbine blades and towers "would only be part of the backfill plan and not contemporaneous with final reclamation."

We understand Wyoming's response to mean, as required by the proposed changes to their reclamation plan requirements, wind turbine blade and tower disposal would only occur during the backfill stage of the reclamation once the operation has met an end wall or final void. As required by the performance standards in both the Federal regulations at 30 CFR 816.100 and the Wyoming regulations at WCWR 020-0006-4 Section 2(b)(i), all coal mine operators are required to reclaim land as contemporaneously as practicable with mining operations, including but not limited to backfilling, grading, topsoil replacement, and revegetation. Nothing in Wyoming's proposed amendment would remove or alter the existing contemporaneous reclamation requirement from Wyoming's performance standards. Operators who elect to dispose of wind turbine blades and towers must still reclaim their land as

contemporaneously as possible with their mining operation. Thus, with this understanding, Wyoming's proposed amendment is in accordance with SMCRA and consistent with the Federal regulations in relation to contemporaneous reclamation requirements.

WCWR 020-0006-2 Section 6(b)(ii)(F)(III)(6.) requires that any "backfill disposal location approved by the Division shall comply with Chapter 4, Section 4 of the Solid and Hazardous Waste Division Rules. As enacted in 1977, SMCRA states that "[n]othing in this Act shall be construed as superseding, amending, modifying, or repealing . . . The Solid Waste Disposal Act . . ." 30 U.S.C. 1292(a)(5). One year prior, RCRA amended the Solid Waste Disposal Act on October 21, 1976. Public Law 94-580, Oct. 21, 1976, 90 Stat. 2795. Therefore, SMCRA does not permit an action that has the effect of superseding, amending, modifying, or repealing RCRA or the Solid Waste Disposal Act.

In Wyoming's June 4, 2021, submission letter for this proposed amendment, Wyoming stated that its proposed rules for the disposal of decommissioned inert towers and blades would be compliant with the Wyoming Solid Waste Diversion Rules Chapter 4 Construction and Demolition Landfill Regulations. However, Wyoming's proposed rules do not require a permit under the Construction and Demolition Landfill Regulations and only provide cross-references to Chapter 4, Sections 4 and 8(b)(iv)(A) of the Solid and Hazardous Waste Division Rules, which are subsets of Wyoming's Construction and Demolition Landfill within WCWR 020-0009-4 Section 2(a) and the Federal requirements of 40 CFR part 257, subpart A.

OSMRE acknowledges that an LQD permit issued pursuant to SMCRA can, in certain circumstances, substitute for the separate permit required by Wyoming's Construction and Demolition Landfill requirements. As noted earlier and as discussed below under "Section IV. Summary and Disposition of Comments," OSMRE sought consultation from EPA because Wyoming's proposal would authorize disposal of waste material normally regulated under RCRA on SMCRA sites. EPA's response indicated that a facility receiving decommissioned inert towers and blades, including SMCRA coal mines, would need to meet all requirements of Wyoming's Construction and Demolition Landfill regulations within WCWR 020-0009-4, Section 2(a), and the Federal criteria at 40 CFR part 257, subpart A. The EPA

notes that Section 2(a) of Wyoming's Construction and Demolition Landfill regulations requires RCRA permit applications to contain applicable information related to Sections 3 through 17, which include criteria for the location, design and construction, operating, monitoring, and corrective action standards, among others. The EPA concluded that it does not see a conflict between Wyoming's proposed rule and the RCRA program, so long as these proposed rules are implemented such that they meet Wyoming's Construction and Demolition Landfill regulations within WCWR 020-0009-4, Section 2(a) and the Federal requirements of 40 CFR part 257, subpart A.

In its Clarification Letter, Wyoming stated that "[a]lthough specific sections of Solid Waste Rule, Chapter 4 are listed in the Land Quality Rule, facilities are required to meet all applicable standards in all rules." Based on this representation that all facilities, including SMCRA sites receiving wind turbine and blade waste materials, are required to satisfy all Construction and Demolition Landfill regulations within WCWR 020-0009-4 Section 2(a) and the Federal requirements of 40 CFR part 257, subpart A, OSMRE determined that these provisions would be in accordance with SMCRA and consistent with Federal regulations; any implementation of this section that is inconsistent with this interpretation may require OSMRE to reevaluate its approval.

As proposed, WCWR 020-0006-2 Section 6(b)(ii)(F)(IV) contains three closure requirements for locations where inert decommissioned wind turbine blades and towers are authorized as part of the backfill. The first outlines how this material should be placed in lifts to prevent subsidence, the second outlines groundwater monitoring requirements, and the third relates to bond releases. WCWR 020-0006-2 Section 6(b)(ii)(F)(IV).

WCWR 020-0006-2 Section 6(b)(ii)(F)(IV)(1.) requires that inert decommissioned wind turbine blades and towers be placed in lifts not to exceed 10 feet and covered with a minimum of 15 feet of suitable backfill "dry tomb placement." The Federal regulations at 30 CFR 780.18(b)(3) require a plan for backfilling, soil stabilization, grading, and compacting, with contour maps or cross sections to show the anticipated final surface configuration in accordance with 30 CFR 816.102. Federal regulation 30 CFR 816.102(c) requires the operator to compact spoil to ensure stability or to prevent leaching of toxic material.

Under Wyoming's rules at WCWR 020-0006-2 Section 6(b)(ii)(E), a mine operator's reclamation plan must be designed to ensure stability of the reclaimed land surface.

A lift is a method in which an operator puts dirt above and below an area or object. Typically, these areas are compacted. This placement configuration stabilizes the surrounding area and helps to prevent leaching of material throughout the surrounding soil; thus, assuming the lift uses compacted dirt, this section is in accordance with SMCRA and consistent with the Federal regulations.

While lifts are helpful in preventing subsidence, Wyoming's proposed amendment does not specify whether this proposed regulation requires the lifts to be compacted or if loose fill is allowed. Wyoming's proposed regulations do not address if or how inert decommissioned wind turbine blades and towers will be processed before disposal. Inert towers and blade casings are generally rigid and hollow and are made of fiberglass and epoxy resin. While the material is durable, over an extended period of time it will break down. In addition, unprocessed inert turbine blades and casings are hollow, so the breakdown of material could potentially cause soil instability and subsidence, which could be worsened if multiple inert turbine blades and towers are stacked together. Therefore, there is potential that surface and postmining land use activities will be affected by a subsidence issue in the future, after bond release.

In its Clarification Letter, Wyoming stated that Chapter 4, Section 2(b) of the Wyoming's Coal Rules (Coal Chapter 2, Section 6(b)(ii)(F)(IV)(1)), which details the requirements for a plan for backfilling, grading, and contouring all affected lands, requires an applicant to provide procedures for assuring stability of the reclaimed land surface. Wyoming's response indicates that Wyoming intends for its rules to require an operator to reclaim areas, including wind turbine disposal sites, in a way that prevents subsidence. Thus, Wyoming's proposed rules are in accordance with SMCRA and consistent with the Federal regulations in preventing subsidence in reclaimed areas; any implementation of this section that is inconsistent with this interpretation may cause OSMRE to reevaluate its approval.

WCWR 020-0006-2 Section 6(b)(ii)(F)(IV)(2.) and (3.) require that the groundwater monitoring plan required by Wyoming's existing coal rules also include monitoring wells to be installed and monitored in

accordance with Chapter 4, Section 8(b)(iv)(A) of the Solid and Hazardous Waste Division Rules, and that this groundwater monitoring and vegetation monitoring continue until final bond release.

Under SMCRA at 30 U.S.C. 1259, a coal mine operator is required to obtain a performance bond once their permit has been approved by the regulatory authority. The amount of the bond is calculated by determining the cost to fully reclaim a mine site. To obtain full release of its performance bond, an operator must meet the requirements of 30 CFR 800.40, which includes rules for re-vegetation and water monitoring, among others. Wyoming has equivalent requirements under its own Coal Program at WCWR 020-0006-15. Wyoming's proposed amendment does not explicitly require recalculating bond amounts to account for potential impacts or uncertainty related to the disposal of inert decommissioned wind turbines and towers on their permit.

While Wyoming did not specifically indicate how the proposed amendment will affect its bonding calculations, Wyoming reiterated in its Clarification Letter that operators are required to meet all of the existing and approved bonding rules in WCWR 020-0006-11, as well as those prescribed by SMCRA and the Federal regulations. Under Wyoming's existing rules, if disposal of wind turbine blades or towers caused unanticipated impacts, Wyoming would be required to adjust the bond amounts and order an operator to correct the issue without any further revision to its regulations.

Wyoming's proposal adds the requirement that any additional groundwater monitoring requirements under Chapter 4, Section 8(b)(iv)(A) of the Solid and Hazardous Waste Division Rules be added to LDQ's permit. Wyoming's proposal does not remove any existing groundwater monitoring requirements or bond requirements already approved by OSMRE. Consequently, Wyoming's proposed amendment is in accordance with SMCRA and consistent with the Federal regulations with regard to groundwater monitoring and bonding.

As proposed, WCWR 020-0006-2 Section 6(b)(ii)(F)(V) contains two final surface reclamation requirements. First, Section 6(b)(ii)(F)(V)(1.) requires that the final reclamation surface must blend with the surrounding mine reclamation and have a permanent vegetative cover in accordance with Chapter 4, Section 2(d) of the Division's Coal Chapter 4 requirements. Second, Section 6(b)(ii)(F)(V)(2.) requires that the final reclamation must drain properly and

not impound water in accordance with the Division's Coal Chapter 4 requirements.

Under the Federal regulations at 30 CFR 816.102, areas disturbed by surface coal mining operations must be backfilled and graded to achieve approximate original contour (AOC), except in limited cases. Wyoming's regulations, at WCWR 020-0006-4 Sec. 2 (b)(iii), also require all affected lands to be returned to AOC, with some exceptions. Wyoming defines AOC to mean "surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed land surface closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain." WCWR 020-0006-1 Sec. 2 (h). Under its proposed regulations for the disposal of inert towers and blades within surface coal mining sites, Wyoming would require the reclaimed surface to not exceed the approximate pre-mining slopes, WCWR 020-0006-2 Sec. 6 (b)(ii)(D), and the lands to blend with the surrounding mine reclamation. WCWR 020-0006-2 Sec. 6 (b)(ii)(F)(V)(1). To clarify this matter, we asked Wyoming if it could describe how its proposed regulations will ensure that the surface configuration achieved by backfilling and grading of the areas receiving inert towers and blades will closely resemble the general surface configuration of the land prior to mining and blend into and complement the drainage pattern of the surrounding terrain. (Administrative Record No. WY-049-12).

In its Clarification Letter, Wyoming confirmed that the requirements in Sections 6(b)(ii)(F)(V)(1.) and (2.) are in addition to the requirement that the entire mine, including areas receiving disposal of inert towers and blades, must achieve approximate original contour as required by Chapter 4, Section 2(b)(iii) of the Division's Coal Rules. Because this provision does not remove any existing requirements related to achieving approximate original contour and only adds the requirement that the disposal areas must blend with the surrounding mine and drain properly, Wyoming's proposed amendment is in accordance with SMCRA and consistent with the Federal regulations in ensuring that these sites will be reclaimed to achieve approximate original contour.

2. Conclusion

As explained above, with the information contained in its initial submission and the Clarification Letter, we conclude that the proposed

amendment is in accordance with SMCRA and consistent with the Federal regulations. We therefore approve Wyoming's changes to its State program.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but we did not receive any.

Federal Agency Comments

On June 16, 2021, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Wyoming program (Administrative Record No. WY-49-04). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Wyoming proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on June 16, 2021, under 30 CFR 732.17(h)(11)(i), we requested comments from EPA Region 8 on the amendment (Administrative Record No. WY-049-04). The EPA did not respond to this request.

OSMRE identified that Wyoming's proposed amendment may have RCRA implications because Wyoming's proposal would authorize the disposal of waste material normally regulated under RCRA in SMCRA sites. So, pursuant to 30 CFR 732.17(h)(11)(i), on September 27, 2024, we sent a letter to the EPA's Office of Land and Emergency Management requesting comment. (Administrative Record No. WY-049-07). The EPA responded on October 24, 2024. (Administrative Record No. WY-049-10). These letters are posted on www.regulations.gov (Docket Nos. OSM-2021-0003-00007 and OSM-2021-0003-00008).

The EPA commented that, under RCRA, the EPA establishes a national minimum standard for non-hazardous waste, the states are delegated the lead role in overseeing the disposal of non-hazardous waste, and the generator of waste is ultimately responsible for determining whether the waste qualifies as non-hazardous. The EPA explained that, if wind turbine blades and towers

are appropriately characterized as non-hazardous waste and no other waste is accepted at these wind turbine disposal facilities, then such facilities would be subject to 40 CFR part 257, subpart A, entitled “Classification of Solid Waste Disposal Facilities and Practices.”

As explained in more detail above, the EPA interpreted Wyoming’s proposed amendment to mean that the wind turbine disposal facilities are permitted and subject to Wyoming’s Construction and Demolition Landfill Regulations under Chapter 4 of Wyoming’s Solid Waste Division Rules. Accordingly, a facility under these proposed rules would need to meet both the Wyoming criteria and Federal criteria at 40 CFR part 257, subpart A. The EPA concluded its comment by stating that, so long as these criteria are met, it does not anticipate a conflict between Wyoming’s proposed amendments and RCRA.

OSMRE Response

OSMRE appreciates EPA’s response. As explained above, SMCRA provides that nothing in SMCRA can be construed as superseding, amending, modifying, or repealing various environmental laws, including the Solid Waste Disposal Act, which RCRA amended. In its June 4, 2021, submission letter for this proposed amendment, Wyoming stated that its proposed rules for the disposal of decommissioned inert towers and blades would be compliant with Wyoming Solid Waste Diversion Rules Chapter 4, “Construction and Demolition Landfill Regulations.” In our November 26, 2024, letter to Wyoming, we asked Wyoming to describe how its proposed regulations will comply with all of Chapter 4 of Wyoming’s Solid Waste Diversion Rules. Wyoming’s Clarification Letter stated: “The standards found in Wyoming Solid Waste Rule Chapter 4 are state standards and there is no federal oversight for this type of waste disposal under [RCRA] and as verified in US EPA’s October 24, 2024, letter. Although specific sections of Solid Waste Rule, Chapter 4 are listed in the Land Quality Rule, facilities are required to meet all applicable standards in all rules.”

Based on EPA’s response and Wyoming’s commitment that “facilities are required to meet all applicable standards in all rules[,]” we conclude that this amendment does not supersede, amend, modify, or repeal RCRA so long as the disposal facilities authorized under this amendment are permitted and subject to all of Wyoming’s Construction and Demolition Landfill Regulations under

Chapter 4 of Wyoming’s Solid Waste Division Rules and meet the Federal criteria at 40 CFR part 257, subpart A.

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

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On June 16, 2021, we requested comments on Wyoming’s amendment (Administrative Record No. WY-054-04). We did not receive comments from the SHPO or ACHP. Nevertheless, OSMRE determined there will be no effect on historic or cultural resources as a result of this amendment because wind turbine blades and towers will be disposed of in pits as backfill material within the footprint of areas disturbed by coal mining activities.

V. OSMRE’s Decision

Based on the above findings, we are approving Wyoming’s amendment submitted to us on June 4, 2021. To implement this decision, we are amending the Federal regulations at 30 CFR part 950, which codify decisions concerning the Wyoming program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA requires that the State’s program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency of State and Federal standards.

VI. Statutory and Executive Order Reviews

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

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

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

Executive Order 12866, as amended by Executive Order 14094, provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance dated October 12, 1993 (OMB Memo M-94-3),

the approval of state program amendments is exempted from OMB review under Executive Order 12866, as amended by Executive Order 14094. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

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

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule

under the Department's consultation policy and under the criteria of Executive Order 13175 and have determined that, although no Indian lands, as defined under SMCRA, are implicated by this rule, this State program amendment may have substantial direct effects on 49 Federally-recognized Tribes because of the potential implications for the Tribe or Tribal members, Tribal treaty rights, reserved rights, trust resources, or ancestral lands. Therefore, on September 27, 2024, we sent invitation letters to consult to these 49 Tribes (Administrative Record No. WY-049-08).

In response to our invitation, we received one request for Tribal consultation, one request for an informational meeting, and two written comments. Despite the request for Tribal consultation, we did not receive a response to our follow-up communication to set up a date and time, so the Tribal consultation did not go forward. In response to the request for an informational meeting, we met with a representative of the Shoshone Paiute Tribe on October 28, 2024. During the meeting, we explained Wyoming's proposed amendment to the Tribe in further detail. At the end of the meeting, the Shoshone Paiute decided to not pursue Tribal consultation.

We received a written comment from the Northern Cheyenne Tribe on October 22, 2024 (Administrative Record No. WY-049-09). The Tribe recognized that this proposed amendment would allow for the disposal of wind turbines and blades without the need to seek out any new undisturbed land; however, the Tribe expressed concern with how Tribal governments are included in the determination of potential impacts to archaeological resources. The Northern Cheyenne Tribe stated that Wyoming does not include Tribes as part of the state SMCRA permit review process and that the best outcome would be to include Tribes in the reviews and approvals on State-owned lands with the applicable coal mine areas for disposition of wind turbine blades and towers.

We also received a written comment from the Comanche Nation on October 25, 2024 (Administrative Record No. WY-049-11). In their comment, the Comanche Nation's Historic Preservation Officer stated that no prehistoric or historic archaeological materials for the Tribe were identified within areas of mineable coal in Wyoming.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

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

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1291 (d) respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), State program amendments are not major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partner, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*) is not required.

Regulatory Flexibility Act

Although there is no Federal counterpart for Wyoming's proposed amendment, based on OSMRE's collaboration with State regulatory authorities and years of experience, OSMRE certifies that this final rule will

not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Small Business Regulatory Enforcement Fairness Act

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

Unfunded Mandates

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of \$100 million per year. Although there is no Federal counterpart for Wyoming's proposed amendment, OSMRE's determination regarding unfunded mandates is based on OSMRE's collaboration with State regulatory authorities and years of experience.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

David A. Berry,

Regional Director, Unified Regions, 5, 7–11.

For the reasons set out in the preamble, 30 CFR part 950 is amended as set forth below:

PART 950—WYOMING

■ 1. The authority citation for part 950 continues to read as follows:

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

■ 2. In § 950.15 amend the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 950.15 Approval of Wyoming regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
June 4, 2021	January 13, 2025	State initiative outlining rules regarding how decommissioned wind turbine blades and towers can be used as backfill in open surface coal mine pits, while updating Chapter 2 Permit Application Requirements for Surface Coal Mining Operations to provide consistency with the Wyoming Secretary of State's Rules on Rules and correct grammatical errors.

[FR Doc. 2025–00198 Filed 1–10–25; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR**National Park Service****36 CFR Part 7**

[NPS–GLCA–NPS0039168; NPS–2024–0005; PPIMGLCAA0.PPMPAS1Z.Y00000–255P10361]

RIN 1024–AE91

Glen Canyon National Recreation Area; Motor Vehicles**AGENCY:** National Park Service, Interior.**ACTION:** Final rule.

SUMMARY: The National Park Service revises special regulations for Glen Canyon National Recreation Area to update rules about the use of motor vehicles on roads and off roads on designated routes and areas.

DATES: This rule is effective February 12, 2025. Comments on the information collection contained in this final rule should be submitted to OMB by February 12, 2025.

ADDRESSES: The comments received on the proposed rule are available on www.regulations.gov in Docket No. NPS–2024–0005.

Information Collection Requirements: Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function. Please provide a copy of your comments to the NPS Information Collection Clearance Officer (ADIR–ICCO), 13461 Sunrise Valley Drive (MS–244), Herndon, VA 20171 (mail); or phadrea_ponds@nps.gov (email). Please include “1024–AE91” in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT:

Michelle Kerns, Superintendent, Glen Canyon National Recreation Area, P.O.

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SUPPLEMENTARY INFORMATION:**Background***Purpose and Significance of Glen Canyon National Recreation Area*

Congress established Glen Canyon National Recreation Area (the recreation area) in 1972 “to provide for the public outdoor recreation use and enjoyment of Lake Powell and lands adjacent thereto in the states of Arizona and Utah and to preserve the scenic, scientific, and historic features contributing to the public enjoyment of the area.” 16 U.S.C. 460dd.

The recreation area encompasses 1,254,117 acres in northern Arizona and southeastern Utah and constitutes a substantial part of the outstanding public lands of the Colorado Plateau. The recreation area offers a natural diversity of rugged water- and wind-carved canyons, buttes, mesas, and other outstanding physiographic features. The recreation area allows for a variety of recreational opportunities, including on- and off-road motor vehicle use and contains Lake Powell, the second-largest human-made lake in North America, which provides the opportunity to recreate in a natural environment and access remote backcountry areas. Evidence of 11,000 years of human occupation and use of resources in the recreation area provides a continuing story of the prehistoric,

historic, and present-day affiliation of humans and their environment.

Authority To Promulgate Regulations

The National Park Service (NPS) manages the recreation area under the NPS Organic Act (54 U.S.C. 100101 *et seq.*), which gives the NPS broad authority to regulate the use of the park areas under its jurisdiction. The NPS Organic Act authorizes the Secretary of the Interior, acting through the NPS, to “prescribe such regulations as the Secretary considers necessary or proper for the use and management of [National Park] System units.” 54 U.S.C. 100751(a). In the recreation area’s enabling act, Congress directed the Secretary of the Interior to “administer, protect, and develop the recreation area in accordance with the [NPS Organic Act], and with any other statutory authority available to him for the conservation and management of natural resources.” 16 U.S.C. 460dd–3. These general authorities allow the NPS to regulate the use of motor vehicles within the recreation area, both on roads and off roads, and on designated routes and areas.

Executive Order 11644, Use of Off-Road Vehicles on the Public Lands, was issued in 1972 and amended by Executive Order 11989 in 1977. Executive Order 11644 requires Federal agencies to issue regulations designating specific routes and areas on public lands where the use of off-road vehicles (ORVs) may be allowed. The NPS implemented these Executive Orders, in part, by promulgating a regulation at 36 CFR 4.10 (Travel on park roads and designated routes). Under 36 CFR 4.10, the use of motor vehicles off park roads is not permitted unless routes and areas are designated for off-road motor vehicle use by special regulation. Under 36 CFR 4.10(b), such routes and areas may be designated only in national recreation areas, national seashores, national lakeshores and national preserves. This rule implements regulatory changes for certain areas where motor vehicles may be used off park roads in the recreation area in compliance with 36 CFR 4.10 and Executive Orders 11644 and 11989.

The changes to motor vehicle use on roads within the recreation area are not subject to the requirements in 36 CFR 4.10(b) and the Executive Orders because they do not concern routes and areas. Paved and unpaved roads within the recreation area are referred to in this rule and defined in the regulations as “GMP roads” because they are identified in the recreation area’s 1979 General Management Plan (GMP) as open to motor vehicle traffic. There are no roads within the recreation area other than GMP roads.

Current Motor Vehicle Use in the Recreation Area

In 2021, the NPS promulgated special regulations that for the first time addressed the use of motor vehicles within the recreation area (86 FR 3804). These regulations are codified at 36 CFR 7.70(f) and address the use of conventional motor vehicles, off-highway vehicles (OHVs), and street-legal all-terrain vehicles (ATVs). The regulations establish rules for the use of motor vehicles on paved and unpaved GMP roads and off roads in designated routes and areas. The regulations also contain a permit requirement for off-road motor vehicle use, motor vehicle and operator requirements, and provide the superintendent with a specific discretionary authority to establish closures, conditions, and restrictions on ORV use after taking into consideration public health and safety, natural and cultural resource protection, lake levels, and other management activities and objectives.

Litigation and Settlement Agreement

The National Parks Conservation Association filed a Complaint challenging the special regulations on January 19, 2021, which it subsequently amended on April 16, 2021. The Southern Utah Wilderness Alliance filed a Complaint on March 15, 2023, which also challenged the special regulations. It amended its Complaint on August 7, 2023. The Court consolidated the two matters and stayed the cases for settlement discussions among the parties. The Parties executed a Settlement Agreement on March 26, 2024. The court subsequently entered an Order dismissing the cases on April 10, 2024. As part of the Settlement, the NPS agreed to propose revisions to the existing special regulations.

Off-Road Vehicle Managed Plan/Final Environmental Impact Statement

In January 2017, the NPS completed an Off-Road Vehicle Management Plan/Final Environmental Impact Statement (FEIS). On August 15, 2018, the

Regional Director for the Intermountain Region signed a Record of Decision (ROD) identifying the preferred alternative in the FEIS (Alternative E: Mixed Use) as the selected alternative. In support of this rule, the NPS prepared a revised Record of Decision (Revised ROD). The FEIS and the Revised ROD supersede all previous ORV management plans for the recreation area. A detailed history of prior NPS management of on- and off-road vehicle use can be found in the FEIS, which can be viewed together with the Revised ROD at <https://parkplanning.nps.gov/glca> by clicking any of the links entitled “Off-road Vehicle Management Plan/Environmental Impact Statement” and then the link entitled “Document List.” The FEIS analyzes the issues and environmental impacts of five alternatives for the management of on- and off-road motor vehicle use in the recreation area. Major issues analyzed in the FEIS include social and economic issues, human health and safety, wildlife, natural soundscapes, wilderness, and visitor use and experience. Impacts associated with each of the alternatives are described in the FEIS. The Revised ROD addresses the purpose and need for this rule and evaluates potential impacts from its implementation. It also further explains the baseline for evaluating the impacts of motor vehicle use in the recreation area. Appended to the Revised ROD are a revised non-impairment determination and a site-specific evaluation of motor vehicle use on off-road routes and areas in the recreation area using the criteria in section 3(a) of E.O. 11644.

Final Rule

This rule makes the following changes to the existing special regulations in 36 CFR 7.70(f).

Two changes address OHV and street-legal ATV use in the Orange Cliffs Special Management Unit, defined in the existing regulations as the area identified as the Orange Cliffs Special Management Unit in the Canyonlands National Park and Orange Cliffs Unit of Glen Canyon National Recreation Area Backcountry Management Plan (NPS 1995). The rule prohibits the use of OHVs and street-legal ATVs on an 8-mile segment of the Poison Spring Loop located on Route 633 proceeding north to Route 730 in the Orange Cliffs Special Management Unit, identified in Table 2 to paragraph (f)(4)(i) in the existing special regulations. The rule also eliminates the superintendent’s ability to potentially open the upper portion of the Flint Trail in the Orange Cliffs Special Management Unit to OHVs and

street-legal ATVs, as stated in Table 2 to paragraph (f)(4)(i) and paragraph (f)(4)(ii) in the existing special regulations.

Three other changes address off-road vehicle use in areas that allow for access from GMP roads to the shoreline of the lake, referred to as shoreline access areas.

One change affects the following 10 shoreline access areas that are identified in table 1 to paragraph (f)(3)(ii) of the existing special regulations: Lone Rock Beach, Blue Notch, Bullfrog North and South, Crosby Canyon, Dirty Devil, Farley Canyon, Hite Boat Ramp, Red Canyon, Stanton Creek, White Canyon. The rule separates the existing shoreline access area at Bullfrog North and South into two shoreline access areas, one for Bullfrog North and another for Bullfrog South. The rule requires the superintendent to identify lake elevation levels at each of the 11 shoreline access areas where, if the lake elevation drops below the identified level and remains below the identified level for seven consecutive days, the shoreline access area will close to off-road motor vehicle use. Inversely, if the lake elevation increases above the identified level and remains above the identified level for seven consecutive days, the shoreline access area will open to off-road vehicle use.

The rule requires the superintendent to use hydrologic data from the United States Geological Survey and the Bureau of Reclamation to set the lake elevation levels, which will be subject to change based upon public health and safety, natural and cultural resource protection, and other management activities and objectives. The rule requires the elevation levels to be published on the recreation area’s website and listed in the superintendent’s compendium for the recreation area. The superintendent’s compendium is a written compilation of all the designations, closures, permit requirements and other restrictions imposed under discretionary authority, required by 36 CFR 1.7(b). After the lake elevation drops below or rises above the identified level, and the seven-day waiting period has concluded, the rule requires the superintendent to identify the shoreline access area as open or closed to off-road vehicle use on the website for the recreation area and in the superintendent’s compendium within 14 days after the expiration of the seven-day waiting period. The rule requires the NPS to install signs at each shoreline access area notifying the public that it is opened or closed to off-road motor vehicle use. When a shoreline access area is closed because

lake elevations have dropped, the rule also requires the NPS to consider additional steps to prevent off-road vehicle use in the area, such as the installation of gates. The rule clarifies that motor vehicle use on a GMP road may continue within a closed shoreline access area at the discretion of the superintendent, and subject to the rules for operating a motor vehicle on such roads in the special regulations.

A second change related to shoreline access areas adds a statement in the regulations that off-road vehicle use in any of those areas, including the shoreline access areas identified in table 1 to paragraph (f)(3)(ii) of the existing special regulations that are not subject to closure based upon lake elevation, must be for the purpose of traveling from a GMP road to the shoreline, and back. This draws a clear distinction between the purpose of off-road vehicle use in shoreline access areas and the purpose of off-road vehicle use in Lone Rock Beach, Lone Rock Beach Play Area, and Ferry Swale, which are identified in table 1 to paragraph (f)(3)(ii), but not considered shoreline access areas. Lone Rock Beach is a developed area with a year-round campground and visitor activities associated with that use. Lone Rock Beach Play Area is a fenced location open to dispersed, high-intensity ORV use. Ferry Swale is a network of approximately 21 miles of off-road vehicle routes that does not provide access to the lake.

The existing regulations in paragraph (f)(6)(i) require the superintendent to provide public notice of closures, conditions or restrictions on ORV use through one or more of the methods listed in 36 CFR 1.7. A third change affecting shoreline access areas requires the superintendent, in every case, to publish notice of all such actions on the recreation area's website.

This final rule also prohibits OHV and street-legal ATV use on the following unpaved GMP roads in the Recreation & Resource Utilization Zone that is defined in the GMP:

- Unnamed road near Dry Mesa/ Sheep's Canyon near Hite, sometimes referred to as Dry Mesa Road (approximately 4.31 miles).
- Road #2/95 Spur near Hite, also known as Dirty Devil Spur (approximately 1.14 miles).
- Cove Canyon Spur Road near Hite (approximately 0.65 miles).
- Flint Trail Spur Road near Hite, also known as Waterhole Flat Spur #1 Road & Dark Canyon Overlook Road (approximately 0.72 miles).
- Ticaboo Mesa Road near Bullfrog (approximately 1.45 miles).

- Muley Point Road (approximately 1.26 miles).
- Johns Canyon Road near Muley Point (approximately 7.49 miles).

This final rule also changes the quiet hours in the Lone Rock Beach Play Area from 10 p.m. to 6 a.m., in the existing regulations, to sunset to sunrise in the final rule. The superintendent retains the authority to lengthen the quiet hour time-period.

Finally, this final rule removes two sentences in paragraphs (f)(2)(i) and (f)(3)(ii) stating that certain regulations are effective beginning on May 17, 2021. This date has passed and therefore these statements are obsolete and unnecessary.

Summary of Public Comments

The NPS published a proposed rule in the **Federal Register** on September 16, 2024 (89 FR 75511). The NPS accepted public comments on the proposed rule for 60 days via the mail, hand delivery, and the Federal eRulemaking Portal at <https://www.regulations.gov>. Comments were accepted through November 15, 2024. The NPS received 2,351 comments on the proposed rule, including one letter-writing campaign with over 2,180 submissions. The NPS received comments from the State of Utah, county governments, advocacy groups, and private individuals. After considering public comments and after additional review, the NPS made one change to the proposed rule. The NPS has removed a proposed revision to paragraph (f)(2)(ii) in the existing special regulations that would have replaced the reference to a "special use permit" with a general reference to a "permit." This proposed change is not part of the Settlement Agreement and therefore does not need to be included in this rule. Summaries of pertinent issues raised in the comments and NPS responses are provided below.

1. Comment: One commenter expressed concern about the impact of the rule on Kane County roads that run through the recreation area and requested that the NPS seek input and coordinate with county officials before making changes that would impact use of those roads.

NPS Response: The NPS values its partnerships with State, county and local governments and has endeavored to keep all partners informed and engaged in the planning and rulemaking processes that have occurred since the initial ORV planning stages in 2012. The NPS looks forward to continued discussions with its many partners and stakeholders during the implementation of this rule.

2. Comment: Several commenters asked the NPS to further explain the purpose and need for this rule. In particular, commenters asked the NPS to identify adverse impacts to resources (e.g., soil, vegetation, wildlife, watershed) and visitors (e.g., for recreation and access) caused by existing motor vehicle use that support the restrictions in this rule. Several commenters asked the NPS to compare impacts from OHVs and street-legal ATVs with impacts from conventional motor vehicles in a manner that supports the different treatment of those vehicle categories in this rule. Another commenter asked the NPS to share key research supporting the need for the rule.

NPS Response: Independent of the litigation, the NPS believes that the changes to the special regulations in this rule are appropriate for the reasons provided below. These changes are targeted, small in scale, and balance recreational interests from various user groups with resource protection. The large majority of the existing regulations will remain the same, including designated routes and areas for ORV use, permit requirements, and motor vehicle operator requirements (e.g., speed limits and equipment requirements).

Eliminating OHV and street-legal ATV use in the Orange Cliffs Special Management Unit will better implement portions of the 1995 Backcountry Management Plan. The NPS developed this inter-park management plan to increase consistency and protection for visitors to both the Maze District of Canyonlands National Park (where OHVs and street-legal ATVs are prohibited) and the Orange Cliffs Special Management Unit. This change also will better implement the direction in the GMP that the NPS manage the Orange Cliffs Special Management Unit to maintain a relatively primitive, undeveloped atmosphere.

The changes related to shoreline access areas largely implement current management practices. Shoreline access area boundaries are defined by topographical features (e.g., water lines and sandstone cliffs) that prevent motor vehicles from leaving designated areas. Low water levels expose travel corridors that would otherwise be blocked by topographical features, allowing users to leave designated shoreline access areas with resulting damage to resources (e.g., soils, cultural and paleontological resources, and soundscapes). The FEIS identifies closures as an ORV management strategy to address decreasing lake elevations. The NPS already uses lake elevations as a

management guide for motor vehicle use in shoreline access areas, and closes shoreline access areas using the discretionary authority of the superintendent in the existing regulations. This rule creates an explicit process for implementing closures due to low lake elevations, which will better inform visitors of potential closures and protect resources. This management tool will allow the NPS to respond to dramatic lake elevation changes that occur on Lake Powell (up to 75 feet annually) and facilitate active management of shoreline access areas.

Shoreline access areas are identified in the GMP and FEIS as a mechanism to facilitate access to the lake for recreation. Shoreline access areas were never contemplated or designed for dispersed driving. This change will help fulfill the original purpose of shoreline access areas and communicate that purpose to the public.

Eliminating OHV and street-legal ATV use on the subset of unpaved roads outside of the Orange Cliffs Special Management Unit will more closely align the regulations with zoning prescriptions in the GMP, which limit impacts to soundscapes in Natural Zones within the recreation area. The unpaved roads that would be affected by this rule are located close enough to Natural Zones such that the use of OHVs and street-legal ATVs on those roads would create adverse impacts to the soundscapes in those zones.

Establishing longer quiet hours in the Lone Rock Beach Play Area may reduce conflict between user groups, improve visitor safety, and better protect wildlife.

For more information about the purpose and need for the rule and associated environmental impacts, the public can view the FEIS and Revised ROD, which can be viewed on the NPS planning site at <https://parkplanning.nps.gov/glca> by clicking any of the links entitled “Off-road Vehicle Management Plan/ Environmental Impact Statement” and then the link entitled “Document List.” The NPS evaluates impacts to resources in the recreation area from all categories of motor vehicle use in both documents. The FEIS contains an executive summary that presents an abbreviated version of the issues, research and analysis that informed the decision-making process, as well as provides a comparison between the alternatives considered.

3. Comment: Several commenters stated that the NPS has no authority to restrict travel on roads to which the State of Utah or county governments have a claim under Revised Statute 2477

(R.S. 2477) and asked the NPS recognize claimed R.S. 2477 rights. One commenter asserted that the NPS should consult with the State of Utah before asserting jurisdiction over such roads. Another commenter asked the NPS to defer any restrictions or closures on roads subject to R.S. 2477 claims until the courts resolve the merits of such claims. Roads identified in such comments that will be affected by this rule include the Flint Trail, Poison Spring Loop, and Cove Canyon Spur Road.

NPS Response: The NPS has broad authority to regulate motor vehicle use within the recreation area. The changes in this rule do not close any roads within the recreation area; they prohibit certain categories of motor vehicles on a small subset of roads. Claims by the State of Utah and county governments under R.S. 2477 within the recreation area have not been adjudicated. The NPS will evaluate the legal effects of any future court decisions regarding R.S. 2477 claims at the appropriate time. Under the Quiet Title Act, “[t]he United States shall not be disturbed in possession or control of any real property involved in any action . . . pending a final judgment or decree, the conclusion of any appeal therefrom, and [for] sixty days [thereafter]. . . .” 28 U.S.C. 2409a(b).

4. Comment: Several commenters stated that the restrictions on motor vehicle use in this rule are contrary to Congressional intent that the NPS manage the recreation area for the purpose of ensuring public access to outdoor recreation and enjoyment. Other commenters stated that there is no basis in the recreation area’s enabling act to manage categories of motor vehicles differently.

NPS Response: Congress established the recreation area in 1972 to “provide for public outdoor recreation use and enjoyment of Lake Powell and lands adjacent thereto in the states of Arizona and Utah and to preserve the scenic, scientific, and historic features contributing to the public enjoyment of the area.” 16 U.S.C. 460dd(a) The enabling act also provides that “[t]he Secretary shall administer, protect, and develop the recreation area in accordance” with the NPS Organic Act “and with any other statutory authority available . . . for the conservation and management of natural resources.” *Id.* at § 460dd–3. These general authorities, among others, instruct the NPS to provide public recreation opportunities while regulating and administering the recreation area in a manner that complies with the NPS Organic Act and conserves natural resources. Thus, the

NPS has broad discretion to manage categories of motor vehicles differently. The FEIS and Revised ROD explain why the potential impacts to resources and visitors are different between conventional motor vehicles, on the one hand, and OHVs and street-legal ATVs, on the other hand. OHVs and street-legal ATVs produce more noise than conventional motor vehicles, creating greater impacts on soundscapes. In addition, OHVs and street-legal ATVs generally are more capable of traveling off unpaved roads and directly over undisturbed natural terrain compared to conventional motor vehicles. This creates the potential for greater impacts to natural resources in those areas.

5. Comment: One commenter argued that the rule bypasses the authority held by Congress to designate wilderness areas by limiting motorized access in the Orange Cliffs Management Unit.

NPS Response: Prohibiting OHVs and street-legal ATVs cannot be considered a de facto designation of the Orange Cliffs Management Unit as wilderness. The regulations will continue to allow conventional motor vehicles on unpaved GMP roads within the Orange Cliffs Management Unit. Motor vehicle use is prohibited in designated wilderness and this rule does not change that. Neither the rule nor the existing regulations address any of the other prohibited uses in the Wilderness Act, such as motorized equipment, commercial activities, landing of aircraft, mechanical transport, structures, or installations.

6. Comment: One commenter asserted that E.O. 11644 precludes the NPS from considering the impacts of motor vehicles, in particular OHVs and street-legal ATVs, on the soundscape of the recreation area because that term is not mentioned in the E.O., unlike other resources such as soil, vegetation, and wildlife. This commenter also suggested that the NPS decrease the maximum decibel level limit in the existing regulations as a more effective way to protect soundscapes than placing new restrictions on OHVs and street-legal ATVs. The commenter stated that the rule will be ineffective in protecting soundscapes because conventional motor vehicles can produce noise levels equal to or exceeding the levels produced by the other OHVs and street-legal ATVs.

NPS Response: Soundscapes are a resource the NPS manages, with a goal of preserving, to the greatest extent possible, natural soundscapes within System units. NPS Management Policies 2006, Section 4.9. The NPS has committed to restoring the natural soundscape condition wherever

possible when soundscapes have been degraded by unnatural sounds (noise) and will protect natural soundscapes from unacceptable impacts. While true that Executive Order 11644 does not specifically identify “soundscape” as a resource, it does require Federal agencies to consider harassment of wildlife, disruption of wildlife habitat, conflicts with other recreational users, and the compatibility of those uses. Further, it requires agencies to determine that designated locations for ORV use will not adversely affect their natural, aesthetic, or scenic values. The NPS considers soundscapes as a natural value of the recreation area. Therefore, the NPS considers noise as part of that analysis. Reducing the maximum 96 decibel of sound limit in the existing regulations would functionally preclude the use of many OHVs and street-legal ATVs in the recreation area. It also would be too broad of a prescription because in some locations noise output up to that level may be appropriate. As explained in the FEIS, OHVs and street legal ATVs generally have greater noise impacts than conventional motor vehicles.

7. Comment: Several commenters stated that NPS regulations for managing motor vehicle use in the recreation area should avoid conflict with State of Utah and county laws and policies. One commenter cited conflict with the San Juan County Travel Plan which recognizes Johns Canyon Road, Muley Point Road, and Dry Mesa Road as open to all classes of vehicles. Several commenters cited conflict with State of Utah motor vehicle law which allows off-highway vehicles on public highways designated as open by the controlling Federal, State, county, or municipal agency. State of Utah Code 41–22–10.1.

NPS Response: The NPS recognizes the value of consistent management among Federal and State jurisdictions. NPS regulations adopt non-conflicting State law for traffic and the use of motor vehicles in all National Park System units, including the recreation area. See 36 CFR 4.2(a). In some situations, however, it may be necessary for NPS regulations to conflict with State and local laws or policies in order to comply with Federal law and policy. As the controlling agency for the management of lands within the recreation area, the NPS has a legal responsibility to manage the recreation area in accordance with the enabling act, which requires the NPS to administer, protect, and develop the recreation area in accordance with the NPS Organic Act for the conservation and management of natural resources. The NPS believes that

the restrictions in this rule on the use of OHVs and street-legal ATVs on certain unpaved roads within the recreation area are appropriate. This is further explained in the Revised ROD. The NPS made substantial effort to ensure that the changes in this rule are minor alternations to the existing regulations that implement the preferred alternative in the FEIS.

8. Comment: One commenter stated that prohibiting OHVs and street-legal ATVs on Johns Canyon Road limits the ability of the State of Utah Trust Lands Administration to derive the full economic benefit of State trust lands from recreational and other revenue generating activities.

NPS Response: The NPS recognizes the importance of allowing the residents of the State of Utah to derive economic benefit from State trust lands and does not believe that this rule will eliminate the economic value of State trust lands accessible by Johns Canyon Road. This road will continue to be open to conventional motor vehicles as a means of accessing adjacent trust lands. The NPS is willing to discuss access to and activities on State trust lands to the extent a written authorization from the NPS, or cooperation between the NPS and the Trust Lands Administration, is necessary or appropriate.

9. Comment: One commenter suggested that the NPS change quiet hours in the Lone Rock Beach Play Area to 30 minutes before sunset and after sunrise to further enhance the enjoyment of watching those events.

NPS Response: The decision to set quiet hours to sunrise and sunset generally lengthens quiet hours compared to the existing regulations, which will allow for more tranquil experiences during those events. It further will allow quiet hours to shift with the seasons without the need for administrative actions. Adding 30-minute buffers on either side of sunset and sunrise will complicate the public’s understanding of when quiet hours begin and end and may increase the potential for misunderstanding and visitor conflict.

10. Comment: Several commenters objected to the NPS closing shoreline access areas when lake elevations drop. One commenter argued that this would unfairly limit access to Lake Powell when other visitor activities on the water, such as boating and operating generators to power houseboats, have greater impacts to the natural environment than ORV use. Other commenters stated that certain shoreline access areas, such as Farley Canyon, Blue Notch Canyon, Red Canyon, and White Canyon should remain open

because they provide wild camping experiences that are not available at more accessible shoreline access areas. Another commenter specifically asked the NPS to keep Blue Notch Canyon open at any lake elevation because it is the only northern vehicle-access point for small boat launching and shore camping.

NPS Response: The NPS established the boundaries of shoreline access areas utilizing topographical and bathymetric data to identify confining barriers for motorized vehicle traffic. The NPS designed shoreline access to accommodate access at higher lake levels, accounting for only small fluctuations in surface elevations. When lake levels recede to certain elevations, alternative travel corridors can become exposed, allowing motorized vehicle users to leave designated areas and potentially cause resource impacts. Persistent drought over the last two-and-a-half decades, however, has resulted in a steady decline of the level of the lake, which has receded well below the original boundaries of many of the shoreline access areas at the water’s edge. In some situations, the water level has migrated miles away from the defined use areas. Some shoreline access areas, therefore, have been temporarily closed to discourage creation of networks of unauthorized secondary routes as users chase receding water levels. These closures protect vegetation and wildlife that are recolonizing exposed areas, protect cultural resources (e.g., archeological sites) that may be exposed by receding water levels, protect natural and cultural resources in adjacent areas that have become accessible, and promote visitor safety by keeping visitors away from locations that have not been determined safe for ORV use. Should lake levels rebound, the shoreline access areas subject to temporary closures in this rule would reopen. Stanton Creek remains open and provides the opportunity for wild camping experiences.

11. Comment: One commenter suggested that the NPS limit the number of ORVs allowed in shoreline access areas to prevent accelerated erosion, which could lead to runoff and increased water pollution, significantly affecting the habitats and wildlife in the recreation area. Several commenters expressed concern that OHV users may disregard the rules and urged the NPS to regularly monitor wildlife and habitat quality in areas affected by this rule to evaluate its effectiveness.

NPS Response: This rule does not limit the number of ORVs that can enter shoreline access areas, which was not

contemplated by any of the alternatives evaluated in the FEIS. The NPS monitors the degradation of resources, including soil erosion, wildlife, and wildlife habitat, in shoreline access areas and other locations within the recreation area. If the NPS observes substantial negative impacts to the resources at any shoreline access area, it may take mitigation measures that could include a temporary closure of the affected area for recovery and rehabilitation.

12. Comment: One commenter stated that the NPS should reopen the Crosby Canyon shoreline access area because the closure is preventing the use of roads below the high-water line.

NPS Response: When the Crosby Canyon shoreline access area is open, limited driving beyond direct travel from Crosby Canyon Road is allowed to access the adjacent shoreline when water is present there. Any other “roads” or routes within the shoreline access area are unauthorized and user-created. This shoreline access area is currently closed due to low water levels for the reasons explained above.

13. Comment: One commenter stated that temporarily closing shoreline access areas results in congestion and overcrowding in the areas that remain open, exacerbating impacts to the environment in those areas. Keeping shoreline access areas open would disperse use across multiple managed access points and discourage users from creating non-designated routes to access the shoreline.

NPS Response: The NPS has not observed high levels of congestion in the shoreline access areas that remain open. Temporary closures of shoreline access areas when lake elevations drop are necessary to protect resources and visitors for the reasons explained above.

14. Comment: One commenter stated that limiting ORV use to direct travel from a road to the shoreline and back significantly limits the utility and value of shoreline access because they will no longer provide meaningful and practical access to the water’s edge. Instead, and to meet public demand, this commenter recommended the designation of routes that lead to the shoreline.

NPS Response: The purpose of shoreline access areas is to provide motorized vehicle access to the edges of Lake Powell; they are not intended to provide general overland driving opportunities that are available elsewhere, such as the Lone Rock Beach Play Area. Dramatically fluctuating water levels at Lake Powell can significantly alter the area of beach exposed as dry lakebed. This is especially true in locations with a

relatively flat shoreline where the water’s edge can rise and recede great distances over the course of a normal water year. Because of these fluctuations, and the visual impacts associated with signage and barriers on open, exposed landscapes, designating travel routes within a shoreline access area is challenging and often impracticable. NPS will continue placing signage and other interpretive tools at shoreline access areas where appropriate.

15. Comment: Several commenters stated that OHVs and street-legal ATVs are purpose-built and optimized for travel on rugged backcountry roads (including the Flint Trail and Poison Spring Loop) and for that reason are safer than conventional motor vehicles on those roads. Another commenter stated that OHVs and street-legal ATVs are designed for backcountry conditions and are more capable of navigating steep and uneven terrain than conventional high-clearance vehicles. These commenters stated that prohibiting their use on unpaved roads may increase the likelihood of accidents and stranding.

NPS Response: Conventional motor vehicles can be sufficiently capable of travel on unpaved roads within the recreation area, especially when they are properly equipped and operated. There is insufficient data available to conclude that conventional motor vehicles are less safe than OHVs and street-legal ATVs at low speeds. The off-road capabilities of OHVs and street-legal ATVs create the opportunity to take them off-road for driving directly over undisturbed natural terrain, creating the potential for significant impacts to natural resources in those locations.

16. Comment: One commenter argued that prohibiting OHVs and street-legal ATVs on certain roads, such as the Cove Canyon Spur Road near Hite, Ticaboo Mesa Road, and the 8-mile segment of the Poison Spring Loop, will sever connectivity between NPS-managed lands and adjacent lands administered by the Bureau of Land Management (BLM). In particular, this commenter stated that closure of the Cove Canyon Spur Road will make BLM-managed lands within the Henry Mountain Travel Management Area inaccessible to OHVs and street-legal ATVs. This commenter argued that these closures undermine BLM travel planning and restrict lawful access to adjacent BLM-managed areas, imposing burdens on land use outside of NPS jurisdiction. Several commenters asked the NPS to explain whether it has coordinated with BLM about road closures that will impact BLM lands.

NPS Response: This rule only applies to NPS-administered lands. The rule will restrict the categories of vehicles that may travel on some unpaved roads within the recreation area that connect to adjacent BLM lands. This could affect how certain visitors travel between the recreation area and those adjacent lands, but will not interfere with any administrative action taken by BLM on lands administered by that agency. The NPS regularly coordinates with BLM on respective travel management plans (most recently in September 2024) and attempts to stay aligned when possible, recognizing that different laws and policies guide visitor use management for each agency. Cove Canyon Spur Road connects with a county-maintained road on BLM lands that is open to conventional motor vehicles, OHVs, and street-legal ATVs. This road is less than one mile in length and does not connect with any other roads outside of the recreation area. Visitors will still be able to use OHVs and street-legal ATVs on this road segment provided they are hauled there on Cove Canyon Spur Road using conventional motor vehicles. Notwithstanding any effect this rule may have on motorized use of that road, the NPS believes that the restrictions in this rule on Cove Canyon Spur Road are necessary under the distinct legal and policy framework governing NPS management of the recreation area. Ticaboo Mesa Road does not connect with an open route on BLM lands. Travelers can access the BLM portions of the Poison Spring Loop using OHVs and street-legal ATVs without having to travel through the recreation area.

17. Comment: Commenters raised concerns that the rule creates an environmental justice issue by restricting access to public lands for economically disadvantaged visitors who depend on OHVs and street-legal ATVs.

NPS Response: As discussed in the FEIS, the NPS does not believe that this rule disproportionately affects economically disadvantaged individuals or communities. Over 250 miles of road in the recreation areas will continue to be open to OHVs and street-legal ATVs.

18. Comment: Several commenters noted that ORV routes are the only way for individuals with limited mobility to access certain areas. They expressed concern that prohibiting OHVs and street-legal ATVs on certain roads would restrict access for people with disabilities and limit their recreational opportunities.

NPS Response: The NPS strives to create opportunities for recreation and access to National Park System units for

all types of visitors, including those with limited mobility and disabilities. Conventional motor vehicles will continue to be allowed on all paved and unpaved roads within the recreation area. This will allow persons with limited mobility and disabilities to use motor vehicles to access and enjoy the recreation area. Consistent with the Rehabilitation Act of 1973 and other applicable laws, NPS makes all practicable efforts to make NPS facilities and programs accessible and usable by all people, including those with disabilities. NPS addressed these concerns in the FEIS, see p. A-19.

19. Comment: Many commenters expressed concern that this rule will eliminate opportunities for access and recreation throughout the recreation area. One commenter stated that certain unpaved roads themselves hold historical and cultural significance tracing back to paths used by early settlers and indigenous communities and that closing these roads would diminish public access to lands that communities have relied upon for generations, permanently disconnecting them from these important cultural landscapes. Another commenter asserted that prohibiting OHVs and street-legal ATVs on certain unpaved roads, such as Johns Canyon, Muley Point, and Dry Mesa, will reduce opportunities for recreation and access to some of the most scenic areas of San Juan County.

NPS Response: This rule will not close any unpaved roads within the recreation area to motor vehicle traffic. Conventional motor vehicles will continue to be allowed on all paved and unpaved roads within the recreation area, providing a viable means of recreation and motorized access to points of interest, scenic landscapes, dispersed camping, remote areas, and areas of historic and cultural significance. The use of OHVs and street-legal ATVs will continue to be allowed on the vast majority of unpaved roads within the recreation area. The roads that will be closed to these vehicle categories account for 25 of 295 miles (or approximately eight percent) of all the unpaved roads open to motor vehicle use in the recreation area. Substantial opportunities for motorized recreation will remain available to those and other user groups. Motorized recreation and access (particularly to the shoreline of the lake) were recognized by Congress when it established the recreation area. This rule preserves motorized use in the recreation area in balance with limited measures that protect resources and other visitor experiences. In general, conditions on

Johns Canyon Road, Muley Point Road, and Dry Mesa Road do not require the use of an OHV or street-legal ATV in order to access scenic areas that they access and traverse. These roads normally accommodate a variety of conventional motor vehicle types which will continue to provide recreational and scenic opportunities within San Juan County. As discussed in the FEIS, other roads with strong cultural and historical significance, such as Hole in the Rock Road, will remain open to conventional vehicles, OHVs, and street-legal ATVs in order to accommodate access to these popular driving destinations for local residents and tourists.

20. Comment: Several commenters stated that prohibiting OHVs and street-legal ATVs on the 8-mile segment of the Poison Spring Loop creates an unreasonable barrier in the middle of a critical road. Several commenters expressed concern that closing the 8-mile segment of the Poison Spring Loop will create a dangerous situation for anyone using an OHV or street-legal ATV to complete an overland trip from the northern Poison Spring Loop down to Hite. These commenters stated that the only alternative route is to travel for 40 miles on a State highway (Utah State Route 95) from Hanksville to Hite that is very dangerous for slower vehicles.

NPS Response: Before 2021, the 8-mile segment of the Poison Spring Loop in the recreation area had never been open to OHV and street-legal ATV use. This segment is not a historic or customary travel corridor or traffic route for these categories of vehicles and will remain open for travel by conventional motor vehicles. The NPS acknowledges that several commenters perceive travel on Utah State Route 95 as more dangerous using OHVs or street-legal ATVs compared to conventional motor vehicles. Rules about the types of vehicles that are allowed on that highway are established by the State of Utah. This rule will result in the same trip planning options that existed before 2021 and does not force anyone to use OHVs or street-legal ATVs on the highway if they feel that it would be unsafe.

21. Comment: Several commenters stated that restricting OHV and street-legal ATV use will reduce tourism opportunities for motorized recreation and hurt the local economies of nearby communities, including Hanksville, Tropic, Blanding, Escalante, Torrey, and Boulder. One commenter highlighted the rapid growth of the OHV market in Utah and urged the NPS to keep roads open to support this industry. This commenter stated that

Hite is an ideal basecamp for commercial OHV and street-legal ATV tours, and that the NPS may have difficulty attracting concessioners if revenue opportunities are restricted.

NPS Response: The NPS values its relationship with nearby communities and appreciates the importance of tourism for local economies. There are currently two businesses that have a commercial use authorization (CUA) to provide guided tours using OHVs and street-legal ATVs in the recreation area. These businesses are not authorized to operate in the Orange Cliffs Special Management Unit and do not currently offer tours on the unpaved roads that will be affected by this rule. No other businesses offer commercial visitor services that will be affected by this rule. As stated above, use of OHVs and street-legal ATVs will continue to be allowed on the vast majority (92%) of unpaved roads currently open to motor vehicle use within the recreation area. There will continue to be ample opportunities for motorized recreation within the recreation area using various categories of vehicles. There will continue to be opportunities for small businesses to apply for CUAs to provide commercial visitor services, including guided ORV tours, within the recreation area where appropriate and in accordance with applicable law and policy.

22. Comment: Commenters voiced concerns about compliance with ORV regulations and proposed several methods for the NPS to improve it. Recommended methods included (1) developing an in-person and online public education program to explain the environmental rationale for the new rules and state which shoreline access areas are open or closed to motorized use; (2) improving signage that details allowed activities on ORV routes, areas, and roads; (3) guidance on what is allowed in both open and closed shoreline access areas; and (4) utilizing multilingual information on signs, websites, and social media to communicate closures and regulatory requirements.

NPS Response: The NPS currently engages in a variety of methods to communicate ORV information to the public. The recreation area website hosts information on closures and features a short video to educate ORV users on the rules and responsibilities for all vehicle operators. The NPS has developed geo-enabled electronic files that visitors can view on the website or offline in third party apps for use in the field on mobile devices. Implementation of the FEIS includes posting signs that designate routes and aid users in

recognition of authorized vehicle types for each ORV-use location. The NPS publicizes closures and openings of roads, routes, and shoreline access areas through press releases, notifications to partners, and website and social media updates.

Compliance With Other Laws, Executive Orders, and Department Policy

Use of Off-Road Vehicles on the Public Lands (Executive Orders 11644 and 11989)

Executive Order 11644, as amended by Executive Order 11989, was adopted to address impacts on public lands from ORV use. The Executive Order applies to ORV use on Federal public lands that is not authorized under a valid lease, permit, contract, or license. Section 3(a)(4) of Executive Order 11644 provides that ORV “[a]reas and trails shall be located in areas of the National Park System, Natural Areas, or National Wildlife Refuges and Game Ranges only if the respective agency head determines that off-road vehicle use in such locations will not adversely affect their natural, aesthetic, or scenic values.” Since the E.O. clearly was not intended to prohibit all ORV use everywhere in these units, the term “adversely affect” does not have the same meaning as the somewhat similar terms “adverse impact” and “adverse effect” used in the National Environmental Policy Act of 1969 (NEPA). In analyses under NEPA, a procedural statute that provides for the study of environmental impacts, the term “adverse effect” includes minor or negligible effects.

Section 3(a)(4) of the Executive Order, by contrast, concerns substantive management decisions and must be read in the context of the authorities applicable to such decisions. Glen Canyon National Recreation Area is an area of the National Park System. Therefore, NPS interprets the Executive Order term “adversely affect” consistent with its NPS Management Policies 2006. Those policies require that the NPS only allow “appropriate use” of parks and avoid “unacceptable impacts.”

This rule is consistent with the requirements of Executive Order 11644 in the context of these authorities and policies. Supporting analysis for this determination can be found in the FEIS and Revised ROD, which includes a revised non-impairment determination and a site-specific evaluation of motor vehicle use on off-road routes and areas in the recreation area using the minimization criteria in section 3(a) of E.O. 11644.

Section 8(a) of the Executive Order requires agency heads to monitor the effects of ORV use on lands under their jurisdictions. On the basis of information gathered, agency heads may from time to time amend or rescind designations of areas or other actions as necessary to further the policy of the Executive Order. The preferred alternative in the FEIS that was selected in the related 2017 Record of Decision includes monitoring and resource protection procedures and periodic review to provide for the ongoing evaluation of impacts of motor vehicle use on protected resources. This ongoing adaptive management and monitoring protocol will continue under this final rule. The superintendent retains authority to take appropriate action as needed to protect the resources of the recreation area.

Regulatory Planning and Review (Executive Orders 12866 and 13563 and 14094)

Executive Order 12866, as amended by Executive Order 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that the final rule is not significant.

Executive Order 14094 amends Executive Order 12866 and reaffirms the principles of Executive Order 12866 and Executive Order 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and be consistent with Executive Order 12866, Executive Order 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law.

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

developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (RFA)

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). No small entities will be directly regulated by the rule, which only modifies regulations affecting visitor use of ORVs in certain areas of the park. The roads that will be closed to OHV and street-legal ATV use only account for 25 of 295 miles (or approximately eight percent) of GMP roads open to motor vehicle use in the recreation area. Currently, there are no authorized guiding companies that use OHVs and street-legal ATVs on the roads that will be closed to those vehicles.

Congressional Review Act

This rulemaking is not a major rule under 5 U.S.C. 804(2). This rulemaking:

(a) Does not have an annual effect on the economy of \$100 million or more.

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

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rulemaking does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rulemaking does not have a significant or unique effect on State, local or Tribal governments or the private sector. It addresses public use of national park lands and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rulemaking does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rulemaking does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rulemaking only affects use of federally administered lands and

waters. It has no direct effects on other areas. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rulemaking complies with the requirements of Executive Order 12988. This rulemaking:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the criteria in Executive Order 13175 and under the Department's consultation policy and have determined that Tribal consultation on the rule is not required because the rule will have no substantial direct effect on federally recognized Indian Tribes. In support of the Department of Interior and NPS commitment for government-to-government consultation with the 19 Native American Tribes and bands associated with the recreation area, and as a reflection of the shared boundary of the recreation area and the Navajo Nation, the NPS has engaged in a continuing process of consultation with these Tribes and bands. This consultation has taken the form of bimonthly newsletters, in-person meetings with chapter houses, informal email updates, and formal update letters.

Paperwork Reduction Act (PRA)

This rule contains no new information requirements that will affect the currently approved information collection. (NPS Special

Park Use Permits NPS Form 10–933—OMB Control Number 1024–0026). By using NPS Form 10–933 this action will cause a net increase of 3,000 respondents and 750 burden hours. In accordance with 5 CFR 1320.10, the agency may continue to conduct or sponsor this collection of information while the submission is pending at OMB. Based on the anticipated net increase, we expect that the overall respondent burden for this collection will be 83,542 responses totaling 23,640 annual burden hours. The NPS did not receive any public comments related to this information collection during the 60-day public comment period.

Title of Collection: Special Park Use Applications, portions of 36 CFR 1–7, 13, 20, and 34.

OMB Control Number: 1024–0026.

Form Number: NPS Forms 10–930, 10–930c, 10–930s, 10–930q, 10–931, 10–932, 10–933, 10–934.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals/households (licensed anglers drawn from three representative U.S. States).

Total Estimated Number of Annual Responses: 83,542.

Total Estimated Number of Annual Responses: 83,542.

Estimated Completion Time per Response: Varies from 15 minutes to 30 minutes (depending on the activity).

Total Estimated Number of Annual Burden Hours: 23,640.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: \$6,265,650 for application fees.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act of 1969 (NEPA)

This rule constitutes a major Federal action significantly affecting the quality of the human environment. We have prepared the FEIS and Revised ROD in

compliance with NEPA. These documents are available online at <https://parkplanning.nps.gov/glca> by clicking any of the links entitled “Off-road Vehicle Management Plan/Environmental Impact Statement” and then the link entitled “Document List.”

Effects on the Energy Supply (Executive Order 13211)

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

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service amends 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

- 1. The authority citation for part 7 continues to read as follows:

Authority: 54 U.S.C. 100101, 100751, 320102; Sec. 7.96 also issued under D.C. Code 10–137 and D.C. Code 50–2201.07.

- 2. Amend § 7.70 by:
 - a. Removing and reserving paragraph (f)(2)(i);
 - b. In paragraph (f)(3)(ii), removing the last sentence;
 - c. In table 1 to paragraph (f)(3)(ii):
 - i. Adding, at the top of the table, entries for “Bullfrog North” and “Bullfrog South”;
 - ii. Revising the entry for “Lone Rock Beach Play Area”; and
 - iii. Removing the entry for “Bullfrog North and South”;
 - d. Adding paragraphs (f)(3)(iii) and (iv);
 - e. Revising table 2 to paragraph (f)(4)(i); and
 - f. Revising paragraphs (f)(4)(ii) and (f)(6)(ii).

The revisions and additions read as follows:

*	*	*	*	*
(f)	*	*	*	
(3)	*	*	*	
(ii)	*	*	*	

TABLE 1 TO PARAGRAPH (f)(3)(ii)

Designated area or route for off-road motor vehicle use	Approximate size	Management prescriptions
Bullfrog North	860 acres	• Street-legal ATVs allowed with ORV permit from March 2–October 31. • Conventional motor vehicles allowed with ORV permit year-round. • 15 mph speed limit (unless otherwise posted). • Quiet hours between 10 p.m. and 6 a.m. or as designated by superintendent. • Vehicle-free zone as posted.
Bullfrog South	1,410 acres	• Street-legal ATVs allowed with ORV permit from March 2–October 31.

TABLE 1 TO PARAGRAPH (f)(3)(ii)—Continued

Designated area or route for off-road motor vehicle use	Approximate size	Management prescriptions
		• Conventional motor vehicles allowed with ORV permit year-round. • 15 mph speed limit (unless otherwise posted). • Quiet hours between 10 p.m. and 6 a.m. or as designated by superintendent. • Vehicle-free zone as posted.
* * *		
Lone Rock Beach Play Area	180 acres	• Conventional motor vehicles, street-legal ATVs, and OHVs allowed with ORV permit. • OHVs required to display a red or orange safety flag at least six by 12 inches in size that is located at least eight feet off the ground, or at least 18 inches above the top of the protective headgear of a motorcycle or dirt bike operator. • Quiet hours between sunset and sunrise or as lengthened by the superintendent.
* * *		

(iii) Certain areas designated in table 1 to paragraph (f)(3)(ii) will close and open to off-road motor vehicle use pursuant to the provisions in this paragraph (f)(3)(iii).

(A) The superintendent will identify lake elevation levels for each of the following areas designated in table 1 to paragraph (f)(3)(ii): Lone Rock Beach, Blue Notch, Bullfrog North, Bullfrog South, Crosby Canyon, Dirty Devil, Farley Canyon, Hite Boat Ramp, Red Canyon, Stanton Creek, and White Canyon.

(B) The superintendent will use hydrologic data from the United States Geological Survey and the Bureau of Reclamation to identify the lake elevation levels, which would be subject to change based upon public health and safety, natural and cultural resource protection, and other management activities and objectives. The superintendent will notify the public of the lake elevation levels by publishing them on the website of the recreation

area and in the superintendent's compendium (or written compilation) of discretionary actions referred to in 36 CFR 1.7(b).

(C) If the lake elevation drops below the identified level for a designated area and remains below the identified level for seven consecutive days, the superintendent will close the designated area to off-road motor vehicle use. If the lake elevation increases above the identified level for a designated area and remains above the identified level for seven consecutive days, the superintendent will open the designated area to off-road motor vehicle use. The superintendent will notify the public that a designated area has been closed or opened to off-road motor vehicle use within 14 days after the expiration of the seven-day waiting period, by publishing a notice of the management action on the website of the recreation area and in the superintendent's compendium.

(D) The National Park Service will install signs at each designated area notifying the public that it is opened or closed to off-road motor vehicle use. When a designated area is closed because lake elevations have dropped, the superintendent will consider additional steps to prevent off-road motor vehicle use in the area, such as the installation of gates. Motor vehicle use on a GMP road may continue within a closed designated area at the discretion of the superintendent, and subject to the rules for operating a motor vehicle on such roads in this paragraph (f).

(iv) Off-road motor vehicle use in any of the areas designated in table 1 to paragraph (f)(3)(ii), except for Lone Rock Beach, Lone Rock Beach Play Area and Ferry Swale, must be for the purpose of traveling from a GMP road to the shoreline, and back.

- (4) * * *
- (i) * * *

TABLE 2 TO PARAGRAPH (f)(4)(i)

Type of motor vehicle	Allowed on paved GMP roads	Allowed on unpaved GMP roads outside the Orange Cliffs Special Management Unit	Allowed on unpaved GMP roads within the Orange Cliffs Special Management Unit
Conventional motor vehicle	Yes	Yes	Yes.
Street-legal ATV	Yes (except for the Lees Ferry Developed Area).	Yes (except for the GMP roads identified in paragraph (f)(4)(ii)).	No.
OHV	No	Yes (except for the GMP roads identified in paragraph (f)(4)(ii)).	No.

(ii) Street-legal ATVs and OHVs are not allowed on the following unpaved GMP roads identified in the Recreation & Resource Utilization Zone, as defined in the 1979 General Management Plan for the recreation area:

(A) Unnamed road near Dry Mesa/ Sheep's Canyon near Hite, sometimes referred to as Dry Mesa Road (approximately 4.31 miles).

(B) Road #2/95 Spur near Hite, also known as Dirty Devil Spur (approximately 1.14 miles).

(C) Cove Canyon Spur Road near Hite (approximately 0.65 miles).

(D) Flint Trail Spur Road near Hite, also known as Waterhole Flat Spur #1 Road and Dark Canyon Overlook Road (approximately 0.72 miles).

(E) Ticaboo Mesa Road near Bullfrog (approximately 1.45 miles).

(F) Muley Point Road (approximately 1.26 miles).

(G) Johns Canyon Road near Muley Point (approximately 7.49 miles).

- * * * * *
- (6) * * *

(ii) The superintendent will provide public notice of all such actions through one or more of the methods listed in § 1.7 of this chapter, and through

publication on the recreation area website.

* * * * *

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2025–00509 Filed 1–10–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 406, 407, 410, 411, 416, 419, 435, 440, 457, 482, and 485

[CMS–1809–F2]

RIN 0938–AV35

Medicare and Medicaid Programs: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems; Quality Reporting Programs, Including the Hospital Inpatient Quality Reporting Program; Health and Safety Standards for Obstetrical Services in Hospitals and Critical Access Hospitals; Prior Authorization; Requests for Information; Medicaid and CHIP Continuous Eligibility; Medicaid Clinic Services Four Walls Exceptions; Individuals Currently or Formerly in Custody of Penal Authorities; Revision to Medicare Special Enrollment Period for Formerly Incarcerated Individuals; and All-Inclusive Rate Add-On Payment for High-Cost Drugs Provided by Indian Health Service and Tribal Facilities; Correcting Amendment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule with comment period; correcting amendment.

SUMMARY: This document corrects technical and typographical errors in the final rule with comment period that appeared in the November 27, 2024 *Federal Register* titled “Medicare and Medicaid Programs: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems; Quality Reporting Programs, including the Hospital Inpatient Quality Reporting Program; Health and Safety Standards for Obstetrical Services in Hospitals and Critical Access Hospitals; Prior Authorization; Requests for Information; Medicaid and CHIP Continuous Eligibility; Medicaid Clinic Services Four Walls Exceptions; Individuals Currently or Formerly in Custody of Penal Authorities; Revision to Medicare

Special Enrollment Period for Formerly Incarcerated Individuals; and All-Inclusive Rate Add-On Payment for High-Cost Drugs Provided by Indian Health Service and Tribal Facilities”.

DATES: This correcting amendment is effective January 8, 2025, and is applicable beginning January 1, 2025.

FOR FURTHER INFORMATION CONTACT:

For OPPS/ASC related questions, contact Elise Barringer via email at *Elise.Barringer@cms.hhs.gov* or at (410) 786–9222.

For OPPS Addenda questions, contact Marina Kushnirova via email at *Marina.Kushnirova@cms.hhs.gov*.

For ASC Addenda questions, contact Scott Talaga via email at *Scott.Talaga@cms.hhs.gov*.

For Health and Safety Standards for Obstetrical Services in Hospitals and Critical Access Hospitals questions, contact the Clinical Standards Group via email at *HealthandSafetyInquiries@cms.hhs.gov*.

For Hospital Outpatient Quality Reporting Program policies, contact Kimberly Go via email at *Kimberly.Go@cms.hhs.gov* or Janis Grady via email at *Janis.Grady@cms.hhs.gov*.

For Medicaid Clinic Services Four Walls Exceptions related questions, contact Sheri Gaskins via email at *Sheri.Gaskins@cms.hhs.gov* or Ryan Tisdale via email at *Ryan.Tisdale@cms.hhs.gov*.

For Medicaid and CHIP Continuous Eligibility questions, contact Cassie Lagorio via email at *Cassandra.Lagorio@cms.hhs.gov*.

For New Technology APC questions, contact Nicole Marcos via email at *Nicole.Marcos@cms.hhs.gov*.

For Outpatient Department Prior Authorization Process, contact Kelly Wojciechowski via email at *Kelly.Wojciechowski@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the FR Doc. 2024–25521 of November 27, 2024 (89 FR 93912), there were a number of technical and typographical errors that are identified and corrected in this correcting document. The corrections in this correcting document are effective as if they had been included in the document that appeared in the November 27, 2024 *Federal Register*. Accordingly, the corrections are effective January 1, 2025.

II. Summary of Errors

A. Summary of Errors in For Further Information Contact

In the **FOR FURTHER INFORMATION CONTACT** section, the email address for Kelly Wojciechowski is incorrect.

B. Summary of Errors in the Preamble

1. Hospital Outpatient Prospective Payment System (OPPS) Corrections

On pages 94054 and 94055, we are correcting typographical errors. Specifically, we are correcting CPT code “0899T” to “0889T”.

On pages 94111 and 94114, we referred to an incorrect APC assignment for CPT code 15013. We inadvertently failed to account for the impact on the amount of payment for the skin cell suspension autograft procedure described by CPT code 15013 (*Preparation of skin cell suspension autograft, requiring enzymatic processing, manual mechanical disaggregation of skin cells, and filtration; first 25 sq cm or less of harvested skin*) of the assignment of this code to status indicator “T” (Procedure or Service, Multiple Procedure Reduction Applies; Paid under OPPS, separate APC payment) when we assigned CPT code 15013 to APC 1567 New Technology—Level 30 (\$6,001–\$6,500), which has a payment rate of \$6,250.50 and status indicator “T”.

In the final rule with comment period, we stated that when the full service (skin cell suspension autograft described by CPT codes 15011 through 15018) is performed, meaning that the harvesting (described by CPT code 15011), preparation (described by CPT code 15013), and application (described by CPT codes 15015 or 15017) steps are performed, the total cost for the service for CY 2025 would be approximately \$10,000. However, because of the effect of the multiple procedure reduction, the total payment for the skin cell suspension autograft furnished using the RECELL System would have been approximately \$8,000, contrary to the intended target of \$10,000 as stated in the CY 2025 OPPS/ASC final rule with comment period. To correct this error, we are assigning CPT code 15013 to APC 1532 New Technology—Level 32 (\$7,001–\$7,500), which has a payment rate of \$7,250.50 and status indicator “S” (Procedure or Service, Not Discounted When Multiple, Paid under OPPS; separate APC payment.).

On page 94120, we stated “We note that we will replace HCPCS code C9734 with CPT code 5X008 (55882) effective January 1, 2025, as well as assign the underlying claims associated with HCPCS code C9734 to CPT code 5X008 (55882).” While we intended to crosswalk the claims data for HCPCS code C9734 to CPT code 5X008 (55882) to determine the APC assignment for CPT code 5X008 (55882) for CY 2025, we did not intend to retire HCPCS code C9734 because, based on its descriptor,

C9734 can be used for services other than those described by CPT code 5X008 (55882). We are correcting this reference to indicate that we are using C9734 claims data to set the payment rate for CPT code 5X008 (55882) and removing the reference to replacing HCPCS code C9734. HCPCS code C9734 will remain assigned to APC 5115 (Level 5 Musculoskeletal Procedures).”

2. The Hospital Outpatient Quality Reporting (OQR), Rural Emergency Hospital Quality Reporting (REHQR), and Ambulatory Surgical Center Quality Reporting (ASCQR) Programs Corrections

On pages 94368 and 94380, we are correcting URL links in footnotes 270 and 316 (respectively) for accuracy.

On page 94407, we are making a technical edit and removing language for accuracy.

On pages 94411 and 94412, we are correcting URL links in footnotes 446 and 461 (respectively) for accuracy.

On pages 94416 and 94417, we are correcting section references for accuracy.

On page 94417, we are correcting final rule references for accuracy.

On page 94522, we are correcting the number of web-based measures that are being finalized in the rule for the Hospital OQR program.

On pages 94561 through 94563, we are correcting section references for accuracy.

3. Medicaid Clinic Services Four Walls Exceptions Corrections

On pages 94442, 94446, 94448, 94452, and 94561, we made typographical errors. Specifically, on page 94442 we inadvertently included a dollar symbol (\$), on page 94446 we inadvertently repeated the word “that,” on page 94448 we inadvertently repeated the phrase “rely upon,” on page 94452 we inadvertently omitted the word “system” from the phrase “mistrusted the health care system at higher rates,” and on page 94561 we inadvertently included the phrase “Four Walls:” at the beginning of the title for Table 207.

On page 94455, we incorrectly stated in footnote 586 that as of November 27, 2024, the Health Resources and Services Administration (HRSA) had not finalized their proposed changes to the Federal Office of Rural Health Policy’s (FORHP) definition of rural. However, HRSA finalized changes to FORHP’s definition of rural in a final notice published in the **Federal Register** on November 21, 2024 (89 FR 92131), which post-dated CMS’s development of the final rule. We are making corrections to state that, as of the

development of the OPPS final rule, HRSA had not finalized changes to FORHP’s definition of rural.

4. Health and Safety Standards for Obstetrical Services in Hospitals and Critical Access Hospitals

On pages 94481, 94483, 94542, 94569, 94571, 94572, and 94573 we are replacing the word “biannual” and/or “biannually” with the word “biennial” and/or “biennially”, to clarify that staff training is required every other year, not twice a year.

C. Summary of Errors in the Regulations Text

On page 94586, in the regulations text for § 406.27(d)(1), we are adding in a missing word.

On page 94591, we made technical errors in the regulations text amendatory instructions for § 457.342, by excluding the numbering of paragraph (a) and the reservation of paragraph (b).

On pages 94592 and 94594 we are replacing the word “biannual” with the word “biennial”, to clarify that staff training is required every other year, not twice a year.

D. Summary of Errors and Corrections to the OPSS and ASC Addenda Posted on the CMS Website

1. OPSS Addenda Summary of Errors

To view any corrections or updates to the final CY 2025 OPSS status indicators, APC assignments, relative weights, copayment rates, device-intensive status, and short descriptors in the OPSS addenda, we refer readers to the Addenda and supporting files that are posted on the CMS website at <https://www.cms.gov/medicare/payment/prospective-payment-systems/hospital-outpatient/regulations-notice>. Select “CMS–1809–F2” from the list of regulations. All corrected Addenda for this correcting document are contained in the zipped folder titled “2025 F2 OPSS Addenda” at the bottom of the CMS web page for CMS–1809–F2.

a. Errors in Addendum B

We are making a number of updates to Addendum B (OPSS Payment by HCPCS Code for CY 2025) to correct typographical errors. We are also correcting the following technical errors:

We incorrectly deleted HCPCS code C9734 (U/s trtmt, not leiomyomata) from Addendum B by inadvertently assigning it to status indicator “D”. We are correcting this error by replacing status indicator “D” with “J1” for HCPCS code C9734 and assigning it to APC 5115 (Level 5 Musculoskeletal

Procedures) in Column E, as well as adding corresponding data to Columns F–K to reflect the updated APC 5115 assignment.

In addition, due to an inadvertent miscalculation of the payment rate for CPT code 15013 as explained in more detail in section II.B. Summary of Errors in the Preamble of this notice, we incorrectly assigned CPT code 15013 (Prepj skn cll ssp agrft 1st) status indicator “T” and are correcting it to “S”. We also incorrectly assigned CPT code 15013 to APC 1567 (New Technology—Level 30 (\$6001–\$6500)) and are correcting it to APC 1532 (New Technology—Level 32 (\$7001–\$7500)).

Due to an inadvertent miscalculation of the payment rate for HCPCS code C8002 for the same reason as the error for CPT code 15013, we incorrectly assigned HCPCS code C8002 status indicator “T” and we are correcting it to “S”. We also incorrectly assigned HCPCS code C8002 to APC 1567 (New Technology—Level 30 (\$6001–\$6500)) and are correcting it to APC 1532 (New Technology—Level 32 (\$7001–\$7500)).

b. Errors in Addendum C

In Addendum C (Final HCPCS Codes Payable Under the 2025 OPSS by APC), we are making a number of updates to correct the following technical errors:

Due to the errors described in more detail in section II.B Summary of Errors in the Preamble of this notice related to CPT code 15013 and HCPCS code C8002, we are deleting CPT code 15013 and HCPCS code C8002 from the list of HCPCS and CPT codes assigned to APC 1567 (New Technology—Level 30 (\$6001–\$6500)). We are adding CPT code 15013 and HCPCS code C8002 to the list of HCPCS and CPT codes assigned to APC 1532 (New Technology—Level 32 (\$7001–\$7500)) in Addendum C.

Due to the incorrect deletion of HCPCS code C9734 described in more detail in section II.B Summary of Errors in the Preamble of this notice, we are adding HCPCS code C9734 back to the list of HCPCS and CPT codes assigned to APC 5115 (Level 5 Musculoskeletal Procedures) in Addendum C.

c. Errors in Addendum P

In the tab titled “2025 FR Device Intensive List”, we inadvertently included two rows for each of CPT codes 0795T, 0801T, 27279, and 93656. The additional rows for each of the codes contain values that were incorrectly calculated. For CPT codes 0795T and 0801T, the additional rows included values calculated using CY 2023 data, when the codes were assigned a status indicator of “E1.”

Status indicator “E1” is assigned to items, codes, and services that are not covered by any Medicare outpatient benefit category; are statutorily excluded; or are not reasonable and necessary. Because procedures assigned status indicator “E1” are not payable under the OPPIs, claims data for codes assigned this status indicator should not be used to assign device offset percentages. Accordingly, we are deleting the additional rows that contained incorrect values for these codes. For CPT codes 27279 and 93656, the additional rows included a Device Offset Percentage and Device Offset Amount for each of the codes that was calculated using the APC Device Offset Percentage. But because CPT codes 27279 and 93656 were separately payable in CY 2023, the Device Offset Percentage and Device Offset Amount for each code should have been calculated using CY 2023 claims data. Therefore, we are deleting the additional rows for these codes as well.

In the tabs titled “FR 2025 Device Intensive List” and “2025 FR HCPCS Offsets”, we inadvertently included the incorrect APC Device Offset Percentage for procedures assigned to APC 5463—Level 3 Neurostimulator and Related Procedures. We have revised the APC Device Offset Percentage from 26.11 percent to 26.17 percent.

In the tab titled “2025 FR HCPCS Offsets”, which is described as a “list of the device offset percentages and device offset amounts for all HCPCS codes with CY 2023 claims data,” we inadvertently included device offset percentages based on claims data from procedures that were assigned status indicator “E1” for CY 2023. Because status indicator “E1” is assigned to items, codes, and services that are not covered by any Medicare outpatient benefit category; are statutorily excluded; or are not reasonable and necessary, claims data for procedures assigned this status indicator should not be used to assign device offset percentages as these procedures were not payable under the OPPIs in CY 2023 and do not have OPPIs claims data. The procedures that were assigned status indicator “E1” for CY 2023 but were included in the “2025 FR HCPCS Offsets” tab in Addendum P were CPT codes 0621T, 0737T, 0764T, 0795T, 0796T, 0801T, and 74263. We corrected the 2025 FR HCPCS Offsets file by deleting the entries for these procedures.

2. ASC Payment System Addenda Summary of Errors

To view the corrected final CY 2025 ASC payment indicators, payment weights, payment rates, multiple

procedure discounting indicators, and device offset amounts/device portions in Addendum AA, BB, and FF that resulted from these technical corrections, we refer readers to the Addenda and supporting files on the CMS website at: <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ASCPayment/ASC-Regulations-and-Notices.html>. Select “CMS-1809-F2” from the list of regulations. All corrected ASC addenda for this correcting document are contained in the zipped folder entitled “Addendum AA, BB, DD1, DD2, and EE” at the bottom of the CMS web page for CMS-1809-F2.

a. Errors in Addendum AA

We inadvertently assigned “N” (No) in column D (Subject to Multiple Procedure Discounting) to HCPCS Codes C7500 through C7565 in the list of ASC complexity adjustment codes. We are correcting this error in Addendum AA by revising the procedure discounting status from “N” (No) to “Y” (Yes) for these codes, indicating that the procedures to which these codes correspond are subject to multiple procedure discounting.

As a result of the correction to the OPPIs APC and status indicator assignment for the skin cell suspension autograft procedures described by CPT code 15013 and HCPCS code C8002 described in this correction notice, we are revising the multiple procedure discounting status in Column D for CPT code 15013 and HCPCS code C8002 from “Y” (Yes) to “N” (No) indicating that the procedure is not subject to multiple procedure discounting. We are also correcting the OPPIs APC assignment from APC 1567 to APC 1532 for CPT code 15013 and HCPCS code C8002. Therefore, in Addendum AA, as a result of the correction to the APC assignment for CPT code 15013 and HCPCS code C8002, we are correcting the Final CY 2025 Payment Weight (Column G) and Final CY 2025 Payment Rate (Column H) for CPT code 15013 and HCPCS code C8002 to reflect the correct APC assignment of APC 1532—New Technology—Level 32 (\$7001–\$7500).

We inadvertently assigned a payment rate to CPT code 53865 using APC 5374—Level 4 Urology and Related Services—rather than APC 5376—Level 6 Urology and Related Services. In Addendum AA, we are revising the Final CY 2025 Payment Weight and Final CY 2025 Payment Rate column (Column H) to reflect the corrected APC for CPT code 53865.

b. Errors in Addendum BB

We inadvertently assigned a final CY 2025 ASC payment rate to brachytherapy APCs that were not designated as Low Volume APCs that was based on the mean unit cost. This affected HCPCS codes:

- C1717 (Brachytx, non-str, hdr ir-192);
- C2616 (Brachytx, non-str, yttrium-90);
- C2634 (Brachytx, non-str, ha, i-125);
- C2638 (Brachytx, stranded, i-125);
- C2639 (Brachytx, non-stranded, i-125);
- C2640 (Brachytx, stranded, p-103);
- C2641 (Brachytx, non-stranded, p-103);
- C2643 (Brachytx, non-stranded, c-131);
- C2698 (Brachytx, stranded, nos), and;
- C2699 (Brachytx, non-stranded, nos).

We are correcting the Final CY 2025 Payment Rate column (Column H) to reflect the geometric mean unit cost for these brachytherapy APCs.

We inadvertently made an error in the Short Descriptor column (Column C) for HCPCS Code J1552 and are correcting it from “Inj, alyglo, 100 mg” to read “Inj, alyglo, 500 mg”.

We inadvertently displayed the incorrect payment rate for nine diagnostic radiopharmaceuticals in the HCPCS A9500 through A9600 range. We are correcting the Final CY 2025 Payment Rates column (Column H) for these radiopharmaceuticals.

c. Errors in Addendum FF

We inadvertently assigned CPT code 53865 to APC 5374—Level 4 Urology and Related Services—rather than APC 5376—Level 6 Urology and Related Services. We are revising the Final CY 2025 APC (Column E), Final CY 2025 APC Device Offset Percentage (Column F), Final CY 2025 OPPIs Payment Rate (Column G), and Final CY 2025 Device Offset Amount/Device Portion (Column I) to reflect the corrected APC for CPT code 53865.

We made an error in the OPPIs APC assignment for CPT code 15013 and HCPCS Code C8002 as described previously. As a result of the correction to the OPPIs assignment to APC 1532—New Technology—Level 32 (\$7001–\$7500)—for CPT code 15013 and HCPCS Code C8002, we are correcting the Final CY 2025 APC (Column E) and Final CY 2025 OPPIs Payment Rate (Column G) for these codes to reflect this APC correction.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of proposed rulemaking in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide for notice of the proposed rulemaking in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date APA requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

We believe that this correction does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements. This document corrects technical and typographical errors in the preamble, regulations text, addenda, and tables included or referenced in the CY 2025 OPPTS/ASC final rule with comment period but does not make substantive changes to the policies or payment methodologies that were adopted in the CY 2025 OPPTS/ASC final rule with comment period. As a result, this correction is intended to ensure that the information in the CY 2025 OPPTS/ASC final rule with comment period accurately reflects the policies adopted in that document.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to

incorporate the corrections in this document into the final rule with comment period or delaying the effective date would be contrary to the public interest because it is in the public's interest for providers to receive appropriate payments in as timely a manner as possible, and to ensure that the CY 2025 OPPTS/ASC final rule with comment period reflects our policies. Furthermore, such procedures would be unnecessary, as we are not altering our payment methodologies or policies, but rather, we are simply correctly implementing the policies that we previously proposed, requested comment on, and subsequently finalized. This correcting document is intended solely to ensure that the CY 2025 OPPTS/ASC final rule with comment period accurately reflects these payment methodologies and policies. For these reasons, we believe we have good cause to waive the notice and comment and delayed effective date requirements.

Moreover, even if these corrections were considered to be retroactive rulemaking, they would be authorized under section 1871(e)(1)(A)(ii) of the Act, which permits the Secretary to issue a rule for the Medicare program with retroactive effect if the failure to do so would be contrary to the public interest. As we have explained previously, we believe it would be contrary to the public interest not to implement the corrections in this final rule correction because it is in the public's interest for providers to receive appropriate payments in as timely a manner as possible, and to ensure that the CY 2025 OPPTS/ASC final rule with comment period accurately reflects our policies.

IV. Correction of Errors

In FR Doc. 2024–25521 of November 27, 2024 (89 FR 93912), we are making the following corrections:

A. Correction of Errors in For Further Contact Information

1. On page 93913, column 2, fourth paragraph, line 4, the email address for Kelly Wojciechowski is corrected to read “*Kelly.Wojciechowski@cms.hhs.gov*”.

B. Correction of Errors in the Preamble

1. On page 94054, third column, last partial paragraph, lines 3 and 4, “CPT code 0899T” is corrected to read “CPT code 0889T”.

2. On page 94055, third column, first partial paragraph, first line, “code 0899T” is corrected to read “code 0889T”.

3. On page 94111, in the heading titled “54. Skin Cell Suspension Autograft (SCSA) Procedures, CPT Codes 15011 Through 15018 (APCs 5051, 5054, and 1567)”, line 4, the figure “1567” is corrected to read “1532”.

4. On page 94114, second column, a. First partial paragraph,

(1) Lines 1 through 3, “APC 1567 (New Technology—Level 30 (\$6001–6500)) with a \$6,250.50 payment rate” is corrected to read “APC 1532 (New Technology—Level 32 (\$7001–7500)) with a \$7,250.50 payment rate”.

(2) Lines 12 through 13, “APC 1567 with a payment rate of \$6,250.50” are corrected to read “APC 1532 with a payment rate of \$7,250.50”.

b. First full paragraph, lines 12 through 13 “APC 1567 ((New Technology—Level 30 (\$6001–\$6500)))” is corrected to read “APC 1532 (New Technology—Level 32 (\$7001–7500))”.

5. On page 94120, second column, second full paragraph, lines 4 through 9 that read “We note that we will replace HCPCS code C9734 with CPT code 5X008 (55882) effective January 1, 2025, as well as assign the underlying claims associated with C9734 to CPT code 5X008 (55882)” are corrected in their entirety to read, “We note that we will crosswalk claims for HCPCS code C9734 to CPT code 5X008 (55882) to determine the APC assignment for CPT code 5X008 (55882) for CY 2025. HCPCS C9734 will continue to be assigned to APC 5115 (Level 5 Musculoskeletal Procedures) in CY 2025.”

6. On page 94368, first column, second footnoted paragraph (footnote 270), lines 4 through 6, the link “https://www.cms.gov/About-CMS/Agency-Information/OMH/OMH_Dwnld-CMSEquityPlanforMedicare_090615.pdf” is corrected to read “https://www.cms.gov/About-CMS/Agency-Information/OMH/OMH_Dwnld-CMS_EquityPlanforMedicare_090615.pdf#:~:text=The%20Centers%20for%20Medicare%20%26%20Medicaid%20Services%20%28CMS%29,evidence%20base%2C%20identifying%20opportunities%2C%20and%20gathering%20stakeholder%20input”.

7. On page 94380, first column, fourth footnoted paragraph (footnote 316), lines 3 through 5, the link “<https://www.beckersasc.com/asc-coding-billing-and-collections/hopds-vs-ascs-10-considerations-for-2024.html>” is corrected to read “<https://www.beckersasc.com/asc-coding-billing-and-collections/hopds-vs-ascs-10-considerations-for-2024.html>”.

8. On page 94407, third column, first partial paragraph,

a. Line 19, the punctuation mark “,” is replaced with “.”

b. Lines 19 through 22, the language “which is administered on the first day post-procedure and then followed up at 14 days.” is removed.

9. On page 94411, first column, second footnoted paragraph (footnote 446), lines 4 through 8, the link “https://p4qm.org/sites/default/files/2023-09/Guidebook-of-Policies-and-Procedures-for-Pre-Rulemaking-Measure-Review-%28PRMR%29-and-Measure-SetReview-%28MSR%29-Final_0.pdf” is corrected to read “https://p4qm.org/sites/default/files/2023-09/Guidebook-of-Policies-and-Procedures-for-Pre-Rulemaking-Measure-Review-%28PRMR%29-and-Measure-SetReview-%28MSR%29-Final_0.pdf”.

10. On page 94412, third column, first footnoted paragraph (footnote 461), lines 4 through 6, the link: “<https://p4qm.org/sites/default/files/2024-02/PRMR-Hospital-Recommendation-Group-MeetingSummary-Final.pdf>” is corrected to read “<https://p4qm.org/sites/default/files/2024-02/PRMR-Hospital-Recommendation-Group-MeetingSummary-Final.pdf>”.

11. On page 94416, within table note **** corresponding to Table 163 titled “NEWLY FINALIZED HOSPITAL OQR PROGRAM MEASURE SET BEGINNING WITH THE CY 2027 PAYMENT DETERMINATION”, line 3, section reference “XV.B.3.B” is corrected to read “XV.C.1.b”.

12. On page 94417,

a. Within table note *** corresponding to Table 164 titled “NEWLY FINALIZED HOSPITAL OQR PROGRAM MEASURE SET BEGINNING WITH THE CY 2031 PAYMENT DETERMINATION”, line 3, section reference “XV.B.3.B” is corrected to read section “XV.C.1.b”.

b. Third column, last full paragraph, lines 3 through 10, “(77 FR 68484; 80 FR 70521, 87 FR 72110 through 72112; 78 FR 75097 through 75100; and 88 FR 82004 through 82006, respectively) for information regarding our claims-based, web-based, eCQM, chart-abstracted, PRO-PM, and survey-based data submission and reporting requirements.” is corrected to read “(78 FR 75111 and 75112; 80 FR 70521 through 70522; 86 FR 63863 through 63866; 87 FR 72110 through 72112; 88 FR 82004 through 82009, respectively) for information regarding our claims-based, web-based, survey-based, chart-abstracted, eCQM, and PRO-PM data submission and reporting requirements.”.

13. On page 94442, first column, last paragraph, line 6, the figure “\$2.8

million” is corrected to read “2.8 million”.

14. On page 94446, third column, fourth full paragraph, line 2, “that that” is corrected to read “that”.

15. On page 94448, third column, second full paragraph, line 22, “communities that rely upon rely upon” is corrected to read “communities that rely upon”.

16. On page 94452, third column, last paragraph, line 31 “mistrusted the health care at higher” is corrected to read as “mistrusted the health care system at higher”.

17. On page 94455, second column, first fully footnoted paragraph (footnote 586), “As of November 27, 2024, HRSA has not finalized these proposed changes to FORHP’s definition of rural.” is corrected to read “As of the development of this final rule, HRSA had not finalized these proposed changes to FORHP’s definition of rural.”

18. On page 94481, third column, first partial paragraph, line 12 the word “biannual” is corrected to read “biennial”.

19. On page 94483, first column, a. Eighth bullet, line 5, the word “biannual” is corrected to read “biennial”.

b. Last bullet, line 5 the word “biannual” is corrected to read “biennial”.

20. On page 94522,

a. Second column, last partial paragraph, line 2, the figure “four” is corrected to read “three”.

b. Third column, first partial paragraph,

(1) Line 1, the word “and” is inserted before “(3)”.

(2) Line 7, the phrase “; and (4)” is corrected to read “. We are also adopting”.

21. On page 94542, third column, a. First partial paragraph, line 17, the word “biannually” is corrected to read “biennially”.

b. First full paragraph, line 13 the word “biannual” is corrected to read “biennial”.

22. On page 94561,

a. The table title, “Table 207: Four Walls: Accounting Statement: Medicaid Clinic Services Four Walls Exceptions” is corrected to read as “TABLE 207: ACCOUNTING STATEMENT: MEDICAID CLINIC SERVICES FOUR WALLS EXCEPTIONS”

b. Third column, first full paragraph, line 1, section reference “XXVI.B” is corrected to “XXVI.A”.

23. On page 94562,

a. First column,

(1) First full paragraph, line 8, section reference “XXVI.B” is corrected to “XXVI.A”.

(2) Last paragraph, line 8, section reference “XXVI.B” is corrected to “XXVI.A”.

b. Third column, first full paragraph, line 1, section reference “XXVI.C” is corrected to “XXVI.B”.

24. On page 94563,

a. First column, first full paragraph, line 8, section reference “XXVI.C” is corrected to “XXVI.B”.

b. Second column, second full paragraph, line 1, section reference “XXVI.D” is corrected to “XXVI.C”.

c. Third column, first full paragraph, line 8, section reference “XXVI.D” is corrected to “XXVI.C”.

25. On page 94569, first column, first partial paragraph, line 6 the word “biannually” is corrected to read “biennially.”

26. On page 94571, bottom of the

page, first column; first partial paragraph, line 12, the word “biannual” is corrected to read “biennial”.

27. On page 94572,

a. Second column, first partial paragraph, line 1, the word “biannual” is corrected to read “biennial”.

b. Third column, first partial paragraph, line 44, the word “biannual” is corrected to read “biennial”.

28. On page 94573, third column; first partial paragraph, line 1, the word “biannual” is corrected to read “biennial”.

List of Subjects

42 CFR Part 406

Diseases, Health facilities, Medicare.

42 CFR Part 457

Administrative practice and procedure, Grant programs—health, Health insurance, Reporting and recordkeeping requirements.

42 CFR Part 482

Grant programs—health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 485

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendments:

PART 406—HOSPITAL INSURANCE ELIGIBILITY AND ENTITLEMENT

■ 1. The authority citation for part 406 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395i–2, 1395i–2a, 1395p, 1395q and 1395hh.

§ 406.27 [Amended]

■ 2. Amend § 406.27 in the second sentence of paragraph (d)(1)(i) by adding

the word “the” before the phrase “custody of penal authorities and . . .”

PART 457—ALLOTMENTS AND GRANTS TO STATES

■ 3. The authority citation for part 457 continues to read as follows:

Authority: 42 U.S.C. 1302.

■ 4. Revise § 457.342 to read as follows:

§ 457.342 Continuous eligibility for children.

(a) A State must provide continuous eligibility for children under a separate CHIP in accordance with the terms of § 435.926 of this chapter, and subject to a child remaining ineligible for Medicaid, as required by section 2110(b)(1) of the Act and § 457.310 (related to the definition and standards for being a targeted low-income child) and the requirements of section 2102(b)(3) of the Act and § 457.350 (related to eligibility screening and enrollment).

(b) [Reserved]

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

■ 5. The authority citation for part 482 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395hh, and 1395rr, unless otherwise noted.

§ 482.59 [Amended]

■ 6. Amend § 482.59 in paragraph (c)(3) by correcting the word “biannual” to read “biennial”.

PART 485—CONDITIONS OF PARTICIPATION FOR CRITICAL ACCESS HOSPITALS

■ 7. The authority citation for part 485 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395(hh).

§ 485.649 [Amended]

■ 8. Amend § 485.649 in paragraph (c)(3) by correcting the word “biannual” to read “biennial”.

Elizabeth J. Gramling,

*Executive Secretary to the Department,
Department of Health and Human Services.*

[FR Doc. 2025–00081 Filed 1–8–25; 8:45 am]

BILLING CODE 4120–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Parts 1149 and 1158

RIN 3135–AA33

Civil Penalties Adjustment for 2025

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Final rule.

SUMMARY: The National Endowment for the Arts (NEA) is adjusting the maximum civil monetary penalties (CMPs) that may be imposed for violations of the Program Fraud Civil Remedies Act (PFCRA) and the NEA’s Restrictions on Lobbying to reflect the requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act). The 2015 Act further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act) to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. This final rule provides the 2025 annual inflation adjustments to the initial “catch-up” adjustments made on June 15, 2017, and reflects all other inflation adjustments made in the interim.

DATES: This rule is effective January 13, 2025.

FOR FURTHER INFORMATION CONTACT: William Langer, Assistant General Counsel, National Endowment for the Arts, 400 7th St. SW, Washington, DC 20506, Telephone: 202–682–5595.

SUPPLEMENTARY INFORMATION:

1. Background

On December 12, 2017 the NEA issued a final rule entitled “Federal Civil Penalties Adjustments”¹ which finalized the NEA’s June 15, 2017 interim final rule entitled “Implementing the Federal Civil Penalties Adjustment Act Improvements Act”,² implementing the 2015 Act (section 701 of Pub. L. 114–74), which amended the Inflation Adjustment Act (28 U.S.C. 2461 note) requiring catch-up and annual adjustments to the NEA’s CMPs. The 2015 Act requires agencies make annual adjustments to its CMPs for inflation.

A CMP is defined in the Inflation Adjustment Act as any penalty, fine, or other sanction that is (1) for a specific monetary amount as provided by Federal law, or has a maximum amount

provided for by Federal law; (2) assessed or enforced by an agency pursuant to Federal law; and (3) assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

These annual inflation adjustments are based on the percentage change in the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October preceding the date of the adjustment, relative to the October CPI-U in the year of the previous adjustment. The formula for the amount of a CMP inflation adjustment is prescribed by law, as explained in OMB Memorandum M–16–06 (February 24, 2016), and therefore the amount of the adjustment is not subject to the exercise of discretion by the Chair of the National Endowment for the Arts.

The Office of Management and Budget has issued guidance on implementing and calculating the 2025 adjustment under the 2015 Act.³ Per this guidance, the CPI-U adjustment multiplier for this annual adjustment is 1.02598. In its prior rules, the NEA identified two CMPs, which require adjustment: the penalty for false statements under the PFCRA and the penalty for violations of the NEA’s Restrictions on Lobbying. With this rule, the NEA is adjusting the amount of those CMPs accordingly.

2. Dates of Applicability

The inflation adjustments contained in this rule shall apply to any violations assessed after January 15, 2025.

3. Adjustments

Two CMPs in NEA regulations require adjustment in accordance with the 2015 Act: (1) the penalty associated with the Program Fraud Civil Remedies Act (45 CFR 1149.9) and (2) the penalty associated with Restrictions on Lobbying (45 CFR 1158.400; 45 CFR part 1158, app. A).

A. Adjustments to Penalties Under the NEA’s Program Fraud Civil Remedies Act Regulations

The current maximum penalty under the PFCRA for false claims and statements is currently set at \$13,945. The post-adjustment penalty or range is obtained by multiplying the pre-adjustment penalty or range by the percent change in the CPI-U over the relevant time period and rounding to the nearest dollar. Between October 2023 and October 2024, the CPI-U increased by a multiplier of 102.598%. Therefore, the new post-adjustment maximum penalty under the PFCRA for

¹ 82 FR 58348.

² 82 FR 27431.

³ OMB Memorandum M–25–02 (December 17, 2024).

false statements is $\$13,945 \times 1.02598 = \$14,307.291$, which rounds to $\$14,307$. Therefore, the maximum penalty under the PFCRA for false claims and statements will be $\$14,307$.

B. Adjustments to Penalties Under the NEA's Restrictions on Lobbying Regulations

The penalty for violations of the Restrictions on Lobbying is currently set at a range of a minimum of $\$24,483$ and a maximum of $\$244,958$. The post-adjustment penalty or range is obtained by multiplying the pre-adjustment penalty or range by the percent change in the CPI-U over the relevant time period and rounding to the nearest dollar. Between October 2023 and October 2024, the CPI-U increased by a multiplier of 102.598%. Therefore, the new post-adjustment minimum penalty under the Restrictions on Lobbying is $\$24,483 \times 1.02598 = \$25,119.068$, which rounds to $\$25,119$ and the maximum penalty under the Restrictions on Lobbying is $\$244,958 \times 1.02598 = \$251,322.00884$, which rounds to $\$251,322$. Therefore, the range of penalties under the law on the Restrictions on Lobbying shall be between $\$25,119$ and $\$251,322$.

Administrative Procedure Act

Section 553 of the Administrative Procedure Act (APA) requires agencies to provide an opportunity for notice and comment on rulemaking and also requires agencies to delay a rule's effective date for 30 days following the date of publication in the **Federal Register** unless an agency finds good cause to forgo these requirements. However, section 4(b)(2) of the 2015 Act requires agencies to adjust civil monetary penalties notwithstanding section 553 of the APA and publish annual inflation adjustments in the **Federal Register**. "This means that the public procedure the APA generally requires . . . is not required for agencies to issue regulations implementing the annual adjustment." OMB Memorandum M-18-03.

Even if the 2015 Act did not except this final rule from section 553 of the APA, the NEA has good cause to dispense with notice and comment. Section 553(b)(4)(B), authorizes agencies to dispense with notice and comment procedures for rulemaking if the agency finds good cause that notice and comment are impracticable, unnecessary, or contrary to public interest. The annual adjustments to civil penalties for inflation and the method of calculating those adjustments are established by section 5 of the 2015 Act, as amended, leaving no discretion for

the NEA. Accordingly, public comment would be impracticable because the NEA would be unable to consider such comments in the rulemaking process.

Regulatory Planning and Review (Executive Order 12866)

Executive Order 12866 (E.O. 12866) established a process for review of rules by the Office of Information and Regulatory Affairs, which is within the Office of Management and Budget (OMB). Only "significant" proposed and final rules are subject to review under this Executive Order. "Significant," as used in E.O. 12866, means "economically significant." It refers to rules with (1) an impact on the economy of \$100 million; or that (2) were inconsistent or interfered with an action taken or planned by another agency; (3) materially altered the budgetary impact of entitlements, grants, user fees, or loan programs; or (4) raised novel legal or policy issues.

This final rule would not be a significant policy change and OMB has not reviewed this final rule under E.O. 12866. The NEA has made the assessments required by E.O. 12866 and determined that this final rule: (1) will not have an effect of \$100 million or more on the economy; (2) will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (3) will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; and (5) does not raise novel legal or policy issues.

Federalism (Executive Order 13132)

This final rule does not have federalism implications, as set forth in E.O. 13132. As used in this order, federalism implications mean "substantial direct effects on the States, on the relationship between the [N]ational [G]overnment and the States, or on the distribution of power and responsibilities among the various levels of government." The NEA has determined that this final rule will not have federalism implications within the meaning of E.O. 13132.

Civil Justice Reform (Executive Order 12988)

This final rule meets the applicable standards set forth in section 3(a) and 3(b)(2) of E.O. 12988. Specifically, this final rule is written in clear language designed to help reduce litigation.

Indian Tribal Governments (Executive Order 13175)

Under the criteria in E.O. 13175, the NEA has evaluated this final rule and determined that it would have no potential effects on Federally recognized Indian Tribes.

Takings (Executive Order 12630)

Under the criteria in E.O. 12630, this final rule does not have significant takings implications. Therefore, a takings implication assessment is not required.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This final rule will not have a significant adverse impact on a substantial number of small entities, including small businesses, small governmental jurisdictions, or certain small not-for-profit organizations.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This final rule will not impose any "information collection" requirements under the Paperwork Reduction Act. Under the Act, information collection means the obtaining or disclosure of facts or opinions by or for an agency by 10 or more nonfederal persons.

Unfunded Mandates Act of 1995 (Section 202, Pub. L. 104-4)

This final rule does not contain a Federal mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year.

National Environmental Policy Act of 1969 (5 U.S.C. 804)

The final rule will not have a significant effect on the human environment.

Small Business Regulatory Enforcement Fairness Act of 1996 (Sec. 804, Pub. L. 104-121)

This final rule would not be a major rule as defined in section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule will not result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

E-Government Act of 2002 (44 U.S.C. 3504)

Section 206 of the E-Government Act requires agencies, to the extent practicable, to ensure that all information about that agency required to be published in the **Federal Register** is also published on a publicly accessible website. All information about the NEA required to be published in the **Federal Register** may be accessed at <https://www.arts.gov>. This Act also requires agencies to accept public comments on their rules “by electronic means.” See heading “Public Participation” for directions on electronic submission of public comments on this final rule.

Finally, the E-Government Act requires, to the extent practicable, that agencies ensure that a publicly accessible Federal Government website contains electronic dockets for rulemakings under the Administrative Procedure Act of 1946 (5 U.S.C. 551 *et seq.*). Under this Act, an electronic docket consists of all submissions under section 553(c) of title 5, United States Code; and all other materials that by agency rule or practice are included in the rulemaking docket under section 553(c) of title 5, United States Code, whether or not submitted electronically. The website <https://www.regulations.gov> contains electronic dockets for the NEA’s rulemakings under the Administrative Procedure Act of 1946.

Plain Writing Act of 2010 (5 U.S.C. 301)

Under this Act, the term “plain writing” means writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience. To ensure that this final rule has been written in plain and clear language so that it can be used and understood by the public, the NEA has modeled the language of this final rule on the Federal Plain Language Guidelines.

Public Participation (Executive Order 13563)

The NEA encourages public participation by ensuring its documentation is understandable by the general public, and has written this final rule in compliance with Executive Order 13563 by ensuring its accessibility, consistency, simplicity of language, and overall comprehensibility.

List of Subjects in 45 CFR Parts 1149 and 1158

Administrative practice and procedure, Government contracts, Grant

programs, Loan programs, Lobbying, Penalties.

For the reasons stated in the preamble, the NEA amends 45 CFR chapter XI, subchapter B, as follows:

PART 1149—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

■ 1. The authority citation for part 1149 continues to read as follows:

Authority: 5 U.S.C. App. 8G(a)(2); 20 U.S.C. 959; 28 U.S.C. 2461 note; 31 U.S.C. 3801–3812.

§ 1149.9 [Amended]

■ 2. Amend § 1149.9(a)(1) by removing “\$13,945” and adding in its place “\$14,307”.

PART 1158—NEW RESTRICTIONS ON LOBBYING

■ 3. The authority citation for part 1158 continues to read as follows:

Authority: 20 U.S.C. 959; 28 U.S.C. 2461; 31 U.S.C. 1352.

§ 1158.400 [Amended].

■ 4. Amend § 1158.400(a), (b), and (e) by:

■ a. Removing “\$24,483” and adding in its place “\$25,119” each place it appears.

■ b. Removing “\$244,958” and adding in its place “\$251,322” each place it appears.

Appendix A to Part 1158 [Amended]

■ 5. Amend appendix A to part 1158 by:

■ a. Removing “\$24,483” and adding in its place “\$25,119” each place it appears.

■ b. Removing “\$244,958” and adding in its place “\$251,322” each place it appears.

Dated: January 6, 2025

RaShaunda Thomas,

Deputy Director, Office of Administrative Services & Contracts, National Endowment for the Arts.

[FR Doc. 2025–00401 Filed 1–10–25; 8:45 am]

BILLING CODE 7537–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220919–0193; RTID 0648–XE544]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; General Category January Through March Quota Transfer

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS is transferring 20.5 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the General category December 2025 subquota to the January through March 2025 subquota period. The adjusted General category January through March 2025 subquota is 58.2 mt. This action is intended to provide further harvest opportunities for General category fishermen, based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic Tunas General category (commercial) permitted vessels and Atlantic Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: The quota transfer is effective January 8, 2025, through March 31, 2025.

FOR FURTHER INFORMATION CONTACT:

Anna Quintrell (anna.quintrell@noaa.gov) or Larry Redd, Jr. (larry.redd@noaa.gov) by email or by phone at 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic BFT fisheries are managed under the 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and consistent with the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). ATCA is the implementing statute for binding recommendations of the International Commission for the Conservation of Atlantic Tunas. HMS implementing regulations are at 50 CFR part 635. Section 635.27(a) divides the U.S. BFT quota, established by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United

States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act at 16 U.S.C. 1854(g)(1)(D) to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

As described in § 635.27(a), the current baseline U.S. BFT quota is 1,316.14 mt (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). The baseline quota for the General category is 710.7 mt. The General category baseline quota is suballocated to different time periods. Relevant to this action, the baseline subquotas for the January through March time period and for the December time period are 37.7 mt and 37.0 mt, respectively.

Transfer From the December 2025 Subquota to the January Through March 2025 Subquota

Under § 635.27(a)(1)(ii), NMFS has the authority to transfer subquota from one time period to another time period through inseason action after considering determination criteria provided under § 635.27(a)(7). This section focuses on the calculations involved in transferring quota available from the 2025 General category December time period subquota to the 2025 General category January through March time period subquota; the consideration of the determination criteria can be found below after this section.

As stated above, the baseline subquotas for the January through March time period and for the December time period are 37.7 mt and 37.0 mt, respectively. Transferring 20.5 mt from the General category December time period to the General category January through March time period, results in an adjusted January through March time period subquota of 58.2 mt (37.7 mt + 20.5 mt = 58.2 mt), and an adjusted December time period subquota of 16.5 mt (37.0 mt – 20.5 mt = 16.5 mt). The General category quota is available for use by Atlantic Tunas General category (commercial) permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

In summary, this transfer results in an adjusted January through March 2025 time period subquota of 58.2 mt and an

adjusted December 2025 subquota of 16.5 mt. The General category fishery will remain open until March 31, 2025, or until the adjusted January through March 2025 time period subquota is reached, whichever comes first.

Consideration of the Relevant Determination Criteria

NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer (§ 635.27(a)(7)). These criteria include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(7)(i)), biological samples collected from BFT landed by General category fishermen and provided by BFT dealers continue to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the General category during the January–March time period would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category catches in the December and January through March time periods over the last several years and the likelihood of closure of the January through March segment of the fishery if no adjustment is made (§ 635.27(a)(7)(ii) and (ix)), as well as daily landing trends and the availability of BFT on fishing grounds (§ 635.27(a)(7)(ix)). Without a quota transfer at this time, based on recent catch rates in comparison to the current available quota (37.7 mt), NMFS would likely need to close the General category fishery shortly. Once the fishery is closed, participants would have to stop BFT fishing activities until the next time period begins in June, even though commercial-sized BFT remain available in the areas where General category permitted vessels operate. A quota transfer at this time provides limited additional opportunities to harvest the U.S. BFT quota while avoiding exceeding the current time period's subquota.

Regarding the projected ability of the vessels fishing under the General category to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(7)(iii)), NMFS considered General category landings over the last several years and landings to date this year. Landings are highly variable and

depend on access to commercial-sized BFT and fishing conditions, among other factors. NMFS may adjust each time period's subquota based on overharvest or underharvest in the prior time period and may transfer subquota from one time period to another time period. By allowing for the current quota transfer, NMFS anticipates that the General category quota would be used before the end of the fishing year. Thus, this quota transfer would allow General category fishermen to take advantage of the availability of BFT on the fishing grounds and provide a reasonable opportunity to harvest the available U.S. BFT quota.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(7)(iv)) and the ability to account for all 2025 landings and dead discards (§ 635.27(a)(7)(xi)). In the last several years, the total U.S. BFT landings have typically been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS will need to account for 2025 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that.

NMFS also considered the effects of the transfer on the BFT stock and on accomplishing the objectives of the 2006 Consolidated HMS FMP (§ 635.27(a)(7)(v) and (vi)). This transfer would be with established quotas and subquotas, which are implemented consistent with ICCAT Recommendation 22–10, ATCA, and the objectives of the 2006 Consolidated HMS FMP and amendments. In establishing these quotas and subquotas and associated management measures, ICCAT and NMFS considered the best scientific information available, objectives for stock management and status, and effects on the stock. This quota transfer is in line with the established management measures and stock status determinations. Another principal consideration is the objective of providing opportunities to harvest the available General category quota without exceeding the annual quota, based on the objectives of the 2006 Consolidated HMS FMP and its amendments, including to achieve optimum yield on a continuing basis and to allow all permit categories a reasonable opportunity to harvest available BFT quota allocations (related to § 635.27(a)(7)(x)). Specific to the General category, this includes

providing opportunities equitably across all time periods.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Per § 635.5(b)(2)(i)(A), dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required per § 635.27(a)(4) to report their own catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing <https://hmspermits.noaa.gov> by using the HMS Catch Reporting app, by using other apps approved by NMFS for HMS reporting, or calling (888) 872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may access <https://hmspermits.noaa.gov>, for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act (16 U.S.C. 1855(d)) and regulations at 50 CFR part 635 and this action is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and opportunity to provide comment on this action, as notice and comment would be impracticable and contrary to the public interest. Specifically, the regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason adjustments and quota transfers to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Providing prior notice and opportunity for public comment is impracticable and contrary to the public interest as this fishery is currently

underway. Based on current landings information, the available time period subquota is projected to be reached shortly. Delaying this action could result in BFT landings exceeding the January through March time period subquota. Additionally, a delay in implementing this transfer would preclude the fishery from harvesting BFT that are currently available on the fishing grounds and that might otherwise become unavailable. This action does not raise conservation and management concerns and would support effective management of the BFT fishery. Transferring quota from the General category December time period to the General category January through March time period does not affect the overall ICCAT-allocated U.S. BFT quota. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria.

For all of the above reasons, the AA finds that pursuant to 5 U.S.C. 553(d), there is good cause to waive the 30-day delay in effective date.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: January 8, 2025.

Karen H. Abrams,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2025-00625 Filed 1-8-25; 4:15 pm]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No: 230316-0077]

RTID 0648-XE604

Fisheries of the Northeastern United States; Atlantic Herring Fishery; 2025 Management Area 1B Possession Limit Adjustment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; possession limit adjustment.

SUMMARY: NMFS is implementing a 2,000-lb (907.2-kg) possession limit for Atlantic herring for Management Area 1B. This is required because NMFS projects that herring catch from Area 1B will reach 92 percent of the Area's sub-annual catch limit before the end of the fishing year. This action is intended to

prevent overharvest of herring in Area 1B, which would result in additional catch limit reductions in a subsequent year.

DATES: Effective 00:01 hours (hr) local time, January 8, 2025, through December 31, 2025.

FOR FURTHER INFORMATION CONTACT: Colette Tweeddale, Fishery Management Specialist, 978-281-9335.

SUPPLEMENTARY INFORMATION: The Regional Administrator of the Greater Atlantic Regional Office monitors Atlantic herring fishery catch in each Management Area based on vessel and dealer reports, state data, and other available information. Regulations at 50 CFR 648.201(a)(1)(i)(A) require implementation of a 2,000-lb (907.2-kg) possession limit for herring for Area 1B beginning on the date that catch is projected to reach 92 percent of the sub-annual catch limit (ACL) for that area. The Magnuson-Stevens Fishery Conservation and Management Act provides authority to implement the possession limit only to the Secretary of Commerce, which has been delegated to the Regional Administrator.

Based on vessel reports, dealer reports, and other available information, the Regional Administrator projects that the herring fleet will have caught 92 percent of the Area 1B sub-ACL by January 8, 2025. Therefore, effective 00:01 hr local time January 8, 2025, through December 31, 2025, a person may not attempt or do any of the following: Fish for; possess; transfer; purchase; receive; land; or sell more than 2,000 lb of herring per trip or more than once per calendar day in or from Area 1B except as provided in §§ 648.201(b) and (c).

Vessels that enter port before 00:01 hr local time on January 8, 2025, may land and sell more than 2,000 lb (907.2 kg) of herring from Area 1B from that trip, provided that catch is landed in accordance with state management measures. Vessels may transit or land in Area 1B with more than 2,000 lb (907.2 kg) of herring on board, provided that: The herring were caught in an area not subject to a 2,000-lb (907.2-kg) limit; all fishing gear is stowed and not available for immediate use; and the vessel is issued a permit appropriate to the amount of herring on board and the area where the herring was harvested.

Also effective 00:01 hr local time, January 8, 2025, through 24:00 hr local time, December 31, 2025, federally permitted dealers may not attempt or do any of the following: Purchase; receive; possess; have custody or control of; sell; barter; trade; or transfer more than 2,000 lb (907.2 kg) of herring per trip or

calendar day from Area 1B, unless it is from a vessel that enters port before 00:01 hr local time on January 8, 2025 and catch is landed in accordance with state management measures.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

NMFS finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive prior notice and the opportunity for public comment because it is unnecessary, contrary to the public interest, and impracticable. Ample prior notice and opportunity for public comment has been provided for the required implementation of this action. The requirement to implement this possession limit was developed by the New England Fishery Management Council using public meetings that invited public comment on the measures when they were developed and considered along with alternatives.

Further, the regulations requiring implementation of this possession limit also were subject to public notice and opportunity to comment, when they were first adopted in 2014. Herring fishing industry participants monitor catch closely and anticipate potential possession limit adjustments as catch totals approach Area sub-ACLs. The regulation is not discretionary and is designed for implementation as quickly as possible to prevent catch from exceeding limits designed to prevent overfishing while allowing the fishery to achieve optimum yield.

The 2025 herring fishing year began on January 1, 2025. Data indicating that the herring fleet will have landed at least 92 percent of the 2025 sub-ACL allocated to Area 1B only recently became available. High-volume catch and landings in this fishery can increase total catch relative to the sub-ACL quickly, especially in this fishing year where annual catch limits are unusually

low. If implementation of this possession limit adjustment is delayed to solicit prior public comment, the 2025 sub-ACL for Area 1B will likely be exceeded; thereby undermining the conservation objectives of the Herring Fishery Management Plan (FMP). If sub-ACLs are exceeded, the excess must be deducted from a future sub-ACL and would reduce future fishing opportunities. The public expects these actions to occur in a timely way consistent with the FMP's objectives. For the reasons stated above, NMFS also finds good cause to waive the 30-day delayed effectiveness in accordance with 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 7, 2025.

Karen H. Abrams,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2025–00536 Filed 1–8–25; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 90, No. 7

Monday, January 13, 2025

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

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2025–0002]

RIN 1601–AB04

Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security (DHS or Department) is proposing to amend its regulations under the Privacy Act of 1974 consistent with the Social Security Number Fraud Prevention Act of 2017. In addition, DHS is proposing to amend the rules regarding including a Social Security number on physical mail only when necessary to further define “necessary” and provide instructions on redaction of social security numbers when feasible.

DATES: Comments must be received by February 12, 2025.

ADDRESSES: You may submit comments, identified by docket number DHS–2025–0002 through the Federal e-Rulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Deborah Fleischaker, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528, (202) 343–1717, Privacy@hq.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Privacy Act of 1974, as amended, (“Privacy Act”), serves to safeguard public interest in informational privacy by delineating the duties and responsibilities of Federal agencies that collect, store, and disseminate personal information about individuals.¹ The Privacy Act defines an individual to encompass U.S. citizens and lawful permanent residents.²

The Secretary of Homeland Security (“Secretary”) has authority under 5 U.S.C. 301, 552, 552a, and 6 U.S.C. 112(e) to issue Privacy Act regulations. The Secretary has delegated that authority to the Chief Privacy Officer of the Department.³

In 2017, Congress enacted the Social Security Number Fraud Prevention Act of 2017 (“SSN Fraud Prevention Act”).⁴ This law restricts agencies from including the Social Security number (“SSN”) of an individual on any document sent by mail unless the agency head determines inclusion is necessary.⁵ It requires DHS to promulgate rules that will: (1) specify the circumstances under which inclusion of an SSN on a document sent by mail is necessary; (2) instruct components on the partial redaction of SSNs where feasible; and (3) require that SSNs not be visible on the outside of any package sent by mail.⁶ DHS issued a privacy policy in 2019 that required all new and legacy DHS Information Technology systems, programs, and forms to use a unique alternative identifier to SSNs, which minimized the use of SSN in documents.⁷ The policy provides that if there are technological, legal, or regulatory limitations to eliminating the use of SSNs, then privacy-enhancing SSN alternatives must be utilized, such as masking, redacting, or truncating SSNs in digital and hard copy formats.⁸

¹ See Public Law 93–579, 88 Stat. 1896, as amended; see also 5 U.S.C. 552a.

² See 5 U.S.C. 552a(a)(2).

³ 6 U.S.C. 142 and DHS Del. No. 13001, Rev. 01 (June 2, 2020).

⁴ Public Law 115–59, 131 Stat. 1152 (2017); codified at 42 U.S.C. 405 note.

⁵ *Id.*

⁶ *Id.*

⁷ DHS, Directive 047–01–010: *Social Security Number Collection and Use Reduction* (June 18, 2019), https://www.dhs.gov/sites/default/files/publications/047-01-010_ssn_collection_final_06-17-2019.pdf.

⁸ *Id.*

In 2022, DHS published a final rule updating its procedures implementing the Privacy Act, 5 U.S.C. 552a., at 6 CFR part 5, subpart B.⁹ The rule, among other things, amended 6 CFR 5.33(c) to state that DHS cannot include individuals’ SSNs on any document sent by mail unless the Secretary determines inclusion of the number on the document is necessary.¹⁰ This partially met the requirements of the SSN Fraud Prevention Act.

DHS now proposes to further amend 6 CFR 5.33(c) to define the circumstances when it would be necessary to include the SSN on a document. This change would fully comply with the requirements of the SSN Fraud Prevention Act and the 2019 DHS privacy policy. In general, DHS proposes to specify that DHS may only include an SSN on a document sent by mail when necessary, in other words when a DHS component would be unable to comply, in whole or in part, with a legal, regulatory, or policy requirement if prohibited from mailing the full SSN.

II. Discussion of Proposed Changes

This rule proposes amendments to the DHS regulations on the use and collection of SSN to meet the requirements of the SSN Fraud Prevention Act.¹¹ As stated above, DHS previously amended 6 CFR 5.33(c) consistent with some requirements in the SSN Fraud Prevention Act. DHS proposes to further amend 6 CFR 5.33(c) to codify additional requirements as mandated by the SSN Fraud Prevention Act and the 2019 DHS privacy policy.

Specifically, DHS proposes to specify that DHS will not generally include an individual’s full SSN on a document sent by mail and will only do so if the Secretary or the Secretary’s designee determines that the SSN’s inclusion is necessary. As stated previously, the proposed rule would explain that the inclusion of an SSN would only be necessary in those circumstances in which a component would be unable to comply, in whole or in part, with a legal, regulatory, or policy requirement if prohibited from mailing the full SSN. On the other hand, the proposed rule would explain that including a full SSN

⁹ 87 FR 68599 (Nov. 16, 2022).

¹⁰ See *id.*

¹¹ See Public Law 115–59, 131 Stat. 1152 (2017); codified at 42 U.S.C. 405 note.

is not necessary if the DHS component can either redact the SSN, such as by using no more than the last four digits of the account number, or entirely strike the SSN and still comply with all relevant legal, regulatory, or policy requirements.

However, if the use of the full SSN on a document sent by mail¹² is necessary, the DHS component sending the document shall implement appropriate administrative, technical, and physical safeguards to ensure a reasonable level of security against unauthorized access to, and use, disclosure, disruption, modification, or destruction of, the documents sent by mail. Finally, this proposed rule would specify that in all cases the component will ensure that no part of an SSN is visible on the outside of any package or envelope sent by mail.

Overall, this proposed rule would codify procedures in the regulations to ensure compliance with the SSN Fraud Prevention Act, but DHS does not expect it to have a significant impact on the current operations of the Department. As discussed further below in section III, DHS has already eliminated all DHS forms that contain SSN fields and are mailed through the United States Postal Service (“USPS”).

However, should circumstances change such that a DHS component must include an individual’s full SSN on printed mail in order to comply with all of the component’s legal, regulatory, or policy obligations, then this proposed rule would provide a durable framework to ensure that the SSN is only used when it is truly necessary and that the component applies all possible and appropriate safeguards.

III. Regulatory Analyses

Executive Orders 12866, 14094, and 13563—Regulatory Review

Executive Order 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review) and 13563 (Improving Regulation and Regulatory Review), directs agencies to assess the 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 costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Management and Budget (OMB) has not designated this proposed rule a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, OMB has not reviewed this regulatory action.

DHS has considered the costs and benefits of this proposed rule. The benefits and costs of a regulation are generally measured against a no-action baseline, which is a reasonable forecast of the way the world would look absent the regulatory action being assessed.¹³ This proposed rule would not introduce new regulatory mandates on the public. In compliance with the statutory requirements in the SSN Fraud Prevention Act, this proposed rule describes the circumstances in which DHS would include SSN on documents that DHS sends via mail. This proposed rule would also clarify that DHS Components and Headquarters Offices should undertake technical and physical safeguards when mailing documents with SSNs, or implement alternatives to full SSN, such as truncation, when feasible and legally permissible.

DHS reported in its Social Security Number Fraud Prevention Act Final Report to Congress in June of 2023 that it successfully met the requirements of the Act in 2019 by eliminating all 69 DHS forms that contained fields for SSNs and were mailed through the USPS.¹⁴ All DHS Components and Headquarters Offices confirmed that there remained no DHS-specific forms containing fields for SSNs that are mailed through the USPS.¹⁵

In addition, as noted above, DHS issued a privacy policy in 2019 that required all new and legacy DHS Information Technology systems, programs, and forms to use a unique alternative identifier to SSNs and that provides that components must utilize privacy-enhancing SSN alternatives if there are technological, legal, or regulatory limitations to eliminating the use of SSNs.¹⁶ If, in future

circumstances, DHS determined there would be a need to include SSN in mailed documents, DHS components have already taken appropriate steps to implement safeguards for securing SSN in mailed documents in compliance with DHS-wide policy in effect since 2019. Therefore, the proposed rule would provide clarification benefits but would not result in cost impacts to DHS or the public, because DHS has already eliminated SSNs in DHS forms that are mailed. Further, in the potential circumstance where DHS would mail documents with SSNs, since 2019, DHS implemented safeguards that would be required by this proposed rule.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. This proposed rule would not contain a Federal mandate that results in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it would not significantly or uniquely affect small governments. Therefore, DHS deemed a written statement was not necessary under the provisions of the UMRA.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, and section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 note, agencies must consider the impact of their rulemakings on “small entities” (small businesses, small organizations, and local governments). 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.

DHS certifies that this regulation would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is due to the requirements only applying to the Federal Government (DHS Components and Headquarter Offices). The proposed rule governs only the possible circumstances under which DHS would include SSNs in documents mailed by DHS. However, as previously discussed and reported to Congress, DHS has eliminated the SSN on all DHS forms. DHS does not believe small entities would have new compliance requirements or costs as a direct result of this proposed rule.

¹² Consistent with the language of the Social Security Number Fraud Prevention Act, which discusses “documents sent by mail”, the proposed rule would be limited to physical mail sent by DHS. Accordingly, the rule proposes to clarify that physical mail includes printed document or correspondence but does not include emails or other documents, correspondence, or communications transmitted by electronic means (e.g., via web portals).

¹³ See OMB Circular A–4, p. 11 (Nov. 9, 2023) (accessible at <https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf>).

¹⁴ DHS, Social Security Number Fraud Prevention Act Final Report to Congress, 5 (June 2023), <https://www.dhs.gov/sites/default/files/2023-07/SSN%20Fraud%20Prevention%20Act%20Final%20Report%20%282%29.pdf>.

¹⁵ *Id.*

¹⁶ *Id.*

Paperwork Reduction Act

This regulatory action would not impose a collection of information requirement subject to review and approval by OMB, as it does not include any reporting or recordkeeping requirements, under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

Section 102 of the National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*), as amended, requires Federal agencies to evaluate the impacts of a proposed major Federal action that may significantly affect the human environment, consider alternatives to the proposed action, provide public notice and opportunity to comment, and properly document its analysis. DHS and its agency components analyze proposed actions to determine whether NEPA applies to them and, if so, what level of documentation and analysis is required.

DHS Directive 023–01, Rev. 01 and DHS Instruction Manual 023–01–001–01, Rev. 01 (Instruction Manual) establish the policies and procedures DHS and its component agencies use to comply with NEPA and the Council on Environmental Quality regulations for implementing NEPA codified in 40 CFR parts 1500 through 1508. The CEQ regulations allow Federal agencies to establish, in their implementing procedures, with CEQ review and concurrence, categories of actions (“categorical exclusions”) that experience has shown do not, individually or in the aggregate, have a significant effect on the human environment and, therefore, do not require preparation of an environmental assessment or environmental impact statement. 40 CFR 1501.4, 1507.3(e)(2)(ii). Appendix A of the Instruction Manual lists the DHS categorical exclusions.

Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.

DHS is not aware of any significant impact on the environment, or any change in environmental effect that will result from this proposed rule. DHS finds promulgation of the rule clearly

fits within categorical exclusion A3, established in the Department’s NEPA implementing procedures.

This proposed rule is a standalone rule and is not part of any larger action. This proposed rule would not result in any major Federal action that would significantly affect the quality of the human environment. Furthermore, DHS has determined that no extraordinary circumstances exist that would create the potential for significant environmental effects. Therefore, this proposed rule is categorically excluded from further NEPA review and documentation.

List of Subjects in 6 CFR Part 5

Classified information, Courts, Freedom of information, Government employees, Privacy.

For the reasons stated in the preamble, DHS proposes to amend 6 CFR part 5 as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

- 1. The authority citation for part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.*; Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301; 6 U.S.C. 142; DHS Del. No. 13001, Rev. 01 (June 2, 2020).

Subpart A also issued under 5 U.S.C. 552.
Subpart B also issued under 5 U.S.C. 552a and 552 note.

- 2. Amend § 5.33 by revising paragraph (c) to read as follows:

§ 5.33 Use and collection of Social Security numbers.

* * * * *

(c) The following rules apply to physical mail:

(1)(i) In general, DHS will not include the full Social Security number (SSN) of an individual on any document sent by physical mail. Physical mail includes printed documents or correspondence but does not include emails or any other documents, correspondence, or communications in electronic form.

(ii) DHS will only include the SSN of an individual on any document sent by physical mail if the Secretary, or designee, determines that the inclusion of the SSN on the document is necessary.

(iii) For purposes of paragraph (c)(1)(ii) of this section, *necessary* means required for a DHS component to comply, in whole or in part, with a legal, regulatory, or policy requirement.

(iv) Including the SSN is not necessary under paragraph (c)(1)(ii) of this section if the DHS component can redact the SSN in accordance with paragraph (c)(2) of this section or strike

the SSN entirely and still comply with all relevant legal, regulatory, or policy requirements.

(2) Where feasible, DHS components should partially redact the Social Security account number on any document sent by physical mail by including no more than the last four digits of the Social Security account number. Components should prioritize technical methods to redact Social Security account numbers in accordance with this paragraph (c)(2).

(3) In all cases, DHS components must ensure that no part of the SSN is visible from the outside of any package or envelope sent by physical mail.

Deborah Fleischaker,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2024–31357 Filed 1–10–25; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF LABOR

Office of Workers’ Compensation Programs

20 CFR Part 702

RIN 1240–AA17

Longshore and Harbor Workers’ Compensation Act: Civil Money Penalties Procedures; Withdrawal

AGENCY: Office of Workers’ Compensation Programs, Labor.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The Office of Workers’ Compensation Programs (OWCP) is withdrawing its Notice of Proposed Rulemaking (NPRM) that proposed new procedures for assessing and adjudicating penalties under the Longshore and Harbor Workers’ Compensation Act (LHWCA).

DATES: The withdrawal is effective January 13, 2025.

FOR FURTHER INFORMATION CONTACT: Stephanie S. Brown, Acting Director, Division of Longshore and Harbor Workers’ Compensation, Office of Workers’ Compensation Programs, (562)–256–3190, brown.stephanie.s@dol.gov. TTY/TDD callers may dial toll free 1–877–889–5627 for further information.

SUPPLEMENTARY INFORMATION:

Summary of the Notice of Proposed Rulemaking

On September 12, 2023, OWCP published a notice of proposed rulemaking, *Longshore and Harbor*

Workers' Compensation Act: Civil Money Penalties Procedures, 88 FR 62480 (Sept. 12, 2023). This rule would establish new procedures for assessing and adjudicating penalties under the LHWCA. See 33 U.S.C. 901–50. The rule also would set forth the procedures to contest OWCP's penalty determinations. The comment period for this notice of proposed rulemaking expired on November 13, 2023.

Summary of Comments

The Department received six comments on the proposed regulations. The commenters represented a number of stakeholders from the private sector, including group self-insurance entities, industry associations, and a business advocacy organization.

Rationale for Withdrawal

OWCP has considered the detailed feedback, analysis, and dialogue that the publication of the NPRM produced. OWCP continues to believe that there is a need for a more defined and transparent process for imposing and adjudicating penalties.

Given the range of feedback received and the need for additional examination and input, however, OWCP believes that, before proceeding with this rulemaking, it would benefit from more outreach and dialogue with interested parties and the regulated community, which it cannot complete in the near future with its limited time and resources. In addition, many aspects of the proposed rule and the penalty process are closely connected to OWCP's information technology modernization project and cannot move forward until that project is completed. Therefore, OWCP is withdrawing this proposed rule.

Conclusion

By withdrawing the proposed rule, OWCP is eliminating the pending nature of this rulemaking. OWCP intends to engage with all interested parties to discuss and consider future revision to the penalties procedures, as well as impacts on the stakeholders. If OWCP decides to establish new procedures for the imposition and adjudication of civil money penalties prescribed by the LHWCA, it will issue a new NPRM in the **Federal Register**.

Accordingly, the NPRM published in the **Federal Register** on September 12, 2023 at 88 FR 62480, is withdrawn.

Christopher Godfrey,
Director, Office of Workers' Compensation Programs.

[FR Doc. 2025–00376 Filed 1–10–25; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–101268–24]

RIN 1545–BR11

Catch-Up Contributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document sets forth proposed regulations that would provide guidance for retirement plans that permit participants who have attained age 50 to make additional elective deferrals that are catch-up contributions. The proposed regulations reflect statutory changes made by the SECURE 2.0 Act of 2022, including the requirement that catch-up contributions made by certain catch-up eligible participants must be designated Roth contributions. The proposed regulations would affect participants in, beneficiaries of, employers maintaining, and administrators of certain retirement plans. This document also provides notice of a public hearing.

DATES: Written or electronic comments must be received by March 14, 2025. A public hearing on this proposed regulation has been scheduled for April 7, 2025, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by March 14, 2025. If no outlines are received by March 14, 2025, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. on April 3, 2025.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG–101268–24) 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 comment submitted electronically or on paper to its public docket on www.regulations.gov. Send paper submissions to: CC:PA:01:PR (REG–101268–24), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben

Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, call Jessica S. Weinberger at (202) 317–6349 or Jason E. Levine at (202) 317–4117; concerning submission of comments, the hearing, and the access code to attend the hearing by telephone, call the Publications and Regulations Section at (202) 317–6901 (not toll-free numbers) or email publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:

Authority

This notice of proposed rulemaking sets forth proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 401(k), 403(b), and 414(v) of the Internal Revenue Code (Code) relating to catch-up contributions. These proposed regulations are issued by the Secretary of the Treasury or the Secretary's delegate (Secretary) under the express delegations of authority in sections 401(m)(9), 414(v)(7)(D), and 7805(a) of the Code.

Section 401(m)(9) provides, in part, that “[t]he Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k).” Section 414(v)(7)(D) provides a specific delegation of authority with respect to the requirements of section 414(v)(7)(A), stating, “[t]he Secretary may provide by regulations that an eligible participant may elect to change the participant's election to make additional elective deferrals if the participant's compensation is determined to exceed the limitation under subparagraph (A) after the election is made.” Section 7805(a) provides that “the Secretary shall 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

This notice of proposed rulemaking sets forth proposed amendments to the Income Tax Regulations under section 414(v) of the Code. Section 414(v) permits a plan to allow catch-up eligible participants to make additional elective deferrals that are catch-up contributions and sets forth requirements relating to those contributions. These proposed regulations would amend the regulations under section 414(v) to reflect changes to the catch-up contribution requirements for certain catch-up eligible participants pursuant

to sections 109, 117, and 603 of Division T of the Consolidated Appropriations Act, 2023, Public Law 117–328, 136 Stat. 4459 (2022), known as the SECURE 2.0 Act of 2022 (SECURE 2.0 Act).

This document also proposes conforming amendments to the regulations under sections 401(k) and 403(b) of the Code that reflect section 603 of the SECURE 2.0 Act.

I. Statutory and Regulatory Framework

Section 414(v)(1) of the Code provides that an applicable employer plan will not be treated as failing to meet any requirement of the Code solely because it permits an eligible participant to make additional elective deferrals (as defined in section 414(v)(6)(B)) in any plan year. “Applicable employer plan” is defined in section 414(v)(6)(A) to mean a qualified plan under section 401(a) (qualified plan), a plan under which amounts are contributed by an individual’s employer for an annuity contract described in section 403(b) (section 403(b) plan), an eligible deferred compensation plan under section 457 of an eligible employer described in section 457(e)(1)(A) (eligible governmental 457(b) plan),¹ an arrangement meeting the requirements of section 408(k) (SEP arrangement), or an arrangement meeting the requirements of section 408(p) (SIMPLE IRA plan). Under section 414(v)(5), an eligible participant is a participant who is generally eligible to make elective deferrals under an applicable employer plan and who would attain age 50 by the end of the taxable year, with respect to whom no further elective deferrals may (without regard to section 414(v)) be made to the plan for the plan year (or other applicable year) by reason of a limitation or restriction listed in section 414(v)(3) or a comparable limitation or restriction included in the terms of the plan.

Under section 414(v)(2)(A), the amount of additional elective deferrals that a plan may permit a participant to make pursuant to section 414(v)(1) for a taxable year is limited to the lesser of: (1) the applicable dollar amount under section 414(v)(2)(B) (referred to as the applicable dollar catch-up limit), and (2) the excess (if any) of the participant’s compensation (as defined in section 415(c)(3)) for the year over any other elective deferrals of the participant for such year that are made without regard to section 414(v). Section 414(v)(2)(B)(i) provides the applicable dollar catch-up

limit for an applicable employer plan other than a plan described in section 401(k)(11) (SIMPLE 401(k) plan) or a SIMPLE IRA plan. Section 414(v)(2)(B)(ii) provides the applicable dollar catch-up limit for a SIMPLE 401(k) plan or a SIMPLE IRA plan (collectively referred to as SIMPLE plans). Section 414(v)(2)(C) provides that the applicable dollar catch-up limits under section 414(v)(2)(B)(i) and (ii) are subject to annual adjustment based on changes in the cost of living. Section 414(v)(2)(D) provides that, for purposes of section 414(v)(2), all applicable employer plans, other than eligible governmental 457(b) plans, that are maintained by the same employer (as determined under section 414(b), (c), (m), or (o)) are treated as a single plan, and all eligible governmental 457(b) plans that are maintained by the same employer are treated as a single plan.

Under section 414(v)(3)(A)(i), a catch-up contribution is not, with respect to the year in which the contribution is made, subject to certain otherwise applicable limitations, including those contained in section 401(a)(30) (limiting a participant’s elective deferrals during a calendar year to the amount permitted under section 402(g)), section 403(b) (including the requirement under section 403(b)(1)(E) that a contract purchased under a salary reduction agreement must meet the requirements of section 401(a)(30)), and section 457(b)(2) (limiting a participant’s elective deferrals for a taxable year, determined without regard to any increase to the limitation under section 457(b)(3), to the applicable dollar amount in section 457(e)(15)). Under section 414(v)(3)(B), catch-up contributions are excluded from consideration for purposes of certain nondiscrimination tests.

Section 414(v)(4) provides that an applicable employer plan is treated as failing to meet the nondiscrimination requirements under section 401(a)(4) with respect to benefits, rights, and features unless the plan allows all catch-up eligible participants to make the same election with respect to catch-up contributions. For purposes of section 414(v)(4), all plans maintained by employers who are treated as a single employer under section 414(b), (c), (m), or (o) are treated as one plan (with the exception of a plan described in section 410(b)(6)(C)(i) for the duration of the transition period described in section 410(b)(6)(C)(ii) with respect to that plan).

Section 414(v) was added to the Code by section 631 of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107–16, 115 Stat. 38,

and the Treasury Department and the IRS issued comprehensive regulations under section 414(v) in 2003 (TD 9072, 68 FR 40510). Subsequently, provisions relating to catch-up contributions under section 414(v) were incorporated into regulations under sections 401(k), 403(b), and 457(b).

II. SECURE 2.0 Act Changes to Section 414(v)

A. Section 109 of the SECURE 2.0 Act

For a taxable year beginning after December 31, 2024, section 109 of the SECURE 2.0 Act amends section 414(v)(2) of the Code to increase the applicable dollar catch-up limit under section 414(v)(2)(B)(i) and (ii) in the case of a catch-up eligible participant who attains age 60, 61, 62, or 63 during the taxable year. For such a participant in an applicable employer plan other than a SIMPLE plan, the increased applicable dollar catch-up limit is 150 percent of the otherwise applicable dollar catch-up limit under section 414(v)(2)(B)(i) in effect for 2024. For such a participant in a SIMPLE plan, the increased applicable dollar catch-up limit is 150 percent of the otherwise applicable dollar catch-up limit under section 414(v)(2)(B)(ii) in effect for 2025. In either case, for a year beginning after December 31, 2025, the increased applicable dollar catch-up limit is subject to adjustment to reflect changes in the cost of living, in accordance with the last sentence of section 414(v)(2)(C).

B. Section 117 of the SECURE 2.0 Act

A SIMPLE plan is an alternative plan design under which employees of an eligible employer as defined in section 408(p)(2)(C)(i) (that is, generally, an employer that had no more than 100 employees who received at least \$5,000 of compensation from the employer for the preceding calendar year) are permitted to elect to have salary reduction contributions (or elective contributions, in the case of a SIMPLE 401(k) plan) made on their behalf.² Among other things, section 117 of the SECURE 2.0 Act amends section 414(v)(2) of the Code to increase the applicable dollar catch-up limit under section 414(v)(2)(B)(ii) for SIMPLE plans sponsored by certain eligible employers who are described in section 408(p)(2)(E)(iv).³ The increased

² The annual limit on salary reduction contributions or elective contributions is lower for SIMPLE plans than for other types of plans. However, SIMPLE plans are not subject to nondiscrimination testing, and the employer must make certain contributions.

³ An eligible employer is described in section 408(p)(2)(E)(iv) if, during the three-taxable-year period preceding the first year that the employer

¹ Section 414(v)(6)(C) provides that section 414(v) does not apply to a participant in an eligible governmental 457(b) plan for any year for which a higher limitation applies to the participant under section 457(b)(3).

applicable dollar catch-up limit is available automatically to a SIMPLE plan sponsored by an eligible employer described in section 408(p)(2)(E)(iv) that had no more than 25 employees who received at least \$5,000 of compensation from the employer for the preceding calendar year. Other eligible employers described in section 408(p)(2)(E)(iv) may make an election for the increased applicable dollar catch-up limit to apply and, if the election is made, the employer must make additional matching or nonelective contributions.

The increased applicable dollar catch-up limit, which applies to taxable years beginning after December 31, 2023, is 110 percent of the otherwise applicable dollar catch-up limit under section 414(v)(2)(B)(ii) for calendar year 2024. For a year beginning after December 31, 2024, the increased applicable dollar catch-up limit is subject to adjustment to reflect changes in the cost of living, in accordance with section 414(v)(2)(C)(ii).

C. Section 603 of the SECURE 2.0 Act

Section 603(a) of the SECURE 2.0 Act amends section 414(v) of the Code to add section 414(v)(7). Section 414(v)(7)(A) sets forth the requirement that catch-up contributions made by certain catch-up eligible participants must be designated Roth contributions (the Roth catch-up requirement). Specifically, under section 414(v)(7)(A), in the case of a catch-up eligible participant whose wages as defined in section 3121(a) (that is, wages for purposes of the Federal Insurance Contributions Act (FICA), codified at subtitle C, chapter 21 of the Code, or FICA wages) for the preceding calendar year from the employer sponsoring the plan exceeded \$145,000, section 414(v)(1) applies only if any catch-up contributions made by the participant are designated Roth contributions (as defined in section 402A(c)(1)).

Section 414(v)(7)(B) provides that, in the case of an applicable employer plan with respect to which section 414(v)(7)(A) applies to any participant for a plan year, section 414(v)(1) does not apply to the plan unless the plan provides that any catch-up eligible participant may make catch-up contributions as designated Roth contributions.

maintained the SIMPLE plan, the employer (including any member of the employer's controlled group or any predecessor of the employer or member of its controlled group) has not established or maintained a qualified plan, a section 403(a) annuity plan, or a section 403(b) plan under which contributions were made or benefits were accrued for substantially the same employees as are eligible to participate in the SIMPLE plan. See Q&A E-1 in Notice 2024-2, 2024-2 IRB 316.

Section 414(v)(7)(C) provides that section 414(v)(7)(A) does not apply to SEP arrangements or SIMPLE IRA plans. Under section 414(v)(7)(D), regulations may provide that a catch-up eligible participant may elect to change the participant's election to make catch-up contributions if the participant's compensation is determined to exceed the wage limitation under section 414(v)(7)(A) (Roth catch-up wage threshold) after the election is made. Under section 414(v)(7)(E), for taxable years beginning after December 31, 2024, the Roth catch-up wage threshold is adjusted for changes in the cost of living.

Section 603(b) of the SECURE 2.0 Act includes conforming amendments with respect to section 603(a). Section 603(b)(1) of the SECURE 2.0 Act strikes section 402(g)(1)(C) of the Code. Prior to its elimination, section 402(g)(1)(C) provided that a catch-up eligible participant's gross income did not include elective deferrals in excess of the applicable dollar amount under section 402(g)(1)(B) to the extent that the amount of those elective deferrals did not exceed the applicable dollar catch-up limit under section 414(v)(2)(B)(i) for the taxable year (without regard to the treatment of the elective deferrals by an applicable employer plan under section 414(v)).

Section 603(b)(2) of the SECURE 2.0 Act amends section 457(e)(18)(A)(ii) of the Code and, pursuant to this amendment, a portion of the catch-up contributions made to an eligible governmental 457(b) plan in accordance with section 457(b)(3) and (e)(18) by a catch-up eligible individual for the last three taxable years ending before the individual attains normal retirement age must be designated Roth contributions. The portion that is subject to this Roth requirement is the amount by which the applicable dollar catch-up limit under section 414(v)(2)(B)(i) exceeds the maximum permitted contribution set forth in section 457(b)(3) (determined without regard to section 457(e)(18)).

Under section 603(c) of the SECURE 2.0 Act, the amendments made by section 603 of the SECURE 2.0 Act apply to taxable years beginning after December 31, 2023.

III. Notice 2023-62

In August 2023, the Treasury Department and the IRS issued Notice 2023-62, 2023-37 IRB 817. Notice 2023-62 clarifies that, despite the elimination of section 402(g)(1)(C) of the Code under section 603(b)(1) of the SECURE 2.0 Act, applicable employer plans may, for taxable years beginning after December 31, 2023, continue to

permit catch-up eligible participants to make elective deferrals that exceed the applicable dollar amount under section 402(g)(1)(B) of the Code (or deferrals that exceed the applicable dollar amount under section 457(e)(15)) if those contributions in excess of the applicable dollar amount satisfy the requirements for catch-up contributions under section 414(v). In addition, pursuant to Notice 2023-62, the first two taxable years beginning after December 31, 2023, are regarded as an administrative transition period with respect to the Roth catch-up requirement. During the administrative transition period, catch-up contributions made by a participant who is subject to the Roth catch-up requirement will be treated as satisfying the requirements of section 414(v)(7)(A), even if the contributions are not designated Roth contributions.

Notice 2023-62 also summarizes anticipated guidance from the Treasury Department and the IRS with respect to the implementation of section 603 of the SECURE 2.0 Act as follows: (1) the Roth catch-up requirement would not apply in the case of a catch-up eligible participant who did not have FICA wages for the preceding calendar year from the employer sponsoring the plan; (2) in the case of a catch-up eligible participant who is subject to the Roth catch-up requirement, a plan administrator and an employer would be permitted to treat an election by the participant to make catch-up contributions on a pre-tax basis as an election by the participant to make catch-up contributions that are designated Roth contributions; and (3) a catch-up eligible participant's FICA wages for the preceding calendar year from one participating employer in an applicable employer plan that is maintained by more than one employer (including a multiemployer plan) would not be aggregated with the participant's FICA wages for the preceding calendar year from another participating employer in the plan for purposes of determining whether the participant's FICA wages for that year exceeded the Roth catch-up wage threshold. The notice requested comments with respect to the anticipated guidance summarized in the notice, additional matters under consideration relating to a plan without a qualified Roth contribution program, and, more generally, the provisions of section 603 of the SECURE 2.0 Act.

Explanation of Provisions

I. Amendments to Regulations Under Sections 401(k) and 403(b)—Deemed Roth Catch-Up Election

Section 414(v)(7)(A) of the Code provides that in the case of a participant who is subject to the Roth catch-up requirement, section 414(v)(1) applies only if any catch-up contributions made by the participant are designated Roth contributions made pursuant to the participant's election. Notice 2023–62 requested comments on anticipated future guidance expected to permit plan administrators and employers to treat an election by a participant to make catch-up contributions on a pre-tax basis as an election to make catch-up contributions as designated Roth contributions if the participant is subject to the Roth catch-up requirement. All comments received were in favor of this approach.

Accordingly, proposed § 1.401(k)–1(f)(5)(iii) would permit a plan to provide, for taxable years beginning after December 31, 2023, that a participant who is subject to the Roth catch-up requirement is deemed to have irrevocably designated any catch-up contributions as designated Roth contributions in accordance with the requirements of § 1.401(k)–1(f)(1)(i). Under the proposed regulation, a plan that provides for such a deemed Roth catch-up election would be required, as is the case for any other designated Roth contribution, to: (1) treat catch-up contributions subject to the deemed Roth catch-up election as not excludible from the participant's gross income, and (2) maintain the catch-up contributions in a designated Roth account. A plan would be permitted to provide for a deemed Roth catch-up election without regard to whether it requires separate elections for elective deferrals that are not catch-up contributions and for additional elective deferrals that are catch-up contributions or uses a spillover design.⁴ However, in accordance with section 414(v)(7)(D), the application of a deemed Roth catch-up election to a participant would be conditioned, under proposed § 1.401(k)–1(f)(5)(iv), on the participant having an effective opportunity (determined based on all of the relevant facts and circumstances, in accordance with § 1.401(k)–1(e)(2)(ii)) to make a new

election that is different than the deemed election. For example, under the proposed regulation, a plan would need to permit a participant subject to a deemed Roth catch-up election to elect to cease making additional elective deferrals.

The proposed amendments to § 1.403(b)–3(c)(1) would incorporate proposed § 1.401(k)–1(f)(5)(iii) and (iv), so that a section 403(b) plan would be permitted to include a deemed Roth catch-up election, subject to the requirement to provide a participant subject to a deemed catch-up election with the effective opportunity to make a different election. This amendment would be part of a broader incorporation of all of § 1.401(k)–1(f)(3) and (5) into the rules relating to designated Roth contributions under section 403(b) plans; the incorporation of § 1.401(k)–1(f)(3), (f)(5)(i), and (f)(5)(ii) is not a substantive legal change, as these provisions were previously applicable with respect to section 403(b) plans.⁵

II. Proposed Revisions to § 1.414(v)–1

A. Overview

The proposed revisions and additions to § 1.414(v)–1 would mainly reflect changes made by sections 109 and 117 of the SECURE 2.0 Act. In particular, the revisions to § 1.414(v)–1 would: (1) reflect the increased applicable dollar catch-up limits permitted under sections 109 and 117 of the SECURE 2.0 Act (along with updated cost-of-living adjustments), and (2) clarify the application of the universal availability requirement under Code section 414(v)(4) to an applicable employer plan that permits certain catch-up eligible participants to make catch-up contributions in an amount equal to the increased applicable dollar catch-up limit for participants attaining age 60 through 63. In addition, a provision would be added to the general rules under § 1.414(v)–1(a) indicating that the rules relating to the Roth catch-up requirement under section 414(v)(7) can be found in proposed § 1.414(v)–2.

⁵ This Notice of Proposed Rulemaking (NPRM) does not propose to incorporate proposed § 1.401(k)–1(f)(5)(iii) and (iv) into the regulations relating to eligible governmental 457(b) plans because those regulations do not currently provide for the inclusion of a qualified Roth contribution program in an eligible governmental 457(b) plan. On June 22, 2016, proposed regulations relating to the inclusion of a qualified Roth contribution program in an eligible governmental 457(b) plan were published in the **Federal Register** (81 FR 40548) and those proposed regulations have not been finalized.

B. Increased Applicable Dollar Catch-Up Limit During the Year of Attainment of Age 60 Through 63 Under Section 109 of the SECURE 2.0 Act

Current § 1.414(v)–1(c)(2)(i) sets forth the applicable dollar catch-up limit that applies to all catch-up eligible participants in an applicable employer plan that is not a SIMPLE plan. The proposed regulations would retain that rule (other than the provisions applicable to taxable years beginning in calendar years before 2006) and would note the existence of a higher limit for individuals attaining age 60 through 63 set forth in proposed § 1.414(v)–1(c)(2)(i)(B). Specifically, proposed § 1.414(v)–1(c)(2)(i)(B) sets forth the increased applicable dollar catch-up limit that would apply for a taxable year beginning after 2024 with respect to a catch-up eligible participant in an applicable employer plan other than a SIMPLE plan who would attain age 60, 61, 62, or 63 on the participant's birthday occurring during the taxable year. The increased applicable dollar catch-up limit under proposed § 1.414(v)–1(c)(2)(i)(B) is 150 percent of the applicable dollar catch-up limit that applies during a taxable year beginning in 2024 (that is, \$11,250, which is 150 percent of \$7,500), adjusted for changes in the cost of living.

Similarly, current § 1.414(v)–1(c)(2)(ii) sets forth the applicable dollar catch-up limit that applies to all catch-up eligible participants in a SIMPLE plan. The proposed regulations would retain those provisions (other than the provisions applicable to taxable years beginning in calendar years before 2006) and would note the existence of a higher limit for individuals attaining age 60 through 63 set forth in proposed § 1.414(v)–1(c)(2)(ii)(B) (and a higher limit for participants in certain SIMPLE plans set forth in proposed § 1.414(v)–1(c)(2)(ii)(C)). Specifically, proposed § 1.414(v)–1(c)(2)(ii)(B) sets forth the increased applicable dollar catch-up limit that would apply for a taxable year beginning after 2024, with respect to a catch-up eligible participant in a SIMPLE plan who would attain age 60, 61, 62, or 63 on the participant's birthday occurring during the taxable year. The increased applicable dollar catch-up limit under proposed § 1.414(v)–1(c)(2)(ii)(B) is 150 percent of the applicable dollar catch-up limit that applies during a taxable year beginning in 2025 (that is, \$5,250, which is 150 percent of \$3,500), adjusted for changes in the cost of living.

Current § 1.414(v)–1(c)(2)(iii) provides for cost-of-living adjustments to the applicable dollar catch-up limits that

⁴ Under a spillover design, a participant who would attain age 50 by the end of the taxable year makes one election with respect to elective deferrals for a plan year and, after the participant's elective deferrals reach a Code or plan limitation on elective deferrals that are not catch-up contributions, additional elective deferrals automatically begin counting toward the applicable dollar catch-up limit under section 414(v)(2).

apply under current § 1.414(v)–1(c)(2)(i) and (ii). The proposed regulations would retain that provision and would also set forth the cost-of-living adjustments to the increased applicable dollar catch-up limits for individuals attaining age 60 through 63.

C. Increased Applicable Dollar Catch-Up Limit for Certain SIMPLE Plans Under Section 117 of the SECURE 2.0 Act

In accordance with section 117 of the SECURE 2.0 Act, proposed § 1.414(v)–1(c)(2)(ii)(C) would set forth an increased applicable dollar catch-up limit that would apply for a taxable year beginning in 2024 under a SIMPLE plan that is sponsored by an eligible employer described in Code section 408(p)(2)(E)(iv) and for which the increased applicable dollar catch-up limit under section 414(v)(2)(B)(iii) applies automatically or by election. The increased applicable dollar catch-up limit is 110 percent of the applicable dollar catch-up limit that applies during a taxable year beginning in 2024 (that is, \$3,850, which is 110 percent of \$3,500), adjusted for changes in the cost of living. For taxable years beginning after 2024, proposed § 1.414(v)–1(c)(2)(iii)(C) would set forth the cost-of-living adjustments to this increased applicable dollar catch-up limit.

D. Different Applicable Dollar Catch-Up Limits and Universal Availability

In accordance with the universal availability requirement in section 414(v)(4), existing § 1.414(v)–1(e)(1)(i) sets forth a general rule that an applicable employer plan that offers catch-up contributions and that is otherwise subject to section 401(a)(4) (including a plan that is subject to section 401(a)(4) pursuant to section 403(b)(12)) will not satisfy the requirements of section 401(a)(4) unless all catch-up eligible participants who participate under any applicable employer plan maintained by the employer are provided with an effective opportunity to make the same dollar amount of catch-up contributions.

The Treasury Department and the IRS do not believe that a plan should fail to satisfy the universal availability requirement merely because the plan utilizes the increased limit for catch-up eligible participants attaining age 60 through 63 that is permitted under the Code pursuant to section 414(v)(2)(E). Thus, a new provision would be added to § 1.414(v)–1(e)(1) setting forth an exception to the general rule in § 1.414(v)–1(e)(1)(i) for a plan that permits each catch-up eligible participant to make elective deferrals up to the statutory maximum dollar amount

of catch-up contributions permitted with respect to the participant. Under this new exception, an applicable employer plan would not fail to satisfy the requirements of section 401(a)(4) merely because the plan allows catch-up eligible participants who are subject to the increased applicable dollar catch-up limit for participants attaining age 60 through 63 under section 414(v)(2)(E) to make catch-up contributions up to that increased limit, while permitting other catch-up eligible participants to make catch-up contributions only up to the applicable dollar catch-up limit that applies generally under section 414(v)(2)(B)(i) or (ii), as applicable.⁶

Similarly, an applicable employer plan that covers employees in both the United States and Puerto Rico would not fail to satisfy the requirements of section 401(a)(4) merely because the plan allows catch-up eligible participants whose catch-up contributions are subject to the limit set forth in section 1081.01(d)(7) of the Puerto Rico Internal Revenue Code of 2011 (13 L.P.R.A. section 30391(d)(7)), as amended (Puerto Rico Code), to make catch-up contributions only up to the amount of that limit.⁷ The Treasury Department and the IRS request comments on the application of the limits in the case of an employee who performs service for an employer both in Puerto Rico and the United States in the same year.

III. Proposed § 1.414(v)–2

A. General Rules Relating to the Requirements of Section 414(v)(7)

1. Roth Catch-Up Requirement Under Section 414(v)(7)(A)

Proposed § 1.414(v)–2(a) would set forth general rules relating to the Roth catch-up requirement under section 414(v)(7)(A). Under proposed § 1.414(v)–2(a)(2), if a catch-up eligible participant in an applicable employer plan had FICA wages for the preceding calendar year from the employer sponsoring the plan (as defined in proposed § 1.414(v)–2(b)(3)) that exceeded \$145,000, then section 414(v)(1) would apply with respect to the participant's elective deferrals that are catch-up contributions only if they

are designated Roth contributions (as defined in section 402A(c)(1)). Under proposed § 1.414(v)–2(a)(3), the \$145,000 Roth catch-up wage threshold would be subject to cost-of-living adjustments, in accordance with section 414(v)(7)(E).⁸ Under proposed § 1.414(v)–2(a)(4), the Roth catch-up requirement would not apply to a participant in a SEP arrangement or a SIMPLE IRA plan, in accordance with section 414(v)(7)(C).

Consistent with section 414(v)(7)(A) and the description of anticipated guidance in Notice 2023–62, proposed § 1.414(v)–2(a)(2) would provide that a participant who did not have FICA wages exceeding \$145,000 (as adjusted) from the employer sponsoring the plan for the preceding calendar year would not be subject to the Roth catch-up requirement under the plan for the current year. Proposed § 1.414(v)–2(a)(2) would define FICA wages by reference to the FICA taxes imposed by sections 3101(a) and 3111(a), not sections 3101(b) and 3111(b), and notes that the wages are taken into account for this purpose in the same year that they are taken into account for FICA tax purposes. Accordingly, an individual who did not have any FICA wages from the employer sponsoring the plan for the preceding calendar year (for example, a partner who had only self-employment income; an individual who had wages under section 3231(e) that are subject to taxation under the Railroad Retirement Tax Act, codified at title 45, chapter 9 of the United States Code, rather than FICA; or a State or local government employee whose services were excluded from the definition of employment under section 3121(b)(7) without regard to section 3121(u)) would not be subject to the Roth catch-up requirement under the plan in the current year. Similarly, an individual who received cash compensation from the employer sponsoring the plan in the preceding calendar year but nevertheless did not have any FICA wages from the employer for that year (for example, because the compensation was taxed in an earlier year pursuant to section 3121(v)(2)) would not be subject to the Roth catch-up requirement under the plan in the current year.

⁶ The higher applicable dollar catch-up limit for participants attaining age 60 through 63 may, but is not required to be, included in an applicable employer plan. Thus, an applicable employer plan may also be designed to limit the catch-up contributions for those participants to the same applicable dollar catch-up limit that applies for all other catch-up eligible participants.

⁷ For taxable years beginning in 2024, the limit on catch-up contributions that can be made by a participant who is eligible to make catch-up contributions under the Puerto Rico Code is \$1,500.

⁸ The Roth catch-up wage threshold of \$145,000 would be applied to a catch-up eligible participant's 2023 FICA wages to determine whether the Roth catch-up requirement applies to the participant's catch-up contributions made for 2024. In accordance with Notice 2024–80, 2024–47 IRB 1120, the Roth catch-up wage threshold that would be applied to a catch-up eligible participant's 2024 FICA wages to determine whether the Roth catch-up requirement applies to the participant's catch-up contributions made for 2025 remains \$145,000.

Further, proposed § 1.414(v)–2 would not require that the Roth catch-up wage threshold be prorated for the first year of hire. Thus, a participant who worked for the employer sponsoring the plan for only part of the preceding calendar year would be subject to the Roth catch-up requirement in the current year only if the participant had wages exceeding the full Roth catch-up wage threshold from the employer for the preceding calendar year.

2. Availability of Roth Catch-Up Contributions Under Section 414(v)(7)(B)

Section 414(v)(7)(B) provides that, in the case of an applicable employer plan with respect to which section 414(v)(7)(A) applies to any participant for a plan year, section 414(v)(1) shall not apply to the plan unless the plan provides that any catch-up eligible participant may make catch-up contributions as designated Roth contributions. In accordance with section 414(v)(7)(B), proposed § 1.414(v)–2(a)(5)(i) would provide that if any catch-up eligible participant who is subject to the Roth catch-up requirement is permitted to make catch-up contributions as designated Roth contributions under an applicable employer plan for a plan year, then the plan would be required to allow all other catch-up eligible participants to also make catch-up contributions as designated Roth contributions for the plan year.⁹

Proposed § 1.414(v)–2(a)(5)(ii) sets forth a rule that would address the application of section 414(v)(7)(B) to a plan that is subject to the qualification requirements of both section 401(a) and section 1081.01 of the Puerto Rico Code (dual-qualified plan).¹⁰ If a dual-qualified plan that covers both employees in the United States and employees in Puerto Rico permits any catch-up eligible participant who is subject to the Roth catch-up requirement to make catch-up contributions as designated Roth

contributions for a plan year, then, in accordance with section 414(v)(7)(B), the plan is generally required to permit all catch-up eligible participants to make catch-up contributions as designated Roth contributions for the plan year. The Puerto Rico Code does not provide for designated Roth contributions, but it does allow plans to offer the opportunity to make after-tax contributions. Accordingly, in the case of a dual-qualified plan that permits Roth catch-up contributions for participants in the United States, proposed § 1.414(v)–2(a)(5)(ii) would treat the requirements of section 414(v)(7)(B) as satisfied with respect to a catch-up eligible participant who is subject to section 1081.01 of the Puerto Rico Code if the plan permits the participant to make catch-up contributions as after-tax contributions within the meaning of section 1081.01(a)(15) of the Puerto Rico Code.

B. Rules of Operation for Implementing the Roth Catch-Up Requirement

1. Designated Roth Contributions That Are Treated as Catch-Up Contributions for Purposes of the Roth Catch-Up Requirement

The Treasury Department and the IRS received comments in response to Notice 2023–62 requesting clarification that designated Roth contributions made at any point within a year may be counted towards satisfaction of the Roth catch-up requirement, even if the designated Roth contributions are made earlier than the contributions that are determined to be catch-up contributions (that is, before the participant is considered to have reached an applicable limit on elective deferrals for the year).

In general, under existing § 1.414(v)–1(b)(2)(i)(A) and (c)(3), the amount of a participant's elective deferrals in excess of an applicable limit is determined as of the end of a plan year (or limitation year, in the case of the section 415(c) limit) by comparing the participant's total elective deferrals for the plan year (or total annual additions for the limitation year) with the applicable limit for the plan year (or limitation year). However, under § 1.414(v)–1(c)(3), in the case of an applicable limit that is applied on the basis of a year other than the plan year or limitation year (for example, the calendar-year limit on elective deferrals under section 401(a)(30)), the determination of whether elective deferrals are treated as catch-up contributions is made at the time they are deferred. Thus, if the timing rule in § 1.414(v)–1(c)(3) that applies for purposes of determining

whether an elective deferral is a catch-up contribution also applies for purposes of determining whether a designated Roth contribution is a catch-up contribution that satisfies the Roth catch-up requirement, then, in the case of elective deferrals that are catch-up contributions because they exceed a calendar-year limit (such as the section 401(a)(30) limit), only elective deferrals that are made after reaching that limit would be taken into account in satisfying the Roth catch-up requirement.

Commenters suggested that limiting the designated Roth contributions that may be taken into account in satisfying the Roth catch-up requirement in this manner is not an appropriate approach. For example, a commenter noted that if this approach is used, then a catch-up eligible participant who would like to make elective deferrals for a calendar year in an amount equal to the sum of the section 401(a)(30) limit on elective deferrals and the applicable dollar catch-up limit would be required to make the elective deferrals as designated Roth contributions during the latter part of the year (or after the section 401(a)(30) limit is reached). This would be required even if the participant would prefer to have designated Roth contributions made throughout the year or even if the participant had already frontloaded the designated Roth contributions by making elective deferrals in an amount equal to the applicable dollar catch-up limit as designated Roth contributions during the earlier part of the year.

To address commenters' concerns, provide maximum flexibility for participants, and alleviate administrative burdens, proposed § 1.414(v)–2(b)(1) would take into account designated Roth contributions that are made prior to an applicable limit being reached for purposes of determining whether the Roth catch-up requirement is satisfied. Under proposed § 1.414(v)–2(b)(1), an elective deferral that is determined to be a catch-up contribution at the time of contribution under the timing rules in § 1.414(v)–1(c)(3) (for example, on account of exceeding the section 401(a)(30) limit) would be required to be made as a designated Roth contribution by a participant who is subject to the Roth catch-up requirement only to the extent the participant has not previously made elective deferrals as designated Roth contributions during the calendar year or taxable year equal to the applicable dollar catch-up limit. Thus, if a catch-up eligible participant's total elective deferrals that are designated Roth contributions over the course of a

⁹ By contrast, if none of the participants who are subject to the Roth catch-up requirement are permitted to make catch-up contributions under a plan for a plan year (for example, if a plan does not include a qualified Roth contribution program), then section 414(v)(7)(A) would not be considered to apply to any catch-up eligible participant in the plan for the plan year (and the requirement of section 414(v)(7)(B) would not apply to the plan). This interpretation of section 414(v)(7)(B) is consistent with the Joint Committee on Taxation general explanation of the provision. See JCS–1–23 (December 2023).

¹⁰ For purposes of this NPRM, a dual-qualified plan includes a plan for which an election under section 1022(i)(2) of the Employee Retirement Income Security Act of 1974 (Pub. L. 93–406, 88 Stat. 829), as amended (ERISA), has been made.

calendar year or taxable year equal or exceed the total elective deferrals that are determined to be catch-up contributions, then the participant would satisfy the Roth catch-up requirement.¹¹

2. Plans That Do Not Include a Qualified Roth Contribution Program

In accordance with section 402A(a), an applicable employer plan may, but is not required to, include a qualified Roth contribution program within the meaning of section 402A(b). However, in the case of a catch-up eligible participant who is subject to the Roth catch-up requirement, section 414(v)(1) applies only if any catch-up contributions made by the participant are designated Roth contributions. Therefore, if an applicable employer plan does not include a qualified Roth contribution program, then a participant who is subject to the Roth catch-up requirement would be prohibited from making catch-up contributions under the plan.

The proposed regulations would not require an applicable employer plan to include a qualified Roth contribution program. Thus, under the proposed regulations, an applicable employer plan that does not have a qualified Roth contribution program would be allowed to permit catch-up eligible participants who are not subject to the Roth catch-up requirement to make catch-up contributions even though catch-up eligible participants who are subject to the Roth catch-up requirement would not be permitted to make catch-up contributions.

However, the universal availability requirement under existing § 1.414(v)–1(e) provides that an applicable employer plan will be treated as failing to meet the nondiscrimination requirements under section 401(a)(4) with respect to benefits, rights, and features unless all catch-up eligible participants under the plan are provided with an effective opportunity to make the same dollar amount of catch-up contributions. Proposed § 1.414(v)–1(e)(1)(iii) would add a rule providing that an applicable employer plan would not violate the universal availability requirement merely because the plan permits each catch-up eligible participant to make elective deferrals up

to the maximum dollar amount of catch-up contributions permitted under applicable law with respect to that participant. If a plan does not include a qualified Roth contribution program, then the maximum dollar amount of catch-up contributions permitted based on applicable law with respect to a catch-up eligible participant in the plan who is subject to the Roth catch-up requirement is \$0. Proposed § 1.414(v)–2(b)(2) would address this situation by providing that an applicable employer plan that does not include a qualified Roth contribution program does not fail to satisfy the universal availability requirement merely because the plan (or another applicable employer plan maintained by the employer that does not include a qualified Roth contribution program) does not permit catch-up eligible participants who are subject to the Roth catch-up requirement to make catch-up contributions.

Generally, under § 1.414(v)–1(d)(4), an applicable employer plan does not violate § 1.401(a)(4)–4 merely because the group of employees for whom catch-up contributions are currently available is not a group of employees that would satisfy the minimum coverage requirements of section 410(b). Under the proposed regulations, § 1.414(v)–1(d)(4) would not apply to an applicable employer plan that does not include a qualified Roth contribution program and permits only catch-up eligible participants who are not subject to the Roth catch-up requirement to make catch-up contributions. The reason the proposed regulations would provide that § 1.414(v)–1(d)(4) does not apply to such a plan is that not all catch-up eligible employees under the plan will be able to make catch-up contributions.

Because the Roth catch-up wage threshold is slightly lower than the wage threshold used in the definition of highly compensated employee (HCE) under section 414(q)(1)(B), some non-HCEs may be subject to the Roth catch-up requirement.¹² Thus, if a plan that does not include a qualified Roth contribution program prohibits catch-up eligible participants who are subject to the Roth catch-up requirement from making catch-up contributions, while permitting other catch-up eligible participants to make catch-up contributions, then the outcome of the nondiscrimination test with respect to the availability of catch-up contributions performed under § 1.401(a)(4)–4 may be affected.

Accordingly, proposed § 1.414(v)–2(b)(2) would permit such a plan to also preclude one or more catch-up eligible participants who are HCEs and who are not subject to the Roth catch-up requirement (for example, because they did not receive FICA wages for the preceding year) from making catch-up contributions if doing so facilitates satisfaction of § 1.401(a)(4)–4 with respect to the availability of catch-up contributions.

3. Determination of Employer Sponsoring the Plan

The determination as to whether the Roth catch-up requirement applies to a catch-up eligible participant is based on the amount of the participant's FICA wages for the preceding year “from the employer sponsoring the plan,” but that phrase is not defined in section 414(v)(7). For purposes of determining an individual's FICA wages, the term “employer” generally means the person for whom the individual performs service as an employee under the common law standards that apply under § 31.3121(d)–1(c). Thus, for purposes of determining the individual's FICA wages, the term “employer” generally refers solely to an individual's common law employer.¹³ Because the phrase “from the employer sponsoring the plan” modifies the reference to FICA wages in section 414(v)(7)(A), the determination of whether the Roth catch-up requirement applies to a participant would generally follow the FICA rules and be based on the FICA wages from the participant's common law employer.

Thus, proposed § 1.414(v)–2(b)(3) would provide that, with respect to each catch-up eligible participant who is subject to the Roth catch-up requirement, the term “employer sponsoring the plan” only refers to the participant's common law employer contributing to the plan.¹⁴ Under the

¹³ In general, FICA wages are determined separately by related employers. See § 31.3121(a)(1)–(a)(3) (“If during a calendar year the employee receives remuneration from more than one employer, the annual wage limitation does not apply to the aggregate remuneration received from all of such employers, but instead applies to the remuneration received during such calendar year from each employer.”). See also § 31.3121(s)–1(a) (“For purposes of section . . . 3121(a)(1), except as otherwise provided . . . , when two or more related corporations concurrently employ the same individual and compensate that individual . . . , each of the corporations is considered to have paid only the remuneration it actually disburses to that individual.”).

¹⁴ This rule applies even if responsibilities under chapter 21 of the Code are imposed on a third party, such as a section 3401(d) statutory employer, a section 3504 agent, a section 3121(s) common

¹¹ This is also the case with respect to elective deferrals that are determined to be catch-up contributions because the plan would fail the actual deferral percentage (ADP) test under section 401(k)(3) if it did not correct under section 401(k)(8). The determination of elective deferrals that are catch-up contributions because they are in excess of this ADP limit in § 1.414(v)–1(b)(1)(iii) occurs in the plan year following the plan year for which the elective deferrals are made.

¹² This is particularly true if an employer makes the top-paid group election under section 414(q)(1)(B)(ii).

proposed regulation, the “employer sponsoring the plan” would not include other entities that are treated as a single employer with a catch-up eligible participant’s common law employer under section 414(b), (c), (m), or (o). For example, if there are multiple employers participating in a plan that are treated as a single employer under the controlled group rules, each of the participating employers that is a common law employer would be a separate employer sponsoring the plan.

Similarly, in the context of catch-up contributions made to a multiple employer plan or multiemployer plan by a catch-up eligible participant subject to the Roth catch-up requirement, the “employer sponsoring the plan” means the participant’s common law employer that is the source of the participant’s FICA wages and contributions to the plan. Some commenters have suggested that the Roth catch-up requirement does not apply to a multiemployer plan because section 3(16)(B) of ERISA defines the “plan sponsor” of a multiemployer plan as the joint board of trustees rather than the contributing employers. Under the interpretation of section 414(v)(7)(A) suggested by the commenters, the employer that is the source of the employee’s FICA wages would be a signatory of the collective bargaining agreement pursuant to which the employer’s employees participate in the multiemployer plan and a contributor to that plan, but would not be the “employer sponsoring the plan” for purposes of section 414(v)(7)(A).¹⁵ The Treasury Department and the IRS do not agree that this is a reasonable interpretation of section 414(v)(7)(A) because ERISA is a separate statute from the Code and does not include any provisions that directly apply, or are even parallel, to the Code’s catch-up contribution rules. Rather, in the context of the Roth catch-up requirement, the “employer sponsoring the plan” is the common law employer that is the source of the participant’s FICA wages and contributions to the multiemployer plan.

The Treasury Department and the IRS understand from comments received that multiemployer plans and other plans maintained pursuant to a collective bargaining agreement would benefit from an extended applicability date for the Roth catch-up requirement

so that the terms of any applicable collective bargaining agreement can be conformed to that requirement. In response to these comments, proposed § 1.414(v)–2(e)(2)(ii) would provide that proposed § 1.414(v)–2 does not apply to a plan maintained pursuant to one or more collective bargaining agreements until the first taxable year beginning more than 6 months after the date that final regulations adding § 1.414(v)–2 to the Code of Federal Regulations are issued, or, if later, the first taxable year beginning after the date on which the last collective bargaining agreement related to the plan that is in effect on December 31, 2025, terminates (determined without regard to any extension of those collective bargaining agreements).

4. Plans With More Than One Employer Sponsoring the Plan

Consistent with the treatment of the term “employer sponsoring the plan” as referring to a catch-up eligible participant’s common law employer without aggregation with other employers under section 414(b), (c), (m), or (o), proposed § 1.414(v)–2(b)(4) would apply the Roth catch-up requirement on the basis of FICA wages (if any) for the preceding calendar year solely from a participant’s common law employer without aggregating those wages with the FICA wages from other employers, including employers that participate in the same plan or employers that are treated as a single employer together with the common law employer under section 414(b), (c), (m), or (o). Thus, a catch-up eligible participant who had FICA wages exceeding \$145,000 (as adjusted) in the preceding calendar year from any employer other than the employer sponsoring the plan (as defined with respect to the participant in accordance with proposed § 1.414(v)–2(b)(3)) would not be subject to the Roth catch-up requirement under the plan in the current year if the participant did not also have more than \$145,000 (as adjusted) of FICA wages for the preceding year from the employer sponsoring the plan. This is consistent with the description of anticipated guidance that was included in Notice 2023–62.

C. Treatment of Pre-Tax Catch-Up Contributions That Are Required To Be Designated Roth Contributions Under Section 414(v)(7)

1. Correcting a Violation of the Section 414(v)(7) Roth Catch-Up Requirement

Section 414(v)(7)(A) provides that section 414(v)(1) applies to catch-up

contributions made by a participant who is subject to the Roth catch-up requirement only if the catch-up contributions are designated Roth contributions. If a participant who is subject to the Roth catch-up requirement makes a pre-tax elective deferral in excess of an applicable limit, then section 414(v)(1) will not apply to that elective deferral and the plan will fail to be qualified unless the plan corrects the failure. A plan is permitted to correct this type of error by distributing the additional elective deferrals that are not catch-up contributions under section 414(v)(1) from the plan in accordance with a permitted correction method specific to the limit on elective deferrals that the additional elective deferrals exceeded (for example, the correction method in § 1.402(g)–1(e) for elective deferrals that exceeded the section 401(a)(30) limit, the correction method in section 6.06(1) and (2) of Revenue Procedure 2021–30, 2021–31 IRB 172, for elective deferrals that resulted in the participant’s annual additions exceeding the section 415(c) limit, or the correction method in § 1.401(k)–2(b)(2) or Appendix B, section 2.01, of Revenue Procedure 2021–30 for elective deferrals that exceeded the ADP limit).

In response to Notice 2023–62, the Treasury Department and the IRS received several comments requesting guidance that would permit a pre-tax elective deferral that exceeds an applicable limit to be treated as a designated Roth contribution in order to satisfy the Roth catch-up requirement (as an alternative to distribution of these elective deferrals from the plan). Commenters requested this guidance with respect to elective deferrals that were intended to be catch-up contributions at the time amounts were contributed (because the contributions exceeded plan or statutory limits) but which were not made as Roth contributions because of an error. Commenters also raised specific concerns relating to elective deferrals that are catch-up contributions because they exceed the ADP limit. This concern arises because the determination of whether an elective deferral exceeds the ADP limit (and, therefore, could be a catch-up contribution) cannot be made until after the close of the plan year (that is, after the elective deferral is made).

The Treasury Department and the IRS agree that a correction procedure by which a plan can correct a section 414(v)(7) failure (that is, a failure to satisfy the Roth catch-up requirement), other than through distribution from the plan of elective deferrals in excess of an

paymaster, a section 3511 certified PEO, or a section 3512 motion picture project employer.

¹⁵ This would not be the case with respect to an employee of the joint board of trustees who participates in the plan. In that case, the joint board of trustees would be both the “sponsor” within the meaning of section 3(16)(B) of ERISA and the common law employer.

applicable limit which fail to comply with section 414(v)(7)(A), is warranted. Thus, proposed § 1.414(v)–2(c) would set forth additional permissible methods and related rules for correcting a pre-tax elective deferral that exceeds an applicable limit in order to comply with the Roth catch-up requirement, which are discussed in the next section of this Explanation of Provisions.¹⁶

2. Additional Permissible Correction Methods for Elective Deferrals That Exceed an Applicable Limit

Proposed § 1.414(v)–2(c)(2) sets forth two new methods that a plan would be permitted to use to correct a failure of the Roth catch-up requirement as it applies to elective deferrals that exceed an applicable limit. Under proposed § 1.414(v)–2(c)(2)(i), a plan would be permitted to provide for either correction method but, with respect to a plan year, the plan would be required to apply the same correction method for all participants with elective deferrals in excess of the same applicable limit.

a. Form W–2 Correction Method

Under the correction method set forth in proposed § 1.414(v)–2(c)(2)(ii), a plan would be permitted to correct a participant's pre-tax catch-up contribution that was required to be a designated Roth contribution by transferring the elective deferral (adjusted for allocable gain or loss) from the participant's pre-tax account to the participant's designated Roth account and reporting the contribution (not adjusted for allocable gain or loss) as a designated Roth contribution on the participant's Form W–2 (Wage and Tax Statement) for the year of the deferral (that is, reporting the contribution as if it had been correctly made as a designated Roth contribution). Under this correction method, the contribution (not adjusted for allocable gain or loss) would be includible in the participant's gross income for the year of the deferral as if the contribution had been correctly made as a designated Roth contribution. However, this method would not be permitted to be used if the participant's

Form W–2 for that year has already been filed or furnished to the participant.¹⁷

b. In-Plan Roth Rollover Correction Method

Under proposed § 1.414(v)–2(c)(2)(iii), a plan would be permitted to correct a participant's pre-tax catch-up contribution that was required to be a designated Roth contribution through an in-plan Roth rollover in accordance with section 402A(c)(4)(E). Under this method, a plan would directly roll over the elective deferral (adjusted for allocable gain or loss) from the participant's pre-tax account to the participant's designated Roth account and report the amount of the in-plan Roth rollover on Form 1099–R (Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.) for the year of rollover. The provisions of Notice 2010–84, 2010–51 IRB 872, and Notice 2013–74, 2013–52 IRB 819, would generally apply to an in-plan Roth rollover used to correct a section 414(v)(7) failure. Thus, the amount directly rolled over to the participant's designated Roth account would be the same as the amount reported on Form 1099–R, and the contribution (adjusted for allocable gain or loss) would be includible in the participant's gross income for the year of the rollover.

3. General Correction Requirements and Deadlines To Correct

a. Prerequisite To Correct Certain Section 414(v)(7) Failures Under the New Correction Methods

Under proposed § 1.414(v)–2(c)(3)(i), a plan would be eligible to use a new correction method with respect to pre-tax elective deferrals that exceed a statutory limit described in § 1.414(v)–1(b)(1)(i) (such as contributions that exceed the section 401(a)(30) limit or that result in the participant's annual additions exceeding the section 415(c) limit) only if the plan sponsor or plan administrator has in place practices and procedures designed to result in compliance with section 414(v)(7) at the time an elective deferral is made.¹⁸ A

plan would not meet this requirement unless the plan provides for a deemed Roth catch-up election in accordance with proposed § 1.401(k)–1(f)(5)(iii) and (iv). Under the deemed Roth catch-up election approach, if a participant who is subject to the Roth catch-up requirement has made pre-tax elective deferrals for a calendar year that equal the section 401(a)(30) limit for the taxable year that begins in the calendar year, then subsequent elective deferrals made by the participant in the calendar year would automatically be made as designated Roth contributions, even if the participant has not made an affirmative election to make catch-up contributions as designated Roth contributions. Similarly, if such a participant has made pre-tax elective deferrals for a limitation year that result in the participant's annual additions for the limitation year exceeding the section 415(c) limit, then subsequent elective deferrals made by the participant in the limitation year would automatically be made as designated Roth contributions.

If a plan does not provide for a deemed Roth catch-up election and the plan accepts a pre-tax elective deferral that would be a catch-up contribution on account of exceeding a statutory limit described in § 1.414(v)–1(b)(1)(i) and the elective deferral is required to be a designated Roth contribution in accordance with the Roth catch-up requirement, then the plan would not be eligible to use a correction method described in § 1.414(v)–2(c)(2) and, therefore, would have to use an otherwise-applicable correction method to distribute the elective deferral (for example, the correction method in § 1.402(g)–1(e) relating to an elective deferral that exceeds the section 401(a)(30) limit).¹⁹

A plan would not fail to meet the requirement to have in place practices and procedures that are designed to result in compliance with the Roth

provided limit as described in § 1.414(v)–1(b)(1)(ii). A plan would also not be required to have such practices and procedures in place in order to correct a pre-tax elective deferral that is a catch-up contribution because it exceeds the ADP limit as described in § 1.414(v)–1(b)(1)(iii). This is because these elective deferrals are not determined to be catch-up contributions under § 1.414(v)–1(c)(3) until the last day of the plan year of deferral or in the following plan year.

¹⁹ In the case of a plan that does not provide for a deemed Roth catch-up election, if the plan provides that it will not accept an elective deferral that exceeds an applicable limit on elective deferrals unless the elective deferral is a catch-up contribution, then the plan may be designed to automatically stop elective deferrals for a catch-up eligible participant who is subject to the Roth catch-up requirement after the participant's elective deferrals reach an applicable limit (unless the participant has designated the additional elective deferrals as Roth contributions).

¹⁶ Commenters also suggested that a plan be permitted to avoid having to correct section 414(v)(7) failures by requiring that all catch-up contributions be made as designated Roth contributions. The Treasury Department and the IRS have considered that suggestion and concluded that, for a participant who is not subject to the Roth catch-up requirement, allowing a plan design that requires all participants' catch-up contributions to be designated Roth contributions would be inconsistent with the language of section 402A(b)(1), which provides that a designated Roth contribution must be elected by an employee "in lieu of all or a portion of elective deferrals the employee is otherwise eligible to make."

¹⁷ This method would generally not be available with respect to an elective deferral that is a catch-up contribution because it exceeds the ADP limit under a plan with a calendar year plan year. This is because a participant's Form W–2 for a year is generally filed and furnished to the participant prior to determination of any catch-up contributions made by the participant because the elective deferrals exceed the ADP limit for such a plan year.

¹⁸ A plan would not be required under proposed § 1.414(v)–2(c)(3)(i) to have such practices and procedures in place in order to correct a pre-tax catch-up contribution that is a catch-up contribution because it exceeds an employer-

catch-up requirement at the time an elective deferral is made merely because the plan determines the applicability of the Roth catch-up requirement to a participant solely on the basis of the participant's FICA wages from the employer sponsoring the plan for the preceding calendar year as reported on a timely-filed Form W-2 with respect to the participant. However, if the amount of a participant's FICA wages for the preceding calendar year that is timely reported on a Form W-2 is later determined to be incorrect, a plan would have to correct any pre-tax catch-up contributions that should have been designated Roth contributions on the basis of the adjusted FICA wages for the preceding calendar year.²⁰

b. Deadline To Correct Section 414(v)(7) Failures

Proposed § 1.414(v)-2(c)(3)(iii) provides the deadlines that would apply for correction of a pre-tax catch-up contribution under the new correction methods for a section 414(v)(7) failure. Under the proposed regulation, the deadline to correct a section 414(v)(7) failure would depend on which limit is the basis for the pre-tax elective deferral being designated a catch-up contribution.²¹

If the elective deferral is a catch-up contribution because it exceeds the section 401(a)(30) limit on elective deferrals, then § 1.414(v)-2(c)(3)(iii)(A) would provide that the deadline to complete the corrective steps under proposed § 1.414(v)-2(c)(2) is April 15 of the calendar year following the calendar year for which the elective deferral was made. This is consistent with the deadline that applies for correcting excess deferrals above the section 401(a)(30) limit by distribution under § 1.402(g)-1(e).

If the elective deferral is a catch-up contribution because it results in the participant's annual additions for a limitation year exceeding the section 415(c) limit, then § 1.414(v)-2(c)(3)(iii)(B) would provide that the deadline to complete the corrective steps under proposed § 1.414(v)-2(c)(2) is the deadline that applies under § 1.415(c)-1(b)(6) for allocating amounts

to the limitation year for which the elective deferral was made.

Under proposed § 1.414(v)-2(c)(3)(iii)(C), the deadline to correct a pre-tax catch-up contribution that exceeds the ADP limit under the new correction methods would be the date that is 2½ months (6 months, in the case of plans that include an eligible automatic contribution arrangement within the meaning of section 414(w)) after the close of the plan year for which the excess contribution was made. This is consistent with the deadline under § 1.401(k)-2(b)(5) for distributing excess contributions above the ADP limit in order to avoid a 10 percent excise tax on the excess contributions. Under the proposed regulations, this would also be the deadline to correct a pre-tax catch-up contribution that is a catch-up contribution because it exceeds an employer-provided limit (because the determination of catch-up contributions, which are disregarded for purposes of the ADP test, needs to be made before the performance of the ADP test).

Proposed Applicability Date

The amendments to § 1.414(v)-1 are proposed to apply with respect to contributions in taxable years that begin more than 6 months after the date that final regulations amending § 1.414(v)-1 are issued. However, the proposed regulations would permit a taxpayer to elect to apply: (1) proposed § 1.414(v)-1(c)(2)(ii)(C) and (c)(2)(iii)(C) (relating to the higher catch-up limit for certain newly-established SIMPLE plans) with respect to taxable years beginning after December 31, 2023, and (2) proposed § 1.414(v)-1(c)(2)(i)(B), (c)(2)(ii)(B), and (c)(2)(iii)(B) (relating to the higher catch-up limit applicable during the taxable year of attainment of age 60 through 63) with respect to taxable years beginning after December 31, 2024.

For a plan that is not maintained pursuant to a collective bargaining agreement, proposed § 1.414(v)-2 and the proposed amendments to §§ 1.401(k)-1 and 1.403(b)-3 are proposed to apply with respect to contributions in taxable years beginning more than 6 months after the date that final regulations adding § 1.414(v)-2 to the Code of Federal Regulations are issued. For a plan that is maintained pursuant to one or more collective bargaining agreements, proposed § 1.414(v)-2 and the proposed amendments to §§ 1.401(k)-1 and 1.403(b)-3 are proposed to apply with respect to contributions in taxable years beginning after the later of the first taxable year described in the preceding sentence, or the first taxable year that begins after the date on which the last

collective bargaining agreement related to the plan that is in effect on December 31, 2025, terminates (determined without regard to any extension of those agreements). However, under the proposed regulations, a plan would be permitted to apply § 1.414(v)-2 and the amendments to §§ 1.401(k)-1 and 1.403(b)-3 with respect to contributions in taxable years beginning after December 31, 2023.

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) 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. A Federal 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 contain reporting requirements, contained in § 1.414(v)-2(c), that relate to corrections of pre-tax elective deferrals that are catch-up contributions subject to the requirement under section 414(v)(7)(A) of the Code to be designated Roth contributions. These collections of information generally would be used by the IRS for tax compliance purposes and may involve submission of a Form 1099-R to the IRS. This form and its associated burden are approved by the OMB under 1545-0119. The proposed regulation is not changing the reporting procedures already established for this form.

The proposed regulations also contain a recordkeeping requirement that plan administrators maintain written practices and procedures designed to result in real-time compliance with certain requirements of section 414(v)(7)(A). These recordkeeping requirements are expected to be usual and customary business practices that would impose no additional burden on respondents. Therefore, the recordkeeping requirement would not

²⁰ The Treasury Department and the IRS invite comments on whether there are scenarios in which it would not be appropriate to require correction of pre-tax catch-up contributions that are required to be designated Roth contributions on the basis of a subsequent determination that the amount of FICA wages reported on the Form W-2 was incorrect.

²¹ If the applicable deadline for a new correction method under the proposed regulations is not satisfied, then a section 414(v)(7) failure would need to be corrected by a distribution from the plan in accordance with the correction principles set forth in section 6 of Revenue Procedure 2021-30.

require OMB approval under 5 CFR 1320.3(b)(2).

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect individuals and businesses, some of which may be small entities.

Even if a substantial number of small entities would be affected, the economic impact of these proposed regulations is not expected to be significant. As discussed in the Paperwork Reduction Act section of this preamble, these proposed regulations may involve reporting and ordinary recordkeeping but are not expected to result in an increase in estimated burden. Any additional recordkeeping or administrative costs resulting from the changes relating to catch-up contributions that apply to certain section 401(k) plans, 403(b) plans, and eligible governmental 457(b) plans sponsored by small entities are consistent with existing procedures and are not expected to be significant. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

The Treasury Department and the IRS invite comments on the impacts these proposed regulations may have on small entities. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates 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 in 1995 dollars, updated annually for inflation. The proposed regulations do not propose any rule that would 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. The proposed regulations do not propose rules that would have federalism implications, impose substantial direct compliance costs on State and local governments, or preempt State law within the meaning of the Executive order.

Comments and Public Hearing

Before these proposed regulations and proposed amendments to the 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 www.regulations.gov. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing has been scheduled for April 7, 2025, beginning at 10 a.m. EST in the Auditorium of 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 must submit an outline of the topics to be addressed and the time to be devoted to each topic by March 14, 2025 as prescribed in the preamble under the **DATES** section. A period of 10 minutes will be allocated to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. 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 March 14, 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-101268-24 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG-101268-24.

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-101268-24 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG-101268-24.

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-101268-24 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG-101268-24. Requests to attend the public hearing must be received by 5 p.m. EST on April 3, 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-101268-24 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG-101268-24. Requests to attend the public hearing must be received by 5 p.m. EST on April 3, 2025.

Hearings will be made accessible to people with disabilities. To request special assistance during the hearing, please contact the Publications and Regulations Branch 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 April 2, 2025.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings notices, and other guidance cited in this document 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 <http://www.irs.gov>.

Drafting Information

The principal authors of these proposed regulations are Jessica S. Weinberger and Jason E. Levine, of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes (EEE)). However, other personnel from the Treasury Department and the IRS participated in the development of the proposed regulations.

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 is amended by adding entries, in numerical order, for §§ 1.401(k)–1 and 1.414(v)–2 to read in part, as follows:

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

* * *
Section 1.401(k)–1 also issued under 26 U.S.C. 401(m)(9).
* * *

Section 1.414(v)–2 also issued under 26 U.S.C. 414(v)(7)(D).
* * *

■ **Par. 2.** Section 1.401(k)–1 is amended by adding paragraphs (f)(5)(iii) and (iv) to read as follows:

§ 1.401(k)–1 Certain cash or deferred arrangements.

* * * * *

(f) * * *

(5) * * *

(iii) *Deemed Roth catch-up contribution elections.* For taxable years beginning after December 31, 2023, a plan that satisfies the requirements of paragraph (f)(5)(iv) of this section may provide that an employee who is subject to the requirement under section 414(v)(7) to make any catch-up contributions as designated Roth contributions is deemed to have irrevocably designated any elective deferrals that are catch-up contributions as designated Roth contributions in accordance with paragraph (f)(1)(i) of this section. In such a case, the elective deferrals must be—

(A) Treated by the employer as not excludible from the employee's gross income, in accordance with paragraph (f)(2) of this section; and

(B) Maintained by the plan in a separate account, in accordance with paragraph (f)(3) of this section.

(iv) *Election for employees subject to section 414(v)(7)(A).* A plan satisfies the requirements of this paragraph (f)(5)(iv) only if it provides to an employee who is described in paragraph (f)(5)(iii) of this section an effective opportunity (as determined under paragraph (e)(2)(ii) of this section) to make a new election that is different than the deemed election described in paragraph (f)(5)(iii) of this section.

* * * * *

■ **Par. 3.** Section 1.403(b)–3 is amended in paragraph (c)(1) by:

■ a. Removing the reference “§ 1.401(k)–1(f)(1) and (2)” and adding, in its place, the reference “§ 1.401(k)–1(f)(1), (2), (3), and (5)”;

■ b. Adding the language “(or is deemed to be so irrevocably designated in accordance with § 1.401(k)–1(f)(5)(iii))” immediately following the language “otherwise eligible to make under the plan”; and

■ c. Removing the language “(within the meaning of § 1.401(k)–1(f)(2))” and adding, in its place, the language “(within the meaning of § 1.401(k)–1(f)(3))”.

■ **Par. 4.** Section 1.414(v)–1 is amended by:

■ a. In the last sentence of paragraph (a)(1), removing the language “this section and § 1.402(g)–2” and adding, in its place, the language “this section, and §§ 1.414(v)–2 and 1.402(g)–2”;

■ b. Adding paragraph (a)(4);

■ c. Revising and republishing paragraph (c)(2);

■ d. Adding paragraph (e)(1)(iii); and

■ e. Revising and republishing paragraph (i).

The additions and revisions read as follows:

§ 1.414(v)–1 Catch-up contributions.

(a) * * *

(4) *Catch-up contributions must be designated Roth contributions for certain participants.* For provisions relating to the requirement under section 414(v)(7) that catch-up contributions made by certain catch-up eligible participants must be designated Roth contributions, *see* § 1.414(v)–2.

* * * * *

(c) * * *

(2) *Applicable dollar catch-up limit—(i) Plans other than SIMPLE Plans—(A) In general.* Except as provided in paragraph (c)(2)(i)(B) of this section, the applicable dollar catch-up limit that applies under an applicable employer plan, other than a SIMPLE 401(k) plan described in section 401(k)(11) or a SIMPLE IRA plan described in section 408(p), for a taxable year is \$5,000, as adjusted for changes in the cost of living

under paragraph (c)(2)(iii)(A) of this section.

(B) *Higher limit applicable during the taxable year of attainment of age 60 through 63.* For a taxable year beginning after 2024, with respect to a catch-up eligible participant who would attain age 60, 61, 62, or 63 during the taxable year, the applicable dollar catch-up limit for the taxable year under an applicable employer plan described in paragraph (c)(2)(i)(A) of this section is \$11,250 (which is 150 percent of the applicable dollar catch-up limit described in paragraph (c)(2)(i)(A) of this section for a taxable year beginning in 2024), as adjusted for changes in the cost of living under paragraph (c)(2)(iii)(B) of this section.

(ii) *SIMPLE plans—(A) In general.* Except as provided in paragraph (c)(2)(ii)(B) or (C) of this section, the applicable dollar catch-up limit that applies under a SIMPLE 401(k) plan described in section 401(k)(11) or a SIMPLE IRA plan described in section 408(p) for a taxable year is \$2,500, as adjusted for changes in the cost of living under paragraph (c)(2)(iii)(A) of this section.

(B) *Higher limit applicable during the taxable year of attainment of age 60 through 63.* For a taxable year beginning after 2024, with respect to a catch-up eligible participant who would attain age 60, 61, 62, or 63 during the taxable year, the applicable dollar catch-up limit for the taxable year under an applicable employer plan described in paragraph (c)(2)(ii)(A) of this section is \$5,250 (which is 150 percent of the applicable dollar catch-up limit under paragraph (c)(2)(ii)(A) of this section for a taxable year beginning in 2025), as adjusted for changes in the cost of living under paragraph (c)(2)(iii)(B) of this section.

(C) *Higher limit for certain SIMPLE plans.* For a taxable year beginning after 2023, the applicable dollar catch-up limit under an applicable employer plan described in paragraph (c)(2)(ii)(A) of this section that is maintained by an eligible employer meeting the requirements in section 408(p)(2)(E)(iv) is \$3,850 (which is 110 percent of the applicable dollar catch-up limit in effect under paragraph (c)(2)(ii)(A) of this section for a taxable year beginning in 2024), as adjusted for changes in the cost of living under paragraph (c)(2)(iii)(C) of this section. The preceding sentence applies with respect to a taxable year only if the taxable year begins in a calendar year for which the eligible employer is described in section 408(p)(2)(E)(i)(I) or makes the election described in section 408(p)(2)(E)(i)(II).

(iii) *Cost-of-living adjustments*—(A) *In general.* For a taxable year beginning after 2006, the applicable dollar catch-up limit under paragraph (c)(2)(i)(A) or (c)(2)(ii)(A) of this section (whichever applies to the plan) is the initial amount (\$5,000 or \$2,500, respectively), increased for changes in the cost of living. The increase is made at the same time and in the same manner as adjustments under section 415(d), except that the base period is the calendar quarter beginning July 1, 2005, and any increase that is not a multiple of \$500 is rounded to the next lower multiple of \$500.

(B) *Adjustments to higher limit applicable during the taxable year of attainment of age 60 through 63.* For a taxable year beginning after 2025, the applicable dollar catch-up limit under paragraph (c)(2)(i)(B) or (c)(2)(ii)(B) of this section (whichever applies to the plan) is the initial amount (\$11,250 in the case of paragraph (c)(2)(i)(B) of this section and \$5,250 in the case of paragraph (c)(2)(ii)(B) of this section), increased for changes in the cost of living. The increase is made at the same time and in the same manner as adjustments under section 415(d), except that the base period is the calendar quarter beginning July 1, 2024, and any increase that is not a multiple of \$500 is rounded to the next lower multiple of \$500.

(C) *Adjustments to higher limit for certain SIMPLE plans.* For a taxable year beginning after 2024, the applicable dollar catch-up limit under paragraph (c)(2)(ii)(C) of this section is the initial amount (\$3,850), increased for changes in the cost of living. The increase is made at the same time and in the same manner as adjustments under section 415(d), except that the base period is the calendar quarter beginning July 1, 2023, and any increase that is not a multiple of \$500 is rounded to the next lower multiple of \$500.

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(e) * * *

(1) * * *

(iii) *Plans providing the statutory maximum catch-up contributions.* An applicable employer plan does not fail to satisfy the universal availability requirement of this paragraph (e) merely because of differences among catch-up eligible participants as to the dollar amount of catch-up contributions they are permitted to make, provided that each catch-up eligible participant who participates under any applicable employer plan maintained by the employer is provided with an effective opportunity to make the maximum amount of catch-up contributions

permitted for that participant under section 414(v) or, if applicable, section 1081.01(d)(7) of the Puerto Rico Internal Revenue Code of 2011 (13 L.P.R.A. section 30391(d)(7)), as amended. For example, an applicable employer plan does not fail to satisfy the universal availability requirement of this paragraph (e) merely because the plan permits catch-up eligible participants who would attain age 60, 61, 62, or 63 during a taxable year to make catch-up contributions up to the increased applicable dollar catch-up limit in section 414(v)(2)(E) while only permitting other catch-up eligible participants to make catch-up contributions up to the applicable dollar catch-up limit in section 414(v)(2)(B) without regard to section 414(v)(2)(E).

* * * * *

(i) *Applicability dates*—(1) *In general.* Except as described in paragraph (i)(2) of this section or § 1.414(v)–2(e), section 414(v) applies to contributions in taxable years beginning on or after January 1, 2002. Except as provided in paragraph (i)(2) of this section, paragraphs (a) through (h) of this section apply to contributions in taxable years beginning on or after January 1, 2004.

(2) *Increases in applicable dollar catch-up limit under section 414(v)(2)*—(i) *Higher limit during the taxable year of attainment of age 60 through 63.* The amendments to section 414(v)(2) made by section 109 of Division T of the Consolidated Appropriations Act, 2023, Public Law 117–328, 136 Stat. 4459 (2022), known as the SECURE 2.0 Act of 2022 (SECURE 2.0 Act) to provide for a higher applicable dollar catch-up limit for individuals who attain age 60, 61, 62, or 63 during the taxable year apply to contributions in taxable years beginning after December 31, 2024. Paragraphs (c)(2)(i)(B), (c)(2)(ii)(B), and (c)(2)(iii)(B) of this section apply to contributions in taxable years beginning after [DATE SIX MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE] (or, at the election of the taxpayer, taxable years beginning after December 31, 2024). Except as provided in paragraph (i)(2)(ii) of this section, for taxable years beginning on or before December 31, 2024, the applicable dollar catch-up limit is determined under § 1.414(v)–1(c)(2) as it appeared in the April 1, 2024, edition of 26 CFR part 1.

(ii) *Higher limit for certain SIMPLE plans.* The amendments to section 414(v)(2) made by section 117 of the SECURE 2.0 Act to provide for a higher applicable dollar catch-up limit for certain SIMPLE plans apply to contributions in taxable years beginning

after December 31, 2023. Paragraphs (c)(2)(ii)(C) and (c)(2)(iii)(C) of this section apply to contributions in taxable years beginning after [DATE SIX MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE] (or, at the election of the taxpayer, taxable years beginning after December 31, 2023). For taxable years beginning on or before December 31, 2023, the applicable dollar catch-up limit for a SIMPLE 401(k) plan described in section 401(k)(11) or a SIMPLE IRA plan described in section 408(p) is determined under § 1.414(v)–1(c)(2)(ii) as it appeared in the April 1, 2024, edition of 26 CFR part 1.

■ **Par. 5.** Section 1.414(v)–2 is added to read as follows:

§ 1.414(v)–2 Catch-up contributions required to be designated Roth contributions under section 414(v)(7).

(a) *Section 414(v)(7) Roth catch-up contribution requirement*—(1) *Organization of this section.* Paragraphs (a)(2) through (5) of this section provide general rules relating to the requirements of section 414(v)(7). Paragraph (b) of this section provides certain rules of operation for implementing the requirements of section 414(v)(7) addressed in this paragraph (a). Paragraph (c) of this section provides rules relating to the treatment of pre-tax catch-up contributions that were required to be designated Roth contributions under section 414(v)(7). Paragraph (d) of this section provides examples illustrating the application of the rules of this section. Paragraph (e) of this section sets forth the statutory and regulatory effective dates relating to the section 414(v)(7) Roth catch-up requirement.

(2) *Roth catch-up contribution requirement in general.* For a taxable year beginning on or after January 1, 2024, if, for the calendar year preceding the calendar year in which the taxable year begins, a catch-up eligible participant in an applicable employer plan had wages (as defined in section 3121(a) for purposes of the taxes imposed by sections 3101(a) and 3111(a), for the year the wages are required to be taken into account for purposes of chapter 21 of the Code) from the employer sponsoring the plan (as determined under paragraph (b)(3) of this section) that exceeded the applicable Roth catch-up wage threshold, then § 1.414(v)–1(a)(1) applies only if that participant's catch-up contributions (as described in § 1.414(v)–1(a)(1)) under the plan are designated Roth contributions (as defined in section 402A(c)(1)). The Roth catch-up wage threshold that applies for

a calendar year is \$145,000, as adjusted for changes in the cost of living under paragraph (a)(3) of this section.

(3) *Cost-of-living adjustment.* For a calendar year beginning after December 31, 2024, the applicable Roth catch-up wage threshold in paragraph (a)(2) of this section is the initial amount (\$145,000), increased for changes in the cost of living. The increase is made at the same time and in the same manner as adjustments under section 415(d), except that the base period is the calendar quarter beginning July 1, 2023, and any increase that is not a multiple of \$5,000 is rounded to the next lower multiple of \$5,000.

(4) *Certain plans not subject to section 414(v)(7).* Paragraph (a)(2) of this section does not apply to a plan described in section 408(k) or (p).

(5) *Availability of designated Roth catch-up contributions—(i) In general.* Except as provided in paragraph (a)(5)(ii) of this section, if, under an applicable employer plan, any catch-up eligible participant who is subject to the Roth catch-up requirement under paragraph (a)(2) of this section is permitted to make catch-up contributions as designated Roth contributions for a plan year, then all catch-up eligible participants in the plan must be permitted to make catch-up contributions as designated Roth contributions for the plan year.

(ii) *Special rule for participants subject to the Puerto Rico Code.* In the case of a catch-up eligible participant who is subject to the Roth catch-up requirement under paragraph (a)(2) of this section and is subject to section 1081.01 of the Puerto Rico Internal Revenue Code of 2011 (13 L.P.R.A. section 30391), as amended (Puerto Rico Code), paragraph (a)(5)(i) of this section is treated as satisfied if, under the applicable employer plan, that participant is permitted to make catch-up contributions as after-tax contributions within the meaning of section 1081.01(a)(15) of the Puerto Rico Code.

(b) *Rules of operation—(1) Determination of catch-up contributions subject to section 414(v)(7) Roth requirement.* For a participant who is subject to the Roth catch-up requirement under paragraph (a)(2) of this section for a plan year, an elective deferral that, in accordance with § 1.414(v)–1(c)(3), is treated as a catch-up contribution at the time of deferral (for example, an elective deferral that is a catch-up contribution because it exceeds the section 401(a)(30) limit on elective deferrals) is required to be a designated Roth contribution only to the extent the participant has not previously

made elective deferrals that are designated Roth contributions during the calendar year or taxable year equal to the applicable dollar catch-up limit under § 1.414(v)–1(c)(2). Thus, for example, if a participant who is subject to the Roth catch-up requirement under paragraph (a)(2) of this section has already made elective deferrals that are designated Roth contributions during the calendar year that equal or exceed the applicable dollar catch-up limit at the time the participant's elective deferrals reach the section 401(a)(30) limit on elective deferrals, section 414(v)(7) would not require the participant's subsequent elective deferrals for the calendar year to be designated Roth contributions even though they are treated as catch-up contributions under § 1.414(v)–1(c)(3).

(2) *Treatment of plans without qualified Roth contribution programs—(i) In general.* For purposes of § 1.414(v)–1(e)(1)(iii), if an applicable employer plan does not include a qualified Roth contribution program (within the meaning of section 402A(b)), then, for a catch-up eligible participant who is subject to the Roth catch-up requirement under paragraph (a)(2) of this section, the maximum amount of catch-up contributions permitted under section 414(v) is \$0. Such a plan does not fail to satisfy the universal availability requirement of § 1.414(v)–1(e) merely because the plan (or another applicable employer plan maintained by the employer that does not include a qualified Roth contribution program) does not permit catch-up contributions for participants who are subject to the Roth catch-up requirement under paragraph (a)(2) of this section.

(ii) *Application of nondiscrimination requirements.* If an applicable employer plan is described in paragraph (b)(2)(i) of this section, then § 1.414(v)–1(d)(4) does not apply to the plan. As a result, a plan that has one or more highly compensated employees (as defined in section 414(q)) who are not subject to the Roth catch-up requirement under paragraph (a)(2) may need to preclude one or more of those highly compensated employees from making catch-up contributions to facilitate satisfaction of § 1.401(a)(4)–4 with respect to the availability of catch-up contributions. In such a case, the plan is not treated as failing to satisfy the universal availability requirement of § 1.414(v)–1(e) merely because of that preclusion.

(3) *Determination of employer sponsoring the plan.* For purposes of determining the employer sponsoring the plan with respect to a catch-up eligible participant, the employer is the

participant's common law employer. Thus, for purposes of this section, the employer sponsoring the plan does not include other entities that are treated as a single employer with a catch-up eligible participant's common law employer under section 414(b), (c), (m), or (o).

(4) *Plans with more than one employer sponsoring the plan.* If an applicable employer plan has more than one employer sponsoring the plan (that is, the plan is sponsored by multiple employers that are aggregated under section 414(b), (c), (m), or (o), or is a multiple employer plan or a multiemployer plan), a catch-up eligible participant's wages for the preceding calendar year from one employer sponsoring the plan are not aggregated with the wages from another employer sponsoring the plan for purposes of determining whether the participant's wages for the preceding calendar year exceeded the applicable Roth catch-up wage threshold in paragraph (a)(2) of this section. Furthermore, even if a catch-up eligible participant's wages for the preceding calendar year from one employer sponsoring the plan exceeded the applicable Roth catch-up wage threshold in paragraph (a)(2) of this section, elective deferrals made from the participant's compensation from another employer sponsoring the plan that are catch-up contributions would not be required to be designated Roth contributions unless the participant's wages for the preceding calendar year from that other employer also exceeded that wage threshold.

(c) *Treatment of pre-tax catch-up contributions that are required to be designated Roth contributions—(1) General rule.* Subject to paragraph (c)(3) of this section, a pre-tax elective deferral in excess of an applicable limit described in § 1.414(v)–1(b)(1) that, in accordance with paragraph (a)(2) of this section, is a catch-up contribution only if it is a designated Roth contribution does not cause an applicable employer plan to fail to satisfy any requirement of the Internal Revenue Code if the failure to be a designated Roth contribution is corrected in accordance with paragraph (c)(2) of this section.

(2) *Correction of section 414(v)(7) failures—(i) In general.* For purposes of this paragraph (c), if an elective deferral that exceeds a statutory limit, employer-provided limit, or ADP limit (as such terms are defined in § 1.414(v)–1(b)(1)) fails to be a catch-up contribution under section 414(v)(1) because the elective deferral is not a designated Roth contribution, then the failure to satisfy section 414(v)(7) is referred to as a “section 414(v)(7) failure” and may be

corrected in accordance with this paragraph (c)(2). A plan may provide for either of the correction methods described in paragraphs (c)(2)(ii) and (iii) of this section, but with respect to a plan year, the plan must apply the same correction method for all participants with elective deferrals in excess of the same applicable limit.

(ii) *Permitted correction on Form W-2.* A plan may correct a section 414(v)(7) failure by transferring the catch-up contribution (adjusted for earnings and losses) from the participant's pre-tax account to the participant's designated Roth account and reporting the contribution (not adjusted for earnings and losses) as an elective deferral that is a designated Roth contribution on the participant's Form W-2 (Wage and Tax Statement) for the year in which the elective deferral was originally excluded from the participant's gross income. However, this correction method may be used only if the participant's Form W-2 for that year has not been filed or furnished to the participant.

(iii) *Permitted correction by in-plan Roth rollover.* As an alternative to the correction method permitted under paragraph (c)(2)(ii) of this section, a plan may correct a section 414(v)(7) failure by directly rolling over the catch-up contribution (adjusted for earnings and losses) from the participant's pre-tax account to the participant's designated Roth account, in accordance with section 402A(c)(4)(E), and reporting the amount of the in-plan Roth rollover on Form 1099-R (Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.) for the year of the rollover.

(3) *General correction requirements—*

(i) *Practices and procedures.* For a plan to be eligible to use either of the correction methods described under paragraph (c)(2) of this section with respect to an elective deferral that is a catch-up contribution because it exceeds a statutory limit described in § 1.414(v)-1(b)(1)(i), the plan sponsor or plan administrator must have in place practices and procedures designed to result in compliance with section 414(v)(7) at the time the elective deferral is made. As part of these practices and procedures, the plan must provide that the elective deferrals of a participant who is subject to the Roth catch-up requirement under paragraph (a)(2) of this section, but who has not made an affirmative election to make catch-up contributions as designated Roth contributions nor made designated Roth contributions equal to the applicable dollar catch-up limit earlier in a calendar year, are automatically treated

as designated Roth contributions after the participant's pre-tax elective deferrals made during the calendar year equal the section 401(a)(30) limit on elective deferrals for the taxable year that begins in the calendar year. Similarly, the elective deferrals of such a participant who has not made an affirmative election to make catch-up contributions as designated Roth contributions nor made designated Roth contributions equal to the applicable dollar catch-up limit earlier in the limitation year must be automatically treated as designated Roth contributions after the participant's pre-tax elective deferrals result in the participant's annual additions for the limitation year exceeding the section 415(c) limit for the limitation year.

(ii) *Reliance on Form W-2.* A plan sponsor or plan administrator does not fail to have in place practices and procedures in accordance with paragraph (c)(3)(i) of this section merely because a plan determines the applicability of the section 414(v)(7)(A) Roth catch-up requirement to a participant on the basis of a timely-filed Form W-2 with respect to the participant.

(iii) *Deadlines for corrections of section 414(v)(7) failures under paragraph (c)(2) of this section—*(A) *Elective deferrals in excess of a statutory limit.* If the section 414(v)(7) failure arises with respect to an elective deferral that is a catch-up contribution because it exceeds the section 401(a)(30) limit on elective deferrals, the deadline to complete all corrective steps required under paragraph (c)(2) of this section in order to avoid a qualification failure is April 15 of the calendar year following the calendar year for which the elective deferral was made. If the section 414(v)(7) failure arises with respect to an elective deferral that is a catch-up contribution because it results in the participant's annual additions for the limitation year exceeding the section 415(c) limit, the deadline to complete the corrective steps required under paragraph (c)(2) of this section in order to avoid a qualification failure is the deadline that applies under § 1.415(c)-1(b)(6) for allocating amounts to the limitation year for which the elective deferral was made.

(B) *Elective deferrals in excess of an employer-provided limit.* If the section 414(v)(7) failure arises with respect to an elective deferral that is a catch-up contribution because it exceeds an employer-provided limit as described in § 1.414(v)-1(b)(1)(ii), the deadline to complete the corrective steps required under paragraph (c)(2) of this section in order to avoid a qualification failure is

the date that is 2½ months (6 months, in the case of an applicable employer plan that includes an eligible automatic contribution arrangement within the meaning of section 414(w)) after the close of the plan year for which the catch-up contribution was made.

(C) *Elective deferrals in excess of the ADP limit.* If the section 414(v)(7) failure arises with respect to an elective deferral that is a catch-up contribution because it exceeds the ADP limit, the deadline to complete the corrective steps required under paragraph (c)(2) of this section in order to avoid a qualification failure is the date that is 2½ months (6 months, in the case of an applicable employer plan that includes an eligible automatic contribution arrangement within the meaning of section 414(w)) after the close of the plan year for which the excess contribution was made.

(d) *Examples.* The following examples illustrate the application of this section. For purposes of these examples, assume that the participant's elective deferrals under all plans of the employer do not exceed the participant's section 415(c)(3) compensation, the participant's annual additions for a limitation year do not exceed the section 415(c) limit, the taxable year of the participant is the calendar year, the plan includes a qualified Roth contribution program, and the plan year is the calendar year (except as specifically provided). Assume further that this section applies to contributions in taxable years beginning in 2026, the section 401(a)(30) limit on elective deferrals for 2026 is \$24,000, the applicable dollar catch-up limit for 2026 that is applicable to each participant in the examples is \$8,000, and the Roth catch-up wage threshold to be applied to 2025 FICA wages for determining applicability of the Roth catch-up requirement under section 414(v)(7)(A) for a plan year beginning in 2026 is \$150,000.

(1) *Example 1: Application of Roth catch-up wage threshold—*(A) *Facts.* In January 2025, Participant A became an employee of an accounting firm that is structured as a partnership. Through October 2025, A had \$151,000 of FICA wages from the accounting firm. In November 2025, Participant A became a partner in the accounting firm, and, for 2025, Participant A had a \$30,000 distributive share of partnership income from the accounting firm, all of which was self-employment income. Participant A is a partner with the accounting firm for all of 2026.

(B) *Analysis.* Although Participant A is a partner with the accounting firm for the last two months of 2025 and for all

of 2026 (and thus has self-employment income rather than FICA wages for that period), Participant A had more than \$150,000 in FICA wages from the accounting firm for 2025. Thus, Participant A is subject to section 414(v)(7)(A) for 2026, and if Participant A makes elective deferrals in excess of an applicable limit for 2026 under a plan sponsored by the accounting firm, those elective deferrals must be designated Roth contributions.

(2) *Example 2: Application of Roth catch-up wage threshold—(A) Facts.* The facts are the same as in paragraph (d)(1) of this section (*Example 1*), except that Participant A became a partner of the accounting firm in May 2025, and had FICA wages from the firm of \$60,000 before becoming partner. In addition, for 2025, Participant A had a \$150,000 distributive share of partnership income from the accounting firm, all of which was self-employment income.

(B) *Analysis.* Although Participant A had total compensation of \$210,000 for the services Participant A performed for the accounting firm in 2025, only \$60,000 of that amount were FICA wages. Because Participant A did not have more than \$150,000 of FICA wages from the accounting firm for 2025, any elective deferrals in excess of an applicable limit that Participant A makes for 2026 under a plan sponsored by the accounting firm are not required to be designated Roth contributions.

(3) *Example 3: Application of section 414(v)(7)(B) to a plan with a plan year other than the calendar year—(A) Facts.* Participant B participates in an applicable employer plan sponsored by Employer E. The plan year begins on July 1 and ends on June 30. Participant B had \$155,000 in wages within the meaning of section 3121(a) from Employer E for calendar year 2025, and is a catch-up eligible participant for calendar year 2026. For the plan year beginning July 1, 2026, and ending June 30, 2027, the plan allows all catch-up eligible participants to make catch-up contributions and requires that any elective deferrals in excess of an applicable limit made by catch-up eligible participants who are subject to the requirements of section 414(v)(7)(A) be designated Roth contributions.

(B) *Analysis.* Because Participant B's FICA wages from Employer E for calendar year 2025 exceeded \$150,000, Participant B is subject to the requirements of section 414(v)(7)(A) for the first half of the plan year beginning July 1, 2026, and any catch-up contributions that Participant B makes under the plan during that period must be designated Roth contributions.

Because Participant B is permitted to make catch-up contributions that are designated Roth contributions under the plan for the plan year beginning July 1, 2026 (after Participant B reaches an applicable limit (as defined in § 1.414(v)–1(b)(1)), all catch-up eligible participants under the plan must be permitted to make catch-up contributions that are designated Roth contributions for the plan year.

(4) *Example 4: Plans with more than one employer sponsoring the plan—(A) Facts.* Employer F and Employer G are members of a controlled group of corporations within the meaning of section 414(b). Participant C was hired by Employer F on January 1, 2025, and remained employed by Employer F through October 31, 2025. Effective November 1, 2025, Participant C transferred to Employer G and was employed by Employer G for the remainder of 2025. Participant C is employed by Employer G for all of 2026, the year in which Participant C attains age 55. Employer F reported \$155,000 of FICA wages on a Form W–2 for Participant C for 2025. Employer G reported \$35,000 of FICA wages on a Form W–2 for Participant C for 2025. Employers F and G are participating employers in a section 401(k) plan, Plan P. Participant C becomes eligible to participate in Plan P on January 1, 2026, and all of Participant C's elective deferrals for 2026 are made from compensation paid by Employer G.

(B) *Analysis.* Employers F and G are common law employers of Participant C during different portions of 2025, and, under paragraph (b)(3) of this section, they are both employers sponsoring the plan. Because Participant C's FICA wages from Employer G in 2025 did not exceed \$150,000, Participant C is not subject to the requirements of section 414(v)(7)(A) with respect to elective deferrals that are made from compensation paid by Employer G in 2026. Accordingly, Participant C is not required to designate any catch-up contributions made for 2026 under Plan P as designated Roth contributions. This is the case even though Participant C had wages from Employer F (an employer sponsoring the plan) that exceeded \$150,000 for 2025.

(5) *Example 5: Correction of section 414(v)(7) failure—(A) Facts.* Participant D, who attains age 55 in 2026, participates in a section 401(k) plan, Plan Q, sponsored by Employer H. Plan Q does not limit elective deferrals except as necessary to comply with sections 401(a)(30) and 415(c). Plan Q does not provide catch-up eligible participants with a separate election for elective deferrals that are in excess of

the section 401(a)(30) limit and provides that such a participant is permitted to defer amounts in excess of the section 401(a)(30) limit on elective deferrals up to the applicable dollar catch-up limit for the year. For 2025, Participant D had \$151,000 in wages (within the meaning of section 3121(a)) from Employer H. For 2026, Participant D elects to defer \$1,250 into Participant D's account in Plan Q for each of 24 pay periods. Employer H has in place practices and procedures that are designed to prevent section 414(v)(7) failures and to result in compliance with the section 414(v)(7) Roth catch-up requirement at the time an elective deferral is made, and Plan Q provides for a deemed Roth catch-up election as described in paragraph (c)(3)(i) of this section. Nonetheless, Employer H discovers that all of Participant D's elective deferrals under Plan Q during 2026 (a total of \$30,000) were pre-tax elective deferrals.

(B) *Analysis.* Because Participant D had over \$150,000 in wages from Employer H for 2025, under section 414(v)(7)(A), Participant D's catch-up contributions under Plan Q for 2026 (that is, the elective deferrals that exceed the section 401(a)(30) limit) are required to be designated Roth contributions. Thus, \$6,000 of Participant D's elective deferrals for 2026 (that is, the elective deferrals in excess of the section 401(a)(30) limit of \$24,000) are required to be designated Roth contributions. To keep these contributions in the plan, Employer H must correct the section 414(v)(7) failure with respect to \$6,000 of Participant D's pre-tax elective deferrals for 2026, using one of the methods set forth under paragraph (c)(2) of this section, by April 15, 2027 (the deadline under paragraph (c)(3)(iii)(A) of this section).

(6) *Example 6: Designated Roth contributions that can satisfy the section 414(v)(7) Roth catch-up requirement—(A) Facts.* The facts are the same as in paragraph (d)(5) of this section (*Example 5*), except that the first \$5,000 of the \$30,000 total elective deferrals Participant D makes for 2026 are designated Roth contributions. (Thus, during each of the first 4 pay periods in 2026, Participant D makes \$1,250 of elective deferrals that are designated Roth contributions, and then subsequently makes \$25,000 in pre-tax elective deferrals ratably over the remaining 20 pay periods.) Participant D reaches the section 401(a)(30) limit on elective deferrals during the twentieth pay period of 2026 and does not make any designated Roth contributions after reaching the section 401(a)(30) limit on elective deferrals in 2026.

(B) *Analysis.* In accordance with paragraph (b)(1) of this section, the \$5,000 in elective deferrals that are designated Roth contributions that Participant D made at the beginning of 2026 can be taken into account for purposes of satisfying Participant D's Roth catch-up requirement under section 414(v)(7). Thus, the portion of Participant D's pre-tax elective deferrals that are required to be corrected is \$1,000 (\$6,000 of elective deferrals that are in excess of the section 401(a)(30) limit, minus \$5,000 of elective deferrals that were made as designated Roth contributions within the taxable year), and Employer H must correct the section 414(v)(7) failure with respect to only \$1,000 of Participant D's pre-tax elective deferrals. To keep the \$1,000 in the plan, Employer H must correct the section 414(v)(7) failure using one of the methods set forth under paragraph (c)(2) of this section, by April 15, 2027 (the deadline under paragraph (c)(3)(iii)(A) of this section).

(e) *Applicability dates*—(1) *Statutory applicability date.* Section 414(v)(7) applies to contributions in taxable years beginning after December 31, 2023.

(2) *Regulatory applicability dates*—(i) *General rule.* Except as provided in paragraphs (e)(2)(ii) and (iii) of this section, this section applies to contributions in taxable years beginning after [DATE SIX MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE].

(ii) *Collectively bargained plans.* In the case of an applicable employer plan maintained pursuant to one or more collective bargaining agreements, paragraphs (a) through (d) of this section shall not apply until the first taxable year described in paragraph (e)(2)(i) of this section, or, if later, the first taxable year beginning after the date on which the last collective bargaining agreement related to the plan that is in effect on December 31, 2025, terminates (determined without regard to any extension to those agreements).

(iii) *Early implementation permitted.* A plan is permitted to apply the rules of this section to contributions in any taxable year beginning after December 31, 2023.

Douglas W. O'Donnell,
Deputy Commissioner.

[FR Doc. 2025–00350 Filed 1–10–25; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2024–0059; FRL–11682–11–OCSPP]

Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities (November 2024)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of filing of petition and request for comment.

SUMMARY: This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before February 12, 2025.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2024–0059, through the *Federal eRulemaking Portal* at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Anita Pease, Antimicrobials Division (AD) (7510P), main telephone number: (202) 566–0736; email address: ADFRNotices@epa.gov or Charles Smith, Registration Division (RD) (7505T), main telephone number: (202) 566–1030, email address: RDFRNotices@epa.gov. The mailing address for each contact person is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers

determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](https://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/comments.html>.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before

responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in the docket EPA has created for this rulemaking. The docket for this petition is available at <https://www.regulations.gov>.

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

A. Notice of Filing—Amended Tolerances for Non-Inerts

1. *PP 1F8916*. EPA–HQ–OPP–2021–0516. In the **Federal Register** of November 23, 2021 (86 FR 66512) (FRL–8792–05–OCSPP), EPA issued a document pursuant to FFDCA Section 408(d)(3), announcing the filing of pesticide petition (*PP 1F8916*) by CA TriNova, LLC, 1 Beavers Street, Suite B, Newman, GA 30263. This issuance is to supersede the filing of (86 FR 66512) to include additional crop groups. ICA TriNova, LLC, 1 Beavers Street, Suite B, Newman, GA 30263, requests to amend the existing exemption from the requirement for a tolerance for residues of chlorate resulting from the application of gaseous chlorine dioxide as a fungicide, bactericide, and antimicrobial at 40 CFR 180.1364 to include residues in or on raw agricultural commodities from: Crop Group 1 (root and tuber vegetables); crop group 3 (bulb vegetables, bulbs); crop group 8 (fruiting vegetables); crop group 9 (cucurbit vegetables); crop group 10 (citrus); crop group 11 (pome fruits); crop group 12 (stone fruits); crop group 13 (berries); crop group 14 (tree nuts); crop group 16 (forage, fodder, and straw of cereal grains); crop group 17 (grass forage, fodder, and hay); crop group 18 (non-grass animal feeds); crop

group 21 (edible fungi); crop group 23 (tropical and subtropical fruits, edible peel); and crop group 24 (tropical and subtropical fruits, inedible peel). The petitioner believes no analytical method is needed because the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation. *Contact*: AD.

2. *PP 3E9078*. EPA–HQ–OPP–2023–0555. Interregional Research Project Number 4 (IR–4), IR–4 Project Headquarters, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606, requests to amend 40 CFR 180.442, upon the approval of the requested tolerances, by removing the established tolerances for residues of bifenthrin, including its metabolites and degradates in or on the following commodities: Brassica, head and stem, subgroup 5A, (except cabbage) at 0.6 parts per million (ppm); cotton, undelinted seed at 0.5 ppm; leafy petioles subgroup 4B at 3.0 ppm; pea and bean, dried shelled, except soybean, subgroup 6C at 0.15 ppm; pea and bean, succulent shelled, subgroup 6B at 0.05 ppm; rapeseed, seed at 0.05 ppm; and vegetable, legume, edible podded, subgroup 6A at 0.6 ppm. *Contact*: RD.

3. *PP 4E9106*. EPA–HQ–OPP–2024–0201. IR–4, IR–4 Project Headquarters, North Carolina State University, 1730 Varsity Drive, Suite 210, Venture IV, Raleigh, NC 27606, requests to amend 40 CFR 180.378 by removing the established tolerances for residues of the insecticide permethrin [(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate], as the sum of its *cis*- and *trans*- isomers in or on the raw agricultural commodities: Corn, field, grain at 0.05 ppm; corn, pop, grain at 0.05 ppm; corn, sweet, kernel plus cob with husks removed at 0.10 ppm; leafy greens subgroup 4A at 20 ppm; lettuce, head at 20 ppm; and spinach at 20 ppm. *Contact*: RD.

B. Notice of Filing—New Tolerance Exemptions for Inerts (Except PIPS)

PP IN-11881. EPA–HQ–OPP–2024–0347. D. O'Shaughnessy Consulting, Inc. (206 Traditions Blvd., Bowling Green, KY 42103) on behalf of A&L Biological, Inc. (2140 Jetstream Rd., London ON Canada), requests to establish an exemption from the requirement of a tolerance for residues of L-Arginine (CAS Reg. No. 74–79–3) when used as an inert ingredient (protein stabilizer) in pesticide formulations applied in or on the raw agricultural commodity, pre-bloom greenhouse cucumber, under 40 CFR 180.920, limited to ≤1% weight in weight (w/w). The petitioner believes no

analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact*: RD.

C. Notice of Filing—New Tolerances for Non-Inerts

1. *PP 3E9078*. EPA–HQ–OPP–2023–0555. IR–4, IR–4 Project Headquarters, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606 requests to establish tolerances in 40 CFR 180.442 for residues of bifenthrin (2-methyl [1,1'-biphenyl]-3-yl) methyl-3- (2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate in or on the raw agricultural commodities: Celtnuce at 3 ppm; citrus, oil at 0.75 ppm; clover, forage (regional tolerance) at 7 ppm; clover, hay (regional tolerance) at 30 ppm; coffee, green bean at 0.05 ppm; cottonseed subgroup 20C at 0.5 ppm; edible podded bean subgroup 6–22A at 0.6 ppm; edible podded pea subgroup 6–22B at 0.6 ppm; fennel, florence, fresh leaves and stalks at 3 ppm; kiwifruit, fuzzy at 1.5 ppm; kohlrabi at 0.6 ppm; leaf petiole vegetable subgroup 22B at 3 ppm; pulses, dried shelled bean, except soybean, subgroup 6–22E at 0.3 ppm; pulses, dried shelled pea subgroup 6–22F at 0.3 ppm; rapeseed subgroup 20A at 0.05 ppm; safflower at 0.2 ppm; succulent shelled bean subgroup 6–22C at 0.05 ppm; succulent shelled pea subgroup 6–22D at 0.05 ppm; swiss chard at 3 ppm; tropical and subtropical, palm fruit, edible peel, subgroup 23C at 3 ppm; and vegetable, brassica, head and stem, group 5–16 except cabbage at 0.6 ppm. There is a practical analytical method for detecting and measuring levels of bifenthrin in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances (Gas Chromatography with Electron Capture Detection (GC/ECD)). *Contact*: RD.

2. *PP 3F9095*. EPA–HQ–OPP–2024–0502. Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide, pydiflumetofen, in or on coffee, green bean at 0.2 ppm, and dragon fruit at 0.9 ppm. The QuEChERS multi-residue method is used to measure and evaluate the chemical pydiflumetofen. *Contact*: RD.

3. *PP 3F9066*. EPA–HQ–OPP–2024–0491. Bayer CropScience LP, 800 N Lindbergh Blvd., St. Louis, Missouri 63167, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide acetochlor in or on rapeseed subgroup 20A at 0.6 ppm and

pennycress, seed at 0.05 ppm. The High-Performance Liquid Chromatography/Oxidative Coulometric Electrochemical Detector (HPLC–OCED) method is used to measure and evaluate the chemical acetochlor and its metabolites. *Contact:* RD.

4. *PP 4E9105.* EPA–HQ–OPP–2024–0331. UPL Chile S.A. (El Rosal 4610, Huechuraba Santiago, Chile, Postal Code: 8590724), requests to establish a tolerance in 40 CFR 180.417 for residues of triclopyr, [(3,5,6-trichloro-2-pyridinyl) oxy] acetic acid, including its metabolites and degradates, in or on imported commodities in orange subgroup 10–10A at 0.07 ppm. Analytical methods based on High-Performance Liquid Chromatography–Mass Spectrometry/Mass Spectrometry (HPLC–MS/MS), including a method using QuEChERS technique, are available to determine residues of triclopyr in high-acid content commodities. *Contact:* RD.

5. *PP 4E9144.* EPA–HQ–OPP–2024–0405. IR–4, IR–4 Project Headquarters, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606, requests to establish a tolerance in 40 CFR 180.574 for residues of the fungicide fluazinam, including its metabolites and degradates. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of fluazinam, (3-chloro-N-[3-chloro-2,6-dinitro-4-(trifluoromethyl) phenyl]-5-(trifluoromethyl)-2-pyridinamine), in or on the raw agricultural commodities: Grape at 3 ppm, strawberry at 0.01 ppm and vegetable, brassica, head and stem, group 5–16 at 5 ppm. In addition, IR–4 is seeking conversion of existing individual bean and pea commodity tolerances to the following crop subgroups: Vegetable, legume, bean, edible-podded, subgroup 6–22A at 0.1 ppm; vegetable, legume, bean, succulent shelled, subgroup 6–22C at 0.04 ppm; vegetable, legume, pea, edible-podded, subgroup 6–22B at 0.15 ppm; vegetable, legume, pea, succulent shelled, subgroup 6–22D at 0.03 ppm; vegetable, legume, pulse, bean, dried shelled, except soybean, subgroup 6–22E at 0.02 ppm; vegetable, legume, pulse, pea, dried shelled, subgroup 6–22F at 0.04 ppm. Adequate enforcement methodology analytical method using Liquid Chromatography/Mass Spectrometry/Mass Spectrometry (LC–MS/MS) for the determination of fluazinam and AMGT residues on

broccoli and strawberry leaves were used. *Contact:* RD.

6. *PP 4E9149.* EPA–HQ–OPP–2024–0548. National Confectioners Association., 101 30th St. NW, Washington, DC 2007, requests to establish an import tolerance in the 40 CFR part 180 for residues of the insecticide, cypermethrin, on cacao, dried bean, and associated processed commodities at 0.02 ppm. The chromatography in gas phase coupled to a Gas Chromatography/Electron Capture Detector (GC/ECD) analytical method was used to measure and evaluate the chemical cypermethrin. *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: December 12, 2024.

Kimberly Smith,

Acting Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2024–31405 Filed 1–10–25; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 9, 23, and 52

[FAR Case 2021–015, Docket No. FAR–2021–0015, Sequence No. 1]

RIN 9000–AO32

Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; withdrawal.

SUMMARY: DoD, GSA, and NASA are withdrawing the proposed rule to amend the Federal Acquisition Regulation (FAR) titled: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk. Executive Order 14030, directed the Federal Acquisition Regulatory Council to consider amending the Federal Acquisition Regulation (FAR) require major Federal suppliers to publicly disclose greenhouse gas emissions and climate-related financial risk and to set science-based reduction targets. A proposed rule

was published on November 14, 2022. The agencies lack sufficient time during the Biden-Harris Administration to finalize the proposal. In addition, the agencies' analysis of public comments indicates an evolving practices and standards in industry, and an evolving domestic and international regulatory landscape. Accordingly, this proposed rule is withdrawn, and the FAR case is closed.

DATES: The proposed rule published on November 14, 2022, at 87 FR 68312 is withdrawn as of January 13, 2025.

ADDRESSES: *farpolicy@gsa.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Hawes, Procurement Analyst, at 202–255–9194 or by email at *jennifer.hawes@gsa.gov*. Please cite “FAR Case 2021–015”.

SUPPLEMENTARY INFORMATION: On November 12, 2022, DoD, GSA, and NASA proposed to amend the FAR to implement section 5(b)(i) of Executive Order (E.O.) 14030, Climate-Related Financial Risk, to consider requiring major Federal suppliers to publicly disclose greenhouse gas (GHG) emissions and climate-related financial risk and to set science-based reduction targets. The agencies lack sufficient time during the Biden-Harris Administration, however, to finalize the proposal, particularly given the large volume of public comments and the policy issues they raised. The agencies' overall analysis of public comments indicates evolving practices and use of standards in industry, and since the publication of the proposed rule, differing domestic and international regulations covering greenhouse gas disclosures have been created. The FAR Council will continue to monitor recommendations from stakeholders on industry practice, both voluntary and under other requirements, to inform any future efforts in anticipation of continued movement towards more uniform use of standards. Accordingly, the proposed rule published at 87 FR 68312 on November 14, 2022, is withdrawn and FAR Case 2021–015 is closed.

List of Subjects in 48 CFR Parts 1, 4, 9, 23, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2024–30621 Filed 1–10–25; 8:45 am]

BILLING CODE 6820–EP–P

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FGIS–24–0062]

Geographic Areas for Official Grain Inspection Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of proposed updates to United States Grain Standards Act geographic area descriptions; request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) is issuing this notice to announce proposed updates to the boundaries of the geographic areas in which official service providers (OSP) perform official inspection and weighing services under a United States Grain Standards Act (USGSA) designation or delegation, and for purposes of cooperative service agreements under the Agricultural Marketing Act of 1946 (AMA). The proposed updates are necessary due to changes in natural and man-made landmarks, railroad lines, roads, and signs that were used in historical boundary descriptions.

DATES: Comments may be submitted on or before February 12, 2025.

ADDRESSES: To submit comments in response to this notice, go to *Regulations.gov* (<https://www.regulations.gov>). Instructions for submitting and reading comments are detailed on the site. All comments must be submitted through the Federal e-rulemaking portal at <https://www.regulations.gov> and should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this notice will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting

comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT:

Karla Whalen, Director, Quality Assurance and Compliance Division, Federal Grain Inspection Service, AMS, USDA; Telephone: (202) 720–7312; Email: karla.whelen@usda.gov.

SUPPLEMENTARY INFORMATION: The Agricultural Marketing Service's Federal Grain Inspection Service (FGIS) administers provisions of the USGSA and AMA that specify the conditions under which domestic grains, oilseeds, and legumes are sampled, inspected, weighed, and tested for domestic and export shipments. Under the provisions of these statutes, FGIS typically authorizes one OSP, through competitive application procedures, to perform official inspection services for customers within each geographic area of the United States as defined by the Secretary of Agriculture. This ensures effective and efficient delivery of official services to customers within each area and enhances the orderly marketing of grains, oilseeds, and legumes.

Under the USGSA (7 U.S.C. 71–87k), official inspections at locations other than export port locations within a state may be performed by a designated state agency, local governmental agency, or qualified person. 7 U.S.C. 79(f). Official inspections at export port locations are performed by authorized USDA employees or delegated state agencies. 7 U.S.C. 79(e). Under the AMA (7 U.S.C. 1621–1633), the Secretary of Agriculture is authorized to enter into cooperative agreements with states, state agencies, private firms, institutions, and individuals. 7 U.S.C. 1624(a).

Designations under the USGSA are assigned for up to five years. 7 U.S.C. 79(g). Prior to their expiration, AMS publishes a notice in the **Federal Register** announcing the geographic area or areas available for designation, describes the geographic area(s) available, and invites interested parties to apply for designation to provide services in those areas. Applications are reviewed and analyzed by AMS to determine which agency is better able to provide services in that geographic area. On occasion, AMS will amend a geographic area if more than one applicant is better able to serve parts of the area open for consideration. Delegations under the USGSA are ongoing after assignment, subject to

certification by AMS every 5 years that the delegated state agency remains qualified and meets specified criteria. 7 U.S.C. 79(e). For purposes of efficient administration, AMS also uses USGSA designation areas for cooperative service agreements under the AMA.

Where possible, the boundaries of the geographic areas follow state or county lines. Occasionally, geographic areas include only portions of counties in an effort to evenly distribute grain merchandising locations among geographic areas. This is more common in the grain belt where the need for inspection services is most concentrated. Over time, some boundaries were adjusted to recognize historical agreements or accommodate the needs of OSPs or their customers.

In some cases, geographic area boundaries have been defined by rivers, landmarks, or locally recognized roads within counties, rather than by state or county borders. Over the years, some of the landmarks, railroad lines, and roads that were used to define the boundaries of geographic areas have changed or disappeared, leaving some question as to the exact boundaries currently in use. Where possible, AMS utilizes more permanent boundaries, such as state and county lines, when updating the OSP geographic area descriptions.

In October 2022, AMS completed a comprehensive review of the current geographic area descriptions for OSPs.¹ During the review, AMS consulted with OSPs to obtain recommended changes and ensure the accuracy of updated area descriptions. Multiple efforts were made to involve each OSP; however, not all official agencies actively participated in this process.

AMS will update the geographic areas in the designation and delegation documents issued for current OSPs after any comments received have been considered. AMS will also publish a follow-up notice in the **Federal Register** to announce any changes to the geographic boundaries described in this notice.

This notice identifies each of the current geographic areas assigned to an OSP in the United States; provides a proposed, updated description of the

¹ The report is available on AMS's website at <https://www.ams.usda.gov/content/usda-publishes-review-geographic-area-boundaries-grain-inspection-weighing-posts-new-grain> (last visited on October 9, 2024).

area; and lists the current OSP assigned by FGIS to provide services in the area. As explained earlier, the geographic areas can shift over time in response to changes in industry service points and the ability of official agencies to provide services. Any such changes in the future will be announced in the **Federal Register**. Further, in instances where a specific service point within a geographic area becomes a service challenge for a customer, the customer can utilize the USGSA exceptions process as detailed at <https://www.ams.usda.gov/services/fgis/usgsaexceptions>.

Updated Geographic Area Descriptions and Official Service Providers

The geographic areas described below are listed alphabetically by state. A proposed, updated geographic description is included for each area. Some geographic areas include one or more entire states, or entire counties within a state. Several areas include territory in more than one state. Some areas include partial counties, divided by named highways, roads, or waterways. Where possible, geographic areas are defined by state or county lines. In cases in which an area includes only part of a county or counties, the boundaries are identified by reference to highways, roads, waterways, and other landmarks.

For uniformity in the descriptions below, highway and road designations follow typical naming conventions. For example, Interstate 80 is written "I-80," U.S. Route 54 is written "US-54," Iowa State Route 21 is written "IA-21," and County Road 14 is written "CR-14."

The current OSP for each area is identified below. In some cases, grain elevators or customers within defined geographic areas are historically served by other than the designated OSP for that area. Such exclusions are listed below the OSP identified for each area. Where ports for export shipments exist within a geographic area, the OSP for export inspection services in that area is listed. Contact and other information, including the services offered by each OSP, is available on the AMS website at <https://fgisonline.ams.usda.gov/MyFGIS/OSPDIRECTORY/Index>.

Please note that FGIS also administers the AMA and its implementing regulations and instructions, including the provisions regarding cooperative agreements. Accordingly, this document also lists the geographic areas serviced under AMA cooperative agreements by three OSPs, namely, the Idaho State Department of Agriculture, Oregon Department of Agriculture, and Wyoming Department of Agriculture.

AMS requests comments for the following proposed, updated geographic area descriptions. Please note that the geographic areas are now identified by number. Numbers are assigned to the geographic areas in alphabetical order, first by state, then by county.

Area 1 (Formerly Known as State of Alabama)

Description: In Alabama: The entire state of Alabama.

Current Service Provider: Alabama Department of Agriculture and Industries.

Exports: All exports including export waterborne carriers/vessels are serviced by the Alabama Department of Agriculture and Industries.

Area 2 (Formerly Known as Casa Grande, Arizona)

Description: In Arizona: Maricopa, Pinal, Santa Cruz, and Yuma Counties.

In California: Imperial, Riverside, and San Diego Counties.

Current Service Provider: Farwell Commodity and Grain Services, Inc.

Exports: All export waterborne carriers/vessels are serviced by FGIS.

Area 3 (Formerly Known as Memphis, Tennessee)

Description: In Arkansas: The entire state of Arkansas.

In Mississippi: The entire state of Mississippi.

In Tennessee: Carroll, Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Henderson, Lauderdale, Madison, McNairy, Obion (city of Kenton only) Shelby, and Tipton Counties.

In Texas: Bowie and Cass Counties.

Current Service Provider: Midsouth Grain Inspection Service.

Exports: All export waterborne carriers/vessels are serviced by FGIS.

Area 4 (Formerly Known as West Sacramento, California)

Description: In California: Counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Inyo, Kern, Kings, Lake, Lassen, Los Angeles, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Orange, Placer, Plumas, Sacramento, San Benito, San Bernardino, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Ventura, Yolo, Yuba.

Current Service Provider: California Agri Inspection Company, Ltd.

Exports: Cal-Agri has a special agreement with FGIS to service AMA commodities transported on export waterborne carriers/vessels from the Penny-Newman export elevator in Stockton, CA. All USGSA commodities transported on export waterborne carriers/vessels from the Penny-Newman export elevator are serviced by FGIS.

Area 5 (Formerly Known as Topeka, Kansas)

Description: In Colorado: The entire state of Colorado.

In Kansas: The entire state of Kansas.

In Nebraska: Banner, Cheyenne, Deuel, Kimball, Morrill (west of US-385), and Scotts Bluff Counties.

In Wyoming: Goshen, Laramie, and Platt Counties.

Exclusion: The following grain elevator, which is located within the Topeka, Kansas, geographic area, is currently assigned to Hastings Grain Inspection, Inc.: Farmers Coop in the city of Big Springs, Nebraska, in Deuel County, Nebraska.

Current Service Provider: Kansas Grain Inspection Service, Inc.

Area 6 (Formerly Known as Belmond, Iowa)

Description: In Georgia: The entire state of Georgia.

In Iowa: Butler (north of CR C23, east of CR T47, north of CR C33, and west of IA-88), Cerro Gordo, Floyd (north of 280th St and west of Shadow Ave), Franklin (northwest of I-35, north of CR C55, west of CR S56, and north of CR C23), Hancock, Kossuth (east of US-169), Mitchell, Winnebago, Worth, and Wright (North of West Highway 3, east of US-17, north of Broadway St, east of South Kirkwood Ave, north of 5th St S, north of 270th Street, east of US-69, and northwest of I-35) Counties.

In Minnesota: Faribault, Freeborn, and Mower Counties.

In New Jersey: The entire state of New Jersey.

In New York: The entire state of New York.

In South Carolina: Abbeville, Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Clarendon, Colleton, Dorchester, Edgefield, Fairfield, Georgetown, Greenwood, Hampton, Jasper, Laurens, Lexington, McCormick, Newberry, Oconee, Orangeburg, Richland, Saluda, Sumter, and Williamsburg Counties.

Current Service Provider: D.R. Schaal Agency, Inc.

Exports: All export waterborne carriers/vessels are serviced by FGIS.

Area 7 (Formerly Known as Boise, Idaho)

Description: Commodity and/or rice inspections in the entire state of Idaho.

Current Service Provider: Idaho State Department of Agriculture.

Area 8 (Formerly Known as Pocatello, Idaho)

Description: In Idaho: Ada, Adams, Bannock, Bear Lake, Bingham, Blaine, Boise, Bonneville, Butte, Camas, Canyon, Caribou, Cassia, Clark, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Jefferson, Jerome, Lemhi, Lincoln, Madison, Minidoka, Oneida, Owyhee, Payette, Power, Teton, Twin Falls, Valley, and Washington Counties.

Current Service Provider: Idaho Grain Inspection Service.

Area 9 (Formerly Known as Olympia, Washington)

Description: In Idaho: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

In Oregon: The entire state of Oregon.

In Washington: The entire state of Washington.

Current Service Provider: Washington Department of Agriculture.

Exports: All export port locations within the Olympia, Washington, geographic area in the state of Oregon are serviced by FGIS, and in the state of Washington, by Washington Department of Agriculture.

Area 10 (Formerly Known as Essex, Illinois)

Description: In Illinois: Bureau (east of IL-40), Kankakee (west of I-57 and west of US-52), LaSalle (north of IL-17, north of IL-18 (west side of US-51) and east of US-51 (south of IL-18)), Grundy, Marshall (east of US-51, north of CR 14/IL-17; west of IL-26), Putnam (north of IL-18), Stark, Tazewell (west of IL-26 and IL-116 and north of I-74), Peoria (north of I-74), Will (west of I-57), and Woodford (west of IL-26) Counties.

Current Service Provider: Kankakee Grain Inspection, Inc.

Area 11 (Formerly Known as Urbana, Illinois)

Description: In Illinois (central section): Cass, Christian (the area west of CR22, south of CR 2600 N, west of CR 1500 E, south of CR 2500 N, west of N 1600 East Rd., south of E 2100 North Rd., west of IL-48 and N 1600 East Rd., north of CR 900 N, west of CR 1250 E/ N 1250 East Rd., north of E 300 North Rd., and west of CR 1100 E), Greene, Logan (the area south of IL-10, west of 2000th Ave., north of CR 1500N, west of 1800th Ave., north of CR 1400 N, west

of 1600th Ave., north of CR 1200 N, west of CR 1325 E, north of CR 1100 N, west of 1175th Ave., north of 950th St./CR 12, west of CR 937 E, south of 825th St., west of CR 950 E, north of CR 10/700th St., northwest of N Gillett St, and west of CR 600 E; and the area south and west of CR 11), Macoupin, Menard, Montgomery (west of CR 6, north of IL-16), Morgan, Pike (south and east of US-54 and IL-107, south of IL-104) Sangamon (the area west of Burrus Rd., south of McLaughlin Rd., west of Buffalo Hart Rd., south of Sherman Rd./CR 6 1/2, west of Cornland Rd., south of Old Rte. 36, west of Lanesville Rd./CR 34, south of Mechanicsburg Illiopolis Rd./CR 33, west of CR 20 1/4 E/Mt. Auburn Rd./CR 57), Schuyler, and Scott Counties.

In Illinois (eastern section):

Champaign, Clark, Coles, Crawford (north and east of IL-33), Douglas, Edgar, Ford, Iroquois, Kankakee (east of US-57 and US-45/US-52), Lawrence (east of IL-33 and north of US-50), Livingston (west of CR 10, south of IL-116, and west of IL-47), McLean (east of CR 13 north of IL-165, east of CR-15 between IL-165 and US-136), and east of CR 11 south of US-136), Piatt (north of US-72), Vermillion, and Will (east of US-57) Counties.

In Indiana: Benton, Clay, Elkhart, Fountain (west of US-41), Greene, Jasper, Lake, LaPorte, Marshall, Newton, Owen, Parke, Porter, Pulaski, Putnam, St. Joseph, Starke, Sullivan, Vigo, Warren, and White Counties.

In Michigan: Berrien, Cass, and St. Joseph Counties.

Current Service Provider: Champaign-Danville Grain Inspection Departments, Inc.

Exports: All export waterborne carriers/vessels are serviced by FGIS.

Area 12 (Formerly Known as Fargo, North Dakota)

Description: In Illinois: Bond, Calhoun, Clay, Clinton, Crawford (south of IL-33), Cumberland, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Jackson (North of IL-3, IL-149, IL-13 and east of US-51)), Jasper, Jefferson, Jersey, Lawrence (west of IL-33 south to US-50), Madison, Marion, Monroe, Montgomery (south of IL-16, west and south of CR 6 to CR 7, east of CR 7, and south of CR 15), Perry, Randolph (north of IL-150 and northeast of IL-3), Richland, Saline, St. Clair, Wabash, Washington, Wayne, White, and Williamson Counties.

In Indiana: Adams, Allen, Bartholomew, Blackford, Boone, Brown, Carroll, Cass, Clinton, DeKalb, Delaware, Fayette, Fountain (east of U.S. Route 41), Fulton, Grant, Hamilton,

Hancock, Hendricks, Henry, Howard, Huntington, Jay, Johnson, Kosciusko, LaGrange, Madison, Marion, Miami, Monroe, Montgomery, Morgan, Noble, Randolph, Rush (north of State Route 244), Shelby, Stueben, Tippecanoe, Tipton, Union, Wabash, Wayne, Wells, and Whitley Counties.

In Michigan: Clinton (east of US-127), Genesee, Huron (east of MI-53), Ingham (east of US-127), Jackson (east of US-127), Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, Sanilac (east of MI-53 and south of MI-46), Shiawassee (south of MI-21 and east of MI-52), St. Clair, Tuscola (south of MI-46, east of Sheridan Road, south of Barnes Road, and east of MI-15), Washtenaw, and Wayne Counties.

In Minnesota: Aitkin, Becker, Carlton, Cass, Clay, Cook, Crow Wing, Hubbard, Itasca, Koochiching, Lake, Mahnomon, Norman, Otter Tail, St. Louis, Wadena, and Wilkin Counties.

In North Dakota: Barnes (east of ND-1 north and south of I-94), Cass, Dickey (east of ND-1), Griggs (south and east of ND-45, east of ND-1 and south of ND-200), LaMoure (east of ND-1), Ransom, Richland, Sargent, Steele, and Traill Counties.

In Ohio: Adams (northeast of OH-73), Ashland, Ashtabula, Athens, Belmont, Carroll, Champaign (east of Valley Pike Road, east of OH-560 and north of US-36), Clark (east of US-68), Clinton (east of OH-73, north of US-22, east of US-68), Columbiana, Coshocton, Crawford, Cuyahoga, Darke, Delaware, Erie, Fairfield, Fayette, Franklin, Gallia, Geauga, Greene (east of US-68), Guernsey, Hancock, Hardin (east of US-68), Harrison, Highland (east of OH-73), Hocking, Holmes, Huron, Jackson, Jefferson, Knox, Lake, Lawrence, Licking, Logan (south of OH-47, east of US-68), Lorain, Lucas, Madison, Mahoning, Marion, Medina, Meigs, Monroe, Morgan, Morrow, Muskingum, Noble, Ottawa, Perry, Pickaway, Pike, Portage, Richland, Ross, Sandusky, Scioto, Seneca, Shelby (east of I-75, southeast of OH-47, includes all of Sidney, OH), Stark, Summit, Trumbull, Tuscarawas, Union, Vinton, Washington, Wayne, Wood, and Wyandot Counties.

Current Service Provider: North Dakota Grain Inspection Service, Inc.

Exports: All export waterborne carriers/vessels are serviced by FGIS unless under special agreement. The Wisconsin Department of Agriculture Trade and Consumer Protection services the port of Duluth in Minnesota via special agreement with FGIS.

Area 13 (Formerly Known as Keokuk, Iowa)

Description: In Illinois: Adams, Brown, Fulton, Hancock, Mason, McDonough, and Pike (northwest of US-54 northeast to IL-107; IL-107 northeast to IL-104; IL-104 east to the eastern Pike County line) Counties.

In Iowa: Davis, Lee, and Van Buren Counties.

Current Service Provider: Keokuk Grain Inspection Service.

Area 14 (Formerly Known as Cedar Rapids, Iowa)

Description: In Iowa: Allamakee, Benton, Black Hawk (east of CR V49, south of CR D38, east of IA-21), Buchanan, Cedar (north of IA-130, east of IA-38, and north of I-80), Clayton, Clinton, Fayette, Jackson, Johnson (north of I-80), Iowa (north of I-80), Jones, Linn, Poweshiek (north of I-80 and east of US-63), Tama (east of IA-21, south of IA-8, south and east of US-63) and Winneshiek Counties.

In Illinois: Carroll, Christian (east of CR 1100E, south of 300N, east of CR 1, south of CR 8, east of 1600E, southeast of IL-48, east of CR 1800E, north of 2100N, east of 1600E, north of 2500N, east of 1500E, north of 2600N, east of CR 22), De Witt, LaSalle (south of IL-18, west of US-51 and south of IL-17), Livingston (west of IL-47, north of IL-116, west of CR 10), Logan (northeast of Burrus (aka CR 9 N), east of CR 600E, southeast of Gillett Street in Elkhart, south of CR 10, east of 950th Avenue, north of 825th Street, south of CR 12, east of CR 1175E, south of CR 1100N, east of CR 1325E, south of CR 1200N, east of 1800th Avenue, south of CR 1500N, east of 200th Avenue, and north of IL-10), Macon, Marshall (east of IL-26, west of US-51, south of CR 14 and south of IL-17), McLean (west of CR 13, north of E 2600 North Road, west of CR 15, and south of US-136, east of CR 11), Montgomery (east of CR 6, north of IL-16, east and north of CR 6, south of IL-16, west of CR 7, and north of CR 15), Moultrie, Piatt (south of I-72), Putnam (east of CR 26, south of IL-18), Sangamon (east of CR 57, north of CR 33, east of CR 34, south of CR 631, east of Cornland Road, north of Sherman Road, east of Buffalo Hart Road), Shelby, Tazewell (south of I-74, south and east of IL-116, east of IL-26), Peoria (south of I-74), Whiteside, and Woodford (east of IL-26) Counties.

In Minnesota: Fillmore, Houston, Olmstead, Wabasha, and Winona Counties.

Exclusions: The following grain elevators, which are located within the Cedar Rapids, Iowa, geographic area, are

currently assigned to Champaign-Danville Grain Inspection Departments, Inc., for official inspection services: East Lincoln Farmers Grain Co. in the city of Lincoln, Illinois, in Logan County, Illinois; Okaw Cooperative in the city of Cadwell, Illinois, in Moultrie County, Illinois; ADM in the city of Farmer City, Illinois, in Dewitt County, Illinois; and Topflight Grain Company in the city of Monticello, Illinois, in Piatt County, Illinois.

Current Service Provider: Mid-Iowa Grain Inspection, Inc.

Area 15 (Formerly Known as Davenport, Iowa)

Description: In Illinois: Northern Area: Boone, Cook, DeKalb, DuPage, Jo Daviess, Kane, Kendall, Lake, Lee, McHenry, Ogle Stephenson, and Winnebago Counties. Midwestern Area: Bureau (west of IL-40), Henderson, Henry, Knox, Mercer Rock Island, and Warren Counties.

In Iowa: Northern Area: Delaware and Dubuque Counties. Southern Area: Cedar (south of I-80, east of IA-38, and south of IA-130), Des Moines, Henry, Iowa (south of I-80), Jefferson, Johnson (south of I-80), Keokuk, Louisa, Muscatine, Scott, Wapello, and Washington Counties.

In Wisconsin: The entire state of Wisconsin, for domestic services.

Current Service Provider: Eastern Iowa Grain Inspection and Weighing Service, Inc.

Exports: All export waterborne carriers/vessels are serviced by FGIS unless under special agreement. In the state of Wisconsin, Milwaukee is serviced by FGIS under special agreement and Superior is serviced by the Wisconsin Department of Agriculture under special agreement.

Area 16 (Formerly Known as Wickliffe, Kentucky)

Description: In Illinois: Alexander, Hardin, Jackson (south of IL-3, IL-149, IL-13 and west of IL-51), Johnson, Massac, Pope, Pulaski, Randolph (south of IL-150 and southwest of IL-3), and Union Counties.

In Kentucky: Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Livingston, Lyon, Marshall, McCracken, and Trigg Counties.

In Tennessee: Benton, Dickson, Henry, Houston, Humphreys, Lake, Montgomery, Obion (except the city of Kenton), Stewart, and Weakley Counties.

Exclusion: The following grain elevator, which is located within the Wickliffe, Kentucky, geographic area, is currently assigned to Midsouth Grain Inspection Service: Cargill, Inc. in the

city of Tiptonville, Tennessee, in Lake County, Tennessee.

Current Service Provider: Cairo Grain Inspection Agency, Inc.

Area 17 (Formerly Known as Cincinnati, Ohio)

Description: In Indiana: Dearborn, Decatur, Franklin, Ohio, Ripley, Rush (south of IN-244), and Switzerland Counties.

In Kentucky: Bath, Boone, Bourbon, Bracken, Campbell, Clark, Fleming, Gallatin, Grant, Harrison, Kenton, Lewis (west of KY-59 and Main Street across the Ohio River to the Adams County line), Mason, Montgomery, Nicholas, Owen, Pendleton, and Robertson Counties.

In Ohio: Adams (southwest of OH-73), Brown, Butler, Champaign (south of US-36 and west of OH-55), Clark (west of I-68), Clermont, Clinton (west of US-68, south of ND-22, and west of OH-73), Greene (west of US-68), Hamilton, Highland (west of OH-73), Miami, Montgomery, Preble, and Warren Counties.

Current Service Provider: Tri-State Grain Inspection Service, Inc.

Area 18 (Formerly Known as Owensboro, Kentucky)

Description: In Indiana: Clark, Crawford, Floyd, Harrison, Jackson, Jefferson, Jennings, Lawrence, Martin, Orange, Perry, Scott, Spencer, and Washington Counties.

In Kentucky: Allen, Anderson, Barren, Breckinridge, Bullitt, Butler, Carroll, Daviess, Edmonson, Fayette, Franklin, Grayson, Hancock, Hardin, Hart, Henry, Hopkins (north of Wendell H. Ford Western Kentucky Parkway/I-69, east of KY-109 and CR 814), Jefferson, Jessamine, Larue, McLean, Meade, Muhlenberg, Nelson, Ohio, Oldham, Scott, Shelby, Simpson, Spencer, Trimble, Warren, Webster (east of Alternate US-41 and CR 814), and Woodford Counties.

In Tennessee: Anderson, Bedford, Bledsoe, Blount, Bradley, Campbell, Cannon, Carter, Claiborne, Clay, Cocke, Coffee, Cumberland, DeKalb, Fentress, Franklin, Giles, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Lincoln, Loudon, Macon, Marion, Marshall, Maury, McMinn, Meigs, Monroe, Moore, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Rutherford, Scott, Sequatchie, Sevier, Smith, Sullivan, Sumner, Trousdale, Unicoi, Union, Van Buren, Warren, Washington, White, Williamson, and Wilson Counties.

Current Service Provider: J.W. Barton Grain Inspection Service, Inc.

Area 19 (Formerly Known as Evansville, Indiana)

Description: In Indiana: Daviess, Dubois, Gibson, Knox (except the area west of US-41 and north of US-50), Pike, Posey, Vanderburgh, and Warrick Counties.

In Kentucky: Caldwell, Christian, Crittenden, Henderson, Hopkins (west of KY-109 south of the Wendell H Ford Western Kentucky Parkway), Logan, Todd, Union, and Webster (west of US-41A and CR 814) Counties.

In Tennessee: Cheatham, Davidson, and Robertson Counties.

Current Service Provider: Ohio Valley Grain Inspection, Inc.

Area 20 (Formerly Known as Sioux City, Iowa)

Description: In Iowa: Adair, Adams, Appanoose, Audubon, Black Hawk (west of CR V49 to CR D38, north of CR D38 to IA-21, west of IA-21), Boone, Bremer, Bueno Visa, Butler (south of CR C23, west of CR T47, south of CR C33, east of CR T64), Calhoun, Cass, Cherokee, Chickasaw, Clarke, Clay, Dallas, Decatur, Dickinson, Emmet, Floyd (east of Shadow Ave. and south of 280th St), Franklin (Interstate 35 northeast to C55; C55 east to S41; S41 north to State Route 3; State Route 3 to east U.S. Route 65; U.S. Route 65 north to C25; C25 east to S56; S56 north to C23; C23 east to T47), Greene, Grundy, Guthrie, Hamilton, Hardin, Howard, Humboldt, Ida, Jasper, Kossuth (west of US-169), Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Monona (north of IA-37 and IA-175), Carroll (east of US-71), Monroe, Montgomery (east of IA-48 and CR/M 47), O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas, Polk, Poweshiek (west of US-63 to I-80, south of I-80), Ringgold, Sac, Sioux, Story, Tama (west of IA-21 and north of IA-8, north and west of IA-63), Taylor, Union, Warren, Wayne, Webster, Woodbury, and Wright (South of West Highway 3, west of US-17, south of East Broadway St, west of South Kirkwood Ave, south of SE 5th St S, south of 270th Street, west of US-69, and southeast of I-35) Counties.

In Minnesota: Cottonwood, Jackson, Lincoln, Lyon, Martin, Murray, Nobles, Pipestone, Redwood, Renville, Rock, and Yellow Medicine Counties.

In Nebraska: Cedar, Dakota, Dixon, Pierce (north of US-20), and Thurston Counties.

In South Dakota: Bon Homme, Charles Mix (south of SD-44), Clay, Douglas (south of SD-44), Hutchinson (south of SD-44), Lincoln (south of SD-44, west of I-29, south of US-18, west of SD-11, south of CR 140 (288th St.),

and east of 486th Ave. South), Turner (south of SD-44), Union, and Yankton Counties.

Exclusions: The following grain elevators, which are located within the Sioux City, Iowa, geographic area, are currently assigned to Omaha Grain Inspection Service, Inc.: Scouler Elevator in the city of Elliot, Iowa, in Montgomery County, Iowa, and two Scouler elevators in the city of Griswold, Iowa, in Cass County, Iowa.

Current Service Provider: Sioux City Inspection and Weighing Service Company.

Area 21 (Formerly Known as Fremont, Nebraska)

Description: In Iowa: Carroll (west of US-71), Crawford, Harrison (east of IA-183 to IA 127 to Loess Hills Trail), and Shelby Counties.

In Nebraska: Burt, Butler, Colfax, Cuming, Dodge, Madison (east of US-81), Pierce (east of US-81 and south of US-20), Platte, Polk, Saunders (west of US-77), Stanton, Washington (north of State Route 91), and Wayne Counties.

Exclusions: The following grain elevators, which are located within the Fremont, Nebraska, geographic area, are currently assigned to the following service providers for official inspection services: Hastings Grain Inspection Service, Inc.: Huskers Cooperative Grain Company in the city of Columbus, Nebraska in Platte County, Nebraska; Omaha Grain Inspection Service, Inc.: Central Valley Ag in the city of Rising City, Nebraska, in Butler County, Nebraska, and Central Valley Ag in the city of Shelby, Nebraska, in Polk County, Nebraska.

Current Service Provider: Fremont Grain Inspection Department, Inc.

Area 22 (Formerly Known as Lincoln, Nebraska)

Description: In Iowa: Freemont, Mills (south of US-34 and west of I-29), and Page Counties.

In Nebraska: Cass, Gage, Jefferson, Johnson, Lancaster, Nemaha, Otoe, Pawnee, Richardson, Saline, Seward, Thayer (east of CR 5900, south of NE-8, and east of US-81), and York Counties.

Exclusion: The following grain elevator, which is located within the Lincoln, Nebraska, geographic area, is currently assigned to Omaha Grain Inspection Service, Inc., for official inspection services: Haveman Grain in Murray, Nebraska, in Cass County, Nebraska.

Current Service Provider: Lincoln Inspection Service, Inc.

Area 23 (Formerly Known as Council Bluffs, Iowa)

Description: In Iowa: Harrison (west of IA-183), Mills (east of I-29 and north of US-34), Monona (south of IA-175 and IA-37), Montgomery (west of CR 47 and IA-48), and Pottawattamie Counties.

In Nebraska: Douglas, Sarpy, Saunders (east of US-77), and Washington (south of NE-91 and US-30) Counties.

Exclusions: The following grain elevators, which are located within the Council Bluffs, Iowa, geographic area, are currently assigned to Fremont Grain Inspection Department, Inc., for official inspection services: Farmers Union Cooperative Association and Krumel Grain and Storage in the city of Wahoo, Nebraska, in Saunders County, Nebraska.

Current Service Provider: Omaha Grain Inspection Service, Inc.

Area 24 (Formerly Known as Baton Rouge, Louisiana)

Description: In Louisiana: The entire state of Louisiana.

Current Service Provider: Louisiana Department of Agriculture and Forestry.

Exports: All export waterborne carriers/vessels are serviced by FGIS.

Area 25 (Formerly Known as Annapolis, Maryland)

Description: In Maryland: The entire state of Maryland.

Current Service Provider: Maryland Department of Agriculture.

Exports: All export waterborne carriers/vessels are serviced by FGIS.

Area 26 (Formerly Known as Marshall, Michigan)

Description: In Michigan: Alcona, Alger, Allegan, Alpena, Antrim, Arenac, Baraga, Barry, Bay, Benzie, Branch, Calhoun, Charlevoix, Cheboygan, Chippewa, Clare, Clinton (west of US-127), Crawford, Delta, Dickenson, Eaton, Emmet, Gladwin, Gogebic, Grand Traverse, Gratiot, Hillsdale, Houghton, Huron (west of MI-53), Ingham (west of US-127), Ionia, Iosco, Iron, Isabella, Jackson (west of US-127), Kalamazoo, Kalkaska, Kent, Keweenaw, Lake, Leelanau, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Midland, Missaukee, Montcalm, Montmorency, Muskegon, Newaygo, Oceana, Ogemaw, Ontonagon, Osceola, Oscoda, Otsego, Ottawa, Presque Isle, Roscommon, Sanilac (west of MI-53 and north of MI-46), Schoolcraft, Shiawassee (north of MI-21 and west of MI-52), Tuscola (west of MI-15, north of Barnes Rd., west of Sheridan Rd., and north of MI-46),

Saginaw, Van Buren, and Wexford Counties.

In Ohio: Allen, Auglaize, Defiance, Fulton, Hardin (west of US-68), Henry, Logan (west of US-68 and north of OH-47), Mercer, Paulding, Putnam, Shelby (north of OH-47 (and excluding all of Sidney, OH) and west of I-75), Van Wert, and Williams Counties.

Current Service Provider: Michigan Grain Inspection Services, Inc.

Area 27 (Formerly Known as Savage, Minnesota)

Description: *In Minnesota:* Blue Earth, Brown, Carver, Dakota, Dodge, Goodhue, Hennepin, Le Sueur, McLeod, Nicollet, Ramsey, Rice, Scott, Sibley, Steele, Waseca, Washington, and Watonwan Counties.

Current Service Provider: State Grain Inspection, Inc.

Area 28 (Formerly Known as Jamestown, North Dakota)

Description: *In Minnesota:* Anoka, Benton, Big Stone, Chippewa, Chisago, Douglas, Grant, Isanti, Kanabec, Kandiyohi, Lac Qui Parle, Meeker, Mille Lacs, Morrison, Pine, Pope, Sherburne, Stearns, Stevens, Swift, Todd, Traverse, and Wright Counties.

In North Dakota: Adams (northwest corner west of ND-22 and north of US-12), Barnes (west of ND-1, south of I-94), Billings (south of I-94 and east of US-85), Bowman (north of US-12), Burleigh, Dickey (west of ND-1, north/east of US-281), Dunn (south of ND-200), Eddy, Emmons (north of ND-13 to ND-83 then west of ND-83), Foster, Golden Valley (south of I-94), Grant (east of ND-49 to ND-21, north of ND-21), Griggs (west of ND-32, north and west of ND-45 to ND-200 then north of ND-200 and west of ND-1), Hettinger (north of ND-21, west of ND-22), Kidder, Lamoure (west of ND-1), Logan, McKenzie (southeast corner east of US-85, south of ND-200), McLean (east and south of ND-200, west of US Route 83, south and east of ND-41, south of ND-200), Mercer (south of ND-200), Morton, Oliver, Sheridan (south of ND-200), Sioux (east of ND-49), Slope (north of US-12), Stark (south of I-94 and east of US-85), Stutsman, and Wells (south of ND-200, east of ND-3) Counties.

Exclusion: The following grain elevator, which is located within the Jamestown, North Dakota, geographic area, is currently assigned to Minot Grain Inspection, Inc., for official inspection services: SRS Commodities in the city of Washburn, North Dakota in McLean County, North Dakota.

Current Service Provider: Grain Inspection, Inc. (Jamestown).

Area 29 (Formerly Known as Grand Forks, North Dakota)

Description: *In Minnesota:* Beltrami, Clearwater, Kittson, Lake of the Woods, Marshall, Pennington, Polk, Red Lake, and Roseau Counties.

In North Dakota: Benson, Cavalier, Grand Forks, Nelson, Pembina, Pierce (east of ND-3), Ramsey, Rolette, Towner, and Walsh Counties.

Current Service Provider: Northern Plains Grain Inspection Service, Inc.

Area 30 (Formerly Known as Wisconsin)

Current Service Provider: Wisconsin Department of Agriculture, Trade and Consumer Protection.

Exports: All export waterborne carriers/vessels in the state of Wisconsin are serviced by the Wisconsin Department of Agriculture, Trade and Consumer Protection, excluding the port of Milwaukee which is serviced by FGIS under special agreement. Wisconsin also services the port of Duluth in Minnesota under special agreement with FGIS.

Area 31 (Formerly Known as Jefferson City, Missouri)

Description: *In Missouri:* The entire state of Missouri.

Current Service Provider: Missouri Department of Agriculture.

Area 32 (Formerly Known as Helena, Montana)

Description: The entire state of Montana.

Current Service Provider: Montana Department of Agriculture.

Area 33 (Formerly Known as Hastings, Nebraska)

Description: *In Nebraska:* Adams, Antelope, Arthur, Blaine, Boone, Box Butte, Boyd, Brown, Buffalo, Chase, Cherry, Clay, Custer, Dawes, Dawson, Dundy, Fillmore, Franklin, Frontier, Furnas, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Kearney, Keith, Keya Paha, Knox, Lincoln, Logan, Loup, Madison (west of US-81), McPherson, Merrick, Morrill (east of US-385), Nance, Nuckolls, Perkins, Phelps, Red Willow, Rock, Sheridan, Sherman, Sioux, Thayer (west of US-81, north of NE-8 and west of CR 5900), Thomas, Valley, Webster, and Wheeler Counties.

Current Service Provider: Hastings Grain Inspection, Inc.

Area 34 (Formerly Known as Raleigh, North Carolina)

Description: *In North Carolina:* The entire state of North Carolina.

In South Carolina: Cherokee, Chester, Chesterfield, Darlington, Dillon, Florence, Greenville, Horry, Kershaw, Lancaster, Lee, Marion, Marlboro, Pickens, Spartanburg, Union, and York Counties.

Current Service Provider: North Carolina Department of Agriculture.

Exports: All export waterborne carriers/vessels are serviced by FGIS.

Area 35 (Formerly Known as Minot, North Dakota)

Description: *In North Dakota:* Billings (north of I-94 and west of US-85), Bottineau, Burke, Divide, Dunn (north of ND-200), Golden Valley (north of I-94), McHenry, McKenzie (except the area south of ND-200 and east of US-85), McLean (except the area south of ND-200 and west of US-83), Mercer (north of ND-200), Mountrail, Pierce (west of ND-3), Renville, Sheridan (north of ND-200), Stark (north of I-94 and west of US-85), Ward, Wells (north of ND-200 and west of ND-3) and Williams Counties.

Exclusion: The following grain elevator is part of this geographic area assignment in Grain Inspection, Inc.'s, (Jamestown) area: SRS Commodities in the city of Washburn, North Dakota, in McLean County, North Dakota.

Current Service Provider: Minot Grain Inspection, Inc.

Area 36 (Formerly Known as Aberdeen, South Dakota)

Description: *In North Dakota (western section):* Adams (north of US-12 and east of ND-22, entirety south of US-12), Bowman (south of US-12), Grant (west of ND-49 and south of ND-21), Hettinger (east of ND-22, south of ND-21), Sioux (west of ND-49), and Slope (south of US-12) Counties.

In North Dakota (eastern section): Dickey (west of US-281), Emmons (east of US-83 and south of ND-13), and McIntosh Counties.

In South Dakota: Aurora, Beadle, Bennett, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix (north of SD-44), Clark, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas (north of SD-44), Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchinson (north of SD-44), Hyde, Jackson, Jerauld, Jones, Kingsbury, Lake, Lawrence, Lincoln (north of SD-44, east of I-29, north of US-18, east of SD-11, north of CR 140, west of 486th Avenue South), Lyman, Marshall, McCook, McPherson, Meade, Mellette, Miner, Minnehaha, Moody, Pennington, Perkins, Potter, Roberts, Sanborn, Shannon, Spink, Stanley, Sully, Todd,

Tripp, Turner (north of SD-44), Walworth, and Ziebach Counties.

Current Service Provider: Aberdeen Grain Inspection, Inc.

Area 37 (Formerly Known as Enid, Oklahoma)

Description: In Oklahoma: Adair, Alfalfa, Atoka, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Choctaw, Cleveland, Coal, Comanche, Cotton, Craig, Creek, Custer, Delaware, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Logan, Love, McClain, McCurtain, McIntosh, Major, Marshall, Mayes, Murray, Muskogee, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Roger Mills, Rogers, Seminole, Sequoyah, Stephens, Tillman, Tulsa, Wagoner, Washington, Washita, Woods, and Woodward Counties.

In Texas: Clay, Wichita, and Wilbarger Counties.

Current Service Provider: Enid Grain Inspection Company, Inc.

Area 38 (Formerly Known as Amarillo, Texas)

Description: In Oklahoma: Beaver, Cimarron, and Texas Counties.

In Texas: Armstrong (north of Prairie Dog Town Fork of the Red River), Carson, Childress, Collingsworth, Dallam, Deaf Smith (north of CR FM 1062 and east of US-385), Donley, Gray, Hall (east of US-287), Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall (north of Prairie Dog Town Fork of the Red River, TX-217, US-60 [Canyon], and Farm to Market (FM) 1062), Roberts, Sherman, and Wheeler Counties.

Current Service Provider: Amarillo Grain Exchange, Inc.

Area 39 (Formerly Known as Salem, Oregon)

Description: Commodity and/or rice inspections in the entire state of Oregon.

Current Service Provider: Oregon Department of Agriculture.

Area 40 (Formerly Texas Central)

Description: In Texas: Anderson, Angelina, Atascosa, Austin, Bandera, Bastrop, Bell, Bexar, Blanco, Bosque, Brazos, Brewster, Brown, Burleson, Burnet, Caldwell, Camp, Cherokee, Collin, Comal, Comanche, Concho, Cooke, Coryell, Crane, Crockett, Culberson, Dallas, Delta, Denton, DeWitt, Eastland, Edwards, Ellis, El

Paso, Erath, Falls, Fannin, Fayette, Franklin, Freestone, Frio, Gillespie, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hamilton, Hardin, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hudspeth, Hunt, Irion, Jack, Jasper, Jeff Davis, Johnson, Karnes, Kaufman, Kendall, Kerr, Kimble, Kinney, Lamar, Lampasas, Lavaca, Lee, Leon, Liberty, Limestone, Llano, Loving, McCulloch, McLennan, Madison, Marion, Mason, Maverick, Medina, Menard, Milam, Mills, Montague, Montgomery, Morris, Nacogdoches, Navarro, Newton, Orange, Palo Pinto, Panola, Parker, Pecos, Polk, Presidio, Rans, Reagan, Real, Red River, Reeves, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Shelby, Smith, Somervell, Stephens, Sutton, Tarrant, Terrell, Titus, Tom Green, Travis, Trinity, Tyler, Upshur, Upton, Uvalde, Val Verde, Van Zandt, Walker, Ward, Washington, Williamson, Wilson, Wise, Wood, Young, and Zavala Counties.

Current Service Provider: Grain Inspection Services of Texas, LLC.

Area 41 (Formerly Known as Plainview, Texas)

Description: In Texas: Andrews, Archer, Armstrong (south of the Prairie Dog Town Fork of the Red River), Bailey, Baylor, Borden, Briscoe, Callahan, Castro, Cochran, Coke, Coleman, Cottle, Crosby, Dawson, Deaf Smith (south of CR FM 1062 and west of US-385), Dickens, Ector, Fisher, Floyd, Foard, Gaines, Garza, Glasscock, Hale, Hall (west of US-287), Hardeman, Haskell, Hockley, Howard, Jones, Kent, King, Knox, Lamb, Lubbock, Lynn, Martin, Midland, Mitchell, Motley, Nolan, Parmer, Randall (south of CR FM 1062, US-60, TX-217 and the Prairie Dog Town Fork of the Red River), Runnels, Scurry, Shackelford, Sterling, Stonewall, Swisher, Taylor, Terry, Throckmorton, Winkler, and Yoakum Counties.

Current Service Provider: Plainview Grain Inspection and Weighing Service, Inc.

Area 42 (Formerly Known as Salt Lake City, Utah)

Description: In Utah: The entire state of Utah.

Current Service Provider: Utah Department of Agriculture and Food.

Area 43 (Formerly Known as Richmond, Virginia)

Description: In Virginia: The entire Commonwealth of Virginia.

Current Service Provider: Virginia Department of Agriculture and Consumer Services.

Exports: All exports including export waterborne carriers/vessels are serviced by the Virginia Department of Agriculture and Consumer services.

Area 44 (Formerly Known as Cheyenne, Wyoming)

Description: Commodity and/or rice inspections in the entire state of Wyoming.

Current Service Provider: Wyoming Department of Agriculture.

Melissa Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2025-00407 Filed 1-10-25; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by February 12, 2025 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information

unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Data Security Requirements for Accessing Confidential Data.

OMB Control No.: 0579–NEW.

Summary of Collection: Title III of the Foundations for Evidence-Based Policymaking Act of 2018 (44 U.S.C. 3583; hereafter referred to as the Evidence Act) mandates that OMB establish a Standard Application Process (SAP) for requesting access to certain confidential data assets. While the adoption of the SAP is required for statistical agencies and units designated under the Confidential Information Protection and Statistical Efficiency Act of 2018 (CIPSEA), it is recognized that other agencies and organizational units within the Executive Branch may benefit from the adoption of the SAP to accept applications for access to confidential data assets. The SAP is to be a process through which agencies, the Congressional Budget Office, State, local, and Tribal governments, researchers, and other individuals, as appropriate, may apply to access confidential data assets held by a federal statistical agency or unit for the purposes of developing evidence. With the Interagency Council on Statistical Policy (ICSP) as advisors, the entities upon whom this requirement is levied are working with the SAP Project Management Office (PMO) and with OMB to implement the SAP.

The SAP Portal is to be a single web-based common application designed to collect information from individuals requesting access to confidential data assets from federal statistical agencies and units. When an application for confidential data is approved through the SAP Portal, APHIS–NAHMS will collect information to fulfill its data security requirements. This is a required step before providing the individual with access to restricted use microdata for the purpose of evidence building. APHIS–NAHMS's data security agreements and other paperwork, along with the corresponding security protocols, allow APHIS–NAHMS to maintain careful controls on confidentiality and privacy, as required by law. APHIS–NAHMS's collection of data security information will occur outside of the SAP Portal.

The following bullets outline the major components and processes in and around the SAP Portal, leading up to APHIS–NAHMS' collection of security requirements.

- *SAP Policy:* At the recommendation of the ICSP, the SAP Policy establishes the SAP

to be implemented by statistical agencies and units and incorporates directives from the Evidence Act. The SAP Policy may be found in OMB Memorandum 23–04.

- *The SAP Portal:* The SAP Portal is an application interface connecting applicants seeking data with a catalog of metadata for data assets owned by the federal statistical agencies and units. The SAP Portal is not a new data repository or warehouse; confidential data assets will continue to be stored in secure data access facilities owned and hosted by the federal statistical agencies and units. The Portal provides a streamlined application process across agencies, reducing redundancies in the application process.

- *Data Discovery:* Individuals begin the process of accessing restricted use data by discovering confidential data assets through the SAP metadata catalog, maintained by federal statistical agencies at www.researchdatagov.org.

- *SAP Portal Application Process:* Individuals who have identified and wish to access confidential data assets apply through the SAP Portal. Applicants must create an account and follow all steps to complete the application. Applicants enter personal, contact, and institutional information for the research team and provide summary information about their proposed project.

- *Submission for Review:* Agencies approve or reject an application within a prompt timeframe. Agencies may also request applicants to revise and resubmit their application.

- *Access to Confidential Data:* Approved applicants are notified through the SAP Portal that their proposal has been accepted. This concludes the SAP Portal process. Agencies will contact approved applicants to initiate completion of their security documents. The completion and submission of the agency's security requirements will take place outside of the SAP Portal.

- *Collection of Information for Data Security Requirements:* In the instance of a positive determination for an application requesting access to an APHIS–NAHMS-owned confidential data asset, APHIS–NAHMS will contact the applicant(s) to initiate the process of collecting information to fulfill its data security requirements. This process allows APHIS–NAHMS to place the applicant(s) in a trusted access category.

Need and Use of the Information: APHIS–NAHMS is required by law to uphold rigorous controls that allow it to minimize disclosure risk and protect confidentiality. The Data Security Requirements will allow APHIS–NAHMS to provide required training to applicants on the laws and regulations protecting the confidentiality of the data it collects, policies and procedures for data access, handling, and export, and to designate the applicant agency status according to Section 3572 of U.S.C. 44.

Description of Respondents: State governments, researchers, and other individuals, as appropriate.

Number of Respondents: 10.

Frequency of Responses:

Reporting: Other (one time).

Total Burden Hours: 26.

Rachelle Ragland-Greene,
Departmental Information Collection
Clearance Officer.

[FR Doc. 2025–00506 Filed 1–10–25; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Summer Food Service Program; 2025 Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program. These adjustments address changes in the Consumer Price Index, as required under the Richard B. Russell National School Lunch Act. The 2025 reimbursement rates are presented as a combined set of rates to highlight simplified cost accounting procedures. The 2025 rates are also presented individually, as separate operating and administrative rates of reimbursement, to show the effect of the Consumer Price Index adjustment on each rate. On average, the 2025 rates adjustment represents a 3.6 percent increase in the rates from last year.

DATES: This adjustment is applicable January 1, 2025.

FOR FURTHER INFORMATION CONTACT: Penny Burke, Program Monitoring and Operational Support Division, Child Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, 1320 Braddock Place, Suite 401, Alexandria, Virginia 22314. Tel. (303) 844–0357.

SUPPLEMENTARY INFORMATION: The Summer Food Service Program (SFSP) is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR part 415 and final rule-related notice published at 48 FR 29114, June 24, 1983.)

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice is not a rule as defined by the Regulatory Flexibility Act, 5 U.S.C.

601–612, and thus is exempt from the provisions of that Act. Additionally, this notice has been determined to be exempt from formal review by the Office of Management and Budget under Executive Order 12866.

Definitions

The terms used in this notice have the meaning ascribed to them under 7 CFR part 225 of the SFSP regulations.

Background

This notice informs the public of the annual adjustments to the reimbursement rates for meals served in SFSP. In accordance with sections 12(f) and 13, 42 U.S.C. 1760(f) and 1761 of the Richard B. Russell National School Lunch Act (NSLA) and SFSP regulations under 7 CFR part 225, the USDA announces the adjustments in SFSP payments for meals served to participating children during calendar year 2025.

The 2025 reimbursement rates are presented as a combined set of rates to highlight simplified cost accounting procedures. Reimbursement is based solely on a “meals times rates” calculation, without comparison to actual or budgeted costs.

Sponsors receive reimbursement that is determined by the number of reimbursable meals served, multiplied by the combined rates for food service operations and administration. However, the combined rate is based on separate operating and administrative rates of reimbursement, each of which is adjusted differently for inflation.

Calculation of Rates

The combined rates are constructed from individually authorized operating and administrative reimbursements. Simplified procedures provide flexibility, enabling sponsors to manage their reimbursements to pay for any allowable cost, regardless of the cost category. Sponsors remain responsible, however, for ensuring proper administration of the Program, while providing the best possible nutrition benefit to children.

The operating and administrative rates are calculated separately. However, the calculations of adjustments for both cost categories are based on the same set of changes in the *Food Away from Home* series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor. They represent a 3.6 percent increase in this series for the 12-month period, from November 2023 through November 2024 (from 360.383 in November 2023 to 373.530 in November 2024).

Table of 2025 Reimbursement Rates

Presentation of the 2025 maximum per meal rates for meals served to children in SFSP combines the results from the calculations of operational and administrative payments, which are further explained in this notice. The total amount of payments to State agencies for disbursement to SFSP sponsors will be based upon these adjusted combined rates and the number of meals of each type served.

These adjusted rates will be in effect from January 1, 2025, through December 31, 2025.

These changes are reflected below.

All States except Alaska and Hawaii—Rural or Self-prep Sites—Breakfast—3 dollars and 8.75 cents (11 cent increase from the 2024 reimbursement rate), Lunch or Supper—5 dollars and 40.25 cents (19 cent increase), Snack—1 dollar and 28 cents (4.50 cent increase); All Other Types of Sites—Breakfast—3 dollars and 3 cents (10.75 cent increase), Lunch or Supper—5 dollars and 31.50 cents (18.50 cent increase), Snack—1 dollar and 25 cents (4.50 cent increase).

Alaska—Rural or Self-prep Sites—Breakfast—5 dollars and 0 cents (17.50 cent increase), Lunch or Supper—8 dollars and 76 cents (31 cent increase), Snack—2 dollar and 7.50 cents (7.75 cent increase); All Other Types of Sites—Breakfast—4 dollars and 90.75 cents (17.25 cent increase), Lunch or Supper—8 dollars and 61.75 cents (30.50 cent increase), Snack—2 dollar and 2.75 cents (7.5 cent increase).

Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands—Rural or Self-prep Sites—Breakfast—4 dollars and 1.25 cents (14.25 cent increase), Lunch or Supper—7 dollars and 2.50 cents (24.25 cent increase), Snack—1 dollar and 66 cents (5.50 cent increase); All Other Types of Sites—Breakfast—3 dollars and 93.50 cents (14 cent increase), Lunch or Supper—6 dollars and 91.25 cent (24 cent increase), Snack—1 dollar and 62.25 cents (5.5 cent increase).

2025 REIMBURSEMENT RATES
[Combined]

Per meal rates in whole or fractions of U.S. dollars	All states except Alaska and Hawaii	All states except Alaska and Hawaii	Alaska	Alaska	Guam, Hawaii, Puerto Rico, and U.S. Virgin Islands	Guam, Hawaii, Puerto Rico, and U.S. Virgin Islands
Site types	Rural or self-prep sites	All other types of sites	Rural or self-prep sites	All other types of sites	Rural or self-prep sites	All other types of sites
Breakfast	3.0875	3.0300	5.0000	4.9075	4.0125	3.9350
Lunch or Supper	5.4025	5.3150	8.7600	8.6175	7.0250	6.9125
Snack	1.2800	1.2500	2.0750	2.0275	1.6600	1.6225

Operating Rates

The portion of the SFSP rates for operating costs is based on payment amounts set in section 13(b)(1) of the NSLA, 42 U.S.C. 1761(b)(1). They are rounded down to the nearest whole cent, as required by section 11(a)(3)(B)(iii) of the NSLA, 42 U.S.C. 1759a(a)(3)(B)(iii).

These changes are reflected below.
All States except Alaska and Hawaii—Breakfast—2 dollars and 81 cents (10 cents increase from the 2024 reimbursement rate), Lunch or Supper—4 dollars and 89 cents (17 cents increase), Snack—1 dollar and 14 cents (4 cents increase).
Alaska—Breakfast—4 dollars and 55 cents (16 cents increase), Lunch or

Supper—7 dollars and 93 cents (28 cents increase), Snack—1 dollar and 85 cents (7 cents increase).
Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands—Breakfast—3 dollars and 65 cents (13 cents increase), Lunch or Supper—6 dollars and 36 cents (22 cents increase), Snack—1 dollar and 48 cents (5 cents increase).

OPERATING COMPONENT OF 2025 REIMBURSEMENT RATES

Operating rates in U.S. dollars, rounded down to the nearest whole cent	All states except Alaska and Hawaii	Alaska	Guam, Hawaii, Puerto Rico, and U.S. Virgin Islands
Breakfast	2.81	4.55	3.65
Lunch or Supper	4.89	7.93	6.36
Snack	1.14	1.85	1.48

Administrative Rates

The administrative cost component of the reimbursement is authorized under section 13(b)(3) of the NSLA, 42 U.S.C. 1761(b)(3). Rates are higher for sponsors of sites located in rural areas and for “self-prep” sponsors that prepare their own meals at the SFSP site or at a central facility instead of purchasing them from vendors. The administrative portion of SFSP rates are adjusted, either up or down, to the nearest quarter-cent.

These changes are reflected below.

All States except Alaska and Hawaii—Rural or Self-prep Sites—Breakfast—27.75 cents (1 cent increase from the 2024 reimbursement rate), Lunch or Supper—51.25 cents (2 cent increase), Snack—14 cents (0.50 cent increase); All Other Types of Sites—Breakfast—22 cents (0.75 cent increase), Lunch or Supper—42.50 cents (1.5 cent increase), Snack 11 cents (0.50 cent increase).

Alaska—Rural or Self-prep Sites—Breakfast—45 cents (1.5 cent increase), Lunch or Supper—83 cents (3 cent increase), Snack—22.50 cents (0.75 cent

increase); All Other Types of Sites—Breakfast—35.75 cents (1.25 cent increase), Lunch or Supper—68.75 cents (2.50 cent increase), Snack—17.75 cents (0.5 cent increase).

Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands—Rural or Self-prep Sites—Breakfast—36.25 cents (1.25 cent increase), Lunch or Supper—66.50 cents (2.25 cent increase), Snack—18 cents (0.50 cent increase); All Other Types of Sites—Breakfast—28.50 cents (1 cent increase), Lunch or Supper—55.25 cents (2 cent increase), Snack—14.25 cents (0.5 cent increase).

ADMINISTRATIVE COMPONENT OF 2025 REIMBURSEMENT RATES

Administrative rates in U.S. dollars, adjusted, up or down, to the nearest quarter-cent	All states except Alaska and Hawaii	All states except Alaska and Hawaii	Alaska	Alaska	Guam, Hawaii, Puerto Rico, and U.S. Virgin Islands	Guam, Hawaii, Puerto Rico, and U.S. Virgin Islands
Site types	Rural or self-prep sites	All other types of sites	Rural or self-prep sites	All other types of sites	Rural or self-prep sites	All other types of sites
Breakfast	0.2775	0.2200	0.4500	0.3575	0.3625	0.2850
Lunch or Supper	0.5125	0.4250	0.8300	0.6875	0.6650	0.5525
Snack	0.1400	0.1100	0.2250	0.1775	0.1800	0.1425

Authority: Sections 9, 13, and 14, Richard B. Russell National School Lunch Act, 42 U.S.C. 1758, 1761, and 1762a, respectively.

Tameka Owens,

Acting Administrator and Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2025–00479 Filed 1–10–25; 8:45 am]

BILLING CODE 3410–30–P

COMMISSION ON CIVIL RIGHTS**Notice of Public Meeting of the North Carolina Advisory Committee to the U.S. Commission on Civil Rights**

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the North Carolina Advisory Committee (Committee) to the U.S. Commission on

Civil Rights will hold a virtual, public meeting via Zoom at 1 p.m. eastern time on Friday, January 31, 2025. The purpose of this meeting is to discuss the Committee’s report on the topic, *Civil Rights and the Child Welfare System in North Carolina*.

DATES: Friday, January 31, 2025, from 1 p.m.–2:30 p.m. eastern time.

ADDRESSES: The meeting will be held via Zoom Webinar.

Registration Link (Audio/Visual):
https://www.zoomgov.com/webinar/register/WN_PGdEd9zCRD-VokjFwyeyuQ.

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 160 774 5329.

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

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An

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

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be

emailed to Ana Victoria Fortes at afortes@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at (202) 681-0857.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, as they become available, both before and after the meeting. Records of the meeting will be available via the file sharing website, www.box.com. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

- I. Welcome & Roll Call
- II. Committee Discussion
- III. Public Comment
- IV. Next Steps
- V. Adjournment

Dated: January 6, 2025.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2025-00422 Filed 1-10-25; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-830]

Certain Stainless Steel Plate in Coils From Taiwan: Rescission of Antidumping Duty Administrative Review; 2023-2024

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on certain stainless steel plate in coils (SS plate in coils) from Taiwan for the period of review (POR) May 1, 2023, through April 30, 2024.

DATES: Applicable January 13, 2025.

FOR FURTHER INFORMATION CONTACT: Carter Sherwin, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4260.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2024, Commerce published in the **Federal Register** a notice of opportunity to request an administrative

review of the antidumping duty order on SS plate in coils from Taiwan.¹ On May 31, 2024, North American Stainless and Outokumpu Stainless USA, LLC, (the domestic interested parties) submitted a timely request that Commerce conduct an administrative review.²

On July 5, 2024, Commerce published in the **Federal Register** a notice of initiation of administrative review with respect to imports of SS plate in coils exported and/or produced by the companies listed in the domestic interested parties' request for review, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i).³ On July 30, 2024, we placed on the record U.S. Customs and Border Protection (CBP) data for entries of SS plate in coils from Taiwan during the POR, showing no reviewable entries, and invited interested parties to comment.⁴ No interested party submitted comments to Commerce.

On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.⁵ On October 1, 2024, Commerce notified all interested parties of its intent to rescind the instant review in full because there were no suspended entries of subject merchandise by any of the companies subject to this review during the POR and invited interested parties to comment.⁶ No interested party submitted comments to Commerce. Additionally, on December 9, 2024, Commerce tolled the deadline to issue the preliminary results in this administrative review by 90 days.⁷

Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), it is Commerce's practice to rescind an administrative review of an antidumping duty order when there are no reviewable entries of subject merchandise during the POR for which

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List*, 89 FR 35778 (May 2, 2024).

² See Domestic Interested Parties' Letter, "Domestic Interested Parties' Request for Initiation of Administrative Review," dated May 31, 2024.

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 89 FR 55567 (July 5, 2024).

⁴ See Memorandum, "Customs Entry Data from U.S. Customs and Border Protection," dated July 30, 2024.

⁵ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

⁶ See Commerce's Letter, "Notice of Intent to Rescind Review," dated October 1, 2024.

⁷ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated December 9, 2024.

liquidation is suspended.⁸ Normally, upon completion of an administrative review, the suspended entries are liquidated at the antidumping duty assessment rate calculated for the review period.⁹ Therefore, for an administrative review to be conducted, there must be at least one reviewable, suspended entry that Commerce can instruct CBP to liquidate at the antidumping duty assessment rate calculated for the review period.¹⁰ As noted above, there were no entries of subject merchandise for any of the companies subject to this review during the POR. Accordingly, in the absence of suspended entries of subject merchandise during the POR, we are hereby rescinding this administrative review, in its entirety, in accordance with 19 CFR 351.213(d)(3).

Assessment

Commerce will instruct CBP to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this rescission notice in the **Federal Register**.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

⁸ See, e.g., *Diocetyl Terephthalate from the Republic of Korea: Rescission of Antidumping Administrative Review; 2021-2022*, 88 FR 24758 (April 24, 2023); see also *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany: Rescission of Antidumping Administrative Review; 2020-2021*, 88 FR 4157 (January 24, 2023).

⁹ See 19 CFR 351.212(b)(1).

¹⁰ See 19 CFR 351.213(d)(3).

Dated: December 17, 2024.

Scot Fullerton,

*Acting Deputy Assistant Secretary for
Antidumping and Countervailing Duty
Operations.*

[FR Doc. 2025–00435 Filed 1–10–25; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: NOAA–HQ–2024–0152]

Federal Consistency Appeal by Robert Hagopian

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of appeal.

SUMMARY: This announcement provides notice that the Department of Commerce (DOC) has received a “Notice of Appeal” filed by Robert Hagopian, (Appellant) requesting that the Secretary override an objection by the New York State Department of State to a consistency certification for a proposed project to perform shoreline stabilization, dock installation, and dredging at a property along the Hudson River in Ulster, New York.

DATES: Written comments and requests for a public hearing will be considered if received no later than February 12, 2025.

ADDRESSES: NOAA intends to post publicly available materials and related documents comprising the appeal record electronically, at www.regulations.gov, under docket number NOAA–HQ–2024–0152.

Comments or requests for a public hearing must be submitted via the following method:

- **Electronic Submission:** Submit all electronic public comments or requests for a public hearing via the Federal eRulemaking portal. Go to www.regulations.gov and enter NOAA–HQ–2024–0152 in the search box. Click the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA.

FOR FURTHER INFORMATION CONTACT: For further questions about this notice, contact Emily Van Dam, NOAA Office of the General Counsel, Oceans and Coasts Section, 1305 East-West Highway, Room 6111, Silver Spring, MD

20910, (301) 278–8536, emily.van.dam@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 2024, the Secretary of Commerce (Secretary) received a “Notice of Appeal” filed by Robert Hagopian, pursuant to the Coastal Zone Management Act (CZMA), 16 U.S.C. 1451 *et seq.*, and implementing regulations found at 15 CFR part 930, subpart H. The Notice of Appeal is taken from an objection by the New York State Department of State to the Appellant’s CZMA consistency certification for Appellant’s pending permit application to the U.S. Army Corps of Engineers to perform shoreline stabilization, dock installation, and dredging at a property along the Hudson River in Ulster, New York.

Under the CZMA, the Secretary may override the New York State Department of State’s objection on grounds that the project is consistent with the objectives or purposes of the CZMA, or otherwise necessary in the interest of national security. To make the determination that the proposed activity is “consistent with the objectives or purposes of the CZMA,” the Secretary must find that: (1) The proposed activity furthers the national interest as articulated in sections 302 or 303 of the CZMA, in a significant or substantial manner; (2) the national interest furthered by the proposed activity outweighs the activity’s adverse coastal effects, when those effects are considered separately or cumulatively; and (3) no reasonable alternative is available that would permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the applicable coastal management program. 15 CFR 930.121. To make the determination that the proposed activity is “necessary in the interest of national security,” the Secretary must find that a national defense or other national security interest would be significantly impaired if the proposed activity is not permitted to go forward as proposed. 15 CFR 930.122. The Appellant bears the burden of submitting evidence in support of his appeal and the burden of persuasion. 15 CFR 930.127.

Request for Public and Federal Agency Comments

We encourage the public and interested federal agencies to participate in this appeal by submitting written comments and any relevant materials supporting those comments using the method specified in the **ADDRESSES** section of this notice. All comments received are a part of the public record

and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Opportunity for Public Hearing

The Secretary may hold a public hearing on this appeal, either in response to a written request for a public hearing or upon the Secretary’s own initiative. You may submit a request for a public hearing using the method specified in the **ADDRESSES** section of this notice. A written request for a public hearing must include an explanation for why you believe a public hearing would be beneficial and aid the decision-maker. The Secretary is not obligated to hold a public hearing. If a hearing is held, advance notice of the time, date, and location of the public hearing will be published in the **Federal Register**. The public and federal agency comment period will also be reopened for a 10-day period following the hearing to allow for additional input. 15 CFR 930.128.

Public Availability of Appeal Documents and Decisions

NOAA intends to provide access to publicly available materials and related documents comprising the appeal record on the following website: www.regulations.gov, under docket number NOAA–HQ–2024–0152.

(Authority: 15 CFR 930.128(a))

Dated: December 30, 2024.

Jeffrey S. Dillen,

Deputy General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 2024–31594 Filed 1–10–25; 8:45 am]

BILLING CODE 3510–JE–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, January 15, 2025—10:00 a.m. (See **MATTERS TO BE CONSIDERED**)

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, MD.

STATUS: Commission Meeting—Open to the public (10:00 a.m.); Closed Meeting will follow immediately after conclusion of the public meeting.

MATTERS TO BE CONSIDERED:

Open Session

Briefing Matter on Notice of Proposed Rulemaking—Safety Standard for Lithium-Ion Batteries Micromobility Products

A live webcast of the meeting can be viewed at the following link: <https://events.gcc.teams.microsoft.com/event/7ba35e5b-216d-40a2-b183-9f382a696b3e@7f5de26c-a63d-475c-9b6c-4126a914e132>

Dial in by telephone: +1 469-676-2705, CODE,191380541#

Closed Session

Briefing Matter

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, 301-504-7479 (Office) or 240-863-8938 (Cell).

Dated: January 8, 2025

Alberta E. Mills,

Commission Secretary.

[FR Doc. 2025-00585 Filed 1-8-25; 11:15 am]

BILLING CODE 6355-01-P

DEPARTMENT OF DEFENSE**Office of the Secretary****Defense Advisory Committee on Military Personnel Testing; Notice of Federal Advisory Committee Meeting**

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Military Personnel Testing (DAC-MPT) will take place.

DATES: Day 1—Open to the public Wednesday, January 22, 2025 from 8:30 a.m. to 5:45 p.m., Mountain Time. Day 2—Open to the public Thursday, January 23, 2025, from 8:30 a.m. to 1:15 p.m., Mountain Time.

ADDRESSES: Venue to-be-determined (TBD). Meeting details will be posted on: <https://dacmpt.com>.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer (DFO), Dr. Sofiya Velgach, (703) 697-9271 (Voice), 703 614-9272 (Facsimile), osd.pentagon.ousd-p-r.mbx.dacmpt@mail.mil (Email). Mailing address is Designated Federal Officer, Accession Policy, Office of the Under Secretary of Defense for Personnel and Readiness, Room 3D1066, Defense Pentagon,

Washington, DC 20301-4000. The most up-to-date changes to the meeting can be found on the website: <https://dacmpt.com>.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the “Federal Advisory Committee Act” or “FACA”); section 552b of title 5, U.S.C. (commonly known as the “Government in the Sunshine Act”); and 41 Code of Federal Regulations (CFR) 102-3.140 and 102-3.150.

Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, the Defense Advisory Committee on Military Personnel Testing was unable to provide public notification required by 41 CFR 102-3.150(a) concerning changes to its previously noticed January 22-23, 2025 meetings. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102-3.150(b), waives the 15-calendar day notification requirement.

Purpose of the Meeting: The purpose of the meetings is to provide an overview of the accession testing program: progress on Armed Services Vocational Aptitude Batter (ASVAB) form development, special purpose tests, calculator study, adverse impact analyses, and updates to the ASVAB Career Exploration Program. Additional information can be found at <https://dacmpt.com>.

Agenda

Day 1, Wednesday, January 22, 2025 (Mountain Time)

8:30 a.m.–8:45 a.m.: Welcome and Opening—Remarks Dr. Sofiya Velgach, (OASD(M&RA)/AP)
8:45 a.m.–9:15 a.m.: Accession Policy Brief—Dr. Katherine Helland (OASD(M&RA)/AP)
9:15 a.m.–10:00 a.m.: R&D Milestones Brief—Dr. Mary Pommerich (OPA/DTAC)
10:00 a.m.–10:15 a.m.: *Break*
10:15 a.m.–11:15 a.m.: Update on Committee Recommendations—Dr. Mary Pommerich (OPA/DTAC)
11:15 a.m.–12:15 p.m.: Update on P&P Forms—Dr. Jeff Dahlke (HumRRO)
12:15 p.m.–1:45 p.m.: *Lunch*
1:45 p.m.–2:45 p.m.: Form Equating Sampling Design—Dr. Jeff Dahlke (HumRRO)
2:45 p.m.–3:15 p.m.: Complex Reasoning Update—Dr. Kate Klein (HumRRO)
3:15 p.m.–3:45 p.m.: Computational Thinking Update—Dr. Kimberly Adams (HumRRO)

3:45 p.m.–4:00 p.m.: *Break*

4:00 p.m.–5:30 p.m.: Calculator Analyses Efforts

a. Calculator Impact Study—Dr. Kevin Bradley (HumRRO)

b. CAT Simulation—Dr. Glen Heinrich-Wallace (HumRRO)

c. Calculator Needs Assessment—Dr. Monica Gribben (HumRRO)

5:30 p.m.–5:45 p.m.: *Public Comments*

Day 2, Thursday, January 23, 2025 (Mountain Time)

8:30 a.m.–9:30 a.m.: Refinement of the Joint Service—TAPAS Instrument—Dr. Dan Putka (HumRRO)

9:30 a.m.–10:30 a.m.: Adverse Impact—Dr. Nick Howald (HumRRO)

10:30 a.m.–10:45 a.m.: *Break*

10:45 a.m.–11:30 a.m.: Curriculum Alignment Study ASVAB CEP—Dr. Rod McCloy (HumRRO)

11:30 a.m.–12:30 p.m.:
a. General—Dr. Irina Rader (OPA/DTAC)

b. Find Your Interest—Dr. Rod McCloy (HumRRO)

c. Work Values—Dr. Maura Burke (HumRRO)

12:30 p.m.–12:45 p.m.: Future Topics—Dr. Mary Pommerich (OPA/DTAC)

12:45 p.m.–1:00 p.m.: *Public Comments*

1:00 p.m.–1:15 p.m.: Closing

Comments—Dr. Fred Oswald, Chair
1:15 p.m.–3:00 p.m.: *Working Lunch (Administrative Items)*

Abbreviations Key

ASVAB—Armed Services Vocational Aptitude Battery

ASVAB CEP—ASVAB Career

Exploration Program, student testing program provided at no charge to high schools nation-wide to help students develop career exploration skills and used by recruiters to identify potential applicants for enlistment.

CAT—computerized adaptive testing
HumRRO—Human Resources Research Organization

OASD(M&RA)/AP—Office of the Assistant Secretary of Defense (Manpower and Reserve Affairs)/Accession Policy

OPA/DTAC—Office of People Analytics/Defense Testing and Assessment Center

P&P—paper and pencil

TAPAS—Tailored Adaptive Personality Assessment System

Latest version of the agenda will be posted on <https://dacmpt.com>.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102-3.140 through 102-3.165, and the availability of space, this meeting is open to the public. Seating availability is on a first-come, first-served basis. All members of the public who wish to attend the

public meeting must contact the DFO no later than 12:00 p.m. on Friday, January 10, 2025, as listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, interested persons may submit written statements to the DAC–MPT at any time about its approved agenda or at any time on the DAC–MPT’s mission. Written statements should be submitted to the DAC–MPT’s DFO at the address or facsimile number listed in the **FOR FURTHER INFORMATION CONTACT** section. If statements pertain to a specific topic being discussed at the planned meeting, then these statements must be submitted no later than five (5) business days prior to the meeting in question. Written statements received after this date may not be provided to, or not considered by the DAC–MPT until its next meeting. The DFO will review all timely submitted written statements and provide copies to all the DAC–MPT members before the meeting that is the subject of this notice. Please note that since the DAC–MPT operates under the provisions of the FACA, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection. Opportunity for public comments will be provided at the end of each day. Public comments will be limited to 5 minutes per person, as time allows.

Dated: January 6, 2025.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2025–00403 Filed 1–10–25; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF ENERGY

Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice of request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995.

DATES: Comments regarding this proposed information collection must be received on or before March 14, 2025. If you anticipate any difficulty in submitting comments within that period, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

ADDRESSES: Written comments may be sent to Colin Cunliff, Director, Strategic Analysis, Office of Energy Efficiency and Renewable Energy; 1000 Independence Avenue SW, Washington, DC 20585 or by email at strategicanalysis@ee.doe.gov.

FOR FURTHER INFORMATION CONTACT: Colin Cunliff, Director, Strategic Analysis, Office of Energy Efficiency and Renewable Energy; 1000 Independence Avenue SW, Washington, DC 20585; strategicanalysis@ee.doe.gov; (240) 255–8802.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains:

- (1) *OMB No.:* 1910–NEW;
- (2) *Information Collection Request Title:* Greenhouse Gas Emissions Value Analysis;
- (3) *Type of Request:* New collection;
- (4) *Purpose:* DOE seeks to collect information from electricity producers in order to provide such electricity producers with an emissions value that a qualifying facility may use to petition the Internal Revenue Service (IRS) for a Provisional Emissions Rate (PER) and claim the section 45Y or 48E tax credits. DOE will share relevant information collected with one or more National Laboratories as needed so those Laboratories can perform the required emissions analysis. Likely respondents include owners of electricity generating facilities or energy storage technology, as defined in 26 U.S.C. 45Y, 48E;
- (5) *Annual Estimated Number of Respondents:* 20;
- (6) *Annual Estimated Number of Total Responses:* 20;
- (7) *Annual Estimated Number of Burden Hours:* 800;
- (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* \$77,368.
Statutory Authority: 26 U.S.C. 45Y, 48E; 26 CFR 1.45Y, 1.48E

Signing Authority

This document of the Department of Energy was signed on January 6, 2025, by Francisco Moreno, Associate Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, 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 January 7, 2025.

Jennifer Hartzell,

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

[FR Doc. 2025–00500 Filed 1–10–25; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, February 18, 2025; 6–8 p.m. EST.

ADDRESSES: The Ohio State University, Endeavor Center, 1862 Shyville Road, Room 165, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: Greg Simonton, Federal Coordinator, by phone: (740) 897–3737 or email: greg.simonton@pppo.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and

recommendations on any EM program components.

Tentative Agenda:

- Presentation to the Board
- Administrative Activities
- Public Comments

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Greg Simonton in advance of the meeting. The Department of Energy will hear oral public comments during the meeting. A 15-minute public comment period will take place at the end of the agenda. Individual oral comments are to be limited to two minutes per speaker. Written statements may be filed either before or after the meeting. Written comments submitted by 5 p.m. EST on Friday, February 21, 2025, will be included in the minutes. Please submit written comments to Greg Simonton with "Public Comment" in the subject line. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: Minutes will be available by writing or calling Greg Simonton, Federal Coordinator, U.S. Department of Energy, Portsmouth/Paducah Project Office, P.O. Box 700, Piketon, OH 45661, Email: greg.simonton@pppo.gov or by Phone: (740) 897-3737, Minutes will also be available at the following website: <https://www.energy.gov/pppo/ports-ssab/listings/meeting-materials>.

Signing Authority: This document of the Department of Energy was signed on January 7, 2025, 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 January 7, 2025.

Jennifer Hartzell,

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

[FR Doc. 2025-00476 Filed 1-10-25; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Notice of Intent To Prepare a Supplemental Environmental Impact Statement for Enhanced Plutonium Facility Utilization at Lawrence Livermore National Laboratory in Livermore, California

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice of intent.

SUMMARY: The National Nuclear Security Administration (NNSA), a semi-autonomous agency within the United States (U.S.) Department of Energy (DOE), announces its intent to prepare a Supplemental Environmental Impact Statement (SEIS) for Enhanced Plutonium Facility Utilization at Lawrence Livermore National Laboratory (LLNL or Laboratory) in Livermore, California (DOE/EIS-0547-S1), tiered from the 2023 LLNL Site-Wide Environmental Impact Statement (SWEIS) (2023 LLNL SWEIS)(DOE/EIS-0547). The Record of Decision (ROD) for the 2023 LLNL SWEIS was published on February 20, 2024. The ROD implemented the Proposed Action Alternative in the SWEIS and is the baseline for this SEIS. NNSA will prepare the SEIS and will analyze the potential environmental impacts of enhanced plutonium facility utilization, other reasonable alternatives that may be identified, and the baseline operations as discussed in the 2023 LLNL SWEIS. The purpose of this Notice is to invite public participation in the SEIS process and to encourage public involvement on the scope, any environmental issues, and alternatives that NNSA should consider in the draft SEIS.

DATES: NNSA invites other Federal agencies, Native American Tribes, State and local governments, industry, other organizations, and members of the public to review and submit comments on the scope and alternatives of the LLNL SEIS through February 12, 2025. Comments received after this date will be considered to the extent practicable. NNSA will hold one virtual public scoping meeting. The date of the meeting will be provided in a future notice posted on the following website: <https://www.energy.gov/nnsa/nnsa-nepa-reading-room>. NNSA will hold the meeting no earlier than 15 days from the posting of the notice. Public scoping meeting dates and details will also be announced in local media outlets.

ADDRESSES: Written and oral comments will be given equal weight and NNSA will consider all comments received or postmarked by the end of the comment period in preparing the draft SEIS. Comments received or postmarked after the comment period will be considered to the extent practicable. Written comments on the scope of the SEIS or requests for information related to the SEIS should be sent to: Alan Chen, NEPA Document Manager, National Nuclear Security Administration, Livermore Field Office, 7000 East Avenue, L-293, Livermore, CA 94550-9234 or email to: LLNLSEIS@nnsa.doe.gov. Before including your address, phone number, email address, or other personally identifiable information in your comment, please be advised that your entire comment—including your personally identifiable information—may be made publicly available. If you wish for NNSA to withhold your name and/or other personally identifiable information, please state this prominently at the beginning of your comment. You may also submit comments anonymously.

Information related to the virtual public scoping meeting, including internet and telephone access details, and instructions on how to participate will be available at the following website: <https://www.energy.gov/nnsa/nnsa-nepa-reading-room> and announced in local media outlets.

FOR FURTHER INFORMATION CONTACT: For additional information about this Notice, please contact Alan Chen, NEPA Document Manager, National Nuclear Security Administration, Livermore Field Office, 7000 East Avenue, L-293, Livermore, CA 94550-9234; telephone: 833-778-0508; or email to: LLNLSEIS@nnsa.doe.gov.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Security Enterprise is currently performing the highest throughput of work in over 30 years, which includes plutonium (Pu) research and development (R&D). As the weapons in the Nation's nuclear stockpile continue to age beyond their original design lifetime, an increased amount of experimental data developed through Pu R&D is necessary to continue NNSA's science-based stewardship of the nuclear weapons stockpile. NNSA has a need for additional R&D space or enhanced utilization of existing R&D space due to new and evolving international security concerns. This enhanced utilization is critical to NNSA's Stockpile Stewardship and Management Program

(SSMP), to preventing the spread and use of nuclear weapons worldwide, and to many other areas that may impact national security and global stability.

The LLNL Plutonium Facility has been in operation since the 1960s. Its mission is to support the nuclear weapons program through research in the physical, metallurgical, and chemical properties of Pu, including aging, dismantlement, and disposition in support of stockpile stewardship, as well as fabrication, testing, and assembly of plutonium device parts in support of experimental activities. The Pu Facility is part of the LLNL Superblock, which includes several supporting R&D facilities within the 770-acre laboratory site in Livermore, California (Livermore Site). The Livermore Site is situated about 50 miles east of San Francisco in southeastern Alameda County.

Mission

The 21st century presents a growing set of challenges that are the focus of the Laboratory's mission as an NNSA national security laboratory. National security policies require DOE, through NNSA, to maintain the U.S. nuclear weapons stockpile and the Nation's core competencies in nuclear weapons. NNSA has the mission to maintain and enhance the safety, security, and effectiveness of the nuclear weapons stockpile. The 2022 Nuclear Posture Review stated that an effective, responsive, and resilient nuclear weapons infrastructure is essential to the U.S. capacity to adapt to shifting requirements, and to support the sustenance of its nuclear forces to protect the homeland, assure allies, deter adversaries, and hedge against adverse developments.

LLNL's defining responsibility is ensuring the safety, security, and reliability of the Nation's nuclear deterrent. LLNL's mission is broader than stockpile stewardship and also includes missions that respond to national security and global security concerns that range from nuclear proliferation and terrorism to energy shortages and climate change. The Laboratory's science and engineering capabilities are applied to these challenges. Programs at LLNL support DOE; NNSA; the Department of Defense; the Department of Homeland Security; other Federal, State and local agencies; private and academic sponsors; and other scientific institutions.

The Strategic Deterrence Program (previously the Weapons and Complex Integration or WCI Program in the 2023 LLNL SWEIS) at LLNL works to ensure that the Nation's nuclear deterrent

remains safe, secure, and reliable. The program accomplishes this through the SSMP—an ongoing effort to apply a science-based fundamental understanding of nuclear weapons performance—from the development of enhanced warhead surveillance tools that detect the onset of problems to manufacturing capabilities that produce critical components and the use of high-performance computational capabilities.

Purpose and Need for Agency Action

As U.S. nuclear weapons continue to age beyond their original design lifetime, an increased amount of experimental data developed through Pu R&D is necessary to continue the science-based stewardship of the nuclear weapons stockpile. NNSA has a need for additional R&D space due to new and evolving international security concerns. NNSA is constrained in Pu R&D space, and the Pu Facility R&D capabilities at LLNL could be better optimized in support of mission areas including designs of the nuclear explosives package for Life Extension Programs, Modification Programs, and Alteration programs, as well as certifications of weapons as they enter the stockpile. There is a need to perform enhanced utilization of Pu R&D operations at the LLNL Plutonium Facility from Security Category (CAT) III operational levels to CAT II operations.

The LLNL Pu Facility was originally built and operated as a Security CAT I facility and is the only immediately available facility with the capacity and capability to conduct this required Security CAT II work. Increasing Pu R&D floorspace through construction of a new Security CAT I or II facility could take decades, while re-establishment of Security CAT II operations at the LLNL Plutonium Facility may take approximately five years.

By the end of 2012, NNSA removed excess Pu inventories as part of the De-Inventory Project, resulting in the LLNL Pu Facility operating at Security CAT III operational levels as this appeared to be an effective level of support for that time. However, the limitations of Security CAT III operations at LLNL are now insufficient for NNSA's Pu R&D requirements. NNSA will be able to fulfill its current and potential future national security requirements in a timely manner by enhancing the utilization of the LLNL Pu Facility to Security CAT II operational levels.

Requirements To Fulfill DOE NEPA Compliance

The SEIS will be prepared pursuant to the *National Environmental Policy Act* (NEPA) of 1969, as amended (42 U.S.C.

4321 *et seq.*), the Council on Environmental Quality's NEPA regulations (40 CFR parts 1500 through 1508), the DOE NEPA Implementing Procedures (10 CFR part 1021), and NNSA policy document NAP 451.1, *National Environmental Policy Act Compliance Program*. The DOE regulations (10 CFR 1021.314, *Supplemental Environmental Impact Statements*) require preparation of a supplement to an EIS if there are substantial changes or significant new circumstances and information relevant to environmental concerns. The SEIS will be prepared in the same manner as a draft or final EIS and will provide the public with an analysis of the potential environmental impacts from reasonable alternatives. The SEIS would utilize the 2023 LLNL SWEIS for baseline data for ongoing Security CAT III operations.

The NEPA process allows for all interested agencies (Federal, State, and local), Native American Tribes, public interest groups, local businesses, and members of the general public to participate in the environmental review process. Although the scoping process is optional for an SEIS per 10 CFR 1021.314(d), NNSA has decided to include scoping to inform interested members of the public.

Preliminary Alternatives

The NEPA public scoping process is an opportunity for the public to assist NNSA in determining a reasonable range of alternatives and potential environmental issues for analyses. NNSA welcomes specific comments or suggestions on the content of these alternatives, or on other alternatives that could be considered. A preliminary set of alternatives and environmental issues for evaluation in the SEIS are identified below. Additionally, during the development of the SEIS, NNSA may consider other alternatives that are reasonable and that fulfill the purpose and need for agency action.

Proposed Action Alternative (Enhanced Plutonium Facility Utilization)

The SEIS would continue ongoing operations at the LLNL Superblock and would add several new actions to support the enhanced Pu facility utilization. These include: (1) increasing the amount of fissile materials for R&D activities, (2) upgrading the security categorization of the LLNL Pu Facility from Security CAT III to Security CAT II, (3) conducting infrastructure construction activities, (4) increasing materials shipments and waste generation/shipments during operations, and (5) adding operational

and security personnel to support Security CAT II operations.

No Action Alternative (Continuing Present Operations)

The No Action Alternative would continue current facility (CAT III) operations at the Superblock as described in the 2023 LLNL SWEIS.

Other Potential Reasonable Alternatives

NNSA welcomes input on alternatives to be analyzed in the SEIS that the public thinks are reasonable and that fulfill the purpose and need for agency action. Alternatives that NNSA will not consider as reasonable are closure of the Superblock and transfer of current missions/operations from Superblock to other NNSA sites, as those actions would be inconsistent with the purpose and need defined by NNSA. NNSA will identify the environmentally preferable alternative from the list of alternatives analyzed in the SEIS.

Preliminary Environmental Analysis

The following issues have been identified for analysis in the SEIS. The list is tentative and intended to facilitate public comment on the scope of the SEIS. It is not intended to be all-inclusive, nor does it imply any predetermination of potential impacts. The NNSA specifically invites suggestions for the addition or deletion of items on this list.

1. Potential effects on the public and workers from exposures to radiological and hazardous materials during normal operations, construction, reasonably foreseeable accidents, and intentional destructive acts.
2. Impacts on water resources, including floodplains and wetlands.
3. Impacts on air quality, climate, and greenhouse gases.
4. Impacts to plants and animals and their habitat, including species which are federally- or State-listed as threatened or endangered, or of special concern.
5. Impacts on soil.
6. Impacts to cultural resources such as those that are historic and paleontological.
7. Socioeconomic impacts to affected communities.
8. Environmental justice, including impacts to minority and low-income populations.
9. Potential impacts on land use and applicable plans and policies.
10. Impacts from traffic and transportation of radiological and hazardous materials and waste to and from the LLNL Site.
11. Materials and waste management activities.

12. Impacts on visual aesthetics and noise levels from the Superblock on the surrounding communities and ambient environment.

13. Impacts to community services, including fire protection, police protection, schools, and solid waste disposal in landfills.

14. Impacts from use of utilities, including water and electricity consumption, fuel use, sewer discharges, and resource conservation.

15. Impacts from site contamination, characterization, and remediation.

16. Unavoidable adverse impacts due to natural phenomena (*e.g.*, floods, earthquakes, etc.).

17. Environmental compliance and inadvertent releases.

18. Short-term uses and long-term productivity.

19. Irreversible and irretrievable commitment of resources.

20. Cumulative effects of past, present, and future operations.

21. Mitigation commitments.

SEIS Process

The SEIS scoping process is intended to involve all interested agencies (Federal, State, and local), Native American Tribes, public interest groups, local businesses, and members of the general public. Interested parties are invited to participate in the SEIS process and to refine the preliminary alternatives and environmental issues that are reasonable. An SEIS scoping meeting will be scheduled, and all interested parties will be invited to assist the NNSA in refining alternatives and defining the scope of the SEIS analyses.

Following the scoping process announced in this Notice, and after consideration of comments received during scoping, NNSA will prepare a Draft SEIS. NNSA will announce the availability of the Draft SEIS in the **Federal Register** and local media outlets. NNSA will hold one or more public hearings for the Draft SEIS. Any comments received on the Draft SEIS will be considered and addressed in the Final SEIS. NNSA will then issue a ROD no sooner than 30 days after publication by the Environmental Protection Agency of a Notice of Availability of the Final SEIS.

Relationship to Existing and Other NEPA Analyses

The following references provide previous NEPA analyses; these are related to Plutonium Facility operations:

- The ROD for the 2023 LLNL SWEIS (DOE/EIS-0547; 89 FR 12831) for continued operations of LLNL was issued in February 2024. This was the

conclusion of a process involving detailed analysis, public involvement, and document preparation. In particular, the 2023 SWEIS analyzed Superblock operations at Security CAT III operations and Hazard Category 2 levels.

- In 2011, NNSA prepared a Supplement Analysis (SA) (DOE/EIS-0348-SA-03) to the 2005 LLNL SWEIS (DOE/EIS-0348; DOE/EIS-0236-S3) which stated the ongoing De-Inventory Project would decrease the amount of Special Nuclear Material (SNM) in long-term storage onsite and continue the transfer of Security Category I/II SNM from LLNL to receiver sites through the end of 2012.

- In 2008, NNSA completed the Complex Transformation Supplemental Programmatic EIS (DOE/EIS-0236-S4) which stated that NNSA would continue on-going activities to transfer Security CAT I/II SNM from LLNL under the No Action Alternative and phase out Security CAT I/II operations at LLNL by the end of 2012.

- In 2007, NNSA completed a Supplement Analysis and an amended ROD (72 FR 51807) on the Storage and Disposition of Weapons-Usable Fissile Materials EIS (DOE/EIS-0229, DOE/EIS-0229-SA-04), which analyzed consolidating storage of surplus, non-pit weapons usable plutonium from LLNL, Los Alamos National Laboratory, and Hanford to Savannah River Site.

- The 2005 LLNL SWEIS (DOE/EIS-0348) and its corresponding ROD (70 FR 71491) analyzed the impacts of continued operations at LLNL, including Superblock operations at Security CAT I levels (NNSA 2005).

- In 2024, NNSA completed an SA (DOE/EIS-0426-SA-01) and an amended ROD (89 FR 61104) on the SWEIS for the Continued Operation of the DOE/NNSA Nevada National Security Site (NNSS) and Off-Site Locations in the State of Nevada. NNSS provides Pu target material shipments to and from the LLNL Superblock for R&D experiments.

EIS Preparation and Schedule

NNSA expects to issue the Draft SEIS by the end of summer 2025.

Signing Authority

This document of the Department of Energy was signed on this 16th day of December 2024, by Jill Hruby, Under Secretary for Nuclear Security and NNSA Administrator, 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 January 7, 2025.

Treena V. Garrett,

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

[FR Doc. 2025–00451 Filed 1–10–25; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER09–1100–000.

Applicants: Baltimore Gas and Electric Company.

Description: Formal Challenge of the Maryland Office of People's Counsel and Maryland Public Service Commission to Baltimore Gas and Electric's 2024 Formula Rate Annual Update.

Filed Date: 12/30/24.

Accession Number: 20241230–5405.

Comment Date: 5 p.m. ET 1/21/25.

Docket Numbers: ER25–464–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: Amended Tariff Revisions to the NRIS Interconnection Service Product to be effective 2/1/2025.

Filed Date: 1/6/25.

Accession Number: 20250106–5128.

Comment Date: 5 p.m. ET 1/27/25.

Docket Numbers: ER25–858–000.

Applicants: LRE Interconnection Manager, LLC.

Description: 205(d) Rate Filing: Assignment and Assumptions of Co-Tenancy Interests in Shared Facilities to be effective 1/7/2025.

Filed Date: 1/6/25.

Accession Number: 20250106–5036.

Comment Date: 5 p.m. ET 1/27/25.

Docket Numbers: ER25–859–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Amendment to ISA, SA No. 6671; Queue No. AF1–038 to be effective 3/8/2025.

Filed Date: 1/6/25.

Accession Number: 20250106–5041.

Comment Date: 5 p.m. ET 1/27/25.

Docket Numbers: ER25–860–000.

Applicants: AEP Texas Inc.

Description: 205(d) Rate Filing: AEPTX–STEC (Palafox) 1st Amended Facilities Development Agreement to be effective 12/9/2024.

Filed Date: 1/6/25.

Accession Number: 20250106–5062.

Comment Date: 5 p.m. ET 1/27/25.

Docket Numbers: ER25–861–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 7008; Queue No. AG1–191 to be effective 3/7/2025.

Filed Date: 1/6/25.

Accession Number: 20250106–5065.

Comment Date: 5 p.m. ET 1/27/25.

Docket Numbers: ER25–862–000.

Applicants: Antelope Valley BESS, LLC.

Description: 205(d) Rate Filing: Certificates of Concurrence for Shared Facilities Common Ownership Agreements to be effective 1/7/2025.

Filed Date: 1/6/25.

Accession Number: 20250106–5070.

Comment Date: 5 p.m. ET 1/27/25.

Docket Numbers: ER25–863–000.

Applicants: Northern States Power Company, a Wisconsin corporation.

Description: 205(d) Rate Filing: 2025–01–06 NSPW–RFMU SISA to be effective 1/7/2025.

Filed Date: 1/6/25.

Accession Number: 20250106–5154.

Comment Date: 5 p.m. ET 1/27/25.

Docket Numbers: ER25–864–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Original GIA, SA No. 7454; Project Identifier No. AE2–048 to be effective 12/6/2024.

Filed Date: 1/6/25.

Accession Number: 20250106–5169.

Comment Date: 5 p.m. ET 1/27/25.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.asp>) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <https://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: January 6, 2025.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2025–00447 Filed 1–10–25; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP25–342–000.

Applicants: Gulf South Pipeline Company, LLC.

Description: 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Osaka 46428 to EDF 58753) to be effective 1/1/2025.

Filed Date: 1/3/25.

Accession Number: 20250103–5146.

Comment Date: 5 p.m. ET 1/15/25.

Docket Numbers: RP25–343–000.

Applicants: Gulf South Pipeline Company, LLC.

Description: 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Osaka 46428 to EDF 58759) to be effective 1/4/2025.

Filed Date: 1/3/25.

Accession Number: 20250103–5161.

Comment Date: 5 p.m. ET 1/15/25.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is

necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <https://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Dated: January 6, 2025.

Carlos D. Clay,
Acting Deputy Secretary.

[FR Doc. 2025-00446 Filed 1-10-25; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2017-0750; FRL-12477-01-OCSPF]

Pesticide Registration Review; Proposed Decisions for Several Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed registration review decision for ancymidol and opens a 60-day public comment period for the proposed registration review decisions.

DATES: Comments must be received on or before March 14, 2025.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number for the specific pesticide of interest provided in table 1 of unit I, by one of the following methods:

- *Federal eRulemaking Portal:* <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.

- *Mail:* <https://www.epa.gov/dockets/where-send-comments-epa-dockets>. OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

FOR FURTHER INFORMATION CONTACT: For pesticide specific information, contact: The Chemical Review Manager for the pesticide of interest identified in table 1 of unit I.

For general information on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 566-0701; email address: biscoe.melanie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Purpose of this Notice

Pursuant to 40 CFR 155.58(a), this notice announces the availability of EPA's proposed registration review decision for ancymidol (table 1) and opens a 60-day public comment period on the proposed registration review decisions.

TABLE 1—PROPOSED REGISTRATION REVIEW DECISION

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Ancymidol Case Number 3017	EPA-HQ-OPP-2011-0482	Samantha Carter, carter.samantha@epa.gov , (202) 566-1179.

II. Background

EPA is conducting its registration review of the chemical listed in the table 1 of unit I pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 3(g) (7 U.S.C. 136a(g)) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. FIFRA section 3(g) provides, among other things, that pesticide registrations are to be reviewed every 15 years. Consistent with 40 CFR 155.57, in its final registration review decision, EPA will ultimately determine whether a pesticide continues to meet the registration standard in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). As part of the registration review process, the Agency has completed a proposed interim or proposed decision for each of the pesticides listed in table 1 of unit I.

The registration review docket for a pesticide includes documents related to

the registration review case. Among other things, these documents describe EPA's rationales for conducting additional risk assessments for the registration review of the pesticides included in table 1 of unit I, as well as the Agency's subsequent risk findings and consideration of possible risk mitigation measures. The proposed interim and proposed registration review decisions are supported by the rationales included in those documents.

Consistent with 40 CFR 155.58(a), EPA provides for at least a 60-day public comment period on proposed interim and proposed registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed decision.

For additional background on the registration review program, see: <https://www.epa.gov/pesticide-reevaluation>.

III. What action is the Agency taking?

This notice is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager for the pesticide of interest identified in table 1 of unit I. In submitting a comment to EPA, please consider the following:

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](https://www.regulations.gov) or email. Clearly mark the part or all the information that you claim to be CBI. For CBI information on

a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI, and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket.

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at: <https://www.epa.gov/dockets/commenting-epa-dockets>.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

All comments should be submitted using the methods in **ADDRESSES** and must be received by EPA on or before the closing date. These comments will

become part of the docket for the pesticides included in table 1 in unit I. The Agency will consider all comments received by the closing date and may respond to comments in a "Response to Comments Memorandum" in the docket and/or in any subsequent interim or final registration review decision, as appropriate.

Authority: 7 U.S.C. 136 *et seq.*

Dated: January 6, 2025.

Jean Anne Overstreet,
Director, Pesticide Re-Evaluation Division,
Office of Pesticide Programs.

[FR Doc. 2025-00459 Filed 1-10-25; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2017-0720; FRL-12470-01-OCSPP]

Pesticide Registration Review; Pesticide Dockets Opened for Review and Comment; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the EPA's work plans and registration review case dockets for the chemical DEET. EPA is opening a 60-day public comment period for this work plan and case docket.

DATES: Comments must be received on or before March 14, 2025.

ADDRESSES: Submit your comments, to the docket identification (ID) number for

the specific pesticide of interest provided in table 1 of unit I, by one of the following methods:

- *Federal eRulemaking Portal:* <http://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.

- *Mail:* <https://www.epa.gov/dockets/where-send-comments-epa-dockets>. OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information, contact: The Chemical Review Manager for the pesticide of interest identified in table 1 of unit I.

For general questions on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 566-0701; email address: biscoe.melanie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Purpose of this Notice

Pursuant to 40 CFR 155.50(b), this notice announces the availability of the EPA's work plans and registration review case dockets for the pesticides shown in table 1 and opens a 60-day public comment period on the work plans and case dockets.

TABLE 1—WORK PLANS BEING MADE AVAILABLE FOR PUBLIC COMMENT

Registration review case name and number	Docket ID No.	Chemical review manager and contact information
DEET Case Number 0002	EPA-HQ-OPP-2012-0162	Caleb Carr, carr.caleb@epa.gov , (202) 566-0636.

II. Background

EPA is conducting its registration review of the chemical as listed in table 1 of unit I pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 3(g) (7 U.S.C. 136a(g)) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. FIFRA section 3(g) provides, among other things, that pesticide registrations are to be reviewed every 15 years. Consistent with 40 CFR 155.57, in its final registration review decision, EPA will ultimately determine whether a pesticide continues to meet the registration standard in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)).

Pursuant to 40 CFR 155.50, EPA initiates a registration review by establishing a public docket for a pesticide registration review case. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency has consider during registration review. Consistent with 40 CFR 155.50(a), these dockets may include information from the Agency's files including, but not limited to, an overview of the registration review case status, a list of current product registrations and registrants, any **Federal Register** notices regarding any pending registration actions, any **Federal Register** notices regarding current or pending tolerances, risk

assessments, bibliographies concerning current registrations, summaries of incident data, and any other pertinent data or information. EPA includes in these dockets a Preliminary Work Plan (PWP), and in some cases a continuing work plan (CWP), summarizing information EPA has on the pesticide and the anticipated path forward.

Consistent with 40 CFR 155.50(b), EPA provides for at least a 60-day public comment period on work plans and registration review dockets. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary changes to a pesticide's workplan. During this public comment period, the Agency is asking that interested persons

identify any additional information they believe the agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

For additional background on the registration review program, see: <https://www.epa.gov/pesticide-reevaluation>.

III. What should I consider as I prepare a comment for EPA?

This notice is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager identified in table 1 of unit I. In submitting a comment to EPA, please consider the following:

1. *Submitting CBI.* Do not submit this information to the EPA through [regulations.gov](https://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to the EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their

location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

All comments should be submitted using the methods in **ADDRESSES** and must be received by the EPA on or before the closing date. These comments will become part of the docket for the pesticides included in table 1 of unit I. The Agency will consider all comments received by the closing date and may respond to comments in a "Response to Comments Memorandum" in the docket or the Final Work Plan (FWP), as appropriate.

Authority: 7 U.S.C. 136 *et seq.*

Dated: January 6, 2025.

Jean Anne Overstreet,

*Director, Pesticide Re-Evaluation Division,
Office of Pesticide Programs.*

[FR Doc. 2025-00463 Filed 1-10-25; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2024-0094; FRL-12286-02-OCSPPI]

Pesticide Registration Maintenance Fee; Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Environmental Protection Agency (EPA or Agency) is hereby issuing an order for the cancellations of the pesticide product registrations identified in this document. EPA previously announced its receipt of and requested comment on requests to voluntarily cancel the product registrations listed in table 1 of unit II. and announced its intent to cancel the product registrations listed in table 3 of unit III. With the issuance of this cancellation order, any sale, distribution, or use of products listed in this notice will be permitted after the registrations have been cancelled only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: These cancellations are effective January 13, 2025.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2024-0094, is available through [https://](https://www.regulations.gov)

www.regulations.gov. Additional information about dockets generally, along with instructions for visiting the docket in person, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Brenda Minnema, Registration Division (7505M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 566-2840; email address: minnema.brenda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What is EPA's authority for taking this action?

FIFRA section 6(f)(1) (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request.

FIFRA section 4(i)(5) (7 U.S.C. 136a-1(i)(5)) requires that all pesticide registrants pay an annual registration maintenance fee, due by January 15 of each year, to keep their registrations in effect. This requirement applies to all registrations granted under FIFRA section 3 (7 U.S.C. 136a) as well as those granted under FIFRA section 24(c) (7 U.S.C. 136v(c)) to meet special local needs. Registrations for which the fee is not paid are subject to cancellation by order and without a hearing. Under FIFRA, the EPA Administrator may reduce or waive maintenance fees for minor agricultural use pesticides when it is determined that the fee would be likely to cause significant impact on the availability of the pesticide for the use.

C. What action is the Agency taking?

This cancellation order follows a notice of receipt and opportunity for

public comment on the requests from the registrants listed to voluntarily cancel their product registrations. See 89 FR 91382, November 19, 2024 (FRL-12286-01-OCSP). In that document, EPA also provided a notice of intent to cancel certain other product registrations for non-payment of the 2024 pesticide registration maintenance fees. Since registrations for which the fee is not paid are subject to cancellation by order and without a hearing, EPA did not seek public comment for the cancellation of the products listed.

In that document, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within

the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency received comments or withdrawals by the end of the comment period from companies listed in tables 3 and 4 only. Accordingly, EPA hereby issues this cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

II. Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)), EPA hereby approves

the requested cancellations and orders that the product registrations identified in table 1 of this unit are canceled. The effective date of the cancellations that are the subject of this order is January 13, 2025. Any distribution, sale, or use of existing stocks of the products identified in table 1 and table 3 of this unit in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in unit VII. will be a violation of FIFRA.

Table 1 of this unit lists the product cancellations, as requested by registrants, in sequence by registration number (or company number and FIFRA section 24(c) number).

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name	Active ingredient
4-142	4	GRUBTOX LAWN GRUB AND INSECT CONTROL.	Carbaryl—(4.6%).
4-143	4	BONIDE SEVIN 5% DUST INSECTICIDE.	Carbaryl—(5%).
4-413	4	SEVIN GARDEN DUST	Carbaryl—(5%).
4-458	4	COPPER DRAGON TOMATO & VEGETABLE DUST.	Basic copper sulfate—(7%), Carbaryl—(2%).
100-702	100	ORBIT FUNGICIDE	Propiconazole—(41.8%).
100-893	100	VARITY FIRE ANT BAIT	Abamectin—(.011%).
100-1452	100	AWARD II FIRE ANT BAIT	Abamectin—(.011%).
100-1685	100	Oplice	Metalaxyl-M—(45.3%).
538-160	538	TURF BUILDER PLUS 2 W/S FOR GRASS.	MCPA—(1.37%), MCPP—(1.37%).
1381-229	1381	TEBU+META	Metalaxyl—(.64%), Tebuconazole—(.48%).
1706-181	1706	93NF 152	Sodium bromide—(42.8%).
5383-149	5383	Mergal 760	1,2-Benzisothiazolin-3-one—(10.1%), 2-Methyl-3(2H)-isothiazolone—(.53%), 5-Chloro-2-methyl-3(2H)-isothiazolone—(1.67%).
8329-81	8329	NATULAR 1 EC	Spinosad—(10.27%).
8329-107	8329	Natular 10EC	Spinosad—(10.27%).
9198-123	9198	THE ANDERSONS FERTILIZER WITH 0.21% BARRICADE HERBICIDE.	Prodiamine—(.21%).
9198-234	9198	THE ANDERSONS BICARB LAWN INSECT KILLER GRANULES.	Bifenthrin—(.058%), Carbaryl—(2.3%).
9688-303	9688	BLACK FLAG INSECTICIDE DUST.	Deltamethrin—(.05%).
9688-304	9688	TAT ROACH BAIT	Propoxur—(2%).
9688-305	9688	TAT ANT TRAP	Propoxur—(.25%).
66222-10	66222	DIAZINON 50W	Diazinon—(50%).
89459-72	89459	EQUIL CHLORPYRIFOS ULV 1 ...	Chlorpyrifos—(13.624%).
89459-73	89459	EQUIL CHLORPYRIFOS ULV 2 ...	Chlorpyrifos—(24.6%).
AL130001	67690	CAPTAIN LIQUID COPPER ALGAECIDE.	Copper ethanolamine complex—(28.2%).
AZ080008	279	AIM EC HERBICIDE	Carfentrazone-ethyl—(22.3%).
CA120005	100	GRAMOXONE SL 2. O	Paraquat dichloride—(30.1%).
CO990011	5481	DIBROM 8 EMULSIVE	Naled—(62%).
FL120001	66330	CAPTEC 4L CAPTAN FLOWABLE FUNGICIDE.	Captan—(38.75%).
FL980006	5481	ALCO CITRUS FIX	2,4-D, isopropyl ester—(45%).
GA110006	67690	CAPTAIN LIQUID COPPER ALGAECIDE.	Copper ethanolamine complex—(28.2%).
GA120004	100	GRAMOXONE SL 2.0	Paraquat dichloride—(30.1%).
HI110001	5481	DUPONT ASSURE II HERBICIDE	Quizalofop-p-ethyl—(10.3%).
HI120002	100	TILT FUNGICIDE	Propiconazole—(41.8%).
ID110007	67690	CAPTAIN LIQUID COPPER ALGAECIDE.	Copper ethanolamine complex—(28.2%).
ID150011	81880	GWN-1715	Pyridaben—(75%).
LA120005	59639	V-10142 AG HERBICIDE	Imazosulfuron—(75%).

TABLE 1—PRODUCT CANCELLATIONS—Continued

Registration No.	Company No.	Product name	Active ingredient
LA130003	279	CHEMINOVA FOMESAFEN 2.0 HERBICIDE.	Sodium salt of fomesafen—(22.8%).
ME130001	10163	MALATHION 8	Malathion—(79.5%).
ME170001	10163	MALATHION 8	Malathion—(79.5%).
MN090002	70506	SUPER TIN 80WP	Fentin hydroxide—(80%).
MN190005	100	DUAL MAGNUM HERBICIDE	S-Metolachlor—(83.7%).
MO130002	279	CHEMINOVA FOMESAFEN 2.0 HERBICIDE.	Sodium salt of fomesafen—(22.8%).
MS120007	100	GRAMOXONE SL 2. O	Paraquat dichloride—(30.1%).
MS130001	279	CHEMINOVA FOMESAFEN 2.0 HERBICIDE.	Sodium salt of fomesafen—(22.8%).
MS140002	67690	CAPTAIN LIQUID COPPER ALGAECIDE.	Copper ethanolamine complex—(28.2%).
MT050003	5481	DISCIPLINE 2EC	Bifenthrin—(25.1%).
MT130001	100	GRAMOXONE SL 2.0	Paraquat dichloride—(30.1%).
NC120004	100	GRAMOXONE SL 2. O	Paraquat dichloride—(30.1%).
NC180002	5481	PARAZONE 3SL HERBICIDE	Paraquat dichloride—(43.8%).
ND090002	70506	SUPER TIN 80WP FUNGICIDE	Fentin hydroxide—(80%).
ND170004	279	F7127 SE HERBICIDE	Carfentrazone-ethyl—(3.53%), Sulfentrazone—(31.77%).
NE150001	279	AIM EC	Carfentrazone-ethyl—(22.3%).
NJ120002	100	GRAMOXONE SL 2.0	Paraquat dichloride—(30.1%).
NV170001	10163	TREFLAN TR-10	Trifluralin—(43%).
NV170008	10163	ONAGER EW MITICIDE	Hexythiazox—(11.93%).
NY120015	279	DUPONT UPBEET HERBICIDE	Triflurosulfuron-methyl—(50%).
NY140006	10163	ENVIDOR 2 SC	Spirodiclofen—(22.3%).
PR170001	100	PROCLAIM INSECTICIDE	Emamectin benzoate—(5%).
PR180001	5481	DUPONT ASSURE II HERBICIDE	Quizalofop-p-ethyl—(10.3%).
SC000004	100	REWARD LANDSCAPE AND AQUATIC HERBICIDE.	Diquat dibromide—(37.3%).
TN210003	100	GRAMOXONE SL 2.0	Paraquat dichloride—(30.1%).
TN210004	100	GRAMOXONE SL 2.0	Paraquat dichloride—(30.1%).
TX220002	100	Gramoxone® SL 2.0	Paraquat dichloride—(30.1%).
WI050002	5481	DACTHAL W-75	DCPA—(75%).
WY180001	5481	PARAZONE 3SL HERBICIDE	Paraquat dichloride—(43.8%).

Table 2 of this unit includes the names and addresses of record for all registrants of the products in table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in table 1 of this unit.

TABLE 2—REGISTRANTS OF THE VOLUNTARILY CANCELLED PRODUCTS

Company No.	Company name and address
4	Bonide Products, Llc, 6301 Sutliff Road, Oriskany, NY 13424.
100	Syngenta Crop Protection, Llc, 410 Swing Road, Greensboro, NC 27419.
279	FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104.
538	Scotts Company, The, 14111 Scottslawn Road, Marysville, OH 43041.
1381	Winfield Solutions, Llc, P.O. Box 64589, St. Paul, MN 55164.
1706	Nalco Company, Llc, 1601 West Diehl Road, Naperville, IL 60563.
5383	Troy Chemical Corporation, One Avenue L, Newark, NJ 07105.
5481	Amvac Chemical Corporation, 4695 Macarthur Court, Suite 1200, Newport Beach, CA 92660.
8329	Clarke Mosquito Control Products, Inc., 675 Sidwell Court, St. Charles, IL 60174.
9198	The Andersons, Inc., 1947 Briarfield Blvd., Maumee, OH 43537.
9688	Chemsico, One Rider Trail Plaza Drive, Suite 300, Earth City, MO 63045.
10163	Gowan Company, Llc, 370 S Main St., Yuma, AZ 85366.
59639	Valent U.S.A. Llc, 4600 Norris Canyon Road, San Ramon, CA 94583.
66222	Makhteshim Agan Of North America, Inc., 8601 Six Forks Road, Suite 300, Raleigh, NC 27615.
66330	Arysta Lifescience North America Llc, C/O UPL NA Inc., 630 Freedom Business Center, Suite 402, King Of Prussia, PA 19406.
67690	Sepro Corporation, 11550 N Meridian Street, Suite 600, Carmel, IN 46032.
70506	UPL NA Inc, P.O. Box 12219, Research Triangle Park, NC 27709.
81880	Canyon Group Llc, 370 S Main Street, Yuma, AZ 85364.
89459	Central Garden & Pet Company, 1501 East Woodfield Road, Suite 200w, Schaumburg, IL 60173.

Table 3 of this unit lists all the FIFRA sections 3 and 24(c) registrations that were canceled for non-payment of the 2024 maintenance fee. These registrations are canceled by this order effective January 13, 2025 and without a hearing.

TABLE 3—REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2024 MAINTENANCE FEE

Registration No.	Company No.	Product name	Active ingredient
106-72	106	UNICIDE 128	1-Decanaminium, N, N-dimethyl-N-octyl-, chloride—(2.4%), 1-Decanaminium, N-decyl-N, N-dimethyl-, chloride—(1.617%), 1-Octanaminium, N, N-dimethyl-N-octyl-, chloride—(1.2%), Alkyl * dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16)—(3.2%).
106-73	106	UNICIDE 256	1-Decanaminium, N, N-dimethyl-N-octyl-, chloride—(4.8%), 1-Decanaminium, N-decyl-N, N-dimethyl-, chloride—(3.23%), 1-Octanaminium, N, N-dimethyl-N-octyl-, chloride—(2.4%), Alkyl * dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16)—(6.4%).
106-81	106	UNICIDE RTU	1-Decanaminium, N, N-dimethyl-N-octyl-, chloride—(.0281%), 1-Decanaminium, N-decyl-N, N-dimethyl-, chloride—(.0189%), 1-Octanaminium, N, N-dimethyl-N-octyl-, chloride—(.0141%), Alkyl * dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16)—(.0375).
106-85	106	UNIQUAT® PLUS 64	1-Decanaminium, N-decyl-N, N-dimethyl-, chloride—(2.54%), Alkyl * dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16)—(1.69%).
211-65	211	TRI-CEN	2-Benzyl-4-chlorophenol—(4.21%), 4-tert-Amylphenol—(2.22%), o-Phenylphenol (NO INERT USE)—(2.52%).
224-32	224	PHILLIPS FUEL ADDITIVE 56 MB	Diethylene glycol monomethyl ether—(99.7%).
1007-90	1007	DURASECT LIVESTOCK POUR-ON.	Permethrin—(1%).
1007-91	1007	DURASECT II	Permethrin—(5%), Piperonyl butoxide—(1%), Pyrethrins—(.1%).
1007-94	1007	MITA-CLEAR	MGK 264—(.5%), MGK 326—(1%), Piperonyl butoxide—(1.5%), Pyrethrins—(.15%).
1007-95	1007	DEMIDITRAZ TECHNICAL	Demiditraz—(100%).
1007-97	1007	LA COMBO	Demiditraz—(14.4%), Fipronil—(4.8%).
1130-20	1130	Disinfectant I	Alkyl * dimethyl benzyl ammonium chloride *(60%C12, 30%C14, 5%C16, 5%C18)—(.185%), n-Alkyl (68% C12, 32% C14) dimethyl dimethylbenzyl ammonium chloride—(.185%).
2749-641	2749	Dicromax 8EC Insecticide	Dicrotophos—(82%).
2749-642	2749	Dicrotophos Technical	Dicrotophos—(85%).
2749-643	2749	Dicromax XP Insecticide	Bifenthrin—(10.8%), Dicrotophos—(43.1%).
3095-25	3095	PIC ROACH CONTROL SYSTEMS.	Propoxur—(2%).
3487-27	3487	EAGLES-7 FLEA AND TICK SPRAY.	Permethrin—(.5%).
4959-20003	4959	LIQUID CHLORINATION SANITIZER.	Sodium hypochlorite—(9.2%).
7698-17	7698	ROLYX-PRO	Gardona (cis-isomer)—(.44%).
7698-18	7698	ROLYX-MAX	Gardona (cis-isomer)—(.68%).
7698-26	7698	SWEETLIX FLY CONTROL RABON MINERAL/VITAMIN MOLASSES BLOCK.	Tetrachlorvinphos—(.494%).
7698-27	7698	SWEETLIX 16:8 FREE CHOICE MINERAL WITH RABON ORAL LARVICIDE.	Gardona (cis-isomer)—(.494%).
7698-29	7698	V.M.S. PEST-A-SIDE BLOCK W/ RABON.	Gardona (cis-isomer)—(.3%).
7698-30	7698	ENPROAI FLY CONTROL BLOCK WITH RABON ORAL LARVICIDE.	Gardona (cis-isomer)—(.3%).
9009-17	9009	ONLINE 825	Sodium hypochlorite—(8.25%).
9404-80	9404	WEED & FEED WITH 0.57% ATRAZINE FOR ST. AUGUSTINE LAWNS.	Atrazine—(.55%).
9404-94	9404	SUNNILAND XX-X-X LAWN FOOD WITH 0.069% BIFENTHRIN INSECTICIDE.	Bifenthrin—(.069%).
11773-3	11773	CORNBELT 4 LB. LOVOL ESTER	2,4-D, 2-ethylhexyl ester—(66%).
11773-20	11773	CORNBELT METRO	2,4-D, 2-ethylhexyl ester—(87.2%).
20729-20001	20729	KLENS-CHLOR	Sodium hypochlorite—(12.5%).
21165-24	21165	PYRANHA AQUEOUS 30-3	Piperonyl butoxide—(30%), Pyrethrins—(3%).
21165-39	21165	PYRANHA INSECTICIDES EQUINE SPRAY AND WIPE CONCENTRATE.	Permethrin—(.6%), Piperonyl butoxide—(3%), Pyrethrins—(.3%).
21165-50	21165	PYRANHA INSECTICIDES AQUEOUS EQUINE SPRAY.	Permethrin—(.1%), Piperonyl butoxide—(.5%), Pyrethrins—(.05%).
21165-63	21165	RITTER'S FLEA & TICK SPRAY ..	MGK 264—(.5%), MGK 326—(.5%), Piperonyl butoxide—(1.5%), Pyrethrins—(.15%).

TABLE 3—REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2024 MAINTENANCE FEE—Continued

Registration No.	Company No.	Product name	Active ingredient
21268-18	21268	BLUE SHIELD ALGICIDE	Alkyl * dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5%C18, 5%C12)—(2.49%), Dialkyl * methyl benzyl ammonium chloride *(60% C14, 30% C16, 5% C18, 5% C12)—(.01%).
21268-22	21268	Blue Shield Shock Treatment	Sodium hypochlorite—(12.5%).
32273-10	32273	Behr Sanitizing Paint	Cupric oxide—(.351%).
33427-30	33427	Aceto Buprofezin Technical	Buprofezin—(99.1%).
33427-35	33427	Dicrotophos Technical	Dicrotophos—(85%).
34370-3	34370	Ultimate Zapper Wasp & Hornet Spray II.	Permethrin—(.375%), Piperonyl butoxide—(.75%), Tetramethrin—(.15%).
35900-22	35900	X-462 BACTERIOSTATIC SILVER IMPREGNATED ACTIVATED CARBON.	Silver—(1.05%).
35900-23	35900	NEXT GENERATION	Silver—(.1%).
36638-28	36638	NOMATE TPW MEC	(E)-4-Tridecen-1-yl acetate—(19.4%), (Z)-4-Tridecen-1-yl acetate—(.6%).
36864-1	36864	CHIGG AWAY	Sulfur—(10%).
38104-4	38104	CHEM-TAB AT-8	Alkyl * dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5%C18, 5%C12)—(40%).
41619-1	41619	LIQUID CHLORINATING PRODUCT.	Sodium hypochlorite—(12.5%).
42519-38	42519	LBG-W-MUP	Dipotassium phosphite (K ₂ HPO ₃)—(54.5%).
42882-2	42882	Epibloc	alpha-Chlorohydrin—(1%).
46579-3	46579	PYRA-FOG I CONTACT AND SPACE SPRAY.	MGK 264—(3%), Piperonyl butoxide—(2%), Pyrethrins—(1%).
46579-6	46579	PYRA-FOG 5	MGK 264—(1.67%), Piperonyl butoxide—(1%), Pyrethrins—(.5%).
46779-1	46779	SODIUM FLUOROACETATE (COMPOUND 1080) LIVE-STOCK PROTECTION COLLAR.	Sodium fluoroacetate—(1%).
47265-1	47265	ORIENTAL FRUIT MOTH TECHNICAL PHEROMONE.	(E)-8-Dodecen-1-yl acetate—(5.9%), (Z)-8-Dodecen-1-yl acetate—(92%), Dodecen-1-ol, (Z)—(1%).
47265-2	47265	CODLING MOTH TECHNICAL PHEROMONE.	CheckMate Technical Pheromone—(91.7%).
47265-5	47265	E-11/Z-11-TETRADECENYL ACETATE TECHNICAL PHEROMONE.	(E)-11-Tetradecen-1-ol acetate—(75.1%), (Z)-11-Tetradecenyl acetate—(23.14%).
48234-7	48234	CONSYST WDG	Chlorothalonil—(50%), Thiophanate-methyl—(16.66%).
48234-8	48234	REGALKADE 30	Prodiamine—(.3%).
48234-13	48234	SYSTEC 1998 WDG	Thiophanate-methyl—(85%).
49538-6	49538	Spectrum-17-A	Copper sulfate pentahydrate—(7.88%).
51219-7	51219	Actabs	Alkyl * dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5%C18, 5%C12)—(10%), Alkyl * dimethyl ethylbenzyl ammonium chloride *(68%C12, 32%C14)—(10%).
51311-4	51311	BLACK JACK ROACH BAITS	Propoxur—(2%).
52484-5	52484	BIOCLEAR 1430 ANTIMICROBIAL	Alkyl * dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16)—(3%), Glutaraldehyde—(14%).
53575-33	53575	ISOMATE LBAM PLUS	(E)-11-Tetradecen-1-ol acetate—(67.15%), 9,11-tetradecadien-1-ol, acetate, (9E, 11Z)—(2.74%).
54998-1	54998	3" TABLETS	Trichloro-s-triazinetriene—(99%).
54998-4	54998	FORMULA 500	Poly(oxy-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl dichloride)—(40%).
54998-6	54998	MINI-TABS	Trichloro-s-triazinetriene—(99%).
54998-14	54998	POOLBOSS GRANULAR	Sodium dichloroisocyanurate dihydrate—(99%).
54998-20005	54998	POOL SHOCK	Calcium hypochlorite—(65%).
55467-16	55467	TENKOZ ETHEPHON 6 PGR	Ethephon—(55.4%).
56336-1	56336	CHECKMATE (R) PBW	7,11-Hexadecadien-1-ol, acetate, (E, Z)—(40.4%), 7,11-Hexadecadien-1-ol, acetate, (Z, Z)—(40.4%).
56336-19	56336	CONSEP SPR5M PBW SPRAYABLE BEAD PHEROMONE.	7,11-Hexadecadien-1-ol, acetate, (E, Z)—(11.195%), 7,11-Hexadecadien-1-ol, acetate, (Z, Z)—(11.195%).
56336-25	56336	CHECKMATE OLR-F OMNIVOROUS LEAFROLLER (PLAYTONIA STULTANA).	(E)-11-Tetradecen-1-ol acetate—(20.57%), (Z)-11-Tetradecenyl acetate—(3.19%).
56336-46	56336	CHECKMATE OFM-FS	(E)-8-Dodecen-1-yl acetate—(1.26%), (Z)-8-Dodecen-1-yl acetate—(18.73%), Dodecen-1-ol, (Z)—(.23%).
56336-49	56336	CHECKMATE CM-OFM DUEL	(E)-8-Dodecen-1-yl acetate—(.77%), (Z)-8-Dodecen-1-yl acetate—(12%), CheckMate Technical Pheromone—(17.54%), Dodecen-1-ol, (Z)—(.13%).
56336-52	56336	CERTIS TECHNICAL OLIVE FLY PHEROMONE.	1,7-Dioxaspiro [5.5] undecane—(97.6%).
56336-56	56336	CHECKMATE VMB DISPENSER ..	2-Butenoic acid, 3-methyl-, 5-methyl-2-(1-methylethenyl)-4-hexenyl ester—(5.91%).

TABLE 3—REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2024 MAINTENANCE FEE—Continued

Registration No.	Company No.	Product name	Active ingredient
58007-9	58007	3M ULTRATHON INSECT REPEL- LENT PUMP.	Diethyl toluamide—(19%).
58945-1	58945	DORMANT FLOWABLE EMUL- SION INSECTICIDE.	Mineral oil—includes paraffin oil from 063503—(80%).
59106-1	59106	BIO CLEAR 1000	2,2-Dibromo-3-nitrilopropionamide—(98%).
59106-5	59106	DBNPA TECHNICAL	2,2-Dibromo-3-nitrilopropionamide—(98%).
59106-6	59106	BIO-CLEAR 2000	2,2-Dibromo-3-nitrilopropionamide—(20%).
59106-7	59106	BIO-CLEAR 5000	2,2-Dibromo-3-nitrilopropionamide—(5%).
59106-8	59106	BIOCLEAR G50 ANTIMICROBIAL	Glutaraldehyde—(51.1%).
59657-2	59657	COLOR RIPE/WITCHAWAY	Ethylene—(99.9%).
59807-16	59807	OHP CHIPCO 26019	Iprodione—(50%).
59807-17	59807	DECATHLON 20 WP	Cyfluthrin—(20%).
59807-18	59807	DISCUS L	Cyfluthrin—(.7%), Imidacloprid—(2.94%).
59825-1	59825	Mykon AML	Tetraacetylenediamine—(92%).
64137-35	64137	MELOCON WG	Purpureocillium lilacinum strain 251—(6%).
64910-1	64910	BOX	Boron sodium oxide (B8Na2O13) (12008-41-2)—(100%).
65656-4	65656	GLYPHOSATE 41%	Glyphosate, isopropylamine salt—(41%).
65656-5	65656	GLYPHOSATE 62% MC	Glyphosate, isopropylamine salt—(62%).
65656-6	65656	GLUFOSINATE 280 HERBICIDE ..	Glufosinate—(24.5%).
65787-1	65787	AMUCHINA	Sodium hypochlorite—(1.02%).
67503-2	67503	MEDACHIEVE MULTI-PURPOSE 10% E.C.	Permethrin—(10%).
68186-1	68186	DETUR	Jojoba oil—(97.5%).
68719-2	68719	VITA GROW READY TO USE ROOTING COMPOUND.	1-Naphthaleneacetic acid—(.076%), Indole-3-butyric acid—(.133%).
69151-1	69151	PAROX HOSPITAL DISINFECT- ANT.	Sodium chlorite—(10%).
69340-4	69340	EOGAS AN-2014	Ethylene oxide—(96%).
69361-37	69361	TEBUCONAZOLE 45DF FUN- GICIDE.	Tebuconazole—(45%).
69407-1	69407	FLEA, TICK AND EAR MITE TREATMENT.	Piperonyl butoxide—(1.5%), Pyrethrins—(.15%).
69526-15	69526	PC HERBICIDE CONCENTRATE PLUS.	2,4-D, dimethylamine salt—(.885%), Dicamba, dimethylamine salt— (.109%), MCPP-P, DMA salt—(.573%).
69766-1	69766	GIBBMAX	Gibberellic acid—(4%).
69766-2	69766	KALGIBB	Gibberellic acid—(93%).
70062-6	70062	BABOLNA BIO METHOPRENE ANT KILLER BAIT.	Methoprene—(.5%).
70062-10	70062	(S)-METHOPRENE TECHNICAL	S-Methoprene—(95.5%).
70209-1	70209	PREVENTOL S600-L	Octhilinone—(.3%).
70305-2	70305	PARAGON MOTH BARS	Paradichlorobenzene—(99.75%).
70305-3	70305	PARAGON MOTH FLAKES	Paradichlorobenzene—(99.9%).
70385-8	70385	PROFESSIONAL STRENGTH MULTI-PURPOSE ANTI- BACTERIAL CLEANER.	1-Decanaminium, N, N-dimethyl-N-octyl-, chloride—(.025%), 1- Decanaminium, N-decyl-N, N-dimethyl-, chloride—(.015%), 1- Octanaminium, N, N-dimethyl-N-octyl-, chloride—(.01%), Alkyl * di- methyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16)— (.034%).
70804-1	70804	ULTRAFLOC ALGAESOLVE II	Copper sulfate pentahydrate—(25%).
71297-18	71297	MANUFACTURING-USE PROD- UCT—PTNC.	1-Methylcyclopropene—(2%).
71332-5	71332	EPL 0.25 SILVER/CERAMIC FIL- TER MATERIAL.	Silver—(.25%).
71406-1	71406	WOCSEN 50 SL	Propiconazole—(4.5%).
71406-5	71406	DAZOMET PELLETS	Dazomet—(99%).
72265-4	72265	Frontiersman Bear Attack Deter- rent II.	Capsaicin—(2%).
72500-17	72500	KAPUT RODENT FLEA CON- TROL BAIT.	Imidacloprid—(.025%).
72959-3	72959	FUMITOXIN BAGS	Aluminum phosphide—(55%).
73479-4	73479	PARAMOUNT NOW/PTB	(Z, Z)-11,13-Hexadecadienal—(.6667%), 5-Decen-1-ol, (E)- (5.33%), 5-Decen-1-ol, acetate, (E)- —(21.34%).
73479-5	73479	PARAMOUNT AEROSOL NOW/ CM.	(Z, Z)-11,13-Hexadecadienal—(.62%), CheckMate Technical Pheromone—(24.23%).
73479-7	73479	PARAMOUNT AEROSOL NOW/ PTB2.	(Z, Z)-11,13-Hexadecadienal—(.6667%), 5-Decen-1-ol, (E)- (3.3244%), 5-Decen-1-ol, acetate, (E)- —(13.3333%).
73667-4	73667	MB 2002 G	Copper as elemental—(4%).
73711-5	73711	BIOLENE BX	Ethylene oxide—(100%).
74267-1	74267	PRO-MIX WITH BIOFUNGICIDE	Bacillus amyloliquefaciens MBI 600 (antecedent Bacillus subtilis MBI 600)—(.001%).
74559-6	74559	OXY-RES (CONCENTRATE)	Hydrogen peroxide—(4.25%).
74559-8	74559	Accel 5 RTU	Hydrogen peroxide—(.5%).

TABLE 3—REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2024 MAINTENANCE FEE—Continued

Registration No.	Company No.	Product name	Active ingredient
74559-11	74559	OXY-5 (Concentrate) Disinfectant Cleaner.	Hydrogen peroxide—(7.6%).
74559-12	74559	OXY 5 Concentrate Disinfectant Cleaner.	Hydrogen peroxide—(7.6%).
75459-1	75459	ANTIBACTERIAL WIPE	Alkyl * dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5%C18, 5%C12)—(.5%), Alkyl * dimethyl ethylbenzyl ammonium chloride *(68%C12, 32%C14)—(.5%).
75661-1	75661	COLD-STER	Calcium oxide—(86.8%).
79533-7	79533	Coleman Insect Repellent	Diethyl toluamide—(40%).
81242-1	81242	YGIENE 206	Ethaneperoxoic acid—(.6%), Hydrogen peroxide—(6.14%).
81927-29	81927	ALLIGARE EVERETT HERBICIDE	2,4-D, butoxyethyl ester—(34.4%), Triclopyr, butoxyethyl ester—(16.5%).
81927-67	81927	Alligare FLUMI BG	Flumioxazin—(51%).
81927-76	81927	Alligare Imazapyr 75 WDG	Imazapyr—(75%).
81927-87	81927	Alligare Sulfentrazone 75WDG	Sulfentrazone—(75%).
81936-1	81936	WEED WORKS WEED & GRASS KILLER.	Vinegar—(20%).
81951-1	81951	KILLZ-ALL 60 ALUMINUM PHOSPHIDE FUMIGANT TABLETS.	Aluminum phosphide—(60%).
81951-2	81951	KILLZ-ALL 60 ALUMINUM PHOSPHIDE FUMIGANT PELLETS.	Aluminum phosphide—(60%).
82012-1	82012	ANTIMICROBIAL COPPER ALLOYS—GROUP I.	Copper as elemental—(96.2%).
82012-2	82012	ANTIMICROBIAL COPPER ALLOYS—GROUP II.	Copper as elemental—(91.3%).
82012-4	82012	ANTIMICROBIAL COPPER ALLOYS—GROUP IV.	Copper as elemental—(73%).
82012-6	82012	ANTIMICROBIAL COPPER ALLOYS—GROUP VI.	Copper as elemental—(62%).
82012-7	82012	HVAC ANTIMICROBIAL COPPER ALLOY SURFACE MATERIALS.	Copper as elemental—(96.2%).
82123-1	82123	ACTIVEGUARD MATTRESS LINER.	Permethrin—(1.64%).
82123-2	82123	ACTIVEGUARD FABRIC	Permethrin—(1.64%).
82796-1	82796	NAPCO BLEACH	Sodium hypochlorite—(10%).
82796-3	82796	12.5% NAPCO BLEACH	Sodium hypochlorite—(12.5%).
82810-1	82810	DERMAEGIS LIPODEET INSECT REPELLENT 302.	Diethyl toluamide—(30%).
83168-1	83168	Sodium Hypochlorite 12.5%	Sodium hypochlorite—(12.5%).
83190-7	83190	Liquid Harvest Concentrated Indoor & Outdoor Insect Control.	Bifenthrin—(7.9%).
83190-8	83190	LIQUID HARVEST QUINCLORAC	QUINCLORAC, DIMETHYLAMINE SALT—(18.92%).
83451-24	83451	BELLACIDE 370	Poly(oxy-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl dichloride)—(60%).
83933-2	83933	BIOGUARD TRI-BOR PASTE	Boric acid—(10%), Sodium borate pentahydrate—(45%), Zinc borate (3ZnO, 2B03, 3.5H2O; mw 434.66)—(5%).
83997-5	83997	ACQ 2102	Alkyl * dimethyl benzyl ammonium chloride *(67%C12, 25%C14, 7%C16, 1%C18)—(4.6%), Copper ethanolamine complex—(21.4%).
84059-19	84059	MBI-011 TGA1	Sarmentine ((E, E)-1-(1-oxo-2,4-decadienyl) pyrrolidine—(99.3%).
84059-20	84059	MBI-011 EP	Sarmentine ((E, E)-1-(1-oxo-2,4-decadienyl) pyrrolidine—(50%).
84069-1	84069	SUMMERSET ALLDOWN CONCENTRATE.	Citric acid—(14%), Vinegar—(23%).
84069-2	84069	SUMMERSET ALLDOWN HERBICIDE.	Citric acid—(6%), Vinegar—(8%).
84149-1	84149	BLUE EXCESS DICHLOR SHOCK	Sodium dichloroisocyanurate dihydrate—(99%).
84149-2	84149	BLUE EXCESS TRICHLOR SHOCK.	Trichloro-s-triazinetriene—(99%).
84149-3	84149	BLUE EXCESS CHLORINATING TABLETS.	Trichloro-s-triazinetriene—(99%).
84189-1	84189	PRODUCT EP 1%	Silver chloride—(.2%).
84189-2	84189	PRODUCT EP 10%	Silver chloride—(1.75%).
84396-30	84396	KILLER FOR ICE PLANT WEEDS	Magnesium chloride—(20.4%).
84396-43	84396	RODSpray FLY, COCKROACH, AND ANT KILLER.	D-Limonene—(4.015%).
85493-2	85493	REPELLEX SYSTEMIC TABLET ..	Capsaicin—(.3%).
85493-3	85493	REPELLEX SYSTEMIC GRANULAR.	Capsaicin—(.3%).
86014-1	86014	THYMOL MATERIALS PRESERVATIVES.	Thymol—(97.8%).
86064-1	86064	ARMORTECH CLT 825 DF	Chlorothalonil—(82.5%).

TABLE 3—REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2024 MAINTENANCE FEE—Continued

Registration No.	Company No.	Product name	Active ingredient
86064-2	86064	ARMOR TECH CLT 720 FL	Chlorothalonil—(54%).
86064-3	86064	ARMOR TECH PGR 113 MC	Trinexapac-ethyl—(11.3%).
86064-4	86064	ARMOR TECH PPZ 143 MC	Propiconazole—(14.3%).
86064-5	86064	ARMORTECH (R) THREE-SOME(TM).	2,4-D, dimethylamine salt—(30.56%), Dicamba, dimethylamine salt—(2.77%), MCPP-P, DMA salt—(8.17%).
86064-6	86064	ArmorTech ZOXY 2F	Azoxystrobin—(22.9%).
86064-7	86064	ArmorTech IMD 2F	Imidacloprid—(21.4%).
86064-8	86064	ArmorTech TEB 360F	Tebuconazole—(38.7%).
86064-9	86064	ArmorTech TM 462 F	Thiophanate-methyl—(46.2%).
86064-10	86064	ArmorTech TEBU 3.6 F	Tebuconazole—(38.7%).
86106-1	86106	PG721ST	Silver Ion (Ag1+)—(1.4%).
86197-3	86197	FSTI SODIUM HYPOCHLORITE 12.5%.	Sodium hypochlorite—(12.5%).
86197-4	86197	FSTI SODIUMHYPOCHLORITE 10%.	Sodium hypochlorite—(10%).
86277-1	86277	FARMWAY GLYPHOSATE 62% MANUFACTURING CONCENTRATE.	Glyphosate, isopropylamine salt—(62%).
86277-2	86277	FARMWAY GLYPHOSATE TECHNICAL.	Glyphosate—(98.5%).
86277-3	86277	FARMWAY GLYPHOSATE 41% SL.	Glyphosate, isopropylamine salt—(41%).
86583-3	86583	METHYL ANTHRANILATE TECHNICAL.	Methyl anthranilate—(99.94%).
86583-4	86583	ECOBIRD 4.0	Methyl anthranilate—(40%).
86583-5	86583	EcoBird 14.5	Methyl anthranilate—(14.5%).
86829-1	86829	MacroTech Copper Ion Generator	Copper as elemental—(99.8%).
87326-1	87326	BANOLE HV	Mineral oil—includes paraffin oil from 063503—(100%).
87358-1	87358	STAY FRESH ANTIMICROBIAL ...	Hydrogen peroxide—(50%).
87518-3	87518	(HSP2O) PRO	Hypochlorous Acid—(105%).
87656-3	87656	Bio-Spear Sanitizing Wipes	1-Decanaminium, N-decyl-N, N-dimethyl-, chloride—(.9%), 1-Octadecanaminium, N, N-dimethyl-N-[3-(trihydroxysilyl) propyl], chloride—(.54%).
87703-2	87703	8 IN 1 MITE & LICE BIRD SPRAY	Piperonyl butoxide—(.3%), Pyrethrins—(.03%).
87703-3	87703	FLEA AND TICK SPRAY FOR SMALL ANIMALS.	Piperonyl butoxide—(.6%), Pyrethrins—(.06%).
87769-3	87769	OXYFLUORFEN 2E HERBICIDE ..	Oxyfluorfen—(22.3%).
87769-4	87769	Oxyfluorfen Technical	Oxyfluorfen—(99%).
88347-1	88347	PHYLLON SDS-502 MP	Bacillus thuringiensis subspecies galleriea, strain SDS-502, fermentation solids, spores, and insecticidal toxins—(90%).
88347-2	88347	GRUBGONE! G	Bacillus thuringiensis subspecies galleriea, strain SDS-502, fermentation solids, spores, and insecticidal toxins—(9%).
88347-3	88347	PHYLLON BEETLEGONE! BIOLOGICAL INSECTICIDE.	Bacillus thuringiensis subspecies galleriea, strain SDS-502, fermentation solids, spores, and insecticidal toxins—(76.5%).
88714-5	88714	K-BROM G	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl—(98%).
88714-6	88714	K-BAC 1000	2,2-Dibromo-3-nitripropionamide—(98%).
88760-4	88760	PLASMA NEEM OIL (AZADIRACHTIN 3000 PPM) BIOLOGICAL INSECTICIDE.	Neem oil (See Kerry Leifer. No Inert Use without his clearance.)—(100%).
88999-1	88999	SANITECT	1-Octadecanaminium, N, N-dimethyl-N-(3-(trimethoxysilyl) propyl)-, chloride—(72%).
88999-2	88999	ALGAECIDE	Poly(oxy-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl dichloride)—(6%).
88999-3	88999	ALGAECIDE 4.5	Poly(oxy-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl dichloride)—(4.5%).
88999-4	88999	PEROXY TECH GRANULAR	Sodium percarbonate—(42.5%).
89816-3	89816	MEBROM 70-30	Chloropicrin—(30%), Methyl bromide (NO INERT USE)—(70%).
89867-2	89867	AIRGAS SULFUR DIOXIDE	Sulfur dioxide—(99.9%).
90098-1	90098	AM601 Pod	Transfluthrin—(6%).
90098-3	90098	LN3 Slug and Snail Killer	Sodium ferric ethylenediaminetetraacetate—(6%).
90271-1	90271	PCS 7000	Sodium hypochlorite—(735%).
90287-1	90287	MAQUAT 25.6-PDX	Alkyl * dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5%C18, 5%C12)—(.625%), Alkyl * dimethyl ethylbenzyl ammonium chloride *(68%C12, 32%C14)—(.625%).
90290-1	90290	COCKROACH KILLER PUTTY	Boric acid—(50%).
91163-2	91163	FourSure	Aspergillus flavus strain TC16F—(.00024%), Aspergillus flavus strain TC35C—(.00024%), Aspergillus flavus strain TC38B—(.00024%), Aspergillus flavus strain TC46G—(.00024%).
91174-1	91174	COPPER CAT LIQUID COPPER ..	Copper sulfate pentahydrate—(19.7%).
91243-1	91243	Fortress Mussel Control Systems ..	Copper as elemental—(99.8%).
91283-9	91283	AXP10.	
91283-12	91283	Amoeba EP #2	Willaertia magna C2c.Maky—(1%).

TABLE 3—REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2024 MAINTENANCE FEE—Continued

Registration No.	Company No.	Product name	Active ingredient
91283-13	91283	Amoeba EP #1	Willaertia magna C2c.Maky—(.1%).
91411-3	91411	KOCIDE 101	Copper hydroxide—(77%).
91411-7	91411	MANKOCIDE FUNGICIDE/ BACTERICIDE.	Copper hydroxide—(46.1%), Mancozeb—(15%).
91605-5	91605	MCSI Mosquito Trap	Permethrin—(.022%), Pyriproxyfen—(.00031%).
91853-3	91853	ATO CIDE GRANULAR	Potassium silicate—(10%), Sodium percarbonate—(50%), Tetraacetylenediamine—(20%).
91899-1	91899	MDF-200 PART A	Alkyl * dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16)—(3.2%).
91899-2	91899	MDF-200 PART B	Hydrogen peroxide—(7.9%).
92024-3	92024	MicroShield 360 Antibacterial	Dimethyl isopropylaminophenanthrene—(1%).
92029-1	92029	FORTUNE COPPER-COPPER OXIDE POWDER.	Cupric oxide—(100%).
92138-1	92138	MITE OUT	Abamectin—(.0012%).
92388-2	92388	Lemi Shine Disinfectant Spray	Citric acid—(1.32%), Hydrogen peroxide—(1.95%), L-Lactic acid— (1.39%).
92393-1	92393	Xypex Bio-San C-500 (Grey)	Copper as elemental—(5.55%), Silver—(.12%).
92413-1	92413	TEVRA FIPRONIL + METHOPRENE SPOT-ON FOR CATS.	Fipronil—(9.8%), S-Methoprene—(11.8%).
92413-2	92413	TEVRA FIPRONIL + METHOPRENE SPOT-ON FOR DOGS.	Fipronil—(9.8%), S-Methoprene—(8.8%).
92413-7	92413	4% Deltamethrin Collar for Dogs ...	Deltamethrin—(4%).
92413-10	92413	TEVRA Imidacloprid + Pyriproxyfen Spot On for Cats.	Imidacloprid—(9.1%), Pyriproxyfen—(.46%).
92413-12	92413	TEVRA Permethrin + Methoprene Spot On for Dogs.	Permethrin—(45%), S-Methoprene—(1.2%).
92413-13	92413	TEVRA Imidacloprid + Pyriproxyfen Spot On for Dogs.	Imidacloprid—(9.1%), Pyriproxyfen—(.46%).
92413-14	92413	TEVRA Deltamethrin + Pyriproxyfen Collar for Dogs.	Deltamethrin—(4%), Pyriproxyfen—(.5%).
92686-1	92686	REXCU-S	Copper sulfate pentahydrate—(19.8%).
92967-5	92967	MOSS AVENGER—MOSS & ALGAE CONTROL.	D-Limonene—(23%).
93113-2	93113	DoxyKlor DK5G	Chlorine dioxide—(.05%).
93365-3	93365	MESOTRIONE TECHNICAL 2	Mesotrione—(98%).
93392-3	93392	Aquaox Disinfectant 1650	Hypochlorous Acid—(.165%).
93455-1	93455	RAISAN	Chitosan—(2.5%).
93496-2	93496	NEOTERICA PROTECTO 4	Fipronil—(9.78%), Pyriproxyfen—(2.94%).
93496-3	93496	Neoterica Protecto Delta	Deltamethrin—(4%).
93585-1	93585	Microfex 1425	Alkyl * dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16)—(2.5%), Glutaraldehyde—(14%).
93672-1	93672	NEOSAN LABS PART A	Alkyl * dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16)—(3.2%).
93672-2	93672	NEOSAN LABS PART B	Hydrogen peroxide—(7.9%).
93740-2	93740	LOCAL 20 WEED TERMINATOR	Vinegar—(20%).
93756-1	93756	Purox Bleach	Sodium hypochlorite—(6%).
93756-2	93756	TECHNI BLEACH	Sodium hypochlorite—(6%).
93756-3	93756	Victoria Bay	Sodium hypochlorite—(6%).
93756-4	93756	Stern X	Sodium hypochlorite—(6%).
94278-4	94278	Ethephon 75% MUP	Ethephon—(75%).
94396-2	94396	SKYLARK	Tebuconazole—(38.7%).
94396-3	94396	T-BIRD 4.5L	Thiophanate-methyl—(46.2%).
94396-4	94396	AVOCET AQUATIC HERBICIDE ..	Glyphosate, isopropylamine salt—(53.8%).
94396-5	94396	KESTREL MEX	Propiconazole—(14.3%).
94396-6	94396	PEREGRINE	Chlorothalonil—(50%), Thiophanate-methyl—(16.66%).
94396-7	94396	FIREBIRD PRO	Bifenthrin—(7.9%).
94396-8	94396	IMIGOLD 75 WSP	Imidacloprid—(75%).
94396-9	94396	HAWK-I 2L	Imidacloprid—(21.4%).
94396-10	94396	GOLDWING	Trinexapac-ethyl—(11.3%).
94396-11	94396	RAVEN	Iprodione—(23.3%).
94396-13	94396	GULLWING	Imazapyr, isopropylamine salt—(27.77%).
94396-14	94396	KRAKEN	Triclopyr, triethylamine salt—(44.4%).
94396-15	94396	KNIGHTHAWK	Prodiamine—(65%).
94396-16	94396	HAWK-I N/O 60WSP	Imidacloprid—(60%).
94396-17	94396	HAWK-I N/O 2L	Imidacloprid—(21.4%).
94396-18	94396	AVOCET PLX	Glyphosate, isopropylamine salt—(53.8%).
94396-19	94396	VIREO 2E	Metaxyl—(23%).
94396-20	94396	MERLIN ORNAMENTAL	Abamectin—(1.9%).
94396-21	94396	STARFIGHTER L	Oxadiazon—(34.1%).
94396-22	94396	ROOK 4L	Quinclorac—(40%).

TABLE 3—REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2024 MAINTENANCE FEE—Continued

Registration No.	Company No.	Product name	Active ingredient
94396-23	94396	PHOENIX THRASHER	Ethofumesate—(42%).
94396-24	94396	SISKIN	Myclobutanil—(19.7%).
94396-25	94396	KNIGHTHAWK 4F	Prodiamine—(40.7%).
94396-26	94396	PHOENIX CARDINAL	Ethephon—(21.7%).
94396-27	94396	JETPHITER	Dipotassium phosphite (K ₂ HPO ₃)—(45.5%).
94396-28	94396	JAEGER	Dithiopyr—(24%).
94396-34	94396	Aquatrols Trinexapac-Ethyl	Trinexapac-ethyl—(12%).
94865-1	94865	Dish Sani Concentrate	Sodium hypochlorite—(12.5%).
95366-1	95366	MiteXstream	Citronellol—(.21%), Geraniol—(.23%).
95729-1	95729	Propagate AGC	Cytokinin (as kinetin)—(.05%), Gibberellic acid—(.05%), Indole-3-butyric acid—(.09%).
95921-2	95921	ACTIVE RESPONSE	Hypochlorous Acid—(.05%).
96282-1	96282	Ceravida Fresh.	Chitosan—(3.4%).
96738-3	96738	AKTIVE Disinfecting Wipes	1-Decanaminium, N-decyl-N, N-dimethyl-, chloride—(.589%), Alkyl * dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16)—(.449%), Ethanol—(5.08%).
98159-1	98159	BIO5700	1-Octadecanaminium, N, N-dimethyl-N-(3-(trimethoxysilyl) propyl)-, chloride—(.84%).
98919-1	98919	Caspian Disinfectant	Hypochlorous Acid—(.045%).
99503-3	99503	ENVIROQUAT MBEB 80e	Alkyl * dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5%C18, 5%C12)—(40%), Alkyl * dimethyl ethylbenzyl ammonium chloride *(68%C12, 32%C14)—(40%).
100219-1	100219	Algae Magic Eliminator	Copper sulfate pentahydrate—(99%).
100764-1	100764	CUTTONTM 1902 Antimicrobial	Copper sulfate pentahydrate—(1.66%).
101928-1	101928	CHEMCORP SUPER POOL SHOCK.	Calcium hypochlorite—(65%).
102058-1	102058	Kate's Home & Garden Neem Oil	Neem oil (See Kerry Leifer. No Inert Use without his clearance.)—(100%).
AR220001	71512	Tiafenacil 339SC Herbicide	Tiafenacil—(30%).
CA170013	60217	SHIELD POTATO SPROUT INHIBITOR EMULSIFIABLE CONCENTRATE.	Chlorpropham—(36%).
CA200005	68506	UVASYS	Sodium metabisulfite—(36.5%).
CA210004	64962	EARTHTEC	Copper sulfate pentahydrate—(19.8%).
FL080007	63935	CHATEAU HERBICIDE WDG	Flumioxazin—(51%).
ID220012	91411	MANKOCIDE FUNGICIDE/BACTERICIDE.	Copper hydroxide—(46.1%), Mancozeb—(15%).
LA220001	71512	Tiafenacil 339SC Herbicide	Tiafenacil—(30%).
MA160002	69969	AVIPEL (DRY) CORN SEED TREATMENT.	Anthraquinone—(50%).
MS220001	71512	Tiafenacil 339SC Herbicide	Tiafenacil—(30%).
NY070007	86203	SAFARI 20 SG INSECTICIDE	Dinotefuran.
OR170003	91411	MANKOCIDE FUNGICIDE/BACTERICIDE.	Copper hydroxide—(46.1%), Mancozeb—(15%).
PA120001	69969	AVIPEL (DRY) CORN SEED TREATMENT.	Anthraquinone—(50%).
SD170004	69969	AVIPEL HOPPER BOX (DRY) CORN SEED TREATMENT.	Anthraquinone—(50%).
SD230001	71512	Tiafenacil 339SC Herbicide	Tiafenacil—(30%).
SD230002	71512	Tiafenacil 339SC Herbicide	Tiafenacil—(30%).
VA120001	69969	AVIPEL (DRY) CORN SEED TREATMENT.	Anthraquinone—(50%).
WA030030	91411	MANKOCIDE	Copper hydroxide—(46.1%), Mancozeb—(15%).
WA200004	68506	UVASYS	Sodium metabisulfite—(36.5%).
WA220006	59638	CHATEAU EZ HERBICIDE	Flumioxazin—(41.4%).
WI210006	69969	Avipel Dry Corn Seed Treatment ..	Anthraquinone—(50%).

Table 4 of this unit includes the sequence by EPA company number. part of the EPA registration numbers of names and addresses of record for all This number corresponds to the first the products listed in this unit. registrants of the products in table 3, in

TABLE 4—REGISTRANTS OF REGISTRATIONS CANCELLED FOR NON-RESPONSE/PAYMENT OF 2024 MAINTENANCE FEE

Company No.	Company name and address
106	Bulin & Company Inc, P.O. Box 270, Indianapolis, IN, 46206.
211	Central Solutions, Inc., 401 Funston Road, Kansas City, KS, 66115.
224	Phillips 66 Company, 411 S. Keeler, Bartlesville, OK, 74003.
1007	Zoetis Inc., 333 Portage Street, Kalamazoo, MI, 49007.

TABLE 4—REGISTRANTS OF REGISTRATIONS CANCELLED FOR NON-RESPONSE/PAYMENT OF 2024 MAINTENANCE FEE—
Continued

Company No.	Company name and address
1130	Weiman Products, Llc., 755 Tri State Parkway, Gurnee, IL, 60031.
2749	Aceto Life Sciences, L.L.C., D/B/A Actylis, 4 Tri Harbor Court, Port Washington, NY, 11050.
3095	Pic Corporation, 1101–1107 West Elizabeth Avenue, Linden, NJ, 07036.
3487	Bacon Products Company, Inc., P.O. Box 22187, Chattanooga, TN, 37422.
4959	West Agro, Inc., 11100 N. Congress Ave., Kansas City, MO, 64153.
7698	Ridley USA Inc., 111 West Cherry Street, Suite 500, Mankato, MN, 56001.
9009	Online Packaging Inc, 4311 Liberty Lane, Plover, WI, 54467.
9404	Vogel Seed & Fertilizer, Llc/Florida Division, 1891 Spring Valley Road, Jackson, WI, 53037.
11773	Van Diest Supply Company, P.O. Box 610, Webster City, IA, 50595.
20729	Klenswite Pool/Spa Supply Co., Inc., 2410 Rt. 9 South, Rio Grande, NJ, 08242.
21165	Pyranha, Inc., 1164 Jordan Ranch Blvd, Brookshire, TX, 77423.
21268	Namco, Llc, 100 Sanrico Drive, Manchester, CT, 06040.
32273	Behr Process Corporation, 1801 E. St. Andrew Place, Santa Ana, CA, 92705.
33427	Aceto Us, L.L.C., D/B/A/Actylis, 4 Tri Harbor Court, Port Washington, NY, 11050.
34370	Wechem, Inc., 5734 Susitna Drive, Harahan, LA, 70123.
35900	Franklin Water Treatment, Llc, 9255 Coverdale Road, Fort Wayne, IN, 46809.
36638	Scentry Biologicals, Inc., 610 Central Avenue, Billings, MT, 59102.
36864	Pierson Laboratories Inc., 7400 Alumax Dr., Texarkana, TX, 75501.
38104	Away Chemical Corp, 12503 Exchange Drive, Suite 540, Stafford, TX, 77477.
41619	E.J. Miller & Sons Pool Company, 388 Church Road, Mifflinburg, PA, 17844.
42519	Luxembourg-Pamol, Inc., 3647 Willowbend Blvd., Suite 810, Houston, TX, 77054.
42882	Gametrics Limited, 426 Lonesome Country Road, Alzada, MT, 59311.
46579	Dickson Chemical Co., Inc., 2110 S Prairie St, Stuttgart, AR, 72160.
46779	Rancher's Supply Inc, P.O. Box 725, Alpine, TX, 79831.
47265	Shin-Etsu Chemical Co., Ltd., 4–1, Marunouchi 1-Chome, Chiyoda-Ku, Tokyo, 100–0005.
48234	Regal Chemical Co., 600 Branch Dr, Alpharetta, GA, 30004.
49538	Phyton Corporation, 13505 Industrial Park Blvd, Plymouth, MN, 55441.
51219	Rectorseal Llc, 2601 Spenwick Drive, Houston, TX, 77055.
51311	HBC Chemical, Llc, 324a Half Acre Road, Cranbury, NJ, 08512.
52484	The Lubrizol Corporation, 29400 Lakeland Blvd., Wickliffe, OH, 44092.
53575	Pacific Biocontrol Corporation, 14615 Ne 13th Court, Vancouver, WA, 98685.
54998	Capo Industries, Ltd., 1200 Corporate Drive, Burlington, Ontario L7L 5R6,.,
55467	Tenkoz Inc, 1725 Windward Concourse, Suite 410, Alpharetta, GA, 30005.
56336	Suterra Llc, 20950 Northeast Talus Place, Bend, OR 97701.
58007	3m, 3m Center, Building 220–6e-03, St Paul, MN, 55144.
58945	Mid-Valley Ag. Svc. Inc., P.O. Box 728, Oakdale, CA, 95361.
59106	The Lubrizol Corporation, 29400 Lakeland Blvd., Wickliffe, OH, 44092.
59657	Permiviro Systems Inc, 3520 Trotter Dr, Alpharetta, GA, 30004.
59807	Ohp, Inc., 5151 Mccrimmon Pkwy Ste 275, Morrisville, NC, 27560.
59825	The Lubrizol Corporation, 29400 Lakeland Blvd., Wickliffe, OH, 44092.
63935	Third Party Registrations, Inc., P.O. Box 948153, Maitland, FL, 32794.
64137	Danstar Ferment Ag/Lallemand Plant Care, Poststrasse 30, Ch-6300 Zug,.,
64910	Specialty Glass Inc., 305 Marlborough Street, Oldsmar, FL, 34677.
64962	Earth Science Laboratories, Inc., 903 North 47th Street, Suite 105, Rogers, AR, 72756.
65656	Gilmore Marketing And Development, 6070 Poplar Avenue, Suite 710, Memphis, TN, 38187.
65787	Angelini Pharma Inc., 230 Peachtree Street, NW, Suite 1250, Atlanta, GA, 30303.
67503	Medachieve Inc, 49 Timber Park Drive, Black Mountain, NC, 28711.
68186	Ijo Products, Llc, 4672 W. Jennifer, Suite 103, Fresno, CA, 93722.
68506	Tessara (Pty) Ltd, 35 Kinghall Avenue, Epping 2, Cape Town, , 7460.
68719	Marco Industries Incorporated, 9220 S.E. Stark St, Portland, OR, 97216.
69151	Paroxmed, Llc, 23350 S. 216th Street, Queen Creek, AZ, 85142.
69340	Andersen Sterilizers, Inc., Health Science Park, 3154 Caroline Drive, Haw River, NC, 27258.
69361	Repar Corp, P.O. Box 4321, Silver Spring, MD, 20914.
69407	Animal Dermatology Laboratories, P.O. Box 19097, Irvine, CA 92623.
69526	Petro-Canada Lubricants Inc., D/B/A Intelligro, 385 Southdown Road, Mississauga, Ontario L5J 2Y3,.,
69766	Advanced Foliar Nutrients Systems, 6501 Schirra Court, Suite 101, Bakersfield, CA, 93313.
69969	Arkion Life Sciences, Llc, 551 Mews Drive Suite J, New Castle, DE, 19720.
70062	Babolna Bioenvironmental Centre Private Limited Company, 1107 Budapest, Szallas U. 6,.,,
70209	TLFUSA/Canada, Inc, 525 Woodland Square Blvd. Suite 250, Conroe, TX, 77384.
70305	HBC Chemical, Llc, 324 Half Acre Rd., Cranbury, NJ, 08512.
70385	Prorestore Products, 15180 Josh Wilson Road, Burlington, WA, 98233.
70804	Usalco Llc, 2601 Cannery Avenue, Baltimore, MD, 21226.
71297	Agrofresh Inc., 510–530 Walnut Street—Suite 1350, Philadelphia, PA, 19106.
71332	Envirogard Products Limited, 446 Major Mackenzie Drive East, Unit 6, Richmond Hill, On L4C 1J2, Canada,.,
71406	Wolman Wood And Fire Protection Gmbh, Dr.-Wolman Strasse 31–33, D–7654 7 Sinzheim,.,
71512	Isk Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH, 44077.
72265	Security Equipment Corporation, 747 Sun Park Drive, Fenton, MO, 63026.
72500	Scimetrix, Ltd. Corporation, P.O. Box 1045, Wellington, CO, 80549.
72959	D&D Holdings, Inc., 153 Triangle Drive, Weyers Cave, VA, 24486.
73479	Suterra Llc, 20950 Northeast Talus Place, Bend, OR 97701.
73667	Apyron Technologies, 3317 Chamblee Dunwoody Road, Chamblee, GA, 30341.

TABLE 4—REGISTRANTS OF REGISTRATIONS CANCELLED FOR NON-RESPONSE/PAYMENT OF 2024 MAINTENANCE FEE—
Continued

Company No.	Company name and address
73711	Biolene S.R.L., Pontevedra Merlo Partido (B1761bwn), Buenos Aires,,
74267	Premier Tech Growers And Consumers Inc., 200 Kelly Road, Unit E–1, Quakertown, PA, 18951.
74559	Virox Technologies, Inc., 2770 Coventry Road, Oakville, Ontario L6h 6r1,,
75459	Albaad Massuot Yitzhak Ltd., Massuot Yitzhak 79858,,
75661	Positive Impact Waste Solutions, Llc, P.O. Box 1725, Paramus, NJ, 07653.
79533	Wisconsin Pharmacal Company, Llc, 1 Pharmacal Way, Jackson, WI, 53037.
81242	Yclean Enterprises, Llc, 1055 Parsippany Boulevard, Suite 204, Parsippany, NJ, 07054.
81927	Alligare, Llc, 1565 5th Avenue, Opelika, AL, 36801.
81936	Weed Works, Inc., 2023 E. Sims Way, Suite 358, Port Townsend, WA, 98368.
81951	Roc Enterprises, Llc, 1908 West K 140 Hwy, Salina, KS, 67401.
82012	Copper Development Association (CDA), 260 Madison Avenue, New York, NY, 10016.
82123	Allergy Technologies Llc, 425 Commerce Drive Suite 300, Fort Washington, PA, 19034.
82796	Hawkins, Inc., 2381 Rosegate, Roseville, MN, 55113.
82810	Dermaegis, Inc., 5730 Clarendon Drive, Rockford, IL, 61114.
83168	Suffolk Sales And Service Corporation, 1881 Governor's Pointe Dr., Suite A, Suffolk, VA, 23433.
83190	Bluewater Chemgroup, Inc., P.O. Box 11384, Fort Wayne, IN, 46857.
83451	Bwa Water Additives Us Llc, 5544 Oakdale Road, Se, Smyrna, GA, 30082.
83933	Preschem Pty. Ltd, 147–149 Herald St, Cheltenham, Victoria 3192,,
83997	Viance, Llc, 8001 Ibm Drive, Charlotte, NC, 28262.
84059	Pro Farm Group, Inc., 1530 Drew Ave., Davis, CA, 95618.
84069	Summerset Products, 130 Columbia Court, Chaska, MN, 55318.
84149	Economy Mud Products Company, 435 East Anderson Road, Houston, TX, 77245.
84189	Rudolf Gmbh & Co. Kg, Altwaterstrasse 58–64, Geretsried,,
84396	Sungro Products, Llc, 810 E. 18th Street, Los Angeles, CA, 90021.
85493	Repellex Usa, Inc., P.O. Box 396, Niles, MI, 49120.
86014	Carestream Health, Inc., 2000 Howard Smith Avenue West, Windsor, CO, 80550.
86064	United Turf Alliance, Llc., 8014 Cumming Highway, Suite 403–282, Canton, GA, 30115.
86106	KOA Glass Company, Ltd., 25–27 Hirai 1-Chrome, Edogawa-Ku, Tokyo, 132–0035,,
86197	FSTI, Inc., 6300 Bridgepoint Parkway, Suite 1–200, Austin, Tx, 78730.
86203	Mitsui Chemicals Crop & Life Solutions, Inc., 1–19–1, Nihonbashi, Chuo-Ku, Tokyo, 103–0027,,
86277	Farmway, Inc., P.O. Box 640, Hockessin, DE, 19707.
86583	Roth Chemical Company, Ltd., 7200 West 132nd Street, Suite 360, Overland Park, KS, 66213.
86829	Macrotech Industries, Inc., 246 Mamaroneck Road, Scarsdale, NY, 10583.
87326	TotalEnergies Petrochemicals & Refining USA, Inc., 1201 Louisiana Street, Suite 1800, Houston, TX, 77002.
87358	Quick-Med Technologies, Inc., 902 NW, 4th Street, Gainesville, FL, 32601.
87518	HSP USA, Llc, 3111 Route 38, Suite 11, #310, Mount Laurel, NJ, 08054.
87656	Flex Ai, Llc, 5300 Derry Street, Harrisburg, PA, 17111.
87703	Spectrum Brands Pet Group, Inc. D/B/A United Pet Group, Inc., 3001 Commerce Street, Blacksburg, VA, 24060.
87769	Glorion, Llc, P.O. Box 21720, Mesa, AZ, 85277.
88347	Phyllom Bioproducts Corporation, 484 Lake Park Avenue, #23, Oakland, CA, 94610.
88714	Water Science Technologies, Llc, 1701 Vanderbilt Road, Birmingham, AL, 35234.
88760	Terramera, Inc., 199 W 6th Ave., Vancouver, BC V5y 1k3,,
88999	Aquagenics Technologies, Inc., 2764 Golfview Drive, Naperville, IL, 60540.
89816	Mebrom Corp., 251 Little Falls Drive, Wilmington, DE, 19808.
89867	Airgas USA, Llc, 259 N. Radnor-Chester Road, Suite 100, Radnor, PA, 19087.
90098	Central Garden & Pet, Garden Division, 1000 Parkwood Circle, Suite 700, Atlanta, GA, 30339.
90271	Process Cleaning Solutions Ltd, 2060 Fisher Drive, Peterborough, Onk9j-8n4,,
90287	Consumer Product Partners, Llc, 8515 Page Avenue, St. Louis, MO, 63114.
90290	Adela Monica Buljbasich, Mapasingue Oeste Calle 5a Y Avenida 3 A, Guayaquil Ecuador,,
91163	Texas Corn Producers Board, 4205 North Interstate 27, Lubbock, TX, 79403.
91174	J & S Chem Co., 25488 Hwy 45, Brooksville, MS, 39739.
91243	Ong Consulting, Llc, 2513 Winners Circle, Heath, TX, 75126.
91283	Amoeba Sa, 38 Avenue Des Fr Res Montgolfier, F–69680 Chassieu,,
91411	Cosaco Llc, 12701 Alameda Road, Houston, TX, 77045.
91605	Florida Insect Control Group, Llc, 5305 NW 72nd St., Gainesville, FL, 32653.
91853	Atoms F.D. Inc., 3485 Rue Ashby, Ville Saint Laurent, Quebec H4r 2k3,,
91899	Span-World Llc., P.O. Box 18155, Golden, CO, 80402.
92024	Microshield 360, 4700 Rockside Road Suite, Independence, OH, 44131.
92029	Shanghai Fortune Apparel Co. Ltd., Zhongchun Road 7001–D–1202, Minggu Tech. Park, Shanghai,,
92138	MJ Tools Corp., 644 Migaldi Lane, Suite 500, Lansing, MI, 48917.
92388	Lemi Shine, 1250 South Capital Hwy Of Texas, Suite 1350, Austin, TX, 78746.
92393	Xypex Chemical Corporation, 13731 Mayfield Place, Richmond BC C V6v 2g9,,
92413	Tevra Brands, Llc., 9100 F Street, Suite 200, Omaha, NE, 68127.
92686	DNW Global, Llc, P.O. Box 2312, Windermere, FL, 34786.
92967	Avenger Products Llc, 1605 Candler Road, Gainesville, GA, 30507.
93113	Pi Industries, Inc., 8275 S. Eastern Avenue, Suite #200–882, Las Vegas, NV, 89123.
93365	Orion KME, Llc, 425 Westchester Lane, Valparaiso, IN, 46384.
93392	Aquaax, Llc, 17355 Hamlin Boulevard, Loxahatchee, FL, 33470.
93455	Latin America Regulatory Service (Lars), Llc, 7110 Harcourt Crossing, Indian Land, SC, 29707.
93496	CJS SPC Ekoprom, 140070, 11 Garshina Str, Tomilino Town, Moscow Region 140070,,
93585	Chemlogic, Inc., 992 E. Texas Avenue, Rayne, LA, 70578.

TABLE 4—REGISTRANTS OF REGISTRATIONS CANCELLED FOR NON-RESPONSE/PAYMENT OF 2024 MAINTENANCE FEE—
Continued

Company No.	Company name and address
93672	Neosan Labs Inc., 1925 Aspen Drive, #702, Santa Fe, NM, 87505.
93740	Contact Biosolutions USA, Inc., 4947 Us 75 Avenue, Maurice, IA, 51036.
93756	Purox Brands Corp., 5801 E 10th Ave, Suite 108, Hialeah, FL, 33013.
94278	Oasis Chemicals, Llc, 9821 Highway 62, Wolfforth, TX, 79382.
94396	Aquatrols Corporation Of America, 1273 Imperial Way, Paulsboro, NJ, 08066.
95366	Touchstone Enviro Solutions, Inc., 30 North Gould, Suite R, Sheridan, WY, 82801.
95729	Ag Concepts Corp., 439 East Shore Drive Suite 200, Eagle, ID, 83616.
95921	Electrocharged Aqua Solutions Inc, 1550 S Anaheim Blvd Ste. B., Anaheim, CA, 92805.
96282	G. Clo Inc., 100 Maeyeo-Ro, Dong-Gu, Daegu,.
96738	Vaxman Group 2015 Ltd., Gordon 1, Haifa, 3276414, Israel.
98159	BioSafe90, LLC, 6115 Skyline Drive, Houston, TX, 77057.
98919	Wistwell, 515 Valley Street, Ste 130, Maplewood, NJ, 07040.
99503	Environmental Fluids, Inc., 4241 N. Winfield Scott Plaza, Suite 101, Scottsdale, AZ, 85821.
100219	Happy Sisters Distribution LLC, 2934 Woodhams Ave., Portage, MI, 49002.
101928	Chemcorp, 14931 NW 27th Ave, Opa Locka, FL, 33054.
102058	XYZ Innovators LLC, 17870 Newhope St. #104–222, Fountain Valley, CA, 92708.

III. Summary of Public Comments Received and Agency Response to Comments

As indicated in unit I.C., EPA did receive comments in response to the notice of receipt that published in the **Federal Register** of November 19, 2024. EPA received comments to withdraw requests and payments for several companies in tables 3 and 4. Subsequently, those products have been removed from tables 3 and company name and address from table 4.

IV. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States, and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

The registrants listed in table 2 of unit II. may continue to sell and distribute existing stocks of products listed in table 1 of unit II. until January 13, 2025. Thereafter, the registrants are prohibited from selling or distributing products listed in table 1 of unit II., except for export in accordance with FIFRA section 17 (7 U.S.C. 136o), or proper disposal. Persons other than the registrants listed in table 2 of unit II. may sell, distribute, or use existing stocks of products listed in table 1 of unit II. until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

The registrants listed in table 4 of unit II. may continue to sell and distribute products listed in table 3 of unit II. until

January 16, 2025. Under EPA's existing stocks policy, if a registrant fails to pay the appropriate maintenance fee and the product subject to that fee is later canceled, the registrant will generally not be allowed to sell or distribute existing stocks of the cancelled product more than 1 year after the date the maintenance fee was due. Here, registrants of products listed in table 3 of unit II. were required to submit maintenance fees by January 16, 2024. Persons other than registrants listed in table 4 of unit II. may sell, distribute, or use existing stocks of products listed in table 3 of unit II. until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

Authority: 7 U.S.C. 136 *et seq.*

Dated: January 3, 2025.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2025–00461 Filed 1–10–25; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Notice

TIME AND DATE: Tuesday, January 14, 2025, 10:00 a.m. Eastern Time

PLACE: The meeting will be held at the Jacqueline A. Berrien Training Center, 131 M Street NE, Washington, DC 20507.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Closed Session

- Pending Proposed Subpoena Determination(s)
- Pending Litigation Recommendations(s)
- Agency Adjudication and Determination on Federal Agency Discrimination Complaint Appeal(s)

Note: The Legal Counsel has certified that, in the Legal Counsel's opinion, the Commission meeting scheduled for January 14, 2025 (and any portions of any subsequent meetings to which those same matters may be carried over) concerning a proposed subpoena determination(s), pending litigation recommendation(s) and federal agency discrimination complaint appeal(s) may properly be closed under the third, sixth, seventh, and tenth exemptions to the Government in the Sunshine Act, 5 U.S.C. 552b(c)(3), (6), (7), and (10), and Commission regulations at 29 CFR 1612.4(c), (f), (g), and (j).

In accordance with the Sunshine Act, because this meeting is closed, the public will not be able to observe/listen to the Commission's deliberations and voting.

Please telephone (202) 921–2750 (voice) or email commissionmeetingcomments@eeoc.gov at any time for information on this meeting. Please telephone (202) 921–2750, or email commissionmeetingcomments@eeoc.gov at any time for information on this meeting.

CONTACT PERSON FOR MORE INFORMATION: Raymond D. Windmiller, Executive Officer, (202) 921–2705.

Dated: January 6, 2025.

Raymond D. Windmiller,

Executive Officer, Executive Secretariat.

[FR Doc. 2025–00549 Filed 1–8–25; 4:15 pm]

BILLING CODE 6570–01–P

EXPORT-IMPORT BANK**[Public Notice: EIB-2025-0003]****Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of \$100 Million: AP099540XX & AP099540XA****AGENCY:** Export-Import Bank of the United States.**ACTION:** Notice.

SUMMARY: This Notice is to inform the public, in accordance with the Export-Import Bank Act of 1945, as amended, the Export-Import Bank of the United States (“EXIM”) has received an application for final commitment for a long-term loan or financial guarantee in excess of \$100 million. Comments received within the comment period specified below will be presented to the EXIM Board of Directors prior to final action on these Transactions.

DATES: Comments must be received on or before February 7, 2025 to be assured of consideration before final consideration of the transaction by the Board of Directors of EXIM.

ADDRESSES: Comments may be submitted through *Regulations.gov* at *www.regulations.gov*. To submit a comment, enter *EIB-2025-003* under the heading “Enter Keyword or ID” and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and *EIB-2025-0003* on any attached document.

SUPPLEMENTARY INFORMATION:

Reference: AP099540XX & AP099540XA.

Purpose and Use:

Brief description of the purpose of the transaction: To support the export of U.S.-manufactured commercial aircraft to Azerbaijan.

Brief non-proprietary description of the anticipated use of the items being exported: To provide air cargo transport services between Azerbaijan and other countries.

To the extent that EXIM is reasonably aware, the item(s) being exported will not be used to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties:

Principal Supplier: The Boeing Company.

Obligor: Silk Way West Airlines LLC.
Guarantor(s): Silk Way Development LLC, Silk Way Holding LLC, Silk Way Airlines LLC.

Description of Items Being Exported: Boeing commercial jet aircraft.

Information on Decision: Information on the final decision for this transaction

will be available in the “Board Agenda and Meeting Minutes” on *https://www.exim.gov/news/meeting-minutes*.

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

Authority: Section 3(c)(10) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635a(c)(10)).

Deidre Hodge,

Assistant Corporate Secretary.

[FR Doc. 2025-00471 Filed 1-10-25; 8:45 am]

BILLING CODE 6690-01-P

EXPORT-IMPORT BANK**[Public Notice: 2025-3001]****Agency Information Collection Activities: Submission to the Office of Management and Budget for Review and Approval; Comment Request; EIB 84-01 Application for Export Working Capital Guarantee****AGENCY:** Export-Import Bank of the United States**ACTION:** Notice of information collection; request for comment.

SUMMARY: The Export-Import Bank of the United States (EXIM), pursuant to the Export-Import Bank Act of 1945, as amended, facilitates the finance of the export of U.S. goods and services. As part of its continuing effort to reduce paperwork and respondent burden, EXIM invites the general public and other Federal agencies to comment on the proposed information collection, as required by the paperwork Reduction Act of 1995.

DATES: Comments must be received on or before February 12, 2025 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *www.regulations.gov* (EIB 10-02), by email *smaro.karakatsanis@exim.gov*, or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038, Attn: OMB 3048-0017.

The application tool can be reviewed at: *https://img.exim.gov/s3fs-public/pub/pending/EIB+84-01+EXIM_WCGP_Application.pdf*.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Smaro Karakatsanis,

smaro.karakatsanis@exim.gov, 202-565-3943.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 84-01 Application for Export Working Capital Guarantee.

OMB Number: 3048-0003.

Type of Review: Regular.

Need and Use: This form provides EXIM Bank staff with the information necessary to determine if the application and transaction is eligible for EXIM Bank assistance under their export working capital guarantee program.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 150.

Estimated Time per Respondent: 2 hours.

Annual Burden Hours: 300 hours.

Frequency of Reporting of Use: Annually.

Dated: January 7, 2025.

Andrew Smith,
Records Officer.

[FR Doc. 2025-00460 Filed 1-10-25; 8:45 am]

BILLING CODE 6690-01-P

FEDERAL COMMUNICATIONS COMMISSION**[FR ID: 272403]****Privacy Act of 1974; Matching Program****AGENCY:** Federal Communications Commission.**ACTION:** Notice of a new matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (“Privacy Act”), this document announces a new computer matching program the Federal Communications Commission (“FCC” or “Commission” or “Agency”) and the Universal Service Administrative Company (USAC) will conduct with the Colorado Governor’s Office of Information Technology. The purpose of this matching program is to verify the eligibility of applicants to and subscribers of Lifeline, and the Affordable Connectivity Program (ACP), both of which are administered by USAC under the direction of the FCC. More information about these programs is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments are due on or before February 12, 2025. This computer matching program will commence on February 12, 2025 and will conclude 18 months after the effective date.

ADDRESSES: Send comments to Elliot S. Tarloff, FCC, 45 L Street NE,

Washington, DC 20554, or to *Privacy@fcc.gov*.

FOR FURTHER INFORMATION CONTACT:

Elliot S. Tarloff at 202–418–0886 or *Privacy@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Lifeline program provides support for discounted broadband and voice services to low-income consumers. Lifeline is administered by the Universal Service Administrative Company (USAC) under FCC direction. Consumers qualify for Lifeline through proof of income or participation in a qualifying program, such as Medicaid, the Supplemental Nutritional Assistance Program (SNAP), Federal Public Housing Assistance, Supplemental Security Income (SSI), Veterans and Survivors Pension Benefit, or various Tribal-specific federal assistance programs.

In the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182, 2129–36 (2020), Congress created the Emergency Broadband Benefit Program, and directed use of the National Verifier to determine eligibility based on various criteria, including the qualifications for Lifeline (Medicaid, SNAP, etc.). EBBP provided \$3.2 billion in monthly consumer discounts for broadband service and one-time provider reimbursement for a connected device (laptop, desktop computer or tablet). In the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, 1238–44 (2021) (codified at 47 U.S.C. 1751–52), Congress modified and extended EBBP, provided an additional \$14.2 billion, and renamed it the Affordable Connectivity Program (ACP). A household may qualify for the ACP benefit under various criteria, including an individual qualifying for the FCC's Lifeline program.

In a Report and Order adopted on March 31, 2016, (81 FR 33026, May 24, 2016) (*2016 Lifeline Modernization Order*), the Commission ordered USAC to create a National Lifeline Eligibility Verifier (“National Verifier”), including the National Lifeline Eligibility Database (LED), that would match data about Lifeline applicants and subscribers with other data sources to verify the eligibility of an applicant or subscriber. The Commission found that the National Verifier would reduce compliance costs for Lifeline service providers, improve service for Lifeline subscribers, and reduce waste, fraud, and abuse in the program.

The Consolidated Appropriations Act of 2021 directs the FCC to leverage the National Verifier to verify applicants' eligibility for ACP. The purpose of this matching program is to verify the

eligibility of Lifeline and ACP applicants and subscribers by determining whether they receive SNAP and Medicaid benefits administered by the Colorado Governor's Office of Information Technology.

Participating Agencies: Colorado Governor's Office of Information Technology (source agency); Federal Communications Commission (recipient agency) and Universal Service Administrative Company.

Authority for Conducting the Matching Program: The authority to conduct the matching program for the FCC's ACP is 47 U.S.C. 1752(a)–(b). The authority to conduct the matching program for the FCC's Lifeline program is 47 U.S.C. 254(a)–(c), (j).

Purpose(s): The purpose of this new matching agreement is to verify the eligibility of applicants and subscribers to Lifeline, as well as to ACP and other Federal programs that use qualification for Lifeline as an eligibility criterion. This new agreement will permit eligibility verification for the Lifeline program and ACP by checking an applicant's/subscriber's participation in SNAP and Medicaid in Colorado. Under FCC rules, consumers receiving these benefits qualify for Lifeline discounts and also for ACP benefits.

Categories of Individuals: The categories of individuals whose information is involved in the matching program include, but are not limited to, those individuals who have applied for Lifeline and/or ACP benefits; are currently receiving Lifeline and/or ACP benefits; are individuals who enable another individual in their household to qualify for Lifeline and/or ACP benefits; are minors whose status qualifies a parent or guardian for Lifeline and/or ACP benefits; or are individuals who have received Lifeline and/or ACP benefits.

Categories of Records: The categories of records involved in the matching program include the last four digits of the applicant's Social Security Number, date of birth, and first or last name. The National Verifier will transfer these data elements to the Colorado Governor's Office of Information Technology which will respond either “yes” or “no” that the individual is enrolled in a qualifying assistance program: SNAP and Medicaid administered by the Colorado Governor's Office of Information Technology.

System(s) of Records: The records shared as part of this matching program reside in the Lifeline system of records, FCC/WCB–1, Lifeline, which was published in the **Federal Register** at 89 FR 28777 (Apr. 19, 2024).

The records shared as part of this matching program reside in the ACP system of records, FCC/WCB–3, Affordable Connectivity Program, which was published in the **Federal Register** at 89 FR 28780 (Apr. 19, 2024).

Federal Communications Commission.

Marlene Dortch,
Secretary.

[FR Doc. 2025–00499 Filed 1–10–25; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0179; FR ID 272191]

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 February 12, 2025.

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: 3060–0179.

Title: Section 73.1590, Equipment Performance Measurements.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 13,049 respondents and 13,049 responses.

Estimated Time per Response: 0.5–18 hours.

Frequency of Response:

Recordkeeping requirement.

Total Annual Burden: 12,335 hours.

Total Annual Cost: No cost.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Needs and Uses: The information collection requirements contained in 47 CFR 73.1590(d) require licensees of AM, FM and TV stations to make audio and video equipment performance measurements for each main transmitter. These measurements and a description of the equipment and procedures used in making the measurements must be kept on file at the transmitter or remote control point for two years. In addition, this information must be made available to the FCC upon request.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2025–00498 Filed 1–10–25; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0215]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the public and other Federal agencies to take this opportunity to comment on the request to renew the existing information collections described below (OMB Control No. 3064–0215). The notice of proposed renewal for this information collection was previously published in the **Federal Register** on October 25, 2024, allowing for a 60-day comment period.

DATES: Comments must be submitted on or before February 12, 2025.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website:* <https://www.fdic.gov/resources/regulations/federal-register-publications/>.

- *Email:* comments@fdic.gov. Include the name and number of the collection in the subject line of the message.

- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, 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 17th Street NW building (located on F Street NW), on business days between 7 a.m. and 5 p.m.

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:

Manny Cabeza, Regulatory Counsel, 202–898–3767, mcabeza@fdic.gov, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval for the following collection of information:

Title: FDIC National Survey of Unbanked and Underbanked Households.

OMB Number: 3064–0215.

Frequency of Response: Once.

Affected Public: Individuals residing in U.S. households.

Estimated Number of Respondents: 40,000.

Average Time per Response: 9 minutes (0.15 hours) per respondent.

Estimated Total Annual Burden: 6,000 hours.

General Description of Collection: The FDIC is committed to expanding Americans’ access to safe, secure, and affordable banking services, which is integral to the FDIC’s mission of maintaining the stability of, and public confidence in, the U.S. financial system. The Household Survey is one avenue by which the FDIC responds to a congressional mandate contained in section 7 of the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (Reform Act) (Pub. L. 109–173) for the FDIC to conduct ongoing surveys “on efforts by insured depository institutions to bring those individuals and families who have rarely, if ever, held a checking account, a savings account or other type of transaction or check cashing account at

an insured depository institution (hereafter in this section referred to as the 'unbanked') into the conventional finance system." Section 7 further instructs the FDIC to consider several factors in its conduct of the surveys, including (1) "what cultural, language and identification issues as well as transaction costs appear to most prevent 'unbanked' individuals from establishing conventional accounts;" and (2) "what is a fair estimate of the size and worth of the 'unbanked' market in the United States."

The Household Survey collects information on bank account ownership, which provides a factual basis for measuring the number and percentage of households that are unbanked. It is the only population-representative survey conducted at the national level that provides State-level estimates of the size and characteristics of unbanked households for all 50 States and the District of Columbia. The Household Survey also collects information from unbanked households about the reasons that they do not have a bank account and their interest in having a bank account.

Nonbank financial companies are playing an increasingly important role in the provision of financial products and services in the U.S., and households may use a variety of bank and nonbank financial products and services to meet their needs. Consequently, the Household Survey collects information on whether and how households use a wide range of bank and nonbank financial products and services.

To obtain this information, the FDIC partners with the U.S. Census Bureau, which administers the Household Survey under an FDIC-sponsored supplement to its Current Population Survey (CPS). The Household Survey has been administered every other year since January 2009. The previous survey questionnaires and survey results can be accessed through the following link: <https://fdic.gov/analysis/household-survey>.

Consistent with the statutory mandate to conduct the surveys on an ongoing basis, the FDIC already has in place arrangements for conducting the ninth Household Survey as a supplement to the June 2025 CPS. Prior to finalizing the 2025 survey questionnaire, the FDIC seeks to solicit public comment on whether changes to the existing instrument are desirable and, if so, to what extent. It should be noted that, as a supplement of the CPS survey, the Household Survey needs to adhere to specific parameters that include limits in the length and sensitivity of the questions that can be asked of CPS

respondents. Interested members of the public may obtain a copy of the proposed survey questionnaire on the following web page: <https://www.fdic.gov/federal-register-publications/2025-fdic-national-survey-unbanked-and-underbanked-households-draft>.

Request for Comment

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on January 7, 2025.

Debra A. Decker,
Executive Secretary.

[FR Doc. 2025-00502 Filed 1-10-25; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Friday, January 10, 2025.

PLACE: The meeting will be held via remote means.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Commission will conduct a meeting closed to the public to consider the Commission's response, if any, to show cause orders issued by the D.C. Circuit Court of Appeals in D.C. Cir. No. 24-1293 (and consolidated case D.C. Cir. No. 24-1356), and D.C. Cir. No. 24-1294 (and consolidated case DC Cir No. 24-1357). Commissioners will attend the meeting. Commission staff members who provide technological support and other Commission staff may also be present as necessary. This meeting is closed to the public pursuant to 5 U.S.C. 552b(c)(10) on the basis of the Commission's "participation in a civil action or proceeding." The Commission determined that shorter than usual notice for a meeting was required by official agency business.

CONTACT PERSON FOR MORE INFO: Sarah Stewart (202) 434-9935/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Authority: 5 U.S.C. 552b.

Dated: January 8, 2025.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2025-00681 Filed 1-8-25; 4:15 pm]

BILLING CODE 6735-01-P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision the Recordkeeping and Disclosure Requirements Associated with Regulation II (FR II; OMB No. 7100-0349).

DATES: Comments must be submitted on or before March 14, 2025.

ADDRESSES: You may submit comments, identified by FR II, by any of the following methods:

- *Agency Website:* <https://www.federalreserve.gov/>. Follow the instructions for submitting comments, including attachments. *Preferred method.*

- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

- *Hand Delivery/Courier:* Same as mailing address.

- *Other Means:* publiccomments@frb.gov. You must include the OMB number or the FR number in the subject line of the message.

Comments received are subject to public disclosure. In general, comments received will be made available on the Board's website at <https://www.federalreserve.gov/apps/proposals/> 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 be not appropriate for public disclosure. Public comments may also be viewed electronically or in person in Room M-4365A, 2001 C St. NW, Washington, DC 20551, between 9 a.m.

and 5 p.m. during Federal business weekdays.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, nuha.elmaghrabi@frb.gov, (202) 452-3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above. On the page displayed at the link above, you can find the supporting information by referencing the collection identifier, FR II. Final versions of these documents will be made available at <https://www.reginfo.gov/public/do/PRAMain>, if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Collection Title: Recordkeeping and Disclosure Requirements Associated with Regulation II.

Collection Identifier: FR II.

OMB Control Number: 7100-0349.

General description of collection: The FR II requires both recordkeeping and disclosure requirements. Certain debit card issuers (referred to as "covered issuers") are required to develop and implement, and at least annually review and update, certain fraud-prevention policies and procedures to be eligible to receive the fraud-prevention adjustment. In addition, the rule requires such a debit card issuer to annually notify its payment card networks that it is eligible to receive the fraud-prevention adjustment, and to notify its payment card networks when it is no longer eligible to receive the fraud-prevention adjustment. Finally, Regulation II requires all debit card issuers and, in some situations, payment card networks to retain evidence of compliance with the requirements in Regulation II for a prescribed period of time.

Frequency: Annual; Event-generated.

Respondents: Debit card issuers and payment card networks.

Total estimated number of respondents: 534.

Total estimated annual burden hours: 22,251.

Board of Governors of the Federal Reserve System, January 7, 2025.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2025-00481 Filed 1-10-25; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Senior Credit Officer Opinion Survey on Dealer Financing Terms (FR 2034; OMB No. 7100-0325).

DATES: Comments must be submitted on or before March 14, 2025.

ADDRESSES: You may submit comments, identified by FR 2034, by any of the following methods:

- *Agency Website:* <https://www.federalreserve.gov/>. Follow the instructions for submitting comments, including attachments. *Preferred method.*

- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

- *Hand Delivery/Courier:* Same as mailing address.

- *Other Means:* publiccomments@frb.gov. You must include the OMB number or the FR number in the subject line of the message.

Comments received are subject to public disclosure. In general, comments received will be made available on the Board's website at <https://www.federalreserve.gov/apps/proposals/> 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 be not appropriate for public disclosure. Public comments may also be viewed electronically or in person in Room M-4365A, 2001 C St. NW, Washington, DC 20551, between 9 a.m. and 5 p.m. during Federal business weekdays.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance

Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, nuha.elmaghrabi@frb.gov, (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above. On the page displayed at the link above, you can find the supporting information by referencing the collection identifier, FR 2034. Final versions of these documents will be made available at <https://www.reginfo.gov/public/do/PRAMain>, if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

- a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;
- b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;
- c. Ways to enhance the quality, utility, and clarity of the information to be collected;
- d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and
- e. Estimates of capital or startup costs and costs of operation, maintenance,

and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Collection title: Senior Credit Officer Opinion Survey on Dealer Financing Terms.

Collection identifier: FR 2034.

OMB control number: 7100–0325.

General description of collection: The FR 2034 is a voluntary, partially ad hoc survey that collects qualitative and limited quantitative information from senior credit officers at responding financial institutions on (1) stringency of credit terms, (2) credit availability and demand across the entire range of securities financing and over-the-counter derivatives transactions, and (3) the evolution of market conditions and conventions applicable to such activities. The FR 2034 survey is conducted quarterly and contains 79 core questions divided into three broad sections, one optional question, as well as additional questions on topics of timely interest.

Frequency: Quarterly.

Respondents: 25 U.S. banking institutions and U.S. branches and agencies of foreign banks. Other types of respondents, such as other depository institutions, bank holding companies, or other financial entities, may be surveyed when appropriate.

Total estimated number of respondents: 25.

Total estimated annual burden hours: 688.

Board of Governors of the Federal Reserve System, January 7, 2025.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2025–00486 Filed 1–10–25; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Federal

Reserve Payments Study (FR 3066; OMB No. 7100–0351).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, nuha.elmaghrabi@frb.gov, (202) 452–3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements (which contain more detailed information about the information collections and burden estimates than this notice), and approved collection of information instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board's public website at <https://www.federalreserve.gov/apps/reportingforms/review> or may be requested from the agency clearance officer, whose name appears above. On the page displayed at the link above, you can find the supporting information by referencing the collection identifier, FR 3066.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Collection title: Federal Reserve Payments Study.

Collection identifier: FR 3066.

OMB control number: 7100–0351.

General description of collection: The Federal Reserve Payments Study (FRPS) is supported by the following surveys: Depository and Financial Institutions Payments Survey (FR 3066a), and Networks, Processors, and Issuers Payments Surveys (FR 3066b).

The information on these surveys is used by the Federal Reserve to estimate the aggregate number and value of all cash and noncash payments, as well as cash withdrawals and deposits, made by

U.S. consumers and businesses, including for-profit and not-for-profit enterprises, and federal, state, and local government agencies. The aggregate estimates produced from the survey data are widely cited in academic working papers, journal articles, and industry publications; reported in the media; and used by the public, industry, and policy makers as a quantitative aggregate benchmark of noncash payments and cash withdrawal and deposit activity in the United States.

Frequency: Annually.

Respondents: Organizations with a significant role in processing payments, including depository and financial institutions, general-purpose payment networks, third-party payment processors, issuers of private-label payment instruments, and providers of various alternative payment methods and systems.

Total estimated number of respondents: FR 3066a, 513, FR 3066b, 170.

Estimated average hours per response: FR 3066a, 22; FR 3066b, 8.

Total estimated annual burden hours: 12,646.

Current actions: On July 30, 2024, the Board published a notice in the **Federal Register** (89 FR 61116) requesting public comment for 60 days on the extension, without revision, of the FR 3066. The comment period for this notice expired on September 30, 2024. The Board received one comment.

Detailed Discussion of Public Comments

The Board received one public comment from a payments industry association. The commenter was supportive of renewing and continuing this information collection. The commenter also urged the Board to publish timely and comprehensive results from the FRPS.

The Board strives to release detailed results from the FRPS expeditiously. Both the Board and FRB Atlanta are working continuously to improve both the quality and the timing of FRPS releases. The Board intends to publish any releases as soon as practicable with the goal of making information available while not sacrificing the quality and accuracy of that information. Achieving the necessary quality standard for detailed data is particularly important when constructing national estimates upon which policymakers, the industry, and the public can rely.

To that end, the Board expects to continue the practice of releasing results in stages, with an initial release of topline estimates followed by more extensive detailed releases at a later

stage. Results from annual supplements will periodically complement the initial and detailed triennial releases. Focused reports or releases on specific topics may also be published periodically. The Board has released some detailed data for the 2022 Federal Reserve Payments Study and 2023 Annual Supplement, and more is expected to be released in the near future.

The Board has adopted the extension, without revision, of the FR 3066 as originally proposed.

Board of Governors of the Federal Reserve System, January 7, 2025.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2025–00482 Filed 1–10–25; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—DP25–038, Epilepsy Incidence Among Children in the United States.

Date: March 19, 2025.

Time: 10 a.m.–6 p.m., EDT.

Place: Teleconference/Web Conference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Catherine Barrett, Ph.D., Scientific Review Officer, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway, Mailstop S106–3, Atlanta, Georgia 30341–3717. Telephone: (404) 718–7664; Email: CBarrett@cdc.gov.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2025–00491 Filed 1–10–25; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—DP25–043, Comprehensive Analysis, Surveillance, and Statistics Initiative for Diabetes in the Young (CASSIDY).

Date: March 12, 2025.

Time: 10 a.m.–6 p.m., EDT.

Place: Teleconference/Web Conference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Natalie Brown, M.P.H., Scientific Review Officer, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway, Mailstop S106–3, Atlanta, Georgia 30341–3717. Telephone: (404) 639–4601; Email: NBrown3@cdc.gov.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2025–00492 Filed 1–10–25; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—DP25–041, Connecting Organizations and People to Empower Diabetes Prevention and Treatment (Connections).

Date: March 11, 2025.

Time: 10 a.m.–6 p.m., EDT.

Place: Teleconference/Web Conference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Catherine Barrett, Ph.D., Scientific Review Officer, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway, Mailstop S106–3, Atlanta, Georgia

30341–3717. Telephone: (404) 718–7664; Email: CBarrett@cdc.gov.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2025–00488 Filed 1–10–25; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–OH–24–002, Exploratory/Developmental Grants on Lifestyle Medicine Research Related to the World Trade Center Health Program (R21); RFA–OH–24–003, Exploratory/Developmental Grants Related to the World Trade Center Survivors (R21–No Applications with Responders Accepted); RFA–OH–24–004, World Trade Center Health Program Mentored Research Scientist Career Development Award (K01); and RFA–OH–25–001, Exploratory/Developmental Research for World Trade Center Health Program Evidence-based Strategies to Improve Treatment Effectiveness, Diagnostic

Practices, and Program Evaluation (R21).

Dates and Times: February 25, 2025, 9 a.m.–5 p.m., EST; and February 26, 2025, 9 a.m.–12 p.m., EST.

Place: Courtyard by Marriott Atlanta Decatur Downtown/Emory, 130 Clairemont Avenue, Decatur, Georgia 30030.

Agenda: To review and evaluate grant applications.

For Further Information Contact:

Laurel Garrison, M.P.H., Scientific Review Officer, Office of Extramural Coordination and Special Projects, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 5555 Ridge Avenue, Cincinnati, Ohio 45213. Telephone: (513) 533–8324; Email: LGarrison@cdc.gov.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2025–00487 Filed 1–10–25; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–25–1385]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled “Characteristics of Cases of Priority Fungal Diseases” to the Office of Management and Budget (OMB) for review and approval. CDC previously published a “Proposed Data Collection Submitted for Public Comment and Recommendations” notice on October 25, 2024, to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639-7570. 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. Direct written comments and/or suggestions regarding

the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395-5806. Provide written comments within 30 days of notice publication.

Proposed Project

Characteristics of Cases of Priority Fungal Diseases (OMB Control No. 0920-1385, Exp. 4/30/2027)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Fungal diseases cause substantial illness, ranging from mild infection to severe or life-threatening invasive disease. They also constitute a considerable financial burden on patients and healthcare systems. Awareness of fungal diseases is low, and data collection has historically been limited in size, scope, and coordination, which has hindered our understanding of these diseases. Detailed epidemiologic and clinical data are critical to inform appropriate public health responses. We plan to enhance surveillance of high priority fungal diseases across the United States to better characterize factors such as disease burden, geographic scope, patient risk factors, health disparities, healthcare utilization, outcomes, and emerging trends. This project will serve as a Revision of the information collections project: Characteristics of Cases of Priority Fungal Diseases Case Report Form (CRF) (OMB Control No. 0920-1385). The Revision will expand

the number of fungal diseases for which data may be collected.

In addition to triazole-resistant *A. fumigatus* infections, coccidioidomycosis, histoplasmosis, blastomycosis, *C. auris*, and antifungal-resistant dermatophytosis, CRFs have also been developed for chromoblastomycosis, mycetoma, and sporotrichosis. We plan to use standardized CRFs to collect public health surveillance data for cases of these diseases regarding demographics (*e.g.*, age, sex, race/ethnicity, location of residence), underlying medical conditions, diagnosis (*e.g.*, clinical presentation, laboratory testing), treatments, and outcomes (*e.g.*, hospitalization, vital status). The corresponding CRF would be filled out voluntarily by State, local or Tribal health departments, Federal agencies, and the members of the private sector (*e.g.*, academic institutions) and contains a section for medical chart review and an optional supplemental interview (including data on potential occupational or environmental exposures) of the patient or their representative.

Findings can help identify populations at higher risk of these diseases, detect emerging epidemiologic trends, and guide prevention and response efforts. They can also help better focus public and healthcare provider outreach, inform efforts to contain or mitigate spread, and influence health policy and research on prevention and treatment.

CDC requests OMB approval for an estimated 1,564 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number responses per respondent	Avg. burden per response (in hrs.)
Triazole-resistant <i>Aspergillus fumigatus</i> Case Report Form (Attachment 3a).	State and Local Health Departments.	15	15	0.5
Coccidioidomycosis Case Report Form (Attachment 3b)	State and Local Health Departments.	10	25	1.0
	Private Sectors	3	10	1.0
Histoplasmosis Case Report Form (Attachment 3c)	State and Local Health Departments.	10	25	1.0
	Private Sectors	3	10	1.0
Blastomycosis Case Report Form (Attachment 3d)	State and Local Health Departments.	10	25	1.0
	Private Sectors	3	10	1.0
<i>Candida auris</i> Case Report Form (Attachment 3e)	State and Local Health Departments.	15	20	0.75
	Private Sectors	3	10	0.75
Antifungal-resistant dermatophytosis case report form (Attachment 3f).	State and Local Health Departments.	10	10	0.5
Chromoblastomycosis case report form (Attachment 3g)	Private Sectors	25	10	0.5
Mycetoma case report form (Attachment 3h)	Private Sectors	25	5	0.5
Sporotrichosis case report form (Attachment 3i)	Private Sectors	25	10	0.5

Jeffrey M. Zirger,

Lead, Information Collection Review Office,
Office of Public Health Ethics and
Regulations, Office of Science, Centers for
Disease Control and Prevention.

[FR Doc. 2025-00454 Filed 1-10-25; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-3469-PN]

Medicare and Medicaid Programs: Application From The Joint Commission for Continued Approval of its Hospice Accreditation Program

AGENCY: Centers for Medicare &
Medicaid Services (CMS), HHS.

ACTION: Notice with request for
comment.

SUMMARY: This proposed notice
acknowledges the receipt of an
application from The Joint Commission
for continued recognition as a national
accrediting organization for hospices
that wish to participate in the Medicare
or Medicaid programs.

DATES: To be assured consideration,
comments must be received at one of
the addresses provided below, no later
than 5 p.m. on February 12, 2025.

ADDRESSES: In commenting, refer to file
code CMS-3469-PN.

Comments, including mass comment
submissions, must be submitted in one
of the following three ways (please
choose only one of the ways listed):

1. *Electronically.* You may submit
electronic comments on this regulation
to <http://www.regulations.gov>. Follow
the “Submit a comment” instructions.

2. *By regular mail.* You may mail
written comments to the following
address ONLY:

Centers for Medicare & Medicaid
Services, Department of Health and
Human Services, Attention: CMS-3469-
PN, P.O. Box 8010, Baltimore, MD
21244-8010.

Please allow sufficient time for mailed
comments to be received before the
close of the comment period.

3. *By express or overnight mail.* You
may send written comments to the
following address ONLY:

Centers for Medicare & Medicaid
Services, Department of Health and
Human Services, Attention: CMS-3469-
PN, Mail Stop C4-26-05, 7500 Security
Boulevard, Baltimore, MD 21244-1850.

FOR FURTHER INFORMATION CONTACT:
Lillian Williams, (410) 786-8636 or
Melissa Rice, (410) 786-3270.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All
comments received before the close of
the comment period are available for
viewing by the public, including any
personally identifiable or confidential
business information that is included in
a comment. We post all comments
received before the close of the
comment period on the following
website as soon as possible after they
have been received: <http://www.regulations.gov>. Follow the search
instructions on that website to view
public comments. CMS will not post on
Regulations.gov public comments that
make threats to individuals or
institutions or suggest that the
commenter will take actions to harm an
individual. CMS continues to encourage
individuals not to submit duplicative
comments. We will post acceptable
comments from multiple unique
commenters even if the content is
identical or nearly identical to other
comments.

I. Background

Under the Medicare program, eligible
beneficiaries may receive covered
services in a hospice, provided that
certain requirements are met by the
hospice. Section 1861(dd) of the Social
Security Act (the Act) establishes
distinct criteria for facilities seeking
designation as a hospice. Regulations
concerning provider agreements are at
42 CFR part 489 and those pertaining to
activities relating to the survey and
certification of facilities are at 42 CFR
part 488. The regulations at 42 CFR part
418 specify the conditions that a
hospice must meet in order to
participate in the Medicare program, the
scope of covered services and the
conditions for Medicare payment for
hospice services.

Generally, to enter into an agreement,
a hospice must first be certified by a
state survey agency (SA) as complying
with the conditions or requirements set
forth in part 418. Thereafter, the hospice
is subject to regular surveys by a SA to
determine whether it continues to meet
these requirements.

However, section 1865(a)(1) of the Act
provides that, if a provider entity
demonstrates through accreditation by a
Centers for Medicare & Medicaid
Services (CMS) approved national
Accrediting Organization (AO) that all
applicable Medicare conditions are met
or exceeded, we will deem those
provider entities as having met the
requirements. Accreditation by an AO is
voluntary and is not required for
Medicare participation.

If an AO is recognized by the
Secretary of the Department of Health

and Human Services (the Secretary) as
having standards for accreditation that
meet or exceed Medicare requirements,
any provider entity accredited by the
national accrediting body's approved
program would be deemed to meet the
Medicare conditions. A national AO
applying for approval of its
accreditation program under part 488,
subpart A, must provide CMS with
reasonable assurance that the AO
requires the accredited provider entities
to meet requirements that are at least as
stringent as the Medicare conditions.
Our regulations concerning the approval
of AOs are set forth at §§ 488.4 and
488.5. The regulations at § 488.5(e)(2)(i)
require AOs to reapply for continued
approval of its accreditation program
every 6 years or sooner as determined
by CMS.

The Joint Commission's (TJC's)
current term of approval for their
hospice accreditation program expires
June 18, 2025.

II. Approval of Deeming Organizations

Section 1865(a)(2) of the Act and our
regulations at § 488.5 require that our
findings concerning review and
approval of a national AO's
requirements consider, among other
factors, the applying AO's requirements
for accreditation; survey procedures;
resources for conducting required
surveys; capacity to furnish information
for use in enforcement activities;
monitoring procedures for provider
entities found not in compliance with
the conditions or requirements; and
ability to provide CMS with the
necessary data for validation.

Section 1865(a)(3)(A) of the Act
further requires that we publish, within
60 days of receipt of an organization's
complete application, a notice
identifying the national accrediting
body making the request, describing the
nature of the request, and providing at
least a 30-day public comment period.
We have 210 days from the receipt of a
complete application to publish notice
of approval or denial of the application.

The purpose of this proposed notice
is to inform the public of TJC's request
for continued approval of its hospice
accreditation program. This notice also
solicits public comment on whether
TJC's requirements meet or exceed the
Medicare conditions of participation
(CoPs) for hospices.

III. Evaluation of Deeming Authority Request

TJC submitted all the necessary
materials to enable us to make a
determination concerning its request for
continued approval of its hospice
accreditation program. This application

was determined to be complete on November 20, 2024. Under section 1865(a)(2) of the Act and our regulations at § 488.5 (Application and re-application procedures for national AOs), our review and evaluation of TJC will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of TJC's standards for hospices as compared with CMS' hospice CoPs.

- TJC's survey process to determine the following:

- ++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

- ++ The comparability of TJC's processes to those of state agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

- ++ TJC's processes and procedures for monitoring hospices which are found out of compliance with TJC's program requirements. These monitoring procedures are used only when TJC identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the SA monitors corrections as specified at § 488.9.

- ++ TJC's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

- ++ TJC's capacity to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

- ++ The adequacy of TJC's staff and other resources, and its financial viability.

- ++ TJC's capacity to adequately fund required surveys.

- ++ TJC's policies with respect to whether surveys are announced or unannounced, to ensure that surveys are unannounced.

- ++ TJC's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in accreditation decisions.

- ++ TJC's agreement to provide CMS with a copy of the most current accreditation survey, together with any other information related to the survey as we may require (including corrective action plans).

IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Vanessa Garcia, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Vanessa Garcia,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2025-00448 Filed 1-10-25; 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 Review; Administration for Native Americans Project Outcome Assessment Survey (Office of Management and Budget #: 0970-0379)

AGENCY: Administration for Native Americans, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) is requesting a 3-year extension of the Administration for Native Americans Project Outcome Assessment Survey (OMB #: 0970-0379, expiration 6/30/2025). The survey was revised based on

a review by the Administration for Native Americans (ANA) and feedback from grantees, which identified some data elements that could be eliminated and areas that could be clarified.

DATES: *Comments due February 12, 2025.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. You can also obtain copies of the proposed collection of information by emailing infocollection@acf.hhs.gov. Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The information collected by the Project Outcome Assessment Survey is needed for two main reasons—(1) to collect crucial information required to report on ANA's established Government Performance and Results Act (GPRA) measures and (2) to properly abide by ANA's congressionally mandated statute (42 U.S.C. 2991 *et seq.*) found within the Native American Programs Act of 1974, as amended, which states that ANA will evaluate projects assisted through ANA grant dollars "including evaluations that describe and measure the impact of such projects, their effectiveness in achieving stated goals, their impact on related programs, and their structure and mechanisms for delivery of services." The survey information is requested once at the end of a project grant period. The information collected with this survey will fulfill ANA's statutory requirement and will also serve as an important planning and performance tool for ANA.

There are minor revisions proposed to the survey to align with ANA's current requirements of grant recipients and eliminate duplicative data elements.

Respondents: Tribal Governments, Native American nonprofit organizations, and Tribal Colleges and Universities.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
ANA Project Outcome Assessment Survey	85	1	6	510

Authority: 42 U.S.C. 2992.

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2025–00490 Filed 1–10–25; 8:45 am]

BILLING CODE 4184– 34–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: Oncology 1-Basic Translational Integrated Review Group; Cancer Cell Biology Study Section

Date: February 6–7, 2025.

Time: 10:00 a.m. to 6:00 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: Alyssa Diane Gregory, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, alyssa.gregory@nih.gov.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Child Psychopathology and Developmental Disabilities Study Section.

Date: February 10–12, 2025.

Time: 9:00 a.m. to 7:00 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: Karen Elizabeth Seymour, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000–E, Bethesda, MD 20892, (301) 443–9485, karen.seymour@nih.gov.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Maximizing Investigators' Research Award—F Study Section.

Date: February 10–11, 2025.

Time: 10:00 a.m. to 6:30 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: Brian Paul Chadwick, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–3586, chadwickbp@csr.nih.gov.

Name of Committee: Brain Disorders and Clinical Neuroscience, Integrated Review Group; Brain Injury and Neurovascular Pathologies Study Section.

Date: February 10–11, 2025.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Alexander Yakovlev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, 301–435–1254, yakovleva@csr.nih.gov.

Name of Committee: Interdisciplinary Molecular Sciences and Training Integrated Review Group; Cellular and Molecular Technologies Study Section.

Date: February 11–12, 2025.

Time: 9:00 a.m. to 6:00 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: Tatiana V. Cohen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, Bethesda, MD 20892, 301–455–2364, tatiana.cohen@nih.gov.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function B Study Section.

Date: February 11–12, 2025.

Time: 9:30 a.m. to 8:00 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: Alexei A. Yeliseev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 443–0552, yeliseeva@mail.nih.gov.

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group; Pathogenic Eukaryotes Study Section.

Date: February 11–12, 2025.

Time: 9:30 a.m. to 7:00 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: Jennifer Chien Villa, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–496–5436, jennifer.villa@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: January 6, 2025.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025–00458 Filed 1–10–25; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Delegation of Authority

Notice is hereby given that I have delegated to the Director, National Institutes of Health (NIH), the authority vested in the Secretary of Health and Human Services under the Dr. Emmanuel Bilirakis and Honorable Jennifer Wexton National Plan to End Parkinson's Act (Pub. L. 118–66) (Act). The Act amends Title III of the Public Health Service Act by adding section 399OO, 42 U.S.C. 280n. The Act directs the Secretary to carry out a national project to prevent, diagnose, treat, and cure Parkinson's, to be known as the National Parkinson's Project, including

a requirement to establish and maintain an Advisory Council on Parkinson's Research, Care, and Services and to create, maintain, and periodically update a national plan to prevent, diagnose, treat, and cure Parkinson's, ameliorate symptoms, and slow or stop progression.

This authority may be redelegated. Exercise of this authority shall be in accordance with established policies, procedures, guidelines, and regulations as prescribed by the Secretary. The Secretary retains the authority to submit reports to Congress, promulgate regulations, and appoint members to the Advisory Council on Parkinson's Research, Care, and Services. This Advisory Council will be co-chaired by the National Institutes of Health and the Office of the Assistant Secretary for Health. This delegation is effective immediately.

Dated: January 6, 2025.

Xavier Becerra,
Secretary.

[FR Doc. 2025–00432 Filed 1–7–25; 11:15 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HHS–NIH–CDC–SBIR PHS 2025–1 Phase I: Software or Web Services to Assess Quality and Reproducibility of Data and Information about Therapeutics and Vaccines (Topic 147).

Date: February 5, 2025.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of

Health, 5601 Fishers Lane, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Sandip Bhattacharyya, Ph.D., Scientific Review Officer, Scientific Review Program, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, MSC–9823, Rockville, MD 20892, sandip.bhattacharyya@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 6, 2025.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025–00457 Filed 1–10–25; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HHS–NIH–CDC–SBIR PHS–2025–1 Phase I and II: Development of Medical Interventions for Treating Non-Tuberculosis Mycobacterial (NTM) Infections (Topic 144).

Date: February 3, 2025.

Time: 1:00 p.m. to 3:00 p.m.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Video Assisted Meeting).

Agenda: To review and evaluate contract proposals.

Contact Person: Mario Cerritelli, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, MSC–9823, Rockville, MD 20892, 240–669–5199, cerritem@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 6, 2025.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025–00462 Filed 1–10–25; 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 Initial Review Group; Neurological Sciences and Disorders C Study Section.

Date: February 3–4, 2025.

Time: 9:00 a.m. to 6:00 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: January 6, 2025.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025–00470 Filed 1–10–25; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Mechanistic Studies to Investigate the Interrelationship Between Sleep and/or Circadian Rhythms and Substance Use Disorders.

Date: February 21, 2025.

Time: 10:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Ipolia R. Ramadan, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827-4471, ramadanir@mail.nih.gov.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Interplay of Autophagy Regulated Cell Death and HIV Pathogenesis in Substance Use Disorders and Research on the Neuro-Immune Axis in the Context of HIV and Substance Use.

Date: February 24, 2025.

Time: 11:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Meysam Yazdankhah, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 402-6965, meysam.yazdankhah@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research

Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: January 6, 2025.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025-00455 Filed 1-10-25; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Human Genome Research.

This is a video assisted meeting held virtually. It is open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations, should notify the contact person listed below in advance of the meeting. The meeting will be videocast and can be accessed from <https://www.genome.gov/event-calendar/105th-Meeting-of-National-Advisory-Council-for-Human-Genome-Research>.

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 Advisory Council for Human Genome Research.

Date: February 10-11, 2025.

Closed: February 10, 2025, 9:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Address: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Room 1100, Bethesda, MD 20892 (Virtual).

Open: February 10, 2025, 10:00 a.m. to 6:00 p.m.

Agenda: Report of Institute Director and Institute Staff.

Address: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Room 1100, Bethesda, MD 20892 (Virtual).

Closed: February 11, 2025, 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Room 1100, Bethesda, MD 20892 (Virtual).

Contact Person: Jennifer L. Troyer, Ph.D., Director, Division of Extramural Operations, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, Rockville, MD 20852, (301) 480-3565, troyerj@mail.nih.gov.

Information is also available on the Institute's/Center's home page: <http://www.genome.gov/council>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: January 6, 2025.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025-00469 Filed 1-10-25; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HHS-NIH-CDC-SBIR PHS-2023-1 Phase II: Adaptation of CRISPR-Based In Vitro Diagnostics for Rapid Detection of Select Eukaryotic Pathogens (Topic 119).

Date: February 4, 2025.

Time: 1:00 p.m. to 4:00 p.m.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Video Assisted Meeting).

Agenda: To review and evaluate contract proposals.

Contact Person: Mario Cerritelli, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious

Diseases, National Institutes of Health, 5601 Fishers Lane, MSC-9823, Rockville, MD 20892, 240-669-5199, cerritem@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 6, 2025.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025-00456 Filed 1-10-25; 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: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cellular, Molecular and Integrative Reproduction Study Section.

Date: February 5-6, 2025.

Time: 10:00 a.m. to 5:00 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: Anthony Wing Sang Chan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 809K, Bethesda, MD 20892, (301) 496-9392, chana2@csr.nih.gov.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Behavioral Neuroendocrinology, Neuroimmunology, Rhythms, and Sleep Study Section.

Date: February 6-7, 2025.

Time: 8:00 a.m. to 8:00 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: Simon Peter Peron, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 1009K, Bethesda, MD 20892, (301) 594-6236, peronsp@csr.nih.gov.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Science of Implementation in Health and Healthcare Study Section.

Date: February 6-7, 2025.

Time: 9:00 a.m. to 6:00 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: Wenjuan Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, Bethesda, MD 20892, (301) 480-8667, wangw22@mail.nih.gov.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.

Date: February 6-7, 2025.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: Washington Marriott Georgetown, 1221 22nd Street NW, Washington, DC 20037.

Meeting Format: In Person and Virtual Meeting.

Contact Person: Brittany L. Mason-Mah, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000A, Bethesda, MD 20892, (301) 594-3163, masonmahbl@mail.nih.gov.

Name of Committee: Social and Community Influences on Health Integrated Review Group; Psychosocial Development, Risk and Prevention Study Section.

Date: February 6-7, 2025.

Time: 9:00 a.m. to 7:00 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: Anna L. Riley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301-435-2889, rileyann@csr.nih.gov.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Maximizing Investigators' Research Award B Study Section.

Date: February 6-7, 2025.

Time: 9:30 a.m. to 7:00 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: Sudha Veeraraghavan, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7846, Bethesda, MD 20892, (301) 827-5263, sudha.veeraraghavan@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: January 6, 2025.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025-00468 Filed 1-10-25; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2025 Notice of Supplemental Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services (HHS).

ACTION: Notice of intent to award supplemental funding.

SUMMARY: This notice is to inform the public that Substance Abuse and Mental Health Services Administration (SAMHSA) is supporting administrative supplements in scope of the parent award for the five (5) eligible grant recipients funded under the FY 2020 National Consumer and Consumer Supporter Technical Assistance Centers, Notice of Funding Opportunity (NOFO) SM-20-001. The total available funding is \$1,806,000 and each of the five recipients may receive up to \$361,200. This supplemental funding will extend the project period by 12 months to March 30, 2026, as SAMHSA completes the agency's efforts to update the program for the field's current needs. Recipients will use the funding to continue to provide technical assistance to promote evidence-based care for adults with serious mental illness within the scope of their active grant award.

FOR FURTHER INFORMATION CONTACT:

Damie Jackson-Diop, Public Health Advisor, Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS), 5600 Fishers Lane, Rockville, MD 20857, telephone (240) 276-0424; email damie.jackson-diop@samhsa.hhs.gov.

SUPPLEMENTARY INFORMATION:

Funding Opportunity Title: FY 2020 National Consumer and Consumer Supporter Technical Assistance Centers (Consumer and Consumer Supporter TA Centers), SM–20–001.

Assistance Listing Number: 93.243.

Authority: Section 520A of the Public Health Service Act.

Justification: Eligibility for this supplemental funding is limited to the current five recipients. These grant recipients have the capacity and expertise to provide technical assistance to promote evidence-based care for adults with serious mental illness.

This is not a formal request for application. Assistance will only be provided to the five Consumer and Consumer Supporter TA Center recipients funded in FY 2020 under the National Consumer and Consumer Supporter Technical Assistance Centers, SM–20–001, based on the receipt of a satisfactory application and associated budget that is approved by a review group.

Dated: January 6, 2025.

Ann Ferrero,

Public Health Analyst.

[FR Doc. 2025–00427 Filed 1–10–25; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2007–0008]

National Advisory Council; Meeting

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The Federal Emergency Management Agency's National Advisory Council (NAC) will meet on Feb. 12, 2025, to publicly consider, deliberate, and vote upon draft recommendations by the NAC's Planning for Animal Wellness (PAW) Subcommittee. The meeting will be open to the public through virtual means and, space permitting, to in-person attendance requests.

DATES: The NAC plans to meet and invites the public to observe and participate by virtual means or in-person attendance from 1:30 to 4 p.m. eastern time (ET) on Wednesday, Feb. 12, 2025. The meeting may pause for breaks and can continue past the scheduled end time or may end early

when the NAC has completed its business.

ADDRESSES: Anyone who wishes to participate must register with FEMA in advance by providing their name, official title, organization, telephone number, email address and desired attendance means to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below by 3 p.m. ET on Friday, Feb. 7, 2025. Links to attend by virtual means will be provided by registration confirmation email. Members of the public are urged to provide written comments on the issues to be considered by the NAC. The topic areas are indicated in the **SUPPLEMENTARY INFORMATION** section below. Any written comments must be submitted and received by 3 p.m. ET on Friday, Feb. 7, 2025, identified by Docket ID FEMA–2007–0008, and submitted via the Federal eRulemaking Portal at <https://www.regulations.gov>, following the instructions for submitting comments below.

Instructions for Submitting

Comments: All submissions must include the words “Federal Emergency Management Agency” and the docket number (Docket ID FEMA–2007–0008) for this action. Comments received, including any personal information provided, will be posted without alteration at <https://www.regulations.gov>. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage at <https://www.regulations.gov>. For access to the docket or to read comments received by the NAC, go to <https://www.regulations.gov>, and search for Docket ID FEMA–2007–0008.

The open public comment period is anticipated on Wednesday, Feb. 12, 2025, from 2:15 to 2:45 p.m. ET. All speakers must register in advance of the meeting to make remarks during the open public comment period and must limit their comments to three minutes. Comments should be addressed to the NAC. Any comments unrelated to the agenda topics will not be considered. Additional opportunities for public comments during meeting deliberations and voting, limited to one minute per instance and directed to the current topic, may be offered by the Designated Federal Officer as time permits. To register to make remarks during the public comment period, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below by 3 p.m. ET on Friday, Feb. 7, 2025. Please note that the public comment periods may end before the time

indicated, following the last call for comments.

The NAC is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section below as soon as possible. Last-minute requests will be accepted but may not be possible to fulfill.

FOR FURTHER INFORMATION CONTACT:

Dawn Essenmacher, Alternate Designated Federal Officer, Office of the National Advisory Council, Federal Emergency Management Agency, 500 C St. SW, Washington, DC 20472–3184, 202–212–3026, FEMA-PAW-Act@fema.dhs.gov. The NAC PAW Subcommittee website is <https://www.fema.gov/about/offices/national-advisory-council/subcommittees>.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. ch. 10.

The NAC advises the FEMA Administrator on all aspects of emergency management. The NAC incorporates input from state, local, Tribal, and territorial governments, and the private sector in the development and revision of FEMA plans and strategies. The NAC includes a cross-section of officials, emergency managers, and emergency response providers from state, local, Tribal, and territorial governments, the private sector, and nongovernmental organizations. The Planning for Animal Wellness (PAW) Act was signed into law on October 17, 2022. The PAW Act requires, the Administrator of the Federal Emergency Management Agency (FEMA) to establish a working group relating to best practices and Federal guidance for animals in emergencies and disasters, among other things.

Agenda: On Wednesday, Feb. 12, 2025, the PAW Subcommittee under the NAC will present to the full NAC membership its final recommendations on best practices and FEMA guidance regarding congregate and non-congregate sheltering and evacuation planning relating to the needs of household pets, service and assistance animals, and captive animals, as appropriate, in emergency and disaster preparedness, response, and recovery. Additionally, the NAC will deliberate and vote on recommendations from the PAW Subcommittee.

The full agenda and available preparatory materials for this meeting will be available at <https://www.fema.gov/about/offices/national->

advisory-council by Friday, Feb. 7, 2025, or by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Deanne Criswell,
Administrator, Federal Emergency
Management Agency.

[FR Doc. 2025-00489 Filed 1-10-25; 8:45 am]

BILLING CODE 9111-24-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7090-N-11]

60-Day Notice of Proposed Information Collection: Evaluation of the Older Adult Home Modification Grant Program; OMB Control No.: 2528-0335

AGENCY: Office of the Assistant
Secretary for Policy Development and
Research, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 14, 2025.

ADDRESSES: Interested persons are invited to submit comments regarding

this proposal. Written comments and recommendations for the proposed information collection can be submitted within 60 days of publication of this notice to www.regulations.gov. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number to: Anna Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410-5000 or email at PaperworkReductionActOffice@hud.gov.

FOR FURTHER INFORMATION CONTACT:

Anna Guido, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410-5000; email Anna.P.Guido@hud.gov; telephone (202) 402-5535 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection:
Evaluation of the Older Adult Home
Modification Grant Program.

OMB Approval Number: 2528-0335.

Type of Request: Extension of
currently approved collection.

Form Number: N/A.

*Description of the need for the
information and proposed use:* Congress
authorized HUD to make grants to
experienced non-profit organizations,
States, local governments, or public
housing agencies for safety and
functional home modification repairs to
meet the needs of low-income elderly
homeowners to enable them to remain
in their primary residence. To evaluate
the effectiveness of the grants, HUD is:
(1) evaluating the grantees'
implementation of the grants and (2)
evaluating the impact of the home
modification on the recipient. HUD is
seeking an extension of the currently
approved collection.

Members of the affected public: Office
of Lead Hazard Control and Healthy
Homes Grantees and Recipients for
home modifications.

Respondent's Obligation: Mandatory
for grantees. Voluntary for clients.

Legal Authority: The data collection is
conducted under title 12, United States
Code, section. 1701z and section 3507 of
the Paperwork Reduction Act of 1995,
44 U.S.C. 35, as amended.

Table 1. provides an estimate of the
annual burden to respondents.

TABLE 1—ESTIMATED ANNUAL BURDEN TO GRANTEE RESPONDENTS

Information collection	Total number of respondents	Frequency of response	Responses per annum	Burden hours per response	Annual burden hours	Annual hourly cost per response	Annual cost
Client Eligibility Documentation Form ^a	2,235	1	745	0.08	62	\$37.03	\$2,299
Lost-to-Project Form ^b	1,164	1	388	0.08	32	37.03	1,197
OAHM Program Documentation of Work Completed Form ^c	1,341	1	447	0.58	259	37.03	9,600
Grantee Process Evaluation Online Survey ^d	75	1	25	4	100	37.03	3,703
Grantee Site Visit Interview Guide ^e	12	2	4	3	24	37.03	889
Total Annual .....	.....	.....	1,607	7.75	478	.....	17,688
Total over Three Years .....	.....	.....	.....	.....	1,433	.....	53,065

^a 1,675 clients are expected to receive home modifications. Grantees will need to screen approximately 2,233 applicants and complete evaluation Client Eligibility Documentation forms for each of these applicants to reach their unit goal.

^b Of the 2,235 OAHMP applicants, 25% (558) are expected to be determined ineligible for program services, another 20% (335) of eligible clients are expected to decline to participate in the evaluation, and another 25% (268) are expected to be lost to project follow up by the end of the evaluation period. Grantees are required to complete the lost to project form for all applicants and clients lost to the project (1,164).

^c Grantees will complete the Home Modification Documentation only with clients who agree to participate in the evaluation. We estimate 25% of the eligible applicants (1676) will refuse to participate, leading to a total of 1,341 clients for which grantees will complete the form.

^d One program manager from each of up to 25 grantees will complete the Grantee Process Evaluation Online Survey each year of the three year period of performance (3X).

^e The Contractor will administer the Grantee Site Visit Interview Guide with approximately two grantee representatives at up to 12 site visits.

TABLE 2—ESTIMATED TIME AND COSTS TO CLIENT RESPONDENTS

Information collection	Total number of respondents	Frequency of response	Responses per annum	Burden hours per response	Annual burden hours	Annual hourly cost per response	Annual cost
OAHM Client Program Questionnaire Base- line ^a	1,677	1	559	0.17	93	\$11.24	\$1,047

TABLE 2—ESTIMATED TIME AND COSTS TO CLIENT RESPONDENTS—Continued

Information collection	Total number of respondents	Frequency of response	Responses per annum	Burden hours per response	Annual burden hours	Annual hourly cost per response	Annual cost
Home Hazard Checklist Baseline ^a	1,677	1	559	0.42	233	11.24	2,618
OAHM Program Evaluation Informed Consent ^b	1,341	1	447	0.25	112	11.24	1,256
OAHM Client Impact Evaluation Interview Baseline ^b	1,341	1	447	0.42	186	11.24	2,093
Home Hazard Checklist Post-Modification ^c	1,074	1	358	0.42	149	11.24	1,677
OAHM Client Program Questionnaire Post-Modification ^c	1,074	1	358	0.17	60	11.24	671
OAHM Client Impact Evaluation Interview Post-Modification ^c	1,074	1	358	0.42	149	11.24	1,677
Script to Schedule Client Process Evaluation Interview ^d	336	1	112	0.08	9	11.24	105
Client Process Evaluation Interview ^d	202	1	67	0.50	34	11.24	378
Total Annual .....	.....	.....	3,265	2.83	986	.....	11,522
Total Over Three Years .....	.....	.....	.....	.....	2,959	.....	34,566

^a 1,677 applicants are expected to be eligible to receive home modifications. Program Questionnaire and Home Hazard baseline data will be collected for all of these clients.

^b Assuming 20% (335) of eligible clients do not consent to participate in the Evaluation, 1,341 clients are expected to complete the baseline Client Impact Evaluation.

^c Of the clients that agree to participate in the Evaluation, it is assumed 20% (268) will be lost to project follow up during the course of the Evaluation, resulting in post-modification data being collected from 1,074 clients.

^d Assuming 40% of the clients contacted decline to participate in the process survey (134), we will contact 335 clients to ensure up to 200 of the clients who receive home modifications participate in the Client Process Evaluation interviews.

Total Annual Costs: \$29,210.

Total Costs over 3 Years: \$87,631.

Total Client Respondents: 1,677.

Hours/Client Respondent: 2.83.

Total Grantee Respondents: 25.

Hours/Grantee Respondent: 7.75.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Todd M. Richardson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2025–00437 Filed 1–10–25; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2024–N068;

FXES11130200000–256–FF02ENEH00]

Endangered Wildlife; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for a permit to conduct scientific research to promote conservation or other activities intended to recover and enhance endangered species survival. With some exceptions, the Endangered Species Act (ESA) prohibits certain activities that may impact endangered species, unless a Federal permit allows such activity. The ESA also requires that we invite public comment before issuing these permits.

DATES: To ensure consideration, please submit your written comments by February 12, 2025.

ADDRESSES:

Document availability: Request documents from the contact in the **FOR FURTHER INFORMATION CONTACT** section.

Comment submission: Submit comments by email to fw2_te_permits@fws.gov. Please specify the permit application you are interested in by number (*e.g.*, Permit Record No. PER1234567).

FOR FURTHER INFORMATION CONTACT:

Marty Tuegel, Supervisor, Environmental Review Division, by phone at 505–248–6651, or via email at marty_tuegel@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

With some exceptions, the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of "take" includes hunting, shooting, harming, wounding, or killing, and also such activities as pursuing, harassing, trapping, capturing, or collecting.

The ESA and our implementing regulations in the Code of Federal Regulations (CFR) at title 50, part 17, provide for issuing such permits and require that we invite public comment before issuing permits for activities involving listed species.

A recovery permit we issue under the ESA, section 10(a)(1)(A), authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or enhance the species' propagation or survival. These activities often include such prohibited actions as capture and collection. Our regulations

implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Documents and other information submitted with these applications are available for review by any party who submits a request as specified in **ADDRESSES**. Our release of documents is subject to Privacy Act (5 U.S.C. 552a)

and Freedom of Information Act (5 U.S.C. 552) requirements.

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. We invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Please refer to the permit record number when submitting comments.

Permit record No.	Applicant	Species	Location	Activity	Type of take	Permit action
PER1906198	Herman, Eric; Chandler, Arizona.	Southwestern willow flycatcher (<i>Empidonax traillii extimus</i>).	Arizona, California, Colorado, New Mexico, Nevada, Texas, Utah.	Presence/absence surveys, nest monitoring.	Harass, harm	Renew/amend.
PER0946319	Westland Resources, Inc.; Tucson, Arizona.	Southwestern willow flycatcher (<i>Empidonax traillii extimus</i>).	Arizona, New Mexico.	Presence/absence surveys.	Harass, harm	Renew/amend.
PER2691439	Zara Environmental, LLC.; Manchaca, Texas.	Pink mucket (<i>Lampsilis abrupta</i>), Guadalupe fatmucket (<i>Lampsilis bergmanni</i>), Texas pimpleback (<i>Cyclonaias petrina</i>), false spike (<i>Fusconaia mitchelli</i>), Guadalupe orb (<i>Cyclonaias necki</i>), Texas fatmucket (<i>Lampsilis bracteata</i>), Balcones spike (<i>Fusconaia iheringi</i>).	Arkansas, Louisiana, Texas.	Presence/absence surveys.	Harass, harm	Renew/amend.
PER9580515	Powers, Jarrod; Stillwater, Oklahoma.	Winged mapleleaf (<i>Quadrula fragosa</i>), Ouachita rock pocketbook (<i>Arcidens wheeleri</i>), scaleshell mussel (<i>Leptodea leptodon</i>), Neosho mucket (<i>Lampsilis rafinesqueana</i>).	Oklahoma	Presence/absence surveys, relocations, habitat surveys.	Harass, harm	Amend.
PER9356671	Bastrop County; Bastrop, Texas.	Houston toad (<i>Bufo houstonensis</i>)	Texas	Presence/absence surveys, bio-sample.	Harass, harm	New.
PER11358780	Houston Zoo, Inc.; Houston, Texas.	Kemp's ridley sea turtle (<i>Lepidochelys kempii</i>), hawksbill sea turtle (<i>Eretmochelys imbricata</i>), leatherback sea turtle (<i>Dermochelys coriacea</i>), Barton Springs salamander (<i>Eurycea sosorum</i>), Houston toad (<i>Bufo houstonensis</i>), Big Bend gambusia (<i>Gambusia gaigei</i>), Comanche Springs pupfish (<i>Cyprinodon elegans</i>), Leon Springs pupfish (<i>Cyprinodon bovinus</i>).	Texas	Receive, rehabilitate, release, transport, educational display, captive propagation, headstarting, presence/absence surveys.	Harass, harm, capture.	Renew.

Permit record No.	Applicant	Species	Location	Activity	Type of take	Permit action
PER13973885	SWCA Incorporated; Austin, Texas.	Gulf Coast jaguarundi (<i>Puma yagouaroundi cacomitli</i>), ocelot (<i>Leopardus pardalis</i>), golden-cheeked warbler (<i>Setophaga chrysoparia</i>), northern aplomado falcon (<i>Falco femoralis septentrionalis</i>), southwestern willow flycatcher (<i>Empidonax traillii extimus</i>), whooping crane (<i>Grus americana</i>), Houston toad (<i>Bufo houstonensis</i>), Barton Springs salamander (<i>Eurycea sosorum</i>), Austin blind salamander (<i>Eurycea waterlooensis</i>), Texas blind salamander (<i>Eurycea rathbuni</i>), fountain darter (<i>Etheostoma fonticola</i>), Comal Springs dryopid beetle (<i>Stygoparnus comalensis</i>), Comal Springs riffle beetle (<i>Heterelmis comalensis</i>), Peck's Cave amphipod (<i>Stygobromus pecki</i>), Helotes mold beetle (<i>Batrisodes venyivi</i>), Coffin Cave mold beetle (<i>Batrisodes texanus</i>), Robber Baron Cave meshweaver (<i>Cicurina baronia</i>), Madla Cave meshweaver (<i>Cicurina madla</i>), Government Canyon Bat Cave meshweaver (<i>Cicurina vespera</i>), ground beetle (<i>Rhadine exilis</i>), ground beetle (<i>Rhadine infernalis</i>), Tooth Cave ground beetle (<i>Rhadine persephone</i>), Tooth Cave pseudoscorpion (<i>Tartarocreagris texana</i>), Government Canyon Bat Cave spider (<i>Tayshaneta microps</i>), Tooth Cave spider (<i>Tayshaneta myopica</i>), Kretschmarr Cave mold beetle (<i>Texamaurops reddelli</i>), Cokendolpher Cave harvestman (<i>Texella cokendolpheri</i>), Bee Creek Cave harvestman (<i>Texella reddelli</i>), Bone Cave harvestman (<i>Texella reyesi</i>), lesser prairie-chicken (<i>Tympanuchus pallidicinctus</i>), dunes sagebrush lizard (<i>Sceloporus arenicolus</i>), Texas hornshell (<i>Popenaias popeii</i>), Texas pimpleback (<i>Cyclonaias petrina</i>), Guadalupe orb (<i>Cyclonaias necki</i>), Texas fatmucket (<i>Lampsilis bracteata</i>), Guadalupe fatmucket (<i>Lampsilis bergmanni</i>), false spike (<i>Fusconaia mitchelli</i>), Balcones spike (<i>Fusconaia iheringi</i>).	Louisiana, New Mexico, Oklahoma, Texas.	Presence/absence surveys, handle, voucher specimens.	Harass, harm, capture, kill.	Renew/amend.
PER11662207	Gargaro, Madison; San Antonio, Texas.	Golden-cheeked warbler (<i>Setophaga chrysoparia</i>)	Texas	Presence/absence surveys.	Harass, harm	Renew.
PER11837375	San Antonio Zoo; San Antonio, Texas.	Clear Creek gambusia (<i>Gambusia heterochir</i>)	Texas	Captive propagation.	Harass, harm, capture.	Amend.
PER11325945	Terrell, Danielle; Austin, Texas.	Texas pimpleback (<i>Cyclonaias petrina</i>), Texas fatmucket (<i>Lampsilis bracteata</i>), false spike (<i>Fusconaia mitchelli</i>).	Texas	Presence/absence surveys, relocations.	Harass, harm	New.
PER11327677	Craig, Cody; Austin, Texas.	Texas pimpleback (<i>Cyclonaias petrina</i>), Guadalupe orb (<i>Cyclonaias necki</i>), Texas fatmucket (<i>Lampsilis bracteata</i>), Guadalupe fatmucket (<i>Lampsilis bergmanni</i>), false spike (<i>Fusconaia mitchelli</i>), Balcones spike (<i>Fusconaia iheringi</i>).	Texas	Presence/absence surveys, relocations.	Harass, harm	New.
PER11488706	Gudgell, Lee; Seguin, Texas.	Guadalupe orb (<i>Cyclonaias necki</i>), Guadalupe fatmucket (<i>Lampsilis bergmanni</i>), false spike (<i>Fusconaia mitchelli</i>).	Texas	Presence/absence surveys.	Harass, harm	New.
PER13531963	Gladys Porter Zoo; Brownsville, Texas.	Kemp's ridley sea turtle (<i>Lepidochelys kempi</i>), hawksbill sea turtle (<i>Eretmochelys imbricata</i>), leatherback sea turtle (<i>Dermochelys coriacea</i>), Gulf Coast jaguarundi (<i>Puma yagouaroundi cacomitli</i>), ocelot (<i>Leopardus pardalis</i>).	Texas	Receive, rehabilitate, release, educational display, nesting detection, retrieval and relocation, bio-sample, tag, presence/absence surveys.	Harass, harm	Renew/amend.
PER12291510	Schwalb Stream Ecology Lab at Texas State University; San Marcos, Texas.	Texas pimpleback (<i>Cyclonaias petrina</i>), Guadalupe orb (<i>Cyclonaias necki</i>), Texas fatmucket (<i>Lampsilis bracteata</i>), Guadalupe fatmucket (<i>Lampsilis bergmanni</i>), false spike (<i>Fusconaia mitchelli</i>), Balcones spike (<i>Fusconaia iheringi</i>).	Texas	Presence/absence surveys.	Harass, harm	New.
PER11498907	Carreon, Sarah; Helotes, Texas.	Golden-cheeked warbler (<i>Setophaga chrysoparia</i>)	Texas	Presence/absence surveys.	Harass, harm	New.
PER13993348	Fischer, Clay; South Padre Island, Texas.	Gulf Coast jaguarundi (<i>Puma yagouaroundi cacomitli</i>), ocelot (<i>Leopardus pardalis</i>), golden-cheeked warbler (<i>Setophaga chrysoparia</i>), Houston toad (<i>Bufo houstonensis</i>), southwestern willow flycatcher (<i>Empidonax traillii extimus</i>).	Texas	Presence/absence surveys.	Harass, harm	Renew/amend.

Permit record No.	Applicant	Species	Location	Activity	Type of take	Permit action
PER11639611	Macedo, Danielle; Austin, Texas.	Golden-cheeked warbler (<i>Setophaga chrysoparia</i>)	Texas	Presence/absence surveys.	Harass, harm	New.
PER12084642	Laine, Robin; San Antonio, Texas.	Golden-cheeked warbler (<i>Setophaga chrysoparia</i>)	Texas	Presence/absence surveys.	Harass, harm	Renew.
PER12079456	HDR Engineering Inc.; Austin, Texas.	Golden-cheeked warbler (<i>Setophaga chrysoparia</i>), Houston toad (<i>Bufo houstonensis</i>).	Texas	Presence/absence surveys.	Harass, harm	Amend.
PER0029468	Jenkerson, Jeffrey; San Marcos, Texas.	Guadalupe fatmucket (<i>Lampsilis bergmanni</i>), Texas fatmucket (<i>Lampsilis bracteata</i>), Guadalupe orb (<i>Cyclonaias necki</i>), Texas pimpleback (<i>Cyclonaias petrina</i>), Balcones spike (<i>Fusconaia iheringi</i>), false spike (<i>Fusconaia mitchelli</i>).	Texas	Presence/absence surveys, relocations.	Harass, harm, capture.	Amend.
PER13185642	Stantec Texas; Austin, Texas.	Guadalupe fatmucket (<i>Lampsilis bergmanni</i>), Texas fatmucket (<i>Lampsilis bracteata</i>), Guadalupe orb (<i>Cyclonaias necki</i>), Texas pimpleback (<i>Cyclonaias petrina</i>), Balcones spike (<i>Fusconaia iheringi</i>), false spike (<i>Fusconaia mitchelli</i>).	Texas	Presence/absence surveys, salvage, relocations.	Harass, harm, capture.	Amend.
PER12929504	Lower Colorado River Authority Transmission Services Corporation; Austin, Texas.	Golden-cheeked warbler (<i>Setophaga chrysoparia</i>), Houston toad (<i>Bufo houstonensis</i>), northern aplomado falcon (<i>Falco femoralis septentrionalis</i>), southwestern willow flycatcher (<i>Empidonax traillii extimus</i>).	Texas	Presence/absence surveys.	Harass, harm	Renew.
PER13146293	Lazo, Walker; San Antonio, Texas.	Helotes mold beetle (<i>Batrises ventyivi</i>), Coffin Cave mold beetle (<i>Batrises texanus</i>), Robber Baron Cave meshweaver (<i>Cicurina baronia</i>), Madla Cave meshweaver (<i>Cicurina madla</i>), Government Canyon Bat Cave meshweaver (<i>Cicurina vespera</i>), ground beetle (<i>Rhadine exilis</i>), ground beetle (<i>Rhadine infernalis</i>), Tooth Cave ground beetle (<i>Rhadine persephone</i>), Tooth Cave pseudoscorpion (<i>Tartarocreagris texana</i>), Government Canyon Bat Cave spider (<i>Tayshaneta microps</i>), Tooth Cave spider (<i>Tayshaneta myopica</i>), Kretschmarr Cave mold beetle (<i>Texamaurops reddelli</i>), Cokendolpher Cave harvestman (<i>Texella cokendolpheri</i>), Bee Creek Cave harvestman (<i>Texella reddelli</i>), Bone Cave harvestman (<i>Texella reyesi</i>).	Texas	Presence/absence surveys, voucher specimen collection.	Harass, harm, kill.	Amend.
PER13361397	Aragon, Felicia; Santa Fe, New Mexico.	Southwestern willow flycatcher (<i>Empidonax traillii extimus</i>).	New Mexico	Presence/absence surveys.	Harass, harm	New.
PER13544765	Lutterschmidt, William; Huntsville, Texas.	Houston toad (<i>Bufo houstonensis</i>)	Texas	Handle, bio-sample, e-DNA analysis.	Harass, harm, capture.	New.
PER0055324	Bio-West, Inc.; Round Rock, Texas.	Guadalupe fatmucket (<i>Lampsilis bergmanni</i>), Texas fatmucket (<i>Lampsilis bracteata</i>), Guadalupe orb (<i>Cyclonaias necki</i>), Texas pimpleback (<i>Cyclonaias petrina</i>), false spike (<i>Fusconaia mitchelli</i>).	Texas	Presence/absence surveys.	Harass, harm	Amend.
PER13547800	Brown and Gay Engineers, Inc.; Frisco, Texas.	Lesser prairie-chicken (<i>Tympanuchus pallidicinctus</i>), dunes sagebrush lizard (<i>Sceloporus arenicolus</i>).	Colorado, Kansas, New Mexico, Oklahoma, Texas.	Presence/absence surveys.	Harass, harm	Amend.
PER13743117	City of Austin—Balcones Canyonlands Preserve; Austin, Texas.	Golden-cheeked warbler (<i>Setophaga chrysoparia</i>), Barton Springs salamander (<i>Eurycea sosorum</i>), Helotes mold beetle (<i>Batrises ventyivi</i>), Coffin Cave mold beetle (<i>Batrises texanus</i>), Robber Baron Cave meshweaver (<i>Cicurina baronia</i>), Madla Cave meshweaver (<i>Cicurina madla</i>), Government Canyon Bat Cave meshweaver (<i>Cicurina vespera</i>), ground beetle (<i>Rhadine exilis</i>), ground beetle (<i>Rhadine infernalis</i>), Tooth Cave ground beetle (<i>Rhadine persephone</i>), Tooth Cave pseudoscorpion (<i>Tartarocreagris texana</i>), Government Canyon Bat Cave spider (<i>Tayshaneta microps</i>), Tooth Cave spider (<i>Tayshaneta myopica</i>), Kretschmarr Cave mold beetle (<i>Texamaurops reddelli</i>), Cokendolpher Cave harvestman (<i>Texella cokendolpheri</i>), Bee Creek Cave harvestman (<i>Texella reddelli</i>), Bone Cave harvestman (<i>Texella reyesi</i>).	Texas	Presence/absence surveys, nest monitoring, bio-sample, banding, nest collection, voucher species.	Harass, harm, capture, kill.	Renew/amend.
PER12056733	Borchardt, Grahme; Benbrook, Texas.	Lesser prairie-chicken (<i>Tympanuchus pallidicinctus</i>).	Colorado, Kansas, New Mexico, Oklahoma, Texas.	Presence/absence surveys.	Harass, harm	New.

Permit record No.	Applicant	Species	Location	Activity	Type of take	Permit action
PER5502059	Fenolio, Dante; San Antonio, Texas.	Ozark big-eared bat (<i>Corynorhinus townsendii ingens</i>), gray bat (<i>Myotis grisescens</i>), northern long-eared bat (<i>Myotis septentrionalis</i>), Indiana bat (<i>Myotis sodalis</i>), Hell Creek Cave crayfish (<i>Cambarus zophonastes</i>), Benton County Cave crayfish (<i>Cambarus aculabrum</i>), Barton Springs salamander (<i>Eurycea sosorum</i>), Austin blind salamander (<i>Eurycea waterlooensis</i>), Peck's Cave amphipod (<i>Stygobromus pecki</i>), Comal Springs riffle beetle (<i>Heterelmis comalensis</i>), Comal Springs dryopid beetle (<i>Stygoparnus comalensis</i>), Texas blind salamander (<i>Eurycea rathbuni</i>), Mexican blind catfish (<i>Prietella phreatophila</i>), Clear Creek gambusia (<i>Gambusia heterochin</i>).	Arkansas, Oklahoma, Texas.	Presence/absence surveys, bio-sample, voucher specimen, transport.	Harass, harm, capture, kill.	New.

Public Availability of Comments

All comments we receive become part of the public record associated with this action. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, National Environmental Policy Act, and Service and Department of the Interior policies and procedures. 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 to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Amy Lueders,

Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2025-00505 Filed 1-10-25; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R7-ES-2024-0147; FXES111607MRG01-256-FF07CAMM00]

Marine Mammals; Proposed Incidental Harassment Authorization for the Southern Beaufort Sea Stock of Polar Bears During Well Remediation Activities, North Slope of Alaska; Draft Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application; proposed incidental harassment authorization; notice of availability of draft environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, in response to a request under the Marine Mammal Protection Act from the Bureau of Land Management, propose to authorize nonlethal incidental take by harassment of small numbers of Southern Beaufort Sea (SBS) polar bears (*Ursus maritimus*) for 1 year from the date of issuance of the incidental harassment authorization (IHA). The applicant requested this authorization for take by harassment that may result from activities associated with oil well plugging and reclamation, soil sampling, snow trail, pad, and airstrip construction, and summer cleanup activities in the North Slope Borough of Alaska between Wainwright and Oliktok. This proposed authorization, if finalized, will be for up to 12 takes of polar bears by Level B harassment. No Level A harassment or lethal take is requested, expected, or proposed to be authorized. We invite comments on the proposed IHA, the application package, draft environmental assessment, and related documents from the public and local, State, Tribal, and Federal agencies.

DATES: Comments must be received by February 12, 2025.

ADDRESSES:

Document availability: You may view documents at <https://www.regulations.gov> under Docket No. FWS-R7-ES-2024-0147. Alternatively, you may request these documents from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Comment submission: You may submit comments on the proposed authorization by one of the following methods:

- **Electronic submission:** <https://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-R7-ES-2024-0147.

- **U.S. mail:** Public Comments Processing, Attn: Docket No. FWS-R7-ES-2024-0147, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We will post all comments at <https://www.regulations.gov>. You may request that we withhold personal identifying information from public review; however, we cannot guarantee that we will be able to do so. See Request for Public Comments for more information.

FOR FURTHER INFORMATION CONTACT:

Charles Hamilton, by email at R7mmmregulatory@fws.gov, by telephone at 907-786-3800, or by U.S. mail at U.S. Fish and Wildlife Service, MS 341, 1011 East Tudor Road, Anchorage, AK 99503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361, *et*

seq.), authorizes the Secretary of the Interior (Secretary) to allow, upon request, the incidental, but not intentional, taking by harassment of small numbers of marine mammals in response to requests by U.S. citizens (as defined in title 50 of the Code of Federal Regulations (CFR) in part 18, at 50 CFR 18.27(c)) engaged in a specified activity (other than commercial fishing) in a specified geographic region during a period of not more than 1 year. The Secretary has delegated authority for implementation of the MMPA to the U.S. Fish and Wildlife Service (FWS or we). According to the MMPA, the FWS shall allow this incidental taking by harassment if we make findings that the total of such taking for the 1-year period:

- (1) is of small numbers of marine mammals of a species or stock;
- (2) will have a negligible impact on such species or stocks; and
- (3) will not have an unmitigable adverse impact on the availability of the species or stock for taking for subsistence use by Alaska Natives.

If the requisite findings are made, we issue an authorization that sets forth the following, where applicable:

- (a) permissible methods of taking;
- (b) means of effecting the least practicable adverse impact on the species or stock and its habitat and the availability of the species or stock for subsistence uses; and
- (c) requirements for monitoring and reporting of such taking by harassment, including, in certain circumstances, requirements for the independent peer review of proposed monitoring plans or other research proposals.

The term “take” means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill, any marine mammal. “Harassment” for activities other than military readiness activities or scientific research conducted by or on behalf of the Federal Government means any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (the MMPA defines this as “Level A harassment”), or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but

not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (the MMPA defines this as “Level B harassment”).

The terms “negligible impact” and “unmitigable adverse impact” are defined in 50 CFR 18.27 (*i.e.*, regulations governing small takes of marine mammals incidental to specified activities) as follows: “Negligible impact” is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. “Unmitigable adverse impact” means an impact resulting from the specified activity: (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The term “small numbers” is also defined in 50 CFR 18.27. However, we do not rely on that definition here as it conflates “small numbers” with “negligible impacts.” We recognize “small numbers” and “negligible impacts” as two separate and distinct requirements when reviewing requests for incidental harassment authorizations (IHA) under the MMPA (see *Natural Res. Def. Council, Inc. v. Evans*, 232 F. Supp. 2d 1003, 1025 (N.D. Cal. 2003)). Instead, for our small numbers determination, we estimate the likely number of marine mammals to be taken and evaluate if that number is small relative to the size of the species or stock.

The term “least practicable adverse impact” is not defined in the MMPA or its enacting regulations. For this IHA, we ensure the least practicable adverse impact by requiring mitigation measures that are effective in reducing the impact of specified activities, but not so restrictive as to make specified activities unduly burdensome or impossible to undertake and complete.

If the requisite findings are made, we shall issue an IHA, which may set forth the following, where applicable: (i) permissible methods of taking; (ii) other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for subsistence uses by coastal-dwelling Alaska Natives (if applicable); and (iii) requirements for monitoring and reporting take by harassment.

Summary of Request

On June 17, 2024, the FWS received a request from the Department of the Interior’s Bureau of Land Management (BLM) for authorization to take by nonlethal incidental harassment small numbers of Southern Beaufort Sea (SBS) polar bears (*Ursus maritimus*) during oil well plugging and reclamation; soil sampling; snow trail, pad, and airstrip construction; and summer cleanup activities in the North Slope Borough of Alaska between Wainwright and Oliktok for a period of 1 year from the date of issuance, and beginning during the winter of 2024–2025. Their request also included a proposed Polar Bear Awareness and Interaction Plan.

The FWS requested further information on June 20, 2024, and July 10, 2024. The BLM submitted clarifying information on July 10, 17, and 23, 2024. The FWS received a revised application on August 26, 2024. The FWS deemed the revised request dated August 2024 (received August 26, 2024; hereafter referred to as the “Request”) adequate and complete on August 27, 2024.

Description of Specified Activities and Specified Geographic Region

The specified activities described in the Request consist of oil well plugging and reclamation; soil sampling; snow trail, pad, and airstrip construction; and summer cleanup activities associated with two legacy well sites in the North Slope Borough of Alaska between Wainwright and Oliktok (figure 1; BLM 2024).

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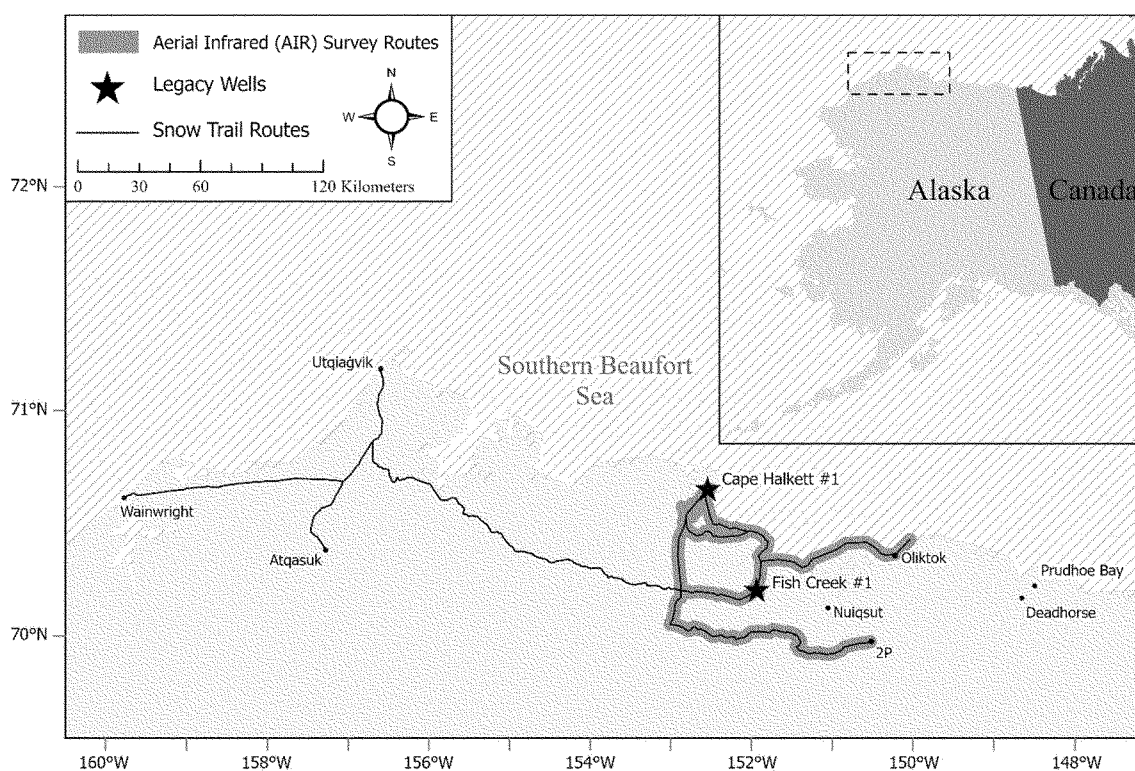


Figure 1—Specific geographic region of the proposed legacy well plugging and reclamation in the North Slope Borough of Alaska.

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The BLM subsequently clarified that activities (*e.g.*, resupply, backhaul of waste, demobilization of equipment) that could occur on pre-existing gravel roads to the east of the specified geographic region (*i.e.*, between Oliktok and Prudhoe Bay) are not specified activities for which BLM requests incidental take authorization.

Fish Creek #1 Legacy Well Reclamation

The Fish Creek #1 Legacy Well (Fish Creek well), located in wetland tundra approximately 14.5 kilometers (km) (9 miles [mi]) inland from the coast and approximately 39 km (24 mi) northwest of Nuiqsut, was drilled in 1949 by the U.S. Navy (figure 1). A concrete pad was built on pilings for drilling operations, and the cellar was concrete reinforced with steel matting. No reserve or flare pits are associated with this well. The well was drilled to a total depth of 2,139 meters (m) (7,020 feet [ft]), then plugged back to 777 m (2,550 ft) and sidetracked to a new total depth of 920 m (3,018 ft) (BLM 2024).

In 2020 and 2021, the BLM began and completed soil sampling and debris removal at Fish Creek well. Sampling work showed areas around the wellhead with impacted soil and concrete, resulting in 3.1 cubic meters (m³) (4 cubic yards [yd³]) of material that were

removed for disposal. The BLM's 2020–2021 cleanup efforts also generated approximately 29 m³ (38 yd³) of materials including recyclable scrap metal 8.4 m³ (11 yd³) and inert debris 21 m³ (27 yd³) for proper disposal. However, due to time constraints encountered during winter 2021 activities, the petroleum-contaminated soil identified during the sample efforts was not removed (estimated 3.8 m³ [5 yd³]). Further in-depth descriptions of previous remediation actions at the Fish Creek well are provided within the BLM's application (BLM 2024). The proposed project would permanently plug and close the Fish Creek well and remove all chemicals, fluids, drilling wastes, contaminated soil, and any remaining scattered surface debris found at the site. Specific methodology for well plugging and waste collection are described in the BLM's application (BLM 2024).

Cape Halkett #1 Legacy Well Reclamation

The Cape Halkett #1 well (Cape Halkett well), located about 6.4 km (4 mi) from the coast and approximately 82 km (51 mi) northwest of Nuiqsut, was drilled by the U.S. Navy in 1975 (figure 1). The well site contains extensive wooden pilings that supported an elevated platform above the water to

conduct drilling operations. An open casing extends 0.6 m (2 ft) above ground level. It is located inside a steel framed and sheeted cellar that has been sheared on the east side and completely rusted at the base. The cellar contains minor amounts of metal debris inside and broken cement blocks outside. There is no reserve pit present. However, two low gravel-bermed areas were constructed, one around the fuel area and the other for discharge of drilling waste. The well was originally plugged in 1975 with four cement plugs set at 2,682 m (8,800 ft), 2,499 m (8,200 ft), and 2,387 m (7,830 ft). The final plug was set with a mix of ArcticSet and Class G cement from 434 m (1,425 ft) to the surface of the well. Minor remediation efforts were undertaken in the late 1970s and early 1980; however, more is required. Sampling activities at the Cape Halkett well were performed by the U.S. Geological Survey (USGS) in 1989. Results of the sampling efforts showed elevated levels of total petroleum hydrocarbons (TPH), oil and grease concentrations, benzene, toluene, ethylbenzene, xylenes, barium, and chromium. Observations from the USGS and BLM site visits note a pile of drilling mud and a pile of cuttings near the well. The total volume of soil removal is not fully known; however, it

is not anticipated to be a substantial volume (BLM 2024).

This project would verify and ensure permanent closure of the Cape Halkett well and remove all chemicals, fluids, drilling wastes, contaminated soil, and any remaining scattered surface debris found at the site. Any pilings still exposed above ground would be cut at or slightly below the ground surface of the excavated areas. Any excavated areas would be backfilled. Specific methodology for well plugging and waste collection are described in the BLM's application (BLM 2024).

Snow Trail, Pad, and Airstrip Construction

There are no permanent roads available to directly access either of the two legacy wells included in this project; therefore, construction of temporary snow trails is required. Snow trail construction will begin in January or February 2025, starting with "prepacking" a minimum of 15 centimeters (6 inches) of base snow via all-terrain smooth-tracked vehicles approved for off-road tundra travel. Prepacking promotes lower tundra soil temperatures and accelerates freezing of soils prior to use, thereby helping to protect the tundra during snow trail and pad grooming, maintenance, and use. Snow will also be packed around stream crossings to protect stream banks and vegetation. Exact locations may vary up to 1.6 km (1 mi) on either side of the center lines of the snow trail routes depicted in figure 1 based on field conditions. This project will require the use of up to approximately 790 km (491 mi) of 9-m (30-ft) wide snow trails; however, some of the trails utilized will include annually constructed public-use trail systems such as the North Slope Borough Community Winter Access Trail (CWAT) (BLM 2024). The majority of public snow trail usage, including all trails west of approximately 153°W longitude, will occur only during demobilization after April 15 when polar bear denning season has ended. Only snow trails that have been surveyed for maternal dens via aerial infrared (AIR) (see *Maternal Den Surveys*) will be used during the denning season (November to April 15; figure 1). All snow trail usage will cease with the spring thaw.

A 610-m (2,000-ft) long by 30-m (100-ft) wide snow airstrip will be constructed at both well sites to allow winter resupply via fixed-wing aircraft. No fuel will be stored at the airstrips. A 2.4-hectare (6-acre, 152-m-by-152 m, 500-ft-by-500-ft) snow pad will be constructed at both well sites to support testing, cleanup, plugging, and other

associated activities. No water will be used for snow trail, pad, or airstrip construction.

Mobilization, Resupply, and Demobilization

Large equipment, including mobile camp trailers, drill rigs, and other support equipment and supplies, will be moved west to the Fish Creek and Cape Halkett well sites from routes originating at either the 2P gravel pad and/or existing pads at Oliktok (figure 1). The specific route will be determined, in part, by environmental conditions. However, to be conservative, our analyses assume all routes are used. Equipment will be hauled along snow trails by appropriate sized tractors or other similar equipment. In January or February 2025, four to six trips will be required to haul camp trailers, vehicles, and drill rig equipment to the well sites, followed by four to six trips to return equipment during demobilization in April 2025. During operations, up to 30 additional round trips will be required for resupply and/or backhaul waste at both well sites. Furthermore, up to 25 winter resupply flights via fixed-wing aircraft will be required at both well sites (up to 50 total flights).

Following final well plugging, cleanup, inspections, and soil sampling, all equipment would be demobilized Wainwright, Utqiagvik, or Atkasuk along routes shown in figure 1. The drill rig and wastes generated from the well plugging and closure would be transported along routes to 2P or Oliktok before final transportation for appropriate disposal. The majority of snow trail and camp cleanup, such as trash removal and stick-picking, will occur during demobilization, but final inspections will occur during the summer via helicopter (see *Summer Cleanup and Inspections*). Full scope of waste material disposal procedures is available in the BLM's application (BLM 2024).

Camp Setup

Mobile camps will be required to provide crew lodging during well site activities. The camp set up at Fish Creek will consist of 20–25 trailers to provide housing, restrooms, kitchen, office space, shop spaces, and other required facilities for approximately 25 personnel. At Cape Halkett, 7–10 trailers will be required to provide the same amenities to 15 personnel. Camps will be established within 1 mile of the well site based on initial field scouting and environmental conditions. Generation of potable water from snow and disposal of grey water will follow Alaska Department of Environmental

Conservation guidance and regulation. Project-generated waste such as household trash, rags, and other used disposable materials will be stored on location in approved containers to prevent wildlife access until being incinerated using appropriate equipment or disposed of at a permitted landfill.

Summer Cleanup and Inspections

The majority of snow trail and camp cleanup, such as trash removal and stick-picking, will occur during demobilization in spring 2025 (April–May). However, a helicopter will be used for approximately 8–10 days in July and/or August 2025 to inspect and remove any debris left on the snow trails, pads, airstrip, and well sites. The helicopter will fly at low elevation (under 50 ft) to conduct inspections. In addition, the helicopter will land at the well sites for soil sampling (with hand tools) and final inspections, and to remove surface debris that may have been missed during winter operations. Approximately 50 helicopter landings would be expected during summer cleanup, inspections, and sampling activities.

Maternal Den Surveys

The BLM will conduct two AIR maternal polar bear den surveys prior to beginning operations to identify any active dens in project areas that will be utilized during the denning period. This compromises the north-south snow trail located approximately along 153°W longitude and all project components to the east of this trail, including the well sites, lakes, and other snow trails (figure 1). The surveyors will use AIR cameras on fixed-wing aircraft, with flights flown between 245–457 m (800–1,500 ft) above ground level at a speed of <185 kilometers per hour (<115 miles per hour). These surveys will be concentrated on areas within 1.6 km (1 mi) of project activities that would be suitable for polar bear denning activity, such as drainages, banks, bluffs, or other areas of topographic relief. The first survey will be conducted between December 1 and December 25, 2024, and the second survey will be conducted between December 15, 2024, and January 10, 2025, with a minimum of 24 hours between surveys. Sections of the project impact area that will not be used until after denning season (after April 15) will not be surveyed.

Description of Marine Mammals in the Specified Geographic Region

Polar bears are the only species of marine mammal managed by the FWS likely to be found within the specified

geographic region. Information on range, stocks, biology, and climate change impacts on polar bears can be found in appendix A of the supplemental information (available as described above in ADDRESSES).

Potential Impacts of the Specified Activities on Marine Mammals

Surface-Level Impacts on Polar Bears

Disturbance impacts on polar bears will be influenced by the type, duration, intensity, timing, and location of the source of disturbance. Disturbance from the specified activities would originate primarily from aircraft overflights (helicopter and fixed wing), tundra travel, well site plugging and reclamation, well site soil sampling, mobilization and demobilization, and cleanup activities. The noises, sights, and smells produced by these activities could elicit variable responses from polar bears, ranging from avoidance to attraction. When disturbed by noise, animals may respond behaviorally by walking, running, or swimming away from a noise source, or physiologically via increased heart rates or hormonal stress responses (Harms et al. 1997; Tempel and Gutierrez 2003). However, individual response to noise disturbance can be influenced by previous interactions, sex, age, and maternal status (Anderson and Aars 2008; Dyck and Baydack 2004). Noise and odors could also attract polar bears to work areas. Attracting polar bears to these locations could result in human-polar bear interactions, unintentional harassment, intentional hazing, or possible lethal take in defense of human life. This proposed IHA, if finalized, would authorize only the nonlethal, incidental, unintentional take of polar bears that may result from the specified activities and would require mitigation measures to manage attractants in work areas and reduce the risk of human-polar bear interactions.

Human-Polar Bear Interactions

A larger percentage of polar bears are spending more time on land during the open-water season, which may increase the risk for human-polar bear

interactions (Atwood et al. 2016; Rode et al. 2022). Polar bear interaction plans, personnel training, attractants management, and polar bear monitoring are mitigation measures used to reduce human-polar bear interactions and minimize the risks to humans and polar bears when interactions occur. Polar bear interaction plans detail the policies and procedures that will be implemented by the BLM to avoid attracting and interacting with polar bears, as well as minimizing impacts to the polar bears. Interaction plans also detail how to respond to the presence of polar bears, the chain of command and communication, and required training for personnel. Efficient management of attractants (e.g., human food, garbage) can prevent polar bears from associating humans with food, which mitigates the risk of human-polar bear interactions (Atwood and Wilder 2021). Information gained from monitoring polar bears near industrial infrastructure can be useful for better understanding polar bear distribution, behavior, and interactions with humans. Technology that may be used to facilitate detection and monitoring of polar bears includes bear monitors, closed-circuit television, video cameras, thermal cameras, radar devices, and motion-detection systems. It is possible that human-polar bear interactions may occur during the specified activities, and mitigation measures, as described in the applicant's Polar Bear Awareness and Interaction Plan, will be implemented by the BLM to minimize the risk of human-polar bear interactions during the specified activities.

From mid-July to mid-November, SBS stock polar bears can be found in large numbers and high densities on barrier islands, along the coastline, and in the nearshore waters of the Beaufort Sea, particularly on and around Barter and Cross Islands (Wilson et al. 2017). This distribution leads to a significantly higher number of human-polar bear interactions on land and at offshore structures during the open-water season than other times of the year. Polar bears that remain on the multi-year pack ice are not typically present in the ice-free

areas where vessel traffic occurs, as barges and vessels associated with industrial activities travel in open water and avoid large ice floes.

On land, most polar bear observations occur within 2 km (1.2 mi) of the coastline based on polar bear monitoring reports. Facilities within the offshore and coastal areas are more likely to be approached by polar bears, and they may act as physical barriers to polar bear movements. As polar bears encounter these facilities, the chances for human-polar bear interactions increase. However, polar bears have frequently been observed crossing existing roads and causeways, and they appear to traverse the human-developed areas as easily as the undeveloped areas based on monitoring reports.

Effects of Aircraft Overflights on Polar Bears

Polar bears experience increased noise and visual stimuli when fixed-wing aircraft or helicopters fly above them, which may elicit a biologically significant behavioral response. Sound frequencies produced by aircraft will likely fall within the hearing range of polar bears (Nachtigall et al. 2007) and will be audible to polar bears during flyovers or when operating in proximity to polar bears. Polar bears likely have acute hearing, with previous sensitivities demonstrated between 1.4 and 22.5 kilohertz (kHz) (tests were limited to 22.5 kHz (Nachtigall et al. 2007)). When exposed to high-energy sound, this hearing range may become impaired temporarily (called temporary threshold shift, or TTS) or permanently (called permanent threshold shift, or PTS). Species-specific TTS and PTS thresholds have not been established for polar bears at this time, but TTS and PTS thresholds have been established for the general group "other marine carnivores," which includes polar bears (Southall et al. 2019). Through a series of systematic modeling procedures and extrapolations, Southall et al. (2019) generated modified noise exposure thresholds for both in-air and underwater sound (table 1).

TABLE 1—TEMPORARY THRESHOLD SHIFT (TTS) AND PERMANENT THRESHOLD SHIFT (PTS) THRESHOLDS ESTABLISHED BY SOUTHALL ET AL. (2019) THROUGH MODELING AND EXTRAPOLATION FOR "OTHER MARINE CARNIVORES," WHICH INCLUDES POLAR BEARS

	TTS			PTS		
	Non-impulsive	Impulsive		Non-impulsive	Impulsive	
	SEL _{CUM}	SEL _{CUM}	Peak SPL	SEL _{CUM}	SEL _{CUM}	Peak SPL
Air	157	146	170	177	161	176

TABLE 1—TEMPORARY THRESHOLD SHIFT (TTS) AND PERMANENT THRESHOLD SHIFT (PTS) THRESHOLDS ESTABLISHED BY SOUTHALL ET AL. (2019) THROUGH MODELING AND EXTRAPOLATION FOR “OTHER MARINE CARNIVORES,” WHICH INCLUDES POLAR BEARS—Continued

	TTS			PTS		
	Non-impulsive	Impulsive		Non-impulsive	Impulsive	
	SEL _{CUM}	SEL _{CUM}	Peak SPL	SEL _{CUM}	SEL _{CUM}	Peak SPL
Water	199	188	226	219	203	232

Note: Values are weighted for other marine carnivores' hearing thresholds and given in cumulative sound exposure level (SEL_{CUM} dB re 20μPa in air and SEL_{CUM} dB re 1 μPa in water) for impulsive and nonimpulsive sounds, and unweighted peak sound pressure level in air (dB re 20μPa) and water (dB 1μPa) (impulsive sounds only).

During a Federal Aviation Administration test, test aircraft produced sound at all frequencies measured (50 Hz to 10 kHz) (Healy 1974). At frequencies centered at 5 kHz, jets flying at 300 m (984 ft) produced $\frac{1}{3}$ octave band noise levels of 84 to 124 dB, propeller-driven aircraft produced 75 to 90 dB, and helicopters produced 60 to 70 dB (Richardson et al. 1995). Thus, the frequency and level of airborne sounds typically produced by aircraft are unlikely to cause TTS or PTS unless polar bears are very close to the sound source.

Although neither TTS nor PTS is anticipated during the specified activities, impacts from aircraft overflights have the potential to elicit biologically significant behavioral responses from polar bears. Exposure to aircraft overflights is expected to result in short-term behavior changes, such as ceasing to rest, walking, or running, and, therefore, has the potential to be energetically costly. Polar bears observed during intentional aircraft overflights conducted to study impacts of aircraft on polar bear responses, with an average flight altitude of 143 m (469 ft), exhibited biologically meaningful behavioral responses during 66.6 percent of aircraft overflights. These behavioral responses were significantly correlated with the aircraft's altitude, the bear's location (e.g., coastline, barrier island), and the bear's activity (Quigley 2022; Quigley et al. 2024). Polar bears associated with dens exhibited various responses when exposed to low-flying aircraft, ranging from increased head movement and observation of the disturbance to the initiation of rapid movement and/or den abandonment (Larson et al. 2020). Aircraft activities can impact polar bears across all seasons; however, aircraft have a greater potential to disturb both individuals and groups of polar bears on land during the summer and fall. These onshore polar bears are primarily fasting or seeking alternative terrestrial foods (Cherry et al. 2009; Griffen et al. 2022),

and polar bear responses to aircraft overflights may result in metabolic costs to limited energy reserves. To reduce potential disturbance of polar bears during aircraft activities, mitigation measures, such as minimum flight altitudes over polar bears and their frequently used areas and flight restrictions around known polar bear aggregations, will be conducted when safe to perform these operations during aircraft activities.

Effects to Denning Polar Bears

Known polar bear dens around the oil fields and other areas of the North Slope are monitored by the FWS. These dens may be discovered opportunistically or during planned surveys for tracking marked polar bears and detecting polar bear dens. However, these sites are only a small percentage of the total active polar bear dens for the SBS stock in any given year. Each year, many entities conducting operations on the North Slope coordinate with the FWS to conduct surveys to determine the location of any polar bear dens that may be located in close proximity to any of the operator's planned activities for that denning season. Under past IHAs and ITRs (Incidental Take Regulations), operators have been required to avoid known polar bear dens by 1.6 km (1 mi). However, an unknown polar bear den may be encountered during the BLM's activities. In instances when a previously unknown den was discovered near human activity, the FWS has implemented mitigation measures such as a 1.6-km (1-mi) activity exclusion zone around the den and 24-hour monitoring of the den site.

The responses of denning polar bears to disturbance and the consequences of these responses can vary throughout the denning process. We divide the denning period into four stages when considering impacts of disturbance: den establishment, early denning, late denning, and post-emergence; definitions and descriptions are provided by Woodruff et al. (2022) and are also located in the 2021–2026

Beaufort Sea ITR (86 FR 42982, August 5, 2021). The stage at which harassment occurs defines the level of disturbance response (Level B harassment, Level A harassment, or Lethal) attributed to either the sow or cub(s), along with the probability of the specific response occurring (see *Denning Analysis*).

Impacts of the Specified Activities on Polar Bear Prey Species

Information on the potential impacts of the specified activities on polar bear prey species can be found in the supplemental information to this document (available as described in **ADDRESSES**).

Estimated Take

Definitions of Incidental Take Under the Marine Mammal Protection Act

Below we provide definitions of three types of take of polar bears. The FWS does not anticipate and is not authorizing either Level A harassment or lethal take as a part of this proposed IHA; however, the definitions of these take types are provided for context and background.

Lethal Take

Human activity may result in biologically significant impacts to polar bears. In the most serious interactions (e.g., vehicle collision, running over an unknown den causing its collapse), human actions can result in the mortality of polar bears. We also note that, while not considered incidental, in situations where there is an imminent threat to human life, polar bears may be killed. Additionally, though not considered incidental, polar bears have been accidentally killed during efforts to deter polar bears from a work area for safety and from direct chemical exposure (81 FR 52276, August 5, 2016). Unintentional disturbance of a female polar bear by human activity during the denning season may cause the female either to abandon her den prematurely with cubs or abandon her cubs in the den before the cubs can survive on their

own. Either scenario may result in the incidental lethal take of the cubs.

Level A Harassment

Human activity may result in the injury of polar bears. Level A harassment, for nonmilitary readiness activities, is defined as any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or marine mammal stock in the wild.

Numerous actions can cause take by Level A harassment of polar bear cubs during the denning period, such as creating a disturbance that separates mothers from dependent cubs (Amstrup 2003), inducing early den emergence during the late denning period (Amstrup and Gardner 1994; Rode et al. 2018), instigating early departure from the den site during the post-emergence period (Andersen et al. 2024), or repeatedly interrupting the nursing or resting of cubs to the extent that it impacts the cubs' body condition.

Level B Harassment

Level B harassment for nonmilitary readiness activities means any act of pursuit, torment, or annoyance that has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering. Changes in behavior that disrupt biologically significant behaviors or activities for the affected animal are indicative of take by Level B harassment under the MMPA. Such reactions include, but are not limited to, the following:

- Fleeing (running or swimming away from a human or a human activity);
- Displaying a stress-related behavior such as jaw or lip-popping, front leg stomping, vocalizations, circling, intense staring, or salivating;
- Abandoning or avoiding preferred movement corridors such as ice floes, leads, polynyas, a segment of coastline, or barrier islands;
- Using a longer or more difficult route of travel instead of the intended path;
- Interrupting breeding, sheltering, or feeding;
- Moving away at a fast pace (adult) and cubs struggling to keep up;
- Temporary, short-term cessation of nursing or resting (cubs);
- Ceasing to rest repeatedly or for a prolonged period (adults);
- Loss of hunting opportunity due to disturbance of prey; or
- Any interruption in normal denning behavior that does not cause injury, den abandonment, or early departure of the female with cubs from the den site.

This list is not meant to encompass all possible behaviors; other behavioral responses may be indicative of take by Level B harassment. Relatively minor changes in behavior such as the animal raising its head or temporarily changing its direction of travel are not likely to disrupt biologically important behavioral patterns, and the FWS does not view such minor changes in behavior as indicative of a take by Level B harassment. It is also important to note that eliciting behavioral responses that equate to take by Level B harassment repeatedly may result in Level A harassment.

Surface Interactions

We analyzed take by Level B harassment for polar bears that may potentially be encountered and impacted during the BLM's oil well plugging and reclamation, soil sampling, snow trail, pad, and airstrip construction, and summer cleanup activities within the specified geographic region.

Impact Area

To assess the area of potential impact from the project activities, we calculate the area affected by project activities where harassment is possible. We refer to this area as an impact area. Behavioral response rates of polar bears to disturbances are highly variable, and data to support the relationship between distance to polar bears and disturbance are limited. Dyck and Baydack (2004) found sex-based differences in the frequencies of vigilance bouts, which involves an animal raising its head to visually scan its surroundings, by polar bears in the presence of vehicles on the tundra. However, in their summary of polar bear behavioral response to ice-breaking vessels in the Chukchi Sea, Smultea et al. (2016) found no difference between reactions of males, females with cubs, or females without cubs. During the FWS's coastal aerial surveys, 99 percent of polar bears that responded in a way that indicated possible Level B harassment (polar bears that were running when detected or began to run or swim in response to the aircraft) did so within 1.6 km (1 mi), as measured from the ninetieth percentile horizontal detection distance from the flight line. Similarly, Andersen and Aars (2008) found that female polar bears with cubs (the most conservative group observed) began to walk or run away from approaching snowmobiles at a mean distance of 1,534 m (0.95 mi). Thus, while future research into the reaction of polar bears to anthropogenic disturbance may indicate a different zone of potential impact is appropriate,

the current literature suggests that the 1.6-km (1.0-mi) impact area will encompass most surface polar bear harassment events.

Estimated Harassment

We estimated Level B harassment using the spatio-temporally specific encounter rates and temporally specific harassment rates derived in the 2021–2026 Beaufort Sea ITR (86 FR 42982, August 5, 2021) in conjunction with the specified project activity information. Some portion of SBS bears may occur within the Chukchi Sea at a given time. However, the ITR rates do not explicitly account for this possibility, and the project area for this proposed IHA occurs only within the geographical boundary of the SBS subpopulation. Therefore, our analyses account only for SBS bears located within the SBS subpopulation boundary. Distribution patterns of polar bears along the coast of the SBS were estimated in Wilson et al. (2017) by dividing the North Slope Coastline into 10 equally sized grids and applying a Bayesian hierarchical model based on 14 years of aerial surveys in late summer and early fall. Wilson et al. (2017) estimated 140 polar bears per week along the coastline (a measurement that included barrier islands); however, not with uniform distributions. The study found that disproportionately high densities of bears occur in grids 6 and 9, which contain known large congregating areas such as Kaktovik and Cross Island; thus, the study has required polar bear density correction of factors in previously issued incidental take authorizations (ITAs). The vast majority of the coastline within the project area in this proposed IHA falls within grids 1–4 (although a small portion of the project area is located outside of Wilson et al.'s (2017) study area near the City of Wainwright). The Wilson et al. (2017) values for grids 1–4 are similar to those in the North Slope area where the 2021–2026 Beaufort Sea ITR (86 FR 42982, August 5, 2021) encounter rates were developed; therefore, we believe those values are applicable to the project area in this proposed IHA and do not require any correction factor for polar bear densities in our analyses.

TABLE 2—DEFINITIONS OF VARIABLES USED IN HARASSMENT ESTIMATES OF POLAR BEARS ON THE COAST OF THE NORTH SLOPE OF ALASKA

Variable	Definition
B_{es}	Bears encountered in an impact area for the entire season.
a_c	Coastal exposure area.

TABLE 2—DEFINITIONS OF VARIABLES USED IN HARASSMENT ESTIMATES OF POLAR BEARS ON THE COAST OF THE NORTH SLOPE OF ALASKA—Continued

Variable	Definition
a_i	Inland exposure area.
r_o	Occupancy rate.
e_{co}	Coastal open-water season bear-encounter rate in bears/season.
e_{ci}	Coastal ice season bear-encounter rate in bears/season.
e_{io}	Inland open-water season bear-encounter rate in bears/season.
e_{ii}	Inland ice season bear-encounter rate in bears/season.
t_i	Ice season harassment rate.
t_o	Open-water season harassment rate.
B_t	Number of estimated Level B harassment events.

Table 2 provides the definition for each variable used in the formulas to calculate the number of potential harassment events. The variables defined in table 2 were used in a series of formulas to ultimately estimate the total harassment from surface-level interactions. Encounter rates were originally calculated as polar bears encountered per square km per season. As a part of their Request, the BLM provided the FWS with digital geospatial files that included the maximum expected human occupancy (*i.e.*, rate of occupancy [r_o] for each individual structure (*e.g.*, snow trails, snow pads) of their specified activities for each season of the IHA period. Using the buffer tool in ArcGIS, we created a spatial file of a 3.2-km (2-mi) buffer around all snow trails (3.2 km on either side of the proposed snow trail center line, *i.e.*, 6.4 km [4 mi] total diameter) to account for up to 1.6-km (1-mi) deviations from the proposed center line of the routes, and around both well sites to account for the presently undetermined camp locations (within 1.6 km [1 mi] of well head). Additionally, we placed a 1.6-km (1-mi) buffer around all lakes that may be potentially utilized during operations. We binned the structures according to their seasonal occupancy rates by rounding them up into tenths (10 percent, 20 percent, etc.). We determined the impact area of each bin by first calculating the area within the buffers of 100-percent occupancy locations. We then removed the area of the 100-percent occupancy buffers from

the project impact area and calculated the area within the 90-percent occupancy buffers. This iterative process continued until we calculated the area within all buffers. The areas of impact were then clipped by coastal and inland zone geospatial files to determine the coastal areas of impact (a_c) and inland areas of impact (a_i) for each occupancy bin. This process was repeated for both seasons (ice season and open-water [ice-free] season).

Impact areas were multiplied by the appropriate encounter rate to obtain the number of polar bears expected to be encountered in the impact area per season (B_{es}). Equation 1 provides an example of the calculation of polar bears encountered in the ice season for an impact area in the coastal zone.

Equation 1

$$B_{es} = a_c * e_{ci}$$

To generate the number of estimated Level B harassments for each area of interest, we multiplied the number of polar bears in the area of interest per season by the proportion of the season the area is occupied, the rate of occupancy, and the harassment rate (equation 2).

Equation 2

$$B_t = B_{es} * S_p * r_o * t_i$$

Aircraft Impacts on Polar Bears

Polar bears in the project area will likely be exposed to the visual and auditory stimulation associated with the applicant's fixed-wing and helicopter activities; however, these impacts are likely to be minimal and short-term. Aircraft activities may cause disruptions in the normal behavioral patterns of polar bears as either an auditory or visual stimulus, thereby resulting in incidental Level B harassment. To reduce the likelihood that polar bears are disturbed by aircraft, mitigation measures, such as minimum flight altitudes over polar bears and restrictions on sudden changes to aircraft movements and direction, will be required if this authorization is finalized. Once mitigated, such disturbances are expected to have no more than short-term, temporary, and minor impacts on individual polar bears.

Estimating Harassment Rates of Aircraft Activities

Harassment rates during aircraft activities were estimated using results

from studies of fixed-wing aircraft and helicopter overflights (Quigley 2022; Quigley et al. 2024). In these studies, aerial searches along the northern coast of Alaska between Point Barrow and the western Canadian border were flown and polar bears were approached at different altitudes. Polar bears that did not exhibit behavioral changes consistent with harassment were then re-approached at progressively lower altitudes, reaching as low as 38 m (100 ft). Researchers recorded behavioral changes during these approaches and evaluated if and when Level B harassment occurred. Covariates examined were polar bear location ("barrier island" or "mainland"), initial behavior ("active" or "inactive"), group size, whether the polar bear belonged to a family group, and the number of previous overflights (*i.e.*, how many times the group was re-approached to elicit a behavioral change). A Bayesian imputation approach accounted for polar bears that exhibited a behavioral change consistent with harassment on their first approach, thus lacking an identified altitude at which no harassment occurred due to a lack of a "non-harassment" observation. Their final model included location, activity level, and the number of previous overflights as predictors of the altitude at which a polar bear was harassed. For our aircraft impacts analysis, we used harassment rates estimated for active polar bears observed on barrier islands, as they had the highest rates of harassment. We further assumed that no previous overflights were conducted.

We provide harassment rates for the following five categories of flights: take-offs, landings, low-altitude flights (defined as those between 122 m [400 ft] and 305 m [1,000 ft] altitude), mid-altitude flights (defined as those between 305 m [1,000 ft] and 457 m [1,500 ft] altitude), and high-altitude flights (defined as those between 457 m [1,500 ft] and 610 m [2,000 ft] altitude). Harassment rates were assigned to each of these flight categories using the harassment rate for the lowest altitude in the category (*e.g.*, for low-altitude flights, the harassment rate estimated for 122 m [400 ft] was used). This binning method of using the lowest altitude harassment rate in the bin allowed our estimates to be inclusive of possible changes in altitude due to variable flight conditions (table 3).

TABLE 3—HARASSMENT RATES FOR THE FIVE CATEGORIES OF FLIGHTS FOR FIXED-WING AIRCRAFT AND HELICOPTER OVERFLIGHTS

Flight category	Fixed-wing	Helicopter
Take-offs	0.99	>0.99
Landings	0.99	>0.99
Low-Altitude Flights (122–305 m)	0.86	>0.99
Mid-Altitude Flights (305–457 m)	0.03	0.82
High-Altitude Flights (457–610 m)	<0.01	0.05

Note: The rate in this table are based on Quigley et al. (2024). We used the harassment rate associated with 30 m (100 ft) for take-offs and landings.

Estimating Area of Impact for Aircraft Activities

For each category of the flight path (*i.e.*, take-off, low-altitude travel, mid-altitude travel, high-altitude travel, and landing), we calculated an impact area and duration of impact using flight hours or flight path information provided in the Request. We used flights logs available through FlightAware (<https://www.flightaware.com/>), a website that maintains flight logs in the public domain, to estimate impact areas and flight hours for take-offs and landings. We estimated a take-off distance of 2.41 km (1.5 mi) that would be impacted for 10 minutes. We estimated a landing distance of 4.83 km (3 mi) per 305 m (1,000 ft) of altitude that would be impacted for 10 minutes

per landing. To estimate the impact area of traveling segments, we subtracted the take-off and landing areas from the total area of the flight path. The duration of impact for traveling flights was either provided in the Request or calculated using the length of the flight and a conservative flight speed of 129 km per hour (80 mi per hour), which was approximately 1.5 minutes per 3.22 km (2 mi) of the flight path.

All take-offs, landings, and traveling segments were then spatially referenced to determine whether they were within the coastal or inland zones. The coastal zone is defined as the offshore and onshore areas within 2 km (1.2 mi) of the coastline, and the inland zone is defined as the onshore area greater than 2 km (1.2 mi) from the coastline. If no location or flight hour information was

provided, flight paths were approximated based on the information provided in the Request. Of the flight paths that were described clearly or were addressed through assumptions, we marked the approximate flight path take-off and landing locations using ArcGIS Pro, and the flight paths were drawn. Once spatially referenced, all flight paths were buffered by 1.6 km (1 mi), which is consistent with aircraft surveys conducted by the FWS and USGS between August and October during most years from 2000 to 2014 (Schliebe et al. 2008; Atwood et al. 2015; Wilson et al. 2017). In these surveys, 99 percent of groups of polar bears that exhibited behavioral responses consistent with Level B harassment were observed within 1.6 km (1 mi) of the aircraft.

TABLE 4—SEASONAL POLAR BEAR ENCOUNTER RATES BY ZONE

Coastal Zone Seasonal Encounter Rate	
Ice Season (July 19–November 11)	0.05 bears/km ² .
Open-water Season (November 12–July 18)	1.48 bears/km ² .
Inland Zone Seasonal Encounter Rate	
Ice Season (July 19–November 11)	0.004 bears/km ² .
Open-water Season (November 12–July 18)	0.005 bears/km ² .

Note: This table is adapted from the 2021–2026 Beaufort Sea ITR (86 FR 42982, August 5, 2021).

To calculate the total number of Level B harassment events estimated due to the specified activities, we calculated the number of flight hours for each flight category (*i.e.*, take-offs, low-altitude travel, mid-altitude travel, high-altitude travel, and landings) for each zone and season combination. These values were then used to calculate the proportion of the season that aircraft occupied their impact areas (*i.e.*, take-off area, landing area, or traveling segment

impact areas). This proportion-of-season metric is equivalent to the occupancy rate (r_o) generated for surface-level interaction harassment estimates. The total impact area for each of the flight categories was multiplied by the zone and season-specific polar bear encounter rate to determine the number of polar bears expected in that area for the season (*i.e.*, B_{es} , as seen in equation 1). This number was then multiplied by the proportion of the season to

determine the number of polar bears expected in that area when flights are occurring, and the appropriate harassment rate based on flight altitude to estimate the number of polar bears that may be harassed as a result of the flights (as seen in equation 2). Table 5 shows a summary of aircraft operations during the specified activities and the values used to estimate Level B harassment of polar bears during aircraft operations.

TABLE 5—SUMMARY OF AIRCRAFT OPERATIONS BY SEASON AND ACTIVITY DURING THE PROPOSED IHA PERIOD

Activity	Ice season (fixed-wing aircraft only)		Open-water season (helicopter only)			
	Winter support—Cape Halkett	Winter support—Fish Creek	Site inspection—Deadhorse to Cape Halkett	Site inspection—Deadhorse to Fish Creek	Site Inspection—Cape Halkett to Fish Creek	Snow trail inspection and cleanup
Altitude *	High	High	High	High	High	Low
Total Flights	25	25	6	5	2	12
Proportion of Season	0.0026	0.0021	0.0020	0.0012	0.00017	0.01887
Proportion of Flight in Coastal Zone	0.60	0	.60	0	0.51	0.26
Proportion of Flight in Inland Zone	0.40	1	.40	1	0.49	0.74
Total Encounter Rate (bears/km ² /season) **	0.0316	0.004	0.89	0.005	0.7573	0.3885
Harassment Rate	0.001	0.001	0.05	0.05	0.05	0.99
Flight Time Harassment	6.570×10^{-07}	6.744×10^{-08}	0.000643	2.440×10^{-06}	5.295×10^{-05}	0.05909
Total Takeoffs and Landings	50	50	12	10	4	24
Landing Time/Season	0.001389	0.001389	0.000725	0.000604	0.000242	0.001449
Landing Time Harassment	0.0016283	0.0016283	0.025146	0.020955	0.008382	0.0502921
Takeoff Time/Season	0.001389	0.001389	0.000725	0.000604	0.000241	0.001449
Takeoff Time Harassment	0.001094	0.001094	0.016893	0.014078	0.005563	0.03379
Number Level B Harassment of Activity	0.002723	0.002723	0.042683	0.035035	0.014066	0.143164
Total number of level B harassment events across all aircraft activities				0.240.		

* High-altitude flight is defined as between 457 m [1,500 ft] and 610 m [2,000 ft] altitude. Low altitude is defined as between 122 m [400 ft] and 305 m [1,000 ft] altitude. There are no mid-altitude flights considered for this project.

** Accounts for unequal encounter rates over coastal and inland zones.

Estimated Harassment From Aircraft Activities

Using the approaches described above, we estimated the total number of polar bears expected to be harassed by the aircraft activities during the proposed IHA period as a total of one bear (table 5).

Denning Analysis

Below we provide a complete description and results of the polar bear den simulation model used to assess impacts to denning polar bears from disturbance associated with all phases of the specified activities. In our denning analysis, we used the analytical method described in the 2023–2024 BLM IHA (88 FR 88943, December 26, 2023).

Additionally, on March 19, 2024, regulations promulgated in the 2021–2026 Beaufort Sea ITR (86 FR 42982, August 5, 2021) were challenged in Federal Court and the Ninth Circuit Court of Appeal issued a remand to FWS to conduct certain additional analysis. As a result of the Court's remand and ongoing scientific advancements, the FWS reexamined the denning analysis and incorporated newly available data since 2021 into the denning analysis model, allowing the continued inclusion of best available scientific information. Updates incorporated into the model adjust the impact area that can result in den disturbance, the probabilities of disturbance, and how FWS reports probabilities of different levels of take, i.e., Level B harassment, Level A harassment, and lethal take. Alterations to the denning model are described in greater detail below.

Den Simulation

We simulated dens across the entire North Slope of Alaska, ranging from the areas identified as denning habitat (Durner et al. 2006, 2013; Durner and Atwood 2018) contained within the National Petroleum Reserve–Alaska (NPR–A) in the west to the Canadian border in the east. To simulate dens on the landscape, we relied on the estimated number of dens in three different regions of northern Alaska provided by Atwood et al. (2020). These included the NPR–A, the area between the Colville and Canning Rivers (CC), and Arctic National Wildlife Refuge (NWR). Den simulations for this proposed IHA were conducted following the exact methodology described previously in the 2023–2024 BLM IHA (88 FR 88943, December 26, 2023).

Impact Area of Specified Activities

The model developed by Wilson and Durner (2020) provides a template for estimating the level of potential impact on denning polar bears during the specified activities while also considering the natural denning ecology of polar bears in the region. Previous iterations of the denning analysis model, including those utilized in the 2021–2026 Beaufort Sea ITR (86 FR 42982, August 5, 2021) and 2023–2024 BLM IHA (88 FR 88943, December 26, 2023), assumed that during all denning periods, any polar bears within dens within 1.6 km (1 mi) from project activities could exhibit a disturbance response if exposed to industrial stimuli. However, for this IHA, we refined that broad assumption to account for denning data that have been

collected subsequent to the promulgation of the 2021–2026 Beaufort Sea ITR. Since 2021, four known dens (monitored in 2022 and 2023) have occurred near human activity. Of the four newly observed dens, three were extremely close to human activity (<50 m), yet the sows remained in their dens until the late denning period. We updated polar bear disturbance probabilities and litter size distributions with the information from these dens, then re-examined the historic dens that were used to create disturbance probabilities. We found that the distances between human activity and polar bear dens during the early denning period were considerably closer than those observed during other denning periods. Specifically, of the 15 dens within the case studies that were exposed to human activity during the early denning period, only one was potentially disturbed at a distance greater than 800 meters. This single den record also had imprecise information on the distance to human activity, so activity was assumed to occur within 1,610 m of the den and was likely closer. The historic dens analyzed during the den establishment, late denning, and post-emergence periods did not follow this pattern. For those dens, disturbance distances commonly exceeded 805 m. Evidence derived from dens exposed to human activity during the early denning period, including both new den records and historic dens, illustrates the reluctance of sows to abandon their maternal den/cubs in response to exposure to stimuli from nearby activity, and supports the concept that sows may be more risk tolerant during the early denning

period. Additionally, sows may be less affected by sound from outside activities during the early denning period because dens are typically closed during that time, which can affect propagation of noise into the den (Owen et al. 2020). Given this evidence, we modified the denning analysis model to adjust the impact area for the early denning period to range from 0 to 805 m. As a result, dens that were simulated to be within 805 m of human activity could be disturbed during all denning periods, while dens between 806 and 1610 m away from human activity could only be disturbed during the den establishment, late denning, and post-emergence periods.

AIR Surveys

We assumed that all remediation and transit areas that will be utilized during denning season would have two AIR surveys flown prior to beginning any operations (figure 1). The first survey would occur between December 1 and December 25, 2024, and the second survey between December 15, 2024, and January 10, 2025, with a minimum of 24 hours between surveys. During each iteration of the model, each AIR survey was randomly assigned a probability of detecting dens using detection probabilities previously described in the 2023–2024 BLM IHA (88 FR 88943, December 26, 2023).

Model Implementation

For each iteration of the model, we first determined which dens were exposed to the specified activities. Dens that were simulated to be within 805 m (2,641 ft) of human activity could be disturbed during all denning periods, while dens within 806–1610 m (2,644–5,282 ft) of human activity could only be disturbed during the den establishment, late denning, and post-emergence periods. Dens detected during AIR survey were excluded if activity did not occur prior to AIR survey. We identified the stage in the denning period when the exposure occurred based on the date range of the activities the den was exposed to: den establishment (*i.e.*, initial entrance into den until cubs are born), early denning (*i.e.*, birth of cubs until they are 60 days old), late denning (*i.e.*, date cubs are 60 days old until den emergence) and post-emergence (*i.e.*, the date of den emergence until permanent departure from the den site). We then determined whether the exposure elicited a response by the denning polar bear based on probabilities derived from the reviewed case studies (Woodruff et al.

2022a), which were updated with data from the dens monitored in 2022 and 2023 using the methods described in Woodruff et al. (2022a).

Specifically, we divided the number of cases that documented responses associated with either a Level B harassment (*i.e.*, potential to cause a disruption of behavioral patterns), Level A harassment (*i.e.*, potential to injure an animal), or lethal take (e.g., cub abandonment) of polar bears by the total number of cases with that combination of period and exposure type (table 6). Level B harassment was applicable to both adults and cubs, if present, whereas Level A harassment and lethal take were applicable to only cubs. AIR surveys were not considered to be a source of potential impact. In thousands of hours of AIR surveys conducted in northern Alaska over the last decade, we are not aware of a single instance of a polar bear abandoning its den during the early denning period due to an AIR survey overflight. These responses would be readily observable on the thermal cameras, and the fact that none have been observed indicates that den abandonment very likely does not occur given the brief duration of the aircraft overflight and the distance and altitude of the aircraft from the den site. Recent peer-reviewed research further supports the model assumption that AIR surveys are not a source of harassment (Quigley et al. 2024).

For dens exposed to activity, we used a multinomial distribution with the probabilities of different levels of take for that period (table 6) to determine whether a den was disturbed or not. If a lethal take was simulated to occur, a den was not allowed to be disturbed again during the subsequent denning periods because the outcome of that denning event was already determined.

The level of impact associated with a disturbance varied according to the severity and timing of the exposure (table 6). Exposures that resulted in emergence from dens prior to cubs reaching 60 days of age were considered lethal takes of cubs. If an exposure resulted in a Level A harassment during the late denning period, we first assigned that den a new random emergence date from a uniform distribution that ranged between the first date of exposure during the late denning period and the original den emergence date. We then determined whether that den was disturbed during the post-emergence period, but the probability of disturbance was dependent on whether or not a den was disturbed (*i.e.*, Level A harassment)

during the late denning period (table 6). If an exposure resulted in a Level A harassment during the post-emergence period, we assigned the den a new time spent at the den site post-emergence from a uniform distribution that ranged from 0 to the original simulated time at the den post-emergence.

Recent research suggests that litter survival is related to the date of den emergence and time spent at the den post-emergence (Andersen et al. 2024), with litters having higher survival rates the later they emerge in the spring, and the longer they spend at the den site after emergence. To determine whether dens that were disturbed during the late denning and/or post-emergence period(s) experienced Level A harassment, we relied on estimates of litter survival until approximately 100 days post emergence, derived from the analysis of empirical data on the dates of emergence from the den and departure from the den site (Anderson et al. 2024). These estimates are dependent on the date of emergence and time spent at the den site post-emergence. For each den disturbed during the late denning and/or post-emergence periods, we obtained a random sample of regression coefficients from the posterior distribution and calculated the probability of a litter surviving approximately 100 days post-emergence with the following equation:

$$\text{logit}(\mathbf{s}) = \beta_0 + \beta_1 \text{emerge} + \beta_2 \text{depart}$$

where $\mathbf{s}$ is the probability of at least one cub being alive approximately 100 days post-emergence, β_0 is the intercept coefficient, β_1 is the coefficient associated with the Julian date of emergence (*emerge*), and β_2 is the coefficient associated with the number of days the family group stayed at the den site post-emergence before departing (*depart*). These probabilities are based on estimates of litter survival derived from the analysis of empirical data on the dates of emergence from the den and departure from the den site (Anderson et al. 2024).

We developed the code to run this model in program R (R Core Development Team 2020) and ran 10,000 iterations of the model (*i.e.*, Monte Carlo simulation) to derive the estimated number of dens disturbed and associated levels of harassment. We then determined the number of cubs that would have lethal take, Level A harassment, and Level B harassment, and the number of females that would experience Level B harassment. Table 6 shows the probability of an exposure resulting in the types of harassment of denning polar bears.

TABLE 6—PROBABILITY THAT AN EXPOSURE ELICITED A RESPONSE BY DENNING POLAR BEARS THAT WOULD RESULT IN LEVEL B HARASSMENT, LEVEL A HARASSMENT, LETHAL TAKE, OR NO TAKE

Denning period	None (sow or cub(s))	Level B (sow)	Level B (cub(s))	Level A (cub(s))	Lethal (cub(s))
Den Establishment	0.750	0.250	0.000	0.000	0.000
Early Denning	0.860	0.140	0.000	0.000	0.130
Late Denning	0.510	0.490	0.000	0.490	0.000
Post Emergence—Previously Undisturbed Den	0.000	1.000	0.200	0.800	0.000
Post Emergence—Previously Disturbed Den	0.000	1.000	0.474	0.526	0.000

Note: Level B harassment was applicable to both adults and cubs, if present; Level A harassment and lethal take were applicable to cubs only and were not possible during the den establishment period, which ended with the birth of the cubs. Probabilities were calculated from the analysis of 60 case studies of polar bear responses to human activity. During the early denning period, there was no Level A harassment for cubs, only lethal take. We provide two sets of take probabilities for the post-emergence period. The first (Post-emergence—Undisturbed) is the set of probabilities when a den has not been disturbed during the late denning period. The second (Post-emergence—Disturbed) is the set of probabilities for a den that was disturbed during the late denning period (Rode et al. 2018; Andersen et al. 2024).

Model Results

Our analysis estimates a mean of 1.36 (median = 1; 95 percent CI: 0–4) land-based dens in the project area will potentially be exposed to disturbance from the specified activities during the 1-year period of the proposed IHA. Our den simulation analysis predicts this degree of potential exposure will have a zero (0) percent chance of incurring Level B harassment. Furthermore, our analysis predicts a zero (0) percent probability of the BLM's specified activities resulting in either Level A harassment or lethal take during the 1-year period of the proposed IHA.

Critical Assumptions

To conduct this analysis and estimate the potential amount of Level B harassment, Level A harassment, and lethal take, we made several critical assumptions.

Level B harassment is equated herein with behavioral responses that indicate harassment or disturbance, but not to the extent that cause the animal to experience significant biological consequences. Our estimates do not account for variable responses by polar bear age and sex; however, sensitivity of denning polar bears was incorporated into the analysis. The available information suggests that polar bears are generally resilient to low levels of disturbance. Females with dependent

young and juvenile polar bears are physiologically the most sensitive (Andersen and Aars 2008) and most likely to experience harassment from disturbance. Not enough information on composition of the SBS polar bear stock in the specified project area is available to incorporate individual variability based on age and sex or to predict its influence on harassment estimates. Our estimates are derived from a variety of sample populations with various age and sex structures, and we assume the exposed population will have a similar composition, and that, therefore, the response rates are applicable.

The estimates of behavioral response presented here do not account for the individual movements of animals in response to the specified activities. Our assessment assumes animals remain stationary (*i.e.*, density does not change). Not enough information is available about the movement of polar bears in response to specific disturbances to refine this assumption.

The SBS polar bears create maternal dens on the sea ice as well as on land. The den simulation used in our analysis does not simulate dens on the sea ice. However, the specified activities will be conducted entirely on land and only a small percentage of the activities will occur within 1.6 km (1 mi) of the coastline. Therefore, the impact of the activities will be primarily limited to land-based dens within 1.6 km (1 mi) of

the project impact areas used during denning season. Additionally, this impact area will be surveyed during AIR surveys to mitigate impacts on denning polar bears.

The specific combination of snow trail segments depicted in figure 1 that will be used for mobilization, resupply, and backhauling is not currently known. For the purposes of the above analyses and estimates of take by Level B and Level A harassment, and the risks of lethal take, we assumed that all routes within the AIR surveyed section (figure 1) of the project might potentially be used at some point during the denning season. This assumption results in a very conservative estimate of take for the 1-year IHA period that accounts for all possible operational scenarios.

Sum of Harassment From All Sources

Our analyses quantified the total number of Level B harassment, Level A harassment, and lethal take likely to result from the BLM's specified activities. We evaluated three potential sources of harassment/take, including surface interactions, aircraft overflights, and den disturbance of sows and/or cubs in our analyses. A summary of total estimated take via Level B harassment during the project by source is provided in table 7. We do not anticipate take by Level A harassment or lethal take to occur.

TABLE 7—TOTAL ESTIMATED TAKES BY HARASSMENT OF POLAR BEARS, BY SOURCE

Source and type of harassment	Number of estimated harassments
Bears on the surface—summer—Level B harassment	1
Bears on the surface—winter—Level B harassment	10
Aircraft activities—summer and winter—Level B harassment	1
Total	12

Determinations and Findings

In making these draft findings, we considered the best available scientific information, including: the biological and behavioral characteristics of polar bears, the most recent information on polar bear distribution and abundance within the area of the specified activities, the current and expected future status of the stock (including existing and foreseeable human and natural stressors), the potential sources of disturbance caused by the project, and the potential responses of polar bears to this disturbance. In addition, we reviewed applicant-provided materials, information in our files and datasets, and published reference materials, and consulted with species experts.

Small Numbers

For our small numbers determination, we consider whether the estimated number of polar bears to be subjected to incidental take is small relative to the population size of the species or stock.

1. We estimate that BLM's proposed specified activities in the specified geographic region will cause the take of no more than 12 polar bears by Level B harassment during the 1-year period of this proposed IHA (table 7). Take of 12 animals is 1.32 percent of the best available estimate of the current SBS stock size of 907 animals (Bromaghin et al. 2015; Atwood et al. 2020) ($(12 \div 907) \times 100 \approx 1.32$ percent) and represents a "small number" of polar bears of that stock.

2. The footprint of the specified activities within the specified geographic region is extremely small relative to the range of the SBS stock of polar bears. Polar bears from the SBS stock occur well beyond the boundaries of the proposed IHA region. As such, the IHA boundaries represent only a minute subset of the potential area in which the polar bear may occur. Thus, the FWS concludes that a small portion of the SBS polar bear populations may be present in the specified geographic region during the time of the specified activities.

Small Numbers Conclusion

We propose a finding that take of up to 12 SBS polar bears represents a small number of the SBS stock of polar bears.

Negligible Impact

For our negligible impacts determination, we consider the following:

1. The distribution and habitat use patterns of polar bears indicate that relatively few polar bears will occur in the specified areas of activity at any

time and, therefore, few polar bears are likely to be affected.

2. The documented impacts of previous activities, including the 2023–2024 BLM IHA (88 FR 88943), similar to the specified activities on polar bears, and, taking into consideration the baseline of existing impacts from factors such as oil and gas activities in the area and other ongoing or proposed ITAs, suggests that the types of activities analyzed for this proposed IHA will have minimal effects on polar bears. Additionally, the effects will be limited to short-term, temporary behavioral changes, or minor injury. Furthermore, our analyses do not indicate, nor do we anticipate, any take by Level A harassment or lethal take of polar bears during the 1-year period of this proposed IHA. Therefore, we anticipate that the specified activities will not have lasting impacts that could significantly affect an individual polar bear's health, reproduction, or survival. The limited extent of anticipated impacts on polar bears is unlikely to adversely affect annual rates of polar bear survival or recruitment. Thus, we do not expect any long-term negative consequences to either individual- or population-level fitness.

3. The IHA, if finalized, would require implementation of monitoring requirements and mitigation measures designed to reduce the potential impacts of their operations on polar bears. Den detection surveys for polar bears and adaptive mitigation and management responses based on real-time monitoring information (described in this proposed authorization) will be used to avoid or minimize interactions with polar bears and, therefore, limit potential disturbance of these animals.

4. The FWS does not anticipate any lethal take that would remove individual polar bears from the population or prevent their successful reproduction. This proposed IHA does not authorize any take by Level A harassment or injury that will likely result in the death of a polar bear.

We also consider the conjectural or speculative impacts associated with these specified activities. The specific congressional direction described below justifies balancing the probability of such impacts with their severity: If potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low, but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock

when determining negligible impact. In applying this balancing test, the FWS will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determination will be made based on the best available scientific information (54 FR 40338, September 29, 1989, quoting 53 FR 8473, March 15, 1988, and 132 Cong. Rec. S 16305 (October 15, 1986)).

The potential effects of most concern here are the mortality of cubs that could result from disturbances during certain periods of the denning season. The FWS estimated that the probability of greater than or equal to one lethal take that is likely to result in the mortality of a denning polar bear is zero within the 1-year period of this proposed IHA. Therefore, the FWS does not anticipate any lethal take will occur during the IHA period. If a den is disturbed and lethal take were to occur, this take would be limited to only cubs during the denning period. Denning females, the demographic group most important to annual recruitment, are limited to take by Level B harassment. Therefore, the number of potentially available reproductive females that would contribute to recruitment for the SBS stock would remain unaffected if a den disturbance were to result in the mortality of the cubs.

The SBS stock of polar bears is currently estimated as 907 polar bears (Bromaghin et al. 2015, 2021; Atwood 2020). The loss of one litter ranges from 0 percent (0 cubs) to approximately 0.33 percent (3 cubs) of the annual SBS stock size of polar bears ($((0 \text{ cubs to } 3 \text{ cubs}) \div 907) \times 100 \approx 0 \text{ to } 0.33$). Cub litter survival was estimated at 50 percent (90 percent CI: 33–67 percent) for the SBS stock during 2001–2006 (Regehr et al. 2010). A female may lose her litter for several reasons separate from den disturbance. The determining factor for polar bear stock growth is adult female survival (Eberhardt 1990). Consequently, the loss of female cubs has a greater impact on annual recruitment rates for the SBS stock of polar bears compared to male cubs. If a den disturbance were to result in the mortality of the entire litter, the female would be available to breed during the next mating season and could produce another litter during the next denning season.

Based on our projected zero cub mortality associated with these specified activities, and the recognition that even if a den is disturbed, the number of potentially affected cubs would be minimal and the number of reproductive females in the stock would remain the same, the FWS does not

anticipate that the conjectural or speculative impacts associated with these specified activities warrant a finding of non-negligible impact or otherwise preclude issuance of this proposed IHA. We reviewed the effects of the specified well-plugging and reclamation activities on polar bears, including impacts from surface interactions, aircraft overflights, and den disturbance. Based on our review of these potential impacts, past monitoring reports, and the biology and natural history of polar bears, we anticipate that such effects will be limited to short-term behavioral disturbances.

We have evaluated climate change regarding polar bears as part of the environmental baseline. Climate change is a global phenomenon and was considered as the overall driver of effects that could alter polar bear habitat and behavior. The FWS is currently involved in research to understand how climate change may affect polar bears. As we gain a better understanding of climate change effects, we will incorporate the information in future authorizations.

We find that the impacts of these specified activities cannot be reasonably expected to, and are not reasonably likely to, adversely affect SBS polar bears through effects on annual rates of recruitment or survival. We therefore find that the total of the taking estimated above and proposed for authorization will have a negligible impact on SBS polar bears. We do not propose to authorize lethal take or any take by Level A harassment that we believe could result in long-term individual or population level fitness consequences.

Impact on Subsistence Use

Based on past community consultations, locations of hunting areas, no anticipated overlap of hunting areas and project activities, and the best scientific information available, including monitoring data from similar activities, we propose a finding that take caused by the oil well plugging and reclamation; soil sampling; snow trail, pad, and airstrip construction; and summer cleanup activities in the project area will not have an unmitigable adverse impact on the availability of polar bears for taking for subsistence uses during the proposed timeframe.

While polar bears represent a small portion, in terms of the number of animals, of the total subsistence harvest for the Utqiagvik, Nuiqsut, Wainwright and Atkasuk communities, their harvest is important to Alaska Natives. The BLM will be required to notify the cities of Wainwright and Utqiagvik and the

Native villages of Atkasuk and Nuiqsut of the planned activities and document any discussions of potential conflict. The BLM must make reasonable efforts to ensure that activities do not interfere with subsistence hunting and that adverse effects on the availability of polar bears are minimized. Should such a concern be voiced, development of plans of cooperation (POC), which must identify measures to minimize any adverse effects, will be required. The POC will ensure that project activities will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. This POC must provide the procedures addressing how the BLM will work with the affected Alaska Native communities and what actions will be taken to avoid interference with subsistence hunting of polar bears, as warranted.

The FWS has not received any reports and is not aware of information that indicates that polar bears are being or will be deterred from hunting areas or impacted in any way that diminishes their availability for subsistence use by oil well plugging and reclamation; soil sampling; snow trail, pad, and airstrip construction; and summer cleanup. If there is evidence that these activities are affecting the availability of polar bears for take for subsistence uses, we will reevaluate our findings regarding permissible limits of take and the measures required to ensure continued subsistence hunting opportunities.

Least Practicable Adverse Impact

We evaluated the practicability and effectiveness of mitigation measures based on the nature, scope, and timing of the specified activities, the best available scientific information, and monitoring data during the BLM's activities in the specified geographic region. We propose a finding that the mitigation measures included within the BLM's Request will ensure least practicable adverse impacts on polar bears (BLM 2024).

Polar bear den surveys at the beginning of the winter season, the resulting 1.6-km (1-mi) operational exclusion zone around any known polar bear dens, and restrictions on the timing and types of activities in the vicinity of dens will ensure that impacts to denning female polar bears and their cubs are minimized during this critical period. Minimum flight elevations over polar bear areas and flight restrictions around observed polar bears and known polar bear dens will reduce the potential for aircraft disturbing polar bears. Finally, the BLM will implement mitigation measures to prevent the presence and impact of attractants in

camps such as the use of wildlife-resistant waste receptacles, daily food waste incineration, and storing hazardous materials in drums or other secure containers. These measures are outlined in a polar bear interaction plan that was developed in coordination with the FWS and is part of the BLM's application for this IHA. Based on the information we currently have regarding den and aircraft disturbance and polar bear attractants, we concluded that the mitigation measures outlined in the BLM's Request (BLM 2024) and incorporated into this authorization will minimize impacts from the specified oil well plugging and reclamation, soil sampling, snow trail, pad, and airstrip construction, and summer cleanup activities to the extent practicable.

Several mitigation measures were considered but determined to be not practicable. These measures are listed below:

- *Grounding all flights if they must fly below 457 m (1,500 ft)*—Requiring all aircraft to maintain an altitude of 457 m (1,500 ft) at all times is not practicable as some operations may require flying below 457 m (1,500 ft) to perform necessary inspections or maintain safety of flight crew. Aircraft are required to fly above 457 m (1,500 ft) at all times within 805 m (0.5 mi) of an observed polar bear unless there is an emergency;

- *One-mile buffer around all known polar bear denning habitat*—One-mile (1.6-km) buffer around all known polar bear denning habitat is not practicable as much of the BLM's proposed project area occurs within 1.6 km (1 mi) of denning habitat; thus, to exclude all areas within 1.6 km of denning habitat would preclude the planned activities from occurring;

- *Prohibition of driving over high relief areas, embankments, or stream and river crossings*—While the denning habitat, such as high relief areas, embankments, and streams or river banks, must be considered during tundra travel, complete prohibition is not practicable. High relief areas, embankments, streams, and rivers occur throughout the project area. To completely avoid these types of areas would likely cause personnel to drive further away from established operational areas and unnecessarily create additional safety concerns. Furthermore, other mitigation measures to minimize impact to denning habitats are included and will minimize the risk imposed by driving over high relief areas, embankments, or stream and river crossings;

- *Use of a broader definition of "denning habitat" for operational offsets*—There is no available data to

support broadening the defining features of denning habitat beyond that established by the USGS. Such a redefinition would cause an increase in the area surveyed for maternal dens, and the associated increase in potential harassment of polar bears on the surface would outweigh the mitigative benefits;

- *Establishment of corridors for sow and cub transit to the sea ice*—As there is no data to support the existence of natural transit corridors to the sea ice, establishment of corridors in the IHA area would be highly speculative. Therefore, there would be no mitigative benefit realized by their establishment;

- *Require all activities to cease if a polar bear is injured or killed until an investigation is completed*—The FWS has incorporated reporting requirements into this proposed authorization for all polar bear interactions. While it may aid in any subsequent investigation, ceasing all activities may not be practicable or safe and, thus, will not be mandated;

- *Require use of den detection dogs*—It is not practicable or safe to require scent-trained dogs to detect dens due to the large spatial extent that would need to be surveyed within activity areas;

- *Require the use of handheld or vehicle-mounted Forward Looking Infrared (FLIR)*—The efficacy rates for AIR have been found to be four times more likely to detect dens versus ground-based FLIR (handheld or vehicle-mounted FLIR) due to impacts of blowing snow on detection. The BLM has incorporated into their mitigation measures the use of handheld or vehicle-mounted FLIR when transiting rivers occurring in suitable denning habitat, but it is not practicable to use the equipment during all transit;

- *Construct safety gates, fences, and enclosures to prevent polar bears from accessing facilities*—This project will require no permanent facility/structures and encompasses a large area. Construction and deconstruction of barriers for a moving camp would increase potential human—polar bear interactions and impacts to polar bear habitat;

- *Employ protected species observers (PSOs) for monitoring, recording, reporting, and implementing mitigation measures*—All personnel will be trained in wildlife observation, employment of PSOs would not be anticipated to reduce impacts to polar bears. Monitoring, recording, reporting are described in the IHA application;

- *Avoid areas of high-density polar bear use (e.g., barrier islands and coastline) including the establishment of camps and pads*—This measure is not practicable because the legacy wells that this project is focused on are all

located along the coastline, and snow trail must also cross through these areas to reach the well sites;

- *Avoid predominantly coastal routes for flight pathways*—This measure is not practicable because the remediation sites are located along the coast, and aviation access routes to project sites must occur over the coast; and

- *Restrict activity and travel over polar bear denning habitat to eliminate or lessen risk of den collapse*—This project has activities that will travel over potential polar bear denning habitat. The BLM has committed to multiple effective mitigation measures to minimize their potential impacts to polar bear denning habitat and reduce to chance of den collapse. Therefore, we believe that the probability of this project's activities causing a den collapse is near zero and additional mitigation measures would not further reduce the probability.

Required Determinations

National Environmental Policy Act (NEPA)

We have prepared a draft environmental assessment in accordance with the NEPA (42 U.S.C. 4321 *et seq.*). We have preliminarily concluded that authorizing the nonlethal, incidental, unintentional take of 12 SBS polar bears by Level B harassment during the proposed harassment authorization period would not significantly affect the quality of the human environment and, thus, preparation of an environmental impact statement for this incidental harassment authorization is not required by section 102(2) of NEPA or its implementing regulations. We are accepting comments on the draft environmental assessment as specified above in **DATES** and **ADDRESSES**.

Endangered Species Act

Under the Endangered Species Act (ESA) (16 U.S.C. 1536(a)(2)), all Federal agencies are required to ensure the actions they authorize are not likely to jeopardize the continued existence of any threatened or endangered species or result in destruction or adverse modification of critical habitat. Prior to issuance of a final IHA, the FWS will complete intra-Service consultation under section 7 of the ESA on our proposed issuance of an IHA. These evaluations and findings will be made available on the FWS's website at <https://ecos.fws.gov/ecp/report/biological-opinion>.

Government-to-Government Consultation

It is our responsibility to communicate and work directly on a Government-to-Government basis with federally recognized Alaska Native Tribes in developing programs for healthy ecosystems. We seek their full and meaningful participation in evaluating and addressing conservation concerns for protected species. It is our goal to remain sensitive to Alaska Native culture, and to make information available to Alaska Tribal organizations and communities. Our efforts are guided by the following policies and directives:

(1) The Native American Policy of the FWS (January 20, 2016);

(2) The Alaska Native Relations Policy (currently in draft form; see 87 FR 66255, November 3, 2022);

(3) Executive Order 13175 (January 9, 2000);

(4) Department of the Interior Secretarial Orders 3206 (June 5, 1997), 3225 (January 19, 2001), 3317 (December 1, 2011), 3342 (October 21, 2016), and 3403 (November 15, 2021) as well as Director's Order 227 (September 8, 2022);

(5) The Alaska Government-to-Government Policy (a departmental memorandum issued January 18, 2001); and

(6) the Department of the Interior's policies on consultation with Alaska Native Tribes and organizations.

We have evaluated possible effects of the proposed IHA on federally recognized Alaska Native Tribes and ANCSA (Alaska Native Claims Settlement Act) Corporations. The FWS has determined that authorizing the Level B harassment of up to 12 polar bears from the BLM's specified activities would not have any Tribal implications or ANCSA Corporation implications and, therefore, Government-to-Government consultation or Government-to-ANCSA Corporation consultation is not necessary. However, we invite continued discussion, either about the project and its impacts or about our coordination and information exchange throughout the IHA/POC public comment process.

Paperwork Reduction Act

This proposed IHA does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The OMB has previously approved the information collection requirements associated with IHAs and assigned OMB Control Number 1018-0194 (expires 08/31/

2026). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Proposed Authorization

We propose to authorize, for 1 year from date of issuance, the nonlethal, incidental take by Level B harassment of up to 12 polar bears from the SBS stock of polar bears for activities associated with the BLM's oil well plugging and reclamation, soil sampling, snow trail, pad, and airstrip construction, and summer cleanup activities in the North Slope Borough of Alaska between Wainwright and Oliktok. Authorized take will be limited to Level B harassment only, *i.e.*, disruption of behavioral patterns, and not anticipated to incur any significant impacts to either individual- or population-level fitness. We do not anticipate or authorize any take by Level A harassment, lethal take, or any other injury.

A. General Conditions for the IHA for the BLM

1. Activities must be conducted in the manner described in the revised Request dated August 2024 (received August 26, 2024) for an IHA and in accordance with all applicable conditions and mitigation measures. The taking of polar bears whenever the required conditions, mitigation, monitoring, and reporting measures are not fully implemented as required by the IHA is prohibited. Failure to follow the measures specified both in the revised Request and within this proposed authorization may result in the modification, suspension, or revocation of the IHA.

2. If project activities cause unauthorized take (*i.e.*, take of more than 12 polar bears from the SBS stock by Level B harassment or a form of take other than Level B harassment, or take of 1 or more polar bears through methods not described in the IHA), then BLM must take the following actions:

- i. Cease its activities immediately (or reduce activities to the minimum level necessary to maintain safety);
- ii. Report the details of the incident to the FWS within 48 hours; and
- iii. Suspend further activities until the FWS has reviewed the circumstances and determined whether additional mitigation measures are necessary to avoid further unauthorized taking.

3. All operations managers, aircraft pilots, and vehicle operators must receive a copy of this IHA and maintain access to it for reference at all times during project work. These personnel must understand, be fully aware of, and be capable of implementing the

conditions of the IHA at all times during project work.

4. This IHA will apply to activities associated with the proposed project as described in this document and in the BLM's revised Request. Changes to the proposed project without prior authorization may invalidate the IHA.

5. The BLM's revised Request is approved and fully incorporated into this IHA unless exceptions are specifically noted herein. The revised Request includes:

- i. The BLM's original *Request for an IHA*, dated June 2024, (received by the FWS June 17, 2024) which includes the BLM's *Polar Bear Safety, Awareness, and Interaction Plan* and geospatial files; and
- ii. The BLM's revised *Request for an IHA*, dated August 2024 (received by the FWS August 26, 2024).

6. Operators will allow the FWS personnel or the FWS's designated representative to visit project work sites to monitor for impacts to polar bears and subsistence uses of polar bears at any time throughout project activities so long as it is safe to do so. "Operators" are all personnel operating under the BLM's authority, including all contractors and subcontractors.

The BLM must implement the following policies and procedures to avoid interactions and minimize to the greatest extent practicable any adverse impacts on polar bears, their habitat, and the availability of these marine mammals for subsistence uses.

B. General Avoidance Measures

1. The BLM must cooperate with the FWS and other designated Federal, State, and local agencies to monitor and mitigate the impacts of activities on polar bears.

2. Trained and qualified personnel must be designated to monitor for the presence of polar bears, initiate mitigation measures, and monitor, record, and report the effects of the activities on polar bears. The BLM must provide all operators with polar bear awareness training prior to their participation in project activities.

3. An FWS-approved polar bear safety, awareness, and interaction plan must be on file with the FWS Marine Mammal Management office and available onsite. The interaction plan must include:

- i. A description of the proposed activity (*i.e.*, a summary of the plan of operations during the proposed activity);
- ii. A food, waste, and other attractants management plan;
- iii. Personnel training policies, procedures, and materials;

iv. Site-specific polar bear interaction risk evaluation and mitigation measures;

v. Polar bear avoidance and encounter procedures; and

vi. Polar bear observation and reporting procedures.

4. The BLM must contact potentially affected subsistence communities and hunter organizations to discuss potential conflicts caused by the activities and provide the FWS documentation of communications as described in *D. Measures To Reduce Impacts to Subsistence Users*.

5. *Mitigation measures for aircraft.* The BLM must undertake the following activities to limit disturbance from aircraft activities:

i. Operators of support aircraft shall, at all times, conduct their activities at the maximum distance practicable from concentrations of polar bears.

ii. Fixed-wing aircraft and helicopter operations within the IHA area must maintain a minimum altitude of 457 m (1,500 ft) above ground level when safe and operationally possible.

iii. Under no circumstances, other than an emergency, will aircraft operate at an altitude lower than 457 m (1,500 ft) within 805 m (0.5 mi) of a polar bear observed on ice or land measured in a straight line between the polar bear and the ground directly underneath the aircraft. Helicopters may not hover or circle above such areas or within 805 m (0.5 mi) of such areas. If weather conditions or operational constraints necessitate operation of aircraft at altitudes below 457 m (1,500 ft), the operator must avoid areas of known polar bear concentrations and should take precautions to avoid flying directly over or within 805 m (0.5 mi) of these areas.

iv. Aircraft may not be operated in such a way as to separate individual polar bears from a group (*i.e.*, two or more polar bears).

6. *Mitigation measures for winter activities.* The BLM must undertake the following activities to limit disturbance around known polar bear dens:

i. The BLM must conduct two aerial infrared (AIR) surveys of all denning habitat located within 1.6 km (1 mi) of specified activities in an attempt to identify maternal polar bear dens. The first survey obtained must occur between December 1 and December 25, 2024, and the second survey obtained must occur between December 15, 2024, and January 10, 2025, with at least 24 hours occurring between the completion of the first survey and the beginning of the second survey.

ii. All observed or suspected polar bear dens must be reported to the FWS prior to the initiation of activities.

iii. If a suspected den site is located, the BLM will immediately consult with the FWS to analyze the data and determine if additional surveys or mitigation measures are required. The FWS will determine whether the suspected den is to be treated as a putative den for the purposes of this IHA.

iv. Operators must observe a 1.6-km (1-mi) operational exclusion zone around all putative polar bear dens during the denning season (November–April, or until the female and cubs leave the areas). Should a suspected den be discovered within 1 mile of activities, work must cease, and the FWS must be contacted for guidance. The FWS will evaluate these instances on a case-by-case basis to determine the appropriate action. Potential actions may range from cessation or modification of work to conducting additional monitoring, and the BLM must comply with any additional measures specified.

v. In determining the denning habitat that requires surveys, the den habitat map developed by the USGS should be used. A map of potential coastal polar bear denning habitat can be found at: https://www.usgs.gov/centers/asc/science/polar-bear-maternal-denning?qt-science_center_objects=4#qt-science_center_objects.

C. Monitoring

1. Operators must provide onsite observers and implement the FWS-approved polar bear safety, awareness, and interaction plan to apply mitigation measures, monitor the project's effects on polar bears and subsistence uses, and evaluate the effectiveness of mitigation measures.

2. Onsite observers must be present during all operations and must record all polar bear observations, identify and document potential harassment, and work with personnel to implement appropriate mitigation measures.

3. Operators shall cooperate with the FWS and other designated Federal, State, and local agencies to monitor the impacts of project activities on polar bears. Where information is insufficient to evaluate the potential effects of activities on polar bears and the subsistence use of this species, the BLM may be required to participate in joint monitoring efforts to address these information needs and ensure the least practicable impact to this resource.

D. Measures To Reduce Impacts to Subsistence Users

The BLM must conduct its activities in a manner that, to the greatest extent practicable, minimizes adverse impacts

on the availability of polar bears for subsistence uses.

1. The BLM will be required to develop a FWS-approved POC if, through community consultation, concerns are raised regarding impacts to subsistence harvest or Alaska Native Tribes and organizations.

2. If an FWS-approved POC is required, the BLM will implement that POC

3. Prior to conducting the work, the BLM will take the following steps to reduce potential effects on subsistence harvest of polar bears:

i. Avoid work in areas of known polar bear subsistence harvest;

ii. Notify the cities Wainwright and Utqiagvik and the Native Villages of Atkasuk and Nuiqsit of the proposed project activities;

iii. Work to resolve any concerns of potentially affected Alaska Native Tribal organizations and corporations regarding the project's effects on subsistence hunting of polar bears;

iv. If any unresolved or ongoing concerns of potentially affected Alaska Native Tribal organizations and corporations remain, modify the POC in consultation with the FWS and subsistence stakeholders to address these concerns; and

v. Implement FWS-required mitigation measures that will reduce impacts to subsistence users and their resources.

E. Reporting Requirements

The BLM must report the results of monitoring to the FWS Marine Mammals Management office via email at: FW7_mmm_reports@fws.gov.

1. *In-season monitoring reports.*

2. *Activity progress reports.* The BLM must:

(i) Notify the FWS at least 48 hours prior to the onset of activities;

(ii) Provide the FWS weekly progress reports of any significant changes in activities and/or locations; and

(iii) Notify the FWS within 48 hours after ending of activities.

3. *Polar bear observation reports.* The BLM must report, within 48 hours, all observations of polar bears and potential polar bear dens during any project activities. Upon request, monitoring report data must be provided in a common electronic format (to be specified by the FWS). Information in the observation report must include, but need not be limited to:

i. Date and time of each observation;

ii. Locations of the observer and polar bears (GPS coordinates if possible);

iii. Number of polar bears;

iv. Sex and age class—adult, subadult, cub (if known);

v. Observer name and contact information;

vi. Weather, visibility, and if at sea, sea state, and sea-ice conditions at the time of observation;

vii. Estimated closest distance of polar bears from personnel and facilities;

viii. Type of work being conducted at time of sighting;

ix. Possible attractants present;

x. Polar bear behavior—initial behavior when first observed (e.g., walking, swimming, resting, etc.);

xi. Potential reaction—behavior of polar bear potentially in response to presence or activity of personnel and equipment;

xii. Description of the encounter;

xiii. Duration of the encounter; and

xiv. Mitigation actions taken.

4. Human-polar bear interaction

reports. The BLM must report all human-polar bear interaction incidents immediately, and not later than 48 hours after the incident. Human-polar bear interactions include:

i. Any situation in which there is a possibility for unauthorized take. For instance, when project activities exceed those included in an IHA, when a mitigation measure was required but not enacted, or when the injury or death of a polar bear occurs. Reports must include all information specified for an observation report in paragraphs (3)(i)–(xiv) of this section E, a complete detailed description of the incident, and any other actions taken.

ii. Injured, dead, or distressed polar bears that are clearly not associated with project activities (e.g., animals found outside the project area, previously wounded animals, or carcasses with moderate to advanced decomposition or scavenger damage) must also be reported to the FWS immediately, and not later than 48 hours after discovery. Photographs, video, location information, or any other available documentation must be included.

6. *Final report.* The results of monitoring and mitigation efforts identified in the marine mammal avoidance and interaction plan must be submitted to the FWS for review within 90 days of the expiration of this IHA. Upon request, final report data must be provided in a common electronic format (to be specified by the FWS).

Information in the final report must include, but need not be limited to:

i. Copies of all observation reports submitted under the IHA;

ii. A summary of the observation reports;

iii. A summary of monitoring and mitigation efforts including areas, total hours, total distances, and distribution;

iv. Analysis of factors affecting the visibility and detectability of polar bears during monitoring;

v. Analysis of the effectiveness of mitigation measures;

vi. A summary and analysis of the distribution, abundance, and behavior of all polar bears observed; and

vii. Estimates of take in relation to the specified activities.

Request for Public Comments

If you wish to comment on this proposed authorization, the associated draft environmental assessment, or both documents, you may submit your comments by either of the methods described in **ADDRESSES**. Please identify whether you are commenting on the proposed authorization, draft environmental assessment, or both, make your comments as specific as possible, confine them to issues pertinent to the proposed authorization, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph that you are addressing. The FWS will consider all comments that are received before the close of the comment period (see **DATES**). The FWS does not anticipate extending the public comment period beyond the 30 days required under section 101(a)(5)(D)(iii) of the MMPA.

Comments, including names and street addresses of respondents, will become part of the administrative record for this proposal. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comments to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Peter Fasbender,

Assistant Regional Director—Fisheries and Ecological Services, Alaska Region.

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

[RR83530000, 256R5065C6,
RX.59389832.1009676]

National Environmental Policy Act Implementing Procedures for the Bureau of Reclamation (516 DM 14)

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of revisions.

SUMMARY: This notice announces the revision of seven categorical exclusions (CEs) listed in the Bureau of Reclamation's procedures for compliance with the National Environmental Policy Act of 1969 (NEPA). The revisions clarify existing CEs on certain financial assistance funding, water-related contracting, and use authorization actions to allow for more consistent interpretation and more efficient review of appropriate actions based on the Reclamation's experience implementing these CEs.

DATES: The revised categorical exclusions are incorporated into Reclamation's NEPA procedures, located at Chapter 14 of Part 516 of the Departmental Manual (516 DM 14), effective January 13, 2025.

ADDRESSES: The revised CEs can be found at the web address for Reclamation's revised NEPA procedures, 516 DM 14: <https://www.doi.gov/document-library/departamental-manual/516-dm-14-managing-nepa-process-bureau-reclamation>.

FOR FURTHER INFORMATION CONTACT: Shane Hunt (he/him) via phone at 916–202–7158, or via email at usbr_ce@usbr.gov. Individuals who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Reclamation (Reclamation) was established in 1902. Its original mission was civil works construction to develop the water resources of the arid Western United States to promote the settlement and economic development of that region. Reclamation developed hundreds of projects to store and deliver water. That substantial infrastructure development contributed to making Reclamation the largest wholesale supplier of water and the second largest producer of hydropower in the United States.

On June 7, 2024, the Department of the Interior (Department) published a **Federal Register** notice (89 FR 48674) proposing revisions to seven categorical exclusions (CEs) in Reclamation's NEPA implementing procedures, 516 DM 14. During the 30-day comment period, Reclamation received 14 comment

letters and emails. A detailed summary of comments on the proposed revisions and Reclamation's responses are noted below.

Reclamation has reviewed the comments and has taken them into consideration in finalizing the revised CEs. Reclamation continues to find it appropriate to revise the seven CEs to promote consistent interpretation and application by eliminating confusing or outdated terminology and authorities, as well as clarifying the scope of activities and constraints. Reclamation edited the revised CEs to respond to comments, as noted below, and revised the CEs in 516 DM 14, section 14.5, paragraph D entitled, "Operation and Maintenance Activities," and paragraph F entitled, "Financial Assistance, Loans, and Funding."

Comments on the Proposal

The Department solicited comments from the public on the potential revisions to the CEs through a 30-day public comment period, announced in the **Federal Register** on June 7, 2024 (89 FR 48674). Reclamation considered all comments received to date, and Reclamation has responded, as provided below, to all substantive issues raised in the public comments.

Reclamation received 14 letters and emails from state governments, water and irrigation districts, water user organizations, and Tribal Nations. Individual comments included several that restated the objectives, limitations, and rationale for the proposed CE revisions, several that expressed general support or opposition for the proposed CE revisions, and several that provided more extensive detailed comments regarding the proposed CE revisions.

Reclamation appreciates the interest and participation of all respondents. Reclamation has noted the comments that provided general support and general opposition. For comments providing additional detail, questions, and suggestions, Reclamation, where appropriate, grouped the common comments and responds to the comments as follows:

Comment 1—Transparency and public input: Commenter expressed concern that the CE revisions would shift the analysis of project impacts to an internal process without public input.

*Response 1—*The Council on Environmental Quality (CEQ) and Department's NEPA implementing regulations do not require public notice for an agency to use a CE. As provided in CEQ regulations and guidance, establishing, revising, and appropriately using CEs is consistent with NEPA. CEs

are not exemptions or waivers from NEPA. Rather, they are a type of NEPA review intended to accomplish the purposes of NEPA, efficiently and effectively. The establishment and revision of a CE is a public process through which the agency must demonstrate that the category of actions would not normally have significant effects, individually or in the aggregate. Having made such a demonstration, subject to public review and comment, the agency may then apply the CE to complete the NEPA environmental review process for proposals that do not require an environmental assessment (EA) or environmental impact statement (EIS), which are more resource intensive than applying a CE. Reclamation has and will continue to meet requirements under NEPA and other laws and regulations, ensuring the appropriate level of analysis and public engagement, consistent with regulations and policies.

Comment 2—Scope of CE D4:

Commenters recommended adding language to CE D4 to clearly cover Warren Act contracts, administrative operating agreements, and other administrative actions.

Response 2—The scope of the revised CE language already captured many of the suggested additions. A Warren Act contract is a type of “water-related contracts” covered under the proposed revision, as it is a legally binding agreement to which Reclamation is a party, pursuant to its authority under Federal law that allows for water to be stored. A commenter suggested including “administrative operating agreements.” CE D4 includes the administration of operation and maintenance contracts, which addresses the suggested inclusion of “administrative operating agreements.” Reclamation considers the suggested inclusion of other “administrative actions” to be overly broad. The text of D4 does include administration of water-related contracts, which would include many “administrative actions.” For these reasons, Reclamation declines to adopt these suggestions.

Comment 3—Concerns regarding Tribal resources and consultation:

Commenters expressed concerns that CE D8 and CE E1 have the potential to adversely affect Tribal resources and that Reclamation may not adequately conduct Tribal consultation or implement National Historic Preservation Act Programmatic Agreements when relying on the CEs.

Response 3—Reclamation met with both Tribes that commented on the proposal to better understand their concerns. Many of the concerns were related to compliance with laws and

policies other than NEPA. The level of NEPA analysis, including the use of a CE, does not affect Reclamation’s obligations under other laws, including the Native American Graves Protection and Repatriation Act, the National Historic Preservation Act, and the Archaeological Resources Protection Act, and related policies, or its obligation to engage in government-to-government consultation, in cases where that obligation arises. Furthermore, when relying on the CEs, Reclamation will review the proposed action against the extraordinary circumstances listed in the Department’s NEPA regulations at 43 CFR 46.215, which include in part, consideration of impacts on public health and safety; natural resources and unique geographic characteristics as historic or cultural resources; park, recreation, or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks, sole or principal drinking water aquifers; prime farmlands; wetlands; floodplains; national monuments; migratory birds; and other ecologically significant or critical areas; unresolved conflicts concerning alternative uses of available resources; unique or unknown environmental risks; precedent for future decision-making; historic properties; listed species or critical habitat; low income or minority populations; access by Indian religious practitioners to, and for ceremonial use of, Indian sacred sites and the physical integrity of those sites; and contribution to the introduction, continued existence, or spread of invasive plants or non-native invasive species. Reclamation will document the evaluation in a CE Checklist. If any extraordinary circumstance exists, Reclamation will conduct additional NEPA analysis. In addition, Reclamation must follow Departmental policy and procedures regarding Tribal consultation (512 DM 4, 512 DM 5), regardless of level of NEPA review.

Comment 4—Concerns regarding National Historic Preservation Act Compliance: A commenter expressed concerns about how a change in the CEs might affect National Historic Preservation Act Section 106 compliance, especially in the context of region-wide programmatic agreements, and the potential for Federal actions to affect historic properties of religious and cultural significance to Indian Tribes.

Response 4—As noted in comment and response 3, actions reviewed under the revised CEs are still subject to other Federal laws, including the Native American Graves Protection and Repatriation Act, the National Historic

Preservation Act and the Archaeological Resources Protection Act; to Departmental policies; and to the extraordinary circumstances review outlined in 43 CFR 46.215, which include consideration of Tribal and cultural resources, and Reclamation will document the evaluation in a CE Checklist. The level of NEPA analysis does not affect Reclamation’s obligations under any of the cultural resource laws or policies.

Comment 5—Expressed concerns with use of undefined terms like “minor,” “localized,” “temporary,” “interim,” and “related” in the proposed CE revisions: Commenters were concerned that the terms “minor,” “localized,” “temporary,” “interim,” and “related” in the CEs are undefined or lacked specificity. Commenters recommended defining, replacing or establishing a quantified threshold. One commenter recommended replacing the term “minor” with the term “does not allow for or lead to a major public or private action” for CEs D4 and E1.

Response 5—CEQ guidance¹ advises agencies to “clearly define the eligible category of actions, as well as any physical, temporal, or environmental factors that would constrain its use.” Reclamation’s revised CEs are intended to appropriately define and limit use to only those actions that normally do not have a significant effect on the human environment, individually or in the aggregate. Reclamation considered the specific language recommendations, concerns, and other suggestions on this topic. After careful consideration, Reclamation decided not to modify the identified terms because these terms as currently used sufficiently describe the CEs, while allowing Reclamation to apply the CEs in a range of appropriate contexts.

Regarding the terms “minor” and “localized,” Reclamation has over 40 years of successful and appropriate implementation of its existing CEs, several of which include these same terms. Reclamation’s record of applying its existing CEs (including those using the terms “minor” or “localized”) for previously implemented actions is well documented in Reclamation’s CE Checklists. In addition, Reclamation reviewed 71 EAs with FONSI and summarized them in the CE substantiation report that was included in supporting documentation for the **Federal Register** notice announcing the proposed CE revision in June 2024.

¹ See CEQ’s 2010 guidance on Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act, p. 5, https://ceq.doe.gov/docs/ceq-regulations-and-guidance/NEPA_CE_Guidance_Nov232010.pdf.

These 71 EAs with FONSI's analyze actions that the proposed CE revisions are designed to cover once finalized. Furthermore, the evaluation of the extraordinary circumstances in the Department's NEPA regulations at 43 CFR 46.215 helps to identify cases in which an action may have a significant effect and, therefore, application of the CE would not be appropriate.

Moreover, terms such as "minor" and "localized" allow Reclamation to appropriately consider the impacts of the proposed action in the context of the specific action and action location. For example, under D4, minor and localized considerations would include potential effects on the aquatic system, project operations, fish and wildlife resources, and the magnitude of the action in relation to hydrologic conditions. Under D8, minor and localized considerations would include things such as physical size, surrounding land use, and extent of potential ground disturbance on previously undisturbed land. Lastly, under E1, minor and localized considerations would include physical size and surrounding land use.

Replacing the term "minor" with "does not allow for or lead to a major public or private action" in CEs D4 or E1 would not lead to an improvement in the application of the CEs. Rather, the term minor and the impact-based constraints included in the D4 and E1 CEs are more appropriate to evaluate the types of actions covered by these CEs and the potential environmental impacts.

Regarding the additional terms highlighted by the commenters, the terms "temporary" and "interim" used in CE D4 are defined in the Reclamation Manual Policy, Water-Related Contracts and Charges—General Principles and Requirements (PEC P05). Under that policy, temporary contracts are limited to one year or less and interim contracts are limited to 10 years or less. Similarly, the term "related" only appears in CE D4 as part of the term "water-related contract(s)," which is also defined in Reclamation policy PEC P05 as any repayment or water service contract and any other legally binding agreement executed pursuant to Reclamation law or to the Water Conservation and Utilization Act of 1939 that: (1) makes water available from or through the facilities of a Federal project that Reclamation manages, operates, or funds; or (2) establishes Operation and Maintenance or Operation, Maintenance, and Replacements responsibilities for such facilities and/or other responsibilities related to ensuring that such facilities continue to serve their intended purposes; or (3) makes

water available to the United States.

Consistent with that policy, Reclamation adds the phrase "limited to 1 year or less" after the term temporary and the phrase "limited to 10 years or less" after the term interim in parentheses to the text of the final D4 CE.

Comment 6—Concerns with scope of actions that might qualify for the CEs: A commenter expressed concern with the scope of activities that might qualify for the CEs and lack of definitions and quantifications of terminology including "minor construction," "minor amounts of water," and "localized."

*Response 6—*As described in response 5, Reclamation considers it appropriate to retain the terms "minor" and "localized" in the CEs because Reclamation has over 40 years of successful and appropriate implementation of its existing CEs, several of which include these terms. Further, Reclamation also considered whether the absolute water-related contract water amounts, for instance, limiting application by acre-feet of water, should constrain the application of the D4 CE. Ultimately, Reclamation declines to specify water amounts because the effects to a water system resulting from a water-related contract's specified changes in water quantity are relative; effects depend on the size and unique characteristics of the water system. For example, an amount of contract water that would be minor to the Columbia River might be significant to the Middle Rio Grande River. Reclamation will assess each CE application on a case-by-case basis using impact-based constraints in the CE and the list of extraordinary circumstances at 43 CFR 46.215 and will document the evaluation in a CE Checklist.

Comment 7—Adequate definition of flexibility and clear standards: A commenter suggested the need for an "adequate definition of" the flexibility. Reclamation intends to provide in the revised CEs to ensure everyone is aware of "clear standards and when they apply."

*Response 7—*Reclamation considers the language within the CEs, including the impact-based constraints, coupled with a review of extraordinary circumstance at 43 CFR 46.215, to sufficiently define the standards of when Reclamation can rely on the CEs for proposed actions. Reclamation will continue to document this review in a CE Checklist. In addition, Reclamation has over 40 years of successful and appropriate implementation of its existing CEs that will enable

Reclamation to successfully and appropriately apply the revised CEs.

Comment 8—Adding grazing back to D8: A commenter recommended adding the word "grazing" back into the revised CE language of D8.

*Response 8—*The language of the D8 CE is consistent with 43 CFR part 429 and contemporary Reclamation Manual policies. Grazing is included in the list of types of uses covered by 43 CFR 429.3, so it does not need to be specifically mentioned in the CE text. Therefore, Reclamation does not incorporate this suggestion into the CE text.

Comment 9—Removing "work is minor" from D8: Commenters recommended removing the phrase "work is minor" from D8 since the CE includes reference to the project not leading to a major action and that limiting factor is sufficient.

*Response 9—*Reclamation accepted this recommendation by removing the phrase "work is minor and" then adding the phrase "of the action" after "impacts." Reclamation retains the word "minor" but moves it to the end of the sentence as described in the section below, "Additional Clarifying Changes."

Comment 10—Adding specific action or list of actions to E1: A commenter suggested including reference to specific types of projects as examples of actions to be covered by the CE within the CE itself, including canal lining/relining/piping, gate replacement, Supervisor Control and Data Acquisition (SCADA) installation, etc.

*Response 10—*Reclamation does not consider it necessary to add a list of specific types of projects as examples of actions the E1 CE will cover in order for Reclamation staff to properly apply the CE. In addition, Reclamation believes that including a predefined list of example project types could lead to inadvertently limiting the scope of eligible projects and lead to potential misunderstandings or missed opportunities for potential actions that fall outside the specified examples. Reclamation will assess each CE application on a case-by-case basis using impact-based constraints in the CE and the list of extraordinary circumstances at 43 CFR 46.215. Therefore, Reclamation declines to adopt this suggestion.

Comment 11—Adding "removed, introduced, or conveyed" to D4: A commenter recommended adding "removed, introduced, or conveyed" to the description of allowable uses of water within water-related contracts covered by the D4 CE as these terms were used to describe how water would

be used for projects evaluated within the EAs summarized in the substantiation report for the CE revisions.

Response 11—Reclamation agrees with the commenter's rationale and suggested language for D4 and adds the language to the final CE to further clarify the range of actions the CE is intended to describe.

Comment 12—Concerns with notification process for proposed CE revisions: One commenter expressed concerns with the notification process for the proposed CE revisions and requested additional coordination.

Response 12—Reclamation issued a news release on June 5, 2024, requesting public review and comment on the proposed CE revisions. On June 7, 2024, the Department published a notice in the **Federal Register** (89 FR 48674) seeking public review and comment on Reclamation's proposed CE revisions. See 40 CFR 1507.3(c)(8)(ii). Reclamation coordinated with the commenter to discuss the proposed CE revisions and their concerns.

Comment 13—Comments outside the scope of the proposed CE revisions: Commenters recommended that Reclamation consider revising additional existing CEs, adoption of CEs from other agencies, development of additional CEs, training for Reclamation staff and non-federal partners, and other ideas related to Reclamation's implementation of NEPA.

Response 13—Reclamation appreciates the suggestions and recommendations that were submitted; however, Reclamation notes that these comments are outside the scope of the proposed CE revisions. Reclamation will take the suggestions and recommendations under advisement in the future.

Additional Clarifying Changes

While considering the comments and recommendations Reclamation received during the public comment period on the proposed CE revisions, Reclamation incorporated several changes as described above. In addition, Reclamation has made a few additional changes from the CE text proposed in June 2024. These additional changes and the rationale for them are described below.

For the D4 CE, Reclamation reinstates the qualifying statement that the "action does not lead to long-term changes" in the CE language related to its application for water-related contracts involving minor amounts of long-term water use. This qualifying language was originally included as a condition for all actions under the CE. The text of

proposed CE revision could have been interpreted as omitting this essential condition for long-term water-related contracts. To clarify that this condition remains applicable to all actions covered by the CE, Reclamation is reintroducing this qualifying language for long-term water-related contracting actions, consistent with the original CE text. Reclamation also adds "minor and" before both instances of the word "localized" in the CE language. Reclamation makes this change to emphasize the use of impact-based constraints to guide the application of the CE. For the D8 CE, Reclamation changes "provide right of use of Reclamation land" to "authorize use of Reclamation land" to align the terminology in the CE with the terminology in 43 CFR part 429 on the use of Reclamation land, facilities, and waterbodies. Reclamation changes the beginning of (a) from "work is minor and impacts are expected to be localized" to "impacts of the action are expected to be minor and localized." Reclamation makes this change to emphasize the use of impact-based constraints to guide the application of the CE in combination with the addition of language clarifying the terms "minor" and "localized" for the CE in response to public comments.

For the E1 CE, Reclamation moves "(a)" to before the phrase "the underlying action being funded" and revised "actions" to "action" in the same phrase to improve readability. Reclamation revises the introduction to (b) from "where the work to be done is confined" to "the action is confined" to improve consistency within the CE language. Reclamation removes the phrase "work is considered minor" and the word "where" after "and" from (b). Then Reclamation adds "minor and" before the word "localized" in the CE language. Reclamation makes these changes to emphasize the use of impact-based constraints to guide the application of the CE.

Categorical Exclusions

The Department and Reclamation find that the category of actions described in the CEs (below), do not normally have a significant effect on the human environment, individually or in aggregate. This finding is based on analysis of the Department's proposal to revise these Reclamation CEs, including analysis in Reclamation's Substantiation Report. The Substantiation Report summarizes 71 EAs that resulted in findings of no significant impact (FONSI) to demonstrate the finding that actions under the revised CEs would not normally result in significant

effects to the human environment. The Substantiation Report and EAs and FONSI for these projects are available at www.usbr.gov/nepa.

The Department and Reclamation consulted with CEQ on the proposed and final revisions to the CEs. CEQ issued a letter stating that it has reviewed the revised CEs and found them to be in conformity with NEPA and the CEQ NEPA regulations. Therefore, the Department adds the final revised CEs to the Department Manual at 516 DM 14.5. Reclamation recognizes that certain proposed actions, when reviewed on a case-by-case basis, could result in one or more of the extraordinary circumstances for which it is not appropriate to utilize the CEs (43 CFR 46.215). In such cases, the proposed action could have a significant environmental effect and would require additional NEPA analysis. Thus, prior to applying the CEs, Reclamation will continue to review all extraordinary circumstances listed in the Department's NEPA regulations. If any extraordinary circumstance exists, Reclamation will conduct additional NEPA analysis.

Amended Text for the Departmental Manual

Reclamation's NEPA procedures in 516 DM 14 are modified as follows:
Part 516: National Environmental Policy Act of 1969
Chapter 14: Managing the NEPA Process—Bureau of Reclamation

14.5 Categorical Exclusions

D. Operation and Maintenance Activities

(4) Approval, execution, administration, and implementation of water-related contracts and contract renewals, amendments, supplements, and assignments, and water transfers, exchanges, and replacements, for which one or more of the following apply: (a) for minor amounts of long-term water use, where the action does not lead to long-term changes and impacts are expected to be minor and localized; (b) for temporary (limited to 1 year or less) or interim (limited to 10 years or less) water use where the action does not lead to long-term changes and where the impacts are expected to be minor and localized; or (c) where the only result will be to implement an administrative or financial practice or change. A "water-related" contract is any legally binding agreement to which Reclamation becomes a party, pursuant to its authority under Federal law that (1) makes water available from or to the United States; (2) allows water to be

stored, removed, introduced, conveyed, carried, or delivered in facilities Reclamation owns, manages, operates, or funds; or (3) establishes operation, maintenance, and replacement responsibilities for such facilities.

(8) Issuance or renewal of use authorizations (as defined in 43 CFR 429.2, including crossing agreements which provide rights-of-way) that authorize use of Reclamation land, facilities, or waterbodies where one or more of the following apply: (a) impacts of the action are expected to be minor and localized; (b) the action does not lead to a major public or private action; (c) the only result of the authorization will be to implement an administrative or financial practice or change; or (d) the level of use or impacts to resources is not increased.

(10) Reserved.

(14) Reserved.

E. Financial Assistance, Loans, and Funding

(1) Financial assistance, cooperative agreements, grants, loans, contracts, or other funding, where (a) the underlying action being funded would be covered by another Reclamation CE if Reclamation were implementing the action itself, or (b) the action is confined to areas already impacted by farming or development activities and the impacts are expected to be minor and localized.

(2) Reserved.

(3) Reserved.

Stephen G. Tryon,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 2025-00485 Filed 1-10-25; 8:45 am]

BILLING CODE 4332-90-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO #4820000251]

Record of Decision and Approved Resource Management Plan for the Organ Mountains-Desert Peaks National Monument, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Approved Resource Management Plan (RMP) for the Organ Mountains-Desert Peaks National Monument (Monument) located in Doña Ana County, New Mexico. The BLM New Mexico State Director signed the ROD on January 8, 2025, which

constitutes the decision of the BLM and makes the Approved RMP effective immediately.

DATES: The New Mexico State Director signed the ROD on January 8, 2025.

ADDRESSES: The ROD/Approved RMP are available online at: <https://eplanning.blm.gov/eplanning-ui/project/92170/510>. Printed copies of the ROD/Approved RMP are available for public inspection at the BLM Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico 88005, telephone: (575) 525-4464, or can be provided upon request by contacting Monument Manager Lane Hauser, BLM Las Cruces District Office; telephone: (575) 525-4464, email lhauser@blm.gov.

A copy of the Protest Resolution Report is available at: <https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports>.

FOR FURTHER INFORMATION CONTACT:

Monument Manager Lane Hauser, BLM Las Cruces District Office; telephone: (575) 525-4464; address: 1800 Marquess Street, Las Cruces, New Mexico 88005; email: lhauser@blm.gov. Individuals in the United States who are deaf, deaf-blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or Tele Braille) to access telecommunications relay services for contacting Mr. Lane Hauser. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Approved RMP replaces previous land use management guidance found in the 1993 Mimbres RMP, as amended, for all Monument objects, lands, resources, resource values, and wildlife habitat. The Approved RMP provides long-term management for approximately 496,330-acres of BLM-administered public lands in Doña Ana County, New Mexico. In accordance with Presidential Proclamation 9131 (79 FR 30431); Section 2 of the Antiquities Act of 1906 (Pub. L. 59-206); the John D. Dingell Jr. Conservation, Management, and Recreation Act of 2019 (Pub. L. 116-9) (Dingell Act); and the Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*), the Approved RMP employs protection, preservation, and conservation principles as a management framework to administer the Monument while providing the public with opportunities to observe, study, and enjoy Monument lands. The Approved RMP identifies land use allocations and resource management goals, objectives, and

direction for the protection of objects of scientific and historic interest, preservation of wilderness character, and conservation of natural and cultural resources, resource values, and wildlife habitat.

The Approved RMP is consistent with appropriate laws, regulations, executive orders and proclamations, and agency policy, including, but not limited to, the Federal Land Policy and Management Act, the National Environmental Policy Act, the Endangered Species Act, and section 106 of the National Historic Preservation Act. Through the planning process, the BLM considered reasonably foreseeable impacts associated with the land use allocations and resource management decisions. The BLM assessed five alternatives in the Draft and Final Environmental Impact Statement (EIS) and selected Alternative E as the Proposed RMP, now Approved RMP.

In order to meet the purpose and need of the planning effort and the mandate of Presidential Proclamation 9131, the BLM developed decisions of allowable and prohibited uses of public lands within the Monument. As with all decisions in the Approved RMP, the BLM considered input from Tribal Nations, cooperating State and Federal agencies, the public, and the Office of the Governor of New Mexico.

All clarifications and modifications made between the publication of the Proposed RMP and the Approved RMP are summarized in the ROD. One update relates to the analysis of the social cost of greenhouse gases in the Approved RMP. The Proposed RMP and the Final EIS relied on the 2021 Interagency Working Group estimates to calculate the social cost of greenhouse gases. The ROD and Approved RMP adopt the 2023 Environmental Protection Agency calculations for analyzing the social cost of greenhouse gases. The BLM also clarified the wilderness management goals in the Approved RMP to be consistent with the Wilderness Act. In addition, new management direction was added for the development of a travel management plan. The specific language is below:

- *Goal:* Subject to valid existing rights, exceptions or special provisions specifically authorized by appropriate legal authority, the BLM shall be responsible for preserving the Wilderness character of the area and so administer such area for the purpose it was designated by Congress. In doing so, the BLM shall not designate a permanent or temporary road within a designated Wilderness area for motorized vehicle use or mechanical transport, nor shall the BLM allow the

use of motorized equipment, motorboats, the landing of aircraft, or the establishment of a structure or installation within any such area.

• **Management Direction:** The BLM shall develop a Travel and Transportation Management Plan during implementation of this RMP that incorporates guidance, direction, restrictions, exceptions, and special provisions provided for in the 2019 John D. Dingell, Jr. Conservation, Management and Recreation Act, as amended; the 2009 Omnibus Public Land Management Act, as amended; the Federal Land Policy and Management Act of 1976, as amended; the Wilderness Act of 1964, as amended; or other applicable legal authorities, as appropriate.

These modifications do not constitute substantial changes from the Proposed RMP to the Approved RMP.

The BLM provided announcement of the availability of the Proposed RMP and Final EIS on October 11, 2024, (89 FR 82622) for a 30-day public protest period and received seven protest letters. Upon careful review of the issues identified in each of the seven protest letters, the BLM Director resolved all protests. No changes to the ROD or Approved RMP were necessary to address valid protests. Responses to protest issues were compiled and documented in a Protest Resolution Report (see **ADDRESSES**).

The BLM provided the Proposed RMP and Final EIS to the Governor of New Mexico for a 60-day Governor's consistency review on October 11, 2024. The Office of the Governor of New Mexico did not identify any concerns or potential inconsistencies between the Proposed RMP and State and local plans, policies, and programs.

(Authority: 40 CFR 1506.6; 43 CFR 1610.5–1)

Melanie G. Barnes,

BLM New Mexico State Director.

[FR Doc. 2025–00364 Filed 1–10–25; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO #4820000251]

New Recreation Fee Areas and New Fees for Existing Individual Special Recreation Permits for On-River Camping in the Gunnison River Special Recreation Management Area Within the Dominguez-Escalante National Conservation Area, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to establish fees.

SUMMARY: Pursuant to the Federal Lands Recreation Enhancement Act (FLREA), the Bureau of Land Management (BLM) Grand Junction Field Office (GJFO), Upper Colorado River District, and the Uncompahgre Field Office (UFO), Southwest District, intend to establish recreation fee areas at existing developed campgrounds, future developed campgrounds and campsites, and for designated campsites within the Gunnison River Special Recreation Management Area (SRMA) in the Dominguez-Escalante National Conservation Area (D–E NCA) as managed by the field offices as one NCA unit in Delta, Mesa, and Montrose Counties.

DATES: The new fees will take effect on July 14, 2025 unless the BLM publishes a **Federal Register** notice to the contrary.

ADDRESSES: Documents concerning this fee change may be reviewed at the Grand Junction Field Office, 2815 H Road, Grand Junction, CO 81506; phone: (970) 244–3000; and online at: <https://www.blm.gov/programs/recreation/permits-and-fees/business-plans>.

FOR FURTHER INFORMATION CONTACT:

Zack Kelley, acting National Conservation Area Manager, or Erin Jones, Deputy District Manager, with the Upper Colorado River District, both at the Grand Junction Field Office, telephone: (970) 244–3000. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting the BLM. 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: Consistent with the FLREA, the intent of recreation fees is to help protect natural resources, provide for public health and safety, and facilitate access to public lands and

related waters, and not to maximize fee revenue. Fees are a way of ensuring that those who actively use recreation opportunities make a greater, but reasonable, contribution toward protecting and enhancing those opportunities than those who do not utilize recreational opportunities.

FLREA directs the Secretary of the Interior to publish a 6-month advance notice in the **Federal Register** whenever new recreation fee areas are established. In accordance with BLM policy, the business plan for the D–E NCA explains the fee collection process and how fees will be used at these sites.

The BLM will establish new expanded amenity recreation fees at the existing Big Dominguez and Potholes campgrounds. The BLM will establish future expanded amenity fee collection for future designated campsites (approximately 70) throughout the D–E NCA as expanded amenities are developed and campsites are designated to meet public need and to provide for resource protection.

The expanded amenity fee for developed campsites is \$20 per night per site (up to two vehicles included and no more than five participants per vehicle). For larger capacity sites, as identified at the campground by the BLM, each additional vehicle beyond the first two vehicles will be \$10 each. A vehicle is defined as legal transportation used to access the site (e.g., car, truck, motorcycle, van, or other wheeled conveyance). Participants includes non-human participants (e.g., dogs, horses, alpacas, etc.).

Because the entirety of the D–E NCA meets the definition of a Special Area, the BLM may also establish Individual Special Recreation Permits (ISRP) and associated fees to be paid by visitors participating in activities requiring special management. Consistent with this authority, this notice also provides the required notification to apply a fee structure to the ISRP established for the Gunnison River SRMA for on-river camping. The BLM may also establish an ISRP fee for additional areas where the Authorized Officer, in the future, determines recreation requires special management through an ISRP. Notification of future ISRP fees for any additional areas within the D–E NCA will be published in the **Federal Register**. Day-use areas and areas where dispersed/undeveloped camping is permitted will remain available throughout D–E NCA without a reservation or a fee.

The ISRP fee is \$20 per night per site for small groups (1 to 5 participants), \$50 per night per site for medium groups (6 to 14 participants), and \$100

per night per site for large groups (15 to 25 participants). Participants includes non-human participants (e.g., dogs, horses, alpacas, etc.).

To stay current with rising management and maintenance costs, the BLM will utilize the Western U.S. Consumer Price Index (CPI) to determine future fee adjustments. The Western U.S. CPI is published online monthly at: <https://www.bls.gov/cpi/regional-resources.htm>. A yearly average of the CPI is published every January. Every year after fee implementation begins, the BLM will use the yearly CPI to determine if fees need to be increased. When the CPI rises by 20 percent, the fees may be increased the corresponding amount, rounded up to the nearest whole dollar. This measure will result in a sustainable and consistent funding source that will increase assurances for users that the program could continue to provide regular maintenance and necessary capital improvements into the future. The BLM will update the BLM Northwest and Southwest Resource Advisory Councils (RACs) after each fee increase (approximately every 4 to 5 years) on successes and challenges in using the Western U.S. CPI.

People holding an America the Beautiful Pass—The National Parks and Federal Recreational Lands Senior Pass or Access Pass, or a Golden Age or Golden Access Passport, will be entitled to a 50 percent fee reduction on expanded amenity fees. Discounts and fee-free days do not apply to ISRP fees.

The BLM is establishing these recreation fees in response to increasing recreation demands and resource protection requirements in the D–E NCA. Recreation fees are needed to: maintain visitor facilities and visitor services; replace aging infrastructure; reduce impacts to resources; improve visitor health and safety; and provide sustainable recreational opportunities. The business plan explains: (1) consistency with the BLM recreation fee program policy; (2) the recreation management direction for the D–E NCA; (3) the need for fee collection; (4) how the fees will be used in the area; (5) coordination with RACs; and (6) guidance on future fee increases. As analyzed in the business plan, the recreation use fees are consistent with other nearby Federal land management agency fees and are lower than the fees charged at privately owned campgrounds. The business plan is available at <https://www.blm.gov/programs/recreation/permits-and-fees/business-plans>.

A public comment period on the draft business plan, announced by a news

release, ran from August 26, 2024, to September 25, 2024. BLM Northwest and Southwest RACs met March 30, 2023, at a combined RAC meeting where they discussed fee proposals. The RACs recommended the fee proposal for approval in a joint meeting on May 2, 2024, using the Western U.S. CPI to determine future fee increases.

(Authority: 16 U.S.C. 6803(b) and 43 CFR 2933)

Douglas Vilsack,
BLM Colorado State Director.

[FR Doc. 2025–00507 Filed 1–10–25; 8:45 am]

BILLING CODE 4331–16–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO4820000251]

Notice of Availability of the Record of Decision and Approved Resource Management Plan for the Grand Staircase-Escalante National Monument in Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Approved Resource Management Plan (RMP) for the Grand Staircase-Escalante National Monument (GSENM) in Utah. The Department of the Interior Principal Deputy Assistant Secretary for Land and Minerals Management signed the ROD on Jan. 6, 2025, which constitutes the decision of the BLM, makes the Approved RMP effective immediately, and replaces the 2020 GSENM and Kanab Escalante Planning Area RMPs.

DATES: The Department of the Interior Principal Deputy Assistant Secretary for Land and Minerals Management signed the ROD on Jan. 6, 2025.

ADDRESSES: The ROD/Approved RMP is available online at <https://eplanning.blm.gov/eplanning-ui/project/2020343/510> and will also be available for public inspection at the BLM Paria River District Office, 669 US–89A, Kanab, Utah 84741, and BLM Utah Public Room, 440 West 200 South, Ste. 500 Salt Lake City, UT 84101.

A copy of the Protest Resolution Report is available at: <https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports>.

FOR FURTHER INFORMATION CONTACT:

Bryce Franklin, Project Manager, by phone: 435–644–1288; by mail: 669 US–

89A, Kanab, Utah 84741; by email: bfranklin@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Mr. Franklin. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The BLM prepared the ROD and Approved RMP in response to Presidential Proclamation 10286, which restored the boundaries and management direction for GSENM that existed prior to Dec. 4, 2017, and mandated that the BLM prepare and maintain a new management plan for the BLM-managed lands within the entirety of the restored monument boundaries for the specific purposes of “protecting and restoring the objects identified [in Proclamation 10286] and in Proclamation 6920.” The RMP’s purpose is to provide a management framework, including goals, objectives, and management direction, to guide GSENM resource management consistent with the protection and restoration of GSENM objects and the management direction provided in Presidential Proclamations 10286 and 6920.

The Approved RMP is based on the Proposed RMP (Alternative E) from the Final Environmental Impact Statement (EIS), with minor changes to management actions, goals and best practices for forestry, grazing, recreation, vegetation, and wildlife. A full description of modifications and clarifications can be found in section 1.2.2 of the ROD.

The BLM provided the Proposed RMP/Final EIS for public protest on Aug. 30, 2024, for a 30-day protest period and received 19 protest letters. The BLM Assistant Director for Resources and Planning resolved all protests. Responses to protest issues are compiled and documented in a Protest Resolution Report (see **ADDRESSES**). While no protests were granted, the BLM made several edits to the Approved RMP text to improve clarity based on input received during the protest period.

The BLM provided the Proposed RMP/Final EIS to the Governor of Utah for a 60-day Governor’s consistency review on Aug. 30, 2024. The Governor’s Office identified concerns and inconsistencies between the Proposed RMP/FEIS and State and local plans, policies, and programs. The BLM

considered the concerns, and where not in conflict with the purposes, policies, and programs of Federal laws and regulations applicable to public lands, accepted several recommendations, which are described in sections 1.2.2 and 1.7.4 of the ROD. As the changes were within the range of alternatives considered in the Draft RMP/EIS, the BLM did not seek public comments on the recommendations that were accepted.

On Dec. 20, 2024, the Governor appealed the State Director's decision not to accept all of the State's recommendations, consistent with 43 CFR 1610.3–2. On Jan. 6, 2025, after careful review and consideration of the Governor's points, the Department of the Interior Principal Deputy Assistant Secretary for Land and Minerals Management determined the planning effort properly considered all applicable State and local plans, policies, and programs, and no further changes are necessary to provide for a reasonable balance between the national interest and the State's interest.

(Authority: 40 CFR 1501.9, 43 CFR 1610.2, 43 CFR 1610.5–1)

Matthew A. Preston,

BLM Utah State Director, Acting.

[FR Doc. 2025–00428 Filed 1–10–25; 8:45 am]

BILLING CODE 4331–25–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–39332;
PPWOCRADIO, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before January 4, 2025, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by January 28, 2025.

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 January 4, 2025. Pursuant to section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations Submitted by State or Tribal Historic Preservation Officers

Key: State, County, Property Name, Multiple Name (if applicable), Address/ Boundary, City, Vicinity, Reference Number.

ARIZONA

Maricopa County

Camelback 32, 3241 East Camelback Road,
Phoenix, SG100011361

CALIFORNIA

Marin County

Marconi Wireless-Synanon Tomales Bay
Headquarters Historic District (Boundary
Increase), 18500 CA 1, Marshall vicinity,
BC100011433

GEORGIA

Chatham County

Savannah Powder Magazine, Ogeechee Road,
Savannah vicinity, SG100011426

Effingham County

Ash Farmhouse, 8603 Old Louisville Road,
Newington vicinity, SG100011427

IOWA

Linn County

Klinsky Farmstead Historic District, 1534
Ivanhoe Road, Ely, SG100011413

Mahaska County

Russell, Chuck and Emily, House, 211
Hillcrest Drive, Oskaloosa, SG100011414

Polk County

Financial Center Office Building, 207
Seventh Street, Des Moines, SG100011415
Ruan Center & Carriers Building, 666 Grand
Avenue & 601 Locust Street, Des Moines,
SG100011416

MARYLAND

Baltimore Independent City

Arch Social Club, (Civil Rights in Baltimore,
Maryland, 1831–1976 MPS), 2426
Pennsylvania Avenue, Baltimore,
MP100011434

Cecil County

West Nottingham Presbyterian Church
Complex, 1195 Firetower Road, Colora,
SG100011349

Charles County

Bel Alton High School, 9501 Crain Highway,
Bel Alton, SG100011395

Frederick County

Frederick Historic District (Boundary
Increase), Roughly bounded by Bentz,
Seventh, East, and South Streets,
Frederick, BC100011393

Prince George's County

Bladensburg Battlefield, Address Restricted,
Bladensburg vicinity, SG100011428

MASSACHUSETTS

Barnstable County

Travelers Club, 314 Barlows Landing Road,
Bourne, SG100011423

Bristol County

Monsignor James Coyle High School, 61
Summer Street, Taunton, SG100011424

Norfolk County

George E. Keith Company Factory No. 8, 44
Wharf Street, Weymouth, SG100011425

MINNESOTA

Hennepin County

Oskam, Hendrik and MARRIGIE (Marri), House,
6901 Dakota Trail, Edina, SG100011339

Otter Tail County

Foss, Ole and Anne, House, 301 Foss Street
North, Underwood, SG100011340

MISSISSIPPI

Hancock County

Holly Bluff on-the-Jordan, 6670 Crump Road,
Kiln vicinity, SG100011347

Lee County

Downtown Tupelo Historic District
(Boundary Increase), Roughly bounded by
Clark Street, Kansas City Railroad line,
North Santa Fe Railroad line, and South
Church St., Tupelo, BC100011392

MISSOURI

Gasconade County

Hermann High School, 808 Washington
Street, Hermann, SG100011397

Greene County

Roberts Farmstead, 1120 South Farm Road 193 (primary); 715 South Farm Road 193, Springfield, SG100011400

Howell County

Lincoln School, 1400 E. Pony Thomas Street, West Plains, SG100011398

Jackson County

Mayfair Apartment Hotel, (Working-Class and Middle-Income Apartment Buildings in Kansas City, Missouri MPS), 1224 East Linwood Boulevard, Kansas City, MP100011399

Perry County

Faherty House, 11 South Spring Street, Perryville, SG100011396

MONTANA**Park County**

Gardiner Bridge, Milepost 0.1 on U.S. Highway 89/Second Street, Gardiner, SG100011446

Silver Bow County

Castle Rock Lodge, 665 Little Basin Creek Rd., Butte, SG100011341

NEW YORK**Allegany County**

The Little Genesee Schoolhouse-Genesee District No. 1 School, 8351 State Route 417, Little Genesee, SG100011343

The Village of Wellsville East Historic District, Roughly Bounded by Genesee Pkwy; Bolivar Rd.; Coats St.; Johnson St.; E Genesee St.; O'Connor St.; Scott Ave.; Wheeler Place; Windover E & W; and E Dyke St., Wellsville, SG100011345

Bronx County

Joseph Rodman Drake Park and Enslaved People's Burial Ground, Oak Point Ave., Drake Park South, Longfellow Ave., and Hunts Point Ave., Bronx, SG100011418
Eastchester Houses, Generally, Burke Avenue, Bouck Avenue, Adea Avenue, Yates Avenue, Bronx, SG100011441

Livingston County

Nunda Village Historic District, Buffalo St, Center St, East St, Fair St, First St, Fourth St, Gibbs St, Holmes St, Massachusetts St, Mill St, North Church St, North State St, Portage St, Price St, Second St, Seward St, South Church St, South State St, Vermont St, West St, Nunda, SG100011419

New York County

Hotel Martinique, 49 West 32nd Street, New York, SG100011342

Oneida County

Rome Residential Historic District, Roughly bounded by West Cedar St, North James St, West Liberty St and North Madison St, Rome, SG100011346

Onondaga County

Westcott-University Neighborhood Historic District, (Architecture of Ward Wellington Ward in Syracuse MPS), Bounded by portions of Madison St, Bassett St, East Genesee St, Cumberland Ave,

Westmoreland Ave, Euclid Ave, Montana St, Dakota St, Kensington Rd, Westcott St, Broad St, Lancaster Ave, Ackerman Ave, Stratford St, etc., Syracuse, MP100011439

Orleans County

Childs Historic District, (Cobblestone Architecture of New York State MPS), Portions of Ridge Road and Oak Orchard Road, Childs vicinity, MP100011442

Otsego County

Tuttle-Peck House, 838 Pegg Road, New Lisbon, SG100011420

Richmond County

Temple Israel Reform Congregation, 315 Forest Ave, Staten Island, SG100011421

Schuyler County

Lawrence Memorial Chapel and Cemetery, 2770 State Route 228, Catharine, SG100011344

Steuben County

St. Vincent de Paul Roman Catholic Church Complex, 222 Dodge Avenue, 109 Ellicott Street, and 108 Griffith Street, Corning, SG100011440

Tompkins County

Lavender Hill Commune, 327 Tupper Road, Newfield, SG100011422

OHIO**Cuyahoga County**

Calvary Presbyterian Church, (Twentieth-Century African American Civil Rights Movement in Ohio MPS), 7812 Euclid Ave, Cleveland, MP100011407

Licking County

Contract Airmail Route 34 Columbus-Philadelphia Route Marker 2, 530 Heath Road, Heath, SG100011411

Richland County

Ohio Brass Company Office Building, 380 N Main Street, Mansfield, SG100011412

OREGON**Clackamas County**

McLean, Dr. Edward and Anne, House, 5350 River Street, West Linn, SG100011430

Jackson County

Lee-Janouch House, 1202 East Main Street, Medford, SG100011431

Multnomah County

Burkes-Belluschi House, 700 NW Rapidan Terrace, Portland, SG100011447
Juniper House, 2006 SE Ankeny Street, Portland, SG100011448

PENNSYLVANIA**Philadelphia County**

Weisbrod & Hess Brewery, 2421 Martha Street; 2423–39 Amber Street, Philadelphia, SG100011438

PUERTO RICO**Juncos Municipality**

Cárcel Municipal de Juncos, Calle Agüeybaná Esq. calle Baldorioty, Juncos, SG100011436

RHODE ISLAND**Bristol County**

Allin, General Thomas, House, 20 Lincoln Avenue, Barrington, SG100011435

SOUTH CAROLINA**Chester County**

Finley High School, (Equalization Schools in South Carolina, 1951–1960), 112 Caldwell Street, Chester, MP100011403

Florence County

Green's Funeral Home and Ambulance Service, 433 Ward Street, Lake City, SG100011408

TEXAS**Harris County**

Humble-Exxon Building, 800 Bell Street and 1616 Milam Street, Houston, SG100011429

WISCONSIN**Pierce County**

Grimm, Jay and Bernice, House, 108 South Sixth Street, River Falls, SG100011401

A request for removal has been made for the following resource(s):

MINNESOTA**Big Stone County**

District No. 13 School, CR 25, Correll vicinity, OT85001772

Dakota County

Good Templars Hall, 9965 124th St. E., Hastings vicinity, OT79001234

OKLAHOMA**Woods County**

Alva Municipal Swimming Pool and Bathhouse, 1402 Flynn St., Alva, OT100008455

Additional documentation has been received for the following resource(s):

CALIFORNIA**Marin County**

Marconi Wireless-Synanon Tomales Bay Headquarters Historic District (Additional Documentation), 18500 CA 1, Marshall vicinity, AD88003223

COLORADO**Pueblo County**

Stickney, Charles H., House (Additional Documentation), 101 E Orman Ave., Pueblo, AD85000232

MARYLAND**Frederick County**

Frederick Historic District (Additional Documentation), 2 blocks E and 3 blocks W of Market St., from South St. to 7th St., Frederick, AD73000916

MASSACHUSETTS**Berkshire County**

Clinton African Methodist Episcopal Zion Church (Additional Documentation), 9 Elm Ct., Great Barrington, AD08000464

OKLAHOMA**Blaine County**

Dusabek Filling Station (Additional Documentation), 101 N Main Street, Okeene, AD100010776

PENNSYLVANIA**Clearfield County**

Old Town Historic District (Additional Documentation), Irregular pattern along Front St., Clearfield, AD79002212

Authority: Section 60.13 of 36 CFR part 60.

Sherry A. Frear,

*Chief, National Register of Historic Places/
National Historic Landmarks Program.*

[FR Doc. 2025-00442 Filed 1-10-25; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement**

[S1D1S SS08011000 SX064A000
256S180110; S2D2S SS08011000
SX064A000 25XS01520]

**Notice of Availability of the Final
Environmental Impact Statement for
Navajo Transitional Energy Company's
Federal Mining Plan Modification for
Federal Lease MTM 94378**

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

ACTION: Notice of availability of the final environmental impact statement.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) announces the availability of the final environmental impact statement (EIS) for Navajo Transitional Energy Company's (NTEC) Lease by Application 1 (LBA1) Federal Mining Plan Modification for Federal Lease MTM-94378 and MTM 110693 (the Project). Spring Creek Mine (SCM) is in Big Horn County, Montana, approximately 32 miles from Sheridan, Wyoming. The Project, as proposed, includes 162.5 acres of additional surface disturbance and recovery of an additional 39.9 million tons (Mt) of Federal coal.

DATES: The U.S. Environmental Protection Agency (EPA) will also publish a notice of availability (NOA) in the **Federal Register**. The Final EIS waiting period begins with the publication of EPA's NOA in the **Federal Register** and will last for 30 days. After the waiting period, OSMRE will select an alternative and issue the Record of Decision (ROD).

ADDRESSES: The Final EIS and documents pertinent to this proposal are

available for review on OSMRE's website at: <https://www.osmre.gov/laws-and-regulations/nepa/projects>.

FOR FURTHER INFORMATION CONTACT:

Marcelo Calle, Program Support Division Chief, OSMRE Western Regions 5, 7-11, P.O. Box 25065, Lakewood, CO 80225-0065; (303) 236-2929 or mcalle@osmre.gov.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:**Project Background**

OSMRE has prepared a Final EIS for SCM's LBA1 mining plan modification for inclusion in its decision document recommending approval, disapproval, or conditional approval of the mining plan modification to the Secretary of the Department of the Interior (Secretary). 30 CFR 746.13. In accordance with the Mineral Leasing Act of 1920 (MLA), the Secretary must approve, disapprove, or conditionally approve the mining plan modification because it contains lands with leased Federal coal associated with MTM-94378 and MTM 110693. The Secretary has delegated this authority to the Assistant Secretary for Land and Minerals Management (ASLM).

OSMRE initially published an environmental assessment (EA) for LBA1 on October 3, 2016. This EA was challenged, and the United States District Court for the District of Montana held, in *WildEarth Guardians v. Haaland*, No. CV 17-80-BLG-SPW (D. Mont. 2021), that the EA failed to take a hard look at: indirect and cumulative effects of diesel emissions, noise, vibrations, and coal dust emissions; indirect effects of non-greenhouse gas from downstream combustion emissions; and effects related to the social costs of greenhouse gases. This Final EIS updates and expands on the environmental analysis in the 2016 EA and provides the additional impacts analysis identified as deficient by the district court.

The SCM is operated by NTEC under Permit SMP C1979012, which was issued by the Montana Department of Environmental Quality (MDEQ). As proposed, the Project includes 162.5 acres of additional surface disturbance and recovery of an additional 39.9 Mt of Federal coal.

Purpose and Need for the Proposed Action

OSMRE's purpose in preparing this Final EIS is to fully analyze the

potential environmental impacts of the proposed Federal mining plan modification, with particular attention to addressing the deficiencies identified by the district court, so that OSMRE can make a recommendation to the ASLM to approve, disapprove, or conditionally approve the proposed Federal mining plan modification for LBA1. NTEC, the current operator, will not be able to access or recover the remaining Federal coal in the LBA1 tracts unless OSMRE completes its analysis under the National Environmental Policy Act and the ASLM approves the Federal mining plan modification.

Proposed Action and Alternatives

Under the Proposed Action, OSMRE would recommend to the ASLM to approve the mining plan modification as proposed. If approved by the ASLM, the Proposed Action would allow 162.5 acres of additional surface disturbance and the recovery of an additional 39.9 Mt of Federal coal in the LBA1 tracts over a period of approximately 16 years.

The Final EIS analyzes three additional alternatives:

- **No Action:** Under the No Action alternative, the Federal mining plan modification for the LBA1 tracts would not be approved, and SCM would no longer be authorized to mine Federal coal in the LBA1 tracts.
- **Partial Mining Alternative:** Under the Partial Mining alternative, ASLM approval of the mining plan modification for the LBA1 tracts would end after a five-year term. As analyzed in this EIS, during this 5-year approval term, approximately 78.5 acres of surface disturbance and the recovery of 19.3 Mt of Federal coal from the LBA1 tracts are anticipated. Under the Partial Mining alternative, if the operator would like to continue mining beyond the initial 5-year term, the operator can apply for an additional mining plan modification.

- **Accelerated Mining Rate Alternative:** Under the Accelerated Mining Rate alternative, it is assumed that the remaining 39.9 Mt of coal would be mined from LBA1 tracts at a rate of 18 Mt per year, which reflects the rate of mining that was expected to occur in 2016 but is unlikely to occur under current market conditions. If approved by the ASLM, the Accelerated Mining Rate alternative would allow 162.5 acres of additional surface disturbance and the recovery of an additional 39.9 Mt of Federal coal from the LBA1 tracts, over a 2.2-year period.

Based on the analyses contained in the Final EIS, and, after carefully considering input received during scoping and the public comment period

of the Draft EIS, OSMRE selected the Partial Mining alternative as the preferred alternative.

Summary of Expected Impacts

Reasonably foreseeable effects of mining Federal coal were evaluated for the following resources in the Final EIS:

- Air Quality (measured as concentration of criteria air pollutants regulated under the National Ambient Air Quality Standards, Hazardous Air Pollutants, and Air Quality Related Values such as visibility [haze] and atmospheric deposition)
- Emissions of greenhouse gases as they relate to climate change (measured in terms of carbon dioxide equivalent for both 20-year and 100-year global warming potentials)
- Surface water and groundwater quality and quantity
- Socio-economic effects (including changes to state and local taxes, royalties, fees, lease bids and bonuses, as well as payroll benefits as well as effects to Environmental Justice populations)
- Federally listed threatened/endangered species
- Geology
- Soils
- Cultural Resources
- Visual Resources
- Wildlife

Anticipated Permits and Authorizations

None.

Schedule for the Decision-Making Process

The OSMRE anticipates releasing a ROD in February 2025.

Public Participation

In addition to making the Draft EIS available for public comment, OSMRE hosted one public meeting during the comment period. OSMRE received 452 written comments, including comments from Federal and State agencies, non-governmental organizations, and members of the public. OSMRE addressed these comments in the Final EIS. OSMRE considered the public comments received on the Draft EIS and during internal OSMRE review and incorporated them as appropriate into the Final EIS. Public comments and internal OSMRE review resulted in the addition of clarifying text. The revisions and edits have not significantly changed the impact analyses.

Lead and Cooperating Agencies

OSMRE is the lead agency for this EIS. No agencies indicated an interest in being a cooperating agency on the EIS.

Decision Maker

Department of the Interior Assistant Secretary for Land and Minerals Management.

Nature of Decision To Be Made

OSMRE will take the analysis in the Final EIS into consideration as it makes a recommendation to the ASLM about the Federal mining plan modification associated with development of the LBA1 Federal coal tracts. The ASLM will consider OSMRE's recommendation to decide whether the mining plan modification is approved, disapproved, or approved with conditions. OSMRE's recommendation to the ASLM is based, at a minimum, on the documentation specified at 30 CFR 746.13.

David A. Berry,

Regional Director, Unified Regions, 5, 7–11.

[FR Doc. 2025–00410 Filed 1–10–25; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–1430]

Certain Urine Splash Guards and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 6, 2024, under section 337 of the Tariff Act of 1930, as amended, on behalf of For Kids By Parents, Inc. of Potomac, Maryland. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain urine splash guards and components thereof by reason of the infringement of certain claims of U.S. Patent No. 7,870,619 (“the ‘619 patent’”) and U.S. Patent No. 11,812,901 (“the ‘901 patent’”). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained

therein, may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>.

FOR FURTHER INFORMATION CONTACT:

Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2024).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 6, 2025, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1 and 2 of the ‘619 patent and claims 1–3 of the ‘901 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is “a flat sheet of flexible material, a portion of which is divided into a plurality of attachment tabs, to be fashioned and, with the aid of an adhesive compound applied to the attachment tabs, affixed to the underside of a toilet seat to prevent urine egress through a gap between the toilet seat and toilet bowl;”

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which

this notice of investigation shall be served:

(a) The complainant is:

For Kids By Parents, Inc., 1385 Kimblewick Road, Potomac, Maryland 20854

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Shenzhenshi Dijiaotuman Trading Co., Ltd. (d/b/a Tigaman), Shangfen Community, Minzhi Street, Longhua District No. 201, Longwu Industrial Zone, Shenzhen, Guangdong, 518000, China

Junyaxincai wuzixunyouxiangongsi (d/b/a Junyixin), Room 307, No. 15, Dong'an Dongshanli, Xiamen City, Jimei District, Fujian Province, 361021 China

Hezeyunjiangjixieshebeiyouxixiangongsi (d/b/a Maomaohouse), No. 203, No. 2, Lane 4, Huangjin South Road, Nanwan Street, Longgang District, Shenzhen, Guangdong Province, 518000 China

Shenzhenshiranbodianshiyouxiangongsi (d/b/a Eurbus), Room 1205, No. 3, Yuandun Road, Danzhutou Community, Nanwan Street, Shenzhen, Longgang District, 518114 China

Hefeiweifengshidaishidaimaoyiyouxiangongsi (d/b/a HealthSTEC), Baohe District, Room 104, Building 23, Area A, Wenchang Xincun, Hefei City, Anhui, 230000 China

ShenzhenShi Julonghui Trading Co., Ltd. (d/b/a Edermurs), Bantian Subdistrict, Room 812, 8th Floor, Donglian E-Times Building, No. 4, Zhongxing Road, Ma'antang, Shenzhen, Longgang District, Guangdong Province, 518000 China

Shenzhenshi Lishian Keji Youxiangongsi (d/b/a Lishian), Room 601, No. 10, University City Pioneer Park, Lishan Road, Pingshan Community, Taoyuan street, Nanshan District, Shenzhen, Guangdong Province, 518000 China

Shenzhen Pairs Industrial Co., Ltd. (d/b/a Sunyoka123), Gangtuo Industrial Zone, Yabian Community, Shajing Street, Room 506, Building B, Haoyi Commercial and Residential Building, Shenzhen, Bao'an District, Guangdong Province, 518125 China

Guangzhou Lesenyu Dianzishangwu Youxiangongsi (d/b/a Le Sengyu), No. 1268 Guangzhou Avenue Middle, 803A (Room 2138), Guangzhou, Tianhe District, Guangdong Province, 510620 China

Shenzhen Sibaite Industrial Co., Ltd. (d/b/a SeLUcky), Gangtuo Industrial Zone, Yabian Community, Shajing

Street, Building B, 501, Haoyi Commercial and Residential Building, Shenzhen City, Bao'an District, Guangdong Province, 518104 China

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: January 6, 2025.

Susan Orndoff,

Supervisory Attorney.

[FR Doc. 2025-00431 Filed 1-10-25; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On January 6, 2025, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Indiana in the lawsuit entitled *United*

States v. Meyer Distributing, Inc., Civil Action No. 3:25-cv-4.

The proposed Consent Decree would resolve Meyer's liability alleged in the concurrently filed Complaint for violations of section 203(a)(3) of the Clean Air Act, 42 U.S.C. 7522(a)(3), arising from Meyer's sale and offers to sell devices that bypass, defeat, or render inoperative emission controls installed on motor vehicles or motor vehicle engines in violation of the Clean Air Act, 42 U.S.C. 7522(a). The Complaint alleges that Meyer sold or offered to sell over 600 types of devices within four distinct categories from January 1, 2018 through September 16, 2020. The proposed Consent Decree requires Meyer to pay a civil penalty of \$7.4 million, comply with the Clean Air Act going forward, complete a series of compliance measures to prevent future violations, and complete a mitigation project to offset some of the excess emissions caused by its violations in the region with the highest number of violative sales.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Meyer Distributing, Inc.*, D.J. Ref. No. 90-5-2-1-12694. All comments must be submitted no later than thirty (30) days after the publication date of this notice.

Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email	pubcomment-ees.enrd@usdoj.gov
By mail	Assistant Attorney General, U.S. DOJ-ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Any comments submitted in writing may be filed by the United States in whole or in part on the public court docket without notice to the commenter.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. If you require assistance accessing the proposed Consent Decree, you may request assistance by email or by mail

to the addresses provided above for submitting comments.

Laura Thoms,
Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.
[FR Doc. 2025–00477 Filed 1–10–25; 8:45 am]
BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE
[OMB Number 1123–0010]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Request for Registration Under the Gambling Devices Act of 1962

AGENCY: Criminal Division, Department of Justice.
ACTION: 30-Day notice.

SUMMARY: The Criminal Division, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.
DATES: Comments are encouraged and will be accepted for 30 days until February 12, 2025.
FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Dawn Cauraugh, Office of Enforcement Operations, 1301 New York Avenue NW, Washington DC 20530, (202) 353–3993, dawn.cauraugh.usdoj.gov.
SUPPLEMENTARY INFORMATION: The proposed information collection was previously published in the **Federal Register** at 89 FR 89044 on November 12, 2024, allowing a 60-day comment

period. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and/or
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering either the title of the information collection or the OMB Control Number OMB 1123–0010. This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years

without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection:

1. *Type of Information Collection:* Extension of a previously approved collection.
2. *Title of the Form/Collection:* Request for Registration Under the Gambling Act of 1962 (15 U.S.C. 1171–1178).
3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* OMB No. 1123–0010 (7/31/2017); Office of Enforcement Operations.
4. *Affected public who will be asked or required to respond, as well as a brief abstract:*
[Affected Public: Primary: Business or other for-profit. Other: Not-for-profit institutions, individuals or household, and State, Local, or Tribe Government. The form can be used by any entity required to register under the Gambling Devices Act of 1962 (15 U.S.C. 1171–1178).
[Abstract: Under the Gambling Devices Act of 1962 (15 U.S.C. 1171–1178) mandates that the Department of Justice register all entities that participate in the interstate commerce of gambling devices. Registration involves the collection of certain information from the respondent, as specified in the Act.
5. *Obligation to Respond:* Gambling Devices Act of 1962, 15 U.S.C. 1171–1178.
6. *Total Estimated Number of Respondents:* 7,800 of respondents.
7. *Estimated Time per Respondent:* 5 minutes.
8. *Frequency:* Annually.
9. *Total Estimated Annual Time Burden:* 650 hours.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency (annually)	Total annual responses	Time per response (min)	Total annual burden (hours)
Form	7,800	1	7,800	5	650
Unduplicated Totals	7,800	1	7,800	5	650

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning
Staff, Justice Management Division, United States Department of Justice,
Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: January 7, 2025.

Darwin Arceo,

*Department Clearance Officer for PRA, U.S.
Department of Justice.*

[FR Doc. 2025-00449 Filed 1-10-25; 8:45 am]

BILLING CODE 4410-14-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2025–
01; Exemption Application No. D-12084]

Exemption From Certain Prohibited Transaction Restrictions Involving United Brotherhood of Carpenters and Joiners of America (UBC or the Applicant) Located in Washington, DC

AGENCY: Employee Benefits Security
Administration, Labor.

ACTION: Notice of exemption.

SUMMARY: This document gives notice of an individual exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and the Internal Revenue Code of 1986 (the Code). This exemption permits the Trustees of the United Brotherhood of Carpenters Pension Fund (the Plan) to sell 19.25 acres of improved real property (the Property) on behalf of the Plan to the UBC for cash (the Sale).

DATES: The exemption will be in effect on January 13, 2025.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Mpras Vaughan, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693-8565 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: UBC requested an exemption pursuant to ERISA section 408(a) and Code section 4975(c)(2) and supplemented the request with certain additional information (that is collectively, referred to as the “Application”).¹ On October 1,

2024, the Department published a notice of proposed exemption in the **Federal Register** (the Proposed Exemption).²

Based on UBC’s representations in its Application and the administrative record, the Department has determined to grant the Proposed Exemption. This exemption provides only the relief specified herein and does not provide relief from violations of any law other than the prohibited transaction provisions of ERISA and the Code.

Benefits of the Exemption: The Department is granting relief based, in part, on UBC’s representations that the Plan will receive approximately \$4,317,500 to \$4,620,000 more in net proceeds by selling the property to UBC than it would receive in a sale to an unrelated third party. Other expected benefits to the Plan are described below.

As discussed below, the Department makes the requisite findings under ERISA section 408(a) based on the Applicant’s adherence to all the exemption’s conditions at all times. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are necessary for the Department to grant the relief requested by the Applicant, and that the Department would not have granted this exemption without these conditions.

Background

1. The UBC is an international labor organization with 725 local unions (UBC Local Unions) and 37 councils (the UBC Councils). The UBC Local Unions are chartered by and affiliated with the UBC and represent the individual members of the UBC in their respective geographic area. Each UBC Council is affiliated with a UBC Local Union and the various UBC Councils are affiliated to the UBC by the UBC Constitution. According to the Applicant, the UBC Councils are separate legal entities from the UBC and the UBC does not control the UBC Councils that are affiliated with it. Further, the Applicant states that none of the trustees appointed by the UBC Councils are officers of the UBC, and no agency relationship exists between the UBC and the UBC Councils.

2. The Plan is a multiemployer defined benefit pension plan located in Las Vegas, Nevada.³ The Plan provides

² 89 FR 79953.

³ The Applicant states that the Plan elected to become a multiemployer plan in accordance with ERISA section 3(37)(G) and meets the legislative definition of a multiemployer plan under 3(37)(G)(vi). That section reads, “(vi) A plan is described in this clause if it is a plan sponsored by an organization which is described in section 501(c)(5) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(5)] and exempt from tax under section 501(a) of such Code 1986 [26 U.S.C. 501(a)] and

pension benefits to full-time officers or representatives employed by a UBC Local Union, UBC Council, other designated representatives of a UBC Local Union or UBC Council, or persons who are United States residents and are determined to be representative of, or professional, management, or confidential employees of, the UBC.⁴ As of December 31, 2022, the Plan had 4,627 participants and as of June 30, 2023, the Plan had approximately \$931,860,235 in assets. According to the Plan’s annual funding notice issued in April 2022, the Plan had a funded percentage of 99.3% as of January 1, 2021.

3. The Plan is sponsored and administered by a Board of Trustees (the Board) comprised of up of six (6) trustees who are current and former members of the UBC Executive Board (the UBC Trustees) and five (5) trustees who are appointed by officers of UBC Local Unions or UBC Councils (the Council Trustees).⁵ The UBC Trustees and the Council Trustees are referred to collectively as the “Trustees.” The Applicant represents that the UBC is an employee organization whose members are covered by the Plan and an employer of employees who are covered by the Plan; therefore, it is a party in interest to the Plan pursuant to ERISA section 3(14)(C) and (D).

The Property

4. The Plan owns the Property through its wholly-owned limited liability company, Bermuda Hidden Well, LLC (Bermuda LLC), that was incorporated by the Plan on April 19, 2001 in the State of Delaware. Bermuda LLC was originally formed to hold real property on behalf of the Plan and is managed on behalf of the Plan by Washington Capital Management, Inc.

which was established in Chicago, Illinois, on August 12, 1881.” The United Brotherhood of Carpenters Pension Fund is sponsored by the UBC, which is a 501(c)(5) organization, tax exempt under Code section 501(a), and was established in Chicago, Illinois, on August 12, 1881.

⁴ Employees of the Carpenters International Training Fund, The International Labor-Management Committee for the Floor and Wall Covering Industry, the UBC National Job Corps Training Fund, The United Brotherhood of Carpenters Pension Fund, and the Carpenters Legislative Improvement Committee may also be eligible for participation in the Plan.

⁵ The Applicant represents that, unlike other multiemployer plans, the Plan is not maintained by a collective bargaining agreement and, therefore, is not a “Taft-Hartley” plan, pursuant to Labor Management Relations Act section 305(c)(5). Because the Trustees of the Plan are appointed by either the UBC or UBC Local Unions and UBC Councils, none of the Trustees could be considered “employer representatives,” which would be required for the Plan to constitute a Taft-Hartley multiemployer plan.

¹ The procedures that govern the Applicant’s request for an exemption (the Exemption Procedures) are set forth in 29 CFR part 2570, subpart B at 76 FR 66637, 66644 (October 27, 2011). Although the Applicant’s submission is being processed under the Exemption Procedures in effect as of December 27, 2011, the Exemption Procedures were recently amended at 89 FR 4662, 4691 (January 24, 2024). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. app. 1 (1996), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under the Code section 4975(c)(2) to the Secretary of Labor. Accordingly, the Department grants this exemption under its sole authority. Furthermore, references herein to provisions of Title I of ERISA shall be deemed to refer to their applicable corresponding provision in Code section 4975, unless specified otherwise.

(WCM), which serves as the Plan's Qualified Professional Asset Manager for real estate and ERISA 3(38) fiduciary investment manager.

5. The Property is comprised on 19.25 acres and located at 6855 Bermuda Road, Las Vegas, Clark County, Nevada. It was specifically developed for car rental operations and includes a passenger terminal, car wash, car repair facility with a service bay, and covered parking.

6. The Plan currently leases the Property to Enterprise Leasing Company-West, LLC (Enterprise) pursuant to a long-term lease that has been extended via several short-term extensions since 2021. Most recently, the Plan and Enterprise amended the lease to extend the expiration date for a portion of the Property through March 31, 2025. UBC represents that the Plan has the ability to terminate the amended lease early. Enterprise's footprint of the premises (and the rent it owes the Plan) has decreased significantly since March 2023 as Enterprise gradually transitions its operational components to other locations.

7. The Property is adjacent to a 10.89-acre parcel owned by UBC (the Adjacent Property) and both parcels abut the Carpenters International Training Center (ITC), which also is owned by UBC. The ITC is designed to provide apprenticeship and training programs to the Plan's participants. The Property, Adjacent Property, and ITC all sit upon an integrated block of land that also houses the UBC offices and several hotels that are owned by UBC and used to host visitors to the UBC Campus.

Decision To Sell the Property

8. As described in the Proposed Exemption, the Plan fiduciaries, with the assistance of WCM, determined that the most prudent course of action for the Plan upon the termination of the lease is to sell the Property to UBC for the following reasons:

- a new tenant was unlikely to enter a long-term lease at the Property's current fair market rental value;
- the Property had been modified to specifications that suited Enterprise's operations;
- it was unlikely that the Plan could secure another long-term lease without significantly redeveloping the Property; and
- the highest and best use of the Property would be to redevelop it with light industrial buildings.

9. Shumaker, Loop & Kendrick LLP (Shumaker, the Independent Fiduciary, or QIF) was engaged by the Plan to act as its independent fiduciary with respect to the Sale, and is required to

ultimately determine whether the Plan proceeds with the Sale.⁶ Shumaker engaged the appraisal firm Cushman (the QIA) to conduct an appraisal of the Property in December of 2022 (the 2022 Appraisal).⁷ The 2022 Appraisal valued the Property at \$33,930,000, which includes an "assemblage increase" (the Assemblage Increase)⁸ resulting from UBC's ownership of the Adjacent Property and certain "contributory costs" (the Contributory Costs) spent by the Plan for the proposed redevelopment of the Property.⁹

⁶ As described in the Proposed Exemption, Shumaker, as the Plan's independent fiduciary with respect to the Sale, must prudently and loyally: (i) represent the interests of the Plan in the Sale; (ii) determine that the Sale and the Sale price is in the interest and protective of the rights of the Plan and its participants and beneficiaries; (iii) review and approve the terms and conditions of the Sale and further negotiate any conditions they consider to be in the interest of the Plan; (iv) independently and prudently engage the qualified independent appraiser for the Sale; (v) review and approve the methodology used by the appraiser and ensure that such methodology is properly applied in determining the Property's fair market value on the date of the Sale; (vi) monitor the Sale throughout its duration consistent with its duties as a prudent plan fiduciary; (vii) ensure that Cushman & Wakefield of Nevada, Inc. in its role as qualified independent appraiser (Cushman or the QIA) renders an updated fair market valuation of the Property as of the date of the Sale; (viii) determine whether it is prudent to proceed with the Sale; (ix) refrain from entering into any agreement, arrangement or understanding that violates ERISA section 410; (x) ensure compliance with the general terms of the transaction and with the conditions of the exemption; (xi) take any appropriate actions to safeguard the interests of the Plan and its participants and beneficiaries; and (xii) submit a written report to the Department not later than 90 days after the Sale has been completed demonstrating that each exemption condition has been met.

⁷ The 2022 Appraisal contains detailed analysis which is available by contacting the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1515, 200 Constitution Avenue NW, Washington, DC 20210. Please reference D-12084.

⁸ As described above, the Original Parcel (30.14 acres previously owned by the Plan in its entirety) was subdivided into the Property (19.25 acres currently owned by the Plan) and the Adjacent Parcel (10.89 acres currently owned by the UBC). The 2022 Appraisal increased the \$30,325,000 "as is" fair market value of the Property by \$3,410,000 (i.e., the Assemblage Increase) to \$33,930,000 to account for the special value that the Property has to the UBC because it is adjacent to the UBC-owned Adjacent Parcel.

⁹ At the request of the Independent Fiduciary, the QIA valued the architect, engineer, and development studies and other activities paid for by the Plan in connection with the potential development of the Property, referred to in the Proposed Exemption as the "Contributory Costs." The 2022 Appraisal determined these costs to be approximately \$270,000. The QIA stated in the 2022 Appraisal that these costs represent the value of costs spent by the Plan to date for the benefit of the adjacent property to the proposed buyer (i.e., the UBC) and not the value to the general market. The Contributory Costs further increased the value of the Property if purchased by the UBC to a total of \$34,090,000.

Exemptive Relief

10. In the proposal, the Department proposed exemptive relief from ERISA sections 406(a)(1)(A) and (D) and 406(b)(1) and (2) for the Sale of the Property by the Plan to the UBC in exchange for an amount of cash equal to the greater of (1) \$34,090,000, or (2) the fair market value of the Property (which includes the Assemblage Increase and Contributory Costs) as established in an updated appraisal of the Property's fair market value on the date of the Sale (the Sale Proceeds).¹⁰

Plan Benefits

11. The Department finds that the exemption would be in the Plan's interest, based on the Plan's receipt of additional compensation due to the Assemblage Increase and Contribution Costs, and the QIF's representations that it would not be prudent for the Plan to expend the time and resources that would be necessary to prepare the Property for sale to a third party. According to the QIF, a sale of the Property by the Plan to an unrelated third-party at its "As Is" fair market value would be anticipated to result in approximately \$4,317,500 to \$4,620,000 less in net proceeds than the proposed Sale to UBC, because the Assemblage Increase and Contributory Costs would not be recouped, and brokerage fees and additional transaction costs would be incurred. According to UBC and the QIF, selling the property to UBC would be in the best interest of the Plan and its participants and beneficiaries, because it would provide the Plan with the opportunity to sell an asset for a significant gain due to the Assemblage Increase, eliminate the risk of losing an investment opportunity associated with the redevelopment of the Property (and the time associated with that process), and diversify the Plan's investments by reinvesting the sale proceeds in accordance with the Plan's investment policy statement.¹¹

12. Nevertheless, in its initial review of the application, the Department was concerned about the possibility that the transaction was designed to transfer a valuable asset to a party in interest (UBC) solely for UBC's benefit.¹² In

¹⁰ The legal analysis regarding the requested exemptive relief is provided in the Proposed Exemption and can be found in the **Federal Register** at 89 FR 79958 (October 1, 2024).

¹¹ A description of the Independent Fiduciary's analysis and conclusions can be found in the Proposed Exemption in paragraphs 28–35 at 89 FR 79957 through 58.

¹² The Department notes that the prohibited transaction provisions of ERISA are designed to prevent a fiduciary of plan from using the assets of

particular, the Department was concerned about the possible sale of the Property to UBC on terms that would enable UBC to later sell the Property at a higher price than its appraised fair market value. The Department's concerns were allayed by the Applicant's representations in its comment letter that the UBC has no intentions of purchasing the property and immediately selling it for gain. Based on these representations, the Department added a condition providing that if UBC sold the Property during the 10-year period that commences immediately following the date it purchased the Property from the Plan, UBC would have to contribute the amount of any profit it receives to the Plan (the Sale Proceeds Clawback Condition).¹³

13. The Proposed Exemption also included a condition requiring the UBC to contribute to the Plan an amount in cash equal to 51 percent of any gross revenue it earns in any calendar year from using the Property, including in connection with leasing the Property to a third party in a manner or for a purpose that is inconsistent with UBC's stated intention articulated in the proposal to expand its International Training Center and/or the provision of union-related services permitted under the UBC's governing documents (the Revenue-Sharing Clawback Condition).¹⁴ The Department proposed to include this condition in the exemption because it was concerned that UBC's intention might have been to purchase the Property to develop it to take advantage of its proximity to the Las Vegas Strip.

14. The proposed Revenue-Sharing Condition was based on a representation the Department received from UBC's representative stating the UBC's development of the Property "is primarily [emphasis added] meant to accommodate the Union's expansion of

the plan in a way that is inconsistent with the best exercise of that fiduciary's responsibilities under ERISA. For example, the prohibited transaction provisions prevent a fiduciary from causing a plan to transfer property to a party in interest for the purpose of benefitting that party in interest.

¹³ In such event, the UBC must contribute an amount of cash generally equal to the profit on the subsequent sale to the Plan as of the end of the Plan year following the date of such subsequent sale. The Revenue-Sharing Condition would apply if UBC sells the whole Property or subdivides and sells a portion of the Property. See 89 FR 79956, 79957 and section III(h)(1) of the Proposed Exemption.

¹⁴ The condition as proposed required the UBC to contribute cash to the Plan equal to 51 percent of the gross revenue received from UBC's use of the Property (including the leasing of the Property) for a purpose or in a manner inconsistent with what was represented to the Department. See 89 FR 79957. See also section III(h)(2) of the Proposed Exemption.

its International Training Center (ITC)." ¹⁵ The requirement, as described in the preamble to the proposal, would be effective for 10 years from the date the revenue was earned by UBC.

Plan Protections

15. To ensure that the Plan, and its participants and beneficiaries, are adequately protected, Shumaker will continue to monitor the Sale, enforce the final terms, and take whatever actions are necessary to protect the interests of the Plan's participants and beneficiaries through closing of the Sale. Shumaker reviewed and approved the terms and conditions of the Sale in Shumaker's sole discretion and will further negotiate any conditions Shumaker concludes are in the interests of the Plan, in accordance with Shumaker's fiduciary duties. Shumaker, acting on behalf of the Plan in Shumaker's fiduciary capacity, determined that the proposed terms and conditions of the Sale Agreement are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated third party, and will make the final determination regarding whether to proceed with the transaction. Subject to the terms of the exemption, UBC has borne and will continue to bear the costs of the Application, and the Plan will bear the costs of the Independent Fiduciary and the QIA.

Comments Received Regarding the Proposed Exemption ¹⁶

16. In the Proposed Exemption, the Department invited all interested persons to submit written comments on the proposal and/or requests for a public hearing by November 15, 2024.

17. During the comment period, the Department received 51 phone calls from Plan participants and beneficiaries. Forty-nine of the calls were general inquiries. The other two calls involved substantive comments on the Proposed Exemption. One caller stated their support for the protections afforded to the Plan by the proposed Sales "Clawback" condition and Revenue Sharing "Clawback" condition in section III(h)(1) and (2) of the Proposed Exemption, because they did not want the Plan to sell the Property without benefitting from the Sale, based on their

¹⁵ Email from Diana Cohn, O'Donoghue & O'Donoghue LLP, counsel for Applicant, to the Department on July 19, 2024. A copy of this email and others can be found in the record for this exemption.

¹⁶ All information submitted to the Department in connection with this exemption, including the written comments, is available through the Department's Public Disclosure Room by referencing Exemption Application D-12084.

belief that the Property is valuable and will increase in value. The other caller stated their support for the Sale if it would help the UBC expand the ITC, as that would be beneficial to the Plan participants who use the ITC.

18. The Department received four written comments. Three of these comments were from the UBC and are considered together (the Applicant's Comment) and one comment was from a Plan participant. UBC's comment (1) requested a clarification of the Summary of Facts and Representations (the Summary) in the Proposed Exemption to better explain the UBC's motivations to purchase the Property; (2) provided further justification for the Plan's sale of the Property to the UBC; (3) objected to the proposed Revenue-Sharing Condition; (4) expressed agreement with respect to proposed Sale Proceeds Clawback Condition; and (5) requested the Department to correct two ministerial errors in the preamble of the Proposed Exemption with respect to the gross revenue percentages received by Shumaker from the Plan for the years 2021 and 2022.

19. The written comment from the Plan participant requested a hearing on the issue of selling plan assets to a party in interest. The commenter also maintained that the Department only could approve the Sale if the Property were put out for a public request for proposal to ensure the Plan maximizes its revenue.

20. The Department responds to the material issues and the material information provided in the comments below.

The Applicant's Comments and the Department's Responses

Comment 1—Clarification of the UBC's Motivations for the Purchase

21. UBC states that the Department's Summary in the Proposed Exemption misstates UBC's intent in acquiring and developing the Property. In this regard, representation 11 of the Summary provides that "[T]he UBC plans to develop the Property into two light industrial buildings to accommodate the UBC's expansion of its International Training Center [ITC]."

22. In its comment, the Applicant clarifies that the UBC's intended future use of the Property is to combine its 10.89-acres Adjacent Property with the 19.25-acre subject Property into a consolidated 30.14-acre block (the Consolidated Property). In its comment letter, UBC states that combining these properties would allow the UBC to redevelop the Consolidated Property by building two industrial warehouses that

will be leased to third-party tenants. UBC represents that its intended use of the Property is consistent with the QIA's determination that the "highest and best use" of the Property is for it to be redeveloped for industrial or mixed use that includes industrial, office and supporting commercial uses. According to UBC's comment, its intended use of the Property is also consistent with the current zoning restrictions on the Property. Referring to the Qualified Independent Appraiser's Report, UBC represents that the Property is zoned "M-1, Light Manufacturing," which may be used for "office, distribution centers, warehouse/flex space, technology and light industry." The UBC also maintains that its intention to use the Consolidated Property conforms with the QIA's determination of the Property's highest and best use and applicable land use laws.

23. Moreover, UBC states that, in the event the ITC should need additional training space in the future, the UBC would be in a position to convert the Property for such purposes at that time. In its comment letter, UBC reports that, over the past 24 years, the ITC has added approximately 189,000 square feet of industrial-type space on its campus, and that the ITC's 25-acre campus is now fully built out except for one vacant lot reserved for a hotel to accommodate an overflow of attendees at the ITC campus. Thus, the Applicant represents that it is quite possible that the ITC will require further expansion in the future. The Applicant states that, although the ITC does not have an immediate need for expansion, it is prudent for UBC to purchase the Property while it is available, because there is no guarantee UBC would be able to purchase or lease the Property if the Plan sold it to an unrelated third party.

24. The Department notes the UBC's requested clarifications to the Summary regarding UBC's intended use of the property.¹⁷ The Department notes further, however, that as stated previously in this preamble, the Summary was based on representations made by UBC's legal counsel (the Representative) in a July 19, 2024 email sent to the Department. In the email, the Representative stated that, "[a]s further explained in its December 28, 2022 exemption application and throughout its responses to the [Department's] information requests, the [UBC] will

develop the [P]roperty into two light industrial buildings, each spanning 300,000 square feet across the two lots. The development is *primarily* meant to accommodate the [UBC's] expansion of its International Training Center (ITC) [emphasis added]. Apart from the subject property, which is adjacent to the ITC, the [UBC] has no other land to expand its campus further."¹⁸

Department's Response: The Department accepts UBC's clarifications as described above.

Comment 2. Justification for the Plan's Sale of the Property to the UBC

25. UBC's second comment addresses why it is in the Plan's interest to sell the Property, rather than to redevelop and lease it. The Department solicited this explanation from UBC, in order to address the Department's concern that the Sale may be designed to transfer a valuable development opportunity from the Plan to its party in interest.

26. According to the UBC, the Plan's only source of income from the Property is the rental income it generates, and no other potential tenants have expressed interest in leasing the Property once Enterprise's lease expires. Moreover, UBC points out that it is highly unlikely the Plan will secure a long-term lease with another tenant without significant redevelopment of the Property.¹⁹ Thus, according to UBC, once Enterprise left the Property, the Plan would be left owning an illiquid, unprofitable investment with no potential new tenants on the horizon.

27. UBC maintains that the Plan is not seeking to devote the significant time and plan assets it would take to redevelop the Property itself because of the high cost and time required for redevelopment, the associated risks, and the Plan's significant real estate portfolio. In this regard, the Plan's Independent Fiduciary stated, among other things, that the potential lack of income or investment gain from the Property over a several year development period (compared to an assumed 7.5 percent return on Fund investments), the up-front cost of any development (including risk of escalating costs), and the risk of selecting the right type of redevelopment to increase the value of

the Property above what would be realized by the Proposed Transaction, all seem unnecessary and speculative risks for the Plan to take on when compared to the availability of a one-time Sale to a willing buyer. In addition to avoiding the above costs and risks, according to UBC, the Sale allows the Plan to secure significant profits and diversify its plan assets into more liquid investments.²⁰ UBC notes again that if its Application is granted, UBC will pay the Plan at least \$34,090,000, which includes \$3,410,000 in additional proceeds due to the Assemblage Increase, which would not be received by the Plan in a third-party sale.

28. UBC's comment provides further that the Plan does not have sufficient resources to purchase the Adjacent Property from UBC and develop and manage the entirety of the Consolidated Property (which is the UBC's intended use of the Property), which would be costly, risky, and result in an overweighting of real estate for the Plan's investment allocations. Noting the Appraisal Report, the UBC states in its comment that the estimated cost to redevelop the 19.25-acre Property with just one building alone could exceed \$60 million. The UBC currently estimates that the cost of purchasing the Property and building two warehouses on the Consolidated Property will exceed \$120 million and could take more than three years. According to the UBC, if the Plan attempted to redevelop the Consolidated Property, these high redevelopment costs would impose a tremendous amount of risk on the Plan's ability to maintain a sufficient amount of liquid investments for the payment of benefits to its participants and beneficiaries.

29. The UBC also states that the Plan would lose the opportunity to reinvest sales proceeds into more liquid and diversified investments, which may have negative consequences for its participants and beneficiaries. In short, if the Plan were to purchase the UBC's parcel and develop the Consolidated Block, it would face an overconcentration of more than \$120 million in a single real estate asset, along with the associated construction risks and lengthy development period. For all of these reasons, the Plan has decided not to redevelop and market the Property itself in the hopes of finding another buyer, or purchase the Adjacent Property and redevelop it, when there is

¹⁷ The Department notes that section III(n) requires that all the material facts and representations made by the Applicant that are set forth in the Summary are true and accurate at all times. The Department views the Applicant's prompt clarification of portions of the Summary as satisfying this requirement.

¹⁸ The Applicant provided the July 19, 2024 representation in response to a request by the Department that the Applicant clarify the UBC's intended use of the Property.

¹⁹ According to the UBC, the Property was modified to specifications that suited Enterprise's operations (rental car business with attached storage and maintenance facilities). Furthermore, the high fair market value rental rate made a lease for use by a different car rental agency unlikely. See Proposed Exemption at 89 FR 79955.

²⁰ See the Proposed Exemption at 89 FR 79957 through 58 for an extended discussion of the Independent Fiduciary's analysis and determinations.

a motivated, ready and willing buyer for the Property: the UBC.

Department's Response: The Department notes the Plan's rationale for its decision to sell the Property to the UBC.

Comment 3—Removal of the Revenue-Sharing Condition in Section III(h)(2) of the Proposed Exemption

30. As previously discussed in this preamble, section III(h)(2) of the Proposed Exemption states that “[i]f UBC earns revenue from its use of the Property in any calendar year, including in connection with the lease of the Property to a third party, in a manner or for a purpose that is inconsistent with the UBC’s stated intention to expand its International Training Center and/or the provision of union-related services permitted under the UBC’s governing documents, then the UBC must contribute to the Plan an amount in cash equal to 51 percent of such gross revenue earned in each such calendar year. Such amounts must be contributed by the UBC to the Plan by the end of the Plan year following the year in which such revenue is earned.” In its Comment, the UBC asserts that the Revenue-Sharing Condition would render the exemption useless to the Applicant for the following reasons:

(I) The condition misapprehends the UBC’s immediate intended use of the Property, inasmuch as there is no intention or need to immediately expand the ITC.

(II) The condition would create a “perpetual entanglement” between the Plan and the UBC, because it would require revenue sharing in any calendar year in which the Property is not used to expand the ITC; the Sale would no longer be a one-time sale for cash (contrary to the condition in section III(a)); the exemption would require continuous monitoring by the Independent Fiduciary and expenditure of additional resources by the Plan; and the exemption would require continuous oversight by the Department. The Applicant also notes that while the preamble to the Proposed Exemption states that the revenue sharing obligation would only apply to revenue earned during the 10 years following the date of the sale, the 10-year limit is not in the condition itself.

(III) The valuation of the Property already considers the revenue that the UBC might generate from redeveloping the Consolidated Property into light industrial facilities and then leasing the facilities to third-party tenants. The Applicant states that requiring the UBC to pay the purchase price and share revenue as part of the Revenue-Sharing

Condition, is illogical and inconsistent with prior exemptions the Department has granted for similar transactions. In addition, the Applicant notes that the UBC estimates it will need to invest at least \$120 million to develop the Consolidated Property into industrial warehouses that it wishes to build. The Applicant states that requiring the UBC to share 51 percent of gross rental revenues after such an investment, in addition to the foregoing reasons, renders the transaction untenable.

Department's Response: In response to the UBC’s comment, the Department has removed the Revenue-Sharing Condition. The Department notes that, based on the representations of the Independent Fiduciary, the Sale will provide the Plan with a significantly greater amount of proceeds than a sale to an unrelated third party, providing a substantial benefit to the Plan’s participants and beneficiaries. Based on this factor and the points raised by the UBC in its comment, the Department finds that the exemption is in the interest of the Plan without including the Revenue Sharing Condition.

Comment 4—Agreement to the Sale Proceeds Clawback Condition at Section III(h)(1) of the Proposed Exemption

31. As previously discussed in this preamble, section III(h)(1) of the proposed exemption states that “[i]f UBC sells the Property within 10 years after the date of the Sale, for a sale price that is greater than the Sale Proceeds, then the amount of the subsequent sale price received by UBC that exceeds the Sale Proceeds (the Excess Amount) must be contributed by the UBC to the Plan in cash before the end of the Plan year following the date of such subsequent sale. If UBC subdivides the Property and a portion of the Property is subsequently sold by UBC, then the Excess Amount would be determined by subtracting from the subsequent sale price the amount of Sale Proceeds attributable to the portion of the Property that was sold in such subsequent sale as determined by an independent appraiser. The records applicable to any subsequent sale by UBC covered by this provision, including any appraisals, must be provided to the Office of Exemption Determinations at e-OED@dol.gov within 90 days after the date of such sale.”

32. UBC states its agreement with this condition in its comment letter, because it has no intention of selling the Property within the next 10 years. Therefore, the Department has finalized this provision as proposed, and renumbered section III(h)(1) as section III(h), in order to reflect the

Department’s removal of section III(h)(2).

Comment 5—Correction of Ministerial Errors

33. Representation 15 of the Proposed Exemption states, in pertinent part, that “Shumaker represents that the revenue received from its engagement as Independent Fiduciary for the Plan is less than two percent of its gross revenue for the 2021 federal income tax year, and less than 3.3 percent of its gross revenue for the 2022 federal income tax year.”

34. UBC states that the foregoing figures are erroneous, and UBC represents that Shumaker received less than 0.02 percent of its gross revenue for federal income tax year 2021 from its engagement as the Plan’s independent fiduciary with respect to the proposed Sale (and the Independent Fiduciary has not received any additional compensation since). The Applicant asserts that this percentage represents the sole amount of revenue received by the Independent Fiduciary from any party in interest with respect to its Application.

Department's Response: The Department acknowledges this update to the Proposed Exemption. Consistent with the Applicant’s comment, the Independent Fiduciary’s statement, dated December 27, 2022, provides that “revenue received from our engagement as independent fiduciary for United Brotherhood of Carpenters Pension Fund is less than 0.02 percent of the gross revenue of Shumaker, Loop and Kendrick, LLP for the prior federal income tax year.” The Department notes that the Independent Fiduciary would have met the compensation threshold set forth in the Department’s exemption procedure regulation notwithstanding the Department’s erroneous reference to 3.3 percent.²¹

Comment From the General Public

35. The Department received a written comment from a Plan participant who requested a hearing on the issue of selling Plan assets to a party in interest. The commenter stated that they would only approve the sale if the Property were put out for a public “RFP” (request for proposal) and the UBC were provided a “right of first refusal” at above the appraised price and above any other RFPs. The commenter stated that this would be the only sure way for the Plan to maximize its revenue and return

²¹ 29 CFR 2570.31(h)(1). The procedures that govern the Applicant’s request for an exemption (the Exemption Procedures) are set forth in 29 CFR part 2570, subpart B at 76 FR 66637, 66644 (October 27, 2011).

on investment and to continue on a sound basis. The commenter further noted that the fiduciary responsibility of the trustees is to the Plan and not to their employer.

Department's Response: The Department agrees with the commenter that any sale of the Property by the Plan should maximize the Plan's revenue and return on investment. To achieve this result, the Department reviewed multiple appraisals submitted by a QIA, a report and additional information submitted by a QIF, and performed a robust analysis of the Plan's rationale for the Sale and the reasons that the UBC wanted to purchase the Property. Based on this review, the Department expects that the Plan will receive approximately \$4,317,500 to \$4,620,000 more in net proceeds by selling the property to UBC than it would receive in a sale to an unrelated third party. Further strengthening the Department's expectation, the Department developed a novel condition, the Sale Proceeds Clawback Condition, which protects the Plan in the event UBC sells the Property during the 10-year period that commences immediately following the date it purchased the Property from the Plan. After careful review of the record attributable to this exemption, including the commenter's comment, and the exemption's protective conditions, the Department believes that the exemption for the Sale provides the Plan with a meaningful benefit that the Plan may not otherwise receive from a third-party sale, and is protective of the rights of participants and beneficiaries of the Plan. For clarity, the Department notes that the fair market value and Sale price, as determined by the Independent Fiduciary and QIA, must reflect the fair market value of the Property free and clear of any encumbrances, and without any reduction based on the existence of the Clawback Condition.

Regarding the commenter's request for a hearing, the Department notes that its regulations provide that the Department may decline to hold a hearing where, among other things, the only issues identified for exploration at the hearing are matters of law; or the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.²² The commenter has not provided a general description of the evidence to be presented at a hearing as required by the Department's Exemption Procedure Regulation. Furthermore, the commenter has not identified any

factual issues that have not been fully explored through the submission of written evidence provided to the Department by UBC. Accordingly, the Department declines the commenter's request for a hearing.²³

Other Revisions

36. On its own motion, the Department made the following revisions to the operative language of the Proposed Exemption.

(i) In order to clarify the elements that comprise the Sale price of the Property, *i.e.*, at the time of the Sale, the UBC must pay the greater of: \$34,090,000; or the fair market value of the Property, plus the Assemblage Increase and Contributory Costs, as established on the date of the Sale, the Department is modifying section III(b) to read, "At the time of the Sale, the Plan receives the greater of (1) \$34,090,000; or (2) the fair market value of the Property plus the Property's Assemblage Increase, as established by the QIA in an updated appraisal of such Property on the date of the Sale, plus the Plan's Contributory Costs (together, the Sale Proceeds). The Sale Proceeds, as determined by the Independent Fiduciary and QIA, must reflect the fair market value of the Property free and clear of any encumbrances, and without any reduction based on the existence of the Subsequent Sale Proceeds Subject to Clawback Condition."

(ii) The term "Assemblage Increase" is now defined in section I(b) to mean an increase to the Property's "as is" fair market value to account for the special value that the Property has to the UBC because it is adjacent to a 10.89-acre parcel of property owned by the UBC that is adjacent to the Property, as determined by a QIA.

(iii) The term "Contributory Costs" is now defined in section I(f) to mean certain costs attributed to architect, engineer, and development studies and other activities paid for by the Plan to date for the benefit of the UBC and are not reflective of the value to the general market. These costs are valued in the 2022 Appraisal at approximately \$270,000.

(iv) In order to provide more flexibility in the event the Plan needs to substitute the Independent Fiduciary, the Department is modifying section III(c) defining the term "Independent Fiduciary" to read, "The term 'Independent Fiduciary' means Shumaker, Loop & Kendrick LLP, or any successor thereto, engaged by the Plan and that conforms to the qualified

independent fiduciary requirements described in the Department's procedures for requesting an exemption at 29 CFR 2570.34(e) and (f), found at 89 FR 4695 (January 24, 2024). The Plan fiduciaries must provide the information required by the procedures to the Department within 30 days after such successor is hired."

(v) In order to provide more flexibility in the event the Plan needs to substitute the QIA, the Department is modifying section I(f) defining the term "QIA" to read, "The term 'QIA' means Cushman & Wakefield of Nevada, Inc., or any successor thereto, engaged by the Independent Fiduciary and that conforms to the qualified independent appraiser requirements described in the Department's procedures for requesting an exemption at 29 CFR 2570.34(c), and (d) found at 89 FR 4694 (January 24, 2024). The Plan fiduciaries must provide the information required by the procedures to the Department within 30 days after such successor is hired."

(vi) The Department is modifying section II to refer as well to certain corresponding provisions of Code section 4975. Specifically, section II of the grant notice reads as follows: "The restrictions of ERISA sections 406(a)(1)(A) and 406(a)(1)(D), and 406(b)(1) and (b)(2), and the sanctions resulting from the application of Code section 4975, by reason of Code sections 4975(c)(1)(A), (D), and (E), shall not apply to the Sale, effective as of the date a final exemption is published in the **Federal Register**, provided that the parties adhere to the conditions in Section III, below."

(vii) The Department is modifying section III(d) to read, "The Plan fiduciaries prudently determined that the Sale is in the Plan's best interest and for no less than the fair market value of the Property, free and clear of any encumbrances."

(viii) The Department is modifying section III(g)(2) to read, "The Independent Fiduciary has not and will not enter into any agreement, arrangement or understanding that violates either ERISA section 410 or the Department's Regulations codified at 29 CFR 2509.75-4."

The Department also made several minor, non-substantive revisions that are intended to clarify the exemption and/or correct scrivener's errors.

Conclusion

37. The Department has carefully considered the issues expressed by the commenters. After giving full consideration to the entire record, including the comments and the hearing request, the Department has determined

²² See 29 CFR 2570.46(a), found at 76 FR 66653 of the Department's Exemption Procedures Regulation.

²³ 29 CFR 2570.46(b), found at 76 FR 66653 of the Exemption Procedures.

to grant the exemption subject to the modifications and clarifications described herein. In granting this exemption, the Department has relied on the representations of the Applicant. If any material statement in the Application, final exemption or the Applicant's Comment is not, or may no longer be, completely and factually accurate, the Applicant and recipient of the exemptive relief provided herein must immediately alert the Department.²⁴

38. For further information regarding the comments and other matters discussed herein, interested persons are encouraged to obtain copies of the Application (Exemption Application No. D-12084) the Department is maintaining in this case from EBSA's Public Disclosure Room (U.S. Department of Labor, Room N-1515, 200 Constitution Avenue NW, Washington DC 20210 (202.693.8673)).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) and/or Code section 4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with ERISA section 404(a)(1)(B); nor does it affect the requirement of Code section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) As required by ERISA section 408(a) and/or Code section 4975(c)(2), the Department hereby finds that the

exemption is (1) administratively feasible, (2) in the interests of the plan and of its participants and beneficiaries, and (3) protective of the rights of the participants and beneficiaries of the plan;

(3) The exemption is supplemental to and not in derogation of any other ERISA provisions and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the Application are true and complete at all times, and that the Application accurately describes all material terms of the transaction which is the subject of the exemption.

Accordingly, the following exemption is granted under the authority of ERISA section 408(a) and/or Code section 4975(c)(2) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B at 76 FR 66637, 66644 (October 27, 2011).

Exemption

Section I. Definitions

(a) The term "Applicant" or "UBC" means United Brotherhood of Carpenters and Joiners of America.

(b) The term "Assemblage Increase" means an increase to the Property's "as is" fair market value, as determined by a QIA, to account for the special value that the Property has to the UBC because it owns a 10.89-acre real estate parcel that is adjacent to the Property.

(c) The term "Bermuda LLC" means Bermuda Hidden Well, LLC.

(d) The term "Board" means a board of trustees made pursuant to the Plan's Declaration of Trust, consisting of six (6) trustees who are current and former members of the UBC Executive Board and five (5) trustees who are appointed from officers of UBC Local Unions or UBC Councils.

(e) The term "Consolidated Property" means a 30.14-acre combined block of property composed of the Property and a 10.89-acre parcel of property owned by the UBC that is adjacent to the Property.

(f) The term "Contributory Costs" means certain costs attributed to architect, engineer, and development studies and other activities paid for by the Plan to date for the benefit of the UBC and are not reflective of the value to the general market. These costs are valued in the 2022 Appraisal at approximately \$270,000.

(g) The term "Independent Fiduciary" means Shumaker, Loop & Kendrick LLP, or any successor thereto, engaged by the Plan and that conforms to the qualified independent fiduciary requirements described in the Department's procedures for requesting an exemption at 29 CFR 2570.34(e) and (f), found at 89 FR 4695 (January 24, 2024). The Plan fiduciaries must provide the information required by the procedures to the Department within 30 days after such successor is hired.

(h) The term "Plan" means United Brotherhood of Carpenters Pension Fund.

(i) The term "Property" means the 19.25-acre parcel of improved real property owned by the Plan and located at 6855 Bermuda Road, Las Vegas, Clark County, Nevada.

(j) The term "QIA" means Cushman & Wakefield of Nevada, Inc., or any successor thereto, engaged by the Independent Fiduciary and that conforms to the qualified independent appraiser requirements described in the Department's procedures for requesting an exemption at 29 CFR 2570.34(c) and (d), found at 89 FR 4694 through 95 (January 24, 2024). The Plan fiduciaries must provide the information required by the procedures to the Department within 30 days after such successor is hired.

(k) The term "Sale" means the one-time sale for cash of the Property by the Trustees on behalf of the Plan through its subsidiary entity, Bermuda LLC, to the UBC.

(l) The term "Trustees" means the six (6) trustees on the Plan's Board who are current and former members of the UBC Executive Board and five (5) trustees who are appointed by officers of UBC Local Unions or UBC Councils.

Section II. Covered Transactions

The restrictions of ERISA sections 406(a)(1)(A) and 406(a)(1)(D), and 406(b)(1) and (b)(2), and the sanctions resulting from the application of Code section 4975, by reason of Code sections 4975(c)(1)(A), (D), and (E), shall not apply to the Sale, effective as of the date a final exemption is published in the **Federal Register**, provided that the parties adhere to the conditions in section III, below.

Section III. Conditions

(a) The Sale is a one-time transaction for cash that must be completed within 90 days of the effective date of the exemption;

(b) At the time of the Sale, the Plan receives the greater of (1) \$34,090,000; or (2) the fair market value of the Property plus the Property's Assemblage

²⁴ The Representations stated herein are based on UBC's representations provided in its exemption application, comments, and supporting submissions, including those of the Independent Fiduciary, and do not reflect factual findings or opinions of the Department unless indicated otherwise. The Department notes that the availability of this exemption is subject to the express condition that the material facts and representations contained in application D-12084 are true and complete at all times, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply as of the date of the change.

Increase, as established by the QIA in an updated appraisal of such Property on the date of the Sale, plus the Plan's Contributory Costs (together, the Sale Proceeds). The Sale Proceeds, as determined by the Independent Fiduciary and QIA, must reflect the fair market value of the Property free and clear of any encumbrances, and without any reduction based on the existence of the Subsequent Sale Proceeds Subject to Clawback Condition;

(c) The Plan pays no commissions, expenses, or fees associated with the Sale, and the Plan does not bear the costs of: (1) the exemption application; nor (2) notifying interested persons;

(d) The Plan fiduciaries prudently determined that the Sale is in the Plan's best interest and for no less than the fair market value of the Property, free and clear of any encumbrances.

(e) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in arm's length transactions with an unrelated third party;

(f) The Independent Fiduciary, in accordance with ERISA sections 404(a)(1)(A) and (B), must prudently and loyally:

(1) represent the Plan's interests with respect to the Sale;

(2) determine that the Sale is in the interests of, and protective of, the Plan and its participants and beneficiaries;

(3) determine that the Sale price for the Property is in the interests of, and protective of, the Plan;

(4) review and approve the terms and conditions of the Sale in their sole discretion and further negotiate any conditions they consider to be in the best interest of the Plan;

(5) independently engage the QIA for the Sale;

(6) ensure that the appraisal is based on complete, current and accurate information; review and approve the methodology used by the QIA that such methodology is properly applied in determining the Property's fair market value on the date of the Sale; and that it is appropriate to rely upon the appraisal as accurately reflecting the fair market value of the Property;

(7) monitor the Sale throughout its duration consistent with its duties as a prudent plan fiduciary;

(8) ensure that the QIA renders an updated fair market valuation of the Property as of the date of the Sale in accordance with paragraph (f)(6) of this section;

(9) determine whether it is prudent for the Plan to proceed with the Sale and has the ultimate decision-making authority to approve the Sale on behalf of the Plan;

(10) ensure compliance with the general terms of the Sale and with the conditions of the exemption;

(11) take any appropriate actions to safeguard the interests of the Plan and its participants and beneficiaries; and

(12) submit a written report to the Department not later than 90 days after the Sale has been completed demonstrating that each exemption condition has been met;

(g)(1) The Independent Fiduciary must not have entered into, and must not enter into, any agreement, arrangement, or understanding that includes any provision that provides for the direct or indirect indemnification or reimbursement of the Independent Fiduciary by the Plan or other party for any failure to adhere to its contractual obligations or to state or Federal laws applicable to the Independent Fiduciary's work; the Independent Fiduciary may not seek or receive any waiver of any rights, claims, or remedies of the Plan under ERISA, state, or Federal law against the Independent Fiduciary with respect to the subject matter of the exemption; and

(2) The Independent Fiduciary has not and will not enter into any agreement, arrangement or understanding that violates either ERISA section 410, or the Department's Regulations codified at 29 CFR 2509.75-4;

(h) Subsequent Sale Proceeds Subject to Clawback Condition. If UBC sells the Property within 10 years after the date of the Sale, for a sale price that is greater than the Sale Proceeds, then the amount of the subsequent sale price received by UBC that exceeds the Sale Proceeds (the Excess Amount) must be contributed by the UBC to the Plan in cash before the end of the Plan year following the date of such subsequent sale. If UBC subdivides the Property and a portion of the Property is subsequently sold by UBC, then the Excess Amount would be determined by subtracting from the subsequent sale price the amount of Sale Proceeds attributable to the portion of the Property that was sold in such subsequent sale as determined by an independent appraiser. The Independent Fiduciary and QIA may not reduce the sale price paid to the Plan or the fair market value of the Property based on the Clawback Condition. The records applicable to any subsequent sale by UBC covered by this provision, including any appraisals, must be provided to the Office of Exemption Determinations at *e-OED@dol.gov* within 90 days after the date of such sale.

(i) Any QIA selected by the Independent Fiduciary must not have

entered into, and must not enter into, any agreement, arrangement, or understanding that includes any provision that provides for the direct or indirect indemnification or reimbursement of the QIA by the Plan or any other party for any failure to adhere to its contractual obligations or to state or Federal laws applicable to the QIA's work; the QIA may not seek or obtain any waiver of any rights, claims or remedies of the Plan or its participants and beneficiaries under ERISA, the Code, or other Federal and state laws against the QIA with respect to the subject matter of the exemption; and

(j) The Board and the Independent Fiduciary maintain for a period of six (6) years from the date of Sale, in a manner that is convenient and accessible for audit and examination, the records necessary to enable the persons described in paragraph (k)(1) below to determine whether conditions of this exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Board and/or the Independent Fiduciary, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest other than the Board or the Independent Fiduciary shall be subject to the civil penalty that may be assessed under ERISA section 502(i) if the records are not maintained, or are not available for examination as required by paragraph (k) below; and

(k)(1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of ERISA section 504, the records referred to in paragraph (j) above shall be unconditionally available at their customary location during normal business hours to:

(i) any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) the Board or any duly authorized representative of the Board;

(iii) the Independent Fiduciary or any duly authorized representative of the Independent Fiduciary;

(iv) any participant or beneficiary of the Plan, or any duly authorized representative of such participant or beneficiary;

(2) If any party refuses to disclose information to a person on the basis that such information is exempt from disclosure, such party must provide a written notice to that person advising them of the reasons for the refusal and that the Department may request such information on their behalf by the close

of the thirtieth (30th) day following the request;

(l) The Sale is not part of an agreement, arrangement or understanding designed to benefit UBC or any of its affiliates;

(m) The Board, the UBC, and/or the Independent Fiduciary must provide to the Department the records necessary to demonstrate that the conditions of this exemption, as amended, have been met, within 30 days from the date the Department requests such records; and

(n) All the material facts and representations made by the Applicant that are set forth in the Summary of Facts and Representations are true and accurate at all times.

Exemption Date: The exemption will be in effect on January 13, 2025.

Signed at Washington, DC.

George Christopher Cosby,

*Director, Office of Exemption Determinations,
Employee Benefits Security Administration,
U.S. Department of Labor.*

[FR Doc. 2025-00405 Filed 1-10-25; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2021-0013]

Pilot Study and Prospective Analyses of the Draft Revised Form 33, Safety and Health Program Assessment Worksheet; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its request to extend OMB's approval of information collection requirements for OMB 1218-0280, Expiration Date: June 30, 2025, regarding the Pilot Study for 3 years (*i.e.*, to June 30, 2028).

DATES: Comments must be submitted (postmarked, sent, or received) by March 14, 2025.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at <https://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to <https://www.regulations.gov>. Documents in the docket are listed in the <https://www.regulations.gov> index; however, some information (*e.g.*, copyrighted material) is not publicly available to read or download through the websites. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA-2021-0013) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates. For further information on submitting comments, see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693-2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance process to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires OSHA to obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary

duplication of efforts in obtaining information (29 U.S.C. 657).

Section 7(c)(1) of the OSH Act authorizes the Secretary of Labor (Secretary) to, "with the consent of any State or political subdivision thereof, accept and use the services, facilities, and personnel of any agency of such State or subdivision with reimbursement." Section 21(c) of the OSH Act authorizes the Secretary to "consult with and advise employers and employees . . . as to effective means of preventing occupational illnesses and injuries."

Additionally, Section 21(d) of the OSH Act instructs the Secretary to "establish and support cooperative agreements with the States under which employers subject to the Act may consult with State personnel with respect to the application of occupational safety and health requirements under the Act or under State plans approved under section 18 of the Act." This gives the Secretary authority to enter into agreements with the States to provide On-Site Consultation services and establish rules under which employers may qualify for a programmed inspection deferral. To satisfy the intent of these and other sections of the OSH Act, OSHA codified the terms that govern cooperative agreements between OSHA and State governments whereby State agencies provide On-Site Consultation services to private sector employers to assist them in complying with the requirements of the OSH Act. The terms were codified as the Consultation Agreement regulations (29 CFR part 1908).

The Occupational Safety and Health Administration (OSHA) is requesting approval from the Office of Management and Budget (OMB), pursuant to the Paperwork Reduction Act (PRA), for a 3 year extension of the information collection requirements for OMB Number 1218-0280, Expiration Date: June 30, 2025; to conduct validity and reliability analyses of a safety and health program (SHP) assessment worksheet, the Draft Revised Form 33 (DRF33), that will replace the current SHP Assessment Worksheet, OSHA Form 33, used by the OSHA On-Site Consultation Program (OMB Number 1218-0110; Expiration Date: February 28, 2025. Completion of the studies on the DRF33 will enable OSHA to ensure that a valid, reliable, and efficient tool is provided to On-Site Consultation programs in the fifty (50) states, the District of Columbia, and several United States territories to replace the current OSHA Form 33, thereby, enhancing the quality of consultative services.

OMB Number 1218–0280 grants OSHA approval to conduct the following studies to assess the validity and reliability of the DRF33: a pre-test (*i.e.*, 20 consultation visits) to assess Pilot Study procedures and the information technology platform so that any issues can be corrected before launching the Pilot Study; 300 pilot study consultation visits during which 350 safety and health program assessments of small- and medium-sized business workplaces will be conducted; a Prospective Analysis conducted at least 12 months after the pilot study consultation visits to assess any impact of the DRF33 at workplaces that received pilot study consultation visits; data analyses; and a follow-up study (*i.e.*, 30 consultation visits) to assess any updates to the DRF33 resulting from data analyses and other findings.

OSHA obtained approval for OMB Number 1218–0280 to begin the Pilot Study in July 2022. Since then, the pre-test has been completed; 326 SHP assessments have been conducted out of the total number of 350 planned assessments, during pilot study consultation visits by Consultation programs nationwide. However, the consultation visits with the SHP assessments have taken longer than initially planned. Consequently, the Prospective Analysis and data analyses have not commenced, therefore, OSHA is requesting an extension of 3 years of OMB Number 1218–0280. OSHA will continue to work to complete the Pilot Study as soon as possible.

After completing the Pilot Study OSHA will request OMB approval before implementing the DRF33 for use by state On-Site Consultation programs nationwide (to replace the current Form 33). Similarly, OSHA will seek OMB approval if any additional updates are made to the approved worksheet, following the prospective study and data analyses.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for

example, by using automated or other technological information, and transmission techniques.

III. Proposed Actions

The agency is requesting a balance of 887 burden hours to complete the remaining tasks for the pilot study from 4,974 burden hours estimated to complete the entire pilot study.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved data collection.

Title: Pilot Study and Prospective Analysis of the Draft Revised Form 33, Safety and Health Program Assessment Worksheet.

OMB Control Number: 1218–0280.

Affected Public: Business and other for-profits.

Number of Respondents: 523.

Number of Responses: 810.

Frequency of Responses: Varies.

Average Time per Response: Varies.

Estimated Total Burden Hours: 887.

Estimated Cost (Operation and Maintenance): \$0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

(1) electronically at <https://www.regulations.gov>, which is the Federal eRulemaking Portal; or (2) by facsimile (fax), if your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at 202–693–1648. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (OSHA–2021–0013). You may supplement electronic submission by uploading document files electronically.

Comments and submissions are posted without change at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the <https://www.regulations.gov> index, some information (*e.g.*, copyrighted material) is not publicly available to read or download from this website. All submission, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Information on using the <https://www.regulations.gov> website to submit comments and access the docket is available at the website's "User Tips" link.

Contact the OSHA Docket Office at (202) 693–2350, (TTY) (877) 889–5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC, on January 3, 2025.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2025–00404 Filed 1–10–25; 8:45 am]

BILLING CODE 4510–26–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2025–1039 and K2025–1038; MC2025–1040 and K2025–1039]

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:* January 14, 2025.

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 (<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 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)*: MC2025–1039 and K2025–1038; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1239 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: January 3, 2025; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Elsie Lee-Robbins; *Comments Due*: January 14, 2025.

2. *Docket No(s)*: MC2025–1040 and K2025–1039; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1240 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: January 3, 2025; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Almaroof Agoro; *Comments Due*: January 14, 2025.

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. 2025–00408 Filed 1–10–25; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Civil Monetary Penalty Inflation Adjustment

AGENCY: Railroad Retirement Board.

ACTION: Notice announcing updated penalty inflation adjustments for civil monetary penalties for 2025.

SUMMARY: As required by section 701 of the Bipartisan Budget Act of 2015, entitled the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the Railroad Retirement Board (Board) hereby publishes its 2025 annual adjustment of civil penalties for inflation.

FOR FURTHER INFORMATION CONTACT:

Peter J. Orlowicz, Senior Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611–1275, (312) 751–4922.

SUPPLEMENTARY INFORMATION: Section 701 of the Bipartisan Budget Act of 2015, Public Law 114–74 (Nov. 2, 2015), entitled the Federal Civil Penalties Inflation Adjustment Act Improvements

Act of 2015 (the 2015 Act), amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) (Inflation Adjustment Act) to require agencies to publish regulations adjusting the amount of civil monetary penalties provided by law within the jurisdiction of the agency not later than January 15th of every year.

For the 2025 annual adjustment for inflation of the maximum civil penalty under the Program Fraud Civil Remedies Act of 1986, the Board applies the formula provided by the 2015 Act and the Board's regulations at 20 CFR part 356. In accordance with the 2015 Act, the amount of the adjustment is based on the percent increase between the Consumer Price Index (CPI–U) for the month of October preceding the date of the adjustment and the CPI–U for the October one year prior to the October immediately preceding the date of the adjustment. If there is no increase, there is no adjustment of civil penalties. The percent increase between the CPI–U for October 2023 and October 2024, as provided by Office of Management and Budget Memorandum M–25–02 (December 17, 2024) is 1.02598 percent. Therefore, the new maximum penalty under the Program Fraud Civil Remedies Act is \$14,308 (the 2024 maximum penalty of \$13,946 multiplied by 1.02598, rounded to the nearest dollar). The new minimum penalty under the False Claims Act is \$14,308 (the 2024 minimum penalty of \$13,946 multiplied by 1.02598, rounded to the nearest dollar), and the new maximum penalty is \$28,618 (the 2024 maximum penalty of \$27,894 multiplied by 1.02598, rounded to the nearest dollar). The adjustments in penalties will be effective January 13, 2025.

Dated: January 7, 2025.

By Authority of the Board.

Stephanie Hillyard,
Secretary to the Board.

[FR Doc. 2025–00472 Filed 1–10–25; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102121; File No. SR–BX–2024–058]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend BX Top and BX Depth Fees Based on the Rate of Inflation

January 6, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

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).

(“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on December 23, 2024, Nasdaq BX, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Item I below, which Item has been substantially prepared by the Exchange. The Exchange has designated this proposal for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b–4(f) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fees of the following options market data products based on the rate of inflation: BX Top and BX Depth fees (internal and external distribution and Non-Display enterprise license) and BX Top and BX Depth per subscriber fees. Each fee will be adjusted for the inflation that has occurred since that specific fee was last changed.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 1, 2025.

The proposed rule change, including the Exchange’s statement of the purpose of, and statutory basis for, the proposed rule change, is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/bx/rules> and on the Commission’s website at https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-BX-2024-058.

II. 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.⁵

Comments may be submitted electronically by using the Commission’s internet comment form (https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-BX-2024-058) or by sending an email to rule-comments@sec.gov. Please include file number SR–BX–2024–058 on the subject line. Alternatively, paper comments may be sent to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. All submissions should refer to file number SR–BX–2024–058. 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-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-BX-2024-058). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–BX–2024–058 and should be submitted on or before February 3, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2025–00409 Filed 1–10–25; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, January 16, 2025.

PLACE: The meeting will be held via remote means and/or at the Commission’s headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

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.

⁶ 17 CFR 200.30–3(a)(12).

MATTERS TO BE CONSIDERED:

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission’s website at <https://www.sec.gov>.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

- Institution and settlement of injunctive actions;

- Institution and settlement of administrative proceedings;

- Resolution of litigation claims; and

- Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION:

For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: January 8, 2025.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2025–00587 Filed 1–8–25; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102126; File No. SR–CBOE–2024–042]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Permit Orders Comprised of Options and Futures Legs (“Future-Option Orders”)

January 6, 2025.

I. Introduction

On September 17, 2024, Cboe Exchange, Inc. (the “Exchange” or

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b–4(f). 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.

⁵ 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

“Cboe Options”) 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 permit future-option orders. ³ The proposed rule change was published for comment in the **Federal Register** on October 8, 2024. ⁴ The Commission has received no comments regarding the proposal.

On November 18, 2024, pursuant to Section 19(b)(2) of the Exchange Act, ⁵ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change. ⁶ This order institutes proceedings under Section 19(b)(2)(B) of the Act ⁷ 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, ⁸ the Exchange proposes to amend its rules to permit future-option orders, which would be comprised of both options and futures legs. ⁹ The Exchange states that it is common for investors to engage in hedging or other investment strategies that involve options and related futures products, and that, to execute these strategies, investors must submit the options order to the Exchange and separately submit the futures order to a designated contract market (“DCM”) on which the futures trade. ¹⁰ The Exchange states, for example, that market participants may obtain positions in Cboe Volatility Index (“VIX”) options through transactions on the Exchange and hedge those positions entering into a separate transaction on Cboe Futures Exchange, LLC’s (“CFE”) centralized market in VIX futures (“VX futures”). ¹¹ The Exchange states that separate executions of this sort create additional risks, including the risk that one order will execute while the other does not and price risk resulting from the time it takes to complete both transactions. ¹² The Exchange states that due to these risks and the complexities of multi-part transactions, market participants may instead transact in the over-the-counter (“OTC”) market or not obtain a hedge at all. ¹³ The Exchange states that the proposal would adopt a mechanism to facilitate the execution of these cross-product transactions in a simple, efficient manner that reduces these execution and price risks. ¹⁴

The proposal amends Exchange Rule 1.1 to define to define a “future-option order” as an order to buy or sell a stated number of units of an underlying or a related futures contract(s) coupled with the purchase or sale of an option contract(s) on the Exchange. ¹⁵ The Exchange would designate in which classes future-option orders would be available. ¹⁶ The Exchange states that it intends to initially permit future-option orders overlying VIX and that it may expand the availability of future-option orders to other underlying securities or

indexes in the future. ¹⁷ The Exchange further states that, if required, the Exchange would submit rule filings in connection with any such expansion; the Exchange states, for example, that it may determine that a different risk offset requirement (as discussed below) is appropriate for another underlying based on the characteristics of the overlying options and futures. ¹⁸

The proposed definition of a future-option order includes a risk offset requirement and a User may submit a future-option order only if it satisfies the applicable risk offset requirement. ¹⁹ The Exchange states that a risk offset requirement will provide market participants with sufficient flexibility to execute legitimate strategies comprised of options and futures while preventing a market participant from using the proposed execution mechanism to execute a futures trade outside of the normal trading process on the applicable DCM by combining the future leg(s), for example, with an inexpensive out-of-the-money option leg. ²⁰ Pursuant to paragraph (a) of the proposed definition of future-option order, the System will accept a future-option order if the future leg(s) provides no less than 10% and no greater than 125% risk offset to the option leg(s). ²¹ A future-option order satisfies this risk offset requirement if the net delta value of the order is no greater than -0.10 and no less than -1.25 . ²² The delta value of an option leg equals the expected change in the price of that options contract given a \$1.00 change in the price of the underlying security or index, and the delta value of a future leg equals the amount set forth in the rules or contract specifications of the DCM on which the future contract trades. ²³ The delta value of each option and future leg is multiplied by the applicable multiplier. ²⁴ The sum of the future legs delta values divided by the sum of the

¹¹ See *id.*

¹² See *id.*

¹³ See *id.*

¹⁴ See *id.*

¹⁵ The Exchange states that a “future-option order” is deemed an inter-regulatory spread order for purposes of the Exchange’s rules. The Exchange states that Exchange Rule 1.1 defines an inter-regulatory spread order as an order involving the simultaneous purchase and/or sale of at least one unit in contracts each of which is subject to different regulatory jurisdictions at stated limits, or at a stated differential, or at market prices on the floor of the Exchange. The Exchange states that the proposed rule change modernizes this definition to apply it to the Exchange in general, as opposed to the floor of the Exchange (the Exchange states that the definition of inter-regulatory spread order was adopted when all trading on the Exchange occurred in open outcry). See *id.* at footnote 3.

¹⁶ See Notice, 89 FR 81593. The Exchange states that the proposed definition of a future-option order is similar to the definition of a stock-option order, and that Exchange Rule 1.1 defines a “stock-option order” as an order to buy or sell a stated number of units of an underlying or a related security coupled with either (a) the purchase or sale of option contract(s) on the opposite side of the market representing either the same number of units of the underlying or related security or the number of units of the underlying security necessary to create a delta neutral position or (b) the purchase or sale of an equal number of put and call option contracts, each having the same exercise price and expiration date, and each representing the same number of units of stock as, and on the opposite side of the market from, the underlying or related security portion of the order. The Exchange states that the primary difference is the stock-option order definition requires the order to be delta neutral, while the proposed definition of a future-option order requires the order to have a risk offset within a specified range (as described below). See *id.* at footnote 4.

¹⁷ See Notice, 89 FR at footnote 5.

¹⁸ See *id.*

¹⁹ See Notice, 89 FR at 81593.

²⁰ See *id.*

²¹ See *id.* The Exchange states that the user must include a delta value for each option leg of the order when submitting a future-option order. See Exchange Rule 1.1 (proposed paragraph (b)(2) of definition of future-option order). The Exchange states that although a user may use any methodology it chooses to calculate the delta value of option legs, the value must be reasonable and will be subject to surveillance by the Exchange’s regulatory division. The Exchange states that the System will use the user-submitted delta values to calculate the risk offset for the entire order. See *id.* at footnote 6.

²² See Notice, 89 FR 81593 and paragraph (a)(1) of the proposed definition of future-option order.

²³ See paragraphs (a)(1)(A) and (B) of the proposed definition of future-option order.

²⁴ See paragraph (a)(1)(C) of the proposed definition of future-option order.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The proposal states that a future-option order “which is deemed an inter-regulatory spread order for purposes of the Rules, is an order to buy or sell a stated number of units of an underlying or a related futures contract(s) coupled with the purchase or sale of an option contract(s) on the Exchange. The Exchange designates in which classes future-option orders are available.” See proposed Exchange Rule 1.1.

⁴ See Securities Exchange Act Release No. 101229 (Oct. 1, 2024), 89 FR 81592 (“Notice”).

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 101646 (Nov. 18, 2024), 89 FR 83723 (Nov. 22, 2024) (designating January 6, 2025, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change).

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See *supra* note 4.

⁹ See Notice, 89 FR 81593.

¹⁰ See *id.*

option legs delta values equals the net delta value for the order.²⁵

For future-option orders overlying the Choe Volatility Index (VIX), the System calculates the risk offset set forth in paragraph (a) using the net delta value for each “group” of option legs and future legs with the same expiration date.²⁶ The net delta value of each group must be no greater than -0.10 and no less than -1.25 .²⁷ If any option contract leg or future contract leg cannot be grouped with any future leg(s) or option leg(s), respectively, the System rejects a VIX future-option order.²⁸

If the System determines that a complex strategy comprised of future and option legs satisfies the risk offset requirement, it accepts all future-option orders for that complex strategy for the remainder of that trading day.²⁹ The Exchange states that this will prevent a situation in which the Exchange accepts a future-option order for a specific complex strategy on a trading day but cannot execute against future-option orders for the same complex strategy submitted later that trading day but no longer satisfies the risk offset requirement because the delta values have changed since the initial order was submitted.³⁰

The Exchange states that the proposal also amends the definition of “complex order” in Exchange Rule 1.1 to provide that unless the context otherwise requires, the term complex order will include future-option orders.³¹

The Exchange states that, under proposed Exchange Rule 5.33(o), when a User submits a future-option order to the Exchange:

- if the User is also a member of the DCM on which the applicable future trades and the Exchange has established electronic communication with the DCM, the Exchange will electronically communicate the future component of the future-option order to the DCM on behalf of the User;³² or

- if the User is not also a member of the DCM on which the applicable future trades or opts out of the direct communication described above (or such direct communication is unavailable), the User must designate a specific futures commission merchant (“FCM”) or introducing broker (“IB”) with which it has entered into an agreement pursuant to proposed Exchange Rule 5.33, Interpretation and Policy .05 (the “designated FCM/IB”) to which the Exchange will communicate the futures component of the future-option order on behalf of the User.³³ The Exchange states that proposed Interpretation and Policy .05 provides that if the User is not also a member of the DCM on which the applicable future trades or opts out of the direct communication (or such direct communication is unavailable), to submit a future-option order to the Exchange for execution, a User must enter into an agreement with one or more FCMs or IBs that are not affiliated with the Exchange, which FCM/IB(s) the Exchange has identified as having connectivity to electronically communicate the futures components of future-option orders to the DCM on which the futures trade.³⁴ The Exchange states that this will provide Users with flexibility to pick which FCM/IB will communicate the futures components of their orders for execution (if an FCM/IB is necessary for communication of the futures component to the DCM).³⁵

The Exchange states that the proposal adds future-option orders to the list of

if the DCM and the Exchange established electronic communication between the two markets to permit this direct communication of the futures component. *See id.* at footnote 12.

³³ The Exchange states that only authorized Users and associated persons of Users may establish connectivity to and access the Exchange to submit orders. *See* Exchange Rule 5.5(a). The Exchange states that a “User” is defined as a Trading Permit Holder (“TPH”) or Sponsored User who is authorized to obtain access to the System pursuant to Exchange Rule 5.5. *See* Exchange Rule 1.1 (definition of User). The Exchange states that it currently has no Sponsored Users, so the term “User” at present is synonymous with the term “TPH.” The Exchange states that a User and any individuals associated with the User that submits a future-option order must have any required futures industry registrations and comply with applicable rules of the DCM on which the futures trades and the Commodity Futures Trading Commission (“CFTC”). *See* Notice, 89 FR at footnote 13.

³⁴ The Exchange states that this requirement is substantially identical to that required for stock-option orders. *See* Notice, 89 FR at footnote 14.

³⁵ The Exchange states that it intends to establish an arrangement with one or more FCMs/IBs that are members of the applicable DCM, pursuant to which arrangement those FCMs/IBs will have connectivity to the Exchange to receive the futures components of future-option orders and communicate those to the applicable DCM for execution of these futures components. *See* Notice, 89 FR at footnote 15.

types of complex orders that may be accepted for electronic trading.³⁶ The Exchange states that future-option orders submitted for electronic processing may execute pursuant to a complex order auction (“COA”) if eligible, as described in Exchange Rule 5.33(d), or in the complex order book (“COB”) as described in Exchange Rule 5.33(e) and will execute in the same manner as other complex orders, except as described herein.³⁷ The Exchange states that future-option orders may also be submitted for execution (if eligible) in the complex automated improvement mechanism (“C-AIM”), as described in Exchange Rule 5.38, or the complex solicitation auction mechanism (“C-SAM”) as described in Exchange Rule 5.40.³⁸ The Exchange further states that the proposal amends Exchange Rule 5.70(b) to provide that the Exchange may make future-option orders available for flexible (FLEX) options trading.³⁹

The Exchange states that it proposes to adopt Exchange Rule 5.33(f)(1)(C) to provide that Users may express bids and offers for a future-option order in any decimal price the Exchange determines, which will allow the Exchange to accommodate the available pricing of futures.⁴⁰ The minimum increment for the option leg(s) of a future-option order is \$0.01 or greater, which the Exchange may determine on a class-by-class basis, regardless of the minimum increments otherwise applicable to the option leg(s), and the future leg(s) of a future-option order may be executed in any decimal price permitted in the DCM on which the applicable futures trade.⁴¹ The Exchange states that smaller minimum increments are appropriate for future-option orders as the future component may be able to trade at finer decimal increments permitted by the DCM on which the futures trade.⁴² The Exchange states that even with the flexibility provided in the proposed rule, the individual options legs must trade at increments allowed by the Commission.⁴³

As described more fully in the Notice, the Exchange states that the proposed electronic execution process of future-option orders is substantially similar to that of stock-option orders.⁴⁴ If a future-option order can execute upon entry or following a COA, or if it can execute following evaluation while resting in

²⁵ *See* paragraph (a)(1)(D) of the proposed definition of future-option order.

²⁶ *See* paragraph (a)(2) of the proposed definition of future-option order.

²⁷ *See id.*

²⁸ *See id.* An example of this calculation appears in the Notice at 89 FR 81593.

²⁹ *See* paragraph (c) [sic] of the proposed definition of future-option order.

³⁰ *See* Notice, 89 FR 81593–4. The Exchange states that it is for this reason a user may not designate a future-option order submitted for electronic processing as GTC or GTD, as provided in proposed Exchange Rule 1.1 (proposed paragraph (b)(1) of definition of future-option order). *See id.* at 81594, footnote 10.

³¹ *See id.* at 81594.

³² The Exchange states that, unlike stock, a future trades on one DCM, which would make such direct communication with the DCM possible. The Exchange states that this would only be available

³⁶ *See* Notice, 89 FR 81594.

³⁷ *See id.*

³⁸ *See id.* at 81595.

³⁹ *See id.* at footnote 16.

⁴⁰ *See* Notice, 89 FR 81594.

⁴¹ *See* proposed Exchange Rule 5.33(f)(1)(C).

⁴² *See* Notice, 89 FR 81594.

⁴³ *See id.*

⁴⁴ *See id.*

the COB pursuant to Exchange Rule 5.33(i), the System will execute the option component (which may consist of one or more option legs) of a future-option order against the option component of other future-option orders resting in the COB or COA responses pursuant to the allocation algorithm applicable to the class, but will not immediately send the User a trade execution report, and then will automatically communicate the future component(s) to the DCM or the designated FCM/IB, as applicable, for execution at the DCM on which the futures trade.⁴⁵ If the System receives an execution report for the future component from the DCM or the designated FCM/IB, as applicable, the Exchange will send the User the trade execution report for the future-option order, including execution information for the future and option components.⁴⁶ If the System receives a report from the DCM or the designated FCM/IB, as applicable, that the future component(s) cannot execute, the Exchange will nullify the option component trade and notify the User of the reason for the nullification.⁴⁷ The Exchange states that such nullification without a request from the User is consistent with the purpose of future-option orders, as contingent execution at or near the same time (and thus reduction in price and execution risk) is one of the primary goals of future-option orders.⁴⁸ A future-option order that is not marketable will rest in the COB (if eligible to rest) or route to PAR for manual handling, subject to a User's instructions.⁴⁹

Proposed Exchange Rule 5.33(f)(2)(C) states that for a future-option order with one option leg, the option leg may not trade at a price worse than the individual component price on the simple book or at the same price as a priority customer order on the simple book. The Exchange states that, for a future-option order with more than one option leg, the option legs must trade at price pursuant to Exchange Rule

5.33(f)(2)(A), which is the permissible execution prices and priority for complex orders comprised of option legs.⁵⁰ Therefore, the Exchange states that the System will not execute a future-option order at a net price: (1) that would cause any option component of the complex strategy to be executed at a price of zero; (2) that would cause any option component of the complex strategy to be executed at a price worse than the individual component prices on the simple book; (3) worse than the price that would be available if the complex order legged into the simple book; or (4) worse than the synthetic best bid or offer ("SBBO")⁵¹ or equal to the SBBO when there is a priority customer order on any leg comprising the SBBO and, if a conforming complex order,⁵² at least one option component of the complex order must execute at a price that improves the best bid or offer ("BBO") for that component by at least one minimum increment or, if a nonconforming complex order,⁵³ the option component(s) of the complex order for the leg(s) with a priority customer order at the BBO must execute at a price that improves the price of that priority customer order(s) on the simple book by at least one minimum increment.⁵⁴ The Exchange states that, pursuant to the proposed changes, the

⁵⁰ See Notice, 89 FR 81595 and proposed Exchange Rule 5.33(f)(2)(C)(ii).

⁵¹ See Notice, 89 FR 81595. The Exchange states that the proposal revises the definition of SBBO in Exchange Rule 5.33(a) to provide that the SBBO is the best net bid and best net offer on the Exchange for a complex strategy calculated using, for future-option orders, the BBO for each component (or the national best bid or offer ("NBBO") for a component if the BBO for that component is not available) and the daily quotation range for each future component. The Exchange states that the proposal revises the definition of synthetic national best bid or offer ("SNBBO") in Exchange Rule 5.33(a) to provide that the SNBBO is the national best net bid and net offer for a complex strategy calculated using, for future-option orders, the NBBO for each option component and the daily quotation range for each future component. See Notice, 89 FR at footnote 22.

⁵² The Exchange states that the proposal amends the definition of "conforming complex order" in Exchange Rule 1.1 to provide that a future-option order is conforming (1) if the ratio on the options legs is greater than or equal to one-to-three (.333) or less than or equal to three-to-one (3.00) or (2) the options legs comprise an Index Combo order (as defined in Exchange Rule 5.33(b)). See Notice, 89 FR at footnote 23.

⁵³ The Exchange states that the proposal amends the definition of "nonconforming complex order" in Exchange Rule 1.1 to provide that a future-option order is nonconforming if the ratio of its options legs is less than one-to-three (.333) or greater than three-to-one (3.00) (unless the options legs comprise an Index Combo order). See Notice, 89 FR at footnote 24.

⁵⁴ The Exchange states that all-or-none complex orders (including future-option orders) may only execute at prices better than the SBBO. See Notice, 89 FR at footnote 25.

option component(s) of a future-option order will ultimately trade in the same manner and in accordance with the same priority principles as they would if they had been submitted without a future leg.⁵⁵

The Exchange states that the proposal also amends rules in Chapter 5, Section G of the Exchange's rulebook to describe the execution of future-option orders in open outcry on the Exchange's trading floor, which the Exchange states is substantially similar to the open outcry process for stock-option orders.⁵⁶ The Exchange states that the proposal amends Exchange Rule 5.83(b) to provide that the Exchange may make future-option orders available for PAR routing for manual handling, and further amends this provision to provide that the Exchange may determine to make nonconforming future-option orders not eligible for electronic processing, in which case such orders would only be eligible for manual handling and open outcry trading.⁵⁷ The Exchange states that the proposal amends Exchange Rule 5.85(g) to provide that a bid or offer that is identified to the trading crowd as part of a future-option order is made and accepted subject to the following conditions (which are the same conditions applicable to stock-option orders): (1) at the time the future-option order is announced, the Trading Permit Holder ("TPH") initiating the order must disclose to the crowd all legs of the order and identify the specific market(s) on which and the price(s) at which the non-option leg(s) of the order is to be filled; and (2) concurrent with the execution of the options leg of the order, the initiating TPH and each TPH that agrees to be a contra-party on the non-option leg(s) of the order must take steps immediately to transmit the non-option leg(s) to the identified market(s) for execution.⁵⁸ The Exchange states that proposed Exchange Rule 5.85(b)(3) provides that (like the stock component of stock-option orders) a floor broker or PAR official may, subject to a User's instructions, route the future component of a future-option order represented in open outcry to the DCM or an Exchange-designated FCM/IB not affiliated with the Exchange for execution at a DCM on

⁵⁵ See Notice, 89 FR 81595.

⁵⁶ See *id.*

⁵⁷ See *id.*

⁵⁸ See *id.* The Exchange states that the proposal also updates Exchange Rule 5.85(g)(2) to provide that a trade representing execution of the options leg of a future-option order may be cancelled at the request of any TPH that is a party to that trade only if market conditions in any of the non-Exchange market(s) prevent the execution of the non-option leg(s) at the price(s) agreed upon. See *id.* at footnote 26.

⁴⁵ See proposed Exchange Rule 5.33(o)(2)(A).

⁴⁶ See proposed Exchange Rule 5.33(o)(2)(B).

⁴⁷ See proposed Exchange Rule 5.33(o)(2)(B). The Exchange states that the execution of the futures component must satisfy requirements of the applicable DCM, including informational and reporting time requirements, risk controls, and price restrictions (such as needing to be within the daily quotation range). The Exchange states that, pursuant to Exchange Rule 5.33(k), trading in any complex strategy (including one that comprises a future-option order) is suspended if any component of a complex strategy (including a future leg) is halted. Therefore, if trading in a future is halted, it could not execute and would result in the future-option order not being executed. See Notice, 89 FR at footnote 21.

⁴⁸ See Notice, 89 FR 81595.

⁴⁹ See proposed Exchange Rule 5.33(o)(2).

which the futures trade in accordance with proposed Exchange Rule 5.33, Interpretation and Policy .05.⁵⁹ The Exchange also proposes to add subparagraph (5) to Exchange Rule 5.85(g) (which the Exchange states is substantially similar to Exchange Rule 5.85(g)(4) for stock-option orders) to provide that a TPH or PAR official may route the future component of an eligible future-option order represented in open outcry from PAR directly to a designated FCM/IB (as defined in Exchange Rule 5.33(o)) not affiliated with the Exchange for electronic execution at the DCM on which the futures trade (1) in accordance with the order's terms, and (2) as a single order or as a paired matching order (including with orders transmitted from separate PAR workstations).⁶⁰ The Exchange states that TPHs seeking to route the future component of a future-option order represented in open outcry through PAR to an Exchange-designated FCM/IB not affiliated with the Exchange for electronic execution at the DCM on which the futures trade must comply with proposed Exchange Rule 5.33(o).⁶¹ The Exchange proposes to amend Exchange Rule 5.91(g) to provide that, as they currently can for complex orders (including stock-option orders), floor brokers may leg future-option orders where one of the legs is executed on the Exchange.⁶²

The Exchange states that the proposal amends Exchange Rule 5.85(b)(3) to describe the priority that will apply to future-option orders executed on the Exchange's trading floor.⁶³ The Exchange states that, under the proposal, future-option orders, like stock-option orders, will have priority over bids (offers) of in-crowd market participants on the trading floor but not over priority customer bids (offers) in the book.⁶⁴ Further, the Exchange states that the options legs of conforming and nonconforming future-option orders may be executed at the same net debit and credit prices as the options legs of stock-option orders.⁶⁵ Pursuant to proposed Exchange Rule 5.85(b)(4), a conforming future-option order may be executed at a net debit or credit price without giving priority to equivalent bids (offers) in the individual series legs that are represented in the trading crowd or in the book if the price of at least one option leg of the order

improves the corresponding bid (offer) of a priority customer order(s) in the book by at least one minimum trading increment as set forth in Exchange Rule 5.4(b).⁶⁶ The Exchange states that, pursuant to proposed Exchange Rule 5.85(b)(5), a nonconforming future-option order may be executed at a net debit or credit price without giving priority to equivalent bids (offers) in the individual series legs that are represented in the trading crowd or in the book if each option leg of the order betters the corresponding bid (offer) of a priority customer order(s) in the book on each leg by at least one minimum trading increment as set forth in Exchange Rule 5.4(b).⁶⁷

The Exchange states that the proposal amends Exchange Rule 6.5, Interpretation and Policy .07 to describe how a future-option order may qualify as an obvious error, that future-option orders will be handled in a similar manner to stock-option orders for purposes of Exchange Rule 6.5.⁶⁸ The Exchange states that if the option leg of a future-option order qualifies as an obvious error under Exchange Rule 6.5(c)(1) or catastrophic error under Exchange Rule 6.5(d)(1), then the option leg that is an obvious or catastrophic error will be adjusted in accordance with Exchange Rule 6.5(c)(4)(A) or (d)(3), respectively, regardless of whether one of the parties is a customer.⁶⁹ The Exchange states that the option leg of any customer future-option order will be nullified if the adjustment would result in an execution price higher (lower) for buy (sell) transactions than the customer's limit price on the future-option order, and the Exchange

will attempt to nullify the future leg.⁷⁰ The Exchange states that when a DCM nullifies the futures leg(s) of a future-option order or when the future leg(s) cannot be executed, the Exchange will nullify the option leg upon request of one of the parties to the transaction or in accordance with Exchange Rule 6.5(c)(3).⁷¹ The Exchange states that the proposal adds Interpretation and Policy .02 to Exchange Rule 6.6 to clarify that TPHs may update only the option component of a future-option order trade using Clearing Editor (and as permitted by Exchange Rule 6.6), and that any updates to the future component would need to be done in accordance with the Rules of the applicable DCM (if permissible).⁷²

The Exchange states that execution of the options components of future-option orders will be subject to Commission jurisdiction, and execution of the futures components of future-option orders will be subject to Commodity Futures Trading Commission ("CFTC") jurisdiction.⁷³ The Exchange further states that each of the Exchange and the DCM on which the futures component of a future-option order trades will regulate conduct relating to future-option orders and trades with respect to compliance with its rules, including bringing disciplinary actions for violations of its rules.⁷⁴ The Exchange states that before authorizing a class of future-option orders to trade on the Exchange, the Exchange would enter into an information sharing agreement with the DCM on which the applicable future trades that encompasses information relating to future-option orders and trades, which would allow for the sharing of information between the Exchange and the DCM to permit the Exchange (and the DCM) to have access to all order, trade, regulatory, and other data relating to these orders and trades.⁷⁵

The Exchange states that the proposal will provide investors with greater opportunities to manage risk and will provide investors with a more efficient mechanism to execute options and related future products, which investors regularly trade as part of hedging and other investment strategies.⁷⁶ The Exchange states that the proposed execution mechanism for future-option orders will make the trading and hedging process for investment

⁵⁹ See Notice, 89 FR 81595–6.

⁶⁰ See *id.* at 81596.

⁶¹ See *id.*

⁶² See *id.*

⁶³ See *id.*

⁶⁴ See *id.*

⁶⁵ See *id.*

⁶⁶ The Exchange states that if there is a priority customer order on every leg comprising the SBBO, at least one option leg of the future-option order must execute at a price that improves the price of the priority customer order on the simple book for that leg by at least one minimum increment. The Exchange states that this is the same priority that applies to a conforming complex order (comprised of all option legs) as set forth in Exchange Rule 5.85(b)(1), and thus the options legs of a conforming future-option order will execute subject to the same priority as they would if they had been submitted without a future leg. See Notice, 89 at footnote 29.

⁶⁷ See Notice, 89 FR 81596. The Exchange states that if there is a priority customer order on any leg(s) comprising the SBBO, the component(s) of the future-option order for the option leg(s) with a priority customer order at the BBO must execute at a price that improves the price of that priority customer order(s) on the simple book by at least one minimum increment. The Exchange states that this is the same priority that applies to a nonconforming complex order (comprised of all option legs) as set forth in Exchange Rule 5.85(b)(2), and thus the options legs of a nonconforming future-option order will execute subject to the same priority as they would if they had been submitted without a future leg. See *id.* at footnote 30.

⁶⁸ See Notice, 89 FR 81596.

⁶⁹ See *id.*

⁷⁰ See *id.*

⁷¹ See *id.*

⁷² See *id.*

⁷³ See *id.*

⁷⁴ See *id.*

⁷⁵ See *id.*

⁷⁶ See *id.* at 81597.

strategies comprised of option and future components more efficient, which will reduce execution, legging, and price drift risk that otherwise accompanies the current execution process for these strategies.⁷⁷ The Exchange states that today, investors seeking to execute an investment strategy comprised of option and future components must do so through separate trades—one for the options and one for the futures, which creates risk that one trade occurs but the other does not, and which may leave an investor with an unhedged position.⁷⁸ In addition, the Exchange states that separate transactions create risk because market conditions may change between the time it takes to execute both transactions, which may make the full package execute in an unfavorable manner for the investor.⁷⁹ The Exchange states that although investors may continue to execute these strategies as separate transactions, the proposed execution process (both electronic and open outcry) will provide investors with an optional, alternative means to execute strategies comprised of future and options components that will reduce these risks, as it will permit the entire package to be priced together and will result in an execution only if both the options and futures components are able to trade.⁸⁰ The Exchange states that the proposed single execution mechanism therefore expands the ability of market participants to engage in cross-product investment and hedging transactions, which the Exchange believes will contribute to reduced overall market risk and increased liquidity.⁸¹

The Exchange believes the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.⁸² The Exchange states that the proposed risk offset requirement is designed to provide market participants with sufficient flexibility to execute legitimate options strategies comprised of options and futures while preventing misuse of this mechanism, such as a market participant using the proposed execution mechanism to execute a futures trade outside of the normal trading process on the applicable DCM by combining the future leg(s), for

example, with an inexpensive out-of-the-money option leg.⁸³

The Exchange states that the Commission and the CFTC will maintain jurisdiction over execution of the options and futures components, respectively, of future-option orders.⁸⁴ The Exchange states that each of the Exchange and the DCM on which the futures component of a future-option order trades will regulate conduct relating to future-option orders and trades with respect to compliance with its rules, including bringing disciplinary actions for violations of its rules.⁸⁵ The Exchange states that it is a member of the Intermarket Surveillance Group (“ISG”). The Exchange states that ISG members work together to coordinate surveillance and investigative information sharing in the futures and options markets, and that the Exchange would therefore have access to information regarding relevant trading activity from other ISG members, including applicable DCMs (as CFE is) that are also members.⁸⁶ The Exchange states that before authorizing a class of future-option orders to trade on the Exchange, if the applicable DCM was not a member of ISG, or if the applicable DCM was a member of ISG but the Exchange still deemed appropriate, the Exchange would enter into an information sharing agreement with the DCM on which the applicable future trades that encompasses information relating to future-option orders and trades.⁸⁷ The Exchange states that this would allow for the sharing of information between the Exchange and the DCM to permit the Exchange (and the DCM) to have access to all order, trade, regulatory, and other data relating to these orders and trades, and thus facilitate the intermarket surveillance of future-option orders.⁸⁸ The Exchange states that, as a self-regulatory organization, it recognizes the importance of surveillance, among other things, to detect and deter fraudulent and manipulative trading activity as well as other violations of Exchange rules and the federal securities laws.⁸⁹ The Exchange states that its current rules prohibiting market manipulation and fraudulent, noncompetitive, and disruptive trading practices will apply to future-option orders, and that the Cboe Regulatory Division will incorporate information it receives from

the DCM into its surveillance procedures to monitor trading of future-option orders, including to detect any manipulative trading activity.⁹⁰ The Exchange states that its surveillance, along with the proposed risk offset requirement, are reasonably designed to detect manipulative trading and enforce compliance with the proposed rules and other Exchange Rules.⁹¹ The Exchange states that it performs ongoing evaluations of its surveillance program to ensure its continued effectiveness and will continue to review its surveillance procedures on an ongoing basis and make any necessary enhancements and/or modifications that may be needed for future-option orders.⁹²

The Exchange states that the proposal will provide investors with the ability to execute their investment strategies in a listed market environment as opposed to in the unregulated OTC market and may shift liquidity from the OTC market onto the Exchange (as well as shift swaps and OTC combos from the OTC market onto designated contract markets in the form of futures), which the Exchange believes would increase market transparency as well as enhance the process of price discovery conducted on the Exchange through increased order flow, to the benefit of all investors.⁹³ The Exchange states that it may be a more attractive alternative to the OTC market, because of, among other things: (1) enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to clearing requirements for listed options and futures.⁹⁴ The Exchange states that the Commission previously approved an Exchange proposal that permitted the trading of inter-regulatory spreads comprised of S&P 500 Index options and CBOE 50 futures, and S&P 100 Index options and S&P 250 futures.⁹⁵

III. Proceedings To Determine Whether To Approve or Disapprove SR-CBOE-2024-042 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act⁹⁶ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is

⁷⁷ See *id.*

⁷⁸ See *id.*

⁷⁹ See *id.*

⁸⁰ See *id.*

⁸¹ See *id.*

⁸² See *id.*

⁸³ See *id.*

⁸⁴ See *id.*

⁸⁵ See *id.*

⁸⁶ See *id.*

⁸⁷ See *id.*

⁸⁸ See *id.*

⁸⁹ See *id.*

⁹⁰ See *id.*

⁹¹ See *id.*

⁹² See *id.*

⁹³ See *id.* at 81598.

⁹⁴ See *id.*

⁹⁵ See Notice, 89 FR at footnote 38.

⁹⁶ 15 U.S.C. 78s(b)(2)(B).

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,⁹⁷ 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,⁹⁸ 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."⁹⁹ 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,¹⁰⁰ 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.¹⁰¹ As discussed above, the Exchange states that it initially proposes to make future-option orders available for VIX, and that it may expand the availability of future-option orders to other underlying securities or indexes in the future.¹⁰² However, the proposed rules do not specifically limit the availability of future-option orders to VIX, nor do they identify the permissible underliers for future-option orders.¹⁰³ In addition,

although all future-option orders would be subject to a risk offset requirement, the proposed rules establish a methodology for calculating the risk offset only for VIX.¹⁰⁴ The Exchange states that it may determine that a different risk offset requirement is appropriate for another underlying based on the characteristics of the overlying options and futures.¹⁰⁵ Instituting proceedings will allow for additional consideration and clarification of the intended scope of the proposal, including whether the proposal should be limited to future-option orders on underliers for which the Exchange has established a methodology for calculating the risk offset requirement.

The Exchange states that the proposed risk offset requirement will provide market participants with sufficient flexibility to execute legitimate strategies comprised of options and futures while preventing a market participant from using the proposed execution mechanism to execute a futures trade outside of the normal trading process on the applicable DCM by combining the future leg(s), for example, with an inexpensive out-of-the-money option leg.¹⁰⁶ The proposal provides no discussion or analysis describing how the Exchange developed the proposed risk offset requirement, including the permitted range of the risk offset, or why the Exchange believes that the proposed risk offset requirement—as opposed to another risk offset requirement or other metric—would be an effective means for permitting the execution of legitimate trading strategies while preventing misuse of the mechanism. Instituting proceedings will allow for additional

which is deemed an inter-regulatory spread order for purposes of the Rules, is an order to buy or sell a stated number of units of an underlying or a related futures contract(s) coupled with the purchase or sale of an option contract(s) on the Exchange. The Exchange designates in which classes future-option orders are available."

¹⁰⁴ Paragraph (a)(1) of the proposed definition of future-option order states: "The System accepts a future-option order if the future leg(s) provides no less than 10% and no greater than 125% risk offset to the option leg(s). A future-option order satisfies this risk offset requirement if the net delta value of the order is no greater than -0.10 and no less than -1.25 ." Paragraph (a)(2) of the proposed definition of future-option order states: "For future-option orders overlying the Cboe Volatility Index (VIX), the System calculates the risk offset set forth in paragraph (a) [sic] above using the net delta value for each "group" of option legs and future legs with the same expiration date. The net delta value of each group must be no greater than -0.10 and no less than -1.25 . If any option contract leg or future contract leg cannot be grouped with any future leg(s) or option leg(s), respectively, the System rejects a VIX future-option order."

¹⁰⁵ See Notice, 89 FR at footnote 5.

¹⁰⁶ See Notice, 89 FR 81593.

analysis and consideration of issues related to the proposed risk offset requirement, including whether the Exchange has adequately described the operation of the proposed risk offset requirement, how the Exchange developed and selected the proposed risk offset requirement, how the proposed risk offset requirement will accomplish its stated purpose, and how the Exchange will determine when a different risk offset requirement would be appropriate.

The proposal requires a User to include a reasonable delta value for each option leg and the risk offset percentage of the order.¹⁰⁷ The Exchange states that "While a user may use any methodology it chooses to calculate the delta value of option legs, the value must be reasonable and will be subject to surveillance by the Exchange's regulatory division."¹⁰⁸ The proposal provides no discussion of how the Exchange will determine that User-assigned delta values are reasonable or how the Exchange will surveil for compliance with this requirement. Instituting proceedings will allow further discussion and consideration of how the Exchange will monitor compliance with the requirement that Users assign a reasonable delta value to each option leg of the order.

In addition, as noted above, the Exchange states that execution of the options components of future-option orders will be subject to Commission jurisdiction, and execution of the futures components of future-option orders will be subject to CFTC jurisdiction.¹⁰⁹ Instituting proceedings will allow for additional analysis and consideration of issues related to any jurisdictional issues.

The Commission is instituting proceedings to allow for additional consideration and comment on the issues discussed above. In particular, the Commission asks commenters to address whether the proposal includes sufficient analysis with respect to the issues discussed above to support a conclusion that the proposal is consistent with the 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

¹⁰⁷ See paragraph (b)(2) of the proposed definition of future-option order.

¹⁰⁸ See Notice, 89 FR at footnote 6.

¹⁰⁹ See Notice, 89 FR 81596.

⁹⁷ See *id.*

⁹⁸ 15 U.S.C. 78f(b)(5).

⁹⁹ 17 CFR 201.700(b)(3).

¹⁰⁰ See *id.*

¹⁰¹ See *id.*

¹⁰² See Notice, 89 FR at footnote 5.

¹⁰³ The proposed definition of future-option order in Exchange Rule 1.1 states: "A future-option order,

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.¹¹⁰

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by February 3, 2025. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by February 18, 2025.

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-2024-042 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-2024-042. 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-2024-042 and should be submitted on or before February 3, 2025. Rebuttal comments should be submitted by February 18, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹¹

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2025-00412 Filed 1-10-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102125; File No. SR-Phlx-2024-73]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Non-Display Enterprise License and PHLX Depth Data Fees Based on the Rate of Inflation

January 6, 2025.

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 December 26, 2024, Nasdaq PHLX LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Item I below, which Item has been substantially prepared by the Exchange. The Exchange has designated this proposal for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f) thereunder.⁴ The Commission

is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fees of (i) the Non-Display Enterprise License and (ii) PHLX Depth Data (internal and external distribution and professional subscriber fee) based on the rate of inflation. Each fee will be adjusted for the inflation that has occurred since that specific fee was last changed.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 1, 2025.

The proposed rule change, including the Exchange's statement of the purpose of, and statutory basis for, the proposed rule change, is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules> and on the Commission's website at https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-Phlx-2024-73.

II. 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.⁵ Comments may be submitted electronically by using the Commission's internet comment form (https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-Phlx-2024-73) or by sending an email to rule-comments@sec.gov. Please include file

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.

⁵ 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.

¹¹⁰ 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).

¹¹¹ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f). At any time within 60 days of the filing of the proposed rule change, the

number SR-Phlx-2024-73 on the subject line. Alternatively, paper comments may be sent to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-Phlx-2024-73. 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-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-Phlx-2024-73). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-Phlx-2024-73 and should be submitted on or before February 3, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025-00414 Filed 1-10-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102120; File No. SR-GEMX-2024-47]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Nasdaq GEMX Order Feed, Nasdaq GEMX Top Feed, Nasdaq GEMX Real-Time Depth of Market Raw Feed, and Nasdaq GEMX Trade Feed Fees Based on the Rate of Inflation

January 6, 2025.

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 December 23, 2024, Nasdaq GEMX, LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Item I below, which Item has been substantially prepared by the Exchange. The Exchange has designated this proposal for immediate effectiveness pursuant to

Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fees of the following market data products based on the rate of inflation: (i) Nasdaq GEMX Order Feed (internal and external distribution and related fee caps); (ii) Nasdaq GEMX Top Feed (internal and external distribution and related fee caps); (iii) Nasdaq GEMX Real-time Depth of Market Raw Feed (internal and external distribution and related fee caps); and (iv) Nasdaq GEMX Trade Feed (internal and external distribution). Each fee will be adjusted for the inflation that has occurred since that specific fee was last changed.

The proposed rule change, including the Exchange's statement of the purpose of, and statutory basis for, the proposed rule change, is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/gemx/rules> and on the Commission's website at https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-GEMX-2024-47.

II. 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.⁵ Comments may be submitted electronically by using the Commission's internet comment form

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f). 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.

⁵ 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.

(https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-GEMX-2024-47) or by sending an email to rule-comments@sec.gov. Please include file number SR-GEMX-2024-47 on the subject line. Alternatively, paper comments may be sent to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-GEMX-2024-47. 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-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-GEMX-2024-47). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-GEMX-2024-47 and should be submitted on or before February 3, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025-00413 Filed 1-10-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-11350; 34-102134; IA-6808; IC-35442]

Adjustments to Civil Monetary Penalty Amounts

AGENCY: Securities and Exchange Commission.

ACTION: Notice of annual inflation adjustment of civil monetary penalties.

SUMMARY: The Securities and Exchange Commission ("Commission") is publishing this notice ("Notice") pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 ("2015 Act"). This Act requires all agencies to annually adjust for inflation the civil monetary penalties that can be imposed under the statutes administered by the agency and publish the adjusted amounts in the **Federal Register**. This Notice sets forth the

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁶ 17 CFR 200.30-3(a)(12).

annual inflation adjustment of the maximum amount of civil monetary penalties (“CMPs”) administered by the Commission under the Securities Act of 1933 (“Securities Act”), the Securities Exchange Act of 1934 (“Exchange Act”), the Investment Company Act of 1940, and certain penalties under the Sarbanes-Oxley Act of 2002. These amounts are effective beginning on January 15, 2025, and will apply to all penalties imposed after that date for violations of the aforementioned statutes that occurred after November 2, 2015.

FOR FURTHER INFORMATION CONTACT:

Stephen M. Ng, Senior Special Counsel, Office of the General Counsel, at (202) 551-7957, or Hannah W. Riedel, Senior Counsel, Office of the General Counsel, at (202) 551-7918.

SUPPLEMENTARY INFORMATION:

I. Background

This Notice is being published pursuant to the 2015 Act,¹ which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (“Inflation Adjustment Act”).² The Inflation Adjustment Act previously had been amended by the Debt Collection Improvement Act of 1996 (“DCIA”)³ to require that each federal agency adopt regulations at least once every four years that adjust for inflation the CMPs that can be imposed under the statutes administered by the agency. Pursuant to this requirement, the Commission previously adopted regulations in 1996, 2001, 2005, 2009, and 2013 to adjust the maximum amount of the CMPs that could be imposed under the statutes the Commission administers.⁴

The 2015 Act replaces the inflation adjustment formula prescribed in the DCIA with a new formula for calculating the inflation-adjusted amount of CMPs. The 2015 Act requires that agencies use this new formula to re-calculate the inflation-adjusted amounts of the penalties they administer on an annual basis and publish these new amounts in the **Federal Register** by January 15 of each year.⁵ The Commission previously published the first annual adjustment required by the 2015 Act on January 6, 2017 (“2017 Adjustment”).⁶ As part of the 2017 Adjustment, the Commission promulgated 17 CFR 201.1001(a) and Table I to Subsection 1001, which lists the penalty amounts for all violations that occurred on or before November 2, 2015. For violations occurring after November 2, 2015, Subsection 1001(b) provides that the applicable penalty amounts will be adjusted annually based on the formula set forth in the 2015 Act. Subsection 1001(b) further provides that these adjusted amounts will be published in the **Federal Register** and on the Commission’s website. The Commission published the most recent annual adjustment on January 5, 2024 (“2024 Adjustment”).⁷

A CMP is defined in relevant part as any penalty, fine, or other sanction that: (1) is for a specific amount, or has a maximum amount, as provided by federal law; and (2) is assessed or enforced by an agency in an administrative proceeding or by a federal court pursuant to federal law.⁸ This definition applies to the monetary penalty provisions contained in four statutes administered by the Commission: the Securities Act, the Exchange Act, the Investment Company Act, and the Investment Advisers Act. In addition, the Sarbanes-Oxley Act provides the Public Company Accounting Oversight Board (“PCAOB”) authority to levy civil monetary penalties in its disciplinary proceedings pursuant to 15 U.S.C. 7215(c)(4)(D).⁹ The definition of a CMP in the Inflation Adjustment Act encompasses such civil monetary penalties.¹⁰

contained in these releases have now been consolidated into Table I to 17 CFR 201.1001.

⁵ 28 U.S.C. 2461 note Sec. 4.

⁶ Release Nos. 33-10276; 34-79749; IA-4599; IC-32414 (effective Jan. 18, 2017).

⁷ Release Nos. 33-11263; 34-99276; IA-6521; IC-35085 (effective Jan. 15, 2024).

⁸ 28 U.S.C. 2461 note Sec. 3(2).

⁹ 15 U.S.C. 7215(c)(4)(D).

¹⁰ The Commission may by order affirm, modify, remand, or set aside sanctions, including civil

II. Adjusting the Commission’s Penalty Amounts for Inflation

This Notice sets forth the annual inflation adjustment required by the 2015 Act for all CMPs under the Securities Act, the Exchange Act, the Investment Company Act, and the Investment Advisers Act, and certain civil monetary penalties under the Sarbanes-Oxley Act.

Pursuant to the 2015 Act, the penalty amounts in the 2025 Adjustment are adjusted for inflation by increasing them by a multiplier (“CPI-U Multiplier”) that represents the percentage change between the Consumer Price Index for all Urban Consumers (“CPI-U”) for October 2023 and the October 2024 CPI-U.¹¹ The CPI-U Multiplier for the 2025 Adjustment is 1.02598.¹² The new penalty amounts are determined by multiplying the amounts in the 2024 Adjustment by the CPI-U Multiplier and then rounding to the nearest dollar.

For example, the CMP for certain insider trading violations by controlling persons under Exchange Act Section 21A(a)(3)¹³ was readjusted for inflation as part of the 2024 Adjustment to \$2,559,636. To determine the new CMP under this provision, the Commission multiplies this amount by the CPI-U Multiplier of 1.02598, and rounds to the nearest dollar. Thus, the new CMP for Exchange Act Section 21A(a)(3) is \$2,636,135.

Below is the Commission’s calculation of the new penalty amounts for the penalties it administers:

monetary penalties, imposed by the PCAOB. See Section 107(c) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7217. The Commission may enforce such orders in federal district court pursuant to Section 21(e) of the Exchange Act. As a result, penalties assessed by the PCAOB in its disciplinary proceedings are penalties “enforced” by the Commission for purposes of the Inflation Adjustment Act. See *Adjustments to Civil Monetary Penalty Amounts*, Release No. 33-8530 (Feb. 4, 2005) [70 FR 7606 (Feb. 14, 2005)].

¹¹ 28 U.S.C. 2461 note Sec. 5.

¹² This figure is based on the percentage change between published CPI-U figures for Oct. 2024 (315.664) and Oct. 2023 (307.671), dividing the former by the latter (1.02597905). OMB rounds the multiplier to the nearest hundredth thousandth (1.02598). See Office of Management and Budget, *Implementation of Penalty Inflation Adjustments for 2025, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (Dec. 17, 2024), available at <https://www.whitehouse.gov/wp-content/uploads/2024/12/M-25-02.pdf>.

¹³ 15 U.S.C. 78u-1(a)(3).

U.S. code citation	Civil monetary penalty description	2024 Adjustment penalty amounts	CPI-U multiplier	2025 Adjusted penalty amounts
15 U.S.C. 77h–1(g) (Securities Act Sec. 8A(g))	For natural person	\$10,550	1.02598	\$10,824
	For any other person	105,505	1.02598	108,246
	For natural person/fraud	105,505	1.02598	108,246
	For any other person/fraud	527,522	1.02598	541,227
	For natural person/fraud/substantial losses or risk of losses to others or gains to self.	211,009	1.02598	216,491
	For any other person/fraud/substantial losses or risk of losses to others or gain to self.	1,019,877	1.02598	1,046,373
15 U.S.C. 77t(d) (Securities Act Sec. 20(d))	For natural person	11,524	1.02598	11,823
	For any other person	115,231	1.02598	118,225
	For natural person/fraud	115,231	1.02598	118,225
	For any other person/fraud	576,158	1.02598	591,127
	For natural person/fraud/substantial losses or risk of losses to others.	230,464	1.02598	236,451
	For any other person/fraud/substantial losses or risk of losses to others.	1,152,314	1.02598	1,182,251
15 U.S.C. 78u(d)(3) (Exchange Act Sec. 21(d)(3))	For natural person	11,524	1.02598	11,823
	For any other person	115,231	1.02598	118,225
	For natural person/fraud	115,231	1.02598	118,225
	For any other person/fraud	576,158	1.02598	591,127
	For natural person/fraud/substantial losses or risk of losses to others or gains to self.	230,464	1.02598	236,451
	For any other person/fraud/substantial losses or risk of losses to others or gain to self.	1,152,314	1.02598	1,182,251
15 U.S.C. 78u–1(a)(3) (Exchange Act Sec. 21A(a)(3))	Insider Trading—controlling person	2,559,636	1.02598	2,626,135
15 U.S.C. 78u–2 (Exchange Act Sec. 21B)	For natural person	11,524	1.02598	11,823
	For any other person	115,231	1.02598	118,225
	For natural person/fraud	115,231	1.02598	118,225
	For any other person/fraud	576,158	1.02598	591,127
	For natural person/fraud/substantial losses or risk of losses to others.	230,464	1.02598	236,451
	For any other person/fraud/substantial losses or risk of losses to others.	1,152,314	1.02598	1,182,251
15 U.S.C. 78ff(b) (Exchange Act Sec. 32(b))	Exchange Act/failure to file information documents, reports	680	1.02598	698
15 U.S.C. 78ff(c)(1)(B) (Exchange Act Sec. 32(c)(1)(B))	Foreign Corrupt Practices—any issuer	25,597	1.02598	26,262
15 U.S.C. 78ff(c)(2)(B) (Exchange Act Sec. 32(c)(2)(B))	Foreign Corrupt Practices—any agent or stockholder acting on behalf of issuer.	25,597	1.02598	26,262
15 U.S.C. 80a–9(d) (Investment Company Act Sec. 9(d))	For natural person	11,524	1.02598	11,823
	For any other person	115,231	1.02598	118,225
	For natural person/fraud	115,231	1.02598	118,225
	For any other person/fraud	576,158	1.02598	591,127
	For natural person/fraud/substantial losses or risk of losses to others or gains to self.	230,464	1.02598	236,451
	For any other person/fraud/substantial losses or risk of losses to others or gain to self.	1,152,314	1.02598	1,182,251
15 U.S.C. 80a–41(e) (Investment Company Act Sec. 42(e))	For natural person	11,524	1.02598	11,823
	For any other person	115,231	1.02598	118,225
	For natural person/fraud	115,231	1.02598	118,225
	For any other person/fraud	576,158	1.02598	591,127
	For natural person/fraud/substantial losses or risk of losses to others.	230,464	1.02598	236,451
	For any other person/fraud/substantial losses or risk of losses to others.	1,152,314	1.02598	1,182,251
15 U.S.C. 80b–3(i) (Investment Advisers Act Sec. 203(i))	For natural person	11,524	1.02598	11,823
	For any other person	115,231	1.02598	118,225
	For natural person/fraud	115,231	1.02598	118,225
	For any other person/fraud	576,158	1.02598	591,127
	For natural person/fraud/substantial losses or risk of losses to others or gains to self.	230,464	1.02598	236,451
	For any other person/fraud/substantial losses or risk of losses to others or gain to self.	1,152,314	1.02598	1,182,251
15 U.S.C. 80b–9(e) (Investment Advisers Act Sec. 209(e))	For natural person	11,524	1.02598	11,823
	For any other person	115,231	1.02598	118,225
	For natural person/fraud	115,231	1.02598	118,225
	For any other person/fraud	576,158	1.02598	591,127
	For natural person/fraud/substantial losses or risk of losses to others.	230,464	1.02598	236,451
	For any other person/fraud/substantial losses or risk of losses to others.	1,152,314	1.02598	1,182,251
15 U.S.C. 7215(c)(4)(D)(i) (Sarbanes-Oxley Act Sec. 105(c)(4)(D)(i)).	For natural person	169,700	1.02598	174,109
	For any other person	3,394,024	1.02598	3,482,201
15 U.S.C. 7215(c)(4)(D)(ii) (Sarbanes-Oxley Act Sec. 105(c)(4)(D)(ii)).	For natural person	1,272,758	1.02598	1,305,824
	For any other person	25,455,170	1.02598	26,116,495

Pursuant to the 2015 Act and 17 CFR 201.1001, the adjusted penalty amounts in this Notice (and all penalty

adjustments performed pursuant to the 2015 Act) apply to penalties imposed after the date the adjustment is effective

for violations that occurred after November 2, 2015, the 2015 Act's enactment date. These penalty amounts

supersede the amounts in the 2024 Adjustment.¹⁴ For violations that occurred on or before November 2, 2015, the penalty amounts in Table I to 17 CFR 201.1001 continue to apply.¹⁵

III. Small Business Regulatory Enforcement Fairness Act Status

The Office of Management and Budget (“OMB”) has concurred in our recommendation that this Notice is not a “major rule” as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act (“SBREFA”), 5 U.S.C. 804(2), because (1) it will not have an annual effect of \$100 million dollars or more on the economy, (2) it does not present a major increase in prices for consumers or individual industries, and (3) it does not have significant adverse effects on competition, investment, or innovation.¹⁶

By the Commission.

Dated: January 7, 2025.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2025–00513 Filed 1–10–25; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102124; File No. SR–NASDAQ–2024–086]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Best of Nasdaq Options, Nasdaq ITCH to Trade Options, and Hardware-Based Delivery of NOM Depth Data Fees Based on the Rate of Inflation

January 6, 2025.

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 December 26, 2024, The Nasdaq Stock Market LLC (“Exchange”) filed with the Securities

¹⁴ The penalty amounts in this Notice are being published in the *Federal Register* and will not be added to the Code of Federal Regulations in accordance with the 2015 Act and 17 CFR 201.1001(b). See 28 U.S.C. 2461 note Sec. 4(a)(2); 17 CFR 201.1001(b). In addition to being published in the *Federal Register*, the penalty amounts in this Notice will be made available on the Commission’s website at <https://www.sec.gov/enforce/civil-penalties-inflation-adjustments.htm>, as detailed in 17 CFR 201.1001(b). This website also lists the penalty amounts for violations that occurred on or before Nov. 2, 2015.

¹⁵ 17 CFR 201.1001(a).

¹⁶ See generally SBREFA, Public Law 104–121 (1996).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

and Exchange Commission (“Commission”) the proposed rule change as described in Item I below, which Item has been substantially prepared by the Exchange. The Exchange has designated this proposal for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b–4(f) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fees of the following options market data products based on the rate of inflation: (i) Best of Nasdaq Options (“BONO”) (internal and external distribution), (ii) Nasdaq ITCH to Trade Options (“ITTO”) (internal and external distribution), (iii) enterprise license fee for BONO and ITTO and per user professional fee (internal and external); and (iv) Hardware-Based Delivery of NOM Depth data (internal and external distribution). Each fee will be adjusted for the inflation that has occurred since that specific fee was last changed.

The proposed rule change, including the Exchange’s statement of the purpose of, and statutory basis for, the proposed rule change, is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules> and on the Commission’s website at https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-NASDAQ-2024-086.

II. 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.⁵

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b–4(f). 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.

⁵ 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

Comments may be submitted electronically by using the Commission’s internet comment form (https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-NASDAQ-2024-086) or by sending an email to rule-comments@sec.gov. Please include file number SR–NASDAQ–2024–086 on the subject line. Alternatively, paper comments may be sent to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. All submissions should refer to file number SR–NASDAQ–2024–086. 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-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-NASDAQ-2024-086). 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–2024–086 and should be submitted on or before February 3, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2025–00415 Filed 1–10–25; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102122; File No. SR–MRX–2024–49]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Depth of Market Feed, Top Feed, Trades Feed, Spread Feed, and Subscriber Fees Based on the Rate of Inflation

January 6, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

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.

⁶ 17 CFR 200.30–3(a)(12).

(“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on December 26, 2024, Nasdaq MRX, LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Item I below, which Item has been substantially prepared by the Exchange. The Exchange has designated this proposal for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b–4(f) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fees of the following market data products based on the rate of inflation: (i) Depth of Market Feed (internal and external distribution), (ii) Order Feed (internal and external distribution), (iii) Top Feed (internal and external distribution), (iv) Trades Feed (internal and external distribution), (v) Spread Feed (internal and external distribution), and (vi) Subscriber Fees (Professional fee and the Non-Display Enterprise License). Each fee will be adjusted for the inflation that has occurred since that specific fee was last changed.

The proposed rule change, including the Exchange’s statement of the purpose of, and statutory basis for, the proposed rule change, is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/mrx/rules> and on the Commission’s website at https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-MRX-2024-49.

II. 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.⁵

Comments may be submitted electronically by using the Commission’s internet comment form (https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-MRX-2024-49) or by sending an email to rule-comments@sec.gov. Please include file number SR–MRX–2024–49 on the subject line. Alternatively, paper comments may be sent to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. All submissions should refer to file number SR–MRX–2024–49. 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-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-MRX-2024-49). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MRX–2024–49 and should be submitted on or before February 3, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025–00411 Filed 1–10–25; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20952; LOUISIANA Disaster Number LA–20008 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of Louisiana

AGENCY: U.S. Small Business Administration.

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.

⁶ 17 CFR 200.30–3(a)(12).

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Louisiana dated January 3, 2025.

Incident: Mass Casualty Incident.

DATES: Issued on January 3, 2025.

Incident Period: January 1, 2025 and continuing.

Economic Injury (EIDL) Loan Application Deadline Date: October 3, 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 Administrator’s EIDL declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Parish: Orleans

Contiguous Parishes:

Louisiana: Jefferson, Plaquemines, St. Bernard, St. Tammany

The Interest Rates are:

	Percent
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.625

The number assigned to this disaster for economic injury is 209520.

The State which received an EIDL Declaration is Louisiana.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: January 3, 2025.

Isabella Guzman,
Administrator.

[FR Doc. 2025–00475 Filed 1–10–25; 8:45 am]

BILLING CODE 8026–09–P

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b–4(f). 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.

⁵ Copies of the submission, all subsequent amendments, all written statements with respect to

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20703 and #20704;
SOUTH CAROLINA Disaster Number SC–
20012]

**Presidential Declaration Amendment of
a Major Disaster for the State of South
Carolina**

AGENCY: U.S. Small Business
Administration.

ACTION: Amendment 10.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of South Carolina (FEMA–4829–DR), dated September 29, 2024.

Incident: Hurricane Helene.

DATES: Issued on January 6, 2025.

Incident Period: September 25, 2024 through October 7, 2024.

Physical Loan Application Deadline Date: January 28, 2025.

Economic Injury (EIDL) Loan Application Deadline Date: June 30, 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 the State of South Carolina, dated September 29, 2024, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to January 28, 2025.

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. 2025–00420 Filed 1–10–25; 8:45 am]

BILLING CODE 8026–09–P

determinations pertaining to certain objects to be included in an exhibition entitled “Woven Histories: Textiles and Modern Abstraction.” Notice is hereby given of the following determinations: I hereby determine that certain of those objects being re-imported from abroad, and certain additional objects being imported from abroad, pursuant to agreements with their foreign owners or custodians for temporary display in the aforesaid exhibition at The Museum of Modern Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021. The notice of determinations published on July 12, 2023, appears at 88 FR 44434.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2025–00445 Filed 1–10–25; 8:45 am]

BILLING CODE 4710–05–P

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2025–00514 Filed 1–10–25; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration**

[Docket No. FAA–2024–2478]

Agency Information Collection

**Activities: Requests for Comments;
Clearance of Renewed Approval of
Information Collection: Report of
Inspections Required by Airworthiness
Directives, Part 39**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice and request for
comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 21, 2024. The collection involves the member of the public that may submit an Alternative Methods of Compliance (AMOC) request to the FAA by using the Airworthiness Directives Development (ADD) External website. The information to be collected will be used to support publicly disseminated information to the FAA and/or is necessary because this information supports the Department of Transportation's strategic goal to promote the public health and safety by working toward eliminating transportation-related deaths and injuries.

DATES: Written comments should be submitted by February 12, 2025.

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/

DEPARTMENT OF STATE

[Public Notice: 12632]

**Notice of Determinations; Culturally
Significant Objects Being Re-Imported
or Imported for Exhibition—**

**Determinations: “Woven Histories:
Textiles and Modern Abstraction”
Exhibition**

SUMMARY: On July 12, 2023, notice was published in the **Federal Register** of

SURFACE TRANSPORTATION BOARD**Release of Waybill Data**

The Surface Transportation Board has received a request from the University of Colorado Boulder (WB24–69–12/30/24) for permission to use data from the Board's 2005–2010 unmasked Carload Waybill Samples. A copy of this request may be obtained from the Board's website under docket no. WB24–69.

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:

Michelle Janollari by email at: michelle.k.janollari@faa.gov; phone: (216) 546-4421.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA’s performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120-0056.

Title: Report of Inspections Required by Airworthiness Directives, Part 39.

Form Numbers: There is no standard form to use for AMOC submission. However, the public may access the ADD External website to submit an AMOC request to the FAA.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 21, 2024 89 FR 84236. Alternative Methods of Compliance (AMOC) are submitted to the FAA by the general public. While anyone may submit an AMOC there is no standard form to use. From Order 8110.103B Alternative Methods of Compliance (AMOC), Section 32:

3-2. AMOC Proposal. 14 CFR 39.19 states in part that “anyone may propose to the FAA an alternative method of compliance or a change in the compliance time, if the proposal provides an acceptable level of safety.”

a. Although a letter is preferred, AMOC proposals may be submitted by other means, such as email, fax, or telephone. AMOC proposals received by telephone must be documented.

An AMOC Response Letter is written by an internal FAA user and sent to the AMOC Requester. The template may be generated from the ADD Dashboard and follows the latest Order. There is not an FAA or OMB number on this template.

A member of the public may submit an AMOC request to the FAA by using the ADD External website. Registration is not needed to use this website. External users must consent to the “Terms of Use” statement before proceeding to the AMOC proposal web

page. An AMOC is required if an owner/operator of aircraft cannot comply with an AD or finds a different method to comply with the actions specified in an AD, as mandated by 14 CFR part 39.

Respondents: The respondents are a member of the public who may submit an AMOC request to FAA by using the ADD External website. We estimate that 25 ADs yearly will require reports of information and findings. The average AD affects about 1,120 owners/operators. Therefore, 25 ADs times 1,120 owners/operators per year equal 28,000 reports.

Frequency: As needed.

Estimated Average Burden per

Response: 1 hour.

Estimated Total Annual Burden:

28,000 reporting hours.

Issued on January 7, 2025.

Hollister B. Thorson,

Manager, Airworthiness Products Section, Operational Safety Branch, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2025-00483 Filed 1-10-25; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on the US 380 Project in Texas

AGENCY: Texas Department of Transportation (TxDOT), Federal Highway Administration (FHWA), U.S. Department of Transportation.

ACTION: Notice of limitation on claims for judicial review of actions by TxDOT and Federal agencies.

SUMMARY: This notice announces actions taken by TxDOT and Federal agencies that are final. The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by TxDOT pursuant to an assignment agreement executed by FHWA and TxDOT. These actions grant licenses, permits, and approvals for the US 380 project, from FM 1827 to CR 560 in Collin County, Texas.

DATES: By this notice, TxDOT is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of TxDOT and Federal agency actions on the US 380 project will be barred unless the claim is filed on or before the deadline. For the US 380 project the deadline is June 12, 2025. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150

days for filing such a claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT:

Patrick Lee, Environmental Affairs Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701; telephone: (512) 416-2358; *email:* Patrick.Lee@txdot.gov. TxDOT’s normal business hours are 8:00 a.m.–5:00 p.m. (central time), Monday through Friday.

SUPPLEMENTARY INFORMATION: This project will be a controlled-access new location freeway consisting of an eight-to 10-lane divided freeway with 12-foot-wide main lanes, auxiliary lanes, ramps, and 10-foot-wide outside and 15-foot-wide inside shoulders. The project will also include continuous, one-way frontage roads with two to three 12-foot-wide lanes with raised curbs and continuous 10-foot-wide shared-use paths on both sides of the facility. US 380 crosses Lavon Lake and will be reconstructed within the existing ROW over the lake, including continuous frontage roads on bridge structures. This project is approximately 11.7 miles in length.

The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment, Finding of No Significant Impact (FONSI) issued on December 27, 2024, and other documents in the TxDOT project file. The Final Environmental Assessment, FONSI, and other documents in the TxDOT project file are available by contacting the TxDOT Dallas District Office at 4777 E Highway 80, Mesquite, TX 75150; telephone: (214) 320-4480.

The environmental review, consultation, and other actions required by applicable Federal environmental laws for the US 380 project are being, or have been, carried-out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 9, 2019, and executed by FHWA and TxDOT.

Notice is hereby given that TxDOT and Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the US 380 project in the State of Texas.

This notice applies to all TxDOT and Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land*: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife*: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources*: Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 300101 *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [54 U.S.C. 312501 *et seq.*]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic*: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources*: Clean Water Act [33 U.S.C. 1251–1377] (Section 404, Section 401, Section 319); Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Executive Orders*: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

Authority: 23 U.S.C. 139(l)(1).

Michael T. Leary,
Director, Planning and Program Development,
Federal Highway Administration.

[FR Doc. 2025–00453 Filed 1–10–25; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2024–0288]

Commercial Driver's License: Application for Exemption; James D. Welch

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application for an exemption from James D. Welch, a Weapons Safety Division Chief for the U.S. Air Force Reserve Command (AFRC). Mr. Welch requests an exemption for Air Reserve Technicians (ARTs) working under the AFRC from the requirement to obtain a commercial driver's license (CDL) to operate a commercial motor vehicle (CMV). Currently, the CDL regulations contain an exception for certain military drivers when operating CMVs for military purposes, but that exception does not cover U.S. Reserve technicians such as ARTs. FMCSA requests public comment on the applicant's request for exemption for ARTs and on whether, if granted, the exemption should apply to all U.S. Reserve technicians.

DATES: Comments must be received on or before February 12, 2025.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2024–0288 by any of the following methods:

- *Federal eRulemaking Portal*: www.regulations.gov. See the Public Participation and Request for Comments section below for further information.
- *Mail*: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001.
- *Fax*: (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2024–0288) for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: If you do not have access to the internet, you may view the docket by visiting Docket Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE,

Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

Privacy Act: In accordance with 49 U.S.C. 31315(b), 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 FDMS, which can be reviewed under the “Department Wide System of Records Notices” 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.

FOR FURTHER INFORMATION CONTACT: Ms. Bernadette Walker, Transportation Specialist, Driver and Carrier Operations Division; (202) 385–2415; bernadette.walker@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2024–0288), indicate the specific section of this document to which the comment applies, and provide a reason for your suggestions or recommendations. 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 the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number “FMCSA–2024–0288” in the “Keyword” box, and click “Search.” When the new screen appears, click on the “Comment” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no

larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the notice 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 notice, 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 notice. 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 notice.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the applicant’s safety analyses. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely maintain a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)). If granted, the notice will

identify the regulatory provision(s) from which the applicant will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reasons for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

III. Applicant’s Request

Mr. Welch¹ requests a five-year exemption from the requirements in 49 CFR part 383 for ARTs working under the AFRC. The CDL regulations in 49 CFR part 383 require every person who operates a CMV, as defined in 49 CFR 383.5, to obtain a CDL. Under 49 CFR 383.3(c), States are required to exempt individuals who operate CMVs for military purposes from 49 CFR part 383. The exception covers active-duty military personnel; members of the military reserves; members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, national guard military technicians (civilians who are required to wear military uniforms); and active-duty U.S. Coast Guard personnel. The regulation states that the “exception is not applicable to U.S. Reserve technicians.” Accordingly, ARTs, when operating on a military facility that is open to public travel or public road, are subject to the requirements of 49 CFR part 383 and must obtain a CDL to operate a CMV.

Mr. Welch states that FMCSA previously granted his petition for rulemaking to consider amending 49 CFR 383.3 and he is submitting his exemption request to expedite the relief. A copy of the Agency’s letter granting Mr. Welch’s petition for rulemaking has been added to the docket for this notice. Mr. Welch believes the exclusion of ARTs from the exception places a hardship on ARTs. In his petition for rulemaking, he states, “The Air Reserve Technician program is currently experiencing difficulties in hiring and retaining employees and this current federal regulation further exacerbates the problem.” Mr. Welch further explains that without the exception, the AFRC is required to provide funding for training in order for the members to obtain a CDL.

Applicant’s Equivalent Level of Safety

The applicant states that ARTs transport items on an installation with multiple layers of safety requirements

¹ Mr. Welch submitted his request on ARFC letterhead and with his official title, but he did not indicate whether the applicant for the exemption was the ARFC or himself in his individual capacity.

and preapproved routes. The applicant lists the following safeguards that he believes will maintain a level of safety equivalent to or greater than the level of safety that would be achieved by complying with the regulations. He says, “First and second line supervisors are present for daily operations, quality assurance conducts random inspections daily, the base safety office also has oversight and increased training requirements that must be completed. Placarding is always required.” The applicant also states that they “comply with all . . . regulations in addition to the safety requirements that our Air Force instructions require.”

A copy of Mr. Welch’s application for exemption is available for review in the docket for this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on Mr. Welch’s application to exempt ARTs from the requirements in 49 CFR part 383 while operating CMVs for military purposes. FMCSA also requests comment on whether, if granted, the exemption should apply to all U.S. Reserve technicians. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2025–00439 Filed 1–10–25; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2024–0302]

Commercial Driver’s License: International Motors, LLC; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on the application from International Motors, LLC (International), formally known as Navistar, for an exemption from the commercial driver's license (CDL) regulations to allow three Swedish commercial license holders to operate commercial motor vehicles (CMVs) in the United States.

DATES: Comments must be received on or before February 12, 2025.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2024–0302 by any of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. See the Public Participation and Request for Comments section below for further information.
- *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:* West Building, Ground Floor, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2024–0302) for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, 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.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption 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 FDMS, which can be reviewed under the “Department Wide System of Records Notices” link 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.

FOR FURTHER INFORMATION CONTACT: Ms. Bernadette Walker, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; (202) 385–2415; or bernadette.walker@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2024–0302), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. 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 the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov, put the docket number “FMCSA–2024–0302” in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click the “Comment” button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

If you submit a comment, please include the docket number for this notice (FMCSA–2024–0302), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. 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 the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov, click on this notice, click “Comment,” and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

FMCSA will consider all comments and material received during the comment period.

B. Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the notice 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 notice, 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 notice. 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 notice.

C. Viewing Comments and Documents

To view comments, as well as any documents mentioned as being available in the docket, go to <https://www.regulations.gov> enter FMCSA–2024–0302 in the keyword box, select 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) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the applicant's safety analysis. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provision from which the applicant will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reason for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

III. Applicant's Request

International has applied for a 5-year exemption from 49 CFR 383.23 for three drivers: Johan Astrom, Kristoffer Lindve, and Martin Uppman, who work for an entity called Scania. Scania and International are subsidiaries of a parent company called TRATON SE and are partnering in developing International's technology advancements. Under 49 CFR 383.23, drivers are required to have a CDL issued by a State when operating CMVs in interstate or intrastate commerce. International requests the exemption because these three drivers are not residents of a U.S. State, and therefore cannot meet the residency requirement for a CDL. They are eligible for non-domiciled CDLs only. These drivers hold valid Swedish commercial licenses.

The requested exemption would allow these three drivers to operate International's vehicles in interstate commerce to support International's development of its advanced

transmission control system. As critical technical members of the development team, the drivers will need to participate in "real world" vehicle tests on U.S. roads prior to going to market. If granted, the drivers will participate in test driving events from International's Lisle, Illinois and Denver, Colorado facilities.

Applicant's Equivalent Level of Safety

International believes that granting the exemption would have no impact on safety on U.S. roadways. Per the applicant, the drivers will drive for no more than 8 hours per day for 2 consecutive days. Driving will take place on 2-lane State highways and interstate highways. Drivers will drive no more than 300 miles per day, and in all cases the drivers will be accompanied by a holder of a CDL issued by a State who is familiar with the routes to be traveled.

International explains in its exemption request that the requirements for a Swedish commercial license ensure that the drivers would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation.

A copy of International's application for exemption for these drivers is available in the docket for this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on International's application for an exemption from 49 CFR 383.23. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2025–00440 Filed 1–10–25; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA–2025–0017]

Notice of Proposed Waiver of Buy America Requirements for Tier 0, Tier 1, and Non-Tiered Locomotives

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice; request for comments.

SUMMARY: The Federal Railroad Administration (FRA) is seeking comments on whether to grant a general applicability public interest waiver of its Buy America requirements for the purchase of used locomotives that would serve as the underframe or chassis to convert them to all-electric, renewable diesel, battery-powered, or other renewable-energy locomotives. Such projects would remove highly polluting locomotives from the national rail network and replace them with more efficient locomotives that will reduce overall emissions, address environmental burdens on communities, and create domestic jobs. Purchases of these locomotives under FRA-funded projects are subject to FRA's Buy America requirements. However, given the age of these used locomotives, it is difficult and may not be possible to verify whether they are fully compliant with FRA's Buy America requirements. In this general applicability waiver, FRA does not propose to waive the applicable Build America, Buy America Act (BABA) requirements. This proposed waiver would not apply to any other manufactured products, steel, iron, or construction materials.

DATES: Comments must be received by January 28, 2025.

ADDRESSES: Please submit all comments electronically to the federal rulemaking Portal. Go to <https://www.regulations.gov> and follow the instructions for submitting comments.

Instructions: All submissions must refer to the Federal Railroad Administration and the docket number in this notice (FRA–2025–0017). Note that all submissions received, including any personal information provided, will be posted without change and will be available to the public at <https://www.regulations.gov>. You may review the U.S. Department of Transportation's (DOT) complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477), or at <https://www.transportation.gov/privacy>.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please

contact Shreyas Bhatnagar, Regional Supervisor, Office of Regional Outreach & Project Delivery—South Central Region, Office of Railroad Development, FRA; telephone: (202) 617–0212; email: *Shreyas.Bhatnagar@dot.gov*. For legal questions, please contact Faris Mohammed, Attorney-Advisor, Office of the Chief Counsel, FRA; telephone: (202) 763–3230; email: *Faris.Mohammed@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Stakeholders have expressed concerns to FRA regarding the applicability of FRA's Buy America requirements on used locomotives that are purchased for an FRA-funded project and rehabilitated or remanufactured to meet higher emission standards. The U.S. Environmental Protection Agency (EPA) sets emissions standards for line haul and switch locomotives under different tiers, each of which corresponds to when the locomotive engine was originally manufactured, as follows:

- Tier 0 includes locomotive engines from 1973–1992 (line haul) and 1973–2001 (switch),
- Tier 1 includes locomotive engines from 1993–2004 (line haul) and 2002–2004 (switch),
- Tier 2 includes locomotive engines from 2005–2011 (line haul) and 2005–2010 (switch),
- Tier 3 includes locomotive engines from 2012–2014 (line haul) and 2011–2014 (switch), and
- Tier 4 includes locomotive engines from 2015 or later (line haul and switch).

Locomotives produced before 1973 are classified as non-tiered.

Tier 0 and Tier 1 locomotives have been in operation in the United States for decades, and many of them are still operating on the national rail network. Locomotive manufacturers may purchase these old non-tiered, Tier 0, and Tier 1 locomotives, remove the diesel engine, and replace the engine with an alternative power source, such as an electric motor and battery, which can result in a more efficient, higher-tier locomotive.

The Infrastructure Investment and Jobs Act (IIJA), also known as the Bipartisan Infrastructure Law, created historic federal investment opportunities in domestic infrastructure, clean energy manufacturing, and electric vehicles and batteries that have grown clean energy jobs across the country. Although rail transportation is generally considered a more efficient mode of transportation, older locomotives are

less efficient than newer, higher-tiered locomotives.

In addition, locomotive emissions from rail yards contribute to poor air quality and other environmental effects for nearby communities. Reducing locomotive emissions in rail yards can help alleviate environmental burdens, including exhaust and noise, and improve the quality of life for these communities.

In the IIJA, Congress amended FRA's Consolidated Rail Infrastructure and Safety Improvements (CRISI) Grant Program to authorize FRA to fund projects for rehabilitating, remanufacturing, procuring, or overhauling locomotives, provided that such activities result in a significant reduction of emissions. 49 U.S.C. 22907(c)(16). FRA has defined significant reduction of emissions to mean rehabilitating, remanufacturing, procuring, or overhauling: (1) a Non-Tiered, Tier 0, or Tier 1 locomotive to at least the Tier 2 level; (2) a Tier 2 or Tier 3 locomotive to at least a Tier 4 level; or (3) any locomotive to an all-electric, renewable diesel, battery-powered, or other renewable energy locomotive.¹

As such, FRA-funded projects may include the purchase of an older Tier 0, Tier 1, or non-tiered locomotive currently in service for the purpose of rehabilitating or remanufacturing the locomotive, converting it to a higher tier by replacing the diesel engine with an alternative power source. FRA's Buy America requirements apply to FRA's CRISI Grant Program. Therefore, these requirements would apply to the purchase of older locomotives as part of projects to convert them to a higher emissions tier. Although it is possible that Tier 0, Tier 1, and non-tiered locomotives that have been in operation in the United States for decades may be compliant with FRA's Buy America requirements, due to their age it is difficult for grant recipients to verify that all of the components used in the locomotive were produced in the United States. Although a grant recipient may be able to confirm that the locomotive was assembled in the United States, documentation verifying the country of origin of the locomotive's components is typically unavailable due to the passage of time.

FRA proposes to issue this general applicability waiver of its Buy America requirements for FRA-funded projects that involve the purchase of these used

locomotives for the purpose of rehabilitating, remanufacturing, or overhauling the used locomotive to deliver a locomotive with significantly reduced emissions. FRA is not proposing to waive its Buy America requirements for any other manufactured products, steel, iron, or construction materials used in FRA-funded projects, nor does this waiver apply to the purchase of any new items necessary for the project, such as the battery system and its components. This general applicability waiver will facilitate the delivery of innovative locomotive projects that seek to develop and deploy alternative power sources to produce more efficient locomotives, reduce locomotive emissions throughout the country, address environmental burdens on communities, and create domestic jobs.

This notice summarizes FRA's Buy America requirements and FRA's proposed waiver. FRA also seeks comments as to whether it should consider issuing a waiver for any other products required to manufacture locomotive batteries or locomotive charging stations and equipment due to the domestic nonavailability of such products. Should it obtain such information, FRA will consider proposing additional nonavailability waivers as appropriate.

II. FRA's Buy America Requirements and Policy

Projects that receive funding under the CRISI Grant Program are subject to FRA's Buy America requirements. This means that FRA can fund a project “only if the steel, iron, and manufactured goods used in the project are produced in the United States” (49 U.S.C. 22905(a)). In addition, FRA-funded projects must also comply with the relevant provisions of BABA, specifically the requirement that all construction materials used in the project must also be produced in the United States (Pub. L. 117–58, sec. 70914(a)).

FRA strictly enforces compliance with Buy America to ensure that FRA-funded projects use materials produced in the United States. FRA expects grantees to work with suppliers to conduct thorough market research and adequately consider, where appropriate, using qualifying alternate items, products, or materials. Compliance with FRA's Buy America requirement supports domestic industry and well-paying jobs.

¹ See Notice of Funding Opportunity for the FY 2023–2024 Consolidated Rail Infrastructure and Safety Improvements Grant Program, 89 FR 22206 (March 29, 2024).

III. FRA's Authority To Waive Buy America Requirements

FRA can waive its Buy America requirements in limited circumstances. FRA will grant a waiver that is consistent with the statutory criteria.

FRA may waive its Buy America requirements if FRA determines that applying the Buy America requirements would be inconsistent with the public interest; the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of satisfactory quality; rolling stock or power train equipment cannot be bought and delivered in the United States within a reasonable time; or including domestic material would increase the cost of the overall project by more than 25 percent (49 U.S.C. 22905(a)(2); *see also* Pub. L. 117–58, sec. 70914(b); prescribing similar statutory conditions for waivers).

FRA may issue a general applicability waiver when doing so is necessary to advance the agency's mission and goals. This waiver would apply generally across FRA's grant programs.² In addition, a waiver in the public interest is appropriate when the agency determines that other important policy goals cannot be achieved consistent with FRA's Buy America requirements and the Buy America requirements established by BABA, and the proposed waiver does not meet the requirements for a non-availability or unreasonable cost waiver.³

If FRA determines a waiver is appropriate, FRA will provide notice and seek comment from the public.

IV. Proposed Waiver

FRA has determined that applying its Buy America requirements to the purchase of Tier 0, Tier 1, and non-tiered locomotives for the purpose of rehabilitating or remanufacturing the locomotive to significantly reduce emissions would be inconsistent with the public interest as it would be overly burdensome or, in some instances, not possible to verify whether the used locomotive is fully compliant with FRA's Buy America requirements. To advance rail projects that deploy more efficient locomotives, reduce emissions, address environmental burdens on communities, and create domestic jobs, FRA proposes to waive its Buy America requirements for the purchase of used Tier 0, Tier 1, and non-tiered

locomotives, provided that the used locomotive:

- has been in continuous service in the United States from the date of manufacture;
- was not purchased outside the United States;
- was manufactured prior to 2004 (line haul or switch); and
- will be used in an FRA-funded project that will result in a significant reduction in emissions.

The proposed waiver does not apply to any other manufactured products, steel, or iron used in the FRA-funded project, nor does it apply to the purchase of any new items necessary for the project, such as the battery system and its components. FRA is not proposing to waive any applicable BABA requirements, and the proposed waiver does not apply to any construction materials.

The proposed waiver would be effective for five years from the date the final waiver is issued and would apply to awards obligated within that period.

V. Request for Comment

FRA will consider comments received during the 15-day public comment period. FRA may consider comments received after this period to the extent practicable. Consistent with 49 U.S.C. 22905(a)(4), following the public comment period, if FRA determines it is necessary to waive its Buy America requirements, FRA will publish its decision in the **Federal Register** and provide an opportunity for public comment on such finding for a reasonable period not to exceed 15 days. After such a period, FRA's decision will be effective.

FRA also seeks input from the public as to whether it should consider issuing a separate waiver for any other products required to manufacture locomotive batteries or locomotive charging stations and equipment due to their nonavailability in the domestic market.

Issued in Washington, DC.

Amitabha Bose,
Administrator.

[FR Doc. 2025–00443 Filed 1–10–25; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2024–0051]

Agency Information Collection Activities; Notice and Request for Comment; Assessing the Fit and Comfort of Motorcycle Safety Gear

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for public comment on a request for approval of a 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 new collection of information for which NHTSA intends to seek OMB approval to gather information on the personal protective equipment (PPE) motorcyclists wear including helmets and riding jackets, pants, boots, and gloves, how well the PPE fits, and how comfortable riders find it to be.

DATES: Comments must be received on or before March 14, 2025.

ADDRESSES: You may submit comments identified by Docket No. NHTSA–2024–0051 using any of the following methods:

- *Electronic submissions:* Go to <https://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 <https://>

² See Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, M–24–02, at p. 13 (Oct. 25, 2023).

³ *Id.*, at p. 11.

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 <https://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 Dr. Kathryn Wochinger, Contracting Officer's Representative, Office of Behavioral Safety Research (NPD–310), (202) 366–4300, 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: Assessing the Fit and Comfort of Motorcycle Safety Gear.

OMB Control Number: New.

Form Numbers: NHTSA Form 2000, NHTSA Form 2001, NHTSA Form 2002, NHTSA Form 2003, NHTSA Form 2004, and NHTSA Form 2005.

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 for a new, one-time information collection from a targeted sample of 625 motorcycle riders (from 1,250 screened for potential participation) about their use and preference for motorcycle protective gear. The study will involve recruiting motorcyclists attending motorcycle events to gather information on the protective gear they are wearing (including footwear, gloves, helmets, jackets, pants) about the perceived and assessed fit and comfort. The study will allow NHTSA to assess the relationship between perceived and objectively measured fit, rider beliefs about the protective value of gear, and factors influencing the selection and use of protective gear.

Participants will be recruited at locations where riders gather such as rallies, training events, or other organized events. The study plan is to recruit an equal number of riders of standard, cruiser, sport, adventure/touring motorcycles, and seated motor scooters. Depending on the venue, the study team will either invite riders to participate at a study tent or conduct the survey near the rider's motorcycle. Study staff will observe gear worn by riders, assess the fit of the gear, and ask riders for their opinions about the fit and comfort of the gear. Data collection will involve the use of a portable tablet for the consent process, and for recording participant responses and staff observations. Participants will self-administer some portions of the survey, while data collectors will verbally ask the participants about their gear during the gear assessments. Anthropometric measurements (e.g., head circumference) will be taken using ribbon tape or an anthropometer as appropriate depending on the gear type being assessed.

The study plan is to assess one type of gear (e.g., jackets) per respondent. Additionally, to obtain information on

respondents' perspectives of different types of gear, study staff will use a table to present images of the gear type being assessed (one type per respondent). The images will be of gear ranging in quality; they will include product descriptions but no brand names. Participants will be asked to rate the protection afforded by the gear, its quality, and the likelihood of wearing or purchasing it.

All data collection activities will be voluntary and anonymous. This collection only requires respondents to report their answers; there are no record-keeping costs to the respondents. NHTSA will use the information to produce a technical report that presents summary statistics and tables; a de-identified data set will also be made available to the public. No identifying information will be reported. The study will advance our understanding of how the fit and comfort of gear influences the choice to use or not use gear. This information will inform the development of NHTSA outreach and education motorcycle safety programs. The technical report will be distributed to stakeholders in highway safety and the public.

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. 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. Having current data is essential to develop appropriate approaches to improve traffic safety. This is especially true for information on vulnerable road users, such as motorcyclists, where data is much more limited.

In 2022, there were 6,218 motorcyclists killed in traffic crashes, comprising 15 percent of all traffic fatalities that year and representing a fatality rate per vehicle miles traveled of 26.16, nearly 22 times that of passenger car occupants (1.20).¹ These findings

¹ National Center for Statistics and Analysis. (2024, July). Motorcycles: 2022 data (Traffic Safety Facts. Report No. DOT HS 813 589). National Highway Traffic Safety Administration.

demonstrate the inherent risk of motorcycle riding and highlight the importance of wearing personal protective gear, especially a helmet, but including footwear, gloves, jacket, and pants. Nonetheless, not all motorcyclists use gear on every ride.

The proposed study addresses the need to understand the relationship between the fit and comfort of personal protective gear and the decision to use gear. The results will assist NHTSA develop its programmatic activities in motorcycle safety by providing information on the types of gear being used, the comfort and fit of gear in use, and deterrents to using protective gear.

Frequency of Collection: This study is intended to be a one-time data collection. Because data collection may occur at multiple events, there is a remote chance an individual could participate more than once. This is not expected, however, as potential

participants will not know data collection locations or times.

Affected Public: This study will recruit volunteers who are riders of selected types of motorcycles (standard, cruiser, sport, adventure/touring, scooter) at the data collection locations. Motorcyclists passing by the data collection locations will be recruited to voluntarily participate in an assessment of the fit of their current protective gear (if worn). They will be asked to review images of selected gear and provide their opinions on the gears' protective capabilities, usability, and perceived quality.

Estimated Number of Respondents: The study expects to contact approximately 1,250 motorcyclists at the data collection locations to obtain responses from 625 motorcyclists (125 per type of motorcycle).

Estimated Total Annual Burden Hours: The total amount of burden is estimated to be 340.42 hours. This

includes the estimated 312.5 hours for the 625 participants who fully participate, with an average completion time of 30 minutes, and the 18.75 hours for the estimated 75 people who will partially participate, spending 15 minutes on average, and 9.17 hours for the estimated 550 people who received screening items but decline to participate, spending on average of 1 minute.

Estimated Total Annual Burden Cost: The total annual burden cost is estimated to be \$15,520 with an annual burden cost of \$5,034 (total/3) (see Table 1). 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.

TABLE 1—SUMMARY OF TOTAL BURDEN HOURS AND ESTIMATED COSTS BY TYPE OF PARTICIPATION

Type of participation	Number of respondents	Minutes per respondent	Estimated wage per hour*	Total estimated burden hours	Estimated cost
Rider Fully Participates	625	30	\$45.97	312.5	\$14,365.00
Rider Does Not Fully Participate	75	15	45.97	18.75	861.90
Rider Screened but Does Not Participate	550	1	45.59	9.17	418.06
Grand Total	1,250	.....	.....	340.42 (340)	15,519.75 (15,520)

* September 2024 total private average hourly earnings (fully loaded at 30%) from the U.S. Bureau of Labor Statistics at <https://www.bls.gov/news.release/empsit.t19.htm>.

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 1351.29A.

Nanda Narayanan Srinivasan,

Associate Administrator, Research and Program Development.

[FR Doc. 2025-00406 Filed 1-10-25; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT-OST-2025-0002]

Draft Designation of National Multimodal Freight Network and State Input Process

AGENCY: Office of the Secretary of Transportation (OST), Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Maritime Administration (MARAD), Federal Motor Carrier Safety Administration (FMCSA), Great Lakes St. Lawrence Seaway Development Corporation (GLS), and Pipelines and Hazardous Materials Safety Administration (PHMSA), Department of Transportation.

ACTION: Draft designation and request for comment; response to comments.

SUMMARY: The U.S. Department of Transportation (DOT or Department) is publishing a draft designation of the

National Multimodal Freight Network (NMFN or Network) as required Federal law. The designation is informed by the comments received on a notice published by DOT on April 12, 2024. DOT is also using this notice to request comments or proposed modifications to the draft Network prior to designating the Network. Once the Network is designated by DOT, States will have the opportunity to submit additional designations through the "State Input" process required by statute.

DATES: Comments must be received on or before February 27, 2025 to receive consideration by DOT with respect to the draft designation of the NMFN.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- **Federal eRulemaking Portal:** Go to <https://www.regulations.gov> and follow the online instructions for submitting comments.

- **Mail:** Docket Management Facility, U.S. Department of Transportation, 1200

New Jersey Ave. SE, W12–140, Washington, DC 20590–0001.

- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.
- *Instructions:* You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Paul Baumer, Office of the Assistant Secretary for Multimodal Freight, 202–366–1092 or via email at freight@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

Summary of Draft NMFN

The Draft NMFN consists of approximately 175,000 miles of highways, railways, and waterways and 205 marine ports and airports that are proposed for designation due to their criticality to freight movement and global and domestic supply chains. The Network was designed to promote intermodal connectivity, based on measurable data assessing the significance of freight movement, including origins and destinations of freight movements, and in consideration of the factors outlined in 49 U.S.C.

70103(b)(2). The Network is described in larger detail below.

Responses to 2024 NMFN RFI

On April 12, 2024, DOT published a Request for Information (RFI) in the **Federal Register** (89 FR 25913) with a 60-day comment period soliciting information on the “Goals, Criteria, Thresholds, and Measurable Data Sources for Designating the National Multimodal Freight Network.” DOT received 43 written responses to the April RFI on the goals, criteria, thresholds, and measurable data sources for designating the NMFN. The respondents included representatives from State Departments of Transportation (State DOTs), Metropolitan Planning Organizations (MPOs), private sector shippers and carriers, port authorities, railroads, and community interest groups. DOT posed eight questions to the public through the RFI, and while not all responses addressed each question, several major themes emerged.

NMFN Purpose: A plurality of respondents indicated that the using the NMFN to prioritize Federal formula or discretionary grant investment was the most important purpose to ensuring the NMFN provides a foundation for the U.S. to compete in the global economy. While this was the most frequent answer among commenters who responded to this question, DOT notes that several commenters felt strongly that the NMFN should not be used to

prioritize Federal funding in this manner. Other commenters noted that NMFN should be linked with other Federal efforts to prioritize investment in zero-emission infrastructure and technologies, and that the NMFN can serve as a catalyst for economic development and the creation of high-quality jobs in the zero-emission freight sector.

How the NMFN will be used: Replying to the second question, commenters described a variety of different plans for how they would use the NMFN once designated. Several State and local governments stated they planned to use the NMFN to better integrate freight planning and investment in order to support their economic, safety, and environmental goals. An association representing private sector operators indicated that the NMFN could assist with optimizing shipping routes and mode choice.

Prioritizing Statutory Factors: Section 70103(b)(2) sets forth twelve factors DOT must consider in designating the NMFN. While, as required by statute, DOT is considering all of the statutory factors in its designation, DOT was particularly interested in how respondents would prioritize these twelve statutory factors. Due to the diversity in how commenters responded to the question, DOT chose to analyze the frequency with which a factor was ranked in the top 3 by each respondent. A table with the results is provided below:

Factor	Frequency with which factor was Top 3 ranked
1. Origins and destinations of freight movement within, to, and from the United States;	6
2. Volume, value, tonnage, and the strategic importance of freight;	5
3. Access to border crossings, airports, seaports, and pipelines;	5
4. Economic factors, including balance of trade;	2
5. Access to major areas for manufacturing, agriculture, or natural resources;	8
6. Access to energy exploration, development, installation, and production areas;	3
7. Intermodal links and intersections that promote connectivity;	14
8. Freight choke points and other impediments contributing to significant measurable congestion, delay in freight movement, or inefficient modal connections;	7
9. Impacts on all freight transportation modes and modes that share significant freight infrastructure;	2
10. Facilities and transportation corridors identified by a multi-State coalition, a State, a State freight advisory committee, or an MPO, using national or local data, as having critical freight importance to the region;	8
11. Major distribution centers, inland intermodal facilities, and first- and last-mile facilities; ^[3] and	9
12. The significance of goods movement, including consideration of global and domestic supply chains.	5

Commenters’ priorities were widely distributed across the statutory factors, with every factor identified ranked in the top 3 at least twice. Nevertheless, a clear theme emerged, with a plurality of commenters expressing a clear preference that DOT prioritize “Intermodal links and intersections that promote connectivity.” This aligns with

the second most frequently cited factor, “Major distribution centers, inland intermodal facilities, and first- and last-mile facilities.”

Other factors of note included “Access to major areas for manufacturing, agriculture, or natural resources” and “Facilities and transportation corridors identified by a

multi-State coalition, a State, a State Freight Advisory Committee, or an MPO, using national or local data, as having critical freight importance to the region.”

These comments informed DOT’s approach to the Draft Network. First and foremost, DOT prioritized ensuring the Network would support the multimodal

movement of freight by including intermodal connections to the extent supported by available data. A large share of marine ports and airports, major multimodal freight generators, along with the National Highway System (NHS)-designated intermodal connectors included in the Primary Highway Freight System, were incorporated into the draft NMFN.

To incorporate the consideration of manufacturing, agriculture, and natural resource economic sectors, along with other features of our modern supply chains, DOT analyzed commodity flows from the Freight Analysis Framework (FAF), Waybill, and Waterborne Commerce data, to ensure the Network had a broad reach and covered routes significant for one or more commodity groups. The data used and analyses conducted are described in more detail in the NMFN Designation Methodology and Extent section of this Notice.

Other Factors for Consideration: DOT asked respondents to provide feedback on to what extent the NMFN should also reflect other factors, including safety, climate and sustainability, equity, national defense, consistency with other federally-designated networks, and transformation. A majority of respondents were supportive of considering these factors, with safety, and climate and sustainability most frequently cited.

Community interest groups highlighted that NMFN designation should factor in air quality improvements, address historical disparities and promote equitable outcomes, and integrate meaningful participation from disadvantaged communities in the designation process. DOT intends for this notice and draft Network to serve as a starting point for conversation and input from impacted communities on proposed designations.

Reflecting the interest in consistency with other networks, DOT used FHWA's Primary Highway Freight System (PHFS) as the initial base layer of the NMFN. Combined with the remainder of the Interstate Highway System, this constitutes more than 86.6% of the National Highway Freight Network (NHFN). The remaining NHFN mileage, constituting MPO assigned Critical Urban Freight Corridors (CUFCs) and State assigned Critical Rural Freight Corridors (CRFCs), were not comprehensively included in the base layer for the Draft Network, due to the inconsistent approaches in designating routes and frequent changes by States in assigning their limited CUFC/CRFC mileage. While previously designated Critical Urban/Rural Freight corridors were not included in the Draft Network

base layer, DOT referred to designated CUFC/CRFCs to help validate other data sources on freight movement when necessary.

Reflecting national defense needs, DOT included the Strategic Highway Network (STRAHNET), the Strategic Rail Corridor Network (STRACNET), and Strategic Sealift Ports as part of the NMFN's base layer.

Other Comments: Some respondents expressed an interest in a more expansive highway network, noting in particular that the 2016 Interim National Multimodal Freight Network did not sufficiently capture the roadways significant to freight movement. It is worth noting that the highway component of the 2024 draft Network is approximately 28% larger than the 2016 Interim Network,¹ prior to any additional designations that may follow this Notice.

The draft rail and waterway Network components were chosen based on available usage data, described below, with an effort to take a consistent approach to designation across modes. DOT also believes that these designations align with multiple statutory considerations while also encouraging investment in relatively under-utilized assets and will encourage and optimize the use of all modes over time as part of the broader multimodal freight transportation system in the U.S. Encouraging increased utilization of rail and waterway modes will increase the energy efficiency and reduce greenhouse gas emissions related to freight transportation.²

NMFN Designation Methodology and Extent

Highway Component Description: In designating the highway component of the NMFN, the FHWA-designated PHFS (23 U.S.C. 167(d)), the Strategic Highway Network (STRAHNET), and the Interstate Highway System were included. Additional segments were added by evaluating both Freight Analysis Framework (FAF)³ data and Highway Performance Monitoring System (HPMS)⁴ data, with consideration given to overall freight volumes as well as specific freight commodity groups. The specific thresholds below were proposed, in

part, to produce a draft network that balanced the goals of a prioritized network and a network with broad coverage. Using 2022 HPMS data, facilities with 4,000 Annual Average Daily Truck Traffic (AADTT) or greater (85th percentile) and facilities with AADTT between 1,200 (70th percentile of volumes) and 4,000 (85th percentile) were identified. Using FAF modeling, segments that carried 8,170 total annual tons of freight, inclusive of all commodities (top 20%) and segments that fall in the top 1% of annual tons of freight carried by specific commodity groupings (using FAF categories) were also identified. Facilities with 4,000 AADTT or greater according to HPMS were included independent of FAF modeling. Highway segments identified by FAF commodity flow modeling were added when HPMS data showed AADTT between 1,200 (70th percentile of volumes) and 4,000 (85th percentile). For segments where FAF commodity flow modeling and HPMS counts did not overlap, DOT considered other factors to determine whether to include them in the Network. These factors included whether the segment was on the National Network;⁵ whether it provided access to manufacturing, agriculture, natural resources, energy exploration, development, installation, or production areas; or if the roadway was discussed in a completed State Freight Plan.⁶ As part of this review, consideration was also given to designated CUFCs and CRFCs under 23 U.S.C. 167, as well as logical connections to other designated roadway segments.

Highway Network Extent: 78,274 total roadway miles

- Urban miles (urban areas of 50,000 population or greater): 19,100
- Rural miles: 59,174

Rail Component Description: The rail Network designation includes all intermodal rail routes, as identified by the FRA, and all Strategic Rail Corridor Network (STRACNET) routes. Additional rail routes were added for segments in the top 2/3 based on the volume of freight carried, using Surface Transportation Board (STB) Waybill data.⁷ Additional segments were added that carry the top 102% of freight by commodity groups, consistent with the FAF commodity groupings used for the

¹ The statutory language establishing the 2016 Interim National Multimodal Freight Network was repealed in the Infrastructure Investments and Jobs Act, Public Law 117–58 (2021).

² <https://www.transportation.gov/priorities/climate-and-sustainability/us-national-blueprint-transportation-decarbonization>.

³ <https://www.bts.gov/faf>.

⁴ <https://www.fhwa.dot.gov/policyinformation/hpms.cfm>.

⁵ The National Network is a congressionally authorized network for commercial truck traffic on which Federal truck width and length limits apply uniformly. https://ops.fhwa.dot.gov/freight/infrastructure/national_network.htm.

⁶ For links to completed State Freight Plans, visit: <https://ops.fhwa.dot.gov/freight/fpcb/toolkit/allplans.aspx>.

⁷ <https://www.stb.gov/reports-data/waybill/>.

highway designation. As an additional measure of significance, rail segments that carry five trains or more per day were also added. This threshold is more likely to capture important segments operated by short line railroads. Other segments were added if they provided logical connections to segments identified through the described methodology.

Rail Network Extent: 80,309 total rail miles:

- Class 1 miles: 67,476
- Class 2 miles: 3,047
- Class 3 miles: 9,786

Marine Ports Component Description: Marine ports that annually move 1.5 million tons of freight or greater, as estimated by the most recent U.S. Army Corps of Engineers (USACE) Waterborne Commerce Statistics Data (2022),⁸ were added to the Network. This threshold was informed by stakeholder input and to guarantee that selected ports would be served by moderate use waterways as defined by USACE. Commercial Strategic Seaports, as identified by the Maritime Administration and U.S. Department of Defense's National Port Readiness Network,⁹ were also added to the Network. To ensure coverage across commodity types, DOT also reviewed commodity level data to identify ports that handled at least 10% of any waterborne commodity type. This identified one additional port, Kivalina, Alaska, which was added to the Network.

Marine Ports Extent: 140 Ports.

- Ports with 1.5 million annual tons or greater: 137 (includes 16 of 18 Commerical Strategic Seaports)
- Additional Commercial Strategic Seaports: 2 (Everett, WA and Apra Harbor, GU)
- Additional ports carrying 10% or more of a freight commodity: 1 (Kivalina, AK)

Waterways Component Description:
DOT is defining “Waterways” of the NMFN to include both elements of the inland waterway system and coastal navigation projects as categorized by USACE, who group segments of the National Waterways Network¹⁰ as high use, moderate use, and low use. The network includes all high use waterways, which are those deep and shallow draft coastal navigation projects with 10 million tons or greater, and those inland waterways with 3 billion ton-miles or greater, based on the latest

5-year average (2018–2022) waterborne commerce statistics. The network also includes all moderate use waterways, which are those deep and shallow draft coastal navigation projects with one to 10 million tons, and those inland waterways with 1 to 3 billion ton-miles, based on the latest 5-year average waterborne commerce statistics. The Draft Network does not include low-use waterways, with the exception of certain offshore coastwise shipping routes in Maine and Alaska, island segments, and a handful of small connections made to provide direct access to a strategic seaport.

Waterways Extent: 21,329 total waterway miles.

- High Use waterways miles: 9,761
- Moderate Use waterways miles: 7,360
- Low Use waterways miles: 4,208

Airport Component Description: 2022 Bureau of Transportation Statistics (BTS) T-100 market data ¹¹ was used to identify freight volumes at airports. Airports that carry more than 0.2% of all freight and mail weight at all National Plan of Integrated Airport Systems (NPIAS) airports were designated. Additional NPIAS airports were designated that carry 0.2% of all freight weight, excluding mail weight. Additional NPIAS airports were also designated that had a higher-than-average freight to passenger ratio and fell within the top 130 of all freight and mail weight.

Airport Extent: 65 total airports.

- 57 airports meet the 0.2% freight and mail threshold.
- 2 additional airports meet the 0.2% of freight (no mail) threshold.
- 6 additional airports meet the freight to passenger ratio criteria and are in the top 130 by all freight and mail weight.

Other Infrastructure Considered: Pipelines and pipeline terminals are not included on the Network due to data security challenges, but connections to pipeline intermodal facilities were considered as part of other Network component designations. DOT conducted an analysis and determined that approximately 1,056 of 1,401 pipeline terminals identified by the Bureau of Transportation Statistics (BTS)¹² are located within 1 mile of the draft designated Network.

DOT also reviewed a database of Trailer-on-Flatcar (TOFC)/Container-on-Flatcar (COFC) intermodal terminals

identified by BTS¹³ to determine the extent to which the draft Network supports intermodal interchange between rail and truck. 230 of 241 identified TOFC/COFC terminals are located within 1 mile of the draft designated Network.

Opportunity for Additional Stakeholder Input and Next Steps

DOT is making an interactive version of the draft designated NMFN available here: (<https://www.transportation.gov/freight-infrastructure-and-policy/NMFN>). The web version of the map includes layers for draft designated roadways, railways, waterways, marine ports, and airports. It also includes multiple reference layers, including DOT's database of trailer-on-flat-car/container-on-flat-car intermodal facilities, marine Roll-on/Roll-off terminals, and air cargo terminals. Other networks, including the NHFN and the NHS Intermodal Connectors, are also included. Finally, DOT has also included a Safety Data layer capturing the location of truck-related fatalities from 2017–2022 Fatality Analysis Reporting System (FARS) database. These reference layers are being made available to provide additional context for DOT stakeholders and highlight opportunities for additional analysis in the future.

DOT is encouraging all stakeholders, including multimodal freight system users, transportation providers, metropolitan planning organizations, local governments, ports, airports, railroads, and States to submit comments with proposed modifications to the draft network. DOT is particularly interested in hearing from the following groups:

- Tribal Nations who own and operate freight infrastructure, and Tribal users of the freight system, and Tribal members impacted by freight movement.
- Members of underserved, overburdened, and disadvantaged communities that are impacted by freight movement.

Due to limitations in available freight data, DOT is interested in feedback or proposed modifications of the Draft Network that address the following areas:

- Preferred routing through urbanized areas, particularly to minimize negative community impacts.
- Key alternative routes that provide network redundancy are important for critical facilities, ensuring for resilience to disruptions.

⁸ <https://www.iwr.usace.army.mil/About/Technical-Centers/WCSC-Waterborne-Commerce-Statistics-Center-2/WCSC-Waterborne-Commerce/>.

⁹ <https://www.maritime.dot.gov/ports/national-port-readiness-network-nprn>.

¹⁰ <https://geodata.bts.gov/datasets/usdot::navigable-waterway-network-lines/about>.

¹¹ <https://geodata.bts.gov/datasets/usdot::t-100-domestic-market-and-segment-data/explore>.

¹² <https://geodata.bts.gov/datasets/usdot::intermodal-freight-facilities-pipeline-terminals/about>.

¹³ <https://geodata.bts.gov/datasets/usdot::intermodal-freight-facilities-rail-tofc-cofc/about>.

- Volumes and values of commodities that flow through critical intermodal facilities.

DOT also invites comment on future opportunities for analysis, including the location and availability of dedicated truck parking, refueling sites for zero-emission medium and heavy-duty vehicles, priority freight rail lines and rail yards for electrification, or priority ports for shifting to shore power to improve air quality for local communities.

State Input Process

This Notice is providing an opportunity for stakeholders to comment on a draft Network. Based on the feedback provided to this Notice, DOT plans to designate the NMFN in Spring 2025.

Once DOT has designated the NMFN, States will have the opportunity to submit "Additional Designations," per the process outlined in 49 U.S.C. 70103(b)(4). States will be required to consider nominations for additional designations from MPOs, State Freight Advisory Committees, and the owners and operators of multimodal freight infrastructure, and are highly encouraged to engage with community groups, particularly environmental justice communities, before submitting their designations. States will be limited to an additional 30% of mileage within each mode based on the DOT-designated network for the State. States will be required to certify their additional designations meet the

requirements of statute. DOT anticipates providing States with an extended period of no less than 180 days to make these designations.

DOT is required to redesignate the NMFN within 5 years after the initial designation, and every 5 years thereafter.

Schedule

DOT is requesting comments, feedback, and proposed modifications within 45 days of publication of this Notice.

Public Comment

DOT will accept written comments on the public docket associated with this notice. If commenters would like to submit GIS data files with proposed modifications, please email freight@dot.gov to arrange for a file transfer.

Issued: January 6, 2025.

Allison L. Dane Camden,
Principal Deputy Assistant Secretary for Multimodal Freight.

[FR Doc. 2025-00474 Filed 1-10-25; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: This action was issued on January 7, 2025. See **SUPPLEMENTARY INFORMATION** for relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, 202-622-2420; the Assistant Director for Sanctions Compliance, 202-622-2490 or <https://ofac.treasury.gov/contact-ofac>.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website: <https://ofac.treasury.gov>.

Notice of OFAC Action

On January 7, 2025, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810-AL-P

Individuals

1. MOUSA, Mohammed Hamdan Daglo (a.k.a. DAGALO, Mohamed Hamdan; a.k.a. DAGALO, Mohammed Hamdan; a.k.a. HAMDAN, Mohamed; a.k.a. "HEMEDTI"; a.k.a. "HEMETI"), Sudan; DOB 01 Jan 1974 to 31 Dec 1974; POB North Darfur, Sudan; nationality Sudan; Gender Male (individual) [SUDAN-EO14098].

Designated pursuant to section 1(a)(ii)(A) of Executive Order 14098 of May 4, 2023, "Imposing Sanctions Certain Persons Destabilizing Sudan and Undermining the Goal of a Democratic Transition," (E.O. 14098) for being a foreign person who is or has been a leader, official, senior executive officer, or member of the board of directors of the Rapid Support Forces, an entity that has, or whose members have been responsible for, or complicit in, or have directly or indirectly engaged or attempted to engage in actions or policies that threaten the peace, security, or stability of Sudan, relating to the tenure of such leader, official, senior executive officer, or member of the board of directors.

2. AHMMED, ABU DHARR ABDUL NABI HABIBALLA (أبو ذر عبد النبي حبيب الله أحمد) (a.k.a. AHMMED, Abo Zer Abdelnabi Habiballa), United Arab Emirates; nationality Sudan; Gender Male (individual) [SUDAN-EO14098].

Designated pursuant to section 1(a)(ii)(B) of E.O. 14098 for being a foreign person who is or has been a leader, official, senior executive officer, or member of the board of directors of Capital Tap Holding L.L.C., an entity whose property and interests in property are blocked pursuant E.O. 14098 relating to the tenure of such leader, official, senior executive officer, or member of the board of directors.

Entities

1. CAPITAL TAP HOLDING L.L.C. (Arabic: كابيتال تاب القابضة ذ.م.م) (a.k.a. "CAPITAL TAP"; a.k.a. "CTH"), Office 2602, U-Bora Towers, Business Bay, Dubai, United Arab Emirates; P.O. Box, 54116, Dubai, United Arab Emirates; Website www.capitaltap.com; Organization Established Date 12 Apr 2021; alt. Organization Established Date circa 2019; Organization Type: Trusts, funds and similar financial entities; License 947727 (United Arab Emirates); Registration Number 11651015 (United Arab Emirates) [SUDAN-EO14098].

Designated pursuant to section 1(a)(i)(A) of E.O. 14098, for being a foreign person who is responsible for, or complicit in, or who has directly or indirectly engaged or attempted to engage in actions or policies that threaten the peace, security, or stability of Sudan.

2. AL JIL ALQADEM GENERAL TRADING L.L.C. (Arabic: الجيل القادم للتجارة العامة ش.ذ.م.م), No. 76, Khalid Mohammed Abdullah Al Zahid Property, Deira, Hor al Anz, Dubai, United Arab Emirates; Organization Established Date 05 Oct 2016; Organization Type: Wholesale and retail trade; License 767427 (United Arab Emirates); Registration Number 10946303 (United Arab Emirates) [SUDAN-EO14098] (Linked To: AHMMED, ABU

DHARR ABDUL NABI HABIBALLA).

Designated pursuant to section 1(a)(v) of E.O. 14098, for being a foreign person who is owned or controlled by, or has acted or purported to act for or on behalf of, directly or indirectly, Abu Dharr Abdul Nabi Habiballa Ahmmed, a person whose property and interests in property are blocked pursuant to E.O. 14098.

3. AL ZUMOROD AND AL YAQOOT GOLD & JEWELLERS TRADING L.L.C. (Arabic: الزمرق و اليقوت للتجارة الذهب و المجوهرات ش.ذ.م.م.) (a.k.a. "AZ GOLD"), Office M-10, M-11, M-12 - King of Ghaith Hamel bin Khadim al Ghaith al Qubaisi, Al Daghaya, PO Box 90928, Dubai, United Arab Emirates; Organization Established Date 20 Feb 2020; Organization Type: Wholesale and retail trade; License 880169 (United Arab Emirates); Registration Number 1708681 (United Arab Emirates) [SUDAN-EO14098] (Linked To: AHMMED, ABU DHARR ABDUL NABI HABIBALLA).

Designated pursuant to section 1(a)(v) of E.O. 14098, for being a foreign person who is owned or controlled by, or has acted or purported to act for or on behalf of, directly or indirectly, Abu Dharr Abdul Nabi Habiballa Ahmmed, a person whose property and interests in property are blocked pursuant to E.O. 14098.

4. CAPITAL TAP GENERAL TRADING L.L.C. (Arabic: كابيتال تاب للتجارة العامة ش.ذ.م.م.) (a.k.a. ELRAKIZA GENERAL TRADING L.L.C. (Arabic: الركيزة للتجارة العامة ش.ذ.م.م.); a.k.a. M I N S GENERAL TRADING L.L.C. (Arabic: ام اي ان اس للتجارة العامة ش ذ م م)), 406, Business Bay, Royal Class Business Centre, Dubai, United Arab Emirates; PO Box 416657, 44 & 43, Dubai Municipality, Dubai, United Arab Emirates; Organization Established Date 18 Feb 2019; Organization Type: Wholesale and retail trade; License 826794 (United Arab Emirates); Registration Number 11337684 (United Arab Emirates) [SUDAN-EO14098] (Linked To: AHMMED, ABU DHARR ABDUL NABI HABIBALLA).

Designated pursuant to section 1(a)(v) of E.O. 14098, for being a foreign person who is owned or controlled by, or has acted or purported to act for or on behalf of, directly or indirectly, Abu Dharr Abdul Nabi Habiballa Ahmmed, a person whose property and interests in property are blocked pursuant to E.O. 14098.

5. CAPITAL TAP MANAGEMENT AND CONSULTANCIES L.L.C. (Arabic: كابيتال تاب للاستشارات الادارية ش.ذ.م.م.) (a.k.a. CAPITAL TAP MANAGEMENT CONSULTANCIES; a.k.a. "CAPITAL TAP"), Office 903, U-Bora Towers Abraj Street, Business Bay, Dubai, United Arab Emirates; Website www.capitaltap.com; Organization Established Date 28 Nov 2019; Organization Type: Professional, scientific, and technical activities; License 865796 (United Arab Emirates); Registration Number 11475487 (United Arab Emirates) [SUDAN-EO14098] (Linked To: CAPITAL TAP HOLDING L.L.C.).

Designated pursuant to section 1(a)(v) of E.O. 14098 for being a foreign person who is owned or controlled by, or has acted or purported to act for or on behalf of, directly or indirectly, Capital Tap Holding L.L.C., a person whose property and interests in property are blocked pursuant to E.O. 14098.

6. CREATIVE PYTHON L.L.C. (Arabic: كريبتف بايثون ش.ذ.م.م.) (a.k.a. CREATIVE PYTHON), Burlington Tower, 2806, Business Bay, Dubai, United Arab Emirates;

Website www.creative-python.com; Organization Established Date 29 Feb 2020; Organization Type: Professional, scientific, and technical activities; License 882080 (United Arab Emirates); Registration Number 11504889 (United Arab Emirates) [SUDAN-EO14098] (Linked To: AHMMED, ABU DHARR ABDUL NABI HABIBALLA).

Designated pursuant to section 1(a)(v) of E.O. 14098, for being a foreign person who is owned or controlled by, or has acted or purported to act for or on behalf of, directly or indirectly, Abu Dharr Abdul Nabi Habiballa Ahmmed, a person whose property and interests in property are blocked pursuant to E.O. 14098.

7. HORIZON ADVANCED SOLUTIONS GENERAL TRADING - SOLE PROPRIETORSHIP L.L.C.

(Arabic: هوريزون افانسيد سوليوشنز للتجارة العامة - شركة الشخص الواحد ذ م م) (a.k.a. HORIZON ADVANCED SOLUTIONS GENERAL TRADING), Abu Dhabi, United Arab Emirates; Organization Established Date 23 Feb 2020; Organization Type Wholesale and retail trade; License CN-2994419 (United Arab Emirates); Registration Number 11502966 (United Arab Emirates) [SUDAN-EO14098] (Linked To: CAPITAL TAP HOLDING L.L.C.).

Designated pursuant to section 1(a)(v) of E.O. 14098 for being a foreign person who is owned or controlled by, or has acted or purported to act for or on behalf of, directly or indirectly, Capital Tap Holding L.L.C., a person whose property and interests in property are blocked pursuant to E.O. 14098.

Lisa M. Palluconi,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2025-00478 Filed 1-10-25; 8:45 am]

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DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. app. 2, sec. 10(a)(2), that a meeting will be held at the United States Treasury Department, 15th Street and Pennsylvania Avenue NW, Washington, DC on February 4, 2025, at 9 a.m., of the following debt management advisory committee:

Treasury Borrowing Advisory Committee

At this meeting, the Treasury is seeking advice from the Committee on topics related to the economy, financial markets, Treasury financing, and debt management. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. app. 2, sec.

10(d) and Public Law 103-202, sec. 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. app. 2, sec. 10(d) and vested in me by Treasury Department Order No. 101-05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103-202, sec. 202(c)(1)(B).

Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an

advisory committee under 5 U.S.C. app. 2, sec. 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Director for Office of Debt Management (202) 622-1876.

Dated: January 7, 2025.

Frederick E. Pietrangeli,
Director (for Office of Debt Management).

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Part II

Securities and Exchange Commission

17 CFR Parts 240 and 249

Daily Computation of Customer and Broker-Dealer Reserve Requirements
Under the Broker-Dealer Customer Protection Rule; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–102022; File No. S7–11–23]

RIN 3235–AN28

Daily Computation of Customer and Broker-Dealer Reserve Requirements Under the Broker-Dealer Customer Protection Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (“Commission”) is adopting amendments to the broker-dealer customer protection rule to require certain broker-dealers to perform their reserve computations for accounts of customers and proprietary accounts of broker-dealers and make any required deposits into their reserve bank accounts daily rather than weekly. The Commission also is adopting amendments to the broker-dealer net capital rule and customer protection rule to permit certain broker-dealers that perform a daily reserve computation for accounts of customers to reduce aggregate debit items (*i.e.*, customer-related receivables) by 2% rather than 3% as part of the computation. Finally, the Commission is adopting technical amendments to the Financial and Operational Combined Uniform Single Report (“FOCUS Report”) to conform it to the amendments with respect to the lowering of the debit reduction from 3% to 2%.

DATES:

Effective date: March 14, 2025.

Compliance date: The compliance date is discussed in section III. of this release.

FOR FURTHER INFORMATION CONTACT:

Michael A. Macchiaroli, Associate Director; Thomas K. McGowan, Associate Director; Randall W. Roy, Deputy Associate Director; Raymond Lombardo, Assistant Director; Sheila Dombal Swartz, Senior Special Counsel; or Abraham Jacob, Special Counsel, at (202) 551–5500, Office of Broker-Dealer Finances, Division of Trading and Markets; Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is amending:

Commission reference	CFR citation (17 CFR)
Rule 15c3–3 Form X–17A–5 Part II	17 CFR 240.15c3–3. 17 CFR 249.617.

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I. Introduction

A. The Need For Daily Reserve Computations

Section 15(c)(3)(A) of the Securities Exchange Act of 1934 (“Exchange Act”) provides, in pertinent part, that no broker-dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (with exceptions for certain securities) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest or for the protection of investors to provide safeguards with respect to the financial responsibility and related practices of broker-dealers including, but not limited to, the acceptance of custody and use of customers’ securities and the carrying and use of customers’ deposits or credit balances.¹ The statute further

¹ 15 U.S.C. 78o(c)(3)(A). The amendments to section 15(c)(3) of the Exchange Act granting this rulemaking authority were adopted in section 7(d) of the Securities Investor Protection Act of 1970 (“SIPA”). Public Law 91–598, 7(d), Dec. 30, 1970, 84 Stat. 1563. Rule 15c3–3 was promulgated in the aftermath of the securities industry “paper work crisis” of 1967–1970. See Commission, *Study of Unsafe and Unsound Practices of Brokers and Dealers*, H.R. Doc. No. 231, 92d Cong., 1st Sess. 6 (1971) (“During the 1967–70 period of severe operational and financial problems, many firms, primarily because of inadequate and inefficient recordkeeping and segregation systems and

Commission reference	CFR citation (17 CFR)
Rule 15c3–1	17 CFR 240.15c3–1.

provides, in pertinent part, that the rules and regulations shall require the maintenance of reserves with respect to customers' deposits or credit balances.²

Pursuant to this statutory directive, the Commission adopted the customer protection rule ("Rule 15c3-3") in 1972.³ This rule requires broker-dealers that hold customer cash and securities ("carrying broker-dealers") to treat these assets in a manner that facilitates their prompt return to the customers if the broker-dealer fails financially.⁴ The goal of the rule is to place a carrying broker-dealer in a position where it is able to wind down in an orderly self-liquidation without the need of financial assistance provided by the Securities Investor Protection Corporation ("SIPC") through a formal proceeding under SIPA.⁵

In order to facilitate an orderly self-liquidation, Rule 15c3-3 requires a carrying broker-dealer to compute the net amount of cash owed to customers under a formula in the rule ("customer reserve computation").⁶ Generally, carrying broker-dealers must perform their customer reserve computation and make any required deposits in a special reserve account at a bank ("customer reserve bank account") weekly.⁷ This weekly cadence has been in effect since 1973.⁸ The rule also addresses how a carrying broker-dealer must treat proprietary securities and cash it holds for other broker-dealers, known as proprietary accounts of broker-dealers ("PAB accounts").⁹ While broker-

dealers are not treated as customers under preexisting Rule 15c3-3, the rule requires a carrying broker-dealer to perform a PAB reserve computation and make any required deposits into its PAB reserve bank account weekly, similar to the requirements for the customer reserve computation and customer reserve bank account.¹⁰

Since the adoption of Rule 15c3-3 in 1972, investor—including retail investor—participation in the U.S. securities markets has grown dramatically, which has led to a correspondingly dramatic increase in the amount of cash carrying broker-dealers hold for customers.¹¹ Cash owed to customers and PAB account holders may include proceeds received from sales of securities, cash customers and PAB account holders deposit for the purpose of purchasing securities, and monthly or quarterly dividends received on behalf of customers and PAB account holders.¹² Carrying broker-dealers may receive large cash inflows on behalf of their customers and PAB account holders during the week (e.g., month-end or quarter-end interest and

includes a foreign broker-dealer, or a foreign bank acting as a broker-dealer) other than a delivery-versus-payment account or a receipt-versus-payment account. The term does not include an account that has been subordinated to the claims of creditors of the carrying broker-dealer. See paragraph (a)(16) of Rule 15c3-3. For example, a broker-dealer that is not a carrying broker-dealer (e.g., a broker-dealer that introduces its customer accounts to a carrying broker-dealer ("introducing broker-dealer")) may hold its proprietary securities and cash at a carrying broker-dealer. In this case, the securities account of the introducing broker-dealer held at the carrying broker-dealer would be a PAB account and the introducing broker-dealer would be a PAB account holder of the carrying broker-dealer. See *Daily Computation of Customer and Broker-Dealer Reserve Requirements under the Broker-Dealer Customer Protection Rule*, Exchange Act Release No. 97877 (July 12, 2023) [88 FR 45836, 45837 (July 18, 2023)] ("Proposing Release").

¹⁰ See section I.C.1. of this release (discussing Rule 15c3-3).

¹¹ Broker-dealers file monthly or quarterly financial and operational information using the FOCUS Report. Based on FOCUS Report data as of December 31, 2023, carrying broker-dealers, in aggregate, reported approximately \$1.1 trillion in total customer and PAB credits. See section IV.B.2. of this release (discussing affected broker-dealers in the baseline). Of that amount, approximately \$965 billion constituted total credits for customer accounts (the remaining balance was total credits for PAB accounts). Further, carrying broker-dealers reported approximately \$319 billion in customer free credit balances. By comparison, free credit balances at year-end 1970 totaled \$2 billion for all broker-dealers that were NYSE members and carried public customer accounts. See *Study of Unsafe and Unsound Practices of Brokers and Dealers* at 51. Free credit balances are generally liabilities of a broker-dealer to customers which are subject to immediate cash payment to customers on demand, whether resulting from sales of securities, dividends, interest, deposits or otherwise, subject to certain exclusions. See paragraph (a)(8) of Rule 15c3-3.

¹² See Proposing Release, 88 FR at 45842.

dividend payments) and days prior to the next required weekly reserve computations and deposits into the reserve bank accounts.¹³ This can lead to situations where—for a period of days—the net amount of cash owed to customers and PAB account holders is greater than the amounts held in the carrying broker-dealer's combined customer and PAB reserve bank accounts.¹⁴ This creates a "mismatch" or difference between the net cash owed to customers and PAB accounts holders and the amounts held in the carrying broker-dealer's combined customer and PAB reserve bank accounts. Moreover, because of the dramatic increase in cash held by carrying broker-dealers since 1972, the amount of the mismatch between cash owed and cash reserved can be much larger than the Commission contemplated when it adopted the requirement to perform a weekly reserve computation. The potential for much larger mismatches today (as compared to 1972) poses a risk that if the carrying broker-dealer fails financially it may not be able to promptly return all cash and securities owed to customers and PAB account holders in an orderly self-liquidation and, instead, will need to be liquidated in a SIPA proceeding.

The potential size of the mismatch risk impacting carrying broker-dealers today can be demonstrated through the size of the deposits they are required to make into their reserve bank accounts. For example, during the 2023 calendar year, the largest required additional deposits into the *customer reserve bank accounts* of all carrying broker-dealers ranged from approximately \$2.3 billion to over \$10 billion.¹⁵ During the 2023 calendar year, the largest required additional deposits into their *PAB reserve bank accounts* ranged from approximately \$345 million to almost \$4.0 billion.¹⁶ Furthermore, during the

¹³ See *id.*

¹⁴ See *id.*

¹⁵ This data is based on the 25 largest additional deposit requirements reported in the monthly FOCUS Reports filed during the 2023 calendar year.

¹⁶ This data is based on the 25 largest additional deposit requirements reported in the monthly FOCUS Reports filed during the 2023 calendar year. The largest additional deposit requirements were made by carrying broker-dealers that also had the 25 largest credit balances based on 2023 FOCUS Report data. A total of nine carrying broker-dealers made the 25 largest additional deposit requirements into the customer reserve bank accounts. Six of the 25 largest additional deposits into the customer reserve bank accounts were made by three carrying broker-dealers that voluntarily perform a daily reserve computation. The mean of these additional deposit requirements was \$4.2 billion, and the median was \$3.6 billion. With respect to the largest deposits into the PAB reserve bank accounts, a total of six carrying broker-dealers made the 25 largest

procedures, and the infrequent counting of securities in their possession, mishandled and misused customers' funds and securities. . . . Firms used customers' free credit and other credit balances in their daily activities." *Id.* at 43.

² 15 U.S.C. 78o(c)(3)(A).

³ See *Broker-Dealers; Maintenance of Certain Basic Reserves*, Exchange Act Release No. 9856 (Nov. 17, 1972) [37 FR 25224 (Nov. 29, 1972)] ("Rule 15c3-3 Adopting Release").

⁴ See section I.C.1. of this release (discussing Rule 15c3-3).

⁵ See *Financial Responsibility Rules for Broker-Dealers; Final Rule*, Exchange Act Release No. 70072 (July 30, 2013) [78 FR 51824, 51869 (Aug. 21, 2013)] ("Financial Responsibility Rules for Broker-Dealers"); See also section I.C.2. of this release (discussing broker-dealer liquidations and SIPA).

⁶ The net amount of cash owed to customers is generally the amount the total cash owed to customers (e.g., cash balances in securities accounts) (referred to as "credits") exceeds the total amount of cash customers owe the carrying broker-dealer (e.g., margin loans to customers) (referred to as "debits"). 17 CFR 240.15c3-3a ("Rule 15c3-3a").

⁷ Preexisting Rule 15c3-3 also permits carrying broker-dealers to perform the customer reserve computation more frequently than weekly (e.g., daily) and, in certain limited circumstances, monthly. See paragraph (e)(3) of Rule 15c3-3.

⁸ See Rule 15c3-3 Adopting Release, 37 FR at 25226. While Rule 15c3-3 was adopted in 1972, the effective date for the rule was January 15, 1973. *Id.*

⁹ The term PAB account means a proprietary securities account of a broker-dealer (which

Continued

2023 calendar year, the top ten additional required deposits to the *customer reserve bank accounts* for the 20 carrying broker-dealers with the lowest average total credits (of the 49 carrying broker-dealers estimated to be subject to the final amendments),¹⁷ ranged from approximately \$74.3 million to over \$600 million.¹⁸ Moreover, the largest potential mismatches today occur at carrying broker-dealers that reported the greatest amount of total credits for their customers and PAB account holders (*i.e.*, amounts that exceed the final \$500 million threshold discussed below).¹⁹ In 2023, in the aggregate, the average mismatch for customer reserve bank accounts was 15.7% for carrying broker-dealers above the \$500 million threshold.²⁰ It was 6.4% for carrying broker-dealers below the threshold.²¹

These large deposit requirements and mismatch percentages indicate that there may be times when the net amount of cash owed to customers and PAB account holders is substantially greater than the amounts on deposit in the customer and PAB reserve bank accounts.²² Large mismatches may lead to correspondingly large shortfalls in the amounts available in the customer and PAB reserve bank accounts, which, in the event of a failure of a carrying broker-dealer, may result in the delayed reimbursement of customer securities and cash, and the potential that

additional deposit requirements. Twenty-one of the 25 largest additional deposits into the PAB reserve bank accounts were made by four carrying broker-dealers that voluntarily perform a daily reserve computation. The mean of these additional deposit requirements was approximately \$1.3 billion, and the median was approximately \$1.1 billion. In addition to large deposit requirements, the customer and PAB reserve computations also permitted some carrying broker-dealers to make large withdrawals from both their customer and PAB reserve bank accounts during the 2023 calendar year. For example, during the 2023 calendar year, the 25 largest withdrawals from customer reserve bank accounts ranged from approximately \$1.2 billion to \$4.8 billion, and the 25 largest withdrawals from PAB reserve bank accounts ranged from \$170 million to \$2.6 billion.

¹⁷ See section IV.B.2. of this release (discussing scope of affected entities in the economic baseline).

¹⁸ This data is based on the largest additional deposit requirements reported in the monthly FOCUS Reports filed during the 2023 calendar year for carrying broker-dealers above the \$500 million threshold.

¹⁹ See section II.A. of this release (describing the final \$500 million threshold).

²⁰ See section IV.B.2. of this release (discussing average mismatches). The aggregated average mismatch of 15.7% is calculated as an average of the average mismatches for all carrying broker-dealers that met the \$500 million threshold. The same was done for carrying broker-dealers below the \$500 million threshold.

²¹ See section IV.B.2. of this release (discussing average mismatches).

²² See Proposing Release, 88 FR at 45843.

customers' claims may not be satisfied in full.²³ In the case of a large shortfall, the cash and securities owed to customers or PAB account holders may be tied up in liquidation proceedings and these customers or PAB account holders would have to wait to receive their cash and securities until the broker-dealer liquidation is carried out under SIPA, which may take a significant amount of time.²⁴ This potential delay in obtaining access to their securities and cash also could cause customers to rapidly withdraw cash from a carrying broker-dealer during times of market turmoil, putting further stress on the carrying broker-dealer and the securities markets more generally, as well as potentially triggering or accelerating the failure of a carrying broker-dealer.

Further, in a SIPA liquidation, SIPC may be required to advance money from the SIPC Fund²⁵ to the extent the fund of customer property was insufficient to make customers—but not to PAB account holders—whole through the *pro rata* distribution.²⁶ In particular, if the mismatch or difference between the net amount a carrying broker-dealer owes its customers and PAB account holders and the combined amounts in the customer and PAB reserve accounts was sufficiently large, customers' claims may not be satisfied in full.²⁷ In this case, the trustee would need to use the SIPC Fund to satisfy customers' claims to make them whole. This risk may be exacerbated for carrying broker-dealers experiencing large aggregate intra-week mismatches.²⁸ As a result, the SIPC

²³ See *id.* at 45842.

²⁴ How quickly claims are satisfied in a SIPA liquidation depends on the complexity of the liquidation and the condition of the carrying broker-dealer's records. See *How The Claims Process Works*, available at <https://www.sipc.org/cases-and-claims/how-the-claims-process-works>; see also Proposing Release, 88 FR at 45848; section IV.A. of this release (discussing potential risks that an intra-week mismatch introduces); section IV.C. (discussing economic effects of the final amendments).

²⁵ See section I.C.2. of this release (discussing the SIPC Fund).

²⁶ See Proposing Release, 88 FR at 45842. The amount that can be advanced to each customer is capped at \$500,000 (of which \$250,000 can be used to cover cash claims). Broker-dealers with securities accounts at a failed broker-dealer—as SIPA customers—have the right to a *pro rata* share of customer property in a SIPA liquidation, but they are not entitled to advances from the SIPC Fund. See section I.C.2. of this release (providing an overview of broker-dealer liquidations and SIPA).

²⁷ See Proposing Release, 88 FR at 45842.

²⁸ See Proposing Release, 88 FR at 45848. See also section IV.A. of this release (discussing potential risks that an intra-week mismatch introduces).

Fund may be at a higher risk of depletion.²⁹

To address these risks, the Commission is amending Rule 15c3–3 to require carrying broker-dealers that owe large amounts of cash to customers and PAB account holders (*i.e.*, have large total credits), measured by both their customer and PAB reserve computations for the previous 12 month ends (*i.e.*, a rolling 12-month average), to perform those computations and make any required deposits into their respective reserve bank accounts daily rather than weekly.³⁰ The final amendments—by requiring daily rather than weekly reserve computations—will more quickly apply the protective measures of the Rule 15c3–3 reserve requirements to cash of customers and PAB account holders that is newly deposited into the carrying broker-dealer. This will reduce the risk—caused by the dramatic increase in cash carrying broker-dealers hold—that if the carrying broker-dealer fails financially, it may be unable to promptly return cash and securities to customers and PAB account holders through an orderly self-liquidation. It also reduces the risk that the SIPC Fund may be depleted.³¹ Further, a daily computation—as compared with a weekly computation—will more dynamically match the net amount of cash owed to customers and PAB account holders with the amount on deposit in the carrying broker-dealer's customer and PAB reserve bank accounts (*i.e.*, daily changes in the net cash owed to customers and PAB account holders will be accounted for more quickly in the reserve computations). While Rule 15c3–3 currently permits a carrying broker-dealer to elect to perform its customer and PAB reserve computations more frequently than weekly,³² a practical effect of a daily computation requirement will permit carrying broker-dealers to withdraw excess cash or qualified securities more quickly from the reserve bank account, which will improve their liquidity.³³

In sum, the daily reserve computations—by protecting customer and PAB cash more quickly than is the

²⁹ See section IV.A. of this release (discussing potential risks that an intra-week mismatch introduces).

³⁰ See section II.A. of this release (discussing the final \$500 million threshold, which is a modification from the proposed \$250 million threshold); See also Proposing Release, 88 FR at 45843–45 (discussing proposed \$250 million threshold).

³¹ See Proposing Release, 88 FR 45842–43, 45848.

³² See paragraph (e)(3)(iv) of Rule 15c3–3.

³³ See *supra* note 16 (citing data related to the 25 largest withdrawals from customer and PAB reserve bank accounts for the calendar year 2023).

case with weekly computations—will make the financial system safer by: (1) increasing the likelihood that a failing carrying broker-dealer can self-liquidate (meaning customers and PAB account holders do not temporarily lose access to their cash and securities); (2) lowering the risk that the SIPC Fund may be depleted by having to address a large shortfall in customer cash held by a failed carrying broker-dealer; and (3) increasing the liquidity of carrying broker-dealers performing the daily customer and PAB reserve computations thereby positioning them to better address potential financial shocks.

B. Overview of the Final Amendments

The Commission proposed the requirement to perform daily customer and PAB reserve computations on July 12, 2023.³⁴ The Commission received comments from a variety of persons, including broker-dealers, retail investors, industry associations, and other market participants.³⁵ As discussed in detail below, the Commission has modified the final amendments in response to comments. For example, while the Commission is retaining the overall structure of the proposal, the Commission has raised the threshold from \$250 million to \$500 million. The Commission also is reducing the 3% aggregate debit items charge (“3% debit reduction”) that certain carrying broker-dealers must take in performing a customer reserve computation to 2% (“2% debit reduction”) if they perform a daily customer reserve computation.³⁶

The final amendments are summarized below.

Daily Computation—Under the final amendments, a carrying broker-dealer that has average total credits that are equal to or greater than \$500 million (“\$500 Million Threshold”) must perform the customer and/or PAB reserve computations daily, rather than weekly as is required under preexisting Rule 15c3–3.³⁷ As proposed and under the final amendments, a carrying broker-dealer must perform the customer and PAB reserve computations, as applicable, as of the close of the previous business day, and any required deposits must be made no later than one hour after the opening of banking

business on the second following business day.³⁸

Definition of Average Total Credits—As proposed and under the final amendments, “average total credits” means the arithmetic mean of the sum of total credits in the customer reserve computation and the PAB reserve computation reported in the carrying broker-dealer’s 12 most recently filed month-end FOCUS Reports.³⁹ This means the average total credits are a 12-month rolling average, as the carrying broker-dealer must add up the sum of the total credits reported in the customer and PAB reserve computations in each of the 12 most recently filed month-end FOCUS Reports and divide that amount by 12 to calculate the arithmetic mean of the total credits.

Six-Month Compliance Period after Exceeding \$500 Million Threshold—Under the final amendments, a carrying broker-dealer must comply with the requirement to perform a customer and PAB reserve computation daily no later than six months after its average total credits equal or exceed the \$500 Million Threshold.⁴⁰

60-day Written DEA Notification to Revert to Weekly Computation—Under the final amendments, in the event that a carrying broker-dealer’s 12-month rolling average of total credits subsequently falls below the \$500 Million Threshold, it must continue to perform customer and PAB reserve computations daily until it provides written notification to its designated examining authority (“DEA”) of its election to perform weekly computations. The amendments require the carrying broker-dealer to provide this written notification 60 days prior to reverting to weekly computations.⁴¹

Lowering the 3% Debit Reduction to 2% for Carrying Broker Dealers that Perform a Daily Customer Reserve Computation—As discussed in more detail below, the minimum net capital requirement for broker-dealers is the greater of a fixed-dollar amount specified in Rule 15c3–1 and an amount determined by applying one of two financial ratios: the 15-to-1 aggregate indebtedness to net capital ratio (“basic method”) or the 2% of aggregate debit items ratio (“alternative method”).⁴² A carrying broker-dealer using the alternative method must reduce aggregate debit items by 3% when performing its customer reserve

computation under Rule 15c3–3. This can increase the amount the carrying broker-dealer must lock up in its customer reserve bank account.

Under the final amendments, the Commission has modified Rule 15c3–1 to permit carrying broker-dealers that use the alternative method and are above the \$500 Million Threshold (*i.e.*, that perform a daily customer reserve computation) to reduce their aggregate debit items by 2% rather than 3%.⁴³ Further, carrying broker-dealers that use the alternative method and are below the \$500 Million Threshold may voluntarily perform a daily customer reserve computation under Rule 15c3–3 and, in so doing, apply the 2% debit reduction in lieu of the 3% debit reduction if they notify their DEA at least 30-days prior to beginning the daily customer reserve computation. Under the final amendments, carrying broker-dealers voluntarily performing a daily reserve computation and applying the 2% debit reduction must receive prior approval from their DEA to revert to a weekly customer reserve computation.⁴⁴ If they revert to performing a weekly customer reserve computation, they also must revert to applying a 3% debit reduction. Finally, under the final amendments, the Commission is adopting technical amendments to the FOCUS Report to conform it to the amendments with respect to the lowering of the debit reduction from 3% to 2%.

Compliance Date—Generally, carrying broker-dealers that exceed the \$500 Million Threshold using each of the 12 filed month-end FOCUS Reports from July 31, 2024, through June 30, 2025, must perform customer and PAB reserve computations daily beginning no later than December 31, 2025 (*i.e.*, six months after June 30, 2025).⁴⁵ On or after the effective date of the final amendments, a carrying broker-dealer may voluntarily perform a daily customer reserve computation and apply the 2% debit reduction, provided it notifies its DEA in writing at least 30 calendar days prior to beginning the daily customer reserve computation that applies the 2% debit reduction.⁴⁶

Reserve Account Requirements for Security-Based Swaps—The Commission is not adopting any changes to the reserve account requirements for security-based swaps.

³⁴ See Proposing Release.

³⁵ Comment letters on the Proposing Release are available at <https://www.sec.gov/comments/s7-11-23/s71123.htm>.

³⁶ See section II.C. of this release (describing this modification in more detail).

³⁷ See paragraph (e)(3)(i)(A)(1) of Rule 15c3–3, as amended.

³⁸ See *id.*

³⁹ See *id.*

⁴⁰ See *id.*

⁴¹ See paragraph (e)(3)(i)(B)(2) of Rule 15c3–3, as amended.

⁴² See section I.C.1. of this release (describing these provisions of the Rule 15c3–1 in more detail).

⁴³ See paragraph (a)(1)(ii)(A) of Rule 15c3–1, as amended and paragraph (e)(3)(v) of Rule 15c3–3, as amended.

⁴⁴ See paragraph (e)(3)(v) of Rule 15c3–3, as amended.

⁴⁵ See section III. of this release (discussing the compliance date).

⁴⁶ See *id.*

C. Overview of Rule 15c3-3 and Broker-Dealer Liquidations

1. Overview of Rule 15c3-3

Rule 15c3-3 is designed to give specific protection to customer funds and securities, in effect forbidding broker-dealers from using customer assets to finance any part of their businesses unrelated to servicing securities customers. For example, a broker-dealer is “virtually” precluded from using customer funds to buy securities for its own account.⁴⁷ To meet this objective, Rule 15c3-3 requires a carrying broker-dealer to take two primary steps to safeguard these assets, as described in this section below. The steps are designed to protect customers by segregating their securities and cash from the carrying broker-dealer’s proprietary business activities. The final amendments address the second step. If the carrying broker-dealer fails financially, the customer securities and cash should be readily available to be returned to the customers, which facilitates an orderly self-liquidation. However, if the failed carrying broker-dealer is liquidated under SIPA, the customer securities and cash should be isolated and readily identifiable as “customer property” and, consequently, available to be distributed to customers ahead of other creditors.⁴⁸

The first step required by Rule 15c3-3 is that a carrying broker-dealer must maintain physical possession or control over customers’ fully paid and excess margin securities.⁴⁹ Control means the carrying broker-dealer must hold these securities in one of several locations specified in Rule 15c3-3 and free of liens or any other interest that a third-party could exercise to secure an obligation of the carrying broker-dealer.⁵⁰ Permissible locations include a clearing corporation and a “bank,” as defined in section 3(a)(6) of the Exchange Act.⁵¹

The second step is that Rule 15c3-3 requires carrying broker-dealers to have a customer reserve bank account that must hold cash and/or qualified securities (e.g., U.S. Treasury securities) in an amount determined by a computation of the net cash owed to the carrying broker-dealer’s customers pursuant to a formula set forth in Exchange Act Rule 15c3-3a, the customer reserve computation.⁵² Preexisting Rule 15c3-3 requires carrying broker-dealers to perform the customer reserve computation as of the close of the last business day of the week and make any required deposits into the customer reserve bank account weekly. Rule 15c3-3 also permits carrying broker-dealers to perform the customer reserve computation more frequently than weekly (e.g., daily),⁵³ and, in certain limited circumstances, to perform a monthly computation.⁵⁴

Under the customer reserve computation, the carrying broker-dealer adds up customer credit items and then subtracts from that amount customer debit items.⁵⁵ The credit items include credit balances in customer securities accounts (i.e., cash owed to customers) and funds obtained through the use of customer securities (e.g., a loan from a bank collateralized with customer margin securities).⁵⁶ The debit items include money owed by customers (e.g., from margin lending), securities borrowed by the carrying broker-dealer to effectuate customer short sales, and margin required and on deposit with

operating under the circumstances set forth in the statement will not be subject to a Commission enforcement action on the basis that the broker-dealer deems itself to have obtained and maintained physical possession or control of customer fully paid and excess margin “digital asset securities” for purposes of Rule 15c3-3. *See Commission Statement on Custody of Digital Asset Securities by Special Purpose Broker-Dealers*, Exchange Act Release No. 90788 (Dec. 23, 2020), 86 FR 11627 (Feb. 21, 2021). While the final amendments apply to all carrying broker-dealers, including special purpose broker-dealers, the amendments do not alter the current possession and control requirements of Rule 15c3-3 for any broker-dealer. *See also* Division of Trading and Markets, Commission and Office of General Counsel, FINRA, *Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities* (July 8, 2019), available at <https://www.sec.gov/news/public-statement/joint-staff-statement-broker-dealer-custody-digital-asset-securities>. The 2019 staff statement represents the views of the staff. It is not a rule, regulation, or statement of the Commission. Furthermore, the Commission has neither approved nor disapproved its content. This staff statement, like all staff statements, has no legal force or effect: it does not alter or amend applicable law; and it creates no new or additional obligations for any person.

⁵² See Rule 15c3-3a.

⁵³ See paragraph (e)(3)(iv) of Rule 15c3-3.

⁵⁴ See paragraph (e)(3)(i) of Rule 15c3-3.

⁵⁵ See Rule 15c3-3a.

⁵⁶ See Rule 15c3-3a, Items 1–9; Proposing Release, 88 FR at 45838.

certain clearing agencies as a consequence of customer securities transactions.⁵⁷ If credit items exceed debit items, the net amount must be on deposit in the customer reserve bank account in the form of cash and/or qualified securities.⁵⁸ The carrying broker-dealer must make a deposit into the customer reserve bank account by 10 a.m. of the second business day following the “as of” date of the new computation if the computation shows the amount required to be on deposit in the customer reserve bank account is greater than the amount currently on deposit in the account.⁵⁹ Conversely, if the computation shows the amount required to be on deposit in the customer reserve bank account is less than the amount currently on deposit in the account, the carrying broker-dealer can withdraw the difference.⁶⁰ A carrying broker-dealer also must make and maintain a record of each computation.⁶¹

The customer reserve computation permits the carrying broker-dealer to offset customer credit items only with customer debit items.⁶² This means the carrying broker-dealer can use customer cash to facilitate customer transactions such as financing customer margin loans and borrowing securities to make deliveries of securities customers have sold short. For example, if a carrying broker-dealer holds \$100 for customer A, the carrying broker-dealer can use that \$100 to finance a security purchase of customer B (i.e., make a margin loan to customer B). The \$100 the carrying broker-dealer owes customer A is a credit in the customer reserve computation and the \$100 customer B owes the carrying broker-dealer is a debit in the computation. Therefore, under the customer reserve computation there would be no requirement to maintain cash and/or qualified securities in the customer reserve bank account. However, if the carrying broker-dealer did not use the \$100 held in customer A’s account for this purpose, there would be no offsetting

⁵⁷ See Rule 15c3-3a, Items 10–15.

⁵⁸ See paragraph (e) of Rule 15c3-3.

⁵⁹ See paragraph (e)(3)(i) of Rule 15c3-3. For example, a carrying broker-dealer would perform the customer reserve computation on Monday as of the close of business on the previous Friday and generally be required to make the necessary deposit no later than 10 a.m. Tuesday. *See* Proposing Release, 88 FR at 45839.

⁶⁰ See paragraph (e) of Rule 15c3-3.

⁶¹ See paragraph (e)(3)(v) of Rule 15c3-3. Each record must be preserved in accordance with Rule 17a-4. *Id.* *See also* Proposing Release, 88 FR at 45839. As a result of the final amendments, paragraph (e)(3)(v) is being re-designated as paragraph (e)(3)(vi).

⁶² See paragraph (e)(2) of Rule 15c3-3; Rule 15c3-3a.

⁴⁷ See *Net Capital Requirements for Brokers and Dealers*, Exchange Act Release No. 21651 (Jan. 11, 1985) [50 FR 2690, 2690 (Jan. 18, 1985)]. *See also* *Broker-Dealers; Maintenance of Certain Basic Reserves*, Exchange Act Release No. 9856 (Nov. 17, 1972) [37 FR 25224, 25224 (Nov. 29, 1972)]; *Proposing Release*, 88 FR at 45837.

⁴⁸ See section I.C.2. of this release (discussing broker-dealer liquidations under SIPA).

⁴⁹ See paragraph (b) of Rule 15c3-3; *Proposing Release*, 88 FR at 45838.

⁵⁰ See paragraph (c) of Rule 15c3-3. A carrying broker-dealer does not treat customer securities as its own assets. Rather, the carrying broker-dealer holds them in a custodial capacity, and the possession and control requirement is designed to ensure that the carrying broker-dealer treats them in a manner that allows for their prompt return.

⁵¹ See *id.* In 2020, the Commission issued a statement describing its position that, for a period of five years, special purpose broker-dealers

debit and, consequently, the carrying broker-dealer would need to have on deposit in the customer reserve bank account cash and/or qualified securities in an amount at least equal to \$100.⁶³

Rule 15c3-3 also addresses how a carrying broker-dealer must treat proprietary securities and cash it holds for other broker-dealers, known as PAB accounts. While broker-dealers are not treated as customers of the carrying broker-dealer under Rule 15c3-3,⁶⁴ the rule requires the carrying broker-dealer to have a PAB reserve bank account.⁶⁵ The PAB reserve bank account must hold cash and/or qualified securities in an amount determined by the PAB reserve computation. Under preexisting Rule 15c3-3, carrying broker-dealers are generally required to perform the PAB reserve computation and make any required deposits into the PAB reserve bank account weekly, similar to the requirements for the customer reserve computation.⁶⁶ Finally, consistent with the requirements for the customer reserve computation, the PAB reserve computation permits the carrying broker-dealer to offset PAB credit items only with PAB debit items.⁶⁷

2. Overview of Broker-Dealer Liquidations and SIPA

SIPA⁶⁸ affords certain protections against loss to customers resulting from a broker-dealer failure through the establishment of SIPC and the SIPC

Fund.⁶⁹ SIPC oversees the liquidation of SIPC-member broker-dealers that fail financially and where customer assets the broker-dealer holds (*i.e.*, cash or securities) are missing from customers' securities accounts (*i.e.*, broker-dealers that cannot return these assets through a self-liquidation).⁷⁰

In a SIPA liquidation of a broker-dealer, SIPC and a court-appointed trustee work to return customers' cash and securities as quickly as possible. Customers under SIPA, including broker-dealers with securities accounts at the failed broker-dealer ("SIPA customers"), generally are entitled to certain protections, including the right to share *pro rata* with other SIPA customers in the customer property held by the carrying broker-dealer by way of a priority claim on the customer property compared to general unsecured creditors of the carrying broker-dealer.⁷¹

SIPA protections also include the ability for a SIPA customer—other than a SIPA customer that is a broker-dealer (*i.e.*, a PAB account holder)—to receive an advance from the SIPC Fund of up to \$500,000 (of which \$250,000 can be used to cover cash claims), if the amount of customer property is insufficient to satisfy the customer's claim for securities and/or cash.⁷² The SIPC Fund largely is financed through assessments paid to SIPC by its broker-dealer members.⁷³ The SIPC Fund is used to pay SIPC's expenses, the administrative costs of a SIPA liquidation to the extent the carrying

broker-dealer's estate is insufficient to cover those costs, and—as stated above in this section—to pay advances to SIPA customers whose claims cannot be fully satisfied by the estate of a failed carrying broker-dealer.⁷⁴ The SIPC Fund—which consists of cash and U.S. Government securities—totaled approximately \$4.47 billion as of December 31, 2023.⁷⁵ Finally, the schedule for calculation of the annual assessment for SIPC members is governed under the SIPC Bylaws and generally depends on the level of SIPC's unrestricted net assets.⁷⁶ The current assessment rate (effective January 1, 2024) is 0.15% of net operating revenues.⁷⁷ A summary of the possible level of SIPC assessments is as follows:

⁷⁴ In the event that the SIPC Fund is or may reasonably appear to be insufficient for the purposes of SIPA, the Commission is authorized to lend SIPC up to \$2.5 billion, which the Commission, in turn, would borrow from the U.S. Treasury. 15 U.S.C. 78ddd(g) and (h). The Commission has not borrowed funds under the authority in SIPA since the legislation was enacted in 1970. See 2023 SIPC Annual Report at 3; Proposing Release, 88 FR at 45841, n.49. In 2023, no liquidations under SIPA were initiated. Over the last ten-year period, the annual average of new cases was 0.2. Since the inception of SIPC, liquidation proceedings under SIPA were commenced for 330 SIPC-member broker-dealers. These 330 members represent less than 1% of the approximately 40,000 broker-dealers that have been SIPC members during the past fifty-three years. In addition, during that timeframe, cash and securities distributed for accounts of customers totaled approximately \$142.5 billion. Of that amount, approximately \$141.6 billion came from debtors' estates and \$915.7 million came from the SIPC Fund. Currently, SIPC has 3,297 members. See SIPC 2023 Annual Report at 8.

⁷⁵ See 2023 SIPC Annual Report at 10. The target level of the SIPC Fund is set out in SIPC's Bylaws and has increased from an initial target of \$150 million in 1970, to the current target of \$5.0 billion as measured in unrestricted net assets. See Article 6 (Assessments) of SIPC Bylaws; The SIPC Fund, available at <https://www.sipc.org/about-sipc/the-sipc-fund>; 2023 SIPC Annual Report at 3.

⁷⁶ See Article 6 (Assessments) of SIPC Bylaws. SIPC's unrestricted net assets are SIPC's total assets (including the SIPC Fund) less liabilities, which include estimated costs to complete ongoing SIPA liquidations. See 2023 SIPC Annual Report at 20. See also 15 U.S.C. 78ddd(c) and (d); Proposing Release, 88 FR at 45841.

⁷⁷ See Assessment Rate, available at <https://www.sipc.org/for-members/assessment-rate>. The amount of each SIPC member's assessment for the member's fiscal year is the product of the assessment rate established by SIPC for that fiscal year and either the member's gross revenues or net operating revenues from the securities business. See section 6(a)(1) of SIPC's Bylaws; Proposing Release, 88 FR at 45841.

⁶³ See Proposing Release 88 FR at 45839, n.22.

⁶⁴ See paragraph (a)(1) of Rule 15c3-3. The definition of "customer" in SIPA, however, is broader than the definition in Rule 15c3-3 in that the SIPA definition includes broker-dealers that have proprietary accounts at the carrying broker-dealer. As discussed in section I.C.2. of this release, broker-dealers—as customers under SIPA—have the right to a *pro rata* share of customer property in a SIPA liquidation. See 15 U.S.C. 78lll(2).

⁶⁵ See paragraph (e)(1) of Rule 15c3-3. Carrying broker-dealers also must obtain and maintain physical possession or control of securities carried for a PAB account holder unless the carrying broker-dealer has provided written notice to the PAB account holder that it may use those securities in the ordinary course of its securities business and has provided opportunity for the PAB account holder to object to such use. See paragraph (b)(5) of Rule 15c3-3. See Financial Responsibility Rules for Broker-Dealers, 78 FR at 51827-31 (adopting a PAB reserve computation and possession and control requirements for securities held in PAB accounts under Rule 15c3-3).

⁶⁶ See paragraph (e)(3) of Rule 15c3-3; Proposing Release, 88 FR at 45839-40.

⁶⁷ See paragraph (e)(2) of Rule 15c3-3.

⁶⁸ See 15 U.S.C. 78aaa *et seq.*

⁶⁹ See 15 U.S.C. 78ccc(a)(1) and 78ddd(a)(1).

⁷⁰ With some limited exceptions set forth in SIPA, all registered broker-dealers are SIPC members. 15 U.S.C. 78ccc(a)(2). SIPC is a non-profit member organization created in 1970 under SIPA. 15 U.S.C. 78ccc(a); Proposing Release, 88 FR at 45840.

⁷¹ See 15 U.S.C. 78fff-2(c) and 15 U.S.C. 78fff-3(a). SIPA liquidations generally involve customer claims and the claims of general unsecured creditors. Customer claims are satisfied out of the customer estate, while general unsecured claims are paid from the general estate (any remaining assets). To the extent a customer's claims are not fully satisfied through advances from the SIPC Fund and the customer's share of the customer estate, a customer will be eligible to receive a distribution as a general creditor if there are any general estate assets. See 15 U.S.C. 78fff2(c)(1).

⁷² 15 U.S.C. 78fff-3.

⁷³ 15 U.S.C. 78ddd(c) and (d); Proposing Release, 88 FR at 45841. The SIPC Fund is also financed through interest on U.S. Government securities held in the SIPC Fund. See 2023 SIPC Annual Report at 4, available at <https://www.sipc.org/media/annual-reports/2023-annual-report.pdf>.

TABLE 1—SIPC ASSESSMENT SCHEDULE

Unrestricted net assets/SIPC Fund balance	Annual assessment rate
Unrestricted net assets \$2.5–<\$5 billion (and reasonably likely to remain less than \$5 billion but not less than \$2.5 billion).	0.15% of net operating revenues.
SIPC Fund balance of \$150 million—unrestricted net assets of <\$2.5 billion.	0.25% of net operating revenues.
SIPC Fund balance \$100 million–<\$150 million	Determined by SIPC, but not less than 0.25% of gross revenues.
SIPC Fund balance below \$100 million	Determined by SIPC, but not less than 0.5% of gross revenues.
Unrestricted net assets ≥\$5 billion (and reasonably likely to remain >\$5 billion (after review of study * and consultation with Commission and SROs)).	SIPC may not more than once in any four-year period, increase or decrease the assessment rate by up to, but not more than, 25% of the assessment rate in effect at that time.

* When unrestricted net assets total \$5 billion, SIPC will commission a study every four years to examine the adequacy of SIPC's unrestricted net asset balance and the SIPC Fund and the appropriate assessment rate. See section 6(a)(1)(C) and (D) of SIPC's Bylaws.

II. Discussion of Comments and Final Amendments

A. Requirement To Perform a Daily Computation

1. Proposal

The Commission proposed amendments to Rule 15c3–3 that would require carrying broker-dealers with large amounts of total credits to perform the customer and PAB reserve computations daily rather than weekly.⁷⁸ More specifically, the amendments would add paragraph (e)(3)(i)(B) to Rule 15c3–3.⁷⁹ This paragraph would provide that a carrying broker-dealer with average total credits that are equal to or greater than \$250 million (“\$250 Million Threshold”) must make the computation necessary to determine the amounts required to be deposited in the customer and PAB reserve bank accounts daily as of the close of the previous business day.⁸⁰ The paragraph would further provide that the deposit so computed must be made no later than one hour after the opening of banking business on the

second following business day.⁸¹ For purposes of paragraph (e)(3) of Rule 15c3–3, the Commission proposed to define average total credits as the arithmetic mean of the sum of total credits in the customer reserve computation and PAB reserve computation reported in the twelve most recently filed month-end FOCUS Reports.⁸² Based on regulatory filings for the period of January 2022 through December 2022, the \$250 Million Threshold would have applied the proposed daily computation requirement to approximately 63 carrying broker-dealers.⁸³ These broker-dealers included 11 carrying broker-dealers that already voluntarily performed the customer reserve computation daily.⁸⁴

2. Comments Received and Final Amendments

Many commenters supported the overall proposal.⁸⁵ Commenters stated that the proposal would help protect customers, and address potential risks in a more timely and proactive manner, which safeguards investors and market participants, as well as strengthens the

overall resilience of the financial markets.⁸⁶ One commenter, however, stated that the preexisting weekly reserve requirements have proven effective for the industry and not resulted in any problems.⁸⁷

The Commission agrees with commenters that the amendments to require daily customer and PAB reserve computations will protect customer and PAB cash more quickly than is the case with weekly computations. While the preexisting weekly customer and PAB reserve requirements have generally been effective,⁸⁸ the observed large deposit requirements, and differences or “mismatches” between the net amount of cash a carrying broker-dealer owes its customers and PAB account holders and the amounts on deposit in the customer and PAB reserve bank accounts, indicate that a daily reserve computation requirement enhances the preexisting rule.⁸⁹

As discussed in section I.A. of this release, a daily reserve computation requirement will make the financial system safer by: (1) increasing the likelihood that a failing carrying broker-dealer can self-liquidate (meaning customers and PAB account holders do not temporarily lose access to their cash and securities); (2) lowering the risk that the SIPC Fund may be depleted by having to address a large shortfall in customer cash held by a failed carrying broker-dealer; and (3) increasing the liquidity of carrying broker-dealers performing the daily customer and PAB reserve computations thereby positioning them to better address potential financial shocks.

⁷⁸ See section I.A. of this release (discussing the need for daily reserve computations); Proposing Release, 88 FR at 45843.

⁷⁹ See paragraph (e)(3)(i)(B) to Rule 15c3–3, as proposed to be amended. In addition, the Commission proposed the following conforming amendments to paragraph (e)(3)(i) of Rule 15c3–3: (1) paragraph (e)(3)(i) would be re-lettered paragraph (e)(3)(i)(A); and (2) the text in paragraph (e)(3)(i) regarding monthly computations would be set forth in new paragraph (e)(3)(i)(C). Further, the phrase “[e]xcept as provided in paragraphs (e)(3)(i)(B)(1) and (C) of this section” would be added to the beginning of paragraph (e)(3)(i)(A) of Rule 15c3–3, as proposed to be amended, to clarify that the weekly computation requirement in paragraph (e)(3)(i)(A) applies unless the carrying broker-dealer is subject to the daily computation requirement of paragraph (e)(3)(i)(B)(1) or meets the conditions of paragraph (e)(3)(i)(C) to perform a monthly computation. See Proposing Release, 88 FR at 45843, n.74. The Commission did not receive comments on these proposed conforming amendments and is adopting them as proposed.

⁸⁰ The text of paragraph (e)(3)(i)(B) of Rule 15c3–3—as proposed to be amended—was modelled closely on the preexisting text of paragraph (e)(3)(i) of Rule 15c3–3. See Proposing Release 88 FR at 45843, n.75.

⁸¹ For example, a carrying broker-dealer performing the computation on Tuesday—as of the close of business on Monday—would be required to make the deposit on Wednesday, assuming all three days are business days. On Wednesday, the carrying broker-dealer would perform the computation as of the close of business Tuesday and be required to make the deposit on Thursday (assuming Thursday is a business day). See Proposing Release 88 FR at 45844.

⁸² See paragraph (e)(3)(i)(B)(1) of Rule 15c3–3, as proposed to be amended. This would mean the carrying broker-dealer would add up the sum of the total credits reported in the customer and PAB reserve computations in each of the twelve most recently filed month-end FOCUS Reports and divide that amount by 12 to calculate the arithmetic mean of the total credits. See Proposing Release, 88 FR at 45844, n.76.

⁸³ See Proposing Release, 88 FR at 45844, n.79.

⁸⁴ See Proposing Release, 88 FR at 45844, n.80.

⁸⁵ See, e.g., Letter from Joshua Beattie, FriendshipWorks (July 20, 2023); Roger Cryer (Aug. 16, 2023); Ethan Jenni (Aug. 20, 2023); Ruth Earle (Aug. 20, 2023); Jesse Tutti (Aug. 20, 2023); Nathan Saint (Aug. 20, 2023); Chris Edmondson (Aug. 20, 2023); and Janice Schrader (Aug. 21, 2023).

⁸⁶ See Letter from Joseph (Sept. 8, 2023); Golden DOGE (Sept. 9, 2023).

⁸⁷ See Letter from Christopher A. Iacovella, President & CEO, American Securities Association (Sept. 11, 2023) (“ASA Letter”) at 4.

⁸⁸ See section II.C.2. of this release (discussing broker-dealer liquidations and SIPA).

⁸⁹ See section I.A. of this release (discussing the need for daily reserve computations); section IV.B.2. of this release (discussing average mismatches).

Regarding the proposed \$250 Million Threshold, one commenter suggested modifying the proposal to include a second test that would need to be met to trigger the requirement to perform daily reserve computations.⁹⁰ In particular, the commenter recommended requiring a carrying broker-dealer to perform daily computations if it exceeds the proposed \$250 Million Threshold *and* has average net credits of \$10 million or more because some carrying broker-dealers that meet the proposed \$250 Million Threshold do not present a material risk as they do not carry a large excess of credits over debits. This commenter also stated that a number of carrying broker-dealers rarely have an excess of credits over debits because of the nature of their activities, and the customer protection benefit of a daily computation requirement for these carrying broker-dealers is minimal, and should be weighed against the significant costs of the proposal, which are not commensurate with the risk profiles they present.⁹¹ Another commenter stated the Commission should adopt a threshold using risk or liquidity factors because they are better predictors of a failing carrying broker-dealer than a fixed threshold based on size.⁹² The commenter stated that this threshold classification would avoid penalizing carrying broker-dealers with strong balance sheets that exceed a fixed threshold.⁹³ One commenter stated that the Commission should define the threshold as a formula that it could adjust periodically without further rulemaking, because the proposed threshold is based on a narrow set of FOCUS reports and could become outdated as a result of material changes.⁹⁴

Some commenters suggested eliminating the proposed \$250 Million Threshold so that all carrying broker-dealers would be required to perform

daily customer and PAB reserve computations.⁹⁵ One of these commenters stated that the mismatch risk applies equally to both large and small carrying broker-dealers, and, as such, the Commission should apply the requirement to all carrying broker-dealers so that customers are not left vulnerable simply because they hold their securities accounts at smaller broker-dealers.⁹⁶ The commenter also stated that this modification would eliminate the need for carrying broker-dealers to monitor their average total credits over a 12-month period to determine whether or not they meet the \$250 Million Threshold.⁹⁷

The final amendments modify the proposal by raising the \$250 Million Threshold to \$500 million. This threshold is designed to provide a balanced demarcation between carrying broker-dealers with large amounts of total credits relative to smaller carrying broker-dealers (with lower average total credits). The former are more likely to have larger mismatches in any given year, and are better positioned to absorb the increased costs resulting from performing daily reserve computations.⁹⁸ For example, when proposed, the threshold was estimated to apply the daily reserve computations requirement to 63 of the 187 total broker-dealers subject to the customer and PAB reserve requirements of Rule 15c3–3.⁹⁹ Further, at proposal, the mismatch risk was calculated as a carrying broker-dealer's deposit divided by its reserve account balance from any month. The average of these mismatches for each carrying broker-dealer during 2022 was computed to determine the average mismatches.¹⁰⁰ For example, in 2022, on the aggregate level, the average

mismatch across the 187 carrying broker-dealers for customer reserve accounts was 11.2% for carrying broker-dealers above the proposed \$250 Million Threshold.¹⁰¹ It was 6.1% for carrying broker-dealers below the proposed \$250 Million Threshold.

The threshold is being raised to \$500 Million to further narrow the scope of the final amendments to carrying broker-dealers whose average mismatches are larger as compared to carrying broker-dealers that are below the threshold.¹⁰² In particular, the \$500 Million Threshold is estimated to apply the daily computation requirement to 49 of the 191 carrying broker-dealers subject to the customer and PAB reserve requirements of Rule 15c3–3.¹⁰³ Nine of these 49 carrying broker-dealers already voluntarily perform daily customer and PAB reserve computations.¹⁰⁴ Moreover, it is estimated that these 49 carrying broker-dealers—in the aggregate—account for 99.3% of the total credits of all 191 carrying broker-dealers subject to the requirement.¹⁰⁵ Further, the average mismatches were generally higher for carrying broker-dealers above the \$500 Million Threshold as compared to carrying broker-dealers below the threshold.¹⁰⁶ For example, the average mismatch across the 191 carrying broker-dealers for customer reserve bank accounts is 15.7% for carrying broker-dealers above the \$500 Million Threshold.¹⁰⁷ It is 6.4% for carrying broker-dealers below the threshold.

These data indicate that the \$500 Million Threshold will apply to carrying

¹⁰¹ See *Proposing Release*, 88 FR at 45852 (table 4 depicting broker-dealer deposits and withdrawals as a share of the reserve account balance). In this release, the aggregated average mismatch of 11.2% is calculated as an average of the average mismatches for all carrying broker-dealers that met the proposed \$250 Million Threshold in 2022. A mismatch is calculated as a carrying broker-dealer's deposit (FOCUS Report Line 4520) divided by its reserve account balance from any month (Line 4530). The average of these mismatches for each broker-dealer is computed to determine the "average mismatches." The same was done for carrying broker-dealers below the proposed \$250 Million Threshold in 2022. Using a \$500 Million Threshold, based on 2022 data, on the aggregate level, the average mismatch across the 187 carrying broker-dealers for customer reserve accounts was 11.9% for carrying broker-dealers above the \$500 Million Threshold, and 6.1% for carrying broker-dealers below the \$500 Million Threshold.

¹⁰² See section IV.B.2. of this release.

¹⁰³ Included in the 191 carrying broker-dealers were 29 carrying broker-dealers that reported zero customer or PAB credits in 2023. See section IV.B.2. of this release.

¹⁰⁴ Based on FOCUS Report data for December 31, 2023.

¹⁰⁵ See *id.*

¹⁰⁶ See section IV.B.2. of this release, table 5—Broker-Dealer Deposits and Withdrawals as a Share of Reserve Account Balance, 2023.

¹⁰⁷ See section IV.B.2. of this release.

⁹⁰ See Letter from Kevin Zambrowicz, Deputy General Counsel (Institutional) & Managing Partner, SIFMA (Sept. 11, 2023) ("SIFMA Letter") at 6–7.

⁹¹ See *id.*

⁹² See ASA Letter at 5.

⁹³ See *id.* The commenter did not identify specific risk or liquidity factors that the Commission could use for this purpose but suggested that the Commission could consider the liquidity factors in a FINRA concept release for a potential FINRA liquidity risk management rule. *Id.*

⁹⁴ See Letter from Andrew Hartnett, NASAA President and Deputy Commissioner, Iowa Insurance Division (Sept. 11, 2023) ("NASAA Letter") at 2–3. The commenter stated that this alternative would ensure that the Commission reevaluates, and refreshes (as necessary) the proposal's systemic risk mitigation aims and ease the Commission's future burdens given the significant effort required to engage in rulemaking. *Id.* at 3.

⁹⁵ See Letter from Stephen W. Hall, Legal Director and Securities Specialist, Better Markets, Inc. (Sept. 11, 2023) ("Better Markets Letter") at 8; Cory (Sept. 19, 2023) ("Cory Letter"). Another commenter stated that it is possible that a threshold based on a narrow set of FOCUS Reports could become stale if the data changes materially and that one remedy would be to require all carrying broker-dealers to compute reserve requirements daily. The commenter, however, recognized the Commission's implicit concern that extending the requirement to all carrying broker-dealers might be unnecessarily burdensome, and stated that there is a potential consensus to support a reasonable "balanced demarcation" [between carrying broker-dealers with large amounts of total credits relative to smaller carrying broker-dealers]. See NASAA Letter at 2.

⁹⁶ See Better Markets Letter at 8.

⁹⁷ See *id.* at 8–9.

⁹⁸ See section IV.B.2. of this release (discussing the number of affected broker-dealers as part of the baseline for the economic analysis of the final amendments).

⁹⁹ See *Proposing Release*, 88 FR at 45849–50. Included in the 187 carrying broker-dealers were 25 carrying broker-dealers that reported zero customer or PAB credits in 2022.

¹⁰⁰ See *id.* at 45852.

broker-dealers that hold the bulk of total credits in the industry and to the carrying broker-dealers that tend to have the larger mismatches as measured by the average of reserve deposits required for the carrying broker-dealer relative to the average balance in its reserve accounts. In this way, the \$500 Million Threshold seeks to reasonably balance the enhancements to customer protection under Rule 15c3–3 through reductions in the mismatch risk, with the potential increases in compliance costs and staffing that may be necessary to perform a daily reserve computation. The \$500 Million Threshold is a straightforward way to narrow the scope of the final rule to carrying broker-dealers that tend to have larger mismatches. For example, this modification will exclude an additional 12 carrying broker-dealers from the scope of the final rule.¹⁰⁸ For these reasons, the Commission is not modifying the final \$500 Million Threshold to include the second test a commenter suggested (*i.e.*, having average net credits of \$10 million or more) or to use risk or liquidity factors, as a different commenter suggested. These suggested modifications would narrow the application of the rule in a way that would exclude some carrying broker-dealers from the daily reserve computation requirement that have the potential for large mismatch risks.

Further, the final \$500 Million Threshold—because it is based on total customer and PAB credits (as opposed to a net amount of credits)—will apply the daily reserve computations requirement to carrying broker-dealers that tend to have large obligations to customers (*e.g.*, through receiving large infusions of customer cash, holding cash balances in customers' securities accounts, or using customer margin securities). Using a net credit amount, in addition to the \$500 Million Threshold would exclude 10 of the 49 carrying broker-dealers that would be subject to the daily reserve requirement based on FOCUS Report data for calendar year 2023.¹⁰⁹ At the time of the weekly computation, however, a carrying broker-dealer may have substantial debits to offset the credits and, therefore, have a relatively small amount of excess credits in comparison to its total credits. This could cause the carrying broker-dealer to stay under the threshold notwithstanding the fact that it typically has large amounts of total credits, and large intra-week

mismatches.¹¹⁰ Consequently, a net credit amount may not indicate that a carrying broker-dealer is at a lower risk of large intra-week mismatches because it does not account for large fluctuations in the net cash owed to customers and PAB account holders between reserve computations. The final amendments are designed to reduce the mismatch risk for carrying broker-dealers with large amounts of total credits (who are more likely to have larger mismatches) by protecting customer and PAB cash more quickly than is the case with weekly computations. This will increase the likelihood that a failing carrying broker-dealer can self-liquidate (meaning customers and PAB account holders do not temporarily lose access to their cash and securities).

Finally, the \$500 Million Threshold also is designed as a straightforward way for a carrying broker-dealer to determine whether it is subject to the requirement to perform daily customer and PAB reserve computations. As such, it will be simple for carrying broker-dealers and the Commission or Commission staff to calculate and monitor because it is a fixed-threshold and the data for the calculation is derived from FOCUS Reports.¹¹¹ Setting formula-based thresholds that incorporate dynamic risk or liquidity factors would make the rule requirements less predictable and more complex to monitor because of their variability. Moreover, carrying broker-dealers in compliance with the net capital rule typically have strong balance sheets because the rule imposes a net liquid assets test that is designed to promote liquidity within broker-dealers.¹¹² During times of market stress, however, carrying broker-dealers may experience fluctuations in their capital if customers and/or PAB account holders rapidly withdraw cash and securities from their accounts to reduce their exposure to the carrying broker-dealer and the securities markets more

generally.¹¹³ Consequently, a formula-based threshold that incorporates dynamic risk or liquidity factors would exclude carrying broker-dealers that are more likely to experience larger mismatches, including carrying broker-dealers with large amounts of credits that have strong balance sheets.¹¹⁴ A fixed threshold also is consistent with other thresholds and ratios in the Commission's broker-dealer financial responsibility rules, which use fixed-dollar amounts or predetermined ratios that do not contain formulas for future adjustments.¹¹⁵ Finally, the \$500 Million Threshold will incorporate any month-to-month material changes because it uses a 12-month rolling average (as compared to basing the calculation on a single filing or date).¹¹⁶ For these reasons, the Commission is not adopting a formula-based threshold that incorporates dynamic risk or liquidity factors, or a threshold that can be adjusted without rulemaking as some commenters suggested.

By adopting a \$500 Million Threshold, the final rule does not apply the daily reserve computation requirement to all carrying broker-dealers, as a commenter suggested.¹¹⁷ This suggested modification would apply the requirement to carrying broker-dealers that do not have the potential for large mismatch risks and that are less able to bear the costs of—and devote the resources necessary for—performing daily reserve computations because of their size or limited customer or PAB account carrying activity. Applying the daily reserve computation to all carrying broker-dealers would impose compliance costs on an additional 113 carrying broker-dealers with relatively less customer and PAB account activity.¹¹⁸ Thus, it would

¹¹³ See section IV.D. of this release (discussing capital losses that could arise in times of market stress); section I.A. of this release (discussing the need for daily reserve computations).

¹¹⁴ See paragraph (a)(16) of Rule 15c3–1 (defining the term insolvent).

¹¹⁵ See Rules 15c3–1 and 15c3–3.

¹¹⁶ See NASAA Letter at 2; see also Letter from Josephine Wang, President and CEO, SIPC (Sept. 11, 2023) (“SIPC Letter”) at 2 (supporting the rolling 12-month average).

¹¹⁷ The commenter also stated that applying the daily reserve computation requirement to all carrying broker-dealers would eliminate the need to monitor average total credits over a 12-month period. See Better Markets Letter at 8. As discussed above in this section, the \$500 Million Threshold is a fairly simple calculation that relies on numbers carrying broker-dealers already report on the FOCUS Report. Consequently, it will not be difficult for carrying broker-dealers to determine whether they have triggered the daily reserve computation requirement.

¹¹⁸ See section IV.E.3. of this release (discussing applying the daily reserve requirement to all carrying broker-dealers as a reasonable alternative).

¹⁰⁸ This estimate is based on FOCUS Report data for calendar year 2023.

¹⁰⁹ See section IV.E.2. of this release (discussing alternative thresholds based on different metrics).

¹¹⁰ Based on FOCUS Report data for calendar year 2023, at least one carrying broker-dealer that would be excluded from the scope of the rule using a net credit amount in addition to a \$500 Million Threshold had two of the top 100 largest deposits in customer reserve bank accounts in 2023. Further, four of the top 25 PAB reserve bank account deposits in calendar year 2023 were made by two carrying broker-dealers that would be excluded using the net credit amount in addition to the \$500 Million Threshold.

¹¹¹ A uniform threshold also is less costly to monitor because it does not change. See the Economic Analysis in section IV. of this release (discussing the economic effects of the final amendments).

¹¹² See Rule 15c3–1. The net capital rule also requires that a carrying broker-dealer must not otherwise be insolvent as defined in the net capital rule. See paragraph (a)(16) of Rule 15c3–1 (defining the term insolvent).

subject them to increased compliance costs while they do not have the potential for large mismatches.¹¹⁹ However, carrying broker-dealers below the \$500 Million Threshold may choose to voluntarily perform a daily customer reserve computation in order to apply the 2% debit reduction in lieu of the 3% reduction.¹²⁰ In this way, the investor protection benefits of performing a daily computation may be expanded beyond the carrying broker-dealers that will be required to perform a daily computation, but in a way that does not impose undue costs on smaller carrying broker-dealers. For example, smaller carrying broker-dealers can analyze whether it is advantageous from a cost perspective to realize the liquidity benefits that result from performing a daily customer reserve computation and applying a 2% debit reduction in lieu of a 3% debit reduction.

In addition to addressing the proposed \$250 Million Threshold, some commenters suggested modifying the proposal in a way that would make the reserve computations a hybrid of the daily and weekly approaches where carrying broker-dealers would compute certain items in the reserve formula daily and others weekly. For example, two commenters¹²¹ suggested that a more cost efficient and effective alternative to prevent a deficit of customer property in a SIPA liquidation (for carrying broker-dealers primarily conducting a DVP/RVP business)¹²² would be to continue weekly computations with a daily calculation of free credit balances.¹²³ Another

commenter acknowledged that while certain carrying broker-dealers should perform a daily reserve computation, the Commission should permit other carrying broker-dealers to perform a weekly reserve computation, and a simplified intra-week reserve computation of only material balances (while excluding cash balances moved to external sweep programs).¹²⁴

The final amendments retain the daily customer and PAB reserve computation requirement, as proposed. The hybrid approaches commenters suggested would not provide the same level of customer protection afforded by complete daily customer and PAB reserve computations because these hybrid approaches do not include all debits and credits.¹²⁵ As discussed above in section I.C.1. of this release, preexisting Rule 15c3–3 is designed to protect customers by segregating their securities and cash from the carrying broker-dealer's proprietary business activities. This is accomplished through the customer and PAB reserve computations that must include all funds which have customer assets as their source, and ensures that the net amount of cash owed to customers and PAB account holders that is not deployed for customer or PAB account holder securities transactions is deposited in the customer and PAB reserve bank accounts.¹²⁶ Performing only a modified or hybrid customer or PAB reserve computation increases the risk of a large mismatch for carrying broker-dealers with large amounts of credits that exceed the \$500 Million

Threshold because they would not be accounting for all credit items when performing daily reserve computations under these alternatives.¹²⁷ This, in turn, would increase the risk that a carrying broker-dealer may be unable to promptly return cash and securities to customer and PAB account holders in the event the carrying broker-dealer fails financially.

Further, limiting the daily computation to the amount of free credit balances and including any increase in only free credit balances in a sweep program or a separate special reserve bank account,¹²⁸ or an intra-week computation of only certain credit items would not account for possible material changes in other credit items not accounted for daily that could substantially affect the customer or PAB reserve computation and any required deposit. Finally, the hybrid computations commenters suggested would introduce an additional level of complexity to the computation that could tax the resources of carrying broker-dealers while not achieving the full risk-reducing benefits of a complete daily reserve computation.¹²⁹

Another commenter stated that the Commission should adopt a separate \$250 million threshold requirement for the customer and PAB reserve computations, to allow carrying broker-dealers to focus their resources on the reserve computation that merits the most attention, rather than one that presents minimal risk to the carrying broker-dealer or the financial system as a whole.¹³⁰ This commenter also suggested as another alternative that the Commission permit a carrying broker-dealer that exceeds the proposed \$250 Million Threshold to perform an optional weekly computation for either its customer or PAB accounts where credits in that particular computation fall below a certain level (e.g., \$50

¹¹⁹ See *id.*

¹²⁰ See section II.C. of this release (describing the 2% debit reduction).

¹²¹ See SIFMA Letter at 10–11; Letter from Erik Soderberg, Head of Regulatory Affairs, Americas, Deutsche Bank Securities, Inc. (Sept. 11, 2023) (“Deutsche Bank Letter”) at 1–2. These commenters stated that inflows of customer cash to customer accounts for interest and dividends represent the vast bulk of any net equity that a carrying broker-dealer would owe its customers if such a carrying broker-dealer were subject to a liquidation. See SIFMA Letter at 10; see also Deutsche Bank Letter at 2.

¹²² DVP/RVP means a delivery-versus-payment or receipt-versus-payment. This generally refers to an arrangement whereby payment for securities purchased is made to the selling customer's agent or delivery of securities sold is made to the buying customer's agent in exchange for payment at time of settlement, usually in the form of cash. This settlement method generally guarantees the transfer of securities only happens after payment has been made. Carrying broker-dealers whose primary business is DVP/RVP transactions also may have limited carrying business (including for affiliates) including margin accounts. See SIFMA Letter at 10.

¹²³ See SIFMA Letter at 10; Deutsche Bank Letter at 1–2. These commenters suggested that these carrying broker-dealers be permitted to calculate free credit balances daily as of the previous business day, identify whether such balances are greater than the free credit balances reflected in

their most recent reserve computation, and, on the same day, either: (1) sweep any excess into a sweep program; or (2) deposit any increase into their customer reserve bank accounts. *Id.*

¹²⁴ See ASA Letter at 5; Letter from ASA (Jan. 19, 2024) (“ASA Letter 2”) at 2; Letter from ASA (Oct. 2, 2024) (“ASA Letter 3”). The commenter stated that this computation would achieve a similar purpose as the daily customer and PAB reserve computations requirement and provide relief for carrying broker-dealers from having to develop infrastructure and hire regulatory staff to perform a customer and PAB reserve computation daily. See ASA Letter at 5.

¹²⁵ In this regard, in adopting the original customer reserve requirements of Rule 15c3–3 in 1972, the Commission stated that “[i]t has taken a broad view of the Congressional mandate by requiring that the reserve account include all funds which have as their source customer assets.” See Rule 15c3–3 Adopting Release, 37 FR at 25224.

¹²⁶ See 1972 15c3–3 Adopting Release, 37 FR at 25224 (One of the goals of Rule 15c3–3 is to “insure that customers' funds held by a broker-dealer (both free credit balances and deposits which may be restricted as to withdrawal) and the cash which is realized through the lending, hypothecation and other permissible uses of customers' securities are deployed in safe areas of the broker-dealer's business related to servicing his customers, or to the extent that the funds are not deployed in these limited areas, that they be deposited in a reserve bank account.”). *Id.*

¹²⁷ See section I.A. of this release (describing the need for daily reserve computations).

¹²⁸ See section II.E.1. of this release (discussing sweep programs and cash in motion and other transitory credits); section IV.E.10. (discussing exemption for cash in motion as a reasonable alternative).

¹²⁹ See section I.A. of this release (describing the need for daily reserve computations).

¹³⁰ See Marshall Ollia, Chief Financial Officer, Raymond James & Associates, Inc. (Sept. 11, 2023) (“Raymond James Letter”) at 2–3. This commenter stated that its total customer credits would exceed \$250 million but its PAB credit balances are significantly below the threshold. The commenter further stated that in practice it does not see large inflows or outflows of broker-dealer credit items in PAB accounts and so the carrying broker-dealer does not experience a mismatch in timing of those items. *Id.*

million).¹³¹ Another commenter stated that for carrying broker-dealers performing both the customer and PAB reserve computations, the Commission should not require daily PAB reserve computations in order to protect customer reserves while mitigating stress on carrying broker-dealers' resources.¹³²

The final amendments do not take these approaches commenters suggested to bifurcate the frequency of the customer and PAB reserve computations. Both the securities accounts of customers and PAB account holders would be affected if a carrying broker-dealer experiences a large intra-week mismatch in either its customer or PAB reserve bank accounts. This mismatch risk increases the risk to both the carrying broker-dealer's customers and PAB account holders that if the carrying broker-dealer fails financially, the customers and PAB account holders may experience a delay in receiving their cash and securities or be subject to a disorderly liquidation. Requiring that a carrying broker-dealer that exceeds the \$500 Million Threshold perform a daily customer and PAB reserve computation reduces the mismatch risk in each of these accounts and more dynamically matches the net cash owed to PAB account holders with the amount on deposit in the customer and PAB reserve bank accounts. This requirement will reduce mismatch risk, and benefit both customer and PAB account holders if a carrying broker-dealer fails financially by ensuring their cash and securities are promptly returned to them.

In addition, in the event of a SIPA liquidation of a failed carrying broker-dealer, both customers and PAB account holders would be part of the customer estate which would include both the customer and PAB reserve bank accounts to the extent needed to satisfy customers' claims. Further, because PAB account holders—as broker-dealers—are not entitled to advances from the SIPC Fund, their claims for securities and cash would be at a greater risk of not being satisfied in full (as compared to non-broker-dealer customers). This could expose the PAB account holder to financial stress and increased risk of liquidation.¹³³

Therefore, because a large mismatch in the customer or PAB reserve bank account will affect both customers and PAB account holders in a SIPA liquidation, the final rules require a carrying broker-dealer to perform a daily customer and PAB reserve computation if it meets or exceeds the \$500 Million Threshold.

Finally, a daily requirement for both the customer and PAB reserve computations also will promote consistency by requiring that a carrying broker-dealer perform the customer and PAB reserve computations with the same frequency.¹³⁴ While Rule 15c3–3 currently permits a carrying broker-dealer to elect to perform its customer and PAB reserve computations more frequently than weekly,¹³⁵ a practical effect of requiring a uniform standard that a carrying broker-dealer perform both the customer and PAB reserve computations daily will be to permit the carrying broker-dealer to withdraw excess funds more quickly from either the customer or PAB reserve bank account (as compared to a weekly reserve computation). This consistency will increase liquidity for carrying broker-dealers and position them to better address potential financial shocks.¹³⁶

For the reasons discussed above in this section, the Commission has not modified the final amendments to establish the alternative thresholds or hybrid computations commenters suggested. However, to the extent that carrying broker-dealers incur costs to transition to a daily reserve computation, the modification of the final amendments to permit a 2% debit reduction in performing the customer reserve computation will provide them additional liquidity.¹³⁷ This modification will reduce costs from the proposal for carrying broker-dealers without compromising the enhancements to customer protection that the final \$500 Million Threshold is designed to provide (and without adopting any of the alternative thresholds or hybrid computations commenters suggested).

Several commenters stated that carrying broker-dealers should perform

reserve computations in real time or commented on the technological advances in the securities markets.¹³⁸ One commenter stated that technical prerequisites for such complex computational operations are already in place and should not be burdensome to carrying broker-dealers.¹³⁹ Another commenter stated that the Commission should not entertain any carrying broker-dealer's objections that the proposal would be ineffective or burdensome to implement since the entirety of their services should now be automated.¹⁴⁰ Commenters also stated that the proposal is a necessary reform given technological advances and pace of today's financial markets.¹⁴¹

Although there have been technological advances to automate and streamline the customer and PAB reserve computations to enable carrying broker-dealers to perform a computation daily, there are still portions of the customer and PAB reserve computations that employees must perform manually (such as performing reconciliations or researching items in suspense accounts in order to properly credit the correct customer securities account), or required data inputs that a carrying broker-dealer may be unable to obtain in real time (such as data from a third party service provider). These manual items and unavailability of certain data in real time make it impractical to require carrying broker-dealers to perform a customer or PAB reserve computation in real time. Moreover, adjusting amounts deposited in the customer and PAB reserve bank accounts in real time would be impractical.

B. Compliance With Daily Reserve Computation After Exceeding \$500 Million Threshold

1. Proposal

The Commission proposed to require that a carrying broker-dealer comply with performing a customer and PAB reserve computation daily no later than six months after having average total credits that are equal to or greater than \$250 million. The purpose of the six-month compliance period in the

¹³¹ See Raymond James Letter at 3. This commenter stated, for example, where a carrying broker-dealer has \$2.0 billion in customer credits, but only \$45 million in PAB credits, then it would perform a customer reserve computation daily for the customer reserve bank account and have the option of performing PAB reserve computations weekly for the PAB reserve bank account. *Id.*

¹³² See ASA Letter at 4.

¹³³ See Proposing Release, 88 FR at 45842.

¹³⁴ Based on FOCUS Report data for December 31, 2023, all nine of the carrying broker-dealers above the \$500 Million Threshold that voluntarily perform daily reserve computations currently perform daily customer and PAB reserve computations.

¹³⁵ See paragraph (e)(3)(iv) of Rule 15c3–3.

¹³⁶ See section I.A. of this release (discussing the need for daily reserve computations).

¹³⁷ See section I.L.C. of this release (describing the 2% debit reduction) and the Economic Analysis in section IV. of this release (discussing the costs and benefits of the rule).

¹³⁸ See Letter from Greg Linder (Aug. 20, 2023) (“Linder Letter”); Andrew O'Donnell (July 30, 2023) (“O'Donnell Letter”) and Alex MacCartney (July 21, 2023); Joao F. Santos (July 28, 2023) (“Santos Letter”); Eddie Klas (July 18, 2023); Adam Whitehurst (July 12, 2023) (“Whitehurst Letter”); Cory Letter.

¹³⁹ See Santos Letter. This commenter suggested that carrying broker-dealers be required to electronically publish whether reserve requirements have been met or breached. *Id.*

¹⁴⁰ See Whitehurst Letter; Anonymous Letter (Aug. 21, 2023).

¹⁴¹ See Whitehurst Letter; Cory Letter.

proposed rule text was to provide time for a carrying broker-dealer to prepare to perform a customer and PAB reserve computation daily after it exceeds the proposed \$250 Million Threshold.¹⁴² The Commission stated that a carrying broker-dealer in this situation may need to add resources in order to perform the computations, including hiring or assigning additional staff to perform the daily computations.¹⁴³

Once a carrying broker-dealer begins to perform customer and PAB reserve computations daily (because it exceeded the \$250 Million Threshold), the Commission proposed to require the carrying broker-dealer to continue performing customer and PAB reserve computations daily for at least 60 days after it falls below the \$250 Million Threshold. More specifically, under the proposal, a carrying broker-dealer could elect to perform computations weekly by notifying its DEA in writing at least 60 calendar days before reverting to a weekly computation.¹⁴⁴ If a carrying broker-dealer that provided the 60-day notice under the proposal reverts to a weekly rather than daily customer and PAB reserve computation and subsequently exceeds the proposed \$250 Million Threshold once again, the proposed rule would require the carrying broker-dealer to comply with the daily computation requirement no later than six months after having average total credits equal to or greater than \$250 million.¹⁴⁵ This would be the same process as when a carrying broker-dealer exceeded the proposed \$250 Million Threshold for the first time.

2. Comments Received and Final Amendments

The Commission sought comment on the proposed compliance period for beginning to perform customer and PAB reserve computations daily after a carrying broker-dealer exceeds the proposed \$250 Million Threshold.¹⁴⁶ As discussed below in this section, the Commission received several comments regarding the proposed compliance period.

One commenter suggested the Commission group carrying broker-dealers by size and select a transition period for compliance appropriate for carrying broker-dealers in each group to accelerate the transition to performing a customer and PAB reserve computation daily.¹⁴⁷ This commenter stated that six

months may be longer than many large and sophisticated carrying broker-dealers need to complete the transition to a daily reserve computation after exceeding the proposed \$250 Million Threshold.¹⁴⁸ Another commenter stated that the Commission should shorten the proposed six-month compliance period to three-months for a carrying broker-dealer to make the systems and staffing changes necessary to perform a daily computation after it exceeds the proposed \$250 Million Threshold.¹⁴⁹ Finally, one commenter requested that the calculations for customer and PAB reserve computations be bifurcated, with the proposed \$250 Million Threshold applied separately for the customer and PAB reserve computations, and that the six month compliance period apply when the particular type of average total credits (customer or PAB) crosses the proposed \$250 Million Threshold.¹⁵⁰

As discussed in section II.A. of this release, the Commission is adopting a \$500 Million Threshold as part of the final amendments. The six-month timeframe accounts for the fact that carrying broker-dealers of different sizes may need more or less time to comply with a requirement to perform the customer and PAB reserve computations daily. The six-month timeframe, accordingly, provides a straightforward and uniform compliance period for carrying broker-dealers to meet if they exceed the \$500 Million Threshold and must begin performing the customer and PAB reserve computations daily. A uniform compliance period also will be easier for the Commission, Commission staff and a carrying broker-dealer's DEA to monitor for compliance because the same requirement will apply to all carrying broker-dealers. As such, the Commission is not modifying the final rule to provide for different compliance timeframes based on the size of a carrying broker-dealer, as commenters suggested.

A six-month compliance period also helps to ensure a carrying broker-dealer that exceeds the \$500 Million Threshold begins to perform a daily customer and PAB reserve computation within a reasonable period of time. In light of the enhancements to customer protection a daily reserve computation provides, it is important that carrying broker-dealers

transition to a daily reserve computation as soon as practicable after exceeding the \$500 Million Threshold. Shortening the compliance period to three-months, however, may not give carrying broker-dealers sufficient time to transition to a daily customer and PAB reserve computation, given the need to add resources in order to perform the computations, including hiring or assigning additional staff, upgrading systems, and making other operational changes. A six-month compliance period reasonably balances the importance of transitioning to a daily customer and PAB reserve computation soon after exceeding the \$500 Million Threshold to enhance customer protection requirements, with the time period a carrying broker-dealer needs to make the changes required to comply with the rule. Therefore, the Commission is not modifying the final rule to provide for a three-month compliance period as a commenter suggested.

One commenter stated that the proposal would allow a carrying broker-dealer that is required to perform daily computations to revert to a weekly computation 60 days after notifying its DEA, but if it exceeds the proposed \$250 Million Threshold, it would not be required to return to performing a customer and PAB reserve computation daily for six months.¹⁵¹ The commenter stated that while the Commission assumes it may be infrequent that a carrying broker-dealer that reverts to weekly computations after falling below the proposed \$250 Million Threshold re-crosses it shortly after because of increased customer activity, if such circumstances were to occur the carrying broker-dealer at issue would present the risk that the Commission is trying to address in the proposal for a period of six months.¹⁵² Consequently, this commenter suggested that the Commission revise the rule so that a carrying broker-dealer that falls below the proposed \$250 Million Threshold would enter a probationary period of six months during which time it would be required to immediately return to performing the customer and PAB reserve computations daily if its total credits re-crossed the threshold.¹⁵³

Another commenter suggested that the Commission provide a transition of not more than 30 days for a carrying broker-dealer that performs a customer and PAB reserve computation daily, reverts to a weekly computation because it falls below the proposed \$250 Million

¹⁴² See SIPC Letter at 1.

¹⁴³ See Letter from Brad D. (Sept. 9, 2023).

¹⁴⁴ See Raymond James Letter at 3. As discussed in section II.A.2. of this release, the Commission is adopting a single threshold, the \$500 Million Threshold, for the customer and PAB reserve computations. As a result, a single compliance period once a carrying broker-dealer has exceeded the \$500 Million Threshold is appropriate.

¹⁵¹ See NASAA Letter at 3.

¹⁵² See *id.*

¹⁵³ See *id.* at 3–4.

¹⁴² See Proposing Release, 88 FR at 45844.

¹⁴³ See *id.*

¹⁴⁴ See Proposing Release, 88 FR at 45844–45.

¹⁴⁵ See Proposing Release, 88 FR at 45845.

¹⁴⁶ See *id.* at 45845–46.

¹⁴⁷ See SIPC Letter at 1. The commenter did not suggest any specific groupings or time periods. *Id.*

Threshold, and then subsequently exceeds the proposed \$250 Million Threshold and must perform a daily computation. This commenter stated that a carrying broker-dealer that formerly performed customer and PAB reserve computations daily is unlikely to require six months to reinstate procedures previously in effect.¹⁵⁴

In response to the comments that the Commission require a carrying broker-dealer to immediately return to performing a customer and PAB reserve computation daily if it exceeds the threshold for a second time, or only be permitted a three-month compliance period, the compliance period is designed to provide sufficient time for a carrying broker-dealer to prepare to perform a customer and PAB reserve computation daily after it exceeds the threshold. A carrying broker-dealer performing the customer and PAB reserve computations weekly which recrosses the \$500 Million Threshold for a second or subsequent time will likely continue to need time to prepare to perform the customer and PAB reserve computations daily, because the carrying broker-dealer may have re-allocated resources when it reverted to a weekly computation. A return to performing a customer and PAB reserve computation daily likely means a carrying broker-dealer will require time to enhance its current operational resources in order to increase the frequency of the customer and PAB reserve computations once more. It also may be the case that a carrying broker-dealer may exceed the \$500 Million Threshold for a second or subsequent time after a substantial period of time has passed. Finally, although a carrying broker-dealer may re-cross the \$500 Million Threshold shortly after falling below it, and not yet have re-allocated resources required to perform a daily computation, consistent standards will be applied to all carrying broker-dealers that exceed the \$500 Million Threshold after a long or short period of time as they will have the same risk profile. Therefore, a six-month compliance period is appropriate in this case.

Some carrying broker-dealers' average total credits may hover around the \$500 Million Threshold from time to time. This will likely be an infrequent occurrence since there will only be a few carrying broker-dealers at any given time whose average total credits remain close to the \$500 Million Threshold.¹⁵⁵

These carrying broker-dealers may choose to monitor and manage their average total credits to remain below the \$500 Million Threshold or voluntarily perform the customer and PAB reserve computations daily to realize the beneficial impact on liquidity management resulting from the ability to make more frequent withdrawals from the customer and PAB reserve bank accounts.¹⁵⁶ Carrying broker-dealers that voluntarily perform the customer reserve computation daily also may apply the 2% debit reduction to the computation.¹⁵⁷ These alternatives will assist carrying broker-dealers in complying with the requirement to perform a customer and PAB reserve computation daily if they exceed the \$500 Million Threshold.

After review of the comments, the Commission is adopting the six-month compliance period after a carrying broker-dealer exceeds the \$500 Million Threshold, and the 60-day written notice requirement to revert to a daily computation.¹⁵⁸ Therefore, under the amendments, a carrying broker-dealer must begin to perform a customer and PAB reserve computation daily no later than six months after its average total credits equal or exceed the \$500 Million Threshold. This means, for example, that a carrying broker-dealer which exceeds the \$500 Million Threshold for 12 filed monthly FOCUS Reports for a particular calendar year (*i.e.*, FOCUS Reports filed for January through December in a calendar year), must begin performing a customer and PAB reserve computation daily no later than June 30th of the next calendar year. Finally, this amendment provides time for a carrying broker-dealer to prepare to perform a customer and PAB reserve computation daily after it exceeds the \$500 Million Threshold. This preparation may involve adding resources to perform the computations, including, among other things, hiring extra staff, assigning additional staff, and updating or enhancing technology and software.

C. Reducing the Aggregate Debit Reduction From 3% to 2%

1. Amendments to Rules 15c3-1 and 15c3-3

Under existing requirements, carrying broker-dealers—as part of the customer reserve computation—must reduce the

value of debits items (*i.e.*, customer-related receivables) in the customer reserve computation by either 1% (for debit balances in customers' cash and margin accounts) or 3% (for aggregate debit items which includes all debit items).¹⁵⁹ Whether a carrying broker-dealer must apply the 1% or 3% debit reduction depends on how it calculates its minimum net capital requirement under Rule 15c3-1. Rule 15c3-1 requires that broker-dealers maintain a minimum level of net capital (meaning highly liquid capital) at all times.¹⁶⁰ The minimum net capital requirement for broker-dealers is the greater of a fixed-dollar amount specified in the rule and an amount determined by applying one of two financial ratios: the 15-to-1 aggregate indebtedness to net capital ratio (basic method) or the 2% of aggregate debit items ratio (alternative method).¹⁶¹ Carrying broker-dealers electing the alternative method must maintain minimum net capital of the greater of \$250,000 or 2% of their aggregate debit items included in the customer reserve computation.¹⁶² In addition, a broker-dealer that uses the alternative method must provide the Commission with an "early warning" notice when the amount of its net capital falls below 5% of aggregate debit items.¹⁶³ Most carrying broker-dealers use the alternative method, including the 49 carrying broker-dealers that

¹⁵⁹ See Note E(3) to Rule 15c3-3a (requiring the 1% debit reduction); paragraph (a)(1)(ii)(A) of Rule 15c3-1 (requiring the 3% debit reduction). The PAB reserve computation does not require either the 3% or the 1% debit reduction. See Rule 15c3-3a, Notes Regarding the PAB Computation, Note 4 (providing that Note E(3) to Rule 15c3-3a—which imposes the 1% debit reduction—does not apply to the PAB reserve computation); paragraph (a)(1)(ii)(A) of Rule 15c3-1 (imposing the 3% debit reduction in lieu of the 1% debit reduction of Note E(3) of Rule 15c3-3a for carrying broker-dealers using the alternative method).

¹⁶⁰ See Rule 15c3-1.

¹⁶¹ See paragraphs (a)(1)(i) and (ii) of Rule 15c3-1.

¹⁶² See paragraphs (a)(1)(i) and (a)(2)(i) of Rule 15c3-1. Aggregate debit items in the customer reserve computation (FOCUS Line 4470) is total debit items before the 3% debit reduction. The Commission adopted the alternative method as part of the Commission's continuing efforts to structure its rules to provide adequate protection for customers' assets while recognizing the industry's need for flexibility in efficiently allocating capital resources. See *Net Capital Requirements for Brokers and Dealers; Amended Rules*, Exchange Act Release No. 18417 (Jan. 13, 1982) [47 FR 3512, 3513 (Jan. 25, 1982)].

¹⁶³ See 17 CFR 240.17a-11(b)(2). This 5% of aggregate debits "early warning" threshold acts as a *de facto* minimum net capital requirement for broker-dealers using the alternative method since they seek to maintain sufficient levels of net capital to avoid the necessity of providing this regulatory notice.

¹⁵⁴ See SIPC Letter at 2.

¹⁵⁵ For example, based on FOCUS Report data for the 2023 calendar year, there were three carrying broker-dealers with average total credits that were between \$450 million and \$500 million, and one

carrying broker-dealer with average total credits between \$500 million and \$600 million.

¹⁵⁶ See paragraph (e)(3)(iv) of Rule 15c3-3.

¹⁵⁷ See paragraph (e)(3)(v) of Rule 15c3-3, as amended.

¹⁵⁸ See paragraph (e)(3)(i)(B)(1) and (2) of Rule 15c3-3, as amended.

exceeded the \$500 Million Threshold for calendar year 2023.¹⁶⁴

Under Rule 15c3–1, a carrying broker-dealer using the alternative method must reduce aggregate debit items (*i.e.*, the total of all debit items in the customer reserve computation) by 3% when performing its customer reserve computation under Rule 15c3–3.¹⁶⁵ Conversely, Note E(3) to the customer reserve computation under Rule 15c3–3a requires a carrying broker-dealer using the basic method to reduce by 1% the total debit balances in customer cash and margin accounts (*i.e.*, margin loan balances customers owe the carrying broker-dealer).¹⁶⁶ Both of these provisions can increase the amount that must be on deposit (locked up) in the customer reserve bank account; however, the 3% debit reduction can result in an even larger increase in the deposit requirement.¹⁶⁷ This is because the reduction is larger (3% compared to 1%) and is applied to the total amount of debit items while the 1% debit reduction applies to a single category of debit items: customer margin loan balances.

The Commission is lowering the 3% debit reduction to 2% in response to comments that a reduction as large as 3% would no longer be necessary if the requirement to perform a daily reserve computation is adopted.¹⁶⁸ This modification to the proposal is designed to recalibrate how Rule 15c3–3 addresses the risk that the amount on deposit in the customer reserve bank account is less than the net amount of cash owed to customers in light of the new requirement to perform daily customer and PAB reserve computations. As a commenter stated, “[u]nder a daily computation, the value of debit items and the amounts owing to customers on any given day are accounted for in the next day’s computation and the difference is protected via the following day’s

deposit into the Special Reserve Bank Accounts” and therefore “[t]he amount of assets in the Special Reserve Bank Accounts would . . . more quickly reflect the amounts owing to customers on any given day and the value of debit items, thereby reducing the need for any cushion [*i.e.*, the 3% debit reduction]] to account for a potential mismatch.”¹⁶⁹ Similarly, another commenter stated that when the Commission adopted the 3% debit reduction in 1975 the purpose was to provide, in the event of a liquidation, an additional cushion of secured debit items which will be available to satisfy customers with whom the carrying broker-dealer effects transactions.¹⁷⁰ This commenter stated that a shift to a daily customer reserve computation enabled by technological advancements since 1975 will result in a more precise and up-to-date computation, thereby mitigating the risk that the 3% debit reduction addresses in the customer reserve computation.¹⁷¹ The commenter went on to state that “a 1% deduction in line with that applied to other broker-dealers seems appropriate for firms that calculate net capital under the alternative method.”¹⁷²

Commenters suggested eliminating the 3% debit reduction that applies to carrying broker-dealers using the alternative method. This would then subject these carrying broker-dealers to the 1% debit reduction that applies to carrying broker-dealers using the basic method. For the reasons discussed below, the Commission is not taking this approach and instead is lowering the 3% debit reduction to 2%.

In order to understand the Commission’s rationale for recalibrating Rule 15c3–3 in this manner, it is necessary to discuss the origins and purpose of the 3% debit reduction and its connection to Rule 15c3–1. Rule 15c3–3—when it was adopted in 1972—required carrying broker-dealers to reduce the value of debit balances in cash and margin accounts by 1% when performing the customer reserve computation.¹⁷³ Debit balances in cash and margin accounts was one of three categories of debit balances included in the customer reserve computation at that time (*i.e.*, the 1% debit reduction did not apply to the total value of debits in the customer reserve computation).¹⁷⁴ In 1972, the

Commission also proposed significant revisions to Rule 15c3–1 (the broker-dealer net capital rule).¹⁷⁵ The original rule prohibited a broker-dealer from having aggregate indebtedness that exceeded 2000% of its net capital, exclusive of exchange memberships and fixed assets (a 20-to-1 requirement).¹⁷⁶ Moreover, the rule did not apply to broker-dealers that were members of a securities exchange on the premise that these broker-dealers were subject to capital requirements promulgated by their respective exchanges. The 1972 proposed amendments—among other things—would apply Rule 15c3–1 to all broker-dealers (*i.e.*, a uniform net capital rule) and change the minimum net capital requirement to the greater of a fixed-dollar amount and a ratio amount: the 15-to-1 aggregate indebtedness to net capital ratio (*i.e.*, the basic method). Thus, as originally proposed in 1972, the amendments to Rule 15c3–1 did not include the alternative method of computing minimum net capital.

While the 1972 amendments to Rule 15c3–1 were still pending, the Commission proposed further amendments to the rule as well as corresponding amendments to Rule 15c3–3. They included a 1974 proposal to add the alternative method of calculating minimum net capital.¹⁷⁷ The proposed alternative method would require a carrying broker-dealer to maintain a minimum level of net capital equal to the greater of \$100,000 or 4% of aggregate debit balances includable in the customer reserve computation.¹⁷⁸ At that time, the Commission acknowledged that the alternative method could result in lower minimum net capital requirements as compared with the basic method.¹⁷⁹ Given this

Items 10, 11, and 12. *Id.* Item 10 was where the carrying broker-dealer recorded the value of debit balances in cash and margin accounts. *Id.* Today, there are six categories of debit items in the customer reserve computation: Items 10, 11, 12, 13, 14, and 15. *See* Rule 15c3–3a. Item 10 continues to be where the carrying broker-dealer records the value of debit balances in cash and margin accounts. *Id.*

¹⁷⁵ *See Net Capital Rule-Proposed Uniform and Comprehensive Regulation*, Exchange Act Release No. 9891 (Dec. 5, 1972) [38 FR 56 (Jan. 3, 1973)].

¹⁷⁶ Net Capital Requirements for Brokers and Dealers; Amended Rules, 47 FR at 3512.

¹⁷⁷ *See Alternative Net Capital Requirement for Certain Brokers and Dealers*, Exchange Act Release No. 11094 (Nov. 11, 1974) [39 FR 41540 (Nov. 29, 1974)].

¹⁷⁸ *Id.* at 41541–42.

¹⁷⁹ *Id.* at 41540. (“The Commission has determined to publish for comment a new concept to measure the capital adequacy of broker-dealers which would eliminate in part restraints presently imposed by the net capital ratio and aggregate indebtedness concepts which have served as the

Continued

¹⁶⁴ Based on FOCUS Report data as of December 31, 2023, using the 3% aggregate debit item (Line 4471) and/or 2% aggregate debit items in computation of minimum regulatory capital requirements (Line 3870). Most broker-dealers that use the basic method to compute net capital are smaller broker-dealers that are not carrying broker-dealers, and generally have minimum net capital requirements that are less than the \$250,000 required to use the alternative method. *See also* section IV.B.2. of this release (discussing the scope of affected broker-dealers).

¹⁶⁵ *See* paragraph (a)(1)(ii)(A) of Rule 15c3–1.

¹⁶⁶ *See* Rule 15c3–3a, Item 10 (debit balances in customers’ cash and margin accounts excluding unsecured accounts and accounts doubtful of collection).

¹⁶⁷ *See* Financial Responsibility Rules for Broker-Dealers, 78 FR at 51858.

¹⁶⁸ *See* SIFMA Letter at 5; Raymond James Letter at 2; ASA Letter at 5; ASA Letter 2; ASA Letter 3.

¹⁶⁹ *See* SIFMA Letter at 6.

¹⁷⁰ *See* Raymond James Letter at 2.

¹⁷¹ *See id.*

¹⁷² *See id.*

¹⁷³ *See* Rule 15c3–3 Adopting Release, 37 FR at 25229.

¹⁷⁴ *See id.* In 1972, there were three categories of debit items in the customer reserve computation:

impact, the Commission proposed a number of more stringent requirements for carrying broker-dealers using the alternative method, including that they would need to apply the 3% debit reduction in lieu of the existing 1% debit reduction in Rule 15c3-3.¹⁸⁰ In proposing the 3% debit reduction, the Commission explained that the proposed debit reduction would require a 100% reserve for customer funds not available for use by the broker-dealer, and an additional 3% commitment of the broker-dealer's own liquid capital in the form of cash or qualified securities as an additional reserve and to insure the broker-dealer's ability to finance its customer-related receivables.¹⁸¹

The Commission adopted the proposed amendments to Rules 15c3-1 and 15c3-3 in 1975.¹⁸² They included the alternative method for calculating the minimum net capital requirement and the requirement that carrying broker-dealers using the alternative method apply the 3% debit reduction.¹⁸³ In this regard, the Commission explained "that the objectives of the [alternative method] can only be achieved by further strengthening the custodial requirements and Reserve Formula safeguards developed for the protection of customer assets established by [Rule 15c3-3]" and therefore the alternative method "requires aggregate debit items in the Reserve Formula to be reduced by 3% rather than the 1% reduction of certain debit items which now exists."¹⁸⁴ The Commission stated that

primary source of protection of customers and other broker-dealers for over 30 years. As a result of the numerous changes that have occurred in the securities industry over the last five years, the evolving future structure of the securities markets and the future needs of the nation's corporate issuers to raise both equity and debt capital, it is important at this time to develop new approaches to the financial responsibility and capital adequacy of broker-dealers for both the protection of customers and to maintain sound and viable primary and secondary capital markets.").

¹⁸⁰ *Id.* at 41542.

¹⁸¹ *Id.* The Commission further explained that such additional reserves will be available to provide self-regulatory organizations and others with additional assets for the satisfaction of customer cash claims and to redeem customers' securities which have been hypothecated or otherwise encumbered when necessary for the orderly winding up of the business of any broker-dealer. *Id.*

¹⁸² See *Adoption of Uniform Net Capital Rule and an Alternative Net Capital Requirement for Certain Brokers and Dealer*, Exchange Act Release No. 11497 (June 26, 1975) [40 FR 29795 (July 16, 1975)].

¹⁸³ In 1982, the Commission modified the alternative method to reduce the ratio from 4% of aggregate debit items to 2% of aggregate debit items. See *Net Capital Requirements for Brokers and Dealers; Amended Rules*.

¹⁸⁴ See *Adoption of Uniform Net Capital Rule and an Alternative Net Capital Requirement for Certain Brokers and Dealers*, 40 FR at 29798.

this "reduction of debit items will thus provide, in the event of a liquidation, an additional cushion of secured debit items which will be available to satisfy customers with whom the broker or dealer effects transactions."¹⁸⁵

Thus, the 3% debit reduction is designed to compensate for the potential lower minimum net capital requirement resulting from carrying broker-dealers electing the alternative method in lieu of the basic method. Consequently, the Commission lowered the capital requirements and strengthened the customer reserve computation requirements for carrying broker-dealers using the alternative method. In particular, the 3% debit reduction decreases the amount of debits that offset credits in the customer reserve computation and, thereby, can increase the amounts carrying broker-dealers must lock up in their customer reserve bank accounts. The 3% debit reduction applies to *aggregate* debit items in the customer reserve computation under Rule 15c3-3 (*i.e.*, all debit items in the customer reserve computation). Carrying broker-dealers that use the basic method to compute their minimum net capital requirement must reduce certain debits (*i.e.*, not all debits) by 1%. This results in a lower reduction and a correspondingly smaller potential increase in the amount carrying broker-dealers applying the 1% debit reduction must lock up in their customer reserve bank accounts.

For these reasons, the Commission is not eliminating the 3% debit reduction as commenters suggested because doing so would subject carrying broker-dealers using the alternative method to the same 1% debit reduction that applies to carrying broker-dealers using the basic method.¹⁸⁶ As discussed above in this section, the 3% debit reduction is designed to compensate for how the alternative method can result in a lower minimum net capital requirement than the basic method. In addition, as stated in this section above, the 49 carrying broker-dealers that exceeded the \$500 Million Threshold for calendar year 2023 use the alternative method for net capital purposes. The Commission also estimates that these 49 carrying broker-dealers, based on FOCUS Report data for January 2023 through December 2023, held 99.3% of aggregate total credits of all carrying broker-dealers.¹⁸⁷

¹⁸⁵ *Id.*

¹⁸⁶ See sections IV.B.3. and C.1. of this release (discussing the 2% debit reduction).

¹⁸⁷ See section IV.B.2. of this release (discussing scope of affected carrying broker-dealers). In comparison, there were 3,461 broker-dealers registered with the Commission on December 31, 2023.

Therefore, carrying broker-dealers using the alternative method for net capital hold the bulk of customer credits (*i.e.*, amounts the carrying broker-dealer owes customers) as compared to carrying broker-dealers using the basic method.

However, the new requirement to perform daily customer reserve computations significantly strengthens the customer protection measures of Rule 15c3-3. In particular, performing a daily customer reserve computation reduces the risk that the net amount of cash owed to customers will be substantially greater than the amount on deposit in a carrying broker-dealer's customer reserve bank account.¹⁸⁸ A daily computation requirement allows for cash owed to customers from a particular day to be included in that day's customer reserve computation, computed the next business day and any required deposits made the following business day. Therefore, under a daily customer reserve computation, the amount on deposit in the customer reserve bank account will more quickly reflect the net amount of cash the carrying broker-dealer owes its customers. Performing a daily customer reserve computation also will reduce the maximum time between required deposits into a customer reserve bank account to two business days. In contrast, under a weekly customer reserve computation, a carrying broker-dealer performs the customer reserve computation on Monday, using numbers as of the close of business on Friday, and makes any required deposits in its customer reserve bank account on Tuesday (typically) of each week. Therefore, the next deposit requirement under a weekly customer reserve computation will be the Tuesday of the following week.

These enhancements to the customer protection measures of Rule 15c3-3 warrant a corresponding adjustment to the 3% debit reduction in order to avoid overcompensating for the differences between the alternative and basic method. Consequently, the Commission is lowering the 3% debit reduction to 2% for carrying broker-dealers that use the alternative method if they perform a daily customer reserve computation.¹⁸⁹

¹⁸⁸ See table 5, panel C in section IV. of this release.

¹⁸⁹ The 2% debit reduction also is consistent with the incremental increase in the frequency of the customer reserve computation for carrying broker-dealers that perform a monthly customer reserve computation and carrying broker-dealers that elect to compute net capital under the alternative method and perform a customer reserve computation weekly or daily under the amendments. Monthly customer reserve computations require a 5% buffer above the carrying broker-dealer's deposit

Lowering the debit reduction to 2% is designed to adjust this risk-reducing measure in response to the customer protection enhancements of the new daily customer reserve computation requirements while maintaining a debit reduction amount (2% as compared to 1%) that will continue to compensate for the differences between the alternative and basic methods of calculating minimum net capital requirements.

In order to implement this change, the Commission is amending paragraph (a)(1)(ii)(A) of Rule 15c3-1 to provide that a carrying broker-dealer that is required to perform a daily customer reserve computation under paragraph (e) of Rule 15c3-3 may reduce aggregate debit items in such computation by 2% (rather than 3%).¹⁹⁰ Carrying broker-dealers that elect the alternative method for calculating their minimum net capital requirement and perform their customer reserve computation weekly must continue to apply the preexisting 3% debit reduction. Further, this amendment to Rule 15c3-1 applies only to a carrying broker-dealer's customer reserve computation. It does not amend or change the minimum net capital requirements for carrying broker-dealers under Rule 15c3-1 irrespective of whether they use the basic or alternative methods. Consequently, carrying broker-dealers electing the alternative method must continue to maintain the greater of \$250,000 or 2% of aggregate debit items under Rule 15c3-1 and they remain subject to an early warning notification requirement under Rule 17a-11 if their net capital falls below 5% of aggregate debit items.¹⁹¹

In addition, the Commission is modifying paragraph (e)(3) of Rule 15c3-3 to add a new paragraph (e)(3)(v) to permit a carrying broker-dealer that voluntarily performs the customer reserve computation daily under preexisting paragraph (e)(3)(iv) of Rule 15c3-1 to reduce its aggregate debit items by 2%, if the carrying broker-

dealer notifies its DEA, in writing, of its election at least 30 calendar days before beginning such computation.¹⁹² The new paragraph also provides that if a carrying broker-dealer has notified its DEA of this election, the carrying broker-dealer must continue to compute the customer reserve computation daily unless a change is approved by its DEA.¹⁹³ This amendment is being made in Rule 15c3-3 (as compared to Rule 15c3-1 where the 3% and 2% debit reduction provisions are located) because it relates to a carrying broker-dealer voluntarily performing a daily customer reserve computation. Therefore, to maintain consistency with existing rule text, this new paragraph follows paragraph (e)(3)(iv) of Rule 15c3-3, which permits carrying broker-dealers to voluntarily perform reserve computations more frequently than required under the rule.¹⁹⁴ The notice requirement to voluntarily begin the daily customer reserve computations with the 2% debit reduction will assist the DEA in monitoring the carrying broker-dealer. For example, upon receiving the notice, the DEA can contact the carrying broker-dealer to inquire about its plan for transitioning to a daily customer reserve computation and about any changes to its systems and processes for performing the daily computation and for applying the lower 2% debit reduction (in lieu of the 3% debit reduction). The approval requirement to revert to performing a weekly customer reserve computation is designed to ensure that a carrying broker-dealer performs a daily customer reserve requirement consistently rather than constantly switching between daily and weekly reserve computations depending on which approach is more advantageous on a given day. This will prevent a carrying broker-dealer from performing a daily customer reserve computation on an *ad hoc* basis solely to reduce an excess of credits over debits in the customer reserve computation and thereby minimize deposit requirements in the customer reserve bank account.

Commenters stated that lowering the 3% debit reduction will increase the liquidity of carrying broker-dealers because it will reduce the extra buffer of broker-dealer capital that must be deposited into the customer reserve bank account. For example, a commenter stated that the new requirement to perform a customer

reserve computation daily would reduce the need for any cushion to account for a mismatch and, consequently, would increase liquidity and lower costs for customer financing by allowing carrying broker-dealers to use assets that would otherwise be locked up (in their customer reserve bank account).¹⁹⁵ This commenter further stated that the increased liquidity resulting from lowering the amount of the 3% debit reduction could be redeployed by carrying broker-dealers to provide customers with more financing at a lower cost, which benefits customers and carrying broker-dealers.¹⁹⁶ This commenter also stated that carrying broker-dealers would use this additional liquidity to pay the costs associated with transitioning from weekly to daily reserve computations, potentially allowing carrying broker-dealers to make the transition more efficiently and at a lower relative cost.¹⁹⁷ Another commenter stated that this modification would provide financial relief to carrying broker-dealers.¹⁹⁸

Decreasing the debit reduction from 3% to 2% will provide extra liquidity to carrying broker-dealers, as commenters suggested. Enhancing the liquidity of carrying broker-dealers will position them to better withstand financial shocks and thereby lower the risk that such a shock causes the carrying broker-dealer to fail financially (which in turn will benefit the carrying broker-dealer's customers, counterparties, and creditors). Further, carrying broker-dealers will be able to use this extra liquidity to pay the initial and ongoing compliance costs to transition from weekly to daily reserve computations. They also may use the extra liquidity to address situations where they must make large additional deposits into the customer or PAB reserve bank accounts to account for large infusions of customer or PAB account holder cash that is intended to be swept out of the broker-dealer but gets accounted for in the reserve computations before it can be swept.¹⁹⁹

requirement, while carrying broker-dealers electing the alternative method for net capital are required to use a 3% "buffer" for weekly customer reserve computations and a 2% "buffer" for daily customer reserve computations. See paragraph (e)(3)(i)(A) of Rule 15c3-3 and paragraph (a)(1)(ii)(A) of Rule 15c3-1, as amended.

¹⁹⁰ See paragraph (a)(1)(ii)(A) of Rule 15c3-1, as amended. In order to implement this change, the following phrase is being added to the end of the current rule text in paragraph (a)(1)(ii)(A): "provided, however, that, if a broker or dealer is required to make the computation required by § 240.15c3-3(e) and set forth in Exhibit A, § 240.15c3-3a, on a daily basis, the broker or dealer may reduce aggregate debit items in such computation by 2%."

¹⁹¹ See paragraph (a)(1)(ii) of Rule 15c3-1; paragraph (b)(2) of Rule 17a-11.

¹⁹² See paragraph (e)(3)(v) of Rule 15c3-3, as amended.

¹⁹³ *Id.*

¹⁹⁴ See paragraph (e)(3)(iv) of Rule 15c3-3, as amended.

¹⁹⁵ See SIFMA Letter at 6. This commenter stated one member carrying broker-dealer estimated that eliminating the 3% debit reduction in favor of the 1% debit reduction would free up \$3 billion in liquidity. *Id.* Another commenter stated that this potential change would, on average, amount to approximately \$50 million in liquid assets each week. See Raymond James Letter at 2. Lowering the 3% debit reduction to 2% will result in additional liquidity for carrying broker-dealers performing a daily customer reserve computation.

¹⁹⁶ See SIFMA Letter at 6.

¹⁹⁷ See SIFMA Letter at 6.

¹⁹⁸ See ASA Letter at 5.

¹⁹⁹ See section I.E.1. of this release (describing sweep programs and other transitory credits).

2. Conforming Amendments to the FOCUS Report

The Commission is adopting amendments to the Part II of the FOCUS Report to conform the reporting obligations with the final amendment lowering the debit reduction from 3% to 2% for carrying broker-dealers that use the alternative method and perform daily customer and PAB reserve computations.²⁰⁰ Currently, in the Computation for Determination of Customer Reserve Requirements in Part II of the FOCUS Report, the form includes a line for a carrying broker-dealer that uses the alternative method for computing net capital to report the 3% debit reduction. The amendments to the FOCUS Report add a line to report the 2% debit reduction in lieu of reporting the 3% debit reduction. The existing line to report the 3% deduction is being retained for carrying broker-dealers that are below the \$500 Million Threshold and that do not voluntarily perform daily customer and PAB reserve computations.

Further, the Commission is amending the line for reporting “Total Debits” in the Computation for Determination of Customer Reserve Requirements in Part II of the FOCUS Report to reflect that Total Debits equals “Aggregate Debit Items” less the 3% or 2% debit reduction, as applicable. The Commission also is adding an additional line under “Frequency of Computation” to require that a carrying broker-dealer check one of two new boxes to indicate whether it is using the 2% debit reduction or 3% debit reduction. Finally, the Commission is amending the footnote to the Computation for Determination of Customer Reserve Requirements in the FOCUS Report Part II to add a reference to paragraph (e)(3)(v) of Rule 15c3–3.

D. Voluntary Customer and PAB Reserve Computations

The Commission proposed to amend paragraph (e)(3)(iv) of Rule 15c3–3, which permits interim reserve

computations to be performed between the days that the weekly or permitted monthly computations must be performed.²⁰¹ In particular, preexisting paragraph (e)(3)(iv) of Rule 15c3–3 provided that computations *in addition to* the computations required in paragraph (e)(3) (*i.e.*, the weekly and permitted monthly computations) may be made as of the close of *any* business day, and the deposits so computed must be made no later than one hour after the opening of banking business on the second following business day.²⁰² The amendment to paragraph (e)(3)(iv) provides that computations—other than those made under paragraph (e)(3)(i)(B)(1) of Rule 15c3–3, as amended (*i.e.*, the daily computations)—may be made as of the close of *any* business day.²⁰³ This amendment specifies that the option to perform a customer or PAB reserve computation more frequently than weekly or monthly (as applicable) remains available to carrying broker-dealers that must make such computations weekly or monthly. Carrying broker-dealers voluntarily performing daily customer and PAB reserve computations have used this option.²⁰⁴

A commenter stated that the proposal permits carrying broker-dealers that perform weekly reserve computations to continue to make voluntary, interim computations but does not expressly require approval from the carrying broker-dealer’s DEA.²⁰⁵ The commenter stated that the Commission should make this approval a requirement in the final rule, as well as require approval from the DEA for the carrying broker-dealer to cease performing the interim computation.²⁰⁶ The commenter stated these changes would help guard against a carrying broker-dealer performing interim reserve computations opportunistically to minimize required reserve account deposits.²⁰⁷

The final amendments do not include this modification, as it would impose new requirements on carrying broker-dealers that elect to perform an interim reserve computation. Further, carrying

broker-dealers that utilize this provision to perform an interim reserve computation will remain subject to the 3% debit reduction. In addition, the Commission estimates that, based on data for January 2023 through December 2023, 49 carrying broker-dealers, which held 99.3% of aggregated total credits of all carrying broker-dealers, will exceed the \$500 Million Threshold and will be required to perform a daily customer and PAB reserve computation.²⁰⁸ Because these carrying broker-dealers will perform daily customer and PAB computations under the final amendments, they will not perform interim reserve computations. Given that these carrying broker-dealers hold nearly all of the total credits of all carrying broker-dealers, an amendment to the rule as the commenter suggested is not merited given the relatively smaller amounts required to be on deposit for the remaining carrying broker-dealers.²⁰⁹ For these reasons, the Commission is not adopting the commenter’s suggested modification and is adopting the amendment as proposed.²¹⁰

E. Other Comments

The Commission received other comments related to the proposal that cover technical questions about how the final amendments will operate, as well as requests for clarification and interpretations on specific issues related to performing a customer and PAB reserve computation daily.

1. Sweep Programs and Other “Cash in Motion” or “Transitory” Credits”

The Commission received two comments regarding sweep programs²¹¹

²⁰⁸ See section IV.B.2. of this release (discussing affected broker-dealers in the baseline).

²⁰⁹ A carrying broker-dealer that is under the \$500 Million Threshold may nonetheless elect to perform a daily customer reserve computation in order to apply the 2% debit reduction in lieu of the 3% reduction. A carrying broker-dealer making this election will be subject to the DEA notification requirements of paragraph (e)(3)(v) of Rule 15c3–3, as amended.

²¹⁰ See paragraph (e)(3)(iv) of Rule 15c3–3, as amended.

²¹¹ A sweep program is a service provided by a carrying broker-dealer where it offers to its customer the option to automatically transfer free credit balances in the securities account of the customer to either a money market fund or an account at a bank whose deposits are insured by the Federal Deposit Insurance Corporation (“FDIC”). See paragraph (a)(17) of Rule 15c3–3. The sweep program requirements for customer accounts are set forth in paragraph (j)(2)(ii) of Rule 15c3–3. Broker-dealers are not customers under Rule 15c3–3. Therefore, PAB account holders are not subject to the sweep program requirements under the rule with respect to their free credit balances. See paragraph (a)(1) of Rule 15c3–3. Nonetheless, PAB account holders may elect to have their free credit balances included in a sweep program. See Proposing Release, 88 FR at 45842, n.58.

²⁰⁰ In addition to amending the FOCUS Report Part II as part of the final amendments, the Commission is updating the FOCUS Report on the Commission’s website that highlights the fields that security-based swap dealers and major security-based swap participants relying on a Commission substituted compliance order (“Covered Entities”) must complete pursuant to the *Amended and Restated Order Specifying the Manner and Format of Filing Unaudited Financial and Operational Information by Security-Based Swap Dealers and Major Security-Based Swap Participants that are not U.S. Persons and are Relying on Substituted Compliance Determinations with Respect to Rule 18a–7*, Exchange Act Release No. 101932 (Dec. 16, 2024). However, these amendments do not result in any changes to the number of fields in the FOCUS Report that Covered Entities must complete.

²⁰¹ See Proposing Release, 88 FR at 45845.

²⁰² 17 CFR 240.15c3–3(e)(3)(iv); Proposing Release, 88 FR at 45845.

²⁰³ This proposed amendment would insert the phrase “other than computations made under paragraph (e)(3)(i)(B)(1) of this section,” following the words “this paragraph (e)(3),” in preexisting paragraph (e)(3)(iv) of Rule 15c3–3. See Proposing Release, 88 FR at 45845. The Commission did not receive any comments on this amendment and is adopting it as proposed.

²⁰⁴ See Proposing Release, 88 FR at 45845.

²⁰⁵ See SIPC Letter at 2.

²⁰⁶ See *id.*

²⁰⁷ See *id.*

and performing daily customer and PAB reserve computations.²¹² One commenter stated that a daily reserve computation would not benefit customers of carrying broker-dealers with widely-used sweep programs.²¹³ This commenter stated that sweep programs contribute to protecting customer assets and already address the mismatch risk the proposal seeks to remedy by regularly moving customer cash off a carrying broker-dealer's balance sheet.²¹⁴ In addition, this commenter stated that if a carrying broker-dealer receives customer cash after the daily sweep cutoff time, it is generally swept early the next business day and, as such, will be protected sooner than including such cash in a daily reserve computation.²¹⁵

This commenter also stated that there are potential benefits to more frequent customer and PAB reserve computations but raised concerns about potential impacts on liquidity, particularly in cases where a free credit balance is "transitory" or is "cash in motion,"²¹⁶ such as cash that the carrying broker-dealer needs the next day to fund an Automated Clearing House transfer or a wire request received after banking cutoff times.²¹⁷ This commenter stated that carrying broker-dealers may need to use their own funds to account for transitory funds and that this may result in only large carrying broker-dealers (with substantial liquidity) being able to service ultra-high net worth clients with large transitory credits.²¹⁸ The commenter stated that this would disadvantage smaller carrying broker-dealers who would be unable to compete for certain types of clients or transactions.²¹⁹ Another commenter stated that the proposed daily computation requirement would impose substantial unintended costs on carrying broker-dealers that regularly deposit inflows of customer cash into reserve bank accounts or transfer them into a

sweep account.²²⁰ For these carrying broker-dealers, the commenter stated that a daily computation could require them to segregate large portions of funds that are already protected by virtue of the sweep/deposit.²²¹ Commenters stated that, although this issue exists with the preexisting weekly computations under Rule 15c3-3, this risk is exacerbated under a daily computation because carrying broker-dealers will no longer have a week to resolve any issues, which creates uncertainty, as the amount of cash tied up would vary each day.²²²

One commenter stated that Commission staff has previously recognized this issue under existing staff no-action positions where carrying broker-dealers in certain circumstances have withdrawn funds from the special reserve bank account or deposited funds into separate special reserve bank accounts that are promptly swept or are otherwise used to meet specific customer instructions.²²³ This

²²⁰ See SIFMA Letter at 7. For example, that commenter stated that if a carrying broker-dealer receives \$100 million shortly before market close on Monday, that \$100 million will be incorporated into the customer reserve computation for Monday. Even if the carrying broker-dealer sweeps the funds into a sweep program first thing Tuesday morning as part of its normal operations, the commenter stated that it would still need to deposit \$100 million into its customer reserve bank account on Wednesday morning, since the relevant computation would be as of close of business on Monday. The commenter stated that this would effectively require carrying broker-dealer to use its own \$100 million, thereby tying up liquidity for no corresponding benefit. *Id.*

²²¹ See SIFMA Letter at 7. The commenter did not provide data regarding the specific amounts of cash each day that is not swept to a carrying broker-dealer's sweep program because the carrying broker-dealer received it after the sweep cut-off time.

²²² See SIFMA Letter at 7; ASA Letter at 3; ASA Letter 2 at 1; ASA Letter 3 at 3.

²²³ See SIFMA Letter at 7. The commenter stated that these staff no-action positions have a number of provisions that are challenging for carrying broker-dealers to meet (e.g., requiring that funds received per transaction or with respect to a particular customer equal at least 25% of the total credits of the carrying broker-dealer's most recent reserve computation). *Id.* See also Letter from Michael A. Macchiaroli, Assistant Director, Commission to Mr. Salvatore Pallante, Vice President, NYSE (Apr. 25, 1990) ("NYSE Letter") (stating that the staff will not recommend enforcement action to the Commission if a carrying broker-dealer withdraws funds from the special reserve bank account without a computation under paragraph (g) of Rule 15c3-3 to fulfill certain specific customer transactions where such transaction represents 25% or more of the total credits in the carrying broker-dealer's most recent reserve account computation, and where the customer funds received are deposited into a separate reserve bank account) and FINRA Interpretations of Financial and Operational Rules, 15c3-3(g)/05, available at www.finra.org; Letter from Aase A. Berling, Staff Accountant, Division of Market Regulation, Commission to James A. Francis, Vice President, The Ohio Company (Mar.

commenter further stated that if funds the carrying broker-dealer receives from or for customers are swept on a same or next day basis into a sweep program or into a customer reserve bank account, they are protected against loss and there is no reason for including these amounts in a reserve computation.²²⁴

Accordingly, the commenter suggested that the Commission simplify the staff no-action positions and permit a carrying broker-dealer to exclude from the customer and PAB reserve computations any funds that the carrying broker-dealer has swept or deposited promptly upon receipt.²²⁵

Another commenter stated that the Commission should permit cash held for a customer that is intended to be swept not be treated as a credit in the customer reserve computation. The commenter stated that this suggestion is analogous to a current interpretation under Rule 15c3-3a that states, if a carrying broker-dealer pre-funds a redemption of money market shares but still carries the shares long in the customer's account, it cannot treat the pre-funding as a debit in the reserve computation. The commenter stated that cash held for a customer that is intended to be swept should not be treated as a credit in the reserve computation just as pre-funded money market fund redemptions are not treated as debits in the computation.²²⁶

For the reasons discussed below, the final amendments do not exclude cash that is intended to be swept or is otherwise "transitory" or in "motion" from the customer and PAB reserve computations. However, the final amendments lowering the debit reduction from 3% to 2% in the customer reserve computations mitigate concerns commenters raised about how a daily reserve requirement could require carrying broker-dealers to use their own capital to fund reserve account deposit requirements that relate

21, 1985) ("Ohio Company Letter") (stating that the staff will not recommend enforcement action to the Commission if a carrying broker-dealer makes a withdrawal from the special reserve bank account without performing a computation in order to obtain sufficient cash to effect the purchase of money market fund shares for customers, and deposits such funds into a separate reserve bank account to purchase money market fund shares) and FINRA Interpretations of Financial and Operational Rules 15c3-3(g)/021, available at www.finra.org. Staff statements (including those cited herein) represent views of the Commission staff and are not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved of these staff statements, and, like all staff statements, they have no legal force or effect, do not alter or amend applicable law, and create no new or additional obligations for any person.

²²⁴ See SIFMA Letter at 7.

²²⁵ See *id.*

²²⁶ See ASA Letter 3 at 3.

²¹² See ASA Letter at 2; SIFMA Letter at 7; ASA Letter 3.

²¹³ See ASA Letter at 2.

²¹⁴ See *id.*

²¹⁵ See *id.*

²¹⁶ See ASA Letter at 2. The commenter stated that for purposes of the comment, transitory means free credits that are: (1) included in the computation; (2) will be needed to fund a known activity the first following day; and (3) will be included in the deposit due the morning of the second following day (despite the fact that the free credits have already been used for another client directed purpose). *Id.* The commenter also referred to these transitory credits as "cash in motion." See ASA Letter 2 at 1.

²¹⁷ See ASA Letter at 2.

²¹⁸ See ASA Letter 3 at 1.

²¹⁹ *Id.*

to cash that will be swept or otherwise deployed the next day. In particular, a carrying broker-dealer can use the additional liquidity available to it through the lower 2% debit reduction to meet a required reserve deposit that results from a situation where cash is not swept or otherwise deployed quickly enough to avoid its inclusion in the customer or PAB reserve computations. Further, in response to the comment that smaller carrying broker-dealers may be disadvantaged in servicing customers with large transitory credits as compared to larger carrying broker-dealers with more liquidity, smaller carrying broker-dealers (as measured in terms of average total credits) also can use this additional liquidity to provide services to all types of customers, including ultra-high net worth individuals with large transitory credits.²²⁷ In addition, raising the threshold to \$500 Million will exclude an additional cohort of smaller carrying broker-dealers—relative to the carrying broker-dealers subject to the requirement—from the scope of the final amendments as compared to the proposal. These smaller carrying broker-dealers (as measured in terms of average total credits) may continue to perform weekly customer and PAB reserve computations and will have a week to resolve any issues related to transitory credits.²²⁸ Lowering the debit reduction from 3% to 2% and increasing the threshold from \$250 million to \$500 million will address—in part—concerns about transitory credits by either providing excess liquidity to account for these credits or excluding a larger number of relatively smaller carrying broker-dealers from the need to address these credits on a daily basis.

Transferring cash in a customer or PAB account to an FDIC-insured bank as part of a sweep program protects customers' and PAB account holders' cash in that it is no longer on the carrying broker-dealer's balance sheet. Other cash that has been redeployed such as cash used to purchase securities also is no longer included on a carrying broker-dealer's balance sheet.²²⁹ However, this does not mean that it would be appropriate to permit a

carrying broker-dealer performing daily customer and PAB reserve computations to exclude cash of customer and PAB account holders (including cash received after the daily cutoff time for a sweep program and other "transitory credits") from its customer and PAB reserve computations because the intent is to sweep the cash out of the accounts or otherwise deploy it before the next deposit into the customer and PAB reserve accounts is due. Uninvested cash (such as cash received after a sweep cut-off time) held for customers and PAB account holders remains in the customer's or PAB account holder's securities account and on a carrying broker-dealer's balance sheet. A carrying broker-dealer must include this cash in its customer or PAB reserve computation for that particular business day because the carrying broker-dealer owes that cash to its customer and PAB account holders, and it will not receive FDIC protection until it is swept the next business day.

As discussed in section I.C.1. of this release, preexisting Rule 15c3-3 is designed to protect customers by segregating their securities and cash from the carrying broker-dealer's proprietary business activities. This is accomplished through the customer and PAB reserve computations. If a carrying broker-dealer excludes customer and PAB cash that is included in its books and records from its reserve computation, it increases the risk that—if the carrying broker-dealer fails—the cash and securities may not be readily available to be returned to customers and PAB account holders. This, in turn, would increase the risk that a carrying broker-dealer may be unable to promptly return cash and securities to customer and PAB account holders in the event the carrying broker-dealer fails financially. This risk is exacerbated for PAB account holders, as they are not entitled to advances from the SIPC Fund.

In response to the comment that the Commission should permit cash held for a customer that is intended to be swept not be treated as a credit in the customer reserve computation, a carrying broker-dealer cannot include this debit in the reserve computation because the receivable is from the money market fund and not the customer. In other words, the carrying broker-dealer cannot treat the pre-funding like a margin loan collateralized by the money market shares carried in the account. Margin loans are debits in the reserve computation, but they are loans to the customers to purchase the securities and the customer owes the money to the carrying broker-dealer. In

the case of cash intended to be swept, however, the carrying broker-dealer holds the cash for the customer, which is a credit item in the reserve computation. This cash is a customer payable (*i.e.*, customer credit) until it is swept and is no longer on the carrying broker-dealer's books and records. A carrying broker-dealer must include such customer credits in its customer reserve computation.

In response to comments that the issue related to cash in motion or transitory credits will be exacerbated under a daily computation requirement because a carrying broker-dealer will no longer have a week to resolve issues under a daily computation requirement because credit amounts vary each day,²³⁰ the scenario of having to account for cash that the carrying broker-dealer no longer holds also can occur under the preexisting weekly reserve computation requirement. For example, customer cash deposited at the carrying broker-dealer on Friday after the time when it can be swept to a money market fund or bank must be accounted for in the customer reserve computation performed the following Monday (using numbers as of the close of business Friday) and, to the extent it creates a deposit requirement, the required deposit must be made by 10 a.m. on Tuesday even though by that time the customer cash has been swept to the money market fund or bank. Moreover, unless the carrying broker-dealer performs an intra-week reserve computation, the cash must remain in the customer reserve bank account until the following Tuesday. A daily reserve computation requirement will shorten the time that the cash must be held in the customer reserve bank account.

While a daily reserve computation requirement will shorten the time that a carrying broker-dealer must hold cash in the customer reserve bank account, the Commission recognizes that a carrying broker-dealer performing a daily reserve computation will need to manage its sweep cash and other transitory credits daily rather than weekly. This increase in frequency in performing the customer and PAB reserve computations will not exacerbate the issue related to sweep-related cash and transitory credits as daily cash fluctuations may become more predictable over time, but it will require the carrying broker-dealer to manage this cash more quickly and efficiently, as compared to a weekly computation. This increase in efficiency, however, as a result of a daily reserve computation requirement

²²⁷ In addition, with respect to accounts of high net worth individuals, the staff has issued no-action positions regarding smaller carrying broker-dealers that receive substantial deposits from individual customers for a current specific purpose. *See, e.g.*, NYSE Letter.

²²⁸ *See* section II.A.2. of this release (discussing the \$500 Million Threshold).

²²⁹ Customer securities are protected under the possession and control requirements under paragraphs (b) and (c) of Rule 15c3-3. *See* section I.C.1. of this release (discussing the possession and control requirements of Rule 15c3-3).

²³⁰ *See* SIFMA Letter at 7; ASA Letter at 2; ASA Letter 2 at 1.

will allow a carrying broker-dealer to withdraw funds more quickly from its customer reserve bank account, as compared to a weekly reserve computation, which will improve its liquidity.²³¹

Further, while the amount of credits related to cash that is not swept in a particular business day or other “cash in motion” would vary each day under a daily reserve computation requirement, the same is true for all customer credits and debits in the customer and PAB reserve computations. Therefore, a carrying broker-dealer must maintain sufficient capital or access to funding to make any required deposit into its customer or PAB reserve bank account, including any increased deposit requirements related to “transitory credits” or “cash in motion,” including when cash is not swept soon enough. This ensures that broker-dealers maintain sufficient access to capital and funding to support the volume of customer and PAB account holder business that they are carrying.

While lowering the debit reduction to 2% and raising of the threshold to \$500 million mitigates concerns commenters raised regarding issues related to cash sweeps and other transitory credits, the Commission recognizes that carrying broker-dealers performing a daily reserve computation may sometimes experience liquidity issues with respect to unusual or large inflows of customer cash received late in the day that is intended to be transferred to a sweep program under paragraph (j)(2)(ii) under Rule 15c3-3. If the unusual or large inflow of cash is swept out of the broker-dealer on the day the computation is performed, it nonetheless will be accounted for in the computation and may result in an increased deposit requirement. This issue merits further consideration. However, any potential solution must not diminish customer protection and be practical. Further, attempting to develop an appropriate solution would be a complex undertaking and could affect a range of carrying broker-dealers depending on their business model, the types of accounts the carrying broker-dealer services, and the products offered

in the carrying broker-dealer’s sweep program. The Commission would need to assess many factors, for example, the amount of cash that would be considered large or unusual (*i.e.*, not routine) on a particular business day, the size of cash inflows that typically may be received by the broker-dealer on the business days following a large or unusual cash inflow, the types of customer accounts or firm business models affected by unusual or large cash inflows (*e.g.*, retail or institutional accounts), and the practices of carrying broker-dealers currently performing daily computations. For these reasons, the Commission is not excluding credits arising from unusual or large inflows of cash from a carrying broker-dealer’s daily reserve computation at this time. The Commission encourages market participants to engage with Commission staff regarding their particular facts and circumstances on this issue.

Finally, a commenter stated that if a carrying broker-dealer must use its own funds to make a required deposit because customer transitory credits are no longer available, it could result in commingling of carrying broker-dealer and customer assets and/or constitute a misuse of the special reserve account.²³² In response, the commenter appears to have misunderstood the requirements of Rule 15c3-3. Carrying broker-dealers may deposit their own cash and/or qualified securities in a customer or PAB reserve bank account to meet any minimum deposit requirements under Rule 15c3-3 or as an additional buffer above the minimum deposit amount. These deposits to the customer and PAB reserve bank accounts comply with the requirements of Rule 15c3-3.²³³

2. Requests for Interpretations and Clarifications

A commenter stated that the Commission should allow carrying broker-dealers to notify their DEA if

they will be unable to perform a customer or PAB reserve computation or make a required deposit on a specific day due to exigent circumstances.²³⁴ The commenter stated that carrying broker-dealers occasionally face unexpected circumstances that could make it difficult or impossible to perform their reserve computation (or part of the computation) on a specific day, or to make the required deposit into the special reserve bank account.²³⁵ For example, the commenter stated that an unexpected market close (which could result from a systems outage or a natural disaster) could temporarily prevent personnel from accessing systems necessary to make the reserve computation; a bank may be unable to accept deposits due to a systems outage; or the failure of a third-party system may make it impossible for a carrying broker-dealer to access data necessary to compute some element of the reserve computation.²³⁶ The commenter further stated these events actually occur and provided an example of a significant processing issue that a large financial market utility had in 2023 that affected the ability of carrying broker-dealers to accurately calculate their end-of-day balances.²³⁷ The commenter stated that the problems such exigent circumstances cause often cannot be resolved in a day, and because these events are beyond the carrying broker-dealer’s control, the Commission should not penalize a carrying broker-dealer for its inability to perform the reserve computation or make a required deposit on a particular day because of them.²³⁸

More specifically, in order to address situations where there is an exigent circumstance, the commenter stated that the Commission should allow carrying broker-dealers to notify their DEA within 24 hours (including an explanation) if they will be unable to perform a customer or PAB reserve computation or make a required deposit on a specific day due to exigent circumstances.²³⁹ The explanation

²³¹ See section I.A. of this release (discussing the need for daily reserve computations and ability of carrying broker-dealers to be able to withdraw excess cash or qualified securities more quickly from the reserve bank account under a daily reserve computation requirement, which will improve their liquidity); section IV.D. of this release (discussing increase in operational efficiency for carrying broker-dealers as a result of the amendments allowing for the more efficient management of funds); section IV.E.10. of this release (discussing exemptions for cash in motion as a reasonable alternative, including the costs).

²³² See ASA Letter at 4.

²³³ Customer cash is a balance sheet item of the carrying broker-dealer (*i.e.*, the amount of cash received from a customer increases the amount of the carrying broker-dealer’s assets and creates a corresponding liability to the customer). The customer reserve computation is designed to isolate these carrying broker-dealer assets so that an amount equal to the net liabilities to customers is held as a reserve in the form of cash or U.S. Government securities. The requirement to maintain this reserve is designed to effectively prevent the carrying broker-dealer from using customer funds for proprietary business activities such as investing in securities. The goal is to put the carrying broker-dealer in a position to be able to readily meet its cash obligations to customers by requiring the carrying broker-dealer to make deposits of cash and/or U.S. Government securities into the customer reserve bank account in the amount of the net cash owed to customers. See Proposing Release, 88 FR at 45838, n.17.

²³⁴ See SIFMA Letter at 8–9.

²³⁵ See SIFMA Letter at 8.

²³⁶ See SIFMA Letter at 8.

²³⁷ See *id.*

²³⁸ See *id.*

²³⁹ See SIFMA Letter at 8–9. Paragraph (i) of Rule 15c3-3 currently provides that if a carrying broker-dealer fails to make a deposit in its customer or PAB reserve bank account, as required by Rule 15c3-3, the carrying broker-dealer must immediately notify the Commission and its DEA. Notification requirements for broker-dealers generally range from immediate, promptly (but within 24 hours), within 24 hours, and within 48 hours. See, *e.g.*, paragraphs (f), (d)(1), (b), (d)(2) of Rule 17a-11, respectively. Given the importance of the customer protection requirements of Rule 15c3-3, a 24-hour notification requirement pertaining to

would describe the circumstances and why it prevents the carrying broker-dealer from performing the reserve computation or making the deposit. The commenter also stated that if the carrying broker-dealer cannot perform the computation, the Commission should permit it to use to the prior day's figures to perform the computation, and suggested that the Commission should require carrying broker-dealers to subsequently notify their DEA of the steps taken to remedy the deficiency.²⁴⁰

The Commission recognizes that there may be exigent circumstances beyond the control of the carrying broker-dealer that could interfere with its ability to perform its customer or PAB reserve computation or make a required deposit into the customer or PAB reserve bank accounts.²⁴¹ For example, exigent circumstances beyond the control of the carrying broker-dealer may include, among other things, a natural disaster; the failure of a third-party data provider's system that affects the carrying broker-dealer's ability to access data necessary to compute the customer or PAB reserve computation, or part of the computation; or where a carrying broker-dealer cannot make a required deposit at a specific bank because the bank cannot accept deposits due to a systemwide outage. The Commission expects that these exigent circumstances would be rare. The Commission further recognizes that performing a daily computation—as compared to a weekly computation—increases the potential that exigent circumstances could interfere with the operations necessary to comply with the computation and deposit requirements of Rule 15c3–3, given the greater frequency of the

the failure to make a required deposit would be inappropriate. Consequently, the final amendments do not modify the immediate notification requirement of paragraph (i) of Rule 15c3–3.

²⁴⁰ See SIFMA Letter at 9.

²⁴¹ The Commission has previously provided exemptive relief and other relief and guidance for circumstances that have affected market participants, including carrying broker-dealers, for events such as the COVID–19 pandemic and for Hurricane Sandy in 2012. *See, e.g.*, Commission, Coronavirus (COVID–19) Response, available at: <https://www.sec.gov/sec-coronavirus-covid-19-response> (Commission statement summarizing the operational initiatives, market-focused actions, guidance and targeted assistance and relief, investor protection efforts and other work of the Commission in response to the effects of COVID–19). *See also* Letter from Michael A. Macchiaroli, Associate Director, Division of Trading and Markets, Commission to Ira Hammerman, General Counsel, SIFMA (Dec. 21, 2012) (staff no-action position about regulatory issues under Rules 15c3–1 and 15c3–3 related to the lack of access to the physical securities located at the vault of the Depository Trust & Clearing Corporation due to Hurricane Sandy), available at <https://www.sec.gov/divisions/marketreg/mr-noaction/2012/sifma-122112-15c3.pdf>.

necessary computations and deposits. Moreover, this interference—in certain circumstances—could occur even though the carrying broker-dealer has established and maintained effective internal controls over compliance.²⁴²

If the exigent circumstances interfere with the carrying broker-dealer's ability to perform the reserve computation, the firm is encouraged to notify its DEA of the situation, explain how the exigent circumstances are interfering with its ability to perform the customer or PAB reserve computation,²⁴³ and describe any steps it is taking to address the situation such as using the prior day's figures to perform the computation, depositing an additional buffer into the customer or PAB reserve account, or opening a reserve account at an alternative bank.

Commenters also stated that the Commission should not require carrying broker-dealers to perform a computation (or make it optional) on certain days on which markets are closed or close early because it is not practical to perform a computation on these days.²⁴⁴ In particular, one commenter stated that exchanges and financial market utilities often close early on the business day before a major holiday, and that this makes it difficult to receive on a timely basis certain information needed to perform the reserve computation, as exchanges and financial market utilities may not update the systems and data

²⁴² See 17 CFR 240.17a–5(d)(3). This rule requires a carrying broker-dealer to include a compliance report in its annual reports filed with the Commission and a report of an independent public accountant covering the compliance report. The compliance report must include, among other statements, statements that the carrying broker-dealer has established and maintained “Internal Control Over Compliance” as that term is defined in the rule and that the Internal Control Over Compliance was effective during the most recent fiscal year and as of the end of the fiscal year. *See* 17 CFR 240.17a–5(d)(3)(i). The rule defines “Internal Control Over Compliance” in pertinent part as controls that have the objective of providing the broker-dealer with reasonable assurance that non-compliance with Rule 15c3–3 will be prevented or detected on a timely basis. *See* 17 CFR 240.17a–5(d)(3)(i). Failure to perform a customer or PAB reserve computation due to exigent circumstances beyond the control of the carrying broker-dealer would not necessarily constitute a material weakness for purposes of the compliance report. *See* 17 CFR 240.17a–5(d)(3)(iii) (stating that a broker-dealer is not permitted to conclude that its Internal Control Over Compliance was effective during the most recent fiscal year if there were one or more material weaknesses in its Internal Control Over Compliance during the most recent fiscal year).

²⁴³ As noted above, the carrying broker dealer must immediately notify the Commission and its DEA if it fails to make a required deposit into its customer or PAB reserve accounts. *See* paragraph (i) of Rule 15c3–3.

²⁴⁴ *See* SIFMA Letter at 9; ASA Letter at 4; Raymond James Letter at 4–5.

needed to conduct the computation.²⁴⁵ This commenter suggested that the Commission should treat New Year's Eve, the Friday before Memorial Day, the Wednesday before Thanksgiving, the Friday after Thanksgiving, and Christmas Eve as non-business days for purposes of the customer and PAB reserve computations.²⁴⁶ Commenters also suggested that the Commission also should not treat days on which either exchanges or banks, but not both, are open, or where exchanges or banks close early, as non-business days for purposes of the reserve computations (including Veterans Day, Columbus Day, and Good Friday).²⁴⁷ One commenter stated that this flexibility could improve operational efficiency and mitigate the burden on carrying broker-dealers during unusual market conditions.²⁴⁸ Another commenter stated that it has found that customers enjoy the same holidays and half-days, reducing the number of customer transactions and, thus, any fluctuations in required minimum account balances are likely to be within acceptable ranges.²⁴⁹

The Commission recognizes there may be days where it is more challenging for a carrying broker-dealer to perform a customer or PAB reserve computation due to staffing issues related to holidays or when banks or exchanges are closed or close early. Performing a daily computation—as compared to a weekly computation—means that the work necessary to perform the daily computations will need to be performed on these days. Carrying broker-dealers should contact the Commission or Commission staff, as well as their DEA, if they anticipate that performing the reserve computations or making the required deposits will be challenging for these or other reasons. The Commission or Commission staff will evaluate these requests and may provide exemptive or other relief as appropriate. For example, the Commission or Commission staff could consider that in some circumstances many employees of a carrying broker-dealer may not be working certain days before major holidays, and as such, carrying broker-dealers may need an

²⁴⁵ *See* SIFMA Letter at 9.

²⁴⁶ *See* SIFMA Letter at 9.

²⁴⁷ *See* SIFMA Letter at 9–10; Raymond James Letter at 4–5. One commenter stated that the Commission staff has previously recognized that carrying broker-dealers should not be required to make deposits and certain transfers in connection with the special reserve bank account on certain days where exchanges are open but banks are closed, as carrying broker-dealers may be unable to actually process or make such deposits or transfers. *See* SIFMA Letter at 9.

²⁴⁸ *See* ASA Letter at 4.

²⁴⁹ *See* Raymond James Letter at 5.

additional day to complete their customer and PAB reserve computations and deposits.²⁵⁰ Finally, when a deposit requirement falls on a day that banks are closed, the carrying broker-dealer should make the deposit by 10 a.m. of the next business day that the banks are open.

F. Reserve Account Requirements for Security-Based Swaps

The Commission sought comment in the proposal on whether carrying broker-dealers should perform the security-based swap customer reserve computation daily (rather than weekly).²⁵¹ One commenter stated that the Commission should not change the reserve account requirements for SBSDs.²⁵² The commenter stated that it is unnecessary to make any changes because as the Proposing Release stated that almost all carrying broker-dealers that have security-based swap credits already take those credits into account and stand-alone SBSDs generally operate under an exemption from reserve computation requirements under 17 CFR 240.18a-4(f) ("Rule 18a-4(f)"). Therefore, the commenter stated requiring a daily computation for security-based swap activity would have virtually no benefit.²⁵³

The Commission agrees with the commenter that amending Rule 15c3-3 to require a broker-dealer (including a broker-dealer (other than an OTC derivatives dealer) also registered as an SBSD) to perform a security-based swap customer reserve computation daily would have virtually no impact because the credits related to security-based swap activity for security-based swap

customers generally are being included in the customer reserve computation.²⁵⁴ The Commission also agrees with the commenter that there would be virtually no benefit to requiring stand-alone SBSDs to perform a reserve computation daily since all of them operate under the exemption under Rule 18a-4(f).²⁵⁵ Therefore, the Commission is not adopting a daily reserve requirement for the security-based swap customer reserve computation under Rule 15c3-3 or 17 CFR 240.18a-4 as part of the final amendments.

III. Compliance Date

In the Proposing Release, the Commission sought input from commenters on the appropriate compliance date or implementation schedule for the proposed amendments. Specifically, the Commission requested comment regarding various aspects of the proposal that would impact a carrying broker-dealer's ability to comply with the new amendments, including the amount of time a carrying broker-dealer would need to comply with the requirement to perform a customer and PAB reserve computation daily, whether there are any technological or operational issues that should be considered, or whether a staggered compliance date depending on the size of the average total credits would be appropriate, among other things.²⁵⁶

The Commission received a few comments relating to the compliance date.²⁵⁷ Stating that there are complexities associated with moving from weekly to daily customer and PAB reserve computations, commenters requested various time periods for implementation of the daily customer and PAB reserve computation requirements. These commenters suggested computing the 12-month rolling average starting one year after publication of the final rule,²⁵⁸ a compliance timeline of at least 18

months from the final rule,²⁵⁹ as well as implementation dates of no earlier than January 2025 and mid- to late-2025.²⁶⁰ One commenter stated that carrying broker-dealers do not need an additional compliance period beyond the six months prescribed in the proposed rule after a carrying broker-dealer exceeds the proposed \$250 Million Threshold.²⁶¹ Commenters stated the proposal would require significant time, experience, and expense to implement, would present significant operational challenges, and that the transition to a daily computation would require significant time to find, hire and train new staff to conduct the computation as well as complete the extensive systems and operations changes.²⁶² One commenter also stated that third party data providers, such as service bureaus, would need to be able to provide carrying broker-dealers with more timely information than is currently available.²⁶³

Commenters also suggested that the Commission consider the cumulative burdens of implementing the amendments and other regulatory obligations with potentially overlapping compliance dates.²⁶⁴ Specifically, one commenter stated that the same carrying broker-dealers who will be required to move to a daily computation are also managing multiple other regulatory requirements.²⁶⁵ The commenter further stated that unless the Commission provides adequate time to manage the new regulatory requirements together, carrying broker-dealers will face an unmanageable clash of compliance requirements all converging at the same time.²⁶⁶ Commenters also stated that many finance, operations, and information technology employees of carrying broker-dealers needed to create and test new programs and systems, among other requirements, are also involved in the implementation of other large-scale, complex initiatives

²⁵⁰ See, e.g., FINRA Regulatory Notice 18-41 (Dec. 17, 2018) (notifying FINRA members of an optional one-day extension for customer and PAB reserve computations and required deposits around the December 2018 month-end holidays). Similar extensions were announced in 2007 and 2012. *Id.* See also FINRA Interpretations of Financial and Operational Rules, 15c3-3(e)(3)/021, Reserve Deposits Focusing Around Bank Holidays.

²⁵¹ See Proposing Release, 88 FR at 45847. In 2019, the Commission adopted customer segregation requirements for broker-dealers and security-based swap dealers ("SBSDs") with respect to customer money, securities, and property related to security-based swaps. See *Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major-Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers*, Exchange Act Release No. 86175 (June 21, 2019) [84 FR 43872, 43930-43 (Aug. 22, 2019)] ("SBS Segregation Adopting Release").

²⁵² See SIFMA Letter at 11-12.

²⁵³ See SIFMA Letter at 11. This commenter also stated the Commission previously proposed a daily reserve computation requirement for security-based swap activity and did not adopt the proposed approach. The commenter stated that there is no need for the Commission to revisit this conclusion. *Id.* at 11-12.

²⁵⁴ This is based on FOCUS Report data for calendar year 2023. The Commission notes that staff has stated its views in Question 1 of *Responses to Frequently Asked Questions Regarding Financial Responsibility Requirements as Applied to Security-Based Swap Activities of Broker-Dealers and Security-Based Swap Dealers* (Oct. 8, 2021), available at <https://www.sec.gov/tm/faqs-financial-responsibility-req-applied-sbs> ("SBS FAQ 1"). Based on FOCUS data for December 31, 2023, no broker-dealer reported Total Credits greater than \$0 (Line 12089) in its security-based swap customer reserve computation.

²⁵⁵ These SBSDs are not SIPC members.

²⁵⁶ See Proposing Release, 88 FR at 46846-45847.

²⁵⁷ SIFMA Letter at 12; Raymond James Letter at 4; ASA Letter at 5-6; ASA Letter 2 at 1; Letter from ASA (Oct. 3, 2024) ("ASA Letter 4").

²⁵⁸ See SIFMA Letter at 12.

²⁵⁹ See ASA Letter 4 at 1.

²⁶⁰ See Raymond James Letter at 4; ASA Letter at 6; ASA Letter 2 at 1.

²⁶¹ See SIPC Letter at 2.

²⁶² See SIFMA Letter at 12; Raymond James Letter at 3-4; ASA Letter at 6; ASA Letter 2 at 1.

²⁶³ See SIFMA Letter at 12.

²⁶⁴ See, e.g., ASA Letter 2 at 1; SIFMA Letter at 12; Raymond James Letter at 4; ASA Letter at 6.

²⁶⁵ ASA Letter at 6.

²⁶⁶ See *id.* In determining compliance dates, the Commission considers the benefits of the rules as well as the costs of delayed compliance dates, and potential overlapping compliance dates. For the reasons discussed throughout the release, to the extent that there are costs from overlapping compliance dates, the benefits of the rule justify the costs. See *infra* sections IV.B.1. and D. in the Economic Analysis for a discussion of the interaction of the final rule with certain other Commission rules.

mandated by other new regulations.²⁶⁷ Commenters stated that these initiatives call on the same personnel, technology, and monetary resources to implement them properly.²⁶⁸

After consideration of the comments, the Commission agrees that carrying broker-dealers need sufficient time to comply with the requirement to perform daily customer and PAB reserve computations beyond the six months provided in the rule after a carrying broker-dealer exceeds the \$500 Million Threshold.²⁶⁹ Carrying broker-dealers must begin calculating their average total credits using the 12 most recently filed month-end FOCUS Reports ending with the FOCUS Report for June 30, 2025. As a result, carrying broker-dealers that exceed the \$500 Million Threshold using each of the 12 filed month-end FOCUS Reports from July 31, 2024, through June 30, 2025, must perform customer and PAB computations daily beginning no later than December 31, 2025. This aligns with the requirements of the final amendments, as carrying broker-dealers are provided six months under paragraph (e)(3)(i)(B)(1) of Rule 15c3–3, as amended, to begin performing customer and PAB reserve computations daily after exceeding the \$500 Million Threshold.

While one commenter stated that the 12-month rolling average for total credits should start one year after publication of the final rule, given the importance of addressing the mismatch risk the final amendments are designed to address, it is important for carrying broker-dealers to comply with the requirement to perform customer and PAB reserve computations daily as soon as practicable, while also having sufficient time to modify and/or upgrade existing technology, to employ additional staff, and to adjust internal processes to comply with the daily reserve computation requirement. The Commission agrees with commenters that stated an implementation date no sooner than January 2025 is appropriate. Thus, as described above in this section, by requiring carrying broker-dealers to begin computing a daily customer and PAB reserve computation beginning no later than December 31, 2025, carrying broker dealers will have sufficient time

to perform the tasks necessary to be able to begin daily customer and PAB reserve computations as required by the final amendments.

Further, the additional six month compliance period provided for carrying broker-dealers in this section beyond the six month compliance period in the rule is appropriate (for a total compliance period of approximately one year) and recognizes that numerous carrying broker-dealers will prepare to transition to a daily customer and PAB reserve computation at the same time.²⁷⁰ This additional time considers that these carrying broker-dealers may need to interview and hire new employees and may use common service providers. Therefore, the extra six months will apply to all affected carrying broker-dealers, and a common transition period will be easier to administer and more equitable.

The Commission also recognizes the need for third-party data providers to provide data for a customer or PAB reserve computation on a timelier basis. Although commenters did not specify a period of time necessary for third-party service providers to transition to a more frequent provision of information, carrying broker-dealers will have approximately one year from adoption to make arrangements with such third-party service providers. As multiple carrying broker-dealers already perform daily customer and PAB reserve computations on a voluntary basis, to the extent third-party service providers supply needed data to these carrying broker-dealers, they should be in a position to implement the processes and agreements necessary to provide additional carrying broker-dealers with the necessary data. The requirement to begin daily customer and PAB reserve computations beginning no later than December 31, 2025, is an adequate time period to accomplish these tasks.

Further, the compliance period also will provide carrying broker-dealers whose average total credits may hover close to the \$500 Million Threshold a sufficient period of time between the date the amendments are adopted and the June 30, 2025 calculation date for average total credits to determine if they will be subject to the requirement to perform a customer and PAB reserve computation daily or whether they will manage their customer and PAB credits to remain below the \$500 Million Threshold. Because the requirement to calculate average total credits ends with the FOCUS Report for June 30, 2025, part of this time period is forward

looking to enable carrying broker-dealers to make these determinations or adjustments after the Commission adopts the final amendments.

A carrying broker-dealer that elects the alternative method for net capital and voluntarily elects to perform the customer reserve computation daily pursuant to paragraph (e)(3)(v) of Rule 15c3–3, as amended, and reduces aggregate debit items by 2% may do so on or after the effective date of the final amendments, provided that the required notification to the carrying broker-dealer's DEA has been made at least 30 days prior to beginning the daily computation (with the 2% debit reduction).

Finally, the compliance date for the amendments to the Form X–17A–5, Part II (*i.e.*, Part II of the FOCUS Report) is March 1, 2026. This will allow carrying broker-dealers the opportunity to become familiar with the changes and make any necessary updates to their policies, procedures, systems, and practices. In addition, it allows FINRA to develop and test these updates to its eFOCUS system.²⁷¹

IV. Economic Analysis

A. Introduction

The Commission is mindful of the economic effects, including the benefits and costs, of the final amendments. Section 3(f) of the Exchange Act provides that when engaging in rulemaking that requires the Commission to consider or determine whether an action is necessary or appropriate in the public interest, to also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.²⁷² Section 23(a)(2) of the Exchange Act also requires the Commission to consider the effect that the rules and rule amendments would have on competition, and it prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act.²⁷³ The analysis below addresses the likely economic effects of the final amendments, including the anticipated

²⁶⁷ See SIFMA Letter at 12; Raymond James Letter at 4; ASA Letter at 6. New requirements or regulations commenters highlighted included T+1 initiatives, amendments to FINRA Rule 4210 about margin requirements for covered agency transactions, and compliance with requirements of the national Consolidated Audit Trail or “CAT.”

²⁶⁸ See SIFMA Letter at 12; *see also* Raymond James Letter at 4.

²⁶⁹ See paragraph (e)(3)(i)(B)(1) of Rule 15c3–3, as amended.

²⁷⁰ See paragraph (e)(3)(i)(B)(1) of Rule 15c3–3, as amended.

²⁷¹ The carrying broker-dealers subject to the final amendments file the FOCUS Report electronically on the FINRA eFOCUS system. These carrying broker-dealers file the FOCUS Report pursuant to a plan established by the carrying broker-dealer's self-regulatory organization, the procedures and provisions of which have been submitted to and declared effective by the Commission pursuant to paragraph (a)(3) of Rule 17a–5. 17 CFR 240.17a–5(a)(3).

²⁷² See 15 U.S.C. 78c(f).

²⁷³ See 15 U.S.C. 78w(a)(2).

benefits and costs of the amendments and their likely effects on efficiency, competition, and capital formation. The Commission also discusses the potential economic effects of certain alternatives to the approaches taken in this adoption.

As part of their business, carrying broker-dealers regularly receive cash related to customers' and PAB account holders' securities transactions, such as cash realized from sales of securities. While it is common that customers' and PAB account holders' cash is quickly re-invested or swept out to a bank account or money market fund by the customer or PAB account holder, it is also common for this cash to remain undeployed for or on behalf of customers and PAB account holders for several days or longer prior to the next required customer and PAB reserve computations and deposits into the customer and PAB reserve bank accounts.²⁷⁴

Under preexisting paragraph (e)(3)(i) of Rule 15c3-3, the required balances in customer and PAB reserve bank accounts (net cash owed to customers or PAB account holders) are required to be calculated weekly, and the resulting amount must be held in the customer and PAB reserve bank accounts until the date of next required deposit.²⁷⁵ However, the value of the net cash owed to customers or PAB account holders may change daily due to customers' and PAB account holders' transactions and re-deployment of undeployed funds. On a weekly basis, this could result in a large intra-week mismatch between the customer or PAB reserve bank account balances and actual net cash owed to customers or PAB account holders. This intra-week mismatch introduces several potential risks that are not internalized by carrying broker-dealers.

First, the mismatch between the calculated and the actual amounts of net cash owed to customers and PAB account holders introduces a risk to other SIPC members. More specifically, if a liquidation of a carrying broker-dealer with a large mismatch of cash in its customer and PAB reserve bank accounts is carried out under SIPA, it increases the risk that the SIPC Fund balance would be used if there are not enough assets in the carrying broker-dealer's estate to cover the difference between the net cash owed to customers and the amount in the reserve bank

account,²⁷⁶ which may trigger a subsequent increase in contributions from other SIPC members. This risk may be exacerbated for carrying broker-dealers experiencing large aggregate intra-week mismatches. As a result, the SIPC Fund may be at a higher risk of depletion. For example, as discussed in section IV.B.2. below, mismatches are common among carrying broker-dealers of all sizes (as measured by average total credits). The largest carrying broker-dealers with average total credits of at least \$500 million²⁷⁷ had mismatches of between 11% and 20% during 2023.²⁷⁸

Second, this mismatch introduces a risk to customers and PAB account holders of carrying broker-dealers. To the extent that there is mismatch of funds in the customer or PAB reserve bank account, a failure of a carrying broker-dealer may result in the delayed reimbursement of customer or PAB securities and cash. In this scenario, the funds owed to customers or PAB account holders may be tied up in liquidation proceedings and these customers or PAB account holders would have to wait to receive their funds back until the broker-dealer liquidation process is carried out under SIPA, which may take a significant amount of time. In addition, customers and PAB account holders may not receive their funds in full if the liquidation proceedings do not result in a full recovery of funds owed to customers and PAB account holders. This risk may be exacerbated for potential failures of carrying broker-dealers with large amounts of customer or PAB reserve bank account balances,

²⁷⁶ See section I.C.2. of this release (discussing broker-dealer liquidations and SIPA, including the funding and balance of the SIPC Fund). For an example of a customer reserve bank account mismatch, one carrying broker-dealer had a deficit in its customer reserve bank account equal to \$5 billion, yet the level of the SIPC Fund at the time was at \$2 billion. See Merrill Lynch, Pierce, Fenner & Smith Incorporated and Merrill Lynch Professional Clearing Corp., Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to sections 15(b) and 21(c) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, Exchange Act Rel. No. 78141 (June 23, 2016).

²⁷⁷ The Proposing Release contained a typographical error stating that the largest carrying broker-dealers with average total credits of at least \$500 billion (instead of \$500 million) had mismatches of between 10 and 18% in 2022. Despite this typographical error in the text, the Proposing Release correctly calculated the mismatches using the carrying broker-dealers with at least \$500 million average total credits.

²⁷⁸ Based on FOCUS Report data for 2023. A mismatch is calculated as a carrying broker-dealer's deposit (FOCUS Report Line 4520) divided by its reserve account balance from any month (Line 4530). These data are discussed in detail in section IV.B.2 of this release, see table 5 in that section and related discussion.

such as when these carrying broker-dealers experience large aggregate intra-week mismatches between the reserve bank account balances and actual net cash owed to customers or PAB account holders.

The requirement to perform daily customer and PAB reserve computations for carrying broker-dealers with large amounts of total credits is aimed to address these risks and is expected to benefit customers, PAB account holders, and other stakeholders of the affected carrying broker-dealers by more dynamically matching the net cash owed to customers or PAB account holders and the customer and PAB reserve bank account balances. More specifically, the daily customer and PAB reserve computations will safeguard customers and PAB account holders of the affected carrying broker-dealers by covering the mismatches promptly, and hence neutralizing the potential of some of these mismatches to build over the week, and thereby reducing the risk of a potential delay in the return of cash and securities in the event of a failure of the affected carrying broker-dealer. Daily computations will also decrease the risk that other stakeholders, such as contributors to the SIPC Fund, would need to provide additional resources (e.g., in the form of increased assessments) to address a failure of a carrying broker-dealer.²⁷⁹

The final amendments may result in increased compliance costs for the affected carrying broker-dealers. To the extent that each customer or PAB reserve computation takes a significant amount of time or involves manual processes, affected carrying broker-dealers will experience a one-time set up cost related to switching to a daily computation, as well as an increase in ongoing costs related to more frequent computations. These costs, like the aforementioned benefits, may ultimately be passed through to customers and PAB account holders of the affected carrying broker-dealers.

Below, the Commission discusses many of the benefits and costs that are likely to result from the adoption of these amendments. To the extent practicable, the effects are quantified based on available data. Although the Commission is providing estimates of direct compliance costs where possible, customer and PAB account holders' may modify their activity in accounts maintained by the affected carrying broker-dealers and customers and PAB

²⁷⁹ If the SIPC Fund is used to advance money to customers, reducing its balance, this reduction may trigger increased contributions from member broker-dealers, as displayed in table 1 in section I.C.2. of this release.

²⁷⁴ See section I.A. of this release (discussing the risk of a mismatch of funds owed and funds reserved under Rule 15c3-3).

²⁷⁵ See section I.C.1. of this release (discussing customer protection requirements of Rule 15c3-3 for customers and PAB account holders).

account holders of non-affected carrying broker-dealers might shift their capital to the affected carrying broker-dealers due to such increased protections; and carrying broker-dealers near the \$500 Million Threshold may adjust their business activities as a result of the final amendments. Moreover, the complexity of customers' and PAB account holders' activities for different carrying broker-dealers makes it challenging for the Commission to estimate the potential costs for various groups of the affected carrying broker-dealers. While the Commission has attempted to quantify economic effects where possible, much of the discussion of economic effects is qualitative in nature. The Commission sought comment on all aspects of the economic analysis,²⁸⁰ especially any data or information that would enable a quantification of the proposal's economic effects and the analysis below takes into consideration relevant comments received.

B. Baseline

1. Regulatory Baseline

The baseline against which the costs, benefits, and the effects on efficiency, competition and capital formation of the final amendments are measured consists of current requirements for carrying broker-dealers under the customer protection rule and the current market structure and regulatory framework. As discussed in detail below, the economic analysis appropriately considers existing regulatory requirements as part of its economic baseline against which the benefits and costs of the final amendments are measured.²⁸¹

Several commenters expressed concern about the need to concurrently comply with the final amendments and "other core regulatory obligations."²⁸²

Specifically, commenters mentioned the rule and amendments adopted in the Settlement Cycle Adopting Release²⁸³ and two other regulatory obligations, namely the new margin requirements under FINRA Rule 4210 and the CAT CAIS amendments.²⁸⁴ Although the specific regulatory obligations mentioned by commenters have been implemented,²⁸⁵ the Commission has

T+1, CAT CAIS and others with 2024 compliance dates causing resource strain to effectively deliver the necessary analysis and technology solutions needed to move to a daily calculation"). See also SIFMA Letter at 12; Raymond James Letter at 6.

²⁸³ *Shortening the Securities Transaction Settlement Cycle*, Exchange Act Release No. 96930 (Feb. 15, 2023) [88 FR 13872 (Mar. 6, 2023)] ("Settlement Cycle Adopting Release"). The rules and rule amendments adopted in the Settlement Cycle Adopting Release shorten the standard settlement cycle for most broker-dealer transactions from two business days after the trade date to one business day after the trade date. To facilitate orderly transition to a shorter settlement cycle, a new rule also establishes requirements related to completing allocations, confirmations, and affirmations no later than the end of trade date for the processing of institutional transactions subject to the rule; requires registered investment advisers to make and keep records of each confirmation received, and of any allocation and each affirmation sent or received, with a date and time stamp for each indicating when it was sent or received; and requires clearing agencies that provide a central matching service ("CMSPs") to establish, implement, and enforce policies and procedures reasonably designed to facilitate straight-through processing ("STP") and to file an annual report regarding progress with respect to STP. The rule has a compliance date of May 28, 2024. Settlement Cycle Adopting Release, sections VII, VIL.B.3.

²⁸⁴ See, e.g., ASA Letter 2 at 2 (stating "Our concern is that many of the same resources in the business and technology groups are delivering against other core regulatory obligations including T+1, CAT CAIS and others with 2024 compliance dates causing resource strain to effectively deliver the necessary analysis and technology solutions needed to move to a daily calculation"); SIFMA Letter at 12 (stating that the implementation of the final amendments will "call on the same personnel, technology, and monetary resources as [the T+1 initiative, the implementation of the changes to margin requirements under FINRA Rule 4210 and the implementation of the CAIS requirements] to implement them properly"); Raymond James Letter at 6 (noting that other broker-dealers are implementing systems to comply with the new requirements and regulations for the amendments to FINRA Rule 4210 and the standards of the national Consolidated Audit Trail ("CAT"), each of which will become effective in May 2024).

²⁸⁵ The date of the settlement requirements for the transition set forth in the Settlement Cycle Adopting Release as well as the requirements under FINRA Rule 4210 and CAT CAIS have passed. See *supra* note 283 discussing the relevant filing and compliance dates for the Settlement Cycle Adopting Release. For compliance dates for the FINRA Rule 4210 requirements, see FINRA, Regulatory Notice 23-14 (Aug. 18, 2023); see also Exchange Act Release No. 98349 (Sept. 11, 2023) [88 FR 63633 (Sept. 15, 2023)] (Notice of filing for immediate effectiveness File No. SR-FINRA-2023-011). For compliance dates for the CAT CAIS requirements, see Interim Reporting Obligation 4 and Full CAIS Go-Live (Jan. 22, 2024), available at <https://www.catnmsplan.com/sites/default/files/2024-01/01.22.24-CAT-Alert-2023-01.pdf> (establishing May 31, 2024 as the compliance date for compliance with the CAT CAIS requirements).

considered the potential effects on entities affected by the final amendments that are implementing other recently adopted rules during the compliance period for these amendments. These recently adopted rules include the Rule 10c-1a Adopting Release,²⁸⁶ the Treasury Clearing Release,²⁸⁷ the Rule 605 Adopting

²⁸⁶ *Reporting of Securities Loans*, Exchange Act Release No. 98737 (Oct. 13, 2023) [88 FR 75644 (Nov. 3, 2023)] ("Rule 10c-1a Adopting Release"). This rule is designed to increase the transparency of information available to brokers, dealers, and investors with respect to loans or borrowing securities, and requires any covered person who agrees to a covered securities loan on behalf of itself or another person to report specified information about the covered securities loan to a registered national securities association (currently FINRA is the only registered national securities association)—or rely on a reporting agent to do so—and requires the registered national securities association to make certain information it receives available to the public. Covered persons will include market intermediaries, securities lenders, and broker-dealers, while reporting agents include certain brokers, dealers, or registered clearing agencies. The rule's compliance dates require that the registered national securities association propose rules pursuant to Rule 10c-1a(f) by May 2, 2024, and the proposed rules shall be effective no later than January 2, 2025; that covered persons report Rule 10c-1a information to a registered national securities association on or by January 2, 2026 (which requires that the registered national securities association have implemented data retention and availability requirements such for reporting); and that the registered national securities association publicly report Rule 10c-1a information by April 2, 2026. Rule 10c-1a Adopting Release, section VIII.

²⁸⁷ *Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule with Respect to U.S. Treasury Securities*, Exchange Act Release No. 99149 (Dec. 13, 2023) [89 FR 2714 (Jan. 16, 2024)] ("Treasury Clearing Release"). Among other things, the amendments require covered clearing agencies for U.S. Treasury securities to have written policies and procedures reasonably designed to require that every direct participant of the covered clearing agency submit for clearance and settlement all eligible secondary market transactions in U.S. Treasury securities to which it is a counterparty. The compliance date is March 18, 2024, for covered clearing agencies to file any proposed rule changes pursuant to final Rule 17Ad-22(e)(6)(i), 17Ad-22(e)(18)(iv)(c), and 15c3-3, which must be effective by March 31, 2025. With respect to the changes to Rule 17Ad-22(e)(18)(iv)(A) and (B), (i) covered clearing agencies will be required to file any proposed rule changes regarding those amendments no later than June 14, 2024, and those changes must be effective by December 31, 2025, for cash market transactions encompassed by section (ii) of the definition of an eligible secondary market transaction, and by June 30, 2026 for repo transactions encompassed by section (i) of the definition of an eligible secondary market transactions. Compliance by the direct participants of a U.S. Treasury securities covered clearing agency with the requirement to clear eligible secondary market transactions would not be required until December 31, 2025, and June 30, 2026, respectively, for cash and repo transactions. See Treasury Clearing Release, section III. Finally, the Commission amended the broker-dealer customer protection rule to permit margin required and on deposit with covered clearing agencies for U.S. Treasury securities to be included as a debit in the reserve formulas for accounts of customers

²⁸⁰ See Proposing Release, 88 FR at 45859.

²⁸¹ See, e.g., *Nasdaq v. SEC*, 34 F.4th 1105, 1111–15 (D.C. Cir. 2022). This approach also follows Commission staff guidance on economic analysis for rulemaking. See Commission staff's "Current Guidance on Economic Analysis in SEC Rulemaking" (Mar. 16, 2012), available at https://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf ("The economic consequences of proposed rules (potential costs and benefits including effects on efficiency, competition, and capital formation) should be measured against a baseline, which is the best assessment of how the world would look in the absence of the proposed action. The baseline includes both the economic attributes of the relevant market and the existing regulatory structure."). The best assessment of how the world would look in the absence of the proposed or final action typically does not include recently proposed actions, because doing so would improperly assume the adoption of those proposed actions.

²⁸² See, e.g., ASA Letter 2 at 2 (stating "Our concern is that many of the same resources in the business and technology groups are delivering against other core regulatory obligations including

Release,²⁸⁸ the Electronic Submission Adopting Release,²⁸⁹ and the Customer Notification Adopting Release.²⁹⁰ These adopted rules were not included as part of the baseline in the Proposing Release because they were not yet adopted at that time, but they are part of the baseline against which this economic analysis considers the benefits and costs of the final amendments. Accordingly, this economic analysis also considers potential economic effects arising from any overlap that may exist between the compliance period for the final

and proprietary accounts of broker-dealers, subject to certain conditions.

²⁸⁸ *Disclosure of Order Execution Information*, Exchange Act Release No. 99679 (Mar. 6, 2024) [89 FR 26428 (Apr. 15, 2024)] (“Rule 605 Adopting Release”). The Commission adopted amendments to rules requiring disclosures for order executions in NMS stocks, including expanding the scope of reporting entities, modifying the scope of orders covered by the rule, and modifying the information required to be reported under the rule. The rule has an effective date of June 14, 2024 and, with a few exceptions, a compliance date of December 14, 2025. See Rule 605 Adopting Release, section VII.

²⁸⁹ *Electronic Submission of Certain Materials Under the Securities Exchange Act of 1934; Amendments Regarding the FOCUS Report*, Release Nos. 33–11342; 34–101925; IC–35420 (Dec. 16, 2024) (“Electronic Submission Adopting Release”). Under the amendments, certain forms and other filings or submissions must be filed or submitted electronically on the Commission’s Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) system, using structured data where appropriate. This includes certain forms, reports, notices, schedules and exhibits provided by broker-dealers, security-based swap dealers, self-regulatory organizations (“SROs”) and major security-based swap participants. The amendments also require the information currently contained in Form 19b–4(e) to be publicly posted on the SRO’s website, and they remove the manual signature requirements for SRO proposed rule change filings. The amendments are effective 60 days after publication in the **Federal Register**, and the compliance dates range from June 30, 2025, to June 30, 2028, depending on the type of filing or submission and on whether the filing firm’s minimum fixed dollar net capital requirement is less than \$250,000 as of Dec. 31, 2024. Electronic Submission Adopting Release, section VIII.

²⁹⁰ *Regulation S–P: Privacy of Consumer Financial Information and Safeguarding Customer Information*, Release Nos. 34–100155; IA–6604; IC–35193 (May 15, 2024) [89 FR 47688 (June 3, 2024)] (“Customer Notification Adopting Release”). The Commission amended Regulation S–P to require brokers, dealers, funding portals, investment companies, registered investment advisers, and transfer agents to adopt written policies and procedures for incident response programs to address unauthorized access to or use of customer information. These must include procedures for providing timely notification to individuals affected by an incident involving sensitive customer information with details about the incident and information designed to help affected individuals respond appropriately. Among other things, the amendments also extended to transfer agents the requirements to safeguard customer records and information, and they broadened the scope of the information covered by those requirements. The compliance date for larger entities is December 3, 2025, and June 3, 2026, for smaller entities. Customer Notification Adopting Release, section II.F.

amendments and the compliance periods for these other adopted rules.²⁹¹

a. Rule 15c3–3

Carrying broker-dealers are broker-dealers that maintain custody of customer securities and cash. Rule 15c3–3, known as the broker-dealer customer protection rule, is designed to give specific protection to customer funds and securities. For example, a broker-dealer is “virtually” precluded from using customer funds to buy securities for its own account.²⁹²

Preexisting Rule 15c3–3 specifies that a carrying broker-dealer must undertake two primary steps to safeguard these customer assets. First, carrying broker-dealers are required to maintain physical possession or control over customers’ fully paid and excess margin securities.²⁹³ Second, a carrying broker-dealer must maintain a customer reserve bank account that must hold funds and/or qualified securities that are at least equal in value to the net cash owed to customers. The amount of net cash owed to customers is computed weekly as of the close of the last business day of the week pursuant to the customer reserve computation.²⁹⁴ Performing a customer reserve computation requires a carrying broker-dealer to add up customer credit items and then subtract from that amount customer debit items. To ensure accuracy of the computations, these credit and debit items are reconciled with other firm data and the computations pass through pre-established internal controls.²⁹⁵ If credit items exceed debit items, the net amount must be on deposit in the customer reserve bank account.²⁹⁶ A carrying broker-dealer also is required to make and maintain a record of each computation.²⁹⁷ Rule 15c3–3 also specifies the way a carrying broker-dealer carries accounts that hold proprietary securities and cash of other

broker-dealers, known as PAB accounts.²⁹⁸ Broker-dealers are not within the definition of “customer” for purposes of Rule 15c3–3, however, the definition of “customer” under SIPA, includes broker-dealers with a proprietary securities account at a carrying broker-dealer. As discussed in more detail in section I.C.2. of this release, broker-dealers—as SIPA customers—have the right to share *pro rata* with other customers in the customer property in a SIPA liquidation if there is a shortfall in the amount the failed broker-dealer owes its customers. Because broker-dealers that are SIPA customers are entitled to a *pro rata* share of customer property,²⁹⁹ Rules 15c3–3 and 15c3–3a require carrying broker-dealers to: (1) perform a PAB reserve computation in addition to the customer reserve computation;³⁰⁰ (2) establish and hold cash and/or qualified securities in their PAB reserve bank account in an amount determined by the PAB reserve computation; and (3) obtain and maintain physical possession or control of securities carried for a PAB account holder, unless the carrying broker-dealer has provided written notice to the PAB account holder that it may use those securities in the ordinary course of its securities business and has provided opportunity for the PAB account holder to object to such use.³⁰¹

b. SIPA and the SIPC Fund

As described in section I.C.2. of this release, SIPA established SIPC and directed SIPC to establish the SIPC Fund.³⁰² At the end of 2023, SIPC reported 3,297 members.³⁰³ The SIPC Fund totaled approximately \$4.47 billion as of December 31, 2023, and currently the objective is to build it to a level of \$5 billion. To date, SIPC has carried out 330 liquidations since its inception with approximately \$141.6 billion in assets distributed to customers.³⁰⁴ Of that, about \$141.6 billion came from debtors’ estates (*i.e.*, SIPC broker-dealer members’ estates),

²⁹¹ See *infra* section IV.C.3. of this release.

²⁹² See section I.C.1. of this release (describing the purposes of Rule 15c3–3).

²⁹³ See section I.C.1. of this release (describing possession and control requirements for customers’ securities).

²⁹⁴ Some carrying broker-dealers choose to perform a daily computation. See paragraph (e)(3)(iv) of Rule 15c3–3. Further, the rule permits carrying broker-dealers in certain limited circumstances to perform a monthly computation. See paragraph (e)(3)(i) of Rule 15c3–3. See also section I.C.1. of this release (describing the customer reserve bank account and customer reserve computation).

²⁹⁵ See SIFMA Letter at 4.

²⁹⁶ See paragraph (e) of Rule 15c3–3. See also section I.C.1. of this release (describing the customer reserve bank account and customer reserve computation).

²⁹⁷ See paragraph (e)(3)(v) of Rule 15c3–3. Each record must be preserved in accordance with Rule 17a–4. *Id.*

²⁹⁸ See section I.C.1. of this release (describing Rule 15c3–3 and PAB accounts).

²⁹⁹ See section I.C.2. of this release (describing broker-dealer liquidations and SIPA).

³⁰⁰ See section I.C.1. of this release (describing Rule 15c3–3 and customer accounts).

³⁰¹ See section I.C.1. of this release (describing Rule 15c3–3 and PAB accounts).

³⁰² See 15 U.S.C. 78ccc(a)(1) and 78ddd(a)(1).

³⁰³ See 2023 SIPC Annual Report, table 2, at 10.

³⁰⁴ As of the end of 2023. See section I.C.2. of this release, describing broker-dealer liquidations and SIPA. The volume of proceedings was highest in the 1970s (15 per year), while between 1980 and 2003 the number averaged about seven per year. Since 2003 the average has been one per year (with the highest number, five, occurring in 2008, while there were 10 years with none). See 2023 SIPC Annual Report, Figure 1, at 8.

while \$915.7 million came from the SIPC Fund.³⁰⁵

c. Reserve Account Requirement for Security-Based Swaps

In 2019, the Commission adopted customer segregation requirements for broker-dealers and SBSBs with respect to customer money, securities, and property related to security-based swaps.³⁰⁶ Under these requirements, broker-dealers (including broker-dealers that are also SBSBs) are required to perform a separate weekly security-based swap customer reserve computation and have a separate security-based swap customer reserve account that must hold the net amount of cash owed to security-based swap customers.³⁰⁷ These requirements were based in part on the requirements of Rules 15c3–3 and 15c3–3a discussed above.³⁰⁸

2. Affected Broker-Dealers

Table 2 presents the universe of broker-dealers by presence of carrying activities.³⁰⁹ As of December 2023, 157 broker-dealers identified in Line 40 of the FOCUS Report reported that they carry their own customer accounts. Among these, 64 reported having only customer credits, 64 reported having both customer and PAB credits, none reported having only PAB credits,³¹⁰ and 14 broker-dealers reported having no customer credits or debits. Further, 15 broker-dealers reported having exemptions from the requirements of Rule 15c3–3, including performing a customer reserve computation.³¹¹ In addition, 34 broker-dealers that did not identify themselves as those that carry their own customer accounts in Line 40 of the FOCUS Report reported customer and/or PAB credits in their customer or

PAB reserve computations. Among these, five broker-dealers had both customer and PAB credits, 28 broker-dealers had customer credits only, and one broker-dealer had PAB account credits only.

When the Commission computed average total credits using data for January 2023 through December 2023, the Commission estimated that there are 191 broker-dealers (“carrying broker-dealers”) that currently fall within the scope of the Rule 15c3–3 (though of this group, 29 carrying broker-dealers reported zero customer or PAB credits in 2023). In aggregate, these carrying broker-dealers hold approximately 83% of all broker-dealer assets,³¹² and report approximately \$1.1 trillion in total credits and approximately \$0.93 trillion in total debits, as of December 2023.³¹³

TABLE 2—BROKER-DEALERS BY CARRYING ACTIVITY, 2023^a

Broker-dealer type	Number	Total assets, \$B	Total credits, \$B		Total debits, \$B	
			Monthly average	Year-end	Monthly average	Year-end
<i>Carrying its own customer accounts</i>	157	4,782.7	1,027.4	1,102.7	825.7	922.4
—with positive customer and PAB credits	64	4,143.0	993.8	1,079.0	794.5	901.1
—with positive customer credits only	64	570.6	33.5	23.7	31.2	21.3
—with zero reported credits	14	64.2	0	0	0	0
—with reporting exemptions	15	5.0	.....	.....	.....	.....
<i>Not carrying its own customer accounts</i>	34	110.1	20.5	21.9	6.3	7.8
—with positive customer and PAB credits	5	49.6	2.0	2.4	1.8	2.3
—with positive customer credits only	28	59.7	18.4	19.2	4.4	5.2
—with positive PAB credits only	1	0.8	0.06	0.4	0.07	0.4
<i>Without any carrying activities</i>	3,208	1013.8	.....	.....	.....	.....
Total	3,399	5,906.6	1,047.9	1,124.6	832.0	930.2

^a Data are for calendar year 2023. The Commission uses monthly FOCUS Reports to calculate average monthly total credits and total debits. For each carrying broker-dealer, total credits are calculated as the sum of the average monthly amount of customer credits reported on Line 4430 and the average monthly amount of PAB credits reported on Line 2170. Similarly, for each broker-dealer, total debits are calculated as the sum of the average monthly amount of customer debits reported on Line 4472 and the average monthly amount of PAB debits reported on Line 2230.

³⁰⁵ See 2023 SIPC Annual Report at 8–9, for the statistics in this paragraph. SIPC refers to distributions to customers as “advances,” though the 2023 SIPC Annual Report does not detail the timing of those advances in the 330 proceedings.

³⁰⁶ See SBS Segregation Adopting Release. See also section II.F. of this release (discussing reserve account requirements for security-based swaps).

³⁰⁷ See paragraph (p) of Rule 15c3–3; 17 CFR 240.15c3–3b. See also section II.F. of this release (discussing reserve account requirements for security-based swaps, and SBS FAQ 1 for staff views). SBSBs that are not broker-dealers (other than OTC derivatives dealers) are subject to the segregation requirements of Exchange Act Rules 18a–4 and 18a–4a.

³⁰⁸ See *id.* See also section I.C.1. of this release (discussing the requirements of Rules 15c3–3 and 15c3–3a).

³⁰⁹ Based on monthly FOCUS Report data for the reporting year 2023. The Commission assumes that

broker-dealers that did not file FOCUS Reports for the last month of 2023 are no longer in business.

³¹⁰ PAB account holders are not considered customers under paragraph (a)(1) of Rule 15c3–3. See section I.C.1. of this release (describing Rule 15c3–3 and PAB accounts).

³¹¹ There are three exemptions to Rule 15c3–3, each related to the procedure broker-dealers follow when they receive customer funds and securities. The first exemption is for broker-dealers that partake in limited mutual fund and insurance-related business. The exemption allows such firms to briefly handle customer funds, but not maintain indefinite custody of those funds or securities. The second exemption applies to broker-dealers that clear their transactions on what is known as a “receive versus payment/delivery versus payment (RVP/DVP) basis.” In an RVP/DVP settlement, a broker-dealer executes simultaneous exchanges of an equal value of funds for securities. As such, the broker-dealer does not end up holding any residual

customer funds or securities. The third exemption is also available to broker-dealers that temporarily handle customer funds. This broker-dealer, called an “introducing broker,” establishes accounts in the name of its customers at another broker-dealer, a “clearing broker.” The clearing broker then maintains custody of those customers’ cash and securities in those accounts on a fully disclosed basis. See paragraph (k) of Rule 15c3–3.

³¹² Total assets are reported on Line 940 of the FOCUS Report.

³¹³ The Commission uses monthly FOCUS Reports to calculate total credits and total debits. For each carrying broker-dealer, total credits are calculated as the sum of customer credits reported on Line 4430 and the PAB credits reported on Line 2170. Similarly, for each carrying broker-dealer, total debits are calculated as the sum of the customer debits reported on Line 4472 and the PAB debits reported on Line 2230.

Table 3 displays the carrying broker-dealers that reported positive customer or PAB credits in 2023 into groups

based on the size of their average monthly total customer and PAB credits

(averaged over January 2023 to December 2023).³¹⁴

TABLE 3—CARRYING BROKER-DEALERS BY SIZE OF AVERAGE TOTAL CREDITS, 2023

	Number	Total assets (\$B)	Total customer credits, \$MM			Total PAB credits, \$MM			Total credits, \$MM	
			Number	Mean	Median	Number	Mean	Median	Mean	Median
>\$0–100MM	87	272.2	87	13.6	1.9	22	0.9	0	14.5	2.2
\$100–250MM	14	132.3	14	157.1	152.3	8	3.2	0	160.3	153.9
\$250–500MM	12	341.6	12	296.1	296.6	8	61.0	13.5	357.2	315.3
\$500MM–1B	8	122.7	8	673.6	633.1	7	24.1	2.5	697.7	633.2
\$1–5B	17	337.3	17	2,239.8	2,103.3	15	104.6	6.3	2,344.3	2,136.5
\$5–10B	6	122.9	6	6,554.2	6,702.3	6	646.8	64.8	7,201.0	6,734.2
≥\$10B	18	3,494.7	18	46,919.0	33,591.7	16	5,939.0	183.0	52,858.1	36,846.2
Total ^a	162	4,823.6	162	5,767.1	57.7	82	701.3	0.0	6,468.4	63.0

^a Table excludes carrying broker-dealers with zero reported credits in 2023.

The final amendments modify the proposal by raising the proposed \$250 Million Threshold to \$500 million. Thus, the daily computation requirement applies only to carrying broker-dealers whose average total credits are above the \$500 Million Threshold. Therefore, the Commission estimates that, based on data for January

2023 through December 2023, the scope of affected entities was 49 carrying broker-dealers, which held 99.3% of aggregate total credits of all carrying broker-dealers.

The number of affected carrying broker-dealers may vary month to month since a 12-month rolling average is used for the calculation of the \$500

Million Threshold. To provide information on how the number of entities may thus vary over time, Figure 1 displays the number of affected carrying broker-dealers for a sequence of 12-month rolling averages beginning with January 2023 and extending through May 2024.³¹⁵

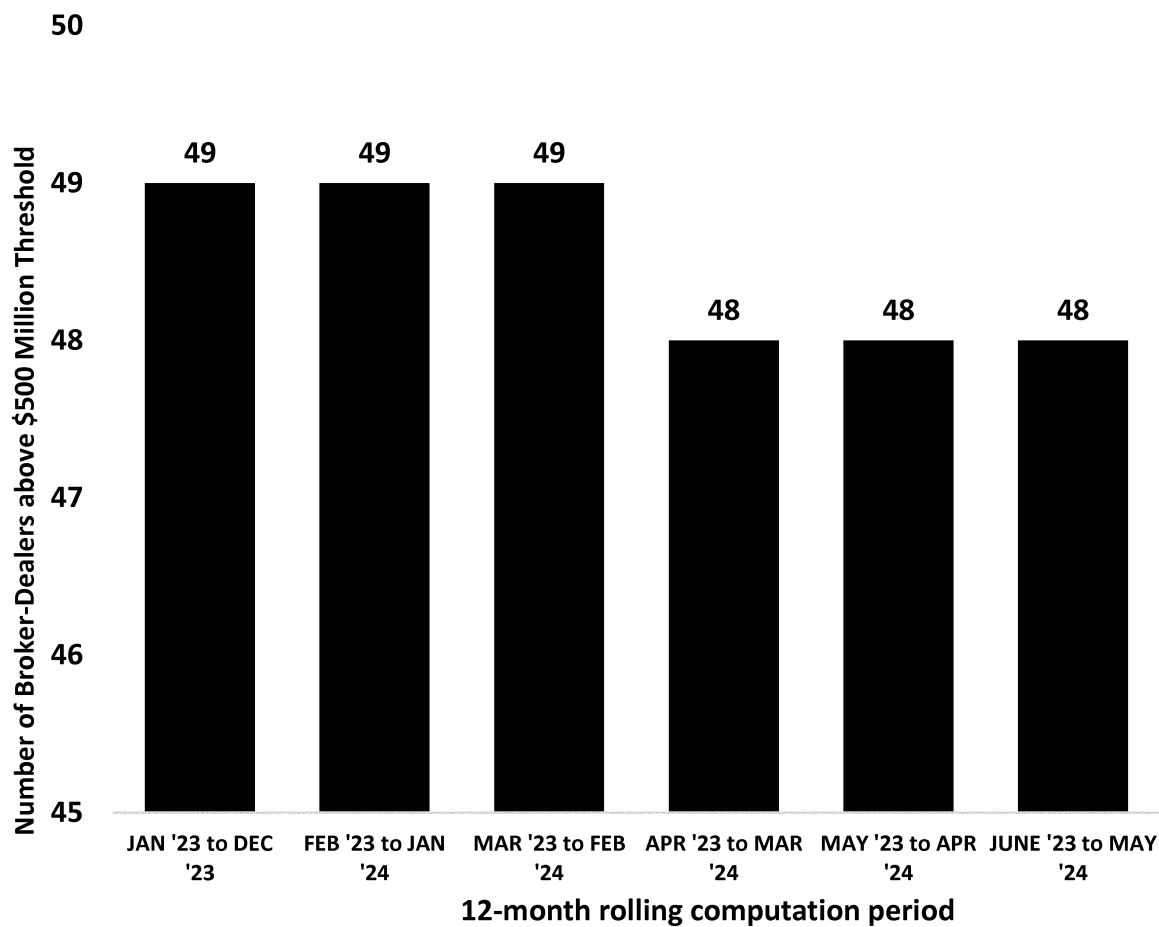
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³¹⁴ The grouping is based on the average monthly amount of customer credits reported on Line 4430 and the average monthly amount of PAB credits reported on Line 2170.

³¹⁵ Figure created from monthly FOCUS Reports, from January 2023 through May 2024. The first 12-month computation period is January 2023 to December 2023, the second period is February 2023 through January 2024, and so on. The total number

of carrying broker-dealers that reported positive total credits in each of the six rolling periods shown in Figure 1 equaled 162, 160, 160, 159, 158 and 160, respectively.

Figure 1. Number of Affected Broker-Dealers under 12-Month Rolling Average, Over the Period from January 2023 – May 2024



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As shown in Figure 1, the number of affected carrying broker-dealers varied monthly from 49 to 48 over the period from January 2023 through May 2024. There was little variation, however, in the identity of the affected carrying broker-dealers. The same 47 carrying

broker-dealers met the \$500 Million Threshold in each month, and from one to two additional carrying broker-dealers met the \$500 Million Threshold in any given month.³¹⁶ In total, over this period, 50 different carrying broker dealers would have been affected.

With respect to the frequency of computation, based on the January 2023 to December 2023 period (12-month period), table 4 displays the number of carrying broker-dealers performing their computations daily, weekly, and monthly in each size category for average total credits.³¹⁷

TABLE 4—RESERVE FORMULA COMPUTATION FREQUENCY, 2023

Average total credits	Number	Customer reserve formula				PAB reserve formula			
		Number	Daily	Weekly	Monthly	Number	Daily	Weekly	Monthly
>\$0–100MM	87	87	1	72	11	22	0	18	1
\$100–250MM	14	14	0	14	0	8	0	6	0
\$250–500MM	12	12	0	12	0	8	0	8	0
\$500MM–1B	8	8	0	8	0	7	0	7	0
\$1–5B	17	17	1	16	0	15	1	14	0

³¹⁶One of the carrying broker-dealers above the \$500 Million Threshold withdrew its broker-dealer registration from the Commission in February 2024. This carrying broker-dealer is excluded from the number of affected carrying broker-dealers in each

of the three rolling periods following the rolling period that covers March 2023 to February 2024.

³¹⁷Data from monthly FOCUS Reports filed for the 2023 calendar year. A small number of carrying broker-dealers did not identify any customer or PAB reserve computation frequency (for example,

for broker-dealers reporting positive credits in customer accounts, one failed to report reporting frequency in its FOCUS Report). Therefore, the total number of carrying broker-dealers exceeds the sum of the number of broker-dealers who identified a daily, weekly, or monthly computation frequency.

TABLE 4—RESERVE FORMULA COMPUTATION FREQUENCY, 2023—Continued

Average total credits	Number	Customer reserve formula				PAB reserve formula			
		Number	Daily	Weekly	Monthly	Number	Daily	Weekly	Monthly
\$5–10B	6	6	0	6	0	6	0	6	0
≥10B	18	18	8	10	0	16	8	8	0
Total	162	162	10	138	11	82	9	67	1

As shown in table 4, out of 162 carrying broker-dealers that reported the frequency of their customer reserve computations, 10 carrying broker-dealers performed the customer reserve computation daily, among which 9 also performed the PAB reserve computation daily and one which does not report carrying PAB accounts. Among carrying broker-dealers performing the customer reserve computation daily, 9 had total credits above the \$500 Million Threshold. These 9 carrying broker-dealers accounted for 61.9% of the total amount of average total credits among all carrying-broker dealers with positive customer or PAB credits reported in 2023.³¹⁸ All the carrying broker-dealers performing the PAB reserve computation daily had total credits above the \$500 Million Threshold.³¹⁹

Based on the January 2023 to December 2023 period, there were 40 carrying broker-dealers with average total credits equal to \$500 million or above performing the customer reserve computation weekly and there were no carrying broker-dealers with average total credits equal to \$500 million or above performing the customer reserve computation monthly. Among the 40 carrying broker-dealers performing a weekly customer reserve computation, there were 35 carrying broker-dealers that performed the PAB reserve computation weekly and there were no carrying broker-dealers with average total credits equal to \$500 million or above that performed the PAB reserve

computation monthly. Based on the data for 2023, the Commission estimates that 40 carrying broker-dealers will be affected by the final amendments.

Table 5 below shows the distribution of deposits required to be put into the customer and PAB reserve bank accounts or permitted withdrawals after the reserve computation performed at the end of the reporting period relative to the reserve bank account balance.³²⁰ These metrics provide a picture of the “mismatch” that occurs with respect to customer and PAB accounts. Specifically, this mismatch is calculated as a carrying broker-dealer’s deposit divided by its reserve account balance from any month.³²¹ The average of these mismatches for each broker-dealer over 2023 is computed to determine the “average mismatches.” For the “maximum mismatches,” each broker-dealer’s largest deposit amount in 2023 is divided by its reserve account balance for that month.³²² The distributions of the average and maximum mismatches are presented in the columns “Average Mismatch” and “Maximum Mismatch” of table 5.

The average mismatches and maximum mismatches were generally lower for carrying broker-dealers below the \$500 Million Threshold, than for carrying broker-dealers above the \$500 Million Threshold.

With respect to customer reserve accounts, shown in panel A, the mismatches were larger for the groups of carrying broker-dealers with over \$500 million in average total credits, with the

largest occurring for carrying broker-dealers within the \$5 to \$10 billion range. On the aggregate level, for carrying broker-dealers above the \$500 Million Threshold, the average mismatch was 15.7%, while it was only 6.4% for carrying broker-dealers below the \$500 Million Threshold.³²³ Similarly, the maximum mismatch for carrying broker-dealers above the \$500 Million Threshold was 36.1%, while it was 20.9% for carrying broker-dealers below the \$500 Million Threshold.³²⁴

For PAB reserve accounts, shown in panel B, the largest average mismatches and the maximum mismatches occurred for the groups of carrying broker-dealers with over \$250 million in average total credits, with the largest occurring for carrying broker-dealers with over \$10 billion in average total credits.

Panels C and D of table 5 display the average mismatch and maximum mismatch metrics comparing the large carrying broker-dealers (over \$1 billion in average total credits) that currently compute their reserve accounts daily versus those that do so weekly. With respect to customer reserve accounts (panel C), carrying broker-dealers that compute daily have larger average reserve balances and deposits, and lower average and maximum mismatches than those that compute weekly.

For PAB reserve accounts (panel D), the average or maximum mismatch do not appear as correlated with daily versus weekly filing.

³¹⁸ Calculated from monthly FOCUS Reports for 2023.

³¹⁹ The carrying broker-dealers identified as computing daily in the January 2023 to December 2023 sample were also computing daily in the June 2023 to May 2024 period (for both customer and PAB accounts). The June 2023 to May 2024 sample included one additional carrying broker-dealer with average total credits below the \$500 Million Threshold that performed customer reserve computations on a daily basis.

³²⁰ Calculated from monthly FOCUS Reports for 2023. The Commission isolated deposits (equal to or greater than zero) from any month (Line 4520), relative to the reserve account balance, (Line 4530). For PAB reserve bank accounts, deposits and amount in reserve account are FOCUS Lines 2290

and 2300, respectively. The distribution of the averages of the monthly deposits, withdrawals, and reserve account balances (over 2023) are presented in columns ‘Average Deposit’, ‘Average Withdrawal’, and ‘Average Reserve Balance’ of table 5. The Commission also recalculated by defining the deposit category as only values greater than zero, but the average mismatch did not change very much for each category, nor did the pattern seen in the table.

³²¹ A deposit represents the amount that a carrying broker-dealer needs to deposit to close the gap between the amount prescribed by the reserve computation and the actual reserve balance in the bank account.

³²² The Commission isolated the largest monthly deposit amount in 2023 (Line 4520), relative to the

reserve account balance for that month (Line 4530). The same was done for PAB reserve accounts (FOCUS Lines 2290 and 2300, respectively).

³²³ Calculated from monthly FOCUS Reports for 2023. The aggregated average mismatch of 15.7% is calculated as an average of the average mismatches for all carrying broker-dealers that met the \$500 Million Threshold. The same was done for carrying broker-dealers below the \$500 Million Threshold.

³²⁴ Calculated from monthly FOCUS Reports for 2023. The maximum mismatch of 36.1% was calculated as an average of the maximum mismatches for all carrying broker-dealers above the \$500 Million Threshold. The same was done for carrying broker-dealers below the \$500 Million Threshold.

TABLE 5—BROKER-DEALER DEPOSITS AND WITHDRAWALS AS A SHARE OF RESERVE ACCOUNT BALANCE, 2023

Broker-dealer group	Number	Average reserve balance MM	Average deposit MM	Average withdrawal MM	Average mismatch (%)	Maximum mismatch (%)
Panel A: Customer Reserve Accounts						
>\$0–100MM	87	\$9.9	\$0.5	–\$3.0	6.5	19.8
\$100–250MM	14	69.7	3.5	–18.4	6.5	26.5
250–500MM	12	194.7	11.2	–25.6	5.0	22.1
500MM–1B	8	190.8	15.8	–24.1	20.8	42.0
1–5B	17	697.3	56.6	–62.9	15.8	37.9
5–10B	6	2,848.8	512.5	–142.9	24.3	52.1
≥10B	18	11,626.0	784.7	–785.1	10.8	26.7
Panel B: PAB Reserve Accounts						
>0–100 MM	22	1.3	0.03	–0.3	1.7	11.3
100–250 MM	8	10.8	0.2	–2.0	1.3	7.1
250–500 MM	8	87.6	3.9	–21.8	4.5	25.4
500MM–1 B	7	3.2	0.3	–0.7	4.8	21.4
1–5 B	15	45.6	5.8	–20.0	9.8	40.4
5–10 B	6	79.3	12.8	–85.7	4.9	37.6
≥10 B	16	528.0	101.8	–245.7	12.5	49.4
Panel C: Customer Reserve Accounts						
All (weekly and daily):						
≥1B	41	5,810.1	443.0	–395.0	14.8	35.1
Daily:						
≥1B	9	13,028.4	423.9	–978.5	3.8	15.2
Weekly:						
≥1B	32	3,780.0	448.3	–200.5	17.9	40.6
Panel D: PAB Reserve Accounts						
All (weekly and daily):						
≥1B	37	259.7	48.4	–141.5	10.1	43.8
Daily:						
≥1B	9	778.3	148.4	–278.2	10.5	49.7
Weekly:						
≥1B	28	93.0	16.3	–77.1	10.0	41.7

3. Debit Reduction in the Customer Reserve Computation for Certain Broker-Dealers

Several commenters suggested that the Commission reduce the aggregate debit items charge that certain carrying broker-dealers must take when performing their customer reserve computation under Rule 15c3–3.³²⁵ Rule 15c3–1 requires broker-dealers to maintain a minimum level of net capital at all times. Carrying broker-dealers using the alternative method for computing their net capital must maintain minimum net capital of the greater of \$250,000 or 2% of their aggregate debit items computed under the customer reserve computation. In addition, a broker-dealer that uses the alternative method to compute its net capital must provide the Commission with an “early warning” notice when its aggregate debit items in its customer reserve computation fall below 5%. All

carrying broker-dealers with total credits more than \$500 million in their customer reserve computation as of December 31, 2023, use the alternative method. A carrying broker-dealer using the alternative method to compute its minimum net capital requirement must reduce aggregate debit items by 3% when performing its customer reserve computation under Rule 15c3–3. This provision serves to increase the amount of funds a carrying broker-dealer must deposit into its customer reserve bank account.

Commenters recommended that the Commission eliminate the 3% debit reduction and instead apply the 1% debit reduction that currently applies to carrying broker-dealers using the basic method to compute their net capital. One commenter stated a reduction of the 3% debit reduction is warranted because under a daily customer reserve computation the value of debit items and amounts carrying broker-dealers owe customers on any given day are accounted for in the next day’s customer

reserve computation and the difference is protected in the next day’s deposit into the customer reserve bank account.³²⁶ This commenter stated that the new requirement to perform a customer reserve computation daily would reduce the need for any cushion to account for a mismatch and, consequently, would increase liquidity and lower costs for customer financing by allowing carrying broker-dealers to use assets that would otherwise be locked up (in their customer reserve bank account).³²⁷ This commenter further stated that carrying broker-dealers could use the added liquidity to provide customers with more financing at a lower cost, and (reducing the debit reduction) would thereby benefit customers as well as carrying broker-dealers.³²⁸

Another commenter stated that when the Commission adopted the 3% debit reduction in 1975 it stated that the

³²⁵ See SIFMA Letter at 5; Raymond James Letter at 2; ASA Letter at 5; ASA Letter 2 at 1.

³²⁶ See SIFMA Letter at 6.

³²⁷ *Id.*

³²⁸ *Id.*

purpose was to provide, in the event of a liquidation, an additional cushion of secured debit items which will be available to satisfy customers with whom the carrying broker-dealer effects transactions.³²⁹ This commenter stated that a shift to a daily customer reserve computation enabled by technological advancements since 1975 would result in a more precise and up-to-date computation, thereby mitigating the risk that the 3 debit reduction addresses in the customer reserve computation.³³⁰ The commenter went on to state that “a 1% debit reduction in line with that applied to other broker-dealers seems appropriate for firms that calculate net capital under the alternative method.”

The Commission agrees that performing a customer and PAB reserve computation daily will reduce the mismatch risk and more dynamically match the amount a carrying broker-dealer owes its customers and PAB account holders and the amount on deposit in its customer reserve bank account. When the mismatch risk is reduced by moving from weekly to daily calculations, the aggregate debit items need not be reduced by the 3%. However, the Commission disagrees with commenters that performing a daily customer reserve computation merits a decrease of the 3% debit reduction to 1% of customer margin loan balances. The 1% debit reduction applies to carrying broker-dealers that use the basic method to calculate their minimum net capital requirements. Net capital requirements are formulated differently under the alternative and basic methods. While the basic method targets the overall leverage of a carrying broker-dealer directly, under the alternative method, the net capital rule is formulated as a percentage of total customer receivables. Under the weekly-computation regime, the 3% debit reduction has been designed to compensate for the potential lower minimum net capital requirement resulting from carrying broker-dealers electing the alternative method in lieu of the basic method. Consequently, the Commission strengthened the customer reserve computation requirements for carrying broker-dealers using the alternative method. A 1% debit reduction could lead to inadequate combined levels of liquidity and capital buffers at carrying broker-dealers that use the alternative method to calculate their minimum net capital requirements.

The Commission is modifying the final rule amendments to permit

carrying broker-dealers that use the alternative method to reduce aggregate debit items by 2% rather than 3% if they perform a daily customer reserve computation. This amendment will apply to both carrying broker-dealers that are required to perform a daily customer reserve computation because they exceed the \$500 Million Threshold and carrying broker-dealers below the \$500 Million Threshold that voluntarily perform a daily computation. Performing a daily customer reserve computation reduces the risk that the net amount of cash owed to customers will be substantially greater than the net amount on deposit in a carrying broker-dealer's customer reserve bank account.

A daily computation requirement allows for cash owed to customers from a particular day to be included in that day's customer reserve computation, computed the next business day and any required deposits made the following business day. Therefore, under a daily customer reserve computation, the amount on deposit in the customer reserve bank account will more quickly reflect the net amount of cash the carrying broker-dealer owes its customers, and therefore, reduces the need for the current 3% “cushion.” Performing a daily customer reserve computation will reduce the maximum time between required deposits into a customer reserve bank account to two business days.

A 2% debit reduction is reasonable given the lower mismatch risk under a daily customer reserve computation. This 2% “buffer” also will provide carrying broker-dealers with a safeguard to ensure a carrying broker-dealer maintains adequate balances in its customer reserve bank account to ensure that the customer securities and cash should be readily available to return to customers and PAB account holders in the event the carrying broker-dealer fails financially. Further, carrying broker-dealers will be able to use this extra liquidity to pay the initial and ongoing compliance costs to transition from a weekly to daily customer reserve computation under the final rule amendments. Carrying broker-dealers below the \$500 Million Threshold also may choose to voluntarily perform a daily customer reserve computation to use the 2% debit reduction. The combined requirement of a daily customer reserve computation and a 2% debit reduction will provide this additional flexibility while enhancing customer protection requirements under Rule 15c3-3.

C. Economic Effects of the Final Amendments

1. Benefits

Customers and PAB account holders of the affected carrying broker-dealers are expected to benefit from the requirement to perform daily customer and PAB reserve computations. As reflected in the discussion in section I.A. of this release noting the large amounts of deposits carrying broker-dealers may receive, and as evidenced from the information in table 5, a weekly customer and PAB reserve computation can result in a carrying broker-dealer owing a net amount of cash to customers or PAB account holders for a number of days that is greater than the current amounts deposited into the customer and PAB reserve bank accounts. Hence, if a carrying broker-dealer fails before the next reserve account computation and the reserve bank account balances do not represent the actual net amount of cash owed to customers or PAB account holders, these customers and PAB account holders may be at risk of having their funds tied up in a liquidation proceeding. Performing daily customer and PAB reserve computations would likely decrease this risk.

Under the scenario where a carrying broker-dealer does not have sufficient funds to repay what it owes to customers or PAB account holders, SIPC likely would need to initiate a liquidation of the carrying broker-dealer under SIPA.³³¹ Although the SIPC Fund can be used to advance funds to customers that are owed money, PAB account holders are not entitled to such advances; therefore, they may not receive the funds owed to them by a failed carrying broker-dealer as promptly as other customers of such broker-dealer may. In addition, there is a limit on advances to customers in the amount of \$500,000 per customer (of which \$250,000 can be used to cover cash claims). If some customers are owed more than such limit, these customers would have to wait along with PAB account holders until a trustee is appointed who would consequently attempt to recover assets of the failed carrying broker-dealer via asset sales or other recovery methods. This recovery process may, in some cases, be lengthy.³³² In an extreme case,

³³¹ See section I.C.2. of this release (discussing broker-dealer liquidations and SIPA).

³³² For example, it has been the case that customers of a liquidated carrying broker-dealer have had to wait up to six months or more to access their assets during the liquidation period. See Michael P. Jamroz, *The Customer Protection Rule*, Continued

³²⁹ See Raymond James Letter at 2.

³³⁰ *Id.*

the amounts the trustee is able to recover may still be insufficient to make all customers and PAB account holders whole, which means that these customers and PAB account holders would absorb the loss.

Based on these various circumstances, from the customer's or PAB account holder's perspective, there are varying degrees of risk related to a potential failure of a carrying broker-dealer, depending on whether it can promptly return cash and securities to customers and PAB account holders, or whether it has enough funds to make all customer and PAB account holders whole at the time of its failure. Therefore, maintaining levels of customer and PAB reserve bank account balances that more closely represent the actual amounts of net cash owed to customers and PAB account holders will benefit these customers and PAB account holders by decreasing the risk of not completely recovering their funds from the carrying broker-dealer or having these funds tied up in a liquidation proceeding.³³³

In addition, performing daily computations will benefit customers and PAB account holders of the affected carrying broker-dealers by more quickly applying the protective measures of the Rule 15c3-3 reserve requirements to cash of customers and PAB account holders that is newly deposited into the carrying broker-dealer. This reduces the likelihood of carrying broker-dealers inadvertently using customers' or PAB account holders' funds to finance any part of their business.³³⁴

Other carrying broker-dealers that are SIPC members may also benefit from the requirement to perform daily customer and PAB reserve computations. Specifically, if a failing carrying broker-dealer with a mismatch between the reserve bank account balances and actual cash owed to customers and PAB

account holders is put into SIPA liquidation, SIPC may be required to use the SIPC Fund to advance money to customers from the SIPC Fund, reducing its balance and potentially depleting the SIPC Fund. Consequently, a reduction in the SIPC Fund balance and/or SIPC's unrestricted net assets may trigger increased contributions from member broker-dealers, as displayed in table 1 in section I.C.2. of this release, with more substantive balance reductions requiring larger increases in assessments of member broker-dealers, which may be passed on to investors in the form of higher fees or commissions. Therefore, the requirement to perform daily computations will benefit SIPC member broker-dealers by reducing the risk of SIPC Fund depletion and a consequent increase in SIPC assessments.

The requirement to perform daily computations will apply only to carrying broker-dealers whose average total credits exceed the \$500 Million Threshold. Given the information from the 12-month average based on the 2023 monthly FOCUS Reports as an example, the Commission estimates that 40 carrying broker-dealers will be required to switch to a daily computation of the customer reserve formula and 35 carrying broker-dealers will be required to switch to a daily computation of the PAB reserve formula.³³⁵ As shown in table 5, carrying broker-dealers with average total credits above the \$500 Million Threshold are more likely to experience larger mismatches and the dollar amounts underlying those mismatches are significantly larger.³³⁶ And as shown in panel C of table 5, those carrying broker-dealers that compute daily tend to have smaller mismatches than those that compute weekly. Hence, the final amendments may reduce the likelihood of mismatches, benefitting customers and PAB account holders of the affected carrying broker-dealers.

Further, in cases where carrying broker-dealers with greater amounts of total credits are more interdependent with other carrying broker-dealers than carrying broker-dealers with smaller amounts of total credits, having additional large carrying broker-dealers computing daily may benefit financial markets overall without imposing the costs of daily computation onto carrying broker-dealers that do not have significant amounts of total credits.

Carrying broker-dealers above the \$500 Million Threshold are more likely to have PAB accounts, and these PAB

accounts hold much greater amounts of total credits. To be specific, 89.8% of carrying broker-dealers above the \$500 Million Threshold hold PAB accounts, and they have an average value of \$2.3 billion in total PAB credits; whereas only 33.6% of carrying broker-dealers below the threshold hold PAB accounts, and they have an average value of \$7.6 million in total PAB credits. Therefore, the carrying broker-dealers above the \$500 million threshold are likely to pose greater risk to other broker-dealers. That is, should a carrying broker-dealer fail and not have sufficient funds in its PAB reserve bank account to make whole its PAB account holders, a broker-dealer that is a PAB account holder of the failed carrying broker-dealer may experience delays in the reimbursement of its securities and cash and consequently be exposed to financial stress, which could further propagate to its PAB account holders, and so on. This risk is exacerbated for PAB account holders because they are not entitled to advances from the SIPC Fund. In that way, a failure of one large carrying broker-dealer with a mismatched PAB reserve bank account may result in other carrying broker-dealers experiencing financial stress and increased risk of liquidation. Insofar as a daily computation for carrying broker-dealers with total credits above the \$500 Million Threshold reduces the chance that a large carrying broker-dealer has mismatched funds in its PAB reserve bank account, the potential for stress propagation associated with a failure of a carrying broker-dealer will be reduced.

As discussed in the baseline section, a carrying broker-dealer using the alternative method to compute its minimum net capital requirement must currently reduce aggregate debit items by 3% when performing its customer reserve computation under Rule 15c3-3. This provision serves to increase the amount of funds a carrying broker-dealer must deposit into its customer reserve bank account. Also, as mentioned in the baseline section, commenters recommended that the Commission eliminate the 3% debit reduction and instead apply the 1% debit reduction that currently applies to carrying broker-dealers using the basic method to compute their net capital.³³⁷

The Commission is modifying the final rule amendments to permit carrying broker-dealers to reduce aggregate debit items by 2% rather than 3% if they perform a daily customer reserve computation. This amendment will apply to both carrying broker-

57 Bus. Law. 1069 (May 2002), available at <https://www.jstor.org/stable/40688076>.

³³³ The Commission notes that, with daily computing, there will still be a mismatch between the actual net cash owed to customers and the reserve account balance because of the deposit timing delay, which is the morning of the second business day after the day of calculation. Should a carrying broker-dealer computing daily fail, and the amount of the mismatch is lower than in the case of a weekly computation, the customer may receive their funds more promptly from the carrying broker-dealers' available assets than in the case where mismatches are larger (which may imply a longer liquidation process), underscoring the potential benefit from daily computing.

³³⁴ With respect to each customer reserve computation required pursuant to Rule 15c3-3, a broker-dealer must not accept or use any of the amounts under items comprising total credits under the customer reserve formula except for the specified purposes indicated under items comprising total debits under the formula. See paragraph (e)(2) of Rule 15c3-3.

³³⁵ See table 3.

³³⁶ See discussion in section IV.B.2. of this release for more details on table 5.

³³⁷ See SIFMA Letter at 5; Raymond James Letter at 2; ASA Letter at 5; ASA Letter 2 at 1.

dealers that are required to perform a daily customer reserve computation because they exceed the \$500 Million Threshold and carrying broker-dealers below the \$500 Million Threshold that voluntarily perform a daily computation. This amendment creates an incentive for smaller carrying broker-dealers to voluntarily perform a daily customer reserve computation. To the extent that they do so, this would reduce the likelihood of a mismatch of funds in their customer and PAB reserve bank accounts, thereby also reducing the risk that customers and PAB account holders experience delays in recovering their funds from the carrying broker-dealer in case of its failure as well as other risks associated with the failure.³³⁸

For the 49 broker-dealers on Figure 1 of the baseline section that met the threshold in 2023, the Commission used FOCUS data on aggregate debits to estimate that the change from 3% to 2% adopted by the rule amendments would have freed up a monthly average of \$7.41 billion of liquidity. The reduction in aggregate debit items from 3% to 2% mitigates the additional costs to carrying broker-dealers who change to a daily calculation while still being congruent with investor protection; the change to a daily calculation, which lowers mismatch risk,³³⁹ allows for this change.

2. Costs

Affected broker-dealers may experience an increase in costs resulting from the shift to the daily computation requirement. If under the weekly computation requirement, the carrying broker-dealers relied on staff who fulfilled other functions to also perform the weekly computations,³⁴⁰ under the daily computation requirement, these carrying broker-dealers will need to make operational changes in order to re-allocate the effort of this staff across the week or hire new personnel who will be assigned the task of performing daily computing.³⁴¹ The Commission also expects that the carrying broker-dealers may need to upgrade their systems and internal controls³⁴² or potentially create

or purchase new programming and systems, and update the infrastructure of various functions,³⁴³ to facilitate the increased frequency of computations and accelerate the coordination of departments and groups involved in providing the necessary information on credit and debit items used to perform the computations.³⁴⁴ Implementing these operational changes, potential staff increases, and upgrades may require the carrying broker-dealers to incur initial start-up compliance costs.

The Commission received comments offering estimates of these start-up costs. One commenter stated that for a carrying broker-dealer that currently performs daily reserve computations, it took over 25,000 man-hours to complete the shift from weekly to daily computing.³⁴⁵ This commenter also stated that it may require anywhere from 12,000 to 25,000 man-hours to complete the technology and systems changes necessary to make the shift, at cost estimates of \$2 million to \$3 million.³⁴⁶ The estimated figure of the man-hours spent by a carrying broker-dealer that has already implemented the shift to daily computing reasonably represents the man-hours for a large carrying broker-dealer, and therefore can be interpreted as an upper bound of the effort required to implement the necessary technology and systems changes.³⁴⁷ The commenter did not provide additional information about assumptions or methodologies used to derive a cost of \$2 to \$3 million from the stated range of 12,000 to 25,000 man-hours. Given that on average the 40 of 49 affected broker-dealers who compute weekly have smaller amounts of total credits and assets than the carrying broker-dealers who currently perform daily reserve computations, the stated cost estimate of \$3 million can be

interpreted as an upper bound of the initial costs that a carrying broker-dealer may incur in the course of implementing the necessary technology and systems changes to comply with the final amendments.³⁴⁸ The Commission, however, will lower the 3% debit reduction to 2% for the carrying broker-dealers using the alternative method for net capital purposes, if they perform a daily customer reserve computation. This will free-up liquidity of these carrying broker-dealers, thus partially mitigating their compliance costs.

The Commission received comments regarding the ongoing costs. One commenter stated that performing a weekly computation requires numerous personnel from various departments and groups to obtain thousands of credit and debit items, reconcile these items with other firm data, and ensure accurate computations.³⁴⁹ A different commenter stated that implementing the final amendments will require carrying broker-dealers to devote the full-time efforts of multiple new personnel in order to perform daily calculations and deposits.³⁵⁰ This commenter stated that when performing and documenting each weekly calculation, no fewer than 55 employees are involved in some aspect of the reserve computations.³⁵¹

The Commission acknowledges that the ongoing costs may increase as a result of implementing the final amendments. The Commission also agrees that completing a reserve computation requires a successful coordination of multiple personnel across various departments within a carrying broker-dealer, while the team responsible for performing the computation collects and validates information on credit and debit items ensuring the accuracy of computations. Thus, the estimate of 55 employees involved in various aspects of the reserve computations may be a reasonable approximation of the number of personnel that participate in providing and processing information about the credit and debit items for the reserve computations. However, as a result of implementing the operational changes and technology upgrades to comply with the final amendments, the

³³⁸ See section I.I.C. of this release (discussing the 2% debit reduction).

³³⁹ See section I.A. of this release (discussing the mismatch risk).

³⁴⁰ See Raymond James Letter at 4.

³⁴¹ See SIFMA Letter at 5 (stating “Firms required to conduct daily computations under any final rule will likely have to hire or train substantially more employees given this labor- and skill-intensive process.”).

³⁴² See SIFMA Letter at 4 (stating “. . . firms must have internal controls over their reserve account computations in accordance with Exchange Act Rule 17a-5. These controls include checks, approval processes, data analytics, and data valuations to ensure accurate computations.”).

³⁴³ See ASA Letter at 6; Raymond James Letter at 4 (stating “the process of implementing the proposed changes to Rule 15c3-3 will itself require the firm to assign multiple staff members to the creation and testing of new programming and systems”).

³⁴⁴ See SIFMA Letter at 4 (stating “Numerous personnel from various departments and groups, including regulatory reporting teams, treasury teams, operations teams, fixed income finance desks, cash management teams, various middle office teams, and business teams, are needed to complete the reserve account calculations”).

³⁴⁵ See SIFMA Letter at 5. This is congruent with a statement from another commenter about the carrying broker-dealers that have also completed the shift. See ASA Letter at 6 (stating “these firms have shared that it took them approximately 25,000 hours of staff and technology work”).

³⁴⁶ See SIFMA Letter at 5.

³⁴⁷ As of December 2023, 9 out of 10 carrying broker-dealers, that performed computations on a daily basis, had over \$1 billion in average total credits and held assets with an average value of \$320 billion.

³⁴⁸ Using the stated cost estimate of \$3 million as an upper bound of a carrying broker-dealer's initial compliance costs, the upper bound of the total initial compliance costs for the 40 carrying broker-dealers can be estimated as \$120 million.

³⁴⁹ See SIFMA Letter at 4.

³⁵⁰ See Raymond James Letter at 4.

³⁵¹ See Raymond James Letter at 3. Another commenter stated that the daily computation processes may involve the participation of numerous departments, as well as up to 50 different people, depending on firm size. See ASA Letter at 6.

increase in the carrying broker-dealers' ongoing costs can be partially mitigated through automation and an accelerated coordination of departments and groups involved in providing the necessary information on credit and debit items. The Commission also recognizes that not all work related to performing the reserve computation can be automated.³⁵² However, the workload associated with the manual verification and validation of the transactions underlying the reserve computations can be reallocated across the week, as a result of operational changes. For example, if a carrying broker-dealer performed the work of verifying and investigating all the transactions at the end of the week, when a weekly computation was conducted, under the daily computation requirement, this carrying broker-dealer will be verifying the transactions daily, as they happen, and hence this workload will be spread out across the week. If the effort of the existing staff cannot be reallocated across the week effectively, implementing the final amendments will require the carrying broker-dealers to hire new personnel. However, as the new personnel takes over the task of performing daily reserve computations, the workload of the staff previously involved in performing weekly reserve computations could be reduced.

One commenter stated that a realistic estimate of the time it takes to complete a reserve computation runs into the dozens of hours, depending on the complexity of the carrying broker-dealer's business, with some carrying broker-dealers spending 60 to 75 man-hours per week on computations.³⁵³ This commenter concluded that moving to daily computing would mean a burden of over 400 man-hours a week for some carrying broker-dealers, meaning that the burden would increase more than five times.

The Commission recognizes that it may take up to 60 to 75 man-hours per week to complete a (weekly) reserve computation for carrying broker-dealers with complex operations. However, the Commission does not expect a more than five times increase in man-hours for the carrying broker-dealers required to transition from weekly to daily reserve computations, as it was suggested by one of the commenters.

To the extent that the carrying broker-dealers successfully implement the operational changes and technology upgrades discussed above, with automation, accelerated coordination of departments and groups involved in

providing the information for the reserve computations, and staff effort being reallocated across the week, the number of man-hours spent on performing one reserve computation is unlikely to increase (and therefore stay below 75 man-hours). As a result, the weekly number of man-hours spent on complying with the final amendments is unlikely to increase more than five times for carrying broker-dealers making the shift from weekly to daily computations, as it was suggested by one of the commenters, and hence will be lower than 400 man-hours.

The daily computation requirement will also lead to an increase in the recordkeeping costs.³⁵⁴ The Commission estimates that it will cost a carrying broker-dealer \$184,000 annually per reserve computation to prepare the records of that computation.³⁵⁵ The 9 carrying broker-dealers that already perform such computations daily (as shown in table 4, based on data for the period for January 2023 through December 2023) may not experience an increase in recordkeeping costs, however. Given the 40 carrying broker-dealers required to switch to a daily computation of the customer reserve formula and the 35 carrying broker-dealers required to switch to a daily computation of the PAB reserve formula, that implies that the aggregate annual costs of preparing records of reserve computations will increase by approximately \$11 million.³⁵⁶

One commenter stated that the 2.5 hour burden provided in the Proposing Release significantly underestimated the costs associated with shifting to the daily computation requirement.³⁵⁷ Another commenter also stated that the Commission underestimated the staffing and time that will be needed to transition to daily computations and

deposits. These commenters suggested that these costs are larger than the figures estimated in the Proposing Release. In response, the 2.5 hour burden reflects solely the costs of making a record of each customer or PAB reserve computation, only one of the components of the costs of implementing the final amendments. This estimate does not represent any other (initial or ongoing) economic costs that carrying broker-dealers may incur while fulfilling the daily computation requirements.³⁵⁸

To the extent that the affected carrying broker-dealers that are just above the \$500 Million Threshold do not experience the same economies of scale as carrying broker-dealers that are well above the threshold, they may be disproportionately affected by the daily computation requirements and the related costs. If these costs are significant, some carrying broker-dealers may decide to alter their business to fall below the threshold and avoid the costs related to performing the customer and PAB reserve computations daily. If so, the benefits of the final amendments may be reduced.

Carrying broker-dealers just below or above the \$500 Million Threshold may also experience uncertainty related to being scoped into compliance with the daily computation requirement and may experience costs related to this uncertainty. As displayed in Figure 1, some carrying broker-dealers are likely to drop below the \$500 Million Threshold over time, and then once again exceed the threshold in later months. The costs related to these fluctuations are uncertain, but are likely to add, for such carrying broker-dealers, to the costs cited above (for example, if additional staff is needed by these carrying broker-dealers to monitor their customer reserve accounts more closely than carrying broker-dealers well above the \$500 Million Threshold).

Furthermore, while switching back and forth between daily and weekly computations may tailor the compliance costs to the size of customer activity, these fluctuations may also be confusing for customers and PAB account holders of carrying broker-dealers who decide to switch. However, this potential cost or concern may be trivial as many customers may be unaware of, or unconcerned by, the switch.

Finally, in order to avoid incurring the costs related to the uncertainty of having to switch back and forth between daily and weekly computations, some of these carrying broker-dealers may prefer to voluntarily perform daily

³⁵⁴ See *infra* section V. of this release (discussing PRA). For an additional discussion of the costs associated with the recordkeeping requirements related to customer and PAB reserve computations, including changes to (or the acquisition of) technology or systems, see *infra* section V.D.1. of this release.

³⁵⁵ The \$184,000 estimate is based on the following calculations: \$184,375 (hourly rate for financial reporting manager at \$295 for 2.5 hours for 250 business days) = \$184,000. This cost estimate is the same for daily customer and PAB reserve computations. It is not an estimate of the time it takes a carrying broker-dealer to perform the customer and PAB reserve computations or to fulfill current regulatory requirements.

³⁵⁶ The \$11 million estimate is based on the following calculation: 46,875 of total burden hours under the final amendments minus the decrease of 9,750 in burden hours (5,200 hours + 4,550 hours), multiplied by the hourly rate of \$295 for financial reporting manager. For an additional discussion of the burden hours, see *infra* section V.D.1. of this release.

³⁵⁷ See SIFMA Letter at 4.

³⁵⁸ See *infra* section V. of this release.

³⁵² See ASA Letter at 6.

³⁵³ See SIFMA Letter at 4.

computations after being scoped into compliance for the first time and paying the start-up costs associated with the final amendments, even if their average total credits temporarily fall below the \$500 Million Threshold.

The Commission received several comments supporting the proposal to require carrying broker-dealers with large amounts of credits to perform daily customer and PAB reserve computations;³⁵⁹ however, some of the commenters suggested modifications to the proposed threshold.

For example, some commenters suggested that the Commission should apply the final rule requirements to all carrying broker-dealers.³⁶⁰ One commenter stated that customer protection rationale applies equally to clients of both small and large broker-dealers.³⁶¹ Furthermore, the same commenter stated that requiring all carrying broker-dealers to perform daily computations eliminates the need for carrying broker-dealers to monitor their average total credits over the twelve-month period.³⁶²

The final amendments do not extend to carrying broker-dealers with average total credits below the \$500 Million Threshold. Applying the daily computation requirement to these carrying broker-dealers would impose compliance costs on 113 more broker-dealers with relatively less customer and PAB account activity.³⁶³ Furthermore, as shown in panels A and B of table 5, carrying broker-dealers with average total credits below the \$500 Million Threshold are less likely to experience larger mismatches, and the dollar amounts of these mismatches are smaller, relative to carrying broker-dealers above the \$500 Million Threshold. Thus, extending the daily computation requirement to these broker-dealers would subject them to increased compliance costs while they do not have potential for large mismatch risks.

Several commenters also suggested establishing alternative thresholds.³⁶⁴ One commenter proposed that the Commission define the threshold as a formula that could be adjusted periodically to ensure that the systemic risk mitigation aims can be reevaluated if necessary.³⁶⁵ Another commenter

suggested incorporating risk and liquidity factors into the threshold as they may be better predictors of a failing carrying broker-dealer.³⁶⁶

The Commission disagrees with these commenters' recommendations to establish alternative thresholds. Setting formula-based thresholds that incorporate dynamic risk or liquidity factors instead of a fixed-dollar threshold would make the rule requirements less predictable and more complex to monitor for the carrying broker-dealers above the threshold. Furthermore, a dynamic formula-based threshold would increase the uncertainty of the carrying broker-dealers that would expect to be scoped into compliance with the requirements of the rule due to being just below the threshold, and, as a result, experience higher costs related to this uncertainty. As displayed in Figure 1 and discussed above, if the threshold is fixed, some carrying broker-dealers are likely to drop below it and then exceed the threshold again in later months. These fluctuations would be larger and more costly for the carrying broker-dealers if they are expected to comply with a formula-based threshold that incorporates dynamic factors. A uniform fixed-dollar threshold will make the rule requirements more predictable and easier to monitor over time for the carrying broker-dealers. Another commenter suggested to require carrying broker-dealers to perform daily computations if their average total credits exceed the proposed \$250 Million Threshold and their average net credits are more than \$10 million.³⁶⁷ This commenter stated that including this additional metric would ensure that the rule requirements exclude broker-dealers without a large excess of credits over debits, as these carrying broker-dealers do not present a large mismatch risk.³⁶⁸ The Commission disagrees with this commenter's suggestion. Although carrying broker-dealers may have lower average excess of credits over debits, these carrying broker-dealers remain at risk for a large mismatch.³⁶⁹ The net credit metric does not take into account fluctuations in the value of net cash owed to customers and PAB account holders, and hence lower average net credits do not necessarily indicate that the carrying broker-dealer is at a lower risk of large intra-week mismatches. Furthermore, the commenter did not provide any data supporting the suggestion that carrying broker-dealers

with net credits below \$10 million necessarily experience lower mismatches.

The Commission is adopting a \$500 Million Threshold to narrow the scope of the final amendments to carrying broker-dealers that tend to have larger mismatches. The \$500 Million Threshold excludes 12 carrying broker-dealers, as compared to the proposed \$250 Million Threshold. The final amendments are designed to reduce the mismatch risk for carrying broker-dealers with large amounts of total credits by reducing the time between the inflows of customer funds and when the carrying broker-dealers perform their next reserve computations and fund their reserve accounts, as these carrying broker-dealers are more likely to have larger mismatches, and the dollar amounts underlying these mismatches are significantly larger. Also, as stated above, a uniform threshold will make it easier for the carrying broker-dealers to comply with the final amendments.

Some commenters also suggested that carrying broker-dealers should perform the reserve computations in real time, given that the technical prerequisites for complex computational operations are already present.³⁷⁰ The Commission disagrees with these commenters. Performing the reserve computations in real time may not be feasible, as these computations are often accompanied by manual validations of the underlying transactions. Automating these components of computations is technically difficult and would be comparatively costlier for the carrying broker-dealers than the final amendments.

One commenter suggested establishing conditions under which either the customer or PAB reserve computations would be exempt from the daily computation requirement.³⁷¹ The commenter stated that if one of the computations (customer or PAB) has significantly less credits relative to the other, it may not be necessary or appropriate to require a daily reserve computation for the smaller category of account.³⁷² The commenter's suggestion included setting separate threshold requirements for each category of computations.³⁷³ One commenter also proposed to exempt PAB reserve computations from the rule requirements entirely.³⁷⁴ The

³⁵⁹ See Better Markets Letter; SIPC Letter; NASAA Letter.

³⁶⁰ See Better Markets Letter at 8; Cory Letter; Letter from J.R. Rothwell (Sept. 8, 2023).

³⁶¹ See Better Markets Letter at 8.

³⁶² See Better Markets Letter at 9.

³⁶³ See section IV.E.3 of this release.

³⁶⁴ See ASA Letter at 5; NASAA Letter at 2; SIFMA Letter at 6.

³⁶⁵ See NASAA Letter at 2.

³⁶⁶ See ASA Letter at 5.

³⁶⁷ See SIFMA Letter at 6.

³⁶⁸ See SIFMA Letter at 6.

³⁶⁹ See section IV.E.2. of this release.

³⁷⁰ See Linder Letter; O'Donnel Letter; and Santos Letter.

³⁷¹ See Raymond James Letter at 2.

³⁷² See Raymond James Letter at 2.

³⁷³ See Raymond James Letter at 3.

³⁷⁴ See ASA Letter at 4.

Commission disagrees with these commenters. As stated above, having a daily computation requirement with a uniform threshold that applies to average total credits will be less costly to monitor for carrying broker-dealers expecting to be scoped into compliance, than a requirement prescribing a more complex threshold. Furthermore, exempting PAB reserve computations from the rule requirements would increase the risks of the PAB account holders as they are not entitled to advances from the SIPC Fund in case of the carrying broker-dealer's liquidation.

One commenter stated that the Commission has not appropriately weighed the costs of implementing the rule requirements against any potential benefits that could derive from the rule.³⁷⁵ This commenter also suggested that these costs could be passed down to investors buying and selling securities.³⁷⁶

The Commission recognizes that complying with the rule requirements may be costly for the carrying broker-dealers. However, the customers and PAB account holders are expected to significantly benefit from the protections provided by the final amendments. Performing daily customer and PAB reserve computations will decrease the risk of delays in recovering their funds from the carrying broker-dealer in case of its failure. Moreover, maintaining customer and PAB reserve account balances that more closely represent the amounts of cash owed to customers and PAB account holders will reduce the risk of not completely recovering their funds from the carrying broker-dealer. These risks are exacerbated for PAB account holders as they are not entitled to advances from SIPC Fund, and hence their benefits from the protections provided by the final amendments are expected to be larger. Performing daily computations will also benefit customers and PAB account holders of carrying broker-dealers by more quickly applying the protective measures of the Rule 15c3-3 reserve requirements to cash of customers and PAB account holders that is newly deposited into the carrying broker-dealer. This is expected to reduce the likelihood that customer funds may be inadvertently used to finance any part of the carrying broker-dealer's business. In addition, other carrying broker-dealers may also benefit from the final amendments, since the requirement to perform daily computations may reduce the risk of SIPC Fund depletion.

3. Other Compliance Costs

Several commenters suggested that the Commission should consider the cumulative burdens of implementing the proposed rule amendments and other regulatory obligations with potentially overlapping compliance dates.³⁷⁷ Specifically, one commenter stated that "the same firms who will be required to move to a daily computation are also managing multiple other regulatory requirements."³⁷⁸ The commenter further stated that "unless the SEC provides adequate time to manage the new regulatory requirements together, firms will face an unmanageable clash of compliance requirements all converging at the same time."³⁷⁹ The Commission has considered the potential effects on carrying broker-dealers that are implementing other recently adopted Commission rules during the compliance period for these amendments.

Consistent with its long-standing practice, the Commission's economic analysis in each adopting release considers the incremental benefits and costs for the specific rule—that is, the benefits and costs stemming from that rule compared to the baseline. The Commission acknowledges the possibility that complying with more than one rule in the same time period may entail costs that could exceed the costs if the rules were to be complied with separately. One of the rules mentioned by commenters which culminated in the recent adoption of the rules and amendments in the Settlement Cycle Adopting Release has a compliance date that occurred before the effective date of the final amendments,³⁸⁰ such that there is no overlap in transition periods.³⁸¹

With respect to the other recently adopted Commission rules discussed above, for which the compliance periods overlap, in part with the

compliance period for the final amendments,³⁸² carrying broker-dealers subject to the amendments will be subject to one or more of those other recently adopted rules only when those carrying broker-dealers' activities fall within the scope of the other rules. Specifically, the rules and amendments adopted in the Rule 605 Adopting Release apply to market centers, which includes certain carrying broker-dealers.³⁸³ The Rule 10c-1a Adopting Release and the Customer Notification Adopting Release also apply to certain carrying broker-dealers, although due to differing requirements, these rules may not all apply to any given carrying broker-dealer.³⁸⁴ The Electronic Submission Adopting Release applies to entities that file FOCUS Reports, which includes all carrying broker-dealers.³⁸⁵ The Treasury Clearing Release applies to certain clearing agencies for U.S. Treasury securities and certain participants of the covered clearing agencies, which could include carrying broker-dealers.³⁸⁶ Where rules affecting the same entities have overlapping compliance periods, the Commission acknowledges that there may be additional costs on those carrying broker-dealers subject to one or more other rules.

D. Effects on Efficiency, Competition, and Capital Formation

The final amendments may affect competition among carrying broker-dealers. First, to the extent that compliance costs would be passed onto customers and PAB account holders, affected carrying broker-dealers that experience greater economies of scale may become more competitive than other affected carrying broker-dealers. Second, to the extent that customers of carrying broker-dealers value daily reserve computations more than the weekly computations, the affected carrying broker-dealers may become more competitive relative to the unaffected carrying broker-dealers. However, the Commission does not anticipate such an effect to be large. Given the fact that ten carrying broker-dealers already compute daily, if such a competitive advantage existed and was sufficiently large, and carrying broker-

³⁷⁷ See, e.g., ASA Letter 2 at 2; SIFMA Letter at 12; Raymond James Letter at 4; ASA Letter at 6.

³⁷⁸ See ASA Letter at 6.

³⁷⁹ *Id.*

³⁸⁰ See, e.g., ASA Letter 2 at 2; SIFMA Letter at 12; Raymond James Letter at 4; ASA Letter at 6. Although the date of the requirements for the T+1 transition has passed, see *supra* note 283 for relevant compliance and filing dates, the Commission considers other recently adopted Commission rules in this analysis.

³⁸¹ Commenters also mentioned the new margin requirements under FINRA Rule 4210 and the CAT CAIS amendments as two regulatory obligations that could potentially overlap with the obligations of these final amendments. See, e.g., ASA Letter 2 at 2; SIFMA Letter at 12; Raymond James Letter at 6. The requirements under both FINRA Rule 4210 and the CAT CAIS amendments have been implemented such that there is no overlap with the requirements of these final amendments.

³⁸² See *supra* section IV.B.1. (listing recent rule adoptions and their respective compliance dates) and section III. (listing compliance dates).

³⁸³ See Rule 605 Adopting Release at 26496–97.

³⁸⁴ See Rule 10c-1a Adopting Release at 75647, 75717–18; Customer Notification Adopting Release at 47689, 47725.

³⁸⁵ See Electronic Submission Adopting Release section VI.

³⁸⁶ See Clearing Agency Governance Adopting Release at 84498; Treasury Clearing Release at 2717, 2791.

³⁷⁵ See ASA Letter at 1.

³⁷⁶ See ASA Letter at 1.

dealers performing weekly computations were losing customers, then more carrying broker-dealers would have likely already converted to daily computing. On the other hand, to the extent that some of the affected carrying broker-dealers that are just above the \$500 Million Threshold do not experience the same economies of scale as carrying broker-dealers that are well above the threshold, they may decide to alter their business or adjust the size of their activities to fall below the threshold and avoid incurring the compliance costs associated with implementing the final amendments, which may in turn adversely impact competition.

As discussed above, the Commission acknowledges that overlapping compliance periods may in some cases increase costs.³⁸⁷ The Commission acknowledges that to the extent overlap occurs between the compliance periods of this rule and the compliance periods of other rules, there could be costs that could affect competition. However, the compliance date is spread over a period extending to December 2025. The Commission therefore does not expect the risk of negative competitive effects from increased compliance costs from overlapping compliance periods to be significant.

The final amendments may increase liquidity in the securities markets, as they will promote confidence in the broker-dealer industry by increasing its resilience and result in an increase of customer and PAB account activities. As a consequence, market efficiency and capital formation in the underlying markets may increase. Under the baseline there is a greater chance of a larger mismatch with weekly reserve computations than with daily reserve computations, potentially suggesting a greater risk in doing business with a carrying broker-dealer that performs its customer and PAB reserve computations weekly. Also, to the extent that the mismatch reflects an overfunding, there may also be a greater cost to the carrying broker-dealer (and by extension its customers), since it ties up capital that the carrying broker-dealer could have put to more productive use.

Therefore, should customers and PAB account holders have a concern over mismatch in reserve bank accounts and potential failures affect market participants' willingness to expose themselves to carrying broker-dealers, there may be less capital committed to

this market as otherwise. However, similar to the point above, if customers of carrying broker-dealers were aware and concerned of mismatches, the Commission might have already observed more carrying broker-dealers computing daily, in order to retain customers, than is currently the case under the baseline. Therefore, the Commission does not anticipate any effect on capital formation in this market to be significant.

In addition, insofar as capital loss could arise in times of market stress due to an increased likelihood of carrying broker-dealer failures, market participants may become concerned with the possibility of not getting their cash promptly or not getting paid in full in an event of a carrying broker-dealer failure and reduce their exposure to carrying broker-dealers. To the extent that the daily computation requirement alleviates this concern, the risk of flight of capital from securities markets may decrease during stressed market conditions and capital inflow during normal market conditions may increase.

Finally, the daily computation requirement may benefit the affected carrying broker-dealers by increasing their operational efficiency. For example, in a scenario where customer reserve or PAB reserve bank accounts are over-funded, a carrying broker-dealer that performs a weekly computation cannot withdraw excess cash from the customer reserve bank account until the following reserve computation date, even if the value of the account exceeds the actual net cash owed to customers, exposing this carrying broker-dealer to operational inefficiency. A daily computation would permit the affected carrying broker-dealers to withdraw these excess funds in a timely manner and would allow them to manage their funds and operations more effectively.

Since the final amendments do not impact the scope of information available to investors, the Commission does not anticipate effects on informational efficiency to be significant.

E. Reasonable Alternatives

1. Over-Funding of the Customer and PAB Reserve Bank Accounts

As an alternative to daily computation requirements, the Commission considered an over-funding approach which would have applied to the customer and PAB reserve bank accounts. For example, carrying broker-dealers would have performed the required reserve computations and deposits weekly and deposited a

multiple of this amount (e.g., 105% or 110%) into the customer or PAB reserve bank account. Under this alternative approach, carrying broker-dealers would have avoided an increase in compliance costs associated with a daily computation requirement (hence, this alternative would have applied to carrying broker-dealers choosing weekly funding). Insofar as the compliance costs associated with the daily computation would be passed onto customers and PAB account holders of the affected carrying broker-dealers, this alternative approach would have been more beneficial for these customers and PAB account holders because it would not have implied an operational change and compliance costs related to the customer and PAB reserve computation while offering extra protection for customers and PAB account holders.

However, under this alternative the carrying broker-dealer would have needed to fund the excess with its own cash, which could have resulted in funding costs, decreased liquidity, and opportunity costs from not being able to deploy this cash in the carrying broker-dealer's business. As a result, requiring carrying broker-dealers to place extra cash in a customer or PAB reserve bank account could have resulted in an operational efficiency decrease and potential reduction of carrying broker-dealers' profits, which may be passed onto customers, PAB account holders, and other stakeholders. In addition, this approach would not have accounted for the actual net cash owed to customers and PAB account holders if reserve bank account mismatches exceeded the buffer that this alternative would have required.

2. A Threshold Based on a Different Metric

As an alternative, the Commission considered setting a threshold for compliance with a daily computation requirement based on a different metric. For example, the Commission could have set a threshold based on total assets of \$1 billion or net capital of \$50 million. A threshold based on such metrics could have been more representative of the economies of scale that carrying broker-dealers experience and could have better indicated a carrying broker-dealer's ability to comply with enhanced requirements without substantial increases in compliance costs that could have ultimately been passed onto their customers.

Based on the monthly 2023 FOCUS Reports, the Commission estimates that under the alternative threshold of \$1 billion in total assets 78 carrying broker-

³⁸⁷ See *supra* section IV.C.3. (discussing potentially overlapping compliance dates and the potential costs to carrying broker-dealers subject to the final amendments).

dealers would have been required to perform the customer and PAB reserve computations daily. Of the 49 carrying broker-dealers that are at or above the \$500 Million Threshold for average total credits, one has total assets below \$1 billion, while 30 carrying broker-dealers below the \$500 Million Threshold have total assets over \$1 billion.

With respect to a \$50 million net capital threshold, 100 carrying broker-dealers would have been required to perform the customer and PAB reserve computations daily. Of the carrying broker-dealers that are below \$500 Million Threshold for average total credits, 51 have net capital exceeding \$50 million, while of the group above \$500 Million Threshold for average total credits, none have net capital below \$50 million.

If the alternative had stated that the carrying broker-dealer has over \$1 billion in total assets, or has over \$50 million net capital threshold, 101 carrying broker-dealers would have been required to perform the customer and PAB reserve computations daily.

A drawback to this alternative is that some large broker-dealers with minimal amounts of carrying activity would have borne the added cost of switching to a daily computation. For example, the group of 30 carrying broker-dealers below the \$500 Million Threshold with \$1 billion in assets or more, had a combined total of average total credits of approximately \$4.6 billion as of the end of 2023. That amounted to only about 0.44% of average total credits for all carrying broker-dealers for that year.³⁸⁸

The Commission received a comment suggesting the Commission require carrying broker-dealers to perform daily reserve computations if the average total credits exceed the proposed \$250 Million Threshold and average net credits exceed \$10 million.³⁸⁹ This commenter stated that including this additional net credits metric would ensure that the rule requirements exclude carrying broker-dealers without a large excess of credits over debits, as these carrying broker-dealers do not present a large mismatch risk.

Under this alternative, based on the monthly 2023 FOCUS Reports, 51 carrying broker-dealers would have been required to perform the reserve computations daily, compared to the 49 under the final amendments with the threshold set to \$500 Million.³⁹⁰ The

potential drawback to this alternative is that some of the carrying broker-dealers with large amounts of average total credits would have been excluded from the daily computation requirement. To be specific, out of 10 carrying broker-dealers above the \$500 Million Threshold that would have been scoped out of the compliance under this alternative, 7 carrying broker-dealers have over \$1 billion in average total credits. Given the information displayed in table 5, carrying broker-dealers in this group are more likely to have larger mismatches, which suggests that under this alternative approach, there is a potential for more carrying broker-dealers to have a large mismatch, than under the final amendments.

3. Daily Computation Requirement for All Carrying Broker-Dealers

As an alternative, the Commission considered requiring the daily computation requirement to apply to all carrying broker-dealers with positive average total credits. Under this alternative, a greater number of carrying broker-dealers would have performed their customer and PAB reserve computations daily, which would have benefitted more customers and PAB account holders compared to the final amendments. Specifically, under the zero threshold, 113 more carrying broker-dealers would have experienced the benefits and costs discussed in section IV.C. of this release (compared to the 49 affected based on the January 2023 to December 2023 period).

Further, to the degree that carrying broker-dealers with smaller amounts of total credits are interdependent with other broker-dealers to the same degree as carrying broker-dealers with larger amounts of total credits, this approach would have benefitted all PAB account holders equally and potentially reduced the systemic risk to a greater degree relative to the final amendments. The number of credits held in the PAB reserve bank accounts of the 44 carrying broker-dealers (with PAB accounts) above the \$500 Million Threshold makes up approximately 99% of the total amount held in PAB reserve bank accounts (of the 82 broker-dealers that reported carrying PAB accounts in 2023).³⁹¹

In particular, insofar as a daily computation for all carrying broker-dealers reduces the chance that any carrying broker-dealer has funds in its PAB reserve bank account that are less

than the net amount of cash owed to PAB account holders, the potential for stress propagation associated with a failure of a carrying broker-dealer could be reduced.

However, this alternative would have imposed compliance costs on a greater number of carrying broker-dealers, which could have been passed onto customers and PAB account holders. In addition, customer protection benefits may have been not justified by the reduction in operational efficiency of carrying broker-dealers with little customer and PAB account activity that may arise from disproportional dedication of resources towards a de minimis business activity. Finally, this alternative would have also imposed significant economic impact on small businesses.

4. A Higher or Lower Threshold for Daily Computation

As an alternative, the Commission considered a threshold higher or lower than \$500 million in average total credits. Under these alternatives, fewer or more carrying broker-dealers would have been required to perform their customer and PAB reserve computations daily. For example, if the threshold was set at \$100 million, a total of 75 carrying broker-dealers would have been scoped into the new requirements compared to the 49 under the final amendments. Similarly, if the threshold was set at \$1 billion, only 41 carrying broker-dealers would have been scoped into the new requirements.³⁹²

If the threshold were \$100 million, more carrying broker-dealers would perform daily computations, which would mean that fewer broker-dealers would have a mismatch between the net cash owed to the carrying broker-dealer's customers and the amounts deposited in their customer or PAB reserve bank accounts. On the other hand, more broker-dealers would have incurred the burden of performing their customer and PAB reserve computations daily. If the threshold were set at \$1 billion, fewer carrying broker-dealers would face the costs of a daily computation than under the final amendments. However, there would have been fewer carrying broker-dealers computing daily, suggesting the potential for more carrying broker-dealers having a mismatch than under the final amendments.

³⁸⁸ See table 7 below in section IV.E.6. of this release for numbers based on the June 2023 to May 2024 period.

³⁸⁹ See SIFMA Letter at 6.

³⁹⁰ The average net credits are calculated as an average of excess total credits over total debits,

where total debits exclude 3% of aggregate debits (*i.e.*, based on the baseline 3% debit reduction).

³⁹¹ See table 7 below in section IV.E.6. of this release for numbers based on the June 2023 to May 2024 period.

³⁹² See table 7 below in section IV.E.6. of this release for numbers based on the June 2023 to May 2024 period.

5. Calculation Based on the Maximum Value Over the Past Year

The \$500 Million Threshold is the arithmetic mean of the total credits in the customer and PAB reserve computations reported on the twelve most recently filed month-end FOCUS Reports.³⁹³ As an alternative, the Commission considered a threshold based on the maximum value for total credits during the most recently ended calendar year. This alternative may have

more appropriately accounted for the implied capacity of the carrying broker-dealer's reserve bank accounts. For example, if total credits related to customers or PAB account holders' activity fluctuated throughout a year or based on economic cycles and such fluctuations are predictable, the maximum value of total credits may have been more representative of the customer transactions' volume. As another example, if a carrying broker-dealer experiences trending growth of

its customer base, the maximum value of total credits would have also been more representative of the current size of the customer base.

Table 6 below regroups carrying broker-dealers based on the maximum number reported for total credits within a given year. Under this alternative, 59 carrying broker-dealers would have been scoped into the final rule, compared to the 49 that are scoped into the rule under the final amendments.

TABLE 6—THRESHOLD BASED ON MAXIMUM TOTAL CREDITS DURING 2023

	Number	Total assets (\$B)	Total customer credits, \$MM			Total PAB credits, \$MM			Total credits, \$MM	
			Number	Mean	Median	Number	Mean	Median	Mean	Median
>\$0–100MM	76	212.8	76	14.4	2.7	17	0.3	.....	14.7	2.9
\$100–250MM	16	91.3	16	159.0	140.2	7	0.1	.....	159.1	140.2
\$250–500MM	11	147.8	11	323.8	303.7	6	37.7	1.2	360.3	333.6
\$500MM–1B	12	301.7	12	540.8	554.9	10	135.6	32.7	643.4	614.1
\$1–5B	22	412.7	22	2,386.7	2,257.6	19	168.8	12.4	2,491.6	2,516.9
\$5–10B	5	133.1	5	7,261.8	7,421.5	5	212.1	76.0	7,460.7	7,457.7
≥10B	20	3,524.2	20	49,360.3	30,366.1	18	8,336.9	330.1	57,157.6	33,833.3
Total ^a	162	4,823.6	162	6,726.6	122.1	82	1,071.5	0	7,719.8	125.6

^a Table excludes carrying broker-dealers with zero reported credits in 2023.

A benefit of this alternative is those carrying broker-dealers with the largest amounts of total credits would be scoped into daily computing, where the largest credits reported (as opposed to the average) could be more indicative of a potential mismatch between the net cash owed to customers and the reserve account balances. However, this

alternative may also create uncertainty if any cyclical behavior of total credits that has occurred over some historical period, changes unexpectedly, leading to potential for a carrying broker-dealer oscillating between weekly and daily computations and deposits from year to year.

Table 7 summarizes the number of affected broker-dealers under the alternatives thus far versus the final amendments, both for the rolling sample period defined from January 2023 to December 2023 and for the period defined from June 2023 to May 2024.

TABLE 7—SUMMARY OF AFFECTED BROKER-DEALERS UNDER THE FINAL AMENDMENTS VERSUS ALTERNATIVES

Alternatives vs. final amendments	Number of affected broker-dealers (based on period January 2023 to December 2023)	Number of affected broker-dealers (based on period June 2023 to May 2024)
Final Amendments	49	48
Alternatives:		
Alt 1 Over-Funding	162	160
Alt 2 \$1B in Total Assets	78	79
Alt 2 \$50MM in Net Capital	100	103
Alt 2 \$10MM in Net Credits and Average T.C. >\$250MM	51	51
Alt 3 Daily for all	162	160
Alt 4 Average T.C. >\$1B	41	40
Alt 4 Average T.C. >\$100MM	75	76
Alt 5 Maximum Total Credits	59	57

6. Daily Computation if an Average Required Deposit Exceeds a Threshold

As an alternative to performing the customer and PAB reserve computations daily for carrying broker-dealers over a

threshold (defined by average total credits), the Commission considered an approach that would have required a daily computation in the case where the required reserve bank account deposit

as a share of the reserve bank account balance prior to such deposit exceeds a

³⁹³ This means, for example, if a carrying broker-dealer is required to file 12 FOCUS Reports for a calendar year, the carrying broker-dealer adds up

the Total Credits reported in both the customer and PAB reserve formulas in each of the 12 FOCUS

Reports filed, and divides the total by 12 to compute the arithmetic mean.

certain percentage threshold (e.g., 5% or 10%).³⁹⁴

This alternative approach would have accounted for broker-dealer-specific trends related to customer transactions. If the customer base differed substantially between carrying broker-dealers, with customers of some carrying broker-dealers trading more often or doing account activities that increased the carrying broker-dealer's total credits by more compared to the customer base of other broker-dealers, this alternative approach would have focused only on those carrying broker-dealers that typically experience larger reserve mismatches. However, given the information displayed in table 5, there does not appear to be a perfect correlation with carrying broker-dealer size (measured by average total credits), and the deposit "mismatch."³⁹⁵ Smaller-broker dealers can have an average mismatch of more than 5% (based on the January 2023 to December 2023 period), implying the possibility of an undue burden with respect to compliance costs. That latter could have ultimately been passed onto the carrying broker-dealers' customers and PAB account holders.

7. Daily Computation Requirement Based on Average Total Credits per Number of Customer and PAB Accounts

As an alternative to performing the customer and PAB reserve computations

daily for carrying broker-dealers over a threshold (defined by average total credits), the Commission considered requiring daily computations based on *average total credits per number of customer accounts*. While a failure of carrying broker-dealers with smaller amounts of total credits may not have posed a significant risk of depletion to the SIPC Fund, a threshold based on the average total credits may have had limitations from an individual customer or PAB account holder prospective. This is because such a threshold does not account for the number of customers and PAB account holders a carrying broker-dealer might have and is disconnected from the per-customer protection approach that is used by SIPC.³⁹⁶

For example, consider two carrying broker-dealers, both with \$150 million in total credits, which is below the \$500 Million Threshold. The first carrying broker-dealer has three customers, each contributing \$50 million in credits towards the carrying broker-dealer's aggregate value of total credits, and the second carrying broker-dealer has 100 customers each contributing \$1.5 million in credits towards the carrying broker-dealer's aggregate value of total credits. Recall that the maximum advance from the SIPC Fund is \$500,000 per customer. Consider a situation where both carrying broker-dealers fail

and their reserve bank accounts are underfunded by more than 1% of what is owed to customers (i.e., the shortage is above \$1.5 million). In this situation, the customers of the second carrying broker-dealer would be made whole promptly with an advance from the SIPC Fund, but the customers of the first carrying broker-dealer would not be made whole (because the per-customer loss is above maximum per-customer SIPC advance of \$500,000) until SIPC recovers funds from the carrying broker-dealer, which may take some time.

The above example notwithstanding, data from the FOCUS Reports for 2023 suggests the potential for this concern is likely negligible. Table 8 displays the amounts of average total credits per total accounts for each size grouping of carrying broker-dealers. For the 162 carrying broker-dealers that reported positive total credits in December 2023, the average amount of average total credits per account (with the number of customer accounts and PAB accounts combined) was notably larger for the carrying broker-dealers above the \$500 Million Threshold than for carrying broker-dealers below the threshold. Carrying broker-dealers above the \$500 Million Threshold had about \$13 million per customer account, while carrying broker-dealers below the \$500 Million Threshold had about \$.5 million on average per customer account.³⁹⁷

TABLE 8—THRESHOLD BASED ON AVERAGE TOTAL CREDITS PER ACCOUNTS DURING 2023

	Number	Number of accounts (cust + PAB)	Total credits \$MM	Total credits per account \$MM
		Mean	Mean	Mean
>\$0–100MM	87	214,951	14.5	0.6
\$100–250MM	14	480,321	160.3	0.1
\$250–500MM	12	469,612	357.2	0.4
\$500MM–1B	8	141,807	697.7	1.3
\$1–5B	17	1,964,257	2,344.3	33.6
\$5–10B	6	11,133,250	7,201.0	2.1
≥10B	18	7,783,768	52,858.1	2.1
Total	162	1,682,066	6,468.4	5.1

8. Daily Computation Based on Average Total Credits From the Most Recent Calendar Year

As an alternative to performing the customer and PAB reserve computations daily based on a 12-month rolling

average of total credits, the Commission considered requiring computation based on the arithmetic mean of the sum of total credits over the 12 months in the most recent calendar year. For example, whether a carrying-broker dealer

exceeded the \$500 Million Threshold at any point in 2024, would have been based on the average total credits from January 2023 through December 2023.

The potential benefit of basing the average total credit amount on the most recent calendar year is that carrying

³⁹⁴ See discussion related to table 5 in section IV.B.2. of this release.
³⁹⁵ Computed by dividing the numbers in column four by the numbers in column three of panel A of table 5.
³⁹⁶ Per 15 U.S.C. 78fff–2(c), customers of a failed broker-dealer have the right to share *pro rata* with

other SIPA customers in the customer property held by that broker-dealer. See section I.C.2. of this release for more details.
³⁹⁷ Calculated from monthly FOCUS Reports for 2023. The Commission divided average total credits in 2023 for each carrying broker-dealer by the number of total customer and PAB accounts for

each carrying broker-dealer (Lines 8080 and 8081, respectively), then computed the average of the per customer amount for each size category, and above and below the \$500 Million Threshold. Lines 8080 and 8081 are reported in the December FOCUS Report each year, hence those numbers are not yet available for the rolling averages beyond 2023.

broker-dealers would have known with certainty if they fell above or below the \$500 Million Threshold and would have been subject to daily or weekly computing for the entirety of the next calendar year. This potential benefit contrasted with the possible uncertainty that the rolling average computation would have introduced for carrying broker-dealers that are close to the \$500 Million Threshold. That uncertainty may have created an added cost for those carrying broker-dealers as they would have needed to constantly monitor their standing with respect to the \$500 Million Threshold. This monitoring may have involved additional staff, or existing staff devoting additional time to that task, and suggests the cost of the final amendments may be marginally higher for some carrying broker-dealers than the cost estimates cited earlier in this release.³⁹⁸ Or, wishing to avoid this monitoring cost, the carrying broker-dealer may have had to decide to switch to daily (or weekly) once and for all, which may have also implied additional costs.

However, a potential cost of this alternative was that, over the course of a year, a carrying broker-dealer computing weekly (for example) may exceed the \$500 Million Threshold. This may have resulted in a situation where a carrying broker-dealer with average total credits above the \$500 Million Threshold would not have been engaging in daily computation—as it would have with a timelier and up-to-date rolling average—and the risks of weekly computing discussed in this release would have remained present for that carrying broker-dealer.

9. Reduction of the Aggregate Debit Items Charge From 3% to 1%

The Commission could have implemented a debit-items charge reduction from 3% to 1%, as suggested by some commenters.³⁹⁹ This change would have freed up double the amount of liquidity (\$14.82 billion) compared to the reduction from 3% to 2% finally chosen by the Commission.

As mentioned in the baseline, however, a 1% debit reduction already applies to firms that use the basic method to calculate their net capital requirements. Net capital requirements are formulated differently under the alternative and basic methods. While the basic method targets the leverage of a carrying broker-dealer directly, under

the alternative method, the net capital rule is formulated as a percentage of total customer receivables. The 1% debit reduction should not be applied to firms that calculate their net capital requirements under the alternative method. Otherwise, their combined levels of liquidity and capital buffers under the customer protection and net capital rules may fall below adequate levels. The 2% debit reduction will be appropriate because moving from weekly to daily computations, the mismatch risk, which has been discussed earlier, will be reduced, and so the original 3% debit reduction will not be required in the new regime.

10. Exemption for Cash in Motion

The Commission could have adopted an alternative that exempts from the reserve computations cash that has been “directed off of the [carrying broker dealer’s] balance sheet,”⁴⁰⁰ for example, cash that is subject to a sweep program in accordance with paragraph (j)(2)(ii) of Rule 15c3–3.⁴⁰¹ Commenters raised the following scenario: a customer deposits cash with the carrying broker-dealer near the close of the business (say, Monday for example). It is sufficiently late in the day that the carrying broker-dealer cannot sweep the cash into the money market fund or bank; however, according to the customer’s preset instructions, the carrying broker-dealer will automatically sweep the funds into the money market fund or bank account the first thing next morning (Tuesday). Such funds would become part of the customer reserve computation and would need to be deposited in the customer reserve bank account on Wednesday, even though, as of the next morning (on Tuesday), they are no longer held by the carrying broker-dealer. Thus, the carrying broker-dealer would need to fund the customer reserve bank account from its own reserves. Commenters stated that this situation creates new costs in the daily versus the weekly computation. Under the weekly computation, cash deposited on Monday would be swept out on Tuesday, and therefore would not be subject to the weekly reserve computation the next Monday (using numbers as of the close of business the previous Friday).⁴⁰²

³⁹⁸ See ASA Letter 2 at 1.

⁴⁰¹ See ASA Letter at 2; SIFMA Letter at 7; ASA Letter 3.

⁴⁰² However, this scenario of having to account for cash that is no longer held by the carrying broker-dealer also can occur under the existing weekly reserve computation requirement. For example, customer cash deposited at the broker-dealer on Friday after the time when it can be swept to a money market fund or bank must be accounted

The Commission recognizes that this alternative would lower costs for carrying broker-dealers in that it would reduce the amount of cash they would need to set aside. However, the Commission does not believe the relative cost savings to be substantial, as the carrying broker-dealer would only be required to fund the reserve bank account overnight (in the example above from Wednesday to Thursday), because, under the commenter’s assumption, the cash is swept out as of Tuesday morning and therefore would not be required to be held (in the customer reserve bank account) as of Thursday. Moreover, the cost only applies to cash that is received before close of business and yet after the sweep deadline. Any cash received before the sweep deadline on Monday would not be part of the reserve computation as of Monday afternoon.

On the other hand, retaining this requirement maintains the current level of customer protection, providing a buffer against the situation where the funds in the customer reserve bank account turn out to be insufficient to pay customers in the event of broker-dealer failure.

V. Paperwork Reduction Act

Paragraph (e) of Rule 15c3–3 contains “collection of information” requirements within the meaning of the Paperwork Reduction Act (“PRA”).⁴⁰³ Specifically, paragraph (e) of Rule 15c3–3 requires carrying broker-dealers to make and maintain a record of each customer and PAB reserve computation and to preserve each such record in accordance with Rule 17a–4.⁴⁰⁴ The Commission has submitted the final collection of information to the Office of Management and Budget (“OMB”) for review and approval in accordance with the PRA and its implementing regulations.⁴⁰⁵ For the amendments, the title of the existing information collection is “Customer Protection—Reserves and Custody of Securities”

for in the customer reserve computation performed the following Monday (using numbers as of the close of business Friday) and, to the extent it creates a deposit requirement, the required deposit must be made by 10 a.m. on Tuesday even though by that time the customer cash has been swept to the money market fund or bank. Moreover, unless the carrying broker-dealer performs an intra-week reserve computation, the cash must remain in the customer reserve bank account until the following Tuesday. Thus, the new cost arises from the fact that a daily customer reserve computation can increase the frequency of having to account for customer cash that is no longer held by the carrying broker-dealer, but—as discussed below—the daily requirement also shortens the time that the cash must be held in the customer reserve bank account.

⁴⁰³ See 44 U.S.C. 3501 *et seq.*

⁴⁰⁴ See 17 CFR 240.15c3–3(e)(3)(v).

⁴⁰⁵ See 44 U.S.C. 3507; 5 CFR 1320.11.

³⁹⁸ See *infra* section V. of this release (discussing PRA).

³⁹⁹ See SIFMA Letter at 5; Raymond James Letter at 2; ASA Letter at 5; ASA Letter 2 at 1.

(OMB Control No. 3235–0078), and the amendments revise that collection. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.⁴⁰⁶ The Commission published notice soliciting comments on the collection of information requirements in the Proposing Release⁴⁰⁷ and submitted the proposed collections of information to OMB for review in accordance with the PRA.⁴⁰⁸ The initial burden estimates from the Proposing Release have been adjusted, as discussed below, to reflect updated information used to make the current estimates, including updated FOCUS Report data.⁴⁰⁹

The burden estimates contained in this section are recordkeeping and notification burdens. The recordkeeping burden relates solely to the requirement for carrying broker-dealers to make and maintain a record of the customer and PAB reserve computations and do not include any other possible costs or economic effects beyond the burdens required to be calculated for PRA purposes.⁴¹⁰

A. Summary of Collections of Information Under the Final Amendments

Rule 15c3–3 requires each carrying broker-dealer to maintain a reserve of cash and/or qualified securities in a customer reserve bank account that is at least equal in value to the net cash owed to customers.⁴¹¹ Carrying broker-dealers also maintain a reserve of cash and/or qualified securities in a PAB reserve bank account in an amount that is at least equal in value to the net cash owed to PAB account holders.⁴¹² In order to determine the amount required to be deposited in the customer and PAB reserve bank accounts, Rule 15c3–3 requires carrying broker-dealers to perform weekly customer and PAB reserve computations as of the close of the last business day of each week.⁴¹³

The rule requires carrying broker-dealers to make and maintain a record of each such computation, and to also preserve each such record in accordance with Rule 17a–4.⁴¹⁴ This recordkeeping requirement represents a collection of information for PRA purposes. This is an existing PRA burden. As described in this section below, the estimated hourly burden associated with this collection of information is not changing. Instead, the total burden is being revised to reflect that the number of respondents subject to the estimated burden will change as a result of the amendments to Rule 15c3–3 adopted by the Commission.

As a result of the amendments, carrying broker-dealers with average total credits equal to or greater than the \$500 Million Threshold must perform the customer and PAB reserve computations daily instead of weekly, and must make and maintain a record of each such daily computation, and also preserve each such record.⁴¹⁵ The amendments also provide that a carrying broker-dealer performing daily customer and PAB reserve computations may elect to perform weekly computations if its average total credits fall below the \$500 Million Threshold and it notifies its DEA, in writing, of this election at least 60 calendar days prior to starting weekly computations.⁴¹⁶ This notification requirement represents a collection of information for the purposes of the PRA.

Further, as a result of the amendments to Rule 15c3–3, carrying broker-dealers that elect to voluntarily perform the customer reserve computation daily and seek to reduce aggregate debit items in the customer reserve computation by 2% instead of 3% must provide notification to their DEA 30 calendar days prior to operating under this provision.⁴¹⁷ This notification requirement represents a collection of information for PRA purposes.

In addition, as a result of the amendment to paragraph (a)(1)(ii)(A) of Rule 15c3–1,⁴¹⁸ a carrying broker-dealer required to perform a daily customer reserve computation may reduce

aggregate debit items in such computation by 2% rather than 3%. This paragraph does not contain an information collection requirement. Therefore, the Commission is not estimating any new collection of information burdens, or revising any existing burden estimates, in connection with this amendment.

Finally, the Commission is adopting technical amendments to Part II of the FOCUS Report (OMB Control No. 3235–0123) to conform it to the amendments with respect to the lowering of the debit reduction from 3% to 2%.⁴¹⁹ Because these amendments, as described above in section II.C.2 of this release, add only two additional lines to a lengthy form, carrying broker-dealers can quickly familiarize themselves with them. Accordingly, the addition of the two new line items will not affect the current estimated burden.

B. Use of the Information

Rule 15c3–3 is an integral part of the Commission's financial responsibility program for broker-dealers. The requirement to document in writing the customer and PAB reserve computations facilitates the process by which the Commission and the carrying broker-dealer's DEA examine the broker-dealer's compliance with Rule 15c3–3. The purpose of the 60-day written notice requirement is to provide the DEA with prior notice that the carrying broker-dealer is switching from daily to weekly customer and PAB reserve computations and provide the DEA the opportunity to contact the carrying broker-dealer and ask how it intends to implement the change. This will assist the DEA in monitoring the carrying broker-dealer. Similarly, the 30-day notification requirement for carrying broker-dealers electing to voluntarily perform a daily customer reserve computation and deduct 2% of aggregate debit items is to ensure that the carrying broker-dealer's DEA is aware of the carrying broker-dealer's election and is able to monitor its compliance with those requirements.

C. Respondents

1. Recordkeeping Requirements

Under the amendments, respondents are carrying broker-dealers with average total credits equal to or exceeding the \$500 Million Threshold. The Commission estimates there are approximately 49 carrying broker-dealers that will have average total credits equal to or exceeding the \$500

⁴⁰⁶ See 5 CFR 1320.11(l).

⁴⁰⁷ See Proposing Release, 88 FR at 45859–62.

⁴⁰⁸ 44 U.S.C. 3507(d); 5 CFR 1320.11.

⁴⁰⁹ The PRA estimates derived from FOCUS Reports have been updated in this final release to reflect more recently available information, including FOCUS Report data for the 2023 calendar year. The estimates in the Proposing Release were based on FOCUS Report data for the 2022 calendar year.

⁴¹⁰ See the Economic Analysis in section IV. of this release.

⁴¹¹ See paragraph (e) of Rule 15c3–3. See also section I.C.1. of this release (discussing the customer reserve requirements of Rule 15c3–3 in more detail).

⁴¹² See paragraph (e) of Rule 15c3–3.

⁴¹³ See paragraph (e) of Rule 15c3–3. Rule 15c3–3 also permits certain carrying broker-dealers to

perform their reserve computations monthly. See paragraphs (e)(3)(i) and (iii) of Rule 15c3–3. Some carrying broker-dealers also elect to perform daily customer and PAB reserve computations. See paragraph (e)(3)(iv) of Rule 15c3–3.

⁴¹⁴ See paragraph (e)(3)(v) of Rule 15c3–3. This paragraph is being re-designated as paragraph (vi) as part of the final amendments.

⁴¹⁵ See paragraph (e)(3)(i)(B)(1) of Rule 15c3–3, as amended.

⁴¹⁶ See paragraph (e)(3)(i)(B)(2) of Rule 15c3–3, as amended.

⁴¹⁷ See paragraph (e)(3)(v) of Rule 15c3–3, as amended.

⁴¹⁸ The OMB Control No. for Rule 15c3–1 (17 CFR 240.15c3–1) is 3235–0200.

⁴¹⁹ See *supra* section II.C.2. of this release (discussing the conforming amendments to the FOCUS Report).

Million Threshold based on a review of FOCUS Report data for the calendar year 2023. Of these carrying broker-dealers, the Commission estimates that 9 already perform the customer reserve computation daily, and therefore already make, maintain, and preserve a record of each such computation. Of the 49 carrying broker-dealers that would have average total credits equal to or exceed the \$500 Million Threshold, the Commission estimates that 44 perform a PAB reserve computation, with 9 of these carrying broker-dealers already performing the PAB reserve computation daily, and therefore already make, maintain, and preserve a record of each such computation. Consequently, for the purposes of the PRA, the Commission estimates that there are 40 respondents for the requirement to make, maintain, and to preserve a record of each customer reserve computation, and 35 respondents for the requirement to make, maintain, and to preserve a record of each PAB reserve computation. These respondents are currently included in the collection of information associated with Rule 15c3–3 related to weekly computations for the customer and PAB reserve computations and the requirement to make, maintain, and to preserve a record of each such computation. However, as a result of the amendments, these respondents will need to perform daily customer and PAB reserve computations rather than weekly computations, and make, maintain, and preserve a record of each such computation.

2. Notification Requirement To Revert to Weekly Computations

Based on a review of FOCUS Report data for the calendar year 2023, the Commission estimates that one carrying broker-dealer per year will provide notice to their DEA that the carrying broker-dealer's average total credits has fallen below the \$500 Million Threshold, and that such carrying broker-dealer will switch from a daily computation to a weekly computation.

3. Notification Requirement To Voluntarily Perform Daily Customer Reserve Computation With 2% Debit Reduction

Based on a review of FOCUS Report data for the calendar year 2023, the Commission estimates that 9 carrying broker-dealers that are above the \$500 Million Threshold already voluntarily perform daily customer reserve computations.⁴²⁰ The Commission

estimates that these nine carrying broker-dealers will notify their DEA of their intent to continuing to perform daily customer reserve computations voluntarily pursuant to paragraph (e)(3)(v) of Rule 15c3–3. Additionally, the Commission estimates that an additional 6 carrying broker-dealers that have significant debit balances may voluntarily elect to perform daily customer reserve computations in order to deduct 2% of aggregate debit items instead of 3% in connection with the computation. Consequently, the Commission estimates that there are 15 respondents associated with this collection of information.

D. Total Annual Burden Estimate

1. Recordkeeping Requirements

Carrying broker-dealers subject to the requirement to perform daily customer and PAB reserve computations under the final amendments were previously required to perform such computations weekly. Under preexisting paragraph (e)(3)(v) of Rule 15c3–3, carrying broker-dealers subject to the requirement to perform customer and PAB reserve computations are also subject to the requirement to make and maintain a record of each such computation and to preserve it in accordance with Rule 17a–4.⁴²¹ Carrying broker-dealers are able to elect to maintain the required record of the customer and PAB reserve computation in a physical (*i.e.*, paper format) or electronic format under the record preservation requirements of Rule 17a–4, but given the size and sophistication of carrying broker-dealers subject to the requirement to perform daily customer and PAB reserve computations, and the nature of the actual computations, based on staff experience with carrying broker-dealer operations, the Commission estimates

⁴²⁰ 10 carrying broker-dealers perform daily customer reserve computations. Of these 10 carrying broker-dealers, the Commission estimates that 9 exceed the \$500 Million Threshold. The one carrying broker-dealer that does not exceed the \$500 Million Threshold also does not compute net capital pursuant to Rule 15c3–1(a)(ii)(A), and therefore would not be eligible to avail itself of the 2% debit reduction.

⁴²¹ See paragraph (e)(v) of Rule 15c3–3 and 17 CFR 240.17a–4 (“Rule 17a–4”). Paragraph (e)(3)(v) of preexisting Rule 15c3–3 will be renumbered as paragraph (e)(3)(vi) of Rule 15c3–3 as part of the final amendments. Rule 17a–4 sets forth record preservation requirements for physical records as well as for records maintained in electronic format but does not specify the format in which a carrying broker-dealer must maintain required records, though certain requirements related to electronic recordkeeping systems are set forth in the rule. See, e.g., paragraph (f)(2) of Rule 17a–4 (establishing minimum requirements for an electronic recordkeeping system). The costs for these electronic recordkeeping systems are contained in the PRA collection for Rule 17a–4.

that carrying broker-dealers subject to the requirement to perform daily customer and PAB reserve computations will likely have electronic systems, including electronic recordkeeping systems meeting the record preservation requirements of Rule 17a–4, in place and will use those systems to make and maintain, and preserve the record of the computations in electronic format. Because these electronic recordkeeping systems are part of the record preservation requirements of Rule 17a–4, the costs of those systems are accounted for in the collection of information for Rule 17a–4 because broker-dealers use these systems for their overall recordkeeping.

Because carrying broker-dealers already have in place processes, personnel, and the systems and technology necessary to meet the record preservation requirements of Rule 17a–4, including for the purpose of making and maintaining the record of the customer and PAB reserve computations, and preserving such records in compliance with Rule 17a–4, they will not need to hire additional staff or upgrade or develop new technology or systems, and have already expended the time, effort, and/or financial resources to generate and maintain the required records.⁴²² Therefore, the Commission estimates that the amendments will not impose any new one-time burdens or start-up costs (*e.g.*, hardware acquisition, cloud storage costs, systems/tech upgrades, tech services, etc.) on carrying broker-dealers to set up the process of creating the required record of such computations.

Instead, the amendments will impose increased ongoing burdens on the respondent carrying broker-dealers because they must increase the frequency of the customer and PAB reserve computations and, therefore, must make, maintain, and preserve additional records of the computations. Specifically, there will be an increase in the burdens associated with the collections of information titled “Rule 15c3–3(e)(3)—daily computations” for

⁴²² As discussed in the Economic Analysis in section IV.C. of this release, carrying broker-dealers may be required to incur increased initial start-up compliance costs to comply with the requirement to perform a daily customer and PAB reserve computation under the final amendments. A carrying broker-dealer may incur these initial start-up compliance costs while implementing operational changes, potentially increasing staff, and upgrading systems and internal controls and infrastructure in order to facilitate the increased frequency of computations and accelerate the coordination of staff involved in providing the required information. These economic effects are not in the PRA and are discussed in the Economic Analysis in section IV.C. of this release.

⁴²⁰ Based on FOCUS data for the year ending December 31, 2023, the Commission estimates that

both the customer and PAB reserve computations, and a corresponding decrease in the burdens associated with the collections of information titled “Rule 15c3–3(e)(3)—weekly computations” for the customer and PAB reserve computations as certain carrying broker-dealers will shift from weekly to daily computations in connection with the amendments. Based on experience with customer and PAB reserve computations, the Commission estimates that it takes between one and five hours to make a record of each such computation, and that the average time spent across all carrying broker-dealers is 2.5 hours.⁴²³

The Commission received one comment on this estimate stating that the Proposing Release does not state a basis for this 2.5 hour estimate and that the estimate is so wide of the mark that it cannot support the Commission’s analysis of paperwork burdens (or costs, burdens, and effects on competition of the proposal). This commenter stated that each weekly calculation takes approximately 10 hours and that during these 10 hours more than 50 employees are involved in some part of the data collection, performing calculations, verifying figures, and transferring funds to banks that are part of performing the reserve computations.⁴²⁴ In response, the specific tasks the commenter listed do not specify what amount of the 10 hours is dedicated to making,

maintaining, and preserving a record of the computation, as required by Rule 15c3–3. Instead, the tasks the commenter listed relate to the steps necessary to perform a computation. The 2.5 hours is based on staff experience with customer and PAB reserve computations and recordkeeping requirements and staff’s understanding that these records are made, maintained, and preserved either in an electronic format or as a paper copy. Some carrying broker-dealers may take more time, while others may take less time to make, maintain and preserve a record of the computations. As a result, the 2.5 hour burden estimate is the estimate of the time it takes a carrying broker-dealer to make a record of the computation for purposes of the PRA.⁴²⁵ As noted above, carrying broker-dealers already have in place the personnel, systems, and technology in place to make, maintain, and preserve the required records and to comply with the record preservation requirements of Rule 17a–4. As a result, the Commission is retaining the estimate of 2.5 hours for purposes of the PRA.⁴²⁶

Consequently, the Commission estimates that the amendments will impose aggregate annual ongoing burdens on respondent carrying broker-dealers required to perform daily customer and PAB reserve computations of 25,000 hours and 21,875 hours, respectively, or a total of 46,875 hours.⁴²⁷ When added to the currently

approved burden hours of 9,375 hours and 6,875 hours for the customer and PAB reserve computations, respectively, the revised burden hour estimates are 34,375 hours for the daily customer reserve computation, and 28,750 hours for the daily PAB reserve computation.

In addition to this increase, the Commission estimates that there will be a corresponding decrease in the collections of information titled “Rule 15c3–3(e)(3)—weekly computations” for both the customer and PAB reserve computations. Specifically, the Commission estimates that the amendments will result in a revised burden hour estimate of 15,730 hours with respect to weekly customer reserve computations⁴²⁸ (a decrease of 5,200 hours⁴²⁹), and 5,460 hours with respect to the weekly PAB reserve computations⁴³⁰ (a decrease of 4,550 hours⁴³¹).

2. Notification Requirement To Revert to Weekly Computations

Based on its experience with other notification requirements, in the Proposing Release, the Commission estimated that it will take a carrying broker-dealer 30 minutes to prepare and send the notification regarding its election to perform weekly customer and PAB reserve computations to its DEA. The Commission did not receive comments on the estimate and is adopting it as proposed. This burden represents a new collection of information. The Commission estimates that relatively few carrying broker-dealers will send the notice either because their average total credits will be substantially greater than the \$500

⁴²³ This is consistent with the current collection of information for the customer and PAB reserve computations, available at <https://www.reginfo.gov/public/do/DownloadDocument?objectID=132914201>. The estimate is also based on the Commission’s experience with other recordkeeping requirements. For example, the current estimated burden related to the requirement to maintain records pursuant to Rule 17a–3 (17 CFR 240.17a–3) (“Rule 17a–3”) is 1 hour per day, or 249 hours per year (based on 249 business days for that year) for each registered broker-dealer. This includes the requirement that a broker-dealer make a record of the broker-dealer’s computations for aggregate indebtedness and net capital. See Supporting Statement for Rule 17a–3, available at <https://www.reginfo.gov/public/do/DownloadDocument?objectID=123585601>. See also paragraph (a)(11) of Rule 17a–3.

⁴²⁴ See Raymond James Letter at 3, n.9. See also SIFMA Letter at 4. These commenters stated the 2.5-hour figure underestimates the actual burden associated with fulfilling current requirements. *Id.* These commenters also stated that carrying broker-dealers subject to the requirement to perform daily customer and PAB reserve computations will be required to hire and train additional employees, devote the full-time efforts of these personnel to performing the required daily computations, and to update or implement new systems and processes to comply with the daily computation requirements. See Raymond James Letter at 4. See also SIFMA Letter at 5. The costs associated with increases in personnel and changes or upgrades to systems and processes are not recordkeeping burdens for the purposes of this PRA analysis and are instead discussed as part of the Economic Analysis. See *supra* section IV.C. of this release.

⁴²⁵ This estimated burden involves the time it takes an employee such as a financial reporting manager to make, maintain, and preserve a record of the reserve computation and the supporting details of each credit and debit in the applicable reserve computation. The estimated range of 1 to 5 hours considers that smaller carrying broker-dealers may choose to print out paper copies of the computation and supporting details on a computer to comply with the recordkeeping requirement. Larger carrying broker-dealers may need additional time to make the record in their preexisting electronic recordkeeping system to maintain and preserve it in a format to meet the electronic preservation requirements of Rule 17a–4. Consequently, a 2.5 hour estimate is used. Therefore, the increase in the recordkeeping burden is accounted for in the 2.5 hour estimate and the increase in respondents for the daily reserve computations.

⁴²⁶ Costs of the amendments outside of the PRA are discussed in the Economic Analysis in section IV.C of this release.

⁴²⁷ This figure was calculated as follows: 40 respondent carrying broker-dealers that are required to perform daily customer reserve computations × 2.5 hours/day × 250 business days = 25,000 hours, plus 35 respondent carrying broker-dealers that are required to perform daily PAB reserve computations × 2.5 hours/day × 250 business days = 21,875 hours. Therefore, the total estimated burden is 25,000 hours + 21,875 hours = 46,875 hours. See also *supra* note 355 and the accompanying text (discussing the annual economic cost for one carrying broker-dealer associated with the recordkeeping requirements of the amendments to Rule 15c3–3).

⁴²⁸ This figure was calculated as follows: 161 respondents currently approved under the information collection related to weekly customer reserve computations titled “Rule 15c3–3(e)(3)—weekly computations” minus the 40 respondent carrying broker-dealers that are required under the adopted amendments to perform daily customer reserve computations = 121 respondents × 2.5 hours × 52 responses annually = 15,730 hours.

⁴²⁹ This figure was calculated as follows: 20,930 burden hours currently approved with respect to the collection of information related to weekly customer reserve computations minus the revised estimate of 15,730 hours resulting from fewer respondents performing weekly computations = 5,200 hours.

⁴³⁰ This figure was calculated as follows: 77 respondents currently approved under the information collection related to weekly PAB reserve computations titled “Rule 15c3–3(e)(3)—weekly computations” minus the 35 respondent carrying broker-dealers that are required under the adopted amendments to perform daily PAB reserve computations = 34 respondents × 2.5 hours × 52 responses annually = 4,450 hours.

⁴³¹ This figure was calculated as follows: 10,010 burden hours currently approved with respect to the collection of information related to weekly PAB reserve computations minus the revised estimate of 5,460 hours resulting from fewer respondents performing weekly computations = 4,550 hours.

Million Threshold or because they will continue to perform daily computations, even if their average total credits fall below the \$500 Million Threshold, given the liquidity benefits of performing a daily computation. Consequently, the Commission estimates that one carrying broker-dealer per year will send the notice for a burden of 0.5 hours per year.⁴³²

3. Notification Requirement To Voluntarily Perform Daily Customer Reserve Computation With 2% Debit Reduction

Based on its experience with other notification requirements, the Commission estimates that it will take a carrying broker-dealer 30 minutes to prepare and send the notification regarding its election to voluntarily perform a daily customer reserve computation. This burden represents a new collection of information. The Commission estimates that there are 15

respondents: 9 in the first year; 3 in the second year; and 3 in the third year, or alternatively, 5 respondents per year on average. Consequently, the Commission estimates that this will result in an annualized burden of approximately 2.5 hours per year.⁴³³

4. Summary of the Burden Revisions⁴³⁴

As a result of the amendments, the Commission estimates that the burdens associated with the requirement to make, maintain, and preserve a record of the daily customer reserve computations will increase by 25,000 hours and the burdens associated with the requirement to make, maintain, and preserve a record of the daily PAB reserve computations will increase by 21,875 hours. This increase will be accompanied by a decrease in burdens associated with the recordkeeping requirement for weekly customer and PAB reserve computations of 5,200 hours and 4,550 hours,⁴³⁵ respectively,

as carrying broker-dealers with average total credits that exceed the \$500 Million Threshold shift from performing the customer and PAB reserve computations weekly to daily.

Additionally, a new collection of information related to the notification requirement for carrying broker-dealers reverting to weekly customer and PAB reserve computations will result in an additional 0.5 burden hours per year.

Lastly, a new collection of information related to the notification requirement for carrying broker-dealers electing to voluntarily perform daily customer reserve computations and to reduce aggregate debit items by 2% instead of 3% will result in an additional 2.5 burden hours per year.

The net increase in estimated annual burdens associated with the amendments to Rule 15c3-3, as adopted, is estimated to be 37,128 hours. The table below summarizes these changes.

Name of information collection	Currently approved estimated annual industry burden (hours)	Estimated increase/decrease in annual industry burden (hours)	Revised annual industry burden (hours)
Rule 15c3-3(e)(3)—daily computations for customer reserve account ¹	9,375	25,000	34,375
Rule 15c3-3(e)—daily computations for PAB reserve account	6,875	21,875	28,750
Rule 15c3-3(e)(3)—weekly computations for customer reserve account ² ..	20,930	(5,200)	15,730
Rule 15c3-3(3)(3)—weekly computations for PAB reserve account	10,010	(4,550)	5,460
Rule 15c3-3(e)(i)(B)(2) notification	N/A	0.5	0.5
Rule 15c3-3(e)	N/A	2.5	2.5
Total Change:		37,128	

¹ In the most recently approved supporting statement for Rule 15c3-3, the titles of the collections of information related to daily customer and PAB reserve computations are both listed as “Rule 15c3-3(e)(3)—daily computations.” The Commission is revising the titles of these collections of information as set forth in this table in order to clarify that they are distinct collections of information.

² In the most recently approved supporting statement for Rule 15c3-3, the titles of the collections of information related to weekly customer and PAB reserve computations are both listed as “Rule 15c3-3(e)(3)—weekly computations.” The Commission is revising the titles of these collections of information as set forth in this table in order to clarify that they are distinct collections of information.

E. Collections of Information Are Mandatory

The collections of information under the amendments to Rule 15c3-3 are mandatory as to the carrying broker-dealers that are subject to them.

F. Confidentiality of Response to Collections of Information

The Commission expects to receive confidential information in connection

with the collections of information. A carrying broker-dealer requested by the Commission to produce records related to the amendments under Rule 15c3-3 could request confidential treatment of the information.⁴³⁶ If a confidential treatment request were made, the Commission anticipates that it would keep the information confidential subject to applicable law.⁴³⁷

G. Retention Period for Recordkeeping Requirements

The record of the customer and PAB reserve computations must be preserved in accordance with the requirements of Rule 17a-4.⁴³⁸ Written notifications from carrying broker-dealers electing to compute the customer and PAB reserve computations weekly after being subject to the daily requirement, and notifications from carrying broker-

⁴³² One response per year $\times$ 0.5 hours per response = 0.5 hours.

⁴³³ (Nine responses in year 1 $\times$ 0.5 hours per response) + (3 responses in year 2 $\times$ 0.5 hours per response) + (3 responses in year 3 $\times$ 0.5 hours per response) or 4.5 hours + 1.5 hours + 1.5 hour = 7.5 hours. Over three years the annualized burden would be 7 hours/3 years = 2.5 hours per year. Alternatively, (5 respondents per year $\times$ 0.5 hours per response) = 2.5 hours per year.

⁴³⁴ OMB Control No. 3235-0078 for Rule 15c3-3 includes thirty separate information collections. This summary shows only those information

collections that are being revised as a result of the amendments.

⁴³⁵ See *supra* notes 354–356 and the accompanying text (discussing the economic costs associated with the recordkeeping requirements of the amendments to Rule 15c3-3). The net increase in estimated annual burdens associated with the requirement to make, maintain, and preserve a record of the daily customer and reserve computations is estimated to be hours (25,000 hours + 21,875 hours) – (5,200 hours + 4,550 hours) = 37,125 hours. The 37,125 net increase, plus the increase in 3 hours (0.5 hours and 2.5 hours) for the

new notification requirement totals a net increase in estimated annual burden hours of 37,128 hours.

⁴³⁶ See 17 CFR 200.83. Information regarding requests for confidential treatment of information submitted to the Commission is available on the Commission’s website at <https://www.sec.gov/foia/howfo2.htm#privacy>.

⁴³⁷ See, e.g., 15 U.S.C. 78x (governing the public availability of information obtained by the Commission); 5 U.S.C. 552 *et seq.*

⁴³⁸ See paragraph (e)(3)(v) of Rule 15c3-3; Rule 17a-4.

dealers that elect to perform a daily customer reserve computation and use the 2% debit reduction will be submitted to the carrying broker-dealer's DEA. These notices constitute communications relating to a carrying broker-dealer's "business as such" and, therefore, will need to be retained for three years.⁴³⁹

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act ("RFA") requires the Commission, in promulgating rules, to consider the impact of those rules on small entities.⁴⁴⁰ Section 603(a) of the Administrative Procedure Act,⁴⁴¹ as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules to determine the impact of such rulemaking on "small entities."⁴⁴² Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule which, if adopted, would not have a significant economic impact on a substantial number of small entities.⁴⁴³ In the Proposing Release, the Commission certified that the proposed amendments to Rule 15c3-3 would not have a significant economic impact on a substantial number of small entities for purposes of the RFA.⁴⁴⁴ The Proposing Release solicited comment on the certification. The Commission received no comments on this certification.

For purposes of Commission rulemaking in connection with the RFA, a small entity includes a broker-dealer that: (1) had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to paragraph (d) of 17 CFR 240.17a-5 ("Rule 17a-5(d)"),⁴⁴⁵ or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than \$500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not

a small business or small organization.⁴⁴⁶

The amendments to Rule 15c3-3 will require certain carrying broker-dealers to perform the customer and PAB reserve computations daily rather than weekly. The amendments to Rule 15c3-3 also will permit carrying broker-dealers below the \$500 Million Threshold to voluntarily perform a daily customer reserve computation and to reduce aggregate debit items in such computation by 2% instead of 3%. Further, the amendments to Rule 15c3-1 will permit carrying broker-dealers that are required to perform a daily customer reserve computation to reduce aggregate debit items in such computation by 2% instead of 3%. Finally, the Commission is adopting technical amendments to the FOCUS Report to conform it to the amendments with respect to the lowering of the debit reduction from 3% to 2%. The amendments to Rules 15c3-3 and 15c3-1 and the FOCUS Report only will impact carrying broker-dealers.

Based on FOCUS Report data, the Commission estimates that as of December 31, 2023, there were approximately 735 broker-dealers that were "small" for the purposes of Rule 0-10. The Commission estimates that none of these small broker-dealers is a carrying broker-dealer. As a result, the amendments likely will not apply to small broker-dealers. Therefore, the amendments will not have a significant impact on a substantial number of small broker-dealers.

For the foregoing reasons, the Commission certifies that the amendments will not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

VII. Other Matters

The Commission considers the provisions of the final amendments to be severable to the fullest extent permitted by law. "If parts of a regulation are invalid and other parts are not," courts "set aside only the invalid parts unless the remaining ones cannot operate by themselves or unless the agency manifests an intent for the entire package to rise or fall together." *Bd. of Cnty. Commissioners of Weld Cnty. v. EPA*, 72 F.4th 284, 296 (D.C. Cir. 2023); see *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 294 (1988). "In such an inquiry, the presumption is always in favor of severability." *Cnty. for Creative Non-Violence v. Turner*, 893 F.2d 1387, 1394 (D.C. Cir. 1990). Consistent with these principles, while the Commission

believes that all provisions of the final amendments are fully consistent with governing law, if any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Pursuant to the Congressional Review Act, the Office of Information and Regulatory Affairs has designated these rules as a "major rule," as defined by 5 U.S.C. 804(2).

Statutory Authority

The Commission is adopting amendments contained in this release under the Commission's rulemaking authority pursuant to the Exchange Act, 15 U.S.C. 78a *et seq.*, and particularly, sections 15 and 23(a) (15 U.S.C. 78o and 78w(a)), thereof.

List of Subjects

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

17 CFR Part 249

Brokers, Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78j-4, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78dd, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 1681w(a)(1), 6801-6809, 6825, 7201 *et seq.*, and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111-203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112-106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

Section 240.15c3-3 is also issued under 15 U.S.C. 78c-5, 78o(c)(2), 78(c)(3), 78q(a), 78w(a); sec. 6(c), 84 Stat. 1652; 15 U.S.C. 78fff.

* * * * *

■ 2. Section 240.15c3-1 is amended by revising paragraph (a)(1)(ii)(A) to read as follows:

⁴³⁹ See paragraph (b)(4) of Rule 17a-4.

⁴⁴⁰ See 5 U.S.C. 601 *et seq.*

⁴⁴¹ 5 U.S.C. 603(a).

⁴⁴² Section 601(b) of the RFA permits agencies to formulate their own definitions of "small entities." See 5 U.S.C. 601(b). The Commission has adopted definitions for the term "small entity" for the purposes of rulemaking in accordance with the RFA. These definitions, as relevant to this rulemaking, are set forth in 17 CFR 240.0-10 ("Rule 0-10").

⁴⁴³ See 5 U.S.C. 605(b).

⁴⁴⁴ See Proposing Release, 88 FR at 45862.

⁴⁴⁵ 17 CFR 240.17a-5(d).

⁴⁴⁶ See 17 CFR 240.0-10(c).

§ 240.15c3–1 Net capital requirements for brokers or dealers.

- (a) * * *
- (1) * * *
- (i) * * *
- (ii) * * *

(A) Make the computation required by § 240.15c3–3(e) and set forth in Exhibit A, § 240.15c3–3a, on a weekly basis and, in lieu of the 1% reduction of certain debit items required by Note E (3) in the computation of its Exhibit A requirement, reduce aggregate debit items in such computation by 3%; provided, however, that, if a broker or dealer is required to make the computation required by § 240.15c3–3(e) and set forth in Exhibit A, § 240.15c3–3a, on a daily basis, the broker or dealer may reduce aggregate debit items in such computation by 2%;

* * * * *

■ 3. Section 240.15c3–3 is amended by revising paragraphs (e)(3)(i), (iv), and (v) and adding paragraph (e)(3)(vi) to read as follows:

§ 240.15c3–3 Customer protection—reserves and custody of securities.

* * * * *

- (e) * * *
- (3) * * *

(i)(A) Except as provided in paragraphs (e)(3)(i)(B)(1) and (C) of this section, computations necessary to determine the amount required to be deposited in the Customer Reserve Bank Account and PAB Reserve Bank Account as specified in paragraph (e)(1) of this section must be made weekly, as of the close of the last business day of the week, and the deposit so computed must be made no later than one hour after the opening of banking business on the second following business day.

(B)(1) A broker or dealer with average total credits that are equal to or greater than \$500 million must make the computations necessary to determine the amount required to be deposited in the Customer Reserve Bank Account and PAB Reserve Bank Account, as specified in paragraph (e)(1) of this section, daily as of the close of the previous business day, and the deposit so computed must be made no later than one hour after the opening of banking business on the second following business day. A broker or dealer must comply with this paragraph (e)(3)(i)(B)(1) no later than six months after having average total credits equal to or greater than \$500 million and until such time as it has average total credits of less than \$500 million and 60 days

after having provided the 60-day notice required by paragraph (e)(3)(i)(B)(2) of this section. For purposes of this paragraph (e)(3), *average total credits* means the arithmetic mean of the sum of Total Credits in the Customer Reserve Bank Account computation and the PAB Reserve Bank Account computation reported in the 12 most recently filed month-end Forms X–17A–5.

(2) A broker or dealer computing the Customer Reserve Bank Account computation and the PAB Reserve Bank Account computation daily under paragraph (e)(3)(i)(B)(1) of this section whose average total credits falls below \$500 million may elect to compute the Customer Reserve Bank Account and the PAB Reserve Bank Account computation weekly under paragraph (e)(3)(i)(A) of this section. Such broker or dealer must notify its designated examining authority, in writing, of this election at least 60 calendar days before computing the Customer Reserve Bank Account and the PAB Reserve Bank Account computation weekly under paragraph (e)(3)(i)(A) of this section.

(C) A broker or dealer which has aggregate indebtedness not exceeding 800% of net capital (as defined in § 240.15c3–1) and which carries aggregate customer funds (as defined in paragraph (a)(10) of this section), as computed at the last required computation pursuant to this section, not exceeding \$1,000,000, may in the alternative make the Customer Reserve Bank Account computation monthly, as of the close of the last business day of the month, and, in such event, must deposit not less than 105% of the amount so computed no later than one hour after the opening of banking business on the second following business day.

* * * * *

(iv) Computations in addition to the computations required in this paragraph (e)(3), other than computations made under paragraph (e)(3)(i)(B)(1) of this section, may be made as of the close of any business day, and the deposits so computed must be made no later than one hour after the opening of banking business on the second following business day.

(v) A broker or dealer may elect to voluntarily compute the Customer Reserve Bank Account computation daily under paragraph (e)(3)(iv) of this section and reduce aggregate debit items in such computation by 2% under § 240.15c3–1(a)(ii)(A). Such broker or dealer must notify its designated

examining authority, in writing, of its election to operate under this paragraph (e)(3)(v) at least 30 calendar days before beginning such computation. If a broker or dealer has notified the broker or dealer's designated examining authority of its election to operate under this paragraph (e)(3)(v), the broker or dealer must continue to compute the Customer Reserve Bank Account computation daily unless a change is approved by its designated examining authority.

(vi) The broker or dealer must make and maintain a record of each such computation made pursuant to this paragraph (e)(3) or otherwise and preserve each such record in accordance with § 240.17a–4.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 4. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; 12 U.S.C. 5461 *et seq.*; 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3) Pub. L. 112–106, 126 Stat. 309 (2012), Sec. 107 Pub. L. 112–106, 126 Stat. 313 (2012), Sec. 72001 Pub. L. 114–94, 129 Stat. 1312 (2015), and secs. 2 and 3 Pub. L. 116–222, 134 Stat. 1063 (2020), unless otherwise noted.

* * * * *

Section 249.617 is also issued under Pub. L. 111–203, 939, 939A, 124. Stat. 1376 (2010) (15 U.S.C. 78c, 15 U.S.C. 78o–7 note).

* * * * *

■ 5. Amend Part II of the Form X–17A–5 (referenced in § 249.617) by revising the Computation for Determination of Customer Reserve Requirements section as shown in Appendix 1.

Note: The Computation for Determination of Customer Reserve Requirements in Part II of Form X–17A–5 is attached as Appendix 1 to this document. Form X–17A–5 will not appear in the Code of Federal Regulations.

By the Commission.

Dated: December 20, 2024.

Vanessa A. Countryman,
Secretary.

Note: The following appendix containing the text of Part II of Form X–17A–5 and the instructions thereto do not, and these amendments will not, appear in the Code of Federal Regulations.

Appendix 1

* * * * *

BILLING CODE 8011–01–P

FOCUS
Report
Part II

COMPUTATION FOR DETERMINATION OF CUSTOMER RESERVE REQUIREMENTS

Items on this page to be reported by a: Stand-Alone Broker-Dealer
Broker-Dealer SBSB
Broker-Dealer MSBSP

CREDIT BALANCES

1. Free credit balances and other credit balances in customers' security accounts (see Note A).....	\$	4340
2. Monies borrowed collateralized by securities carried for the accounts of customers (see Note B).....	\$	4350
3. Monies payable against customers' securities loaned (see Note C).....	\$	4360
4. Customers' securities failed to receive (see Note D).....	\$	4370
5. Credit balances in firm accounts which are attributable to principal sales to customers.....	\$	4380
6. Market value of stock dividends, stock splits and similar distributions receivable outstanding over 30 calendar days.....	\$	4390
7. **Market value of short security count differences over 30 calendar days old.....	\$	4400
8. **Market value of short securities and credits (not to be offset by longs or by debits) in all suspense accounts over 30 calendar days.....	\$	4410
9. Market value of securities which are in transfer in excess of 40 calendar days and have not been confirmed to be in transfer by the transfer agent or the issuer during the 40 days.....	\$	4420
10. Other (List.....)	\$	4425
11. TOTAL CREDITS (sum of Lines 1-10).....	\$	4430

DEBIT BALANCES

12. **Debit balances in customers' cash and margin accounts, excluding unsecured accounts and accounts doubtful of collection (see Note E).....	\$	4440
13. Securities borrowed to effectuate short sales by customers and securities borrowed to make delivery on customers' securities failed to deliver.....	\$	4450
14. Failed to deliver of customers' securities not older than 30 calendar days.....	\$	4460
15. Margin required and on deposit with the Options Clearing Corporation for all option contracts written or purchased in customer accounts (see Note F).....	\$	4465
16. Margin required and on deposit with a clearing agency registered with the Commission under section 17A of the Exchange Act (15 U.S.C. 78q-1) or a derivatives clearing organization registered with the Commodity Futures Trading Commission under section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) related to the following types of positions written, purchased or sold in customer accounts: (1) security futures products and (2) futures contracts (and options thereon) carried in a securities account pursuant to an SRO portfolio margining rule (see Note G).....	\$	4467
17. Margin required and on deposit with a clearing agency registered with the Commission under section 17A of the Exchange Act (15 U.S.C. 78q-1) resulting from the following types of transactions in U.S. Treasury securities in customer accounts that have been cleared, settled, and novated by the clearing agency: (1) purchases and sales of U.S. Treasury securities; and (2) U.S. Treasury securities repurchase and reverse repurchase agreements (see Note H).....	\$	12843
18. Other (List.....)	\$	4469
19. **Aggregate debit items (sum of Lines 12-18).....	\$	4470
20. **Aggregate debit items reduction (for alternative method only)		
A. Less 3% (if applicable) (See Rule 15c3-1(a)(1)(ii)) (3% x Line Item 4470).....	\$	4471
B. Less 2% (if applicable) (See Rules 15c3-1(a)(1)(ii) and 15c3-3(e)(3)(v)) (2% x Line Item 4470).....	\$	12849
21. **TOTAL DEBITS (Line 19 less [Line 20A or 20B, as applicable]).....	\$	4472

RESERVE COMPUTATION

22. Excess of total debits over total credits (Line 21 less Line 11).....	\$	4480
23. Excess of total credits over total debits (Line 11 less Line 21).....	\$	4490
24. If computation is made monthly as permitted, enter 105% of excess of total credits over total debits.....	\$	4500
25. Amount held on deposit in "Reserve Bank Account(s)," including \$ 4505 value of qualified securities, at end of reporting period.....	\$	4510
26. Amount of deposit (or withdrawal) including \$ 4515 value of qualified securities.....	\$	4520
27. New amount in Reserve Bank Account(s) after adding deposit or subtracting withdrawal including \$ 4525 value of qualified securities.....	\$	4530
28. Date of deposit (MM/DD/YY).....	\$	4540

Name of Firm: _____

As of: _____

FOCUS
Report
Part II

COMPUTATION FOR DETERMINATION OF CUSTOMER RESERVE REQUIREMENTS

Items on this page to be reported by a: Stand-Alone Broker-Dealer
Broker-Dealer SBSD
Broker-Dealer MSBSP

FREQUENCY OF COMPUTATION

29. Daily ☐ 4332 Weekly ☐ 4333 Monthly ☐ 4334

30. If the reserve formula is computed daily, and the net capital requirement is computed under the alternative method, check the applicable aggregate debit items reduction percentage used:

3% ☐ 12850 2% ☐ 12851

**See Rules 15c3-1(a)(1)(ii) and 15c3-3(e)(3)(v). In the event the net capital requirement is computed under the alternative method, this reserve formula must be prepared in accordance with the requirements of paragraphs (a)(1)(ii) of Rule 15c3-1 and (e)(3)(v) of Rule 15c3-3, as applicable.

References to notes in this section refer to the notes to 17 CFR 240.15c3-1a.

Name of Firm: _____

As of: _____

* * * * *

[FR Doc. 2024-31178 Filed 1-10-25; 8:45 am]

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FEDERAL REGISTER

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Part III

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Guidance on Clean Electricity Low-Income Communities Bonus Credit
Amount Program; Final Rule

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[TD 10025]

RIN 1545–BR26

Guidance on Clean Electricity Low-Income Communities Bonus Credit Amount Program**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final regulations.

SUMMARY: This document contains final regulations concerning the program to allocate clean electricity low-income communities bonus credit amounts established pursuant to the Inflation Reduction Act of 2022 for calendar years 2025 and succeeding years. Applicants investing in certain clean electricity generation facilities that produce electricity without combustion and gasification may apply for an allocation of capacity limitation to increase the amount of the clean electricity investment credit for the taxable year in which the facility is placed in service. This document provides definitions and requirements that are applicable for the program. The final regulations affect taxpayers seeking allocations of capacity limitation to claim an increased clean electricity investment credit.

DATES: These regulations are effective on January 13, 2025.

FOR FURTHER INFORMATION CONTACT: Concerning these final regulations, Whitney Brady, IRS Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 317–6853 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Authority**

This document amends the Income Tax Regulations (26 CFR part 1) by adding regulations authorized to be issued by the Secretary of the Treasury or her delegate (Secretary) under sections 48E(i) and 7805(a) of the Internal Revenue Code (Code) regarding the application of section 48E(h) of the Code (final regulations).

Section 48E(i) provides an express delegation of authority to the Secretary to provide guidance regarding the implementation of section 48E, stating, “[n]ot later than January 1, 2025, the Secretary shall issue guidance regarding implementation of this section.”

The final regulations are also issued under the express delegation of authority under section 7805(a), which

provides that “the Secretary shall 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. Overview**

Section 13702 of Public Law 117–169, 136 Stat. 1818, 1921 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), added new section 48E(h) to the Code to authorize the Secretary to establish a program for calendar years 2025 and succeeding years to award allocations of capacity limitation (Capacity Limitation) that increase the amount of the new clean electricity investment credit determined under section 48E(a) (section 48E credit) with respect to eligible property that is part of an applicable facility. This document contains final definitions and rules relating to the allocation of Capacity Limitation for calendar year 2025 and succeeding years, requirements related to claiming the increase under section 48E(h), and recapture provisions.

II. Increase to Section 48E Credit

The amount of section 48E credit for a taxable year generally is calculated by multiplying the qualified investment for such taxable year with respect to any qualified facility placed in service during that taxable year by the applicable percentage (as defined in section 48E(a)(2)). If an applicable facility is awarded an allocation of Capacity Limitation, section 48E(h) increases the amount of the section 48E credit with respect to the applicable facility by increasing the applicable percentage used to calculate the amount of the section 48E credit (section 48E(h) Increase). The term *applicable facility* is defined in section 48E(h)(2) to mean any qualified facility that (i) is not described in section 45Y(b)(2)(B) of the Code (relating to combustion and gasification facilities); (ii) has a maximum net output of less than five megawatts (MW) (as measured in alternating current (AC)); and (iii) is described in at least one of four categories in section 48E(h)(2)(A)(iii) (as further described in part III of this Background).

III. Clean Electricity Low-Income Communities Bonus Credit Amount Program**A. In General**

Section 48E(h)(4)(A) directs the Secretary to establish a program, not later than January 1, 2025, to allocate

amounts of Capacity Limitation to applicable facilities. Section 48E(h)(4) also provides that in establishing a program the Secretary establish procedures for an efficient allocation process. Section 48E(h)(4) contemplates the collection and review of applications to consider facilities for an allocation.

B. Facility Categories and Increase Amount

Depending on the category of the facility, an allocation of Capacity Limitation may result in a section 48E(h) Increase equal to either 10 percentage points or 20 percentage points. Section 48E(h)(1)(A)(i) provides for a section 48E(h) Increase of 10 percentage points for eligible property that is located in a low-income community, as defined in section 45D(e) of the Code (Category 1 facility), or on Indian land, as defined in section 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2)) (Category 2 facility). Section 48E(h)(1)(A)(ii) provides for a section 48E(h) Increase of 20 percentage points for eligible property that is part of a qualified low-income residential building project (Category 3 facility) or a qualified low-income economic benefit project (Category 4 facility).

C. Capacity Limitation

Under section 48E(h)(4)(C), the total annual Capacity Limitation that may be allocated is 1.8 gigawatts of direct current capacity for each of the calendar years during the period beginning on January 1, 2025, and ending on December 31 of the applicable year (as defined in section 45Y(d)(3)), and zero thereafter. Under section 48E(h)(4)(D)(i), if the annual Capacity Limitation for any calendar year exceeds the aggregate amount allocated for such year, the excess is carried forward to the next year. No amount of Capacity Limitation may be carried to any calendar year after the third calendar year following the applicable year (as defined in section 45Y(d)(3)). Under section 48E(h)(4)(D)(ii), if the annual Capacity Limitation for calendar year 2024 under section 48E(h)(4)(D) of the Code exceeds the aggregate amount allocated for such year, the excess amount may be carried over and applied to the annual Capacity Limitation under section 48E(h) for calendar year 2025. The annual Capacity Limitation for calendar year 2025 shall be increased by the amount of such excess.

D. Allocation Amount

Section 48E(h)(1)(B) provides that any section 48E(h) Increase for any taxable year with respect to all eligible property

that is part of a facility shall not exceed the amount which bears the same ratio to the amount of such increase as the amount of the Capacity Limitation allocated to such facility bears to the total megawatt nameplate capacity of such facility, as measured in direct current. Therefore, if an allocation is made to a particular applicable facility, the Capacity Limitation amount allocated is based on the nameplate capacity of that applicable facility.

E. Claiming the Section 48E(h) Increase

Taxpayers that own an applicable facility which received an allocation may claim the section 48E(h) Increase once the applicable facility has been placed in service, as part of its claim for the section 48E credit. For a taxpayer to claim the section 48E(h) Increase for any property which is part of the applicable facility, section 48E(h)(4)(E)(i) requires that the eligible property be placed in service within 4 years after the date of allocation.

IV. Notice of Proposed Rulemaking

On September 3, 2024, the Department of the Treasury (Treasury Department) and the IRS published in the **Federal Register** (89 FR 71193) a notice of proposed rulemaking (REG–108920–24, 2024–38 I.R.B. 607), corrected in 89 FR 77467 on September 23, 2024, under section 48E(h) (Proposed Regulations) relating to the Program. Comments were requested in response to the Proposed Regulations by October 3, 2024, and a public hearing on the Proposed Regulations was held on October 17, 2024. On September 27, 2024, the Treasury Department held a consultation with Tribal leaders on the Proposed Regulations.

The areas of comment and the revisions to the Proposed Regulations are discussed in the following Summary of Comments and Explanation of Revisions section of this preamble. Other minor, editorial, and clarifying revisions made to the Proposed Regulations as adopted in these final regulations are not discussed in the Summary of Comments and Explanation of Revisions section of this preamble.

V. Additional Guidance

As announced in the Proposed Regulations, the Treasury Department and the IRS are also providing procedural guidance applicable to the Program opening in calendar year 2025 and future Program years which will be provided in guidance published in the Internal Revenue Bulletin. These procedural rules provide guidance necessary to implement the Program, including, in relevant part, information

an applicant must submit, the application review process, and the manner of obtaining an allocation. Many of the procedural aspects of the Program will be similar to the Low-Income Communities Bonus Credit Program established under section 48(e) available for calendar years 2023 and 2024.

Summary of Comments and Explanation of Revisions

I. Overview

The Treasury Department and the IRS received 45 written comments in response to the Proposed Regulations. The comments are available for public inspection at <https://www.regulations.gov> or upon request. After full consideration of all comments received, the testimony heard at the public hearing, and the consultation with Tribal leaders, these final regulations adopt the Proposed Regulations with modifications in response to the comments and testimony as described in this Summary of Comments and Explanation of Revisions.

Comments summarizing the statute or the Proposed Regulations, recommending statutory revisions, grammatical edits, and addressing issues that are outside the scope of this rulemaking (such as revising other Federal regulations, recommending changes to tax forms, website portals, or procedural guidance published in the Internal Revenue Bulletin) are generally not addressed in this Summary of Comments and Explanation of Revisions or adopted in these final regulations. In addition to addressing the comments received in response to the Proposed Regulations, the final regulations also include non-substantive grammatical or stylistic changes to the Proposed 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.

II. General Rules

A. In General

Consistent with section 48E(h)(1), proposed § 1.48E(h)–1(a)(1) would provide that for purposes of section 46 of the Code, if an allocation of Capacity Limitation is made with respect to eligible property (as defined in proposed § 1.48E(h)–1(c)) that is part of any applicable facility (as defined in proposed § 1.48E(h)–1(b)) placed in service in connection with low-income communities under the Program established under section 48E(h)(4), the applicable percentage used to calculate

the amount of the section 48E credit is increased under section 48E(h)(1). The final regulations adopt this rule.

B. Certain Terms

Proposed § 1.48E(h)–1(a)(2) would describe certain terms used in the Proposed Regulations. Proposed § 1.48E(h)–1(a)(2)(i) would explain that the term *applicant* would be used interchangeably with *taxpayer* in accordance with the context of a particular rule. Proposed § 1.48E(h)–1(a)(2)(ii) would explain that the term Internal Revenue Bulletin has the meaning provided in § 601.601. The final regulations adopt these terms and descriptions with certain additions to define the term *applicant*. Section 1.48E(h)–1(a)(2)(i) of the final regulations adds language to clarify that the owner of the facility, and the taxpayer which intends to claim the section 48E credit, is the applicant. The final regulations further clarify that disregarded entities are not eligible applicants and may not apply for an allocation. Instead, the regarded taxpayer that owns the disregarded entity is the applicant for purposes of the Program.

III. Applicable Facility

A. Definition of Applicable Facility

The term *applicable facility* is defined in section 48E(h)(2)(A) to mean any qualified facility (as defined in section 48E(b)(3)) that (i) is not described in section 45Y(b)(2)(B) (related to combustion and gasification facilities); (ii) has a maximum net output of less than 5 MW (as measured in AC); and (iii) is described in at least one of the four categories described in section 48E(h)(2)(A)(iii). Consistent with section 48E(h)(2)(A), proposed § 1.48E(h)–1(b)(1) would define an applicable facility to mean any qualified facility (as defined in section 48E(b)(3)) that (i) is a non-combustion and gasification facility for which the Secretary has determined has a greenhouse gas (GHG) emissions rate of not greater than zero in guidance published either in the **Federal Register** or in the Internal Revenue Bulletin as of the opening date for a Program year; (ii) has a maximum net output of less than 5 MW (as measured in AC); and (iii) is described in at least one of the four categories described in section 48E(h)(2)(A)(iii) and proposed § 1.48E(h)–1(b)(2).

Several commenters requested the final regulations revise the definition of applicable facility to include additional types of technologies that do not otherwise meet the definition of an applicable facility as defined under

section 48E(h)(2)(A). Section 48E(h)(2)(A) defines applicable facility by referencing the section 48E(b)(3) definition of qualified facility. Section 48E(h)(2)(A) provides that a qualified facility that is a combustion and gasification (C&G) facility is not eligible for the Program. However, whether a qualified facility is a C&G facility or not is beyond the scope of these regulations under section 48E(h). On June 3, 2024, the Treasury Department and the IRS published in the **Federal Register** (89 FR 47792) a notice of proposed rulemaking (REG-119283-23) under sections 45Y and 48E (48E Proposed Regulations) that would provide definitions and rules for section 48E generally, including the types of qualified facilities that are C&G and the types of qualified facilities that are non-C&G. The 48E Proposed Regulations requested comments on types of qualified facilities, and such comments will be addressed in the final regulations under section 48E. A facility must first be a qualified facility that is eligible to claim the investment credit under section 48E for the facility to be considered an applicable facility under the Program. Information and rules for qualified facilities and the types of categories of non-C&G-facilities will be included in other guidance, under section 48E, published in the **Federal Register** or the Internal Revenue Bulletin. Consistent with the statute, final § 1.48E(h)–1(b)(1) adopts the proposed rule without revision.

B. Four Categories of Applicable Facilities

Section 48E(h)(2)(A)(iii) establishes four categories of applicable facilities as facilities that are located in a *low-income community* (as defined in section 45D(e)) or on *Indian land* (as defined in section 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2))), or facilities that are part of a qualified low-income residential building project or a qualified low-income economic benefit project. The amount of the section 48E(h) Increase is 10 percentage points for facilities located in a low-income community or on Indian land, and 20 percentage points for facilities which are part of a qualified low-income residential building project or part of a qualified low-income economic benefit project.

Proposed § 1.48E(h)–1(b)(2) would generally adopt the statutory language to define each of the four facility categories, with minimal modifications to shorten references to the categories as Category 1, 2, 3, or 4, and to clarify specific category requirements.

Proposed § 1.48E(h)–1(b)(2)(i) would provide that a facility is a *Category 1 facility* if it is located in a low-income community (as defined in section 45D(e)). Proposed § 1.48E(h)–1(b)(2)(i) would also provide clarifying language to explain the term low-income community generally is defined under section 45D(e)(1) as any population census tract for which the poverty rate for such tract is at least 20 percent, or, in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income, or in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income.

Proposed § 1.48E(h)–1(b)(2)(i) additionally would explain that the term *low-income community* also includes the modifications in sections 45D(e)(4) and (5) for tracts with low population and modification of the income requirement for census tracts with high migration rural counties. Proposed § 1.48E(h)–1(b)(2)(i) also would provide that low-income community information for the New Markets Tax Credit (NMTC) can be found at the U.S. Department of Treasury, Community Development Financial Institutions (CDFI) Fund website and its web page mapping tool, <https://www.cdfifund.gov/cims>. Proposed § 1.48E(h)–1(b)(2)(i) then would clarify that the poverty rate for a census tract generally is based on the most recently released ACS low-income community data for the NMTC. Proposed § 1.48E(h)–1(b)(2)(i) would provide, however, if updated data is released, a taxpayer, in its application, can choose to base the poverty rate for any population census tract on either the prior version of the ACS low-income community data or the updated ACS low-income community data for a period of 1 year following the date of the release of the updated data. Proposed § 1.48E(h)–1(b)(2)(i) would provide that after the 1-year transition period, the updated ACS low-income community data must be used.

Additionally, proposed § 1.48E(h)–1(b)(2)(i) would provide that population census tracts that satisfy the definition of low-income community at the time of application are considered to continue to meet the definition of low-income community for the duration of the recapture period unless the location of the facility changes.

One commenter opposed reliance on the NMTC definitions to identify

communities. This commenter cautioned that the NMTC definition may inadvertently exclude certain disadvantaged areas due to changes in census tracts and reliance on outdated data. This commenter suggested that, instead, the Program should use alternative metrics to identify low-income communities like the Climate and Economic Justice Screening Tool (CEJST) and allowing for case-by-case evaluations for community-level qualifications.

Section 48E(h)(2)(A)(iii)(I) requires that a Category 1 facility be located in a low-income community census tract as defined under section 45D(e) for purposes of the NMTC. Therefore, the section 45D(e) definition of low-income community census tracts must be used to determine whether a facility is located in a low-income community census tract for purposes of determining Category 1 eligibility under this Program. The statute does not permit another metric to identify communities as low-income that have not been identified as low-income community census tracts by the CDFI Fund, for purposes of NMTC. Finally, the Program includes the use of CEJST data under the Additional Selection Criteria Geographic Criteria. These comments are not adopted and final § 1.48E(h)–1(b)(2)(i) retains the language from the proposed rule.

One commenter expressed support for the ability of a developer to choose to base the poverty rate for any population census tract on either the prior version of the ACS low-income community data or the updated ACS low-income community data. The CDFI Fund uses the ACS five-year data to determine the low-income community census tracts for purposes of the NMTC. When the CDFI Fund updates the low-income census tract determination based on the most recent 5-year ACS data, the CDFI Fund allows for a one-year transition period for reliance purposes. The final regulations adopt the CDFI Fund's one-year transition period to allow for the same reliance; however, the final regulations clarify that § 1.48E(h)–1(b)(2)(i) does not provide a blanket ability for applicants to select between prior and current official ACS data. The last update to the low-income community census tracts for the NMTC occurred on September 1, 2023. The transition period, and, therefore, the ability to utilize either the prior or updated data to claim that a facility is located in a low-income area also ended on September 1, 2024. The Treasury Department anticipates the next update will occur in 2028. When a subsequent update occurs, the transition period will

again allow for taxpayers to use either the prior or updated data to determine whether their facility is located in a low-income community census tract.

Proposed § 1.48E(h)–1(b)(2)(ii) would provide that, consistent with section 48E(h)(2)(A)(iii)(I), a facility is a Category 2 facility if it is located on *Indian land* as defined in section 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2)). No comments were received on this rule, and, accordingly, the final regulations adopt this rule without modification.

Section 48E(h)(2)(A)(iii)(II) defines an *applicable facility* in part to include a qualified facility that is part of a qualified low-income residential building project. Section 48E(h)(2)(B) further describes a facility as part of a “qualified low-income residential building project” if it is installed on a residential building that participates in a covered housing program (as defined in section 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a)(3)) (VAWA), a housing assistance program administered by the Department of Agriculture under title V of the Housing Act of 1949, a housing program administered by a tribally designated housing entity (as defined in section 4(22) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103(22))), or such other affordable housing programs as the Secretary may provide, and requires that the financial benefits of the electricity produced by such facility are allocated equitably among the occupants of the dwelling units of such building.

Consistent with the statute, proposed § 1.48E(h)–1(b)(2)(iii) would define a facility as a Category 3 facility if it is part of a qualified low-income residential building project, and further would provide that a facility will be treated as part of a qualified low-income residential building project if such facility is installed on a residential rental building that participates in a covered housing program or other affordable housing program described in section 48E(h)(2)(B)(i) and the financial benefits of the electricity produced by such facility are allocated equitably among the occupants of the dwelling units of such building as provided in proposed § 1.48E(h)–1(e). Proposed § 1.48E(h)–1(b)(2)(iii) also would include the term Qualified Residential Property to separately refer to the residential rental building (as opposed to the Category 3 facility). Proposed § 1.48E(h)–1(b)(2)(iii) additionally would clarify that the Qualified Residential Property, and not just its tenants, must participate in a covered

housing program or other affordable housing program described in section 48E(h)(2)(B)(i). Proposed § 1.48E(h)–1(b)(2)(iii) would further clarify that a Qualified Residential Property could either be a multifamily rental property or single-family rental property. Additionally, proposed § 1.48E(h)–1(b)(2)(iii) would clarify that a facility does not need to be installed directly on the building to be considered installed on a Qualified Residential Property if the facility is installed on the same or an adjacent parcel of land as the Qualified Residential Property and the other requirements to be a Category 3 facility are satisfied. No comments were submitted on this definition. These final regulations adopt the proposed rule without modification.

The preamble to the Proposed Regulations would include an illustrative list of eligible Federal housing programs for Category 3. The Treasury Department and the IRS, in consultation with other Federal agencies, developed the illustrative list of Federal housing programs and policies that meet the requirements in section 48E(h)(2)(B)(i) of being covered under section 41411(a) of VAWA, administered by the Department of Agriculture under title V of the Housing Act of 1949, or administered by a tribally designated housing entity (as defined in section 4(22) of the Native American Housing Assistance and Self-Determination Act of 1996). The eligible Federal housing program list will be included in guidance published in the Internal Revenue Bulletin, and the list may be updated in future guidance published in the Internal Revenue Bulletin.

Section 48E(h)(2)(B)(i) also authorizes the Secretary to add other affordable housing programs to the list of eligible programs. The Proposed Regulations requested comment on whether other affordable housing programs should be added to the list of eligible programs, and specifically whether and under what conditions certain state programs should be added to the list.

Several commenters named specific state housing programs and requested addition of those programs as eligible Category 3 housing programs. However, those commenters did not explain why the specific program should be included and what comprehensive set of criteria warrant the inclusion of these specific programs over others. One commenter suggested that any property with a 100 percent affordability covenant that has a minimum of 10 years remaining should be included as an eligible program. Similarly, another commenter recommended that state-subsidized

affordability restricted housing programs that have affordability restrictions equal to or greater than federal programs listed in the Proposed Regulations, should qualify for Category 3. As an additional recommendation, this commenter suggested guidelines for Naturally Occurring Affordable Housing (NOAH), and provided an example stating that eligibility could be considered if the housing is owned by a non-profit or a LLC with a non-profit as the single member and the property is located in a Justice 40 community or where the average rent does not exceed Department of Housing and Urban Development (HUD) fair market rent. Another commenter urged expansion of the list of affordable housing programs eligible to include state and local programs that provide rental assistance and/or capital investments in affordable housing. This commenter also suggested that state and local programs with affordability and compliance requirements like the Federal programs currently qualifying for Category 3 should be eligible. Similarly, another commenter suggested the inclusion of any state-funded low-income housing or transitional housing program where eligibility for assistance under such program is equivalent to eligibility criteria for any of the enumerated federal covered housing programs.

At this time, the Treasury Department and the IRS have determined that the list of eligible housing programs should only include Federal housing programs, not State and local programs. The statute requires the building participate in a covered housing program or other affordable housing program; it is not sufficient that the building has certain characteristics, such as being owned by a tax-exempt entity. Additionally, the statute enumerates programs that are eligible based only on their inclusion under VAWA or because the programs are administered by the USDA or a Tribally designated housing entity. There are no standard criteria across these eligible programs which can be applied to objectively consider other programs. Additionally, comments did not provide a comprehensive set of criteria that could be used to determine what additional affordable housing programs should be included. The Treasury Department, under the authority granted under section 48E(h)(2)(B)(i), may decide in the future to include additional programs for Category 3. If additional, specific housing programs are deemed eligible, or if a process is later developed to consider housing programs for inclusion, that information will be

announced through guidance published in the Internal Revenue Bulletin.

Regarding Federal housing programs, commenters recommended additional housing programs, including programs administered by the Department of Hawaiian Home Lands, Native Hawaiian Organizations, and Hawaiian Homestead Associations. In consultation with HUD, the Treasury Department and the IRS have adopted changes to the list of eligible housing programs for Category 3. For the Program year beginning in calendar year 2025, HUD project based vouchers under Section 8 of the United States Housing Act of 1937 and housing programs administered by the Department of Hawaiian Home Lands as defined in Title VIII of the Native American Housing Assistance and Self-Determination Act of 1996 (24 CFR 1006.10), Hawaiian Homestead Associations (HHA) as defined in 43 CFR 48.6, and DHHL or HHA lands administered by Native Hawaiian Organizations as defined in 13 CFR 124.3, have been added to the list of eligible housing programs. Guidance published in the Internal Revenue Bulletin, as updated, will contain the complete list of eligible housing programs for Category 3.

Section 48E(h)(2)(A)(iii)(II) defines an *applicable facility* in part to include a qualified facility that is part of a qualified low-income economic benefit project. Section 48E(h)(2)(C) provides that a facility will be treated as part of a qualified low-income economic benefit project if at least 50 percent of the financial benefits of the electricity produced by such facility are provided to households with income of less than 200 percent of the poverty line (as defined in section 36B(d)(3)(A) of the Code) applicable to a family of the size involved, or less than 80 percent of area median gross income (as determined under section 142(d)(2)(B) of the Code).

Consistent with section 48E(h)(2)(A)(iii)(II), proposed § 1.48E(h)–1(b)(2)(iv), would define a Category 4 facility as a facility that is part of a qualified low-income economic benefit project. Proposed § 1.48E(h)–1(b)(2)(iv) would further provide that a facility will be treated as part of a qualified low-income economic benefit project if at least 50 percent of the financial benefits of the electricity produced by the facility are provided to households with income of less than 200 percent of the poverty line (as defined in section 36B(d)(3)(A)) applicable to a family of the size involved, or 80 percent of area median gross income (as determined under section 142(d)(2)(B)).

No comments were submitted regarding proposed § 1.48E(h)–1(b)(2)(iv). The final regulations adopt the proposed rule without modification.

C. Less Than Five Megawatts Requirement

Section 48E(h)(2)(A)(ii) requires that an applicable facility have a maximum net output of less than 5 megawatts (as measured in AC), referred to in this preamble as the *less than five megawatts requirement*. Proposed § 1.48E(h)–1(b)(3)(i) would provide that the less than five megawatts requirement is measured at the level of the applicable facility in accordance with section 48E(h)(2)(A)(ii). Proposed § 1.48E(h)–1(b)(3)(i) additionally would clarify that the maximum net output of an applicable facility is measured only by nameplate generating capacity of the applicable facility, which includes only functionally interdependent components of the applicable facility, at the time the applicable facility is placed in service. Proposed § 1.48E(h)–1(b)(3)(i) would provide that components of property are functionally interdependent if the placing in service of each component is dependent upon placing in service other components to produce electricity.

Proposed § 1.48E(h)–1(b)(3)(ii) would further provide that the determination of whether an applicable facility has a maximum net output of less than 5 megawatts (MW) (as measured in AC) is based on the nameplate capacity of the applicable facility. Proposed § 1.48E(h)–1(b)(3)(ii) would additionally state that the nameplate capacity for purposes of the less than five megawatts requirement is the maximum electrical generating output in MW that the applicable facility is capable of producing on a steady state basis and during continuous operation under standard conditions, as measured by the manufacturer and consistent with the definition of nameplate capacity provided in 40 CFR 96.202. Proposed § 1.48E(h)–1(b)(3)(ii) would also state that if applicable, the International Standard Organization conditions should be used to measure the maximum electrical generating output of an applicable facility.

The Proposed Regulations requested comments on other approaches to address this statutory requirement that would further the purpose of efficient allocation of a Federal tax credit program with a national impact and would advance the goals of the Program to incentivize additional deployment of qualified facilities in low-income communities. The preamble to the Proposed Regulations stated that these

approaches could include rules that would aggregate the capacity of qualified facilities with integrated operations (that is, qualified facilities that are owned by the same taxpayer, placed in service in the same taxable year, and transmit electricity generated by the facilities through the same point of interconnection or, if the facilities are not grid-connected, to the same end user(s)) solely for the purposes of whether an application meets the less than five megawatts requirement under section 48E(h)(2)(A)(ii).

Further, the preamble to the Proposed Regulations explained that the Treasury Department and the IRS intended to deprioritize review of applications for an applicable facility that together with other qualified facilities (1) share a point of interconnection, (2) produce electricity using the same technology, (3) are owned by the same taxpayer, and (4) have an aggregate total maximum net output (as determined by the sum of the maximum net output of the applicable facility and each qualified facility under proposed § 1.48E(h)–1(b)(3)(ii)) equal to or greater than five megawatts (as measured in AC). Deprioritized applications would be considered after other applications in the current allocation round, or a subsequent allocation round at the Secretary's discretion.

One commenter stated that the proposed less than 5 MW requirement may allow larger projects to be deceptively segmented into smaller ones to manufacture a false qualification for the bonus credit. This commenter supported the inclusion of stricter aggregation rules to prevent developers from dividing larger projects to monopolize allocations intended for genuinely small facilities. Another commenter expressed support for the proposal to aggregate capacity of qualified facilities with integrated operations. This commenter, however, recommended using only one factor to aggregate facilities, a common point of interconnection. Another commenter suggested that, in evaluating related qualified facilities, the final regulations should consider whether an application is for a project where the developer and its affiliates have multiple interconnection agreements on the same property.

Section 48E(h)(4)(A) provides that “[i]n establishing such program and to carry out the purposes of this subsection, the Secretary shall provide procedures to allow for an efficient allocation process.” To further the aims of an efficient allocation process, the Treasury Department and the IRS agree with commenters that the final

regulations should include an aggregation rule to clarify the scope of applications. Clear parameters of what constitutes an “applicable facility” for purposes of an application to the Program provides certainty for applicants preparing and submitting applications and for the IRS in its review of applications. For example, the definition of a qualified facility, as defined under the 48E Proposed Regulations, may give the impression to the taxpayer that they must submit multiple applications for a 3 MW solar facility with multiple inverters. Such a result would not create an efficient allocation process. Furthermore, because section 48E(h) is subject to a finite annual Capacity Limitation, the Treasury Department and the IRS believe allocating amounts of Capacity Limitation to a group of related qualified facilities with an aggregate total maximum net output equal to or greater than 5 MW (as measured in AC) could concentrate allocations (and the benefits of clean energy development) in a smaller number of communities, rather than making them more broadly available, which would not further the purpose of an efficient allocation of a Federal tax credit. Accordingly, the final regulations revise the nameplate capacity measurement test to determine whether an applicable facility has a maximum net output of less than 5 MW (as measured in AC).

Solely for the purposes of the less than five megawatts requirement for the Program, if an applicable facility has *integrated operations* with one or more other qualified facilities of the same technology type, then the aggregate nameplate capacity of the applicable facility and other qualified facility must be used to determine the maximum net output of an applicable facility, including in determining eligibility for an allocation of Capacity Limitation. This approach provides clarity to applicants, creates a more efficient allocation process relative to other approaches because it streamlines application intake and processing, and helps address commenters’ concerns about fairness in the allocation process.

The final regulations provide at newly added § 1.48E–1(b)(3)(iv) that solely for the purposes of the less than five megawatts requirement for the Program, an applicable facility is treated as having *integrated operations* with one or more other qualified facilities of the same technology type, if the facilities are: (i) owned by the same or related taxpayers; (ii) placed in service in the same taxable year; and (iii) transmit electricity generated by the facilities through the same point of

interconnection or, if the facilities are not grid-connected or are delivering electricity directly to an end user behind a utility meter, are able to support the same end user. The final regulations also provide a definition for related taxpayers in newly added § 1.48E–1(b)(4). For purposes of the less than five megawatts requirement, the term *related taxpayers* means members of a group of trades or businesses that are under common control (as defined in § 1.52–1(b)). Related taxpayers are treated as one taxpayer in determining whether an applicable facility has integrated operations.

One commenter requested clarification as to whether facilities with exactly 5 MW are eligible for the Program, or whether projects must restrict their inverter output to 4.99 MW (as measured in AC) to qualify. The statutory language requires that an applicable facility have a maximum net output of less than 5 MW (as measured in AC), and the final regulations provide a nameplate capacity test to determine whether an applicable facility satisfies the statutory requirement. Accordingly, facilities with a maximum net output of 5 MW (as measured in AC) or greater are not applicable facilities and are not eligible. Furthermore, derating or restricting an inverter to get below 5 MW (as measured in AC) would only change the output of the facility but would not change the maximum net output (or nameplate capacity) of the facility.

The Treasury Department and the IRS are aware that certain technologies generate electricity in direct current, not alternating current, and therefore, it is unclear how to determine whether an applicable facility has a maximum net output of less than 5 MW (as measured in AC).

For applicable facilities that generate electrical output in direct current, the final regulations provide an alternative nameplate capacity measurement at newly added § 1.48E–1(b)(3)(iii). Only for qualified facilities that generate electricity in direct current, the taxpayer may choose to determine the maximum net output (in alternating current) of the applicable facility by using the lesser of: (i) nameplate generating capacity of the applicable facility in direct current, which is deemed the nameplate generating capacity of the applicable facility in alternating current; or (ii) the nameplate capacity of the first component of property that inverts the direct current electricity into alternating current.

D. Eligible Property

Section 48E(h)(3) defines *eligible property* as a qualified investment with respect to any applicable facility. Section 48E(b) describes a qualified investment with respect to a qualified facility. Generally, for purposes of section 48E(a), section 48E(b)(1)(A) and (b)(1)(B) provide that the qualified investment with respect to a qualified facility for any taxable year is the sum of the basis of any qualified property placed in service by the taxpayer during such taxable year that is part of a qualified facility, plus the amount of expenditures that are paid or incurred by the taxpayer for qualified interconnection property.

Consistent with section 48E(h)(3), proposed § 1.48E(h)–1(c) would define *eligible property* as a qualified investment (as defined in section 48E(b))¹ with respect to any applicable facility. The preamble to the Proposed Regulations explained that pursuant to section 48E(h)(3), eligible property does not include any qualified investment with respect to energy storage technology.

Several commenters objected to the exclusion of energy storage technology as eligible property for purposes of the section 48E(h) Increase. Some commenters requested that the final regulations should include energy storage technology as eligible property for purposes of the Program. These commenters cited to the inclusion of co-located energy storage technology as eligible property for purposes of the predecessor program under section 48(e). One commenter asserted that the proposed rule was wrong, and that certain energy storage technology should be includable as a qualified investment by distinguishing between stand-alone energy storage technology and energy storage technology associated with a qualified facility. This commenter asserted that associated energy storage technology is an integral part of the qualified facility and should be includable as a qualified investment. Another commenter similarly requested that the final regulations under sections 48E and 45Y classify energy storage technology as an integral part of the qualified facility, and therefore, further requested that energy storage technology be eligible for the section 48E(h) Increase. Alternatively, this commenter suggested that the final regulations

¹ See proposed § 1.48E–2(d), as proposed in the notice of proposed rulemaking (REG–119283–23) published in the *Federal Register* (89 FR 47792) on June 3, 2024, and corrected on July 18, 2024 at 89 FR 58305, for more information regarding the definition of “qualified investment.”

clarify that facilities that include energy storage technology remain eligible for the bonus credit for the portion of the system that is a qualified facility.

Section 48E(a) defines and provides an investment credit for energy storage technology distinct and separate from a credit for a qualified facility. Eligible property under section 48E(h) only includes a qualified investment with respect to an applicable facility, and therefore, the statute does not support inclusion of energy storage technology in the section 48E(h) Program. If an applicant has a system that includes both an applicable facility and energy storage technology, the applicable facility would still be eligible for a credit under section 48E and the section 48E(h) Increase. Accordingly, the final regulations do not adopt these comments.

E. Location

Proposed § 1.48E(h)–1(d)(1) would treat an applicable facility as *located in a low-income community or on Indian land* under section 48E(h)(2)(A)(iii)(I) or located in a geographic area under the Additional Selection Criteria (*see* part VI.B. of this Summary of Comments and Explanation of Revisions) if the facility satisfies the nameplate capacity test (Nameplate Capacity Test for Location) provided in proposed § 1.48E(h)–1(d)(2). Proposed § 1.48E(h)–1(d)(2) would describe the Nameplate Capacity Test for Location, which provides that an applicable facility would be considered located in or on the relevant geographic area described in proposed § 1.48E(h)–1(d)(1) if 50 percent or more of the applicable facility's nameplate capacity is in a qualifying area. The purpose of this proposed rule is to provide applicants that have an applicable facility that is not entirely located in a qualifying area a means to evaluate eligibility. For example, if an applicant's applicable facility is sited on the boundary of a qualifying area, the Nameplate Capacity Test for Location is used to determine if the applicable facility is deemed located in the qualifying area.

One commenter recommended that devices that are offshore but are eligible for section 48E and can attribute their nameplate capacity to where their power conditioning equipment is onshore should be able to satisfy the Nameplate Capacity Test for Location. This commenter noted that this recommendation is consistent with the Nameplate Capacity Attribution Rule found in Notice 2024–30, 16 I.R.B. 878. The final regulations do not adopt this comment because it is not in accordance with the Program's requirements. The

commenter's suggestion stems from guidance issued for an increased credit rate for qualifying facilities located in specific energy communities. The statutory requirements for the location of an applicable facility eligible for the Program are different than for a qualifying facility eligible for the energy communities bonus. Moreover, the Treasury Department and the IRS do not expect applicable facilities to be located offshore outside of the boundaries of a qualifying area. Accordingly, for the purposes of the Program, the Nameplate Capacity Test for Location requires that an applicable facility be located in a qualifying area. The final regulations adopt § 1.48E(h)–1(d)(1) as proposed.

IV. Financial Benefits for Category 3 and Category 4 Allocations

A. In General

Section 48E(h)(2)(D) provides that electricity acquired at a below-market rate will not fail to be taken into account as a financial benefit. The Proposed Regulations would propose definitions and requirements related to the term *financial benefit* under section 48E(h)(2)(D), as well as a manner to apply such definitions and requirements, appropriately, to qualified low-income residential building projects (section 48E(h)(2)(B)) and qualified low-income economic benefit projects (section 48E(h)(2)(C)). The proposed definitions and requirements for financial benefits were different for an allocation under Category 3 (section 48E(h)(2)(B)) and Category 4 (section 48E(h)(2)(C)) and these definitions remain different for each respective category in the final regulations, because the statutory language provides distinct financial benefit requirements for these categories. A Summary of Comments and Explanation of Revisions for financial benefits for Category 3 facilities is presented below in section IV.C. and for Category 4 in section IV.D.

B. Renewable Energy Certificates (RECs)

For both Category 3 and Category 4, commenters requested clarity on whether RECs are included in the determination of financial benefits. Commenters generally opposed including RECs as part of the financial benefits determination. Section 48E(h)(2)(B)(ii) and (C) both require distribution of the “financial benefits of the electricity produced” by a facility. The Treasury Department and the IRS, understand that accessibility and inclusion of RECs vary across the U.S. depending on the relevant region or state's regulations and overall market. RECs represent environmental or

renewable “attributes” or “benefits” associated with renewable energy generation and RECs are environmental commodities that can be traded separately from wholesale electricity markets. RECs are issued in situations when electricity is generated from a renewable facility and the ability of the owner of the renewable facility to sell RECs has the potential to generate revenue and a financial benefit for the owner. For this reason, any revenue generated by the sale of RECs should be included in determining financial benefits for both Category 3 and Category 4. Similarly, any other certificates or credits (excluding Federal tax credits) that are related to electricity production and that yield revenue to the owner as a result of electricity generated should be included in determining financial benefits. This clarification does not impact any of the Proposed Regulations under Category 3. There were additional comments regarding RECs and the manner by which RECs must be included in determining the bill credit discount rate for Category 4. These comments are summarized and addressed in section IV.D. of this Summary of Comments and Explanations of Revisions.

C. Financial Benefits for Qualified Low-Income Residential Building Projects

For a facility to be treated as part of a qualified low-income residential building project (Category 3 facility), section 48E(h)(2)(B)(ii) provides that the financial benefits of the electricity produced by such facility must be allocated equitably among the occupants of the dwelling units of a Qualified Residential Property.

Consistent with the statute, proposed § 1.48E(h)–1(e)(1) would provide that, to satisfy the requirements of a Category 3 facility, the financial benefits of the electricity produced by the facility must be allocated equitably among the occupants of the dwelling units of the Qualified Residential Property. Proposed § 1.48E(h)–1(e)(1) would also clarify that the same rules for financial benefits for Category 3 facilities apply to both multi-family and single-family Qualified Residential Property. No comments were submitted regarding this proposed rule, and the final regulations adopt this proposed rule for Category 3 financial benefits without modification.

Proposed § 1.48E(h)–1(e)(2) would require that at least 50 percent of the financial value of the electricity produced by the facility (as defined in proposed § 1.48E(h)–1(e)(3)) must be equitably allocated to the Qualified Residential Property's occupants that

are designated as low-income occupants under the housing program. Proposed § 1.48E(h)–1(e)(3) would further define the financial value of the electricity produced by the applicable facility as the greater of: (i) 25 percent of the gross financial value (as defined in proposed § 1.48E(h)–1(e)(4)) of the annual electricity produced by the applicable facility, or (ii) the net financial value (as defined in proposed § 1.48E(h)–1(e)(5)) of the annual electricity produced by the applicable facility. These requirements recognize that not all the financial value of the electricity produced can be passed on to building occupants because a certain percentage can be assumed to be dedicated to lowering the operational costs of electricity consumption for common areas, which benefits all building occupants.

Proposed § 1.48E(h)–1(e)(4) would then provide that the gross financial value of the annual electricity produced by the applicable facility is the sum of: (i) the total self-consumed kilowatt-hours produced by the applicable facility multiplied by the Qualified Residential Property's metered volumetric price of electricity, (ii) the total exported kilowatt-hours produced by the applicable facility multiplied by the Qualified Residential Property's volumetric export compensation rate for kilowatt-hours of electricity, and (iii) the sale of any attributes associated with the applicable facility's production (including, for example, any Federal, State or Tribal renewable energy certificates or incentives), if separate from the metered price of electricity or export compensation rate.

Additionally, the proposed definition of net financial value in § 1.48E(h)–1(e)(5) would account for the specific nature of facilities serving low-income residential buildings and facility ownership. In the case of common ownership, when the facility owner is also the Qualified Residential Property owner, proposed § 1.48E(h)–1(e)(5)(i) would define net financial value as the gross financial value of the annual electricity produced minus the annual average (or levelized) cost of the applicable facility over the useful life of the facility (including debt service, maintenance, replacement reserve, capital expenditures, and any other costs associated with constructing, maintaining, and operating the facility). For third-party ownership, when the facility and the Qualified Residential Property are not commonly owned and the facility owner enters into a power purchase agreement or other contract for electricity services with the Qualified Residential Property owner and/or

building occupants, proposed § 1.48E(h)–1(e)(5)(ii) would define net financial value as the gross financial value of the annual electricity produced minus any payments made by the building owner and/or building occupants to the applicable facility owner for electricity services associated with the applicable facility in a given year.

A commenter stated that the proposed methodology and calculations established to calculate net financial value and gross financial value are too restrictive and hinder the ability for qualified low-income residential buildings to participate. This commenter also asserted that the required financial benefits would exceed the value of the credit. Two commenters requested that the final regulations eliminate the “greater of” language in proposed § 1.48E(h)–1(e)(3) and replace it with “either” to allow applicants to choose between using the gross financial value or the net financial value. These commenters asserted that using either method would still result in the 50 percent minimum requirement under the Proposed Regulations to be met.

The Treasury Department and the IRS do not agree with comment observing that the calculations for Category 3 financial benefits will hinder the ability for qualified low-income residential buildings to participate. No other comments were submitted suggesting that the calculations will restrict the participation of low-income residential buildings. The calculations provide clear parameters for applicants and financial benefits to residents. This comment is not adopted with respect to eliminating the “greater of” requirement. The “greater of” language helps implement the statutory requirement for the equitable distribution of financial benefits to tenants and supports the Program's objectives of providing financial benefits directly to households. Additionally, while the statute requires that the financial benefits of the electricity produced be shared with occupants, the final regulations already recognize that not all the financial value of the electricity produced can be passed on to building occupants, and that a certain portion can be used for lowering the operational costs of electricity consumption for common areas, which benefits all building occupants.

Proposed § 1.48E(h)–1(e)(5)(iii) would provide different rules to ensure an equitable allocation of financial benefits regardless of whether the financial value is distributed to building occupants via

utility bill savings or through some other means. If financial value is distributed via utility bill savings, proposed § 1.48E(h)–1(e)(5)(iii)(A) would provide that financial benefits will be considered to be allocated equitably if at least 50 percent of the financial value of the electricity produced by the applicable facility is distributed as utility bill savings in equal shares to each building dwelling unit among the Qualified Residential Property's occupants that are designated as low-income under the covered housing program or other affordable housing program (described in section 48E(h)(2)(B)(i)) or alternatively distributed in proportional shares based on each low-income dwelling unit's square footage, or each low-income dwelling unit's number of occupants. Proposed § 1.48E(h)–1(e)(5)(iii)(A) also would provide that for any occupant(s) who chooses to not receive utility bill savings, the portion of the financial value that would otherwise be distributed to non-participating occupants must be instead distributed to all participating occupants. Proposed § 1.48E(h)–1(e)(5)(iii)(A) would further clarify that no less than 50 percent of the Qualified Residential Property's occupants that are designated as low-income must participate and receive utility bill savings for the applicable facility to use this method of benefit distribution.

Additionally, proposed § 1.48E(h)–1(e)(5)(iii)(A) would provide that in the case of a solar facility, applicants must follow the HUD guidance on Treatment of Financial Benefits to HUD-Assisted Tenants Resulting from Participation in Solar Programs Notice (Housing Notice 2023–09), located at <https://www.hud.gov/sites/dfiles/OCHCO/documents/2023-09hsgn.pdf>, or future HUD guidance, or other guidance or notices from the Federal agency that oversees the applicable housing program identified in section 48E(h)(2)(B) to ensure that tenants' annual income for rent calculations or other requirements impacting total tenant payment are not impacted negatively by the distribution of financial value. In the case of any other applicable facility, applicants must follow future HUD guidance, or other guidance from the Federal agency that oversees the applicable housing program. In the absence of future guidance from a Federal agency, applicants should apply principles similar to those articulated in the HUD guidance in the case of any other applicable facility.

Proposed § 1.48E(h)–1(e)(5)(iii)(B) would provide that if financial value is

not distributed via utility bill savings, financial benefits will be considered to be allocated equitably if at least 50 percent of the financial value of the electricity produced by the applicable facility is distributed to occupants using one or more methods described in Housing Notice 2023–09 located at <https://www.hud.gov/sites/dfiles/OCHCO/documents/2023-09hsgn.pdf>, or future HUD guidance, or other guidance or notices from the Federal agency that oversees the applicable housing program identified in section 48E(h)(2)(B). In the case of a solar facility, applicants must comply with HUD guidance, or future HUD guidance, for how residents of master-metered HUD-assisted housing can benefit from owners' sharing of financial benefits accrued from an investment in solar electricity generation to ensure that tenants' utility allowances and annual income for rent calculations are not negatively impacted. Applicants should apply principles similar to those articulated in the HUD guidance in the case of any other applicable facility.

No comments were submitted regarding the required methods of delivery of financial benefits for Category 3 facilities. The Proposed Regulations would cite to specific HUD guidance on benefits sharing. In consultation with HUD, the Treasury Department and the IRS understand that HUD's Office of Multifamily Housing, Office of Public and Indian Housing, Office of Native American Programs, and other offices may publish guidance on benefits sharing relevant Category 3 applicable facilities. Accordingly, the final regulations adopt § 1.48E(h)–1(e)(5)(iii)(A) and (B) as proposed with minor clarifications to reflect HUD guidance on benefits sharing.

To strengthen Program compliance and to provide clarity to applicants regarding how they can demonstrate that statutory requirements are met, proposed § 1.48E(h)–1(e)(6)(i) would provide that a Category 3 facility owner must prepare a Benefits Sharing Statement. Proposed § 1.48E(h)–1(e)(6)(i) would further state that the Benefits Sharing Statement is required to include (A) a calculation of the facility's gross financial value using the method described in proposed § 1.48E(h)–1(e)(4), (B) a calculation of the facility's net financial value using the method described in proposed § 1.48E(h)–1(e)(5), (C) a calculation of the financial value required to be distributed to building occupants using the method described in proposed § 1.48E(h)–1(e)(3), (D) a description of the means through which the required financial value will be distributed to

building occupants, and (E) if the facility and Qualified Residential Property are separately owned, an indication of which entity will be responsible for the distribution of benefits to the occupants.

Proposed § 1.48E(h)–1(e)(6)(ii) would provide that the Qualified Residential Property owner must formally notify the occupants of units in the Qualified Residential Property of the development of the facility and planned distribution of benefits.

No comments were received on the Benefits Sharing Statement or the requirement to notify. Accordingly, the final regulations adopt these rules without modification.

D. Financial Benefits in Qualified Low-Income Economic Benefit Projects

For a facility to be treated as part of a qualified low-income economic benefit project, section 48E(h)(2)(C) requires that at least 50 percent of the financial benefits of the electricity produced by the facility be provided to qualifying low-income households.

Proposed § 1.48E(h)–1(f)(1) would add the term *Qualifying Households* to refer to households which meet the income requirements under section 48E(h)(2)(C)(i) or (ii) and would provide that to satisfy the requirements of a Category 4 facility:

- (i) The facility must serve multiple Qualifying Households under section 48E(h)(2)(C)(i) or (ii);
- (ii) At least 50 percent of the facility's total output in kilowatts (kW) must be assigned to Qualifying Households; and
- (iii) Each Qualifying Household must be provided a bill credit discount rate (as defined in proposed § 1.48E(h)–1(f)(2)) of at least 30 percent.

Proposed § 1.48E(h)–1(f)(2)(i) would additionally define a bill credit discount rate as the difference between the financial benefit provided to a Qualifying Household (including utility bill credits, reductions in a Qualifying Household's electricity rate, or other monetary benefits accrued by the Qualifying Household on its utility bill) and the cost of participating in the energy purchasing program (including subscription payments for zero-carbon energy and any other fees or charges), expressed as a percentage of the financial benefit distributed to the Qualifying Household. Proposed § 1.48E(h)–1(f)(2)(i) also would clarify that the bill credit discount rate can be calculated by starting with the financial benefit provided to the Qualifying Household, subtracting all payments made by the Qualifying Household (or payments remitted on behalf of the Qualifying Household through net

crediting, consolidated billing, or similar arrangements) to the facility owner and any related third parties as a condition of receiving that financial benefit, then dividing that difference by the financial benefit distributed to the Qualifying Household.

While several commenters supported the proposed bill credit discount rate of 30 percent, many commenters opposed the increase from the 20 percent bill credit discount rate under the predecessor program. These commenters asserted that the market and industry have not sufficiently evolved to account for a bill credit discount rate of 30 percent. Several comments stated that an increase in the bill credit discount rate would favor States with higher utility rates and already established solar markets, while having a negative impact on States with already low electricity prices, or with no or emerging clean energy programs. Commenters who opposed the 30 percent bill credit discount rate generally supported reinstating the 20 percent rate from the predecessor program. Several commenters stated that projects are already in development based on the 20 percent bill credit discount rate from the predecessor program under section 48(e), and the commentors contended that the bill credit discount rate should remain the same. Some commenters also opposed a phased-in approach to increasing the bill credit discount rate citing a lack of Program data to support any increase. Two commenters, however, expressed support for a phased-in approach. Alternatively, some commenters suggested a tiered approach to the bill credit discount rate within Category 4 by adjusting the required bill credit discount rate based on regional market conditions.

After consideration of the comments, the final regulations adopt a bill credit discount rate of 20 percent. The 20 percent bill credit discount rate—as opposed to a 30 percent bill credit discount rate—supports the Program's goal of national impact by allowing a broader range of facilities to apply under Category 4. Given the uncertainty of how the market will evolve and yearslong industry development timelines, the final regulations do not adjust the bill credit discount rate over time. Therefore, as finalized, § 1.48E(h)–1(f)(1)(iii) provides “[e]ach Qualifying Household must be provided a bill credit discount rate (as defined in § 1.48E(h)–1(f)(2)) of at least 20 percent.” The final regulations adopt the rest of the proposed § 1.48E(h)–1(f)(1)(i) and (ii) without modification.

Proposed § 1.48E(h)–1(f)(2)(ii) would provide that in cases in which the Qualifying Household has no or only a nominal cost of participation, and financial benefits are delivered through a utility or government body, the bill credit discount rate should be calculated as the financial benefit provided to a Qualifying Household (including utility bill credits, reductions in a Qualifying Household's electricity rate, or other monetary benefits accrued by a Qualifying Household on their utility bill) divided by the total value of the electricity produced by the facility and assigned to the Qualifying Household (including any electricity services, products, and credits provided in conjunction with the electricity produced by such facility), as measured by the utility, independent system operator (ISO), or other off-taker procuring electricity (and related services, products, and credits) from the facility. Proposed § 1.48E(h)–1(f)(2)(iv) would clarify that the bill credit discount rate is calculated on an annual basis. Proposed § 1.48E(h)–1(f)(2)(v) would provide examples to clarify the application of proposed § 1.48E(h)–1(f)(2).

Proposed § 1.48E(h)–1(f)(2)(iii) would provide that if the facility derives financial value from the production of electricity in a manner such that this value cannot be directly applied to the Qualifying Household's utility bill (for example, renewable energy certificate payments made directly to the facility owner), then no less than 30 percent of that monetary value must also be provided to the Qualifying Household, either through a greater bill credit discount on the Qualifying Household's utility bill than would otherwise be derived from the method described in proposed § 1.48E(h)–1(f)(1)(i) or through other means.

As previously addressed in section IV, generally, of this Summary of Comments and Explanation of Revisions, the final regulations clarify that RECs are included in the financial benefits calculation for both Category 3 and Category 4. Commenters stated that any RECs would already be included in the general bill credit discount calculation provided for under proposed § 1.48E(h)–1(f)(1). Commenters, therefore, questioned why proposed § 1.48E(h)–1(f)(2)(iii) would separate out any RECs, when the RECs would generally be included in determining the pool of financial benefits. The Treasury Department and the IRS understand commenters' concern and agree that clarity is warranted. The final regulations do not adopt proposed § 1.48E(h)–1(f)(2)(iii). Rather, the final

regulations clarify that the value derived from the sale of RECs (if any) are included within the financial value calculation associated with the requirement that at least 50 percent of the total financial value of the facility's total production in kilowatts must be assigned to Qualifying Households. Specifically, § 1.48E(h)–1(f)(1) is revised to clarify that the financial value calculation associated with the 50 percent requirement must include other values from electricity production (including any electricity services, products, and credits or certificates such as RECs provided in connection with the electricity produced by such facility, but excluding Federal tax credits), as measured by the utility, independent system operator, or other off-taker procuring electricity (and related services, products, and credits of certificates) from the facility.

Notwithstanding that provision, the Treasury Department and the IRS agree with commenters that any monetary value from the sale of RECs (if any) would already be included in the financial benefits value and general bill credit discount described under § 1.48E(h)–1(f)(2)(i). As such, there is no reason to separately identify such possible REC value in the general bill credit discount rate described therein. However, the value from the sale of RECs is appropriately included under § 1.48E(h)–1(f)(2)(ii) related to the bill credit discount requirements when there is no or nominal cost of participation, in this case focused on the total financial value of the electricity produced by the facility. Specifically, as described in § 1.48E(h)–1(f)(2)(ii), the financial value of electricity produced by the facility includes the sale of any attributes associated with the applicable facility's production (including, for example, any Federal, State, Tribal, or utility incentives or renewable energy certificates but excluding any Federal tax credits). In recognition that utilities may have incentives associated with the production of electricity, the final regulations revise proposed § 1.48E(h)–1(e)(4) to include utility incentives in the parenthetical examples of attributes with financial value. The final regulations at § 1.48E(h)–1(f)(2) also include minor edits for clarity, including revisions to § 1.48E(h)–1(f)(2)(iv)(C) (*Example 3*), to clarify the calculation of financial benefits for Category 4 facilities when there is no or nominal cost of participation.

The preamble to the Proposed Regulations also stated that the Treasury Department and the IRS were considering adding other methods, apart from bill credit discounts, for financial

benefits to be shared with Qualifying Households. The Proposed Regulations requested comments on alternative methods for delivering financial benefits in cases in which bill credit discounts are not available or are not feasible for covered technologies. The Proposed Regulations also requested comment on how alternative financial benefits could be verified and how to limit the potential impact of financial benefits on potential recipients' income taxes and eligibility for public assistance programs.

Comments were mixed regarding the inclusion of alternative financial benefits, other than the bill credit discount rate in Category 4. Although several commenters opposed alternative financial benefit delivery methods, many commenters supported alternatives and requested that the framework for other methods allowed under Category 3 be applied to Category 4. A commenter stated that some Federally assisted housing is not able to apply under Category 3 because the housing does not have the proper roof or adequate parcel size to support the facility. In these situations, the commenter stated that households in master-metered buildings should be able to benefit as a Category 4 project and the financial benefits should be applied as they are in Category 3. A commenter suggested that Category 4 benefits could be defined and distributed using the same HUD documents, verification protocols, and Benefit Sharing Statement as used in Category 3. Another commenter similarly suggested that HUD regulations should be promulgated to allow for building improvements, and list, as an example, adding wi-fi service for tenants. Regarding the tax treatment of financial benefits for the residents of the Qualifying Households, one commenter requested that the final regulations provide that financial benefits are not taxable.

The statutory requirements for a Category 4 facility are distinctly different than Category 3 facility requirements. For example, the statutory language under section 48E(h)(2)(C) requires Category 4 financial benefits be "provided to households" that meet specific income limits. An applicant is required to demonstrate that the participating households meet the statutory income limits, and further, prove that a minimum of fifty percent of the financial benefits of the electricity produced by the facility are distributed to Qualifying Households. In contrast, the statutory language for Category 3 requires that the financial benefits be allocated equitably to the occupants of

the residential rental building with which this energy facility is associated. The alternative financial benefit options to bill credit discount that are provided under Category 3 may be provided indirectly to the building as a whole as long as the benefit is equitably distributed among the occupants of the dwelling units of the building. Because of this requirement, alternative financial delivery methods that serve the whole building can be easily distributed for Category 3 facilities because all occupants must be within the residential rental building.

Further, investments in applicable facilities may require other investments, such as a new roof that can support a solar installation. Whether an applicant chooses to make such investments in order to be eligible for to apply under a certain category is a decision that is unique to each applicant and is outside the scope of these final regulations.

Therefore, § 1.48E(h)–1(f) of the final regulations do not adopt these comments. The final regulations also do not adopt the comments related to promulgating HUD regulations because such regulations are issued pursuant to HUD's authority. Lastly, the final regulations do not adopt comments regarding the tax treatment of financial benefits because that is outside of the scope of these regulations.

Proposed § 1.48E(h)–1(f)(3)(i) would require applicants to establish that financial benefits are provided to Qualifying Households as defined in proposed § 1.48E(h)–1(f)(1), by submitting documentation in accordance with guidance published in the Internal Revenue Bulletin. The Proposed Regulations also would provide that a Qualifying Household's low-income status is determined at the time the household enrolls in the subscription program and does not need to be re-verified.

Proposed § 1.48E(h)–1(f)(3)(ii) would further provide methods that applicants could use to establish that a household is a Qualifying Household, including the ability to use categorical eligibility or other income verification methods. Proposed § 1.48E(h)–1(f)(3)(ii)(A) would provide that categorical eligibility consists of obtaining proof of the household's participation in a needs-based Federal, State, Tribal, or utility program with income limits at or below the qualifying income level required to be a Qualifying Household, and included a non-exclusive list of Federal programs which could be used for categorical eligibility verification. Proposed § 1.48E(h)–1(f)(3)(ii)(A) would also clarify that the qualifying income level for a Qualifying Household is

based on where such household is located.

Proposed § 1.48E(h)–1(f)(3)(ii)(B) would provide other income verification methods including paystubs, Federal or State tax returns, or income verification through crediting agencies and commercial data. Proposed § 1.48E(h)–1(f)(3)(ii)(C) would provide that a self-attestation from a household is not a permissible method to establish a household is a Qualifying Household but clarified that this prohibition on direct self-attestation from a household did not extend to categorical eligibility for needs-based programs with income limits that rely on self-attestation for verification of income.

Commenters requested clarifications of and additions to the income verification methods. One commenter observed that, without clarification or modification, the requirements set forth in Proposed Regulations will not lead to verification methods that demonstrate that a particular household necessarily meets the income parameters of section 48(e)(2)(C).

In response to these comments, the documentation requirements have been modified in the final regulations for Category 4. The predecessor program under section 48(e) required taxpayers who had been awarded an allocation for a Category 4 facility to submit a spreadsheet showing a calculation of the projected financial benefits for the facility and a list of subscribers with the method used to verify income for each subscriber. The final regulations eliminate the subscriber list as a Category 4 documentation requirement under the section 48E(h) Program and modify the spreadsheet documentation rule to instead require the submission of a statement by the applicant to demonstrate how the applicant will fulfill the financial benefits distribution requirements.

The final regulations provide at § 1.48E–1(f)(3) that a Demonstration of Financial Benefits statement is required, which includes certain information to demonstrate that the financial benefits requirements will be met based on the expected annual energy produced by the as-built facility at the time it is placed in service and during the recapture period under section 48E(h)(5) and § 1.48E(h)–1(n). The statement must include a calculation of the total financial value of annual electricity production, the bill credit discount rate calculation, and a description of the means of distributing the required benefits to Qualifying Households. With the Demonstration of Financial Benefits statement, the taxpayer must provide documentation showing the facility is

enrolled in a utility tariff, program, or other arrangement to distribute financial benefits to Qualifying Households.

Additional information regarding the Demonstration of Financial Benefits statement will be included in guidance published in the Internal Revenue Bulletin to explain submission requirements at application and at placed in service reporting.

Section 1.48E(h)–1(f)(4) of the final regulations retains portions of the income verification rules as a recordkeeping requirement. With the decision to exclude the predecessor program subscriber list requirement from the Program under section 48E(h), taxpayers will not be required to directly report the method of verification used for each household as part of placed in service reporting. However, to submit an accurate application and Demonstration of Financial Benefits statements, and to appropriately claim the section 48E(h) Increase, taxpayers must have a process to verify that the requisite percentage of their subscribers are Qualifying Households, so that the taxpayer will be able to fulfill the Category 4 financial benefits requirements under section 48E(h)(2)(C) and § 1.48E(h)–1(f)(1) and (2). Moreover, in the event of an audit, taxpayers must be able to provide documentation to prove, that, for each year of the recapture period, the taxpayer has fulfilled the financial benefits requirements under section 48E(h)(2)(C) and § 1.48E(h)–1(f)(1) and (2), validly claimed the credit, and is qualified to retain the section 48E(h) Increase. See the recapture rules under § 1.48E(h)–1(n) and section 48E(h)(5).

Regarding comments requesting more clarity and additions to the list of needs-based programs which can be used for categorical eligibility verification, the final regulations will not provide an exhaustive list of Federal or Tribal programs and will not provide any list regarding State or utility programs. The list included in the Proposed Regulations was limited to examples where it could readily be established that the Federal programs have the same income limit requirements as this Program does for Category 4 Qualifying Households. The illustrative list was intended to provide examples of types of programs which are need-based and that would demonstrate that the household is a Qualifying Household based on participation in that program. To prevent further confusion, the illustrative list of Federal programs is not included in the final regulations. For reference purposes, the illustrative list of Federal programs from the Proposed Regulations will be included

in procedural guidance for the Program that will be published in the Internal Revenue Bulletin.

Regarding a list of State or utility level eligible programs, such programs are too numerous and varied for the Treasury Department and the IRS to provide a list, even just for illustrative purposes. Moreover, whether a household meets the income limits is dependent on the location of that household. Therefore, it is the responsibility of the taxpayer seeking the section 48E(h) Increase, to determine whether a program, Federal or otherwise, has the same income limitations as required for Qualifying Households, and, if documentation proving that a member or members of a household participate in such is sufficient to qualify that household as a Qualifying Household.

The final regulations also do not adopt the proposed rule regarding state agency documentation. The proposed rule was only intended to clarify that documentation from State agencies may be acceptable provided the program associated with the documentation had the same income limit requirements. However, the general rule already provides that State program documentation is acceptable for categorical eligibility, and therefore this additional rule was unnecessary.

Section 1.48E(h)–1(f)(4)(ii) provides that applicants may use categorical eligibility verification or direct income verification methods to establish that a household is a Qualifying Household. Section 1.48E(h)–1(f)(4)(ii) provides that applicants may use categorical eligibility verification or direct income verification methods to establish that a household is a Qualifying Household. Section 1.48E(h)–1(f)(4)(ii)(A) defines categorical eligibility consistent with the general definition from the Proposed Regulations, excluding the illustrative list of Federal programs and the discussion of state agencies. Section 1.48E(h)–1(f)(4)(ii) also includes language that an individual in the household must currently be approved for assistance from or participation in a program with an award letter or other written documentation within the last 12 months for enrollment in that program to establish categorical eligibility of the household. This language was adopted from another paragraph in the same section of the Proposed Regulations. Finally, the term *other income verification methods*, from the Proposed Regulations has been revised to *direct income verification*, but otherwise § 1.48E(h)–1(f)(4)(ii) adopts the language from the Proposed Regulations.

V. Annual Capacity Limitation

Under section 48E(h)(4)(C), the total annual Capacity Limitation is 1.8 gigawatts of DC capacity for each calendar year during the period beginning on January 1, 2025, and ending on December 31 of the applicable year (as defined in section 45Y(d)(3)), and zero thereafter. Proposed § 1.48E(h)–1(g)(1) would provide that the Capacity Limitation would be divided across the four facility categories described in section 48E(h)(2)(A)(iii) and proposed § 1.48E(h)–1(b)(2), and that the distribution of the annual Capacity Limitation would be announced in future guidance published in the Internal Revenue Bulletin.

Some commenters requested that the Program retain the Capacity Limitation distributions established for the predecessor program under section 48(e). These commenters observed that maintaining the distribution will encourage facility development in categories that were undersubscribed in the predecessor program. To promote facility development in categories that were undersubscribed in the predecessor program and to provide greater certainty in the Program, the Treasury Department and the IRS revise proposed § 1.48E(h)–1(g)(1), and § 1.48E(h)–1(g)(1) of the final regulations provides, in added Table 1, the annual Capacity Limitation distribution across facility categories for each Program year. Additionally, Table 2 has been added to new § 1.48E(h)–1(g)(2) to provide the distribution of Capacity Limitation within Category to the Category 1 sub-reservations (described in § 1.48E(h)–1(i) of the final regulations and Section VII of these Summary of Comments and Explanation of Revisions).

Proposed § 1.48E(h)–1(g)(1) would also provide that, after the Capacity Limitation for each facility category is established in guidance published in the Internal Revenue Bulletin, it may be reallocated later across facility categories and sub-reservation in the event one category or sub-reservation is oversubscribed and another has excess capacity. Proposed § 1.48E(h)–1(g)(1) would also clarify that a facility category or sub-reservation is oversubscribed if it receives qualified applications in excess of Capacity Limitation reserved for the facility category or sub-reservation.

To provide clarity on the redistribution process of Capacity Limitation during a Program year, the final regulations add procedural rules to § 1.48E(h)–1(g)(2)(i) through (iv). These

procedural rules detail the process by which the annual Capacity Limitation described in § 1.48E(h)–1(g)(1) will be redistributed in the event that some categories are undersubscribed and others oversubscribed. Additionally, § 1.48E(h)–1(g)(3) includes the definition for *oversubscribed* that was proposed in § 1.48E(h)–1(g)(1) and adds a coordinating definition for the term *undersubscribed*.

Proposed § 1.48E(h)–1(g)(2) would provide that if the annual Capacity Limitation for any calendar year exceeds the aggregate amount of annual Capacity Limitation allocated for a calendar year under proposed § 1.48E(h)–1(g)(1), then the annual Capacity Limitation for the succeeding calendar year shall be increased by the amount of such excess. No comments were received on this proposed rule. The final regulations adopt this rule with some clarifications at § 1.48E(h)–1(g)(4). The final regulations provide that any unallocated Capacity Limitation carried over from the preceding year will be equally distributed across Category 1, 2, 3, and 4, and further equally distributed across non-Additional Selection Criteria and Additional Selection Criteria reservations. Section 1.48E(h)–1(g)(3) also provides that within Category 1, the portion distributed from the carried over Capacity Limitation will be equally distributed across Category 1 sub-reservations and further across the reserves for Additional Selection Criteria within those sub-reservations.

Finally, § 1.48E(h)–1(g)(5) has been added to the final regulations to clarify how allocations of Capacity Limitation in DC, which is stipulated in section 48E(h)(4)(C), are made to facilities which have a nameplate capacity measured in AC. Section 1.48E(h)–1(g)(5) provides that applicable facilities that have a nameplate capacity in AC and that are awarded an allocation, will be awarded an amount of Capacity Limitation in DC that is equal to the facility's reported nameplate capacity in AC.

VI. Additional Selection Criteria

Proposed § 1.48E(h)–1(h)(1) would provide that at least 50 percent of the total Capacity Limitation in each facility category will be reserved for facilities meeting criteria described in proposed § 1.48E(h)–1(h)(2) (relating to ownership criteria) and proposed § 1.48E(h)–1(h)(3) (relating to geographic criteria). In the Proposed Regulations and in these final regulations the ownership criteria and the geographic criteria are collectively referred to as *Additional Selection Criteria*.

Proposed § 1.48E(h)–1(h)(1) would also provide that, after the reservation of Capacity Limitation for qualified facilities meeting the Additional Selection Criteria described in proposed § 1.48E(h)–1(h)(2) and (3) is established in guidance published in the Internal Revenue Bulletin, it may be reallocated later across facility categories and sub-reservations in the event one category or sub-reservation within a category is oversubscribed and another has excess capacity.

No comments were submitted directly addressing these general Proposed Regulations for Additional Selection Criteria. However, one commenter encouraged consideration of other potential Additional Selection Criteria, such as facilities that provide increased financial benefits to qualifying low-income households or that are located on previously developed sites, such as building rooftops, at brownfield sites, and co-located with other infrastructure, because projects that meet these criteria could create greater community impact.

The final regulations do not adopt this recommendation because the commenter did not establish how other potential Additional Selection Criteria could potentially create greater community impact. Further, apart from Additional Selection Criteria, the Program reserves Capacity Limitation for BTM facilities located on rooftops. The Additional Selection Criteria established under proposed § 1.48E(h)–1(h) allows applicants to be evaluated for eligibility under the Additional Selection Criteria, and therefore, an increased chance for an allocation award based on characteristics of the applicant and facility, and without the need to compare applicants.

The final regulations generally adopt proposed § 1.48E(h)–1(h)(1) with the addition that if eligible applications for facilities that meet at least one of the two Additional Selection Criteria categories received during the initial 30-day period total less than 50 percent of the Capacity Limitation for a category, then additional Capacity Limitation would be reserved during the rolling application period such that 50 percent of the total Capacity Limitation in the category would be reserved for these facilities.

However, the final regulations revise § 1.48E(h)–1(h)(1) to account for the inclusion of the distribution of annual Capacity Limitation across categories and the redistribution within a Program year in these final regulations under § 1.48E(h)–1(g). The final regulations clarify that, at the beginning of an application period, the reservation for Additional Selection Criteria applicants

is 50 percent of the Capacity Limitation reserved for each category or Category 1 sub-reservation. The final regulations retain the informational language that specific procedures under Additional Selection Criteria will be provided in guidance published in the Internal Revenue Bulletin.

Comments regarding specific criteria under either the Ownership Criteria category or the Geographic Criteria category are summarized and addressed where appropriate in the sections following this paragraph.

A. Ownership Criteria

1. In General

Proposed § 1.48E(h)–1(h)(2)(i) would provide criteria based on ownership (Ownership Criteria), stating that the Ownership Criteria category is based on characteristics of the applicant that owns the applicable facility. Proposed § 1.48E(h)–1(h)(2)(i) would provide that an applicable facility meets the Ownership Criteria if it is owned by a Tribal enterprise, an Alaska Native Corporation, a Native Hawaiian Organization, a renewable energy cooperative, or a qualified tax-exempt entity.

No comments were submitted regarding this general definition, and, therefore, the final regulations adopt this general rule without modification.

2. Indirect Ownership

Proposed § 1.48E(h)–1(h)(2)(ii)(A) would provide that if an applicant wholly owns an entity that is the owner of an applicable facility, and the entity is disregarded as separate from its owner for Federal income tax purposes (disregarded entity), then the applicant, and not the disregarded entity, is treated as the owner of the applicable facility for purposes of the Ownership Criteria. No comments were submitted on this proposed rule. Section 1.48E(h)–1(h)(2)(ii)(A) of the final regulations adopts the proposed rule with a clarification that disregarded entities are not eligible for an award and may not submit an application. The final regulations at § 1.48E(h)–1(h)(2)(ii)(A) also provide that for entities wholly owned and chartered under Tribal law and corporations incorporated under the authority of either section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. 5124 or section 3 of the Oklahoma Indian Welfare Act, 25 U.S.C. 5203, an application may be made as a Tribal Enterprise.

3. Partner Qualifying Partnership

Proposed § 1.48E(h)–1(h)(2)(ii)(B) would provide that if an applicant is an

entity classified as a partnership for Federal income tax purposes, and an entity described in proposed § 1.48E(h)–1(h)(2)(i)(A) through (E) owns at least a one percent interest (either directly or indirectly) in each material item of partnership income, gain, loss, deduction, and credit and is a managing member or general partner (or similar title) under State or Tribal law of the partnership (or directly owns 100 percent of the equity interests in the managing member or general partner) at all times during the existence of the partnership, the applicable facility will be deemed to meet the ownership criteria. Proposed § 1.48E(h)–1(h)(2)(ii)(B) would provide that if the partnership becomes the owner of the facility after an allocation is made to an entity described in proposed § 1.48E(h)–1(h)(2)(i)(A) through (E), the transfer of the facility to the partnership is not a disqualification event for purposes of proposed § 1.48E(h)–1(m)(5), so long as the requirements of proposed § 1.48E(h)–1(m)(5) are satisfied. Proposed § 1.48E(h)–1(h)(2)(ii)(B) would provide that the original applicant and the successor partnership should refer to guidance published in the Internal Revenue Bulletin for the procedures to request a transfer of the Capacity Limitation allocation to the successor partnership.

No comments were received on this proposed rule. The final regulations adopt the proposed rules without modification at § 1.48E(h)–1(h)(2)(ii)(B).

4. Definitions

i. Tribal Enterprise

Proposed § 1.48E(h)–1(h)(2)(iii) would provide that a “Tribal enterprise” for purposes of the Ownership Criteria is an entity that is (1) owned at least 51 percent directly by an Indian Tribal government (as defined in section 30D(g)(9) of the Code), or owned at least 51 percent indirectly through an entity that is wholly owned by the Indian Tribal government and is created either under the Tribal laws of the Indian Tribal government or through a corporation incorporated under the authority of either section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. 5124, or section 3 of the Oklahoma Indian Welfare Act, 25 U.S.C. 5203, and (2) subject to Tribal government rules, regulations, and/or codes that regulate the operations of the entity.

ii. Alaska Native Corporation

Proposed § 1.48E(h)–1(h)(2)(iv) would provide that an “Alaska Native Corporation” for purposes of the

Ownership Criteria is defined in section 3 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602(m).

iii. Native Hawaiian Organization

Proposed § 1.48E(h)–1(h)(2)(v) would provide that a “Native Hawaiian Organization” for purposes of the Ownership Criteria is defined in 13 CFR 124.3.

iv. Renewable Energy Cooperative

Proposed § 1.48E(h)–1(h)(2)(vi) would provide that a “renewable energy cooperative” for purposes of the Ownership Criteria is an entity that develops applicable facilities and is either (1) a consumer or purchasing cooperative controlled by its members with each member having an equal voting right and with each member having rights to profit distributions based on patronage as defined by proportion of volume of energy or energy credits purchased (kWh), volume of financial benefits delivered (\$), or volume of financial payments made (\$), and in which at least 50 percent of the patronage in the qualified facility is by cooperative members who are low-income households (as defined in section 48E(h)(2)(C)); or (2) a worker cooperative controlled by its worker-members with each member having an equal voting right.

v. Qualified Tax-Exempt Entity

Proposed § 1.48E(h)–1(h)(2)(vii) would provide that a “qualified tax-exempt entity” for purposes of the Ownership Criteria is:

(1) An organization exempt from the tax imposed by subtitle A of the Code by reason of being described in section 501(c)(3) or (d) of the Code;

(2) Any State, the District of Columbia, or political subdivision thereof, or any agency or instrumentality of any of the foregoing;

(3) An Indian Tribal government (as defined in section 30D(g)(9)), a political subdivision thereof, or any agency or instrumentality of any of the foregoing; or

(4) Any corporation described in section 501(c)(12) operating on a cooperative basis that is engaged in furnishing electric energy to persons in rural areas.

No comments were submitted regarding the proposed definitions of Tribal Enterprise, Alaska Native Corporation, Native Hawaiian Organization, and Renewable Energy Cooperative. The final regulations adopt the proposed definitions without change, except that corporation in the definition of Tribal enterprise is replaced with “entity.”

However, several commenters representing the low-income housing credit (commonly referred to as LIHTC) industry stated that the definition of qualified tax-exempt entity should be revised to reflect LIHTC partnership structure. According to these commenters, a LIHTC partnership generally has an investor with a 99.9 percent ownership interest and the tax-exempt or nonprofit entity has an 0.01 percent ownership interest. Because the Proposed Regulations require that a qualified tax-exempt entity own a one percent interest in each material item of the partnership to qualify the partnership for Additional Selection Criteria, these commenters asserted that this requirement is incompatible with the ownership structure commonly used for LIHTC financed developments. These commenters alternatively requested the final regulations clarify that a special allocation of depreciation and any associated credits would not be considered to be a “material item” in determining one percent ownership.

The Treasury and the IRS understand commenters’ concerns and the unintended impacts to LIHTC applicants that are seeking to install clean energy facilities on their qualified low-income residential building projects. Accordingly, the final regulations at § 1.48E–1(h)(2)(ii)(C) revise the Ownership Criteria to allow an applicant to include any partnership that (1) owns an applicable facility connected to a residential building to which credits under section 42 of the Code are reasonably anticipated or have been determined and (2) has a partner for Federal income tax purposes that is a qualified tax-exempt (or another eligible entity identified § 1.48E(h)–1(h)(2)(i)(A) through (E)) to qualify the partnership for the purposes of Ownership Criteria. Section 1.48E–1(h)(2)(ii)(C) of the final regulations provides that the transfer of the facility to the partnership is not a disqualification event for purposes of § 1.48E(h)–1(m)(5) or subject to recapture for purposes of § 1.48E(h)–1(m), so long as the requirements of § 1.48E(h)–1(m)(5) are satisfied. This modification is limited only to applicable facilities that are part of a section 42 LIHTC building.

5. Emerging Market Business

The preamble to the Proposed Regulations indicated that the Treasury Department and the IRS were proposing not to carry over to the Program under section 48E(h), the qualified renewable energy company (QREC) category of Ownership Criteria described in § 1.48E–1(h)(2)(vi) from the

predecessor program under section 48(e). However, the preamble further stated that the Treasury Department and the IRS considered including a category for emerging market businesses, defined as those businesses that do not have large market shares that could be demonstrated by the number of employees, annual revenue, and other factors, similar to the QREC category from the predecessor Program under section 48(e). The Proposed Regulations requested comment on options to include an Ownership Criteria category for emerging market businesses, similar to the former QREC category. This request specifically asked for comments on how an administrable emerging market business Ownership Criteria category could be structured, including what thresholds a definition should include to define market share and size, age of business, the number of employees (both minimum and maximum) and/or annual gross receipts generated by an emerging market business, and the supporting documentation that could be provided as part of the application to verify an applicant meets such criteria.

Some commenters expressed general support for including an emerging market business category but offered no further detail or advice. Several other commenters noted that they qualified as QRECs under the section 48(e) program and asked that the final regulations use the same criteria for “emerging market business” Ownership Criteria. One commenter stated that they understood that this particular Ownership Criteria might be more burdensome than the other criteria in the Ownership Criteria category but asked that the QREC criteria be retained in the section 48E(h) Program and final regulations. This commenter seemed focused on burden to the potential applicants by stating that the QREC requirements for majority ownership by individuals and company size thresholds were workable, and that it would not be an undue burden for companies in the QREC size range to provide tax returns, financial statements, operating agreements, and other business organizational documents.

The QREC category, as with all Additional Selection Criteria, was intended to help create a more efficient allocation process and help ensure that allocations were made to the types of applicants and projects that support the purposes of the Program. However, the QREC criteria instead resulted in a disproportionate administrative burden. Applicants frequently applied as QRECs that did not meet the criteria or failed to submit complete information, causing

delays in the allocation process across the program. In response to these comments and in part based on their administration of the predecessor program under section 48(e), the Treasury Department and the IRS have clarified and streamlined the QREC definition used in the predecessor section 48(e) program to make this criterion more administrable. Specifically, the QREC definition was revised to provide more detail on affiliated entities so as to provide taxpayer certainty and promote sound tax administration. Section 1.48E(h)–1(h)(2)(i)(F) has been added to the final regulations to include QREC as an eligible Ownership Criteria category, and § 1.48E(h)–1(h)(2)(viii) has been added to the final regulations to define QREC. The final regulations provide several changes from the section 48(e) program QREC definition.

First, the definition provided in the final regulations clarifies that QRECs must have a general business purpose to serve low-income communities or low-income households. Second, the final regulations remove the option that at least 51 percent of the entity's ownership interest are owned or controlled by a Community Development Corporation (as defined in 13 CFR 124.3), an agricultural or horticultural cooperative (as defined in section 199A(g)(4)(A) of the Code), an Indian Tribal government (as defined in section 30D(g)(9)), an Alaska Native corporation (as defined in section 3 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602(m)), or a Native Hawaiian organization (as defined in 13 CFR 124.3). These entities are removed from the definition because they are eligible for Additional Selection Criteria as other Ownership criteria. Therefore, the final regulations provide that at least 51 percent of the entity's equity interests are owned and controlled by one or more individuals. Third, the final regulations clarify that entity affiliation for the purposes of determining both the number of full-time equivalent employees and annual gross receipts is defined as: (1) 25 percent or more of an entity's board seats, voting rights, or equity interests, are cumulatively held by another entity and related entities (as described in described in sections 267(b) or 707(b)(1) of the Code); or (2) one or more of an entities' officers, directors, managing members or partners with authority over the board of directors or management and operations also have authority over the board of directors or management and operations of another entity. Lastly, the final regulations remove the

requirement included in the section 48(e) program that a QREC must have provided solar services as a contractor or subcontractor to qualified solar or wind facilities as defined in section 48(e)(2)(A) with at least 100 kW of cumulative nameplate capacity located in one or more low-income communities as defined in section 48(e)(2)(A)(iii)(I).

Proposed § 1.48E(h)–1(h)(2)(ii)(B), regarding a partner qualifying a partnership for purposes of the Ownership Criteria, has also been revised to note that this paragraph is not applicable to QREC applicants. Under the regulations for the predecessor program under section 48(e), a partner that qualified as a QREC and held the requisite interest amount in the partnership could qualify the partnership as a QREC. Moreover, a QREC that received an allocation was permitted to transfer the allocation to a partnership without triggering disqualification if the original applicant that qualified as a QREC remained in the partnership and met the requisite interest requirements in the partnership. This inclusion of QRECs under § 1.48E(h)–1(h)(2)(ii)(B) (the regulations for the predecessor program under section 48(e)), at times, proved to be incompatible with the purpose of establishing QRECs as an Ownership Criteria category, which was to prioritize small, emerging market businesses for an allocation. Instead, some applicants utilized the presence of a small business partner to then qualify a partnership that is not a small business. Moreover, the inclusion of QRECs to qualify a partnership was often in conflict with the QREC affiliated entities threshold requirements. Therefore, to eliminate confusion and any conflict between the Ownership Criteria provision, these final regulations for the program under section 48E(h) exclude QRECs from the partner qualifying a partnership provisions under § 1.48E(h)–1(h)(2)(ii)(B).

B. Geographic Criteria

Proposed § 1.48E(h)–1(h)(3) would provide criteria based on geography (Geographic Criteria). As described in the preamble of the Proposed Regulations, the Geographic Criteria category is based on where the facility will be placed in service. Geographic Criteria do not apply to Category 2 facilities. To meet the Geographic Criteria, a facility needs to be located in a Persistent Poverty County (PPC)² as

described in proposed § 1.48E(h)–1(h)(3)(ii) or in certain census tracts identified on the CEJST³ and as described in proposed § 1.48E(h)–1(h)(3)(iii).

Proposed § 1.48E(h)–1(h)(3)(ii) would describe a PPC as any county where 20 percent or more of residents have experienced high rates of poverty over the past 30 years. Proposed § 1.48E(h)–1(h)(3)(ii) would provide that for purposes of the Program, the Proposed Regulations would use the PPC measure adopted by the United States Department of Agriculture (USDA) to make this determination.

No comments were received recommending modification of these rules, and the Proposed Regulations related to Geographic Criteria are adopted in the final regulations at § 1.48E(h)–1(h)(3)(ii) without modification.

VII. Sub-Reservations of Allocation for Facilities Located in a Low-Income Community

Proposed § 1.48E(h)–1(i)(1) would subdivide the Capacity Limitation reservation for facilities seeking a Category 1 allocation with a portion of the Capacity Limitation specifically reserved for eligible residential behind the meter (BTM) facilities, including rooftop solar. This is because the sub-reservation of a substantial portion of the allocation in Category 1 for eligible residential BTM facilities would help ensure that allocations predominantly are awarded to facilities serving residences and consumers, rather than facilities serving businesses. Proposed § 1.48E(h)–1(i)(1) would reserve the remaining Capacity Limitation in Category 1 for applicants with front of the meter (FTM) facilities as well as non-residential BTM facilities. Proposed § 1.48E(h)–1(i)(1) would clarify that the specific amounts of the Category 1 sub-reservations will be provided in future guidance published in the Internal Revenue Bulletin that is applicable to a Program year based on factors such as promoting efficient allocation of Capacity Limitation and allowing like-projects to compete for an allocation. Proposed § 1.48E(h)–1(i)(1) would provide that after the sub-reservation is established in guidance published in the Internal Revenue Bulletin, it may be reallocated later in the event it has excess capacity.

One commenter generally supported the proposal contained in the Proposed Regulations to create a sub-reservation of Category 1 Capacity Limitation for

² <https://www.ers.usda.gov/data-products/county-typology-codes/>.

³ <https://screeningtool.geoplatform.gov/en/#/33.47/-97.5>, or a successor website such as [IRS.gov](https://irs.gov).

residential BTM facilities under proposed § 1.48E(h)–1(i). No other comments were submitted on this proposal. The final regulations under § 1.48E(h)–1(i) adopt the proposed rule without modification.

VIII. Application and Selection Process

Section 48E(h)(4)(A) provides that “[i]n establishing such program and to carry out the purposes of this subsection, the Secretary shall provide procedures to allow for an efficient allocation process.” In part based on their administration of the predecessor program under section 48(e), the Treasury Department and the IRS anticipate that the number of eligible applicants within any given category seeking an allocation may exceed the total Capacity Limitation allocation available to be allocated. Accordingly, the Treasury Department and the IRS are designing an application process that both ensures that allocations are awarded to facilities that advance the program goals and facilitates an efficient allocation process.

Proposed § 1.48E(h)–1(j)(1) would provide that applications for a Capacity Limitation allocation will be evaluated according to the procedures specified in guidance published in the Internal Revenue Bulletin. Based on feedback received with respect to the section 48(e) predecessor program and an assessment of operational capabilities set up to administer the Program under section 48E(h), the preamble to the Proposed Regulations explained that the expected process would include one or more initial application windows in which applications received by a certain time and date would be evaluated together, followed by a rolling application process. The final regulations add § 1.48E(h)–1(j)(4) to establish the annual application period. Section 1.48E(h)–1(j)(4) also adds certain procedural rules to explain the initial 30-day application window in which applications received by a certain time and date would be evaluated together, followed by a rolling application process. Additionally, § 1.48E(h)–1(j)(4) explains the process by which Additional Selection Criteria applications are prioritized for review and allocations from a particular reservation of Capacity Limitation.

Section 48E(h)(4)(A) directs the Secretary to provide procedures to allow for an efficient allocation process. Additionally, section 48E(h)(4)(E)(i) requires that facilities allocated an amount of Capacity Limitation be placed in service within four years of the date of allocation. To promote efficient allocation, and to ensure that

allocations will be awarded to facilities that are sufficiently viable and well defined to allow for a review for an allocation, and sufficiently advanced such that they are likely to meet the four-year placed in service deadline, proposed § 1.48E(h)–1(j)(2) would require applicants, when applying for an allocation, to submit certain information, documentation, and attestations that demonstrate project eligibility and viability. Proposed § 1.48E(h)–1(j)(2) would clarify that the specific information, documentation, and attestations to be submitted will be provided in guidance published in the Internal Revenue Bulletin that is applicable to a Program year.

Several comments discussed documentation requirements and related procedural requirements. These comments specifically requested exemptions from having to provide documentation or requested the ability to provide alternate documentation due to circumstances specific to that commenter or specific to a State or utility. Comments regarding specific documentation or procedural requirements are outside the scope of these regulations. State and local rules for energy-generating facilities and low-income clean energy programs vary considerably, and procedures for those rules may not be relevant to or compatible with the requirements under section 48E(h). Consistent with the statute, the Treasury Department and the IRS seek to establish an efficient application and allocation process, as well as promote certainty for applicants as to how their application is being reviewed. To do so, documentation and procedural requirements must be standardized to the extent appropriate and possible, and it would not promote sound tax administration to create separate requirements for each applicant based on their specific circumstances. The Treasury Department and the IRS will periodically assess the Program to determine whether to make any changes to the Program’s application process. Specific information related to documentation and procedural requirements will be provided in guidance published in the Internal Revenue Bulletin. The Treasury Department and the IRS expect that the specific application information, documentation, and attestation requirements provided in procedural guidance applicable to the Program published in the Internal Revenue Bulletin will be substantially similar to requirements applicable the section 48(e) Low-Income Communities Bonus Program provided in Revenue Procedure

2024–19, 2024–16 I.R.B. 899. Like the section 48(e) program, some requirements may differ for FTM and BTM facilities and other requirements may differ by facility category and Additional Selection Criteria. The final regulations under § 1.48E(h)–1(j)(1) through (2) adopt the proposed rules without modification.

Although no specific comments were submitted in response to the Proposed Regulations regarding recordkeeping, the Treasury Department and the IRS determined that, in the interest of sound tax administration, a record retention rule is necessary in addition to the specific information, documentation, and attestation requirements set forth in the Proposed Regulations. Consistent with the current applicable periods of limitations under section 6501 of the Code on assessment and collection of tax under chapter 1 with respect to the applicable taxpayer’s return filed for the taxable year, § 1.48E(h)–1(o) of the final regulations provide that the applicant is required to retain records and materials related to the application for the following periods: (1) for at least 6 years after the due date (with extensions) for filing the Federal income tax return after the tax year that return is filed to claim the increase in the section 48E credit; and (2) for at least 6 years after the due date (with extensions) for filing the Federal income tax return for the last year that the applicant could be subject to recapture as described in § 1.48E(h)–1(n). These records are considered general tax records under § 1.6001–1(e), and they are required for the IRS to validate that taxpayers have met the regulatory requirements and are entitled to receive the section 48E(h) Increase.

Proposed § 1.48E(h)–1(j)(3) would provide that there is no administrative appeal of Capacity Limitation allocation decisions. No comments were submitted on this provision, and the final regulations at § 1.48E(h)–1(j)(3) adopt this rule without modification.

IX. Placed in Service

A. Documentation and Attestations To Be Submitted When Facility Is Placed in Service

Proposed § 1.48E(h)–1(k)(1) would require facilities that received a Capacity Limitation allocation to report to the Department of Energy (DOE) the date the applicable facility was placed in service. Proposed § 1.48E(h)–1(k)(2) would require facilities that received a Capacity Limitation to submit additional documentation or complete additional attestations with this reporting. At the time of application, applicants would not necessarily be able

to demonstrate compliance with certain eligibility requirements, as the facility would not yet be operating at that time. Requiring placed in service reporting will allow for final verification that the facilities that were awarded a Capacity Limitation Allocation have met certain eligibility requirements under the Program. Therefore, proposed § 1.48E(h)–1(k)(2) would require facilities awarded a Capacity Limitation to submit final eligibility information at the time of placed in service.

Proposed § 1.48E(h)–1(k)(3) would provide that the DOE will review the placed in service documentation and attestations to determine if the facility meets the eligibility criteria for the owner to claim an increased applicable percentage. Proposed § 1.48E(h)–1(k)(3) would provide that the DOE then provides a recommendation to the IRS regarding whether the facility continues to meet the eligibility requirements for the facility to retain its allocation or if the facility should be disqualified (as provided in proposed § 1.48E(h)–1(m)). Proposed § 1.48E(h)–1(k)(3) would generally provide that the IRS reviews recommendations, and if deemed appropriate, issues the final eligibility letter.

No comments were submitted regarding documentation and attestations to be submitted when placed in service. The final regulations adopt proposed § 1.48E(h)–1(k) with minor edits to clarify technical procedures.

B. Placed in Service Prior to Allocation Award

Proposed § 1.48E(h)–1(l)(1) would provide that facilities that are placed in service prior to being awarded an allocation of Capacity Limitation will not be eligible to receive an allocation. Proposed § 1.48E(h)–1(l)(2) would provide that if a facility is placed in service after the application is submitted, but prior to the allocation of Capacity Limitation, and the facility is awarded an allocation, the allocation will be rescinded.

Several commenters recommend that § 1.48E(h)–1(l)(2) be modified so that an award is not rescinded if a Category 1 facility is placed in service after submitting an application but prior to receiving the allocation award. These commenters asserted that this rule is problematic and disruptive in practice for residential-serving rooftop solar projects that have shorter development timelines.

The Treasury Department and the IRS do not adopt this recommendation, and § 1.48E(h)–1(l)(2) is adopted without modification. Awarding an allocation to

facilities that have already been placed in service would be inconsistent with the statute and the goal of the Program to promote investment in new clean electricity facilities. Section 48E(h)(4)(E)(i) provides that a facility must be placed in service within four years of receiving an allocation of Capacity Limitation, indicating that allocations should be made to new facilities that have not yet been placed in service. Accordingly, facilities placed in service prior to being awarded an allocation of Capacity Limitation are ineligible to receive an allocation. The final regulations maintain the use of a Category 1 sub-reservation for facilities that serve BTM facilities to support timely review of applications serving residential-serving rooftop solar projects that have shorter development timelines.

X. Post-Allocation Compliance

A. Disqualification After Receiving an Allocation

Proposed § 1.48E(h)–1(m) would provide that a facility that was awarded a Capacity Limitation allocation is disqualified and loses its allocation if prior to or upon the facility being placed in service: (1) the location where the facility will be placed in service changes; (2) the maximum net output of the facility increases such that it exceeds the less than five megawatt requirement provided in section 48E(h)(2)(A)(ii) or the nameplate capacity decreases by the greater of 2 kW or 25 percent of the Capacity Limitation awarded in the allocation; (3) the facility cannot satisfy the financial benefits requirements under section 48E(h)(2)(B)(ii) and proposed § 1.48E(h)–1(e) as planned (if applicable) or cannot satisfy the financial benefits requirements under section 48E(h)(2)(C) and proposed § 1.48E(h)–1(f) as planned (if applicable); (4) the eligible property that is part of the facility that received the Capacity Limitation allocation is not placed in service within four years after the date the applicant was notified of the allocation of Capacity Limitation to the facility or the facility that received the Capacity Limitation allocation is placed in service ahead of allocation of award; or (5) the facility received a Capacity Limitation allocation based, in part, on meeting the Ownership Criteria and ownership of the facility changes prior to the facility being placed in service, unless the original applicant transfers the facility to an entity classified as a partnership for Federal income tax purposes and retains at least a one percent interest (either directly or

indirectly) in each material item of partnership income, gain, loss, deduction, and credit of such partnership and is a managing member or general partner (or similar title) under State or Tribal law of the partnership (or directly owns 100 percent of the equity interests in the managing member or general partner) at all times during the existence of the partnership. No comments were received related to proposed § 1.48E(h)–1(m), and this rule is adopted without modification.

B. Recapture of Section 48E(h) Increase

Section 48E(h)(5) requires the Secretary, by regulations or other guidance, to provide rules for recapturing the benefit of any section 48E(h) Increase with respect to any property that ceases to be property eligible for such section 48E(h) Increase (but that does not cease to be investment credit property within the meaning of section 50(a) of the Code). The period and percentage of such recapture is determined under rules similar to the rules of section 50(a). To the extent provided by the Secretary, such recapture may not apply with respect to any property if, within 12 months after the date the applicant becomes aware (or reasonably should have become aware) of such property ceasing to be property eligible for such section 48E(h) Increase, the eligibility of such property for such section 48E(h) Increase is restored. Such restoration of a section 48E(h) Increase is not available more than once with respect to any facility.

Proposed § 1.48E(h)–1(n)(1) would provide that if, at any time during the five year recapture period beginning on the date that an applicable facility under section 48E(h) is placed in service, there is a recapture event under proposed § 1.48E(h)–1(n)(3) with respect to such property, then the Federal income tax imposed on the taxpayer by chapter 1 of the Code for the taxable year in which the recapture event occurs is increased by the recapture percentage of the benefit of the increase in the section 48E credit. Proposed § 1.48E(h)–1(n)(1) would provide that the recapture percentage is determined according to the table provided in section 50(a)(1)(B).

Proposed § 1.48E(h)–1(n)(2) would provide that recapture under proposed § 1.48E(h)–1(n)(1) may not have applied with respect to any property if, within 12 months after the date the applicant becomes aware (or reasonably should have become aware) of such property ceasing to be property eligible for such increase in the credit allowed under section 48E(a), the eligibility of such property for such increase pursuant to section 48E(h) is restored. Proposed

§ 1.48E(h)–1(n)(2) would provide that such restoration of an increase pursuant to section 48E(h) is not available more than once with respect to any facility.

Proposed § 1.48E(h)–1(n)(3) would describe that the following circumstances result in a recapture event if the property ceases to be eligible for the increased credit under section 48E(h): (1) property described in section 48E(h)(2)(A)(iii)(II) fails to provide financial benefits over the 5-year period after its original placed in service date; (2) property described under section 48E(h)(2)(B) ceases to allocate the financial benefits equitably among the occupants of the dwelling units, such as not passing on to residents the required net energy savings of the electricity; (3) property described under section 48E(h)(2)(C) ceases to provide at least 50 percent of the financial benefits of the electricity produced to Qualifying Households as described under section 48E(h)(2)(C)(i) or (ii), or fails to provide those households the required minimum 30 percent bill credit discount rate; (4) for property described under section 48E(h)(2)(B), the residential rental building the facility is a part of ceases to participate in a covered housing program or any other housing program described in section 48E(h)(2)(B)(i), if applicable; and (5) a facility increases its maximum net output such that the facility's maximum net output is 5 MW AC or greater.

Proposed § 1.48E(h)–1(n)(4) would provide that any event that results in recapture under section 50(a) also will result in recapture of the benefit of the increase in the section 48E credit by reason of section 48E(h). Proposed § 1.48E(h)–1(n)(4) would provide that the exception to the application of recapture provided in proposed § 1.48E(h)–1(n)(2) did not apply in the case of a recapture event under section 50(a).

No comments were received related to the recapture provisions contained in the Proposed Regulations. Accordingly, these recapture provisions are adopted in the final regulations without modification.

Applicability Date

The final regulations set forth apply to applicable facilities that are placed in service after December 31, 2024, and during taxable years ending on or after January 13, 2025.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

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) requires that a Federal agency obtain the approval of OMB before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. The collections of information in these final regulations contain reporting and recordkeeping requirements that are required to obtain the section 48E(h) Increase. This information in the collections of information would generally be used for tax compliance purposes and by taxpayers to facilitate proper reporting and compliance. A Federal 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.

The recordkeeping requirements mentioned within this final regulation are considered general tax records under § 1.6001–1(e). These records are required for IRS to validate that taxpayers have met the regulatory requirements and are entitled to receive the section 48E(h) Increase. For PRA purposes, general tax records are already approved by OMB under 1545–0123 for business filers, 1545–0074 for individual filers, and 1545–0047 for tax-exempt organizations.

The final regulations also provide reporting requirements related to providing attestations and supporting documentation for initial application, supplemental documentation for specific facilities, and to confirm a facility is placed in service as detailed in these final regulations. These attestations and documentation would allow IRS to allocate Capacity Limitation and ensure taxpayers keep and maintain compliance for the credits. To assist with the collections of information, the IRS will procure certain administration services for the Program. Among other things, these administration services will include establishing a website portal to review the applications for eligibility criteria and providing recommendations to the IRS regarding the selection of applications for an allocation of Capacity Limitation. These collection requirements will be submitted to the Office of Management and Budget

(OMB) under 1545–2327 for review and approval in accordance with 5 CFR 1320.11. The likely respondents are business filers, individual filers, and tax-exempt organization filers. A summary of paperwork burden estimates for the application and attestations is as follows:

Estimated number of respondents: 70,000.

Estimated burden per response: 60 minutes.

Estimated frequency of response: 1 for initial applications, 1 for follow-up documentation, and 1 for projects placed in service.

Estimated total burden hours: 210,000 burden hours.

The IRS solicited feedback on the collection requirements for the application, supporting documentation, and attestations. Although no public comments received by the IRS were directed specifically at the PRA or on the collection requirements, several commenters generally expressed concerns about the burdens associated with the documentation requirements contained in the Proposed Regulations. As described in the relevant portions of this preamble, the Treasury Department and the IRS believe that the documentation requirements are necessary to administer the Program.

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 will not have a significant economic impact on a substantial number of small entities, section 604 of the RFA requires the agency to present a final regulatory flexibility analysis (FRFA) of the final regulations. The Treasury Department and the IRS have not determined whether the final regulations will likely have a significant economic impact on a substantial number of small entities. This determination requires further study and an FRFA is provided in these final regulations.

Pursuant to section 7805(f) of the Code, these final regulations were submitted to the Chief Counsel of Advocacy of the Small Business Administration, and no comments were received.

1. Need for and Objectives of the Rule

The final regulations provide guidance to potential applicants to determine eligibility to apply for an allocation of Capacity Limitation under section 48E(h), and, in general, to taxpayers awarded an allocation of Capacity Limitation to understand the requirement to claim the section 48E(h) Increase. The final regulations are expected to encourage applicants to invest in applicable facilities. Thus, the Treasury Department and the IRS intend and expect that the final rule will deliver benefits across the economy and environment that will beneficially impact various industries.

2. Significant Issues Raised by Public Comments in Response to the IRFA

There were no comments filed that specifically addressed the Proposed Regulations and policies presented in the IRFA. Additionally, no comments were filed by the Chief Counsel of Advocacy of the Small Business Administration.

3. Affected Small Entities

The Small Business Administration estimates in its 2018 Small Business Profile that 99.9 percent of United States businesses meet its definition of a small business. The applicability of the final 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 this final regulation and in the FRFA, these rules may affect a variety of different businesses across several different industries.

4. Impact of the Rules

The recordkeeping and reporting requirements would increase for applicants that participate in the Program. 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 burden of complying with the recordkeeping and reporting requirements are described in section II. (Paperwork Reduction Act) of the Special Analyses. In particular, section II. of the Special Analyses contains a summary of paperwork burden estimates for the application, supporting documentation, and submissions when projects are placed in service. The IRS solicited feedback on the collection requirements for the application, supporting documentation, and attestations. Although no public comments received by the IRS were directed specifically at the PRA or on the collection requirements, several commenters generally expressed

concerns about the burdens associated with the documentation requirements contained in the Proposed Rule. As described in the relevant portions of this preamble, the Treasury Department and the IRS believe that the documentation requirements are necessary to administer the Program.

5. Steps Taken To Minimize Impacts on Small Entities and Alternatives Considered

The Treasury Department and the IRS considered alternatives to the final regulations. For example, the Treasury Department and the IRS considered requests from stakeholders that potential applicants be able to place a facility in service before applying for or receiving an allocation of Capacity Limitation. The Treasury Department and the IRS determined it would not be possible to accommodate this request in the final regulations because the statutory language under section 48E(h)(4)(E)(i) requires that the facility be placed in service by a date that is 4 years after the date of the allocation. Moreover, facilities that were placed in service prior to the allocation process do not increase adoption of and access to renewable energy facilities, as compared to the absence of the Program, and so do not further Program goals.

Another example is the revisions to the list of eligible housing programs that can be found in the Summary of Comments and Explanation of Revisions section of this document. In the preamble to Treasury Decision 9979, applicable to the Low-Income Communities Bonus Credit Program established under section 48(e), the HUD tenant-based rental assistance under section 8 of the United States Housing Act of 1937 was included as eligible housing program. The Treasury Department and the IRS considered retaining tenant-based housing assistance programs. However, after consulting with HUD, it was determined that tenant-based assistance is assistance that can only be attributed to a particular tenant, and not a building. Under section 48E(h)(2)(B), for a facility to qualify as a being part of a qualified low-income residential building project, the facility must be installed on a residential rental building that participates in a covered housing program or other affordable housing program (that is, a Qualified Residential Property). Tenant-based housing assistance programs applicable to a particular tenant do not qualify the building in which the tenant resides as participating in a covered housing program or other affordable housing program. Therefore, because tenant-

based assistance under Section 8 does not comport with the requirements under section 48E(h)(2)(B), tenant-based housing assistance programs under Section 8 have been removed as an eligible housing program for purposes of the Program under section 48E(h).

Additionally, the Treasury Department and the IRS considered excluding the sub-reservation for Category 1 facilities for eligible residential BTM facilities but concluded that this sub-reservation should be included in the Program. The sub-reservation of a substantial portion of the allocation in Category 1 for eligible residential BTM facilities would help ensure that allocations are predominantly awarded to facilities serving residences and consumers, rather than facilities serving businesses.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Indian Tribal government, in the aggregate, or by the private sector, of \$100 million (updated annually for inflation). This final rule does not include any Federal mandate that may result in expenditures by State, local, or Indian 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 regulations do not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

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 regulations do 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 September 27, 2024, the Treasury Department and the IRS held a consultation with Tribal leaders requesting assistance in addressing questions related to Low-Income Communities Bonus Credit Amount Program, which informed the development of these regulations.

VII. Congressional Review Act

Pursuant to the Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs has determined that this rule meets the criteria set forth in 5 U.S.C. 804(2).

VIII. Immediate Effective Date

These final regulations have an effective date of January 13, 2025. To the extent that a good cause statement is necessary under any provision of law, the Treasury Department and the IRS find that there would be good cause to make this rule immediately effective upon publication in the **Federal Register**. The IRA added the section 48E credit to the Code, and provided that the section 48E credit applies to property placed in service after December 31, 2024. Pursuant to the IRA, section 48E(h)(4)(A) directs the Secretary, not later than January 1, 2025, to establish a program to allocate amounts of Capacity Limitation to applicable facilities and to “provide procedures to allow for an efficient allocation” of Capacity Limitation to applicable facilities. In addition, the public already has been provided notice of the general contents of the rules in the proposed regulations and their proposed applicability to applicable facilities placed in service after December 31, 2024, and during taxable years ending on or after the date of publication of these final regulations. As provided in the IRA, section 48E(h) replaces the existing low-income communities bonus credit program for applicable facilities placed in service after December 31, 2024. The statute and proposed regulations, therefore, provide notice that the rules will apply to applicable facilities placed in service beginning in 2025, and provide notice of the qualification requirements being promulgated in this final rule.

The Treasury Department and the IRS have determined that an expedited effective date of the final regulations is appropriate here because of the January 1, 2025, deadline to establish the Program and to provide certainty to taxpayers.

Consistent with Executive Order 14008 (January 27, 2021), and commenters’ requests for final rules, the Treasury Department and the IRS have determined that an expedited effective date of the final regulations is appropriate here given the statutory deadline to establish the Program and to provide certainty to taxpayers. The final regulations provide needed rules on what the law requires for taxpayers to begin job-generating construction of capital-intensive projects qualifying for section 48E(h). Making the final regulations effective as soon as possible will also prevent delays in enabling low-income households to access cost-saving clean electricity in 2025 given the transition from section 48(e) to section 48E(h). Accordingly, to the extent that a finding of good cause is necessary, the Treasury Department and the IRS have found good cause for the rules in this Treasury decision to take effect on the date of publication in the **Federal Register**.

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is 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 regulations is the Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. 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, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry for § 1.48E(h)–1 in numerical order to read in part as follows:

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

Section 1.48E(h)–1 also issued under 26 U.S.C. 48E(i).

* * * * *

■ **Par. 2.** Sections 1.48E(h)–0 and 1.48E(h)–1 are added to read as follows:

§ 1.48E(h)–0 Table of contents.

This section lists the captions contained in § 1.48E(h)–1.

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§ 1.48E(h)–1 Clean Electricity Low-Income Communities Bonus Credit Amount Program.

(a) *Overview*—(1) *General rule*. For purposes of section 46 of the Internal Revenue Code (Code), if an allocation of the capacity limitation (Capacity Limitation) is made with respect to eligible property (as defined in paragraph (c) of this section) that is part of any applicable facility (as defined in paragraph (b) of this section) placed in service in connection with low-income communities under the Clean Electricity Low-Income Communities Bonus Credit Amount Program (Program) established under section 48E(h)(4), the applicable percentage used to calculate the amount of the clean electricity investment credit determined under section 48E(a) (section 48E credit) is increased under section 48E(h)(1).

(2) *Certain terms used in this section*. In this section:

(i) *Applicant*. The terms *applicant* and *taxpayer* are used interchangeably as the context may require. An applicant is the taxpayer that owns the applicable facility and that intends to claim the section 48E credit and will be applying for an allocation of Capacity Limitation for purposes of the section 48E(h) Increase. A disregarded entity is not eligible to be an applicant. The regarded taxpayer that owns the disregarded entity is the owner of the applicable facility and, therefore, the applicant, for purposes of the Program and this section.

(ii) *Disregarded entity*. The term *disregarded entity* means an entity that is disregarded as separate from its owner for Federal income tax purposes.

(iii) *Internal Revenue Bulletin*. The term *Internal Revenue Bulletin* has the meaning provided in § 601.601 of this chapter.

(b) *Applicable facility defined*—(1) *In general*. An *applicable facility* means any qualified facility (as defined in section 48E(b)(3)) that—

(i) Is a non-combustion and gasification facility for which the Secretary of the Treasury or her delegate has determined has a greenhouse gas (GHG) emissions rate of not greater than zero and announced in guidance published either in the **Federal Register** or in the *Internal Revenue Bulletin* as of the opening date for a Program year;

(ii) Has a maximum net output of less than five megawatts (MW) (as measured in alternating current (AC)); and

(iii) Is described in at least one of the four categories described in section 48E(h)(2)(A)(iii) and paragraph (b)(2) of this section.

(2) *Facility categories*—(i) *Category 1 facility*. A facility is a *Category 1 facility* if it is located in a low-income community. The term *low-income community* is defined under section 45D(e)(1) of the Code as any population census tract for which the poverty rate is at least 20 percent based on the most recently released American Community Survey (ACS) low-income community data currently used for the New Markets Tax Credit (NMTC) under section 45D, or, in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income, or, in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income. The term low-income community also includes the modifications in section 45D(e)(4) and (5) for tracts with low population and modification of the income requirement for census tracts with high migration rural counties. Low-income community information for NMTC can be found at <https://www.cdfifund.gov/cims3>. For purposes of this paragraph (b)(2)(i), if updated ACS low-income community data is released for the NMTC, a taxpayer can choose to base the poverty rate for any population census tract on either the prior version of the ACS low-income community data for the NMTC program or the updated ACS low-income community data for the NMTC program for a period of 1 year following the date of the release of the updated data. After the 1-year transition period, the updated ACS low-income community data for the NMTC program must be used to determine the poverty rate for any population census tract. Population census tracts that satisfy the definition of low-income community at the time of application are considered to continue to meet the definition of low-income community for the duration of the recapture period described in paragraph (n)(1) of this section unless the location of the facility changes.

(ii) *Category 2 facility*. A facility is a *Category 2 facility* if it is located on Indian land. The term Indian land is defined in section 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2)).

(iii) *Category 3 facility*. A facility is a *Category 3 facility* if it is part of a qualified low-income residential building project. A facility will be treated as part of a qualified low-income

residential building project if such facility is installed on a residential rental building that participates in a covered housing program or other affordable housing program as described in section 48E(h)(2)(B)(i) (*Qualified Residential Property*) and the financial benefits of the electricity produced by such facility are allocated equitably among the occupants of the dwelling units of such building as provided in paragraph (e) of this section. A Qualified Residential Property could either be a multifamily rental property or single-family rental property. However, the building, and not merely the tenants, must participate in a covered housing program or other affordable housing program described in section 48E(h)(2)(B)(i). A facility does not need to be installed directly on the building to be considered installed on a Qualified Residential Property if the facility is installed on the same or an adjacent parcel of land as the Qualified Residential Property, and the other requirements to be a Category 3 facility are satisfied.

(iv) *Category 4 facility*. A facility is a *Category 4 facility* if it is part of a qualified low-income economic benefit project. A facility will be treated as part of a qualified low-income economic benefit project if, as provided in paragraph (f) of this section, at least 50 percent of the financial benefits of the electricity produced by such facility are provided to households with income of less than—

(A) Two-hundred percent of the poverty line (as defined in section 36B(d)(3)(A) of the Code) applicable to a family of the size involved; or

(B) Eighty percent of area median gross income (as determined under section 142(d)(2)(B) of the Code).

(3) *Less than five megawatts requirement*—(i) *In general*. For purposes of this paragraph (b), the less than five megawatts requirement in paragraph (b)(1)(ii) of this section is measured at the level of the applicable facility in accordance with section 48E(h)(2)(A)(ii). The maximum net output of an applicable facility is measured only by nameplate generating capacity of the applicable facility, which includes only functionally interdependent components of the applicable facility, at the time the applicable facility is placed in service. Components of property are functionally interdependent if the placing in service of each component is dependent upon placing in service other components to produce electricity.

(ii) *Nameplate capacity for purposes of the less than five megawatts requirement*. The determination of

whether an applicable facility has a maximum net output of less than 5 MW (as measured in AC) is based on the nameplate capacity of the applicable facility. If an applicable facility has *integrated operations* with one or more other qualified facilities of the same technology type, then the aggregate nameplate capacity of the applicable facility and each other qualified facility is used to determine whether the less than five megawatts requirement in paragraph (b)(1)(ii) of this section is met. If an applicable facility has a maximum net output equal to or more than 5 MW (as measured in AC), it is not eligible for the Program. The nameplate capacity for purposes of the less than five megawatts requirement in paragraph (b)(1)(ii) of this section is the maximum electrical generating output in MW that the applicable facility is capable of producing on a steady state basis and during continuous operation under standard conditions, as measured by the manufacturer and consistent with the definition of nameplate capacity provided in 40 CFR 96.202. If applicable, the International Standard Organization conditions should be used to measure the maximum electrical generating output of an applicable facility.

(iii) *Nameplate capacity for an applicable facility that generates in direct current for purposes of the less than five megawatts requirement*. Only for applicable facilities that generate electricity in direct current, the taxpayer may choose to determine the maximum net output (in alternating current) of the applicable facility by using the lesser of:

(A) The nameplate generating capacity of the applicable facility in direct current, which is deemed the nameplate generating capacity of the applicable facility in alternating current; or

(B) The nameplate capacity of the first component of property that inverts the direct current electricity into alternating current.

(iv) *Integrated operations*. For the purposes of the less than five megawatts requirement in paragraph (b)(1)(ii) of this section, an applicable facility is treated as having *integrated operations* with one or more other qualified facilities of the same technology type if the facilities are:

(A) Owned by the same or related taxpayers;

(B) Placed in service in the same taxable year; and

(C) Transmit electricity generated by the facilities through the same point of interconnection or, if the facilities are not grid-connected or are delivering electricity directly to an end user

behind a utility meter, are able to support the same end user.

(4) *Related taxpayers*—(i) *Definition*. For purposes of this paragraph (b), the term *related taxpayers* means members of a group of trades or businesses that are under common control (as defined in § 1.52–1(b)).

(ii) *Related taxpayer rule*. For purposes of this paragraph (b), related taxpayers are treated as one taxpayer in determining whether an applicable facility has integrated operations.

(c) *Eligible property*. *Eligible property* means a qualified investment (as defined in section 48E(b)) with respect to any applicable facility.

(d) *Location*—(1) *In general*. An applicable facility is treated as located in a low-income community or located on Indian land under section 48E(h)(2)(A)(iii)(I) if the applicable facility satisfies the requirements of the *Nameplate Capacity Test for Location* of paragraph (d)(2) of this section. Similarly, an applicable facility is treated as located in a geographic area under the Additional Selection Criteria described in paragraph (h) of this section if it satisfies the *Nameplate Capacity Test for Location*.

(2) *Nameplate Capacity Test for Location*. An applicable facility satisfies the requirements of the *Nameplate Capacity Test for Location* of this paragraph (d)(2) and is considered located in or on the relevant geographic area described in paragraph (d)(1) of this section if 50 percent or more of the applicable facility's nameplate capacity is in a qualifying area. The percentage of an applicable facility's nameplate capacity (as defined in paragraph (d)(3) of this section) that is in a qualifying area is determined by dividing the nameplate capacity of the applicable facility's electricity-generating units that are located in the qualifying area by the total nameplate capacity of all the electricity-generating units of the applicable facility.

(3) *Nameplate capacity for purpose of Nameplate Capacity Test for Location*. *Nameplate capacity* for an electricity generating unit means the maximum electrical output that the applicable facility is capable of producing on a steady state basis and during continuous operation under standard conditions, as measured by the manufacturer and consistent with the definition of nameplate capacity provided in 40 CFR 96.202. If applicable, the International Standard Organization conditions should be used to measure the maximum electrical generating output. For purposes of assessing the *Nameplate Capacity Test*, electricity-generating units that generate direct current (DC)

power before converting to AC (for example, solar photovoltaic), should use nameplate capacity in DC, otherwise the nameplate capacity in AC should be used.

(e) *Financial benefits for a Category 3 facility*—(1) *In general.* To satisfy the requirements of a Category 3 facility as provided in paragraph (b)(2)(iii) of this section, the financial benefits of the electricity produced by the facility must be allocated equitably among the occupants of the dwelling units of the Qualified Residential Property. The same rules for financial benefits for Category 3 facilities apply to both multi-family property and single-family Qualified Residential Property.

(2) *Threshold requirement.* At least 50 percent of the financial benefits of the electricity produced by the applicable facility (as defined in paragraph (e)(3) of this section) must be allocated equitably to the Qualified Residential Property's occupants that are designated as low-income occupants under the covered housing program or other affordable housing program.

(3) *Financial value of the electricity produced by the facility.* Financial benefits are calculated as the financial value of the electricity produced by the applicable facility. For purposes of this paragraph (e), *financial value of the electricity produced by the facility* means the greater of:

(i) 25 percent of the gross financial value (as defined in paragraph (e)(4) of this section) of the annual electricity produced by the applicable facility; or

(ii) The net financial value (as defined in paragraph (e)(5) of this section) of the annual electricity produced by the applicable facility.

(4) *Gross financial value defined.* For purposes of this paragraph (e), *gross financial value* of the annual electricity produced by the applicable facility means the sum of:

(i) The total self-consumed kilowatt-hours produced by the applicable facility multiplied by the Qualified Residential Property's metered volumetric price of electricity;

(ii) The total exported kilowatt-hours produced by the applicable facility multiplied by the Qualified Residential Property's volumetric export compensation rate for the type of electricity produced by the applicable facility per kilowatt-hour; and

(iii) The sale of any attributes associated with the applicable facility's production (including, for example, any Federal, State, Tribal, or utility incentives or renewable energy certificates), if separate from the metered price of electricity or export compensation rate.

(5) *Net financial value defined*—(i) *Common ownership.* For purposes of this paragraph (e), if the facility and Qualified Residential Property are commonly owned, *net financial value* means:

(A) The gross financial value of the annual electricity produced; minus

(B) The annual average (or leveled) cost of the applicable facility over the useful life of the facility (including debt service, maintenance, replacement reserve, capital expenditures, and any other costs associated with constructing, maintaining, and operating the facility).

(ii) *Third-party ownership.* For purposes of this paragraph (e), if the facility and the Qualified Residential Property are not commonly owned and the facility owner enters into a power purchase agreement or other contract for electricity services with the Qualified Residential Property owner and/or building occupants, *net financial value* means:

(A) The gross financial value of the annual electricity produced; minus

(B) Any payments made by the building owner and/or building occupants to the facility owner for electricity services associated with the facility in a given year.

(iii) *Equitable allocation of financial benefits.* Paragraphs (e)(5)(iii)(A) and (B) of this section provide rules regarding an equitable allocation of financial benefits in circumstances where financial value is distributed to building occupants via utility bill savings or via different means, respectively. Distributed financial benefits or investments previously made to the Qualified Residential Property are not considered eligible financial benefits for this purpose.

(A) *If financial value distributed via utility bill savings.* If financial value is distributed via utility bill savings, financial benefits will be considered to be allocated equitably if at least 50 percent of the financial value of the electricity produced by the facility is distributed as utility bill savings in equal shares to each building dwelling unit among the Qualified Residential Property's occupants that are designated as low-income under the covered housing program or other affordable housing program (described in section 48E(h)(2)(B)(i)) or alternatively distributed in proportional shares based on each low-income dwelling unit's square footage, or each low-income dwelling unit's number of occupants. For any occupant(s) who choose to not receive utility bill savings (for example, who exercise their right to not participate in or to opt out of a community solar subscription in their

applicable jurisdictions), the portion of the financial value that would otherwise be distributed to non-participating occupants must be distributed instead to all participating occupants. No less than 50 percent of the Qualified Residential Property's occupants that are designated as low-income must participate and receive utility bill savings for the facility to use this method of benefit distribution. In the case of a solar facility, applicants must follow guidance published by the Department of Housing and Urban Development (HUD) regarding benefits sharing, such as Treatment of Financial Benefits to HUD-Assisted Tenants Resulting from Participation in Solar Programs Notice (Housing Notice 2023–09), located at <https://www.hud.gov/sites/dfiles/OCHCO/documents/2023-09hsgn.pdf>, or other applicable HUD guidance, or other guidance or notices from the Federal agency that oversees the applicable housing program identified in section 48E(h)(2)(B) to ensure that tenants' annual income for rent calculations or other requirements impacting total tenant payment are not negatively impacted by the distribution of financial value. In the case of any other applicable facility, applicants must follow applicable HUD guidance on benefits sharing, or other guidance from the Federal agency that oversees the applicable housing program. In the absence of applicable guidance from a Federal agency, applicants should apply principles similar to those articulated in HUD guidance in the case of any other applicable facility.

(B) *If financial value is not distributed via utility bill savings.* If financial value is not distributed via utility bill savings, financial benefits will be considered to be allocated equitably if at least 50 percent of the financial value of the electricity produced by the facility is distributed to occupants using one or more methods described in HUD guidance regarding benefits sharing for master-metered HUD-assisted housing, such as the Treatment of Financial Benefits to HUD-Assisted Tenants Resulting from Participation in Solar Programs Notice (Housing Notice 2023–09) located at <https://www.hud.gov/sites/dfiles/OCHCO/documents/2023-09hsgn.pdf>, or other applicable HUD guidance, or other guidance or notices from the Federal agency that oversees the applicable housing program identified in section 48E(h)(2)(B). In the case of a solar facility, applicants must comply with applicable HUD guidance for how residents of master-metered HUD-assisted housing can benefit from owners' sharing of financial benefits

accrued from an investment in solar electricity generation to ensure that HUD-assisted tenants' calculations for utility allowances and annual income for rent are not negatively impacted. In the absence of applicable guidance from a Federal agency, applicants should apply principles similar to those articulated in HUD guidance in the case of any other applicable facility.

(6) *Benefits sharing statement*—(i) *In general.* The facility owner must prepare a *Benefits sharing statement* to submit at placed in service reporting, which must include:

(A) A calculation of the facility's gross financial value using the method described paragraph (e)(4) of this section;

(B) A calculation of the facility's net financial value using the method described in paragraph (e)(5) of this section;

(C) A calculation of the financial value required to be distributed to building occupants using the method described in paragraph (e)(3) of this section;

(D) A description of the means through which the required financial value will be distributed to building occupants; and

(E) If the facility and Qualified Residential Property are separately owned, specify which entity will be responsible for the distribution of benefits to the occupants.

(ii) *Notification requirement.* The Qualified Residential Property owner must formally notify the occupants of units in the Qualified Residential Property of the development of the facility and planned distribution of benefits.

(f) *Financial benefits for a Category 4 facility*—(1) *In general.* The requirements of each of paragraph (f)(1)(i) through (iii) of this section must be met to satisfy the requirements of a Category 4 facility as provided in paragraph (b)(2)(iv) of this section.

(i) The facility must serve multiple qualifying low-income households under section 48E(h)(2)(C)(i) or (ii) (*Qualifying Household*).

(ii) At least 50 percent of the total financial benefits of the electricity produced by the applicable facility must be assigned to Qualifying Households. Total financial benefits is calculated as the sum of all value from electricity production as measured by the utility, independent system operator, or other off-taker procuring electricity, and any additional value (including, for example, any electricity services, products, and credits or certificates such as RECs provided in connection with the electricity produced by such facility,

but excluding any Federal tax credits), from the facility.

(iii) Each Qualifying Household must be provided a bill credit discount rate (as defined in paragraph (f)(2) of this section) of at least 20 percent.

(2) *Bill credit discount rate*—(i) *With cost to participate.* A *bill credit discount rate* is the difference between the amount of the total financial benefits provided to a Qualifying Household (including utility bill credits, reductions in a Qualifying Household's electricity rate, or other monetary benefits accrued by the Qualifying Household on their utility bill) and the cost by a Qualifying Household for participating in the program (including, but not limited to subscription payments for zero carbon and any other fees or charges, such as consolidated billing fees), expressed as a percentage of the amount of the total financial benefits provided to a Qualifying Household. The bill credit discount rate must be calculated by starting with the amount of the total financial benefits provided to a Qualifying Household, subtracting all payments made by a Qualifying Household (or payments remitted on behalf of the Qualifying Household through net crediting, consolidated billing, or similar arrangements) to the facility owner and any related third parties as a condition of receiving that financial benefit to determine the net financial benefit (cost savings) to a Qualified Household, then dividing that difference by the amount of the total financial benefit provided to the Qualifying Household.

(ii) *No or nominal cost of participation.* In cases in which the Qualifying Household has no or only a nominal cost of participation, and financial benefits are delivered through a utility or government body, the bill credit discount rate must be calculated as the net financial benefits (cost savings) provided to a Qualifying Household (including utility bill credits, reductions in a Qualifying Household's electricity rate, or other monetary benefits accrued by a Qualifying Household on their utility bill) divided by the amount of the total financial benefit assigned to a Qualifying Household.

(iii) *Calculation on annual basis.* In all instances, the bill credit discount rate is calculated on an annual basis.

(iv) *Examples.* The provisions of this paragraph (f)(2) may be illustrated by the following examples:

(A) *Example 1.* A Qualifying Household signs a community solar subscription agreement with the facility owner. Each month, the facility owner will assign a portion of the electricity

generated (or its value) by the facility to the household's utility bill, and the household will pay the facility owner. The amount the household pays the facility owner cannot exceed 80 percent of the monetary value of the assigned generation. The remaining 20 percent is a cost savings to the household on electricity. In this example, over the course of the first year the facility owner or their agent cause \$180 in utility bill credits to be placed on the Qualifying Household's bill, and the Qualifying Household pays \$144, inclusive of any upfront fees. The subsequent year, due to variation in solar generation and/or the compensation paid by the utility for solar generation, the facility owner, in accordance with the community solar subscription agreement, causes \$240 in bill credits to be provided to the Qualifying Household's bill and the household pays \$192. In each year of facility operation described within this example, a bill credit discount rate of 20 percent is maintained $((\$180 - \$144) / \$180 = 20\%)$ and $((\$240 - \$192) / \$240 = 20\%)$, respectively.

(B) *Example 2.* Due to the regulatory structure of the applicable jurisdiction or program, the terms of the community solar subscription, the use of a *net-crediting* mechanism, or other reason, the Qualifying Household does not make a direct payment to the facility owner, but rather payment is remitted on their behalf by the utility. In this example, over the course of the first year the facility owner or their agent cause \$200 in utility bill credits to be placed on the Qualifying Household's bill, and the Qualifying Household's utility remits \$160 to the facility owner, inclusive of any upfront fees. The subsequent year, due to variation in solar generation and/or the compensation paid by the utility for solar generation, the facility owner, in accordance with the community solar subscription agreement, causes \$240 in bill credits to be provided to the Qualifying Household's bill and the utility remits \$192 to the facility owner. In each year of facility operation described within this example, a bill credit discount rate of 20 percent is maintained $((\$200 - \$160) / \$200 = 20\%)$ and $((\$240 - \$192) / \$240 = 20\%)$, respectively.

(C) *Example 3.* Assume the facility is part of a program by which the financial benefits are delivered to 100 Qualifying Households through a utility or government body, and each Qualifying Household pays no cost to participate. Assume that the financial value of the electricity produced by the facility's total output is \$120,000 in the first year and \$160,000 in the second year.

Assume that 50% of the facility's financial value of the electricity is assigned to Qualifying Households and is therefore calculated as \$60,000 in the first year ($\$120,000 \times 50\% = \$60,000$) and \$80,000 in the second year ($\$160,000 \times 50\% = \$80,000$). Assume further that each Qualifying Household is assigned the same total financial benefit (\$600 in the first year and \$800 in the second year). If the bill credit discount rate for each Qualifying Household is 20 percent in each year, the net financial benefits (or cost savings) provided to each Qualifying Household is \$120 in the first year ($\$120/\$600 = 20\%$) and \$160 in the second year ($\$160/\$800 = 20\%$).

(3) *Demonstration of financial benefits statement.* The facility owner must prepare a *Demonstration of Financial Benefits Statement*, which must include:

(i) A calculation of the total financial benefits of annual electricity production, as described in paragraph (f)(1)(ii) of this section;

(ii) The percent of the total financial benefits provided and/or assigned to Qualifying Households;

(iii) The bill credit discount rate method used (with cost to participate or no or nominal cost of participation);

(iv) A calculation of the bill credit discount rate;

(v) A description of the means of distributing the required benefits to Qualifying Households; and

(vi) Documentation that the facility is enrolled in the applicable utility tariff, program, or other arrangement used to distribute financial benefits to Qualifying Households.

(4) *Low-income verification and recordkeeping—(i) In general.*

Taxpayers must verify that a household meets the income limits under section 48E(h)(2)(C)(i) or (ii), whichever is applicable to the household based on the household's location, for the household to be a Qualifying Household under paragraph (f)(1)(i) of this section. A household's low-income status is determined at the time the household enrolls in the subscription program and does not need to be re-verified. The qualifying income level for a Qualifying Household is based on where such household is located. Taxpayers must additionally maintain records of the verification for each household that prove the taxpayer has provided requisite percentage of financial benefits to Qualifying Households.

(ii) *Methods of verification.*

Applicants may use categorical eligibility verification or direct income verification methods, but not an impermissible verification method

described in paragraph (f)(4)(ii)(C) of this section, to establish that a household is a Qualifying Household.

(A) *Categorical eligibility.* Categorical eligibility consists of obtaining proof of the household's participation in a needs-based Federal, State, Tribal, or utility program with income limits at or below the qualifying income level required to be a Qualifying Household. An individual in the household must currently be approved for assistance from or participation in a program with an award letter or other written documentation within the last 12 months for enrollment in that program to establish categorical eligibility of the household.

(B) *Direct income verification methods.* Documentation like paystubs, Federal or State tax returns, or income verification through crediting agencies and commercial data sources can be used to establish that a household is a Qualifying Household.

(C) *Impermissible verification method.* A self-attestation from a member or members of a household is not a permissible method to establish a household is a Qualifying Household. This prohibition on direct self-attestation from a household, for purposes of this Program, does not extend to categorical eligibility verification where the eligible needs-based Federal, State, Tribal, or utility programs with income limits rely on self-attestation for verification of income, and the taxpayer has obtained proof of a member or members of a household's participation in such a program.

(g) *Annual Capacity Limitation—(1) In general.* Under section 48E(h)(4)(C), the total annual Capacity Limitation is 1.8 gigawatts of DC capacity (Annual Capacity Limitation) for each calendar year of the Program. The Annual Capacity Limitation for each Program year is divided across the four facility categories described in section 48E(h)(2)(A)(iii) and paragraph (b)(2) of this section based on factors such as the anticipated number of applications that are expected for each category and the amount of Capacity Limitation that needs to be reserved for each category to encourage market participation in each category. The initial distribution of the Annual Capacity Limitation for each Program year is:

TABLE 1 TO PARAGRAPH (g)(1) OF THIS SECTION

Category	Capacity limitation (DC)
1: Located in a Low-Income Community.	600 MW.
2: Located on Indian Land	200 MW.
3: Qualified Low-Income Residential Building Project.	200 MW.
4: Qualified Low-Income Economic Benefit Project.	800 MW.

(2) *Sub-reservations.* The reservation of Capacity Limitation for Category 1 is further divided into Category 1 sub-reservations, which are described in paragraph (i) of this section. The category 1 sub-reservation distribution of Capacity Limitation is:

TABLE 2 TO PARAGRAPH (g)(2) OF THIS SECTION

Eligible FTM facilities and non-residential BTM facilities.	200 MW.

(3) *Redistribution within Program year.* At the close of the application period for a Program year, if some categories or sub-reservations are undersubscribed, while others are oversubscribed, capacity will be redistributed within the Program year for allocation to applicants in another Category or sub-reservation. A category or sub-reservation is undersubscribed if the amount of capacity applied for in all eligible applications within a reservation is less than the amount of the Capacity Limitation portion distributed to that reservation. A category or sub-reservation is oversubscribed if the amount of capacity applied for in all eligible applications within a particular reservation is in excess of the Capacity Limitation portion distributed to that reservation. Capacity Limitation will be redistributed within a Program year in the following manner:

(i) Capacity will first be redistributed within a category from the undersubscribed reservation to the oversubscribed reservation. For example, if the Additional Selection Criteria reservation is undersubscribed while the non-Additional Selection Criteria reservation is oversubscribed, the remaining capacity reservation for the Additional Selection Criteria will be redistributed to and increase the non-Additional Selection Criteria reservation or sub-reservation in the same category.

(ii) If there is remaining capacity in a category after redistribution under paragraph (g)(3)(i) of this section, or, in general, if a category is, as a whole,

undersubscribed such that paragraph (g)(3)(i) of this section does not apply to that category, then, any remaining capacity in any category will be redistributed to and increase the reservation for Category 1 residential BTM facilities, but only if Category 1 residential BTM is oversubscribed. If both the Additional Selection Criteria and non-Additional Selection Criteria reservations are oversubscribed for Category 1 residential BTM, then consistent with paragraph (h)(1) of this section, the redistributed capacity limitation will first increase the reservation for Additional Selection Criteria applications, and then if any capacity is remaining it will be added to the reservation for non-Additional Selection Criteria applications.

(iii) If there is remaining capacity after redistribution under paragraphs (g)(3)(i) and (ii) of this section, or if redistribution under paragraph (g)(3)(ii) of this section is inapplicable due to undersubscription in Category 1 residential BTM, then the remaining capacity will be redistributed to and increase the reservation for Category 4. If both the Additional Selection Criteria and the non-Additional Selection Criteria reservations under Category 4 are oversubscribed, then consistent with paragraph (j)(4)(ii) of this section, the redistributed capacity limitation will first increase the reservation for Additional Selection Criteria applications, and then if any capacity is remaining it will be added to the reservation for non-Additional Selection Criteria applications.

(iv) If there is remaining capacity after redistribution under paragraphs (g)(3)(i) through (iii) of this section, or if redistribution under paragraph (g)(3)(iii) of this section is inapplicable due to undersubscription in Category 1 residential BTM and Category 4, then the remaining capacity will be redistributed to and increase the reservation for Category 3. If both the Additional Selection Criteria and the non-Additional Selection Criteria reservations under Category 3 are oversubscribed, then consistent with paragraph (j)(4)(ii) of this section, the redistributed capacity limitation will first increase the reservation for Additional Selection Criteria applications, and then if any capacity is remaining it will be added to the reservation for non-Additional Selection Criteria applications.

(v) If there is remaining capacity after redistribution under paragraphs (g)(3)(i) through (iv) of this section, or if redistribution under paragraph (g)(3)(iv) of this section is inapplicable due to undersubscription in Category 1

residential BTM, Category 4, and Category 3 then the remaining capacity will be redistributed to and increase the reservation for Category 2. If both the Additional Selection Criteria and the non-Additional Selection Criteria reservations under Category 2 are oversubscribed, then consistent with paragraph (j)(4)(ii) of this section, the redistributed capacity limitation will first increase the reservation for Additional Selection Criteria applications, and then if any capacity is remaining it will be added to the reservation for non-Additional Selection Criteria applications.

(vi) If there is remaining capacity after redistribution under paragraphs (g)(3)(i) through (v) of this section, or if redistribution under paragraph (g)(3)(iv) of this section is inapplicable due to undersubscription in Category 1 residential BTM, Category 4, Category 3, and Category 2, then the remaining capacity will be redistributed to and increase the reservation for Category 1 Eligible FTM facilities and non-residential BTM facilities. If both the Additional Selection Criteria and the non-Additional Selection Criteria reservations under Category 1 Eligible FTM facilities and non-residential BTM facilities are oversubscribed, then consistent with paragraph (j)(4)(ii) of this section, the redistributed capacity limitation will first increase the reservation for Additional Selection Criteria applications, and then if any capacity is remaining it will be added to the reservation for non-Additional Selection Criteria applications.

(vii) If after redistribution under paragraphs (g)(3)(i) through (vi) of this section, there is remaining Capacity Limitation at the close of a Program year, the unallocated amount of Capacity Limitation will be carried forward to the succeeding year as described in paragraph (g)(4) of this section.

(4) *Carryover of unallocated Annual Capacity Limitation.* If the Annual Capacity Limitation, as described in paragraph (g)(1) of this section, for any calendar year exceeds the aggregate amount of Annual Capacity Limitation allocated for a given calendar year, the Annual Capacity Limitation for the succeeding calendar year will be increased by the amount of such excess or remainder from previous Program Year. No amount of Capacity Limitation may be carried to any calendar year after the third calendar year following the applicable year (as defined in section 45Y(d)(3) of the Code). Any unallocated Capacity Limitation carried over from the preceding year will be equally distributed across Category 1, 2, 3, and

4. Within Category 1, the portion distributed from the carried over Capacity Limitation will be equally distributed across Category 1 sub-reservations and further across the reservation for Additional Selection Criteria within those sub-reservations. The portion of the carried over Capacity Limitation distributed to each of Category 2, 3, and 4 will be equally distributed within each category to the Additional Selection Criteria reservation and the non-Additional Selection Criteria reservation.

(5) *Allocations to applicable facilities with nameplate capacity in alternating current.* For applicable facilities which have a nameplate capacity in AC, and which are awarded an allocation, such an applicable facility will be awarded an amount of Capacity Limitation in direct current that is equal to the applicable facility's reported nameplate capacity in alternating current.

(h) *Reservations of Capacity Limitation allocation for facilities that meet certain Additional Selection Criteria—(1) In general.* 50 percent of the total Capacity Limitation in each facility category described in paragraph (b) of this section and Category 1 sub-reservation (described in paragraph (i) of this section) will be reserved at the beginning of an application period for applicable facilities meeting the Additional Selection Criteria described in paragraph (h)(2) of this section (relating to ownership criteria) and paragraph (h)(3) of this section (relating to geographic criteria). The reservation of Capacity Limitation for applicable facilities meeting the Additional Selection Criteria may be redistributed across facility categories and sub-reservations as described in paragraph (g)(3) of this section. If after the initial 30-day period an Additional Selection Criteria reservation for a category or Category 1 sub-reservation is undersubscribed, such Additional Selection Criteria reservation of 50 percent is maintained. The procedures for applying under these Additional Selection Criteria are provided in guidance published in the Internal Revenue Bulletin.

(2) *Ownership criteria—(i) In general.* The ownership criteria are based on characteristics of the applicant that owns the applicable facility. An applicable facility will meet the ownership criteria if it is owned by one of the following:

(A) A Tribal enterprise (as defined in paragraph (h)(2)(iii) of this section);

(B) An Alaska Native Corporation (as defined in paragraph (h)(2)(iv) of this section);

(C) A Native Hawaiian Organization (as defined in paragraph (h)(2)(v) of this section);

(D) A renewable energy cooperative (as defined in paragraph (h)(2)(vi) of this section); or

(E) A qualified tax-exempt entity (as defined in paragraph (h)(2)(vii) of this section).

(F) A qualified renewable energy company (as defined in paragraph (h)(2)(viii) of this section).

(ii) *Indirect ownership*—(A) *Disregarded entities.* If an applicant wholly owns a disregarded entity that is the owner of an applicable facility, then the applicant, and not the disregarded entity, is treated as the owner of the applicable facility for purposes of the ownership criteria. For entities wholly owned and chartered under Tribal law and corporations incorporated under the authority of either section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. 5124, or section 3 of the Oklahoma Indian Welfare Act, 25 U.S.C. 5203, an application may be made as a Tribal Enterprise. Disregarded entities are not eligible for an award and may not submit an application.

(B) *Partner qualifying partnership under ownership criteria.* Except as described in paragraph (h)(2)(ii)(C) of this section, if an applicant is an entity classified as a partnership for Federal income tax purposes, and an entity described in paragraphs (h)(2)(i)(A) through (E) of this section owns at least a one percent interest (either directly or indirectly) in each material item of partnership income, gain, loss, deduction, and credit of the partnership and is also a managing member or general partner (or similar title) under State or Tribal law of the partnership (or directly owns 100 percent of the equity interests in the managing member or general partner) at all times during the existence of the partnership, the applicable facility will be deemed to meet the ownership criteria. If the partnership described in the preceding sentence becomes the owner of the facility after an allocation is made to an entity described in paragraphs (h)(2)(i)(A) through (E) of this section, then the transfer of the facility to the partnership is not a disqualification event for purposes of paragraph (m)(5) of this section, so long as the requirements of paragraph (m)(5) of this section are satisfied. Nothing in this paragraph (h)(2)(ii)(B) applies to an applicant described in paragraph (h)(2)(i)(F) of this section.

(C) *Partner qualifying partnership involving low-income housing credit under ownership criteria.* If an applicant is an entity classified as a partnership

for Federal income tax purposes and is the owner of an applicable facility connected to a residential building to which credits under section 42 of the Code are reasonably anticipated or have been determined and has a partner for Federal income tax purposes that is an entity described in paragraphs (h)(2)(i)(A) through (E) of this section, the applicable facility will be deemed to meet the ownership criteria. If the partnership becomes the owner of the facility after an allocation is made to an entity described in paragraph (h)(2)(i)(E) of this section, and complete ownership is transferred to a partnership that owns a qualified low-income building within the meaning of section 42(c)(2) (including, through a disregarded entity owned by the partnership), then the transfer of the facility to the partnership is not a disqualification event for purposes of paragraph (m)(5) of this section or subject to recapture for purposes of paragraph (n) of this section, so long as the requirements of paragraph (m)(5) of this section are satisfied.

(iii) *Tribal enterprise.* A *Tribal enterprise* for purposes of the ownership criteria is an entity that is:

(A) Owned at least 51 percent directly by an Indian Tribal government (as defined in section 30D(g)(9) of the Code), or owned at least 51 percent indirectly through an entity that is wholly owned by the Indian Tribal government and is created under either the Tribal laws of the Indian Tribal government or through a corporation incorporated under the authority of either section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. 5124, or section 3 of the Oklahoma Indian Welfare Act, 25 U.S.C. 5203; and

(B) Subject to Tribal government rules, regulations, and/or codes that regulate the operations of the entity.

(iv) *Alaska Native Corporation.* An *Alaska Native Corporation* for purposes of the ownership criteria is defined in section 3 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602(m).

(v) *Native Hawaiian Organization.* A *Native Hawaiian Organization* for purposes of the ownership criteria is defined in 13 CFR 124.3.

(vi) *Renewable energy cooperative.* A renewable energy cooperative for purposes of the ownership criteria is an entity that develops applicable facilities and is either:

(A) A consumer or purchasing cooperative controlled by its members with each member having an equal voting right and with each member having rights to profit distributions based on patronage as defined by proportion of volume of electricity or

energy credits purchased (kWh), volume of financial benefits delivered (in United States dollars), or volume of financial payments made (in United States dollars); and in which at least 50 percent of the patronage in the qualified facility is by cooperative members who are low-income households (as defined in section 48E(h)(2)(C)); or

(B) A worker cooperative controlled by its worker-members with each member having an equal voting right.

(vii) *Qualified tax-exempt entity.* A qualified tax-exempt entity for purposes of the ownership criteria is:

(A) An organization exempt from the tax imposed by subtitle A of the Code by reason of being described in section 501(c)(3) or (d) of the Code;

(B) Any State, the District of Columbia, or political subdivision thereof, or any agency or instrumentality of any of the foregoing;

(C) An Indian Tribal government (as defined in section 30D(g)(9)), a political subdivision thereof, or any agency or instrumentality of any of the foregoing; or

(D) Any corporation described in section 501(c)(12) operating on a cooperative basis that is engaged in furnishing electric energy to persons in rural areas.

(viii) *Qualified renewable energy company.* A qualified renewable energy company (QREC) for purposes of the ownership criteria is an entity that serves low-income communities and provides pathways for the adoption of clean energy by low-income households. To be a QREC, an entity must meet all of the requirements in paragraphs (h)(2)(vii)(A) through (D) of this section.

(A) The entity's business purpose must be to serve low-income households or low-income communities, and this purpose must be stated in governing documents and dated at least two years prior to application submission;

(B) At least 51 percent of the entity's equity interests must be owned and controlled by one or more individuals;

(C) The entity must have first installed, operated, or provided services as a contractor or subcontractor to an applicable facility two or more years prior to the date of application; and

(D) The entity must have at least one but less than 10 full-time equivalent employees (as determined under section 4980H(c)(2)(E) and (c)(4) of the Code) and less than \$20 million in annual gross receipts in the previous two calendar years. The number of full-time equivalent employees and amount in annual gross receipts must include the full-time equivalent employees and

annual gross receipts of all affiliated entities. An entity is considered to be an affiliated entity if—

(1) 25 percent or more of an entity's board seats, voting rights, or equity interests, are cumulatively held by another entity and related entities (as described in described in section 267(b) or section 707(b)(1) of the Code); or

(2) One or more of an entities' officers, directors, managing members or partners with authority over the board of directors or management and operations also have authority over the board of directors or management and operations of another entity.

(3) *Geographic criteria*—(i) *In general.* Geographic criteria do not apply to Category 2 facilities. To meet the geographic criteria, a facility must be located in a county or census tract that is described in paragraph (h)(3)(ii) or (iii) of this section. Applicants who meet the geographic criteria at the time of application are considered to continue to meet the geographic criteria for the duration of the recapture period unless the location of the facility changes.

(ii) *Persistent Poverty County.* A *Persistent Poverty County* (PPC), which is, generally, described as any county where 20 percent or more of residents have experienced high rates of poverty over the past 30 years. For purposes of the Program and this section, the PPC measure adopted by the USDA is used to make this determination. If updated data is released by USDA, a taxpayer will have a 1-year period following the date of the release of the updated data to be eligible under the previous data. After the 1-year transition period, the updated data must be used to determine eligibility.

(iii) *Certain census tracts under Climate and Economic Justice Screening Tool.* A census tract that is described in the latest official Climate and Economic Justice Screening Tool (CEJST), as greater than or equal to the 90th percentile for energy burden and greater than or equal to the 65th percentile for low income, or as greater than or equal to the 90th percentile for PM_{2.5} exposure and greater than or equal to the 65th percentile for low income.

(A) *Energy burden.* *Energy burden* is defined as average household annual energy cost in dollars divided by the average household income.

(B) *PM_{2.5}.* *PM_{2.5}* is defined as fine inhalable particles with 2.5 or smaller micrometer diameters. The percentile is the weight of the particles per cubic meter.

(C) *Low-income.* *Low income*, for purposes of this section, is defined as the percent of a census tract's

population in households for which household income is at or below 200 percent of the Federal poverty level, not including students enrolled in higher education.

(i) *Sub-reservations of allocation for Category 1 facilities*—(1) *In general.* Capacity Limitation reserved for Category 1 facilities will be subdivided each Program year for facilities seeking a Category 1 allocation with Capacity Limitation reserved specifically for eligible residential behind the meter (BTM) facilities, including rooftop solar. The remaining Capacity Limitation is available for applicants with front of the meter (FTM) facilities as well as non-residential BTM facilities. The specific sub-reservation for eligible residential BTM facilities in Category 1 is provided in guidance published in the Internal Revenue Bulletin and is established based on factors such as promoting efficient allocation of Capacity Limitation and allowing like-projects to compete for an allocation. After the sub-reservation is established in guidance published in the Internal Revenue Bulletin, the sub-reservation may be reallocated later in the event it has excess capacity.

(2) *Definitions*—(i) *Behind the meter (BTM) facility.* For purposes of the Program and this section, an applicable facility is *BTM* if:

(A) It is connected with an electrical connection between the facility and the panelboard or sub-panelboard of the site where the facility is located;

(B) It is to be connected on the customer side of a utility service meter before it connects to a distribution or transmission system (that is, before it connects to the electricity grid); and

(C) Its primary purpose is to provide electricity to the utility customer of the site where the facility is located. This also includes systems not connected to a grid and that may not have a utility service meter, and whose primary purpose is to serve the electricity demand of the owner of the site where the system is located.

(ii) *Eligible residential BTM facility.* For purposes of paragraph (i)(1) of this section, an *eligible residential BTM facility* is defined as a single-family or multi-family residential applicable facility that does not meet the requirements for a Category 3 facility and is BTM. An applicable facility is residential if it uses energy to generate electricity for use in a dwelling unit that is used as a residence.

(iii) *FTM facility.* For purposes of the Program and this section, an applicable facility is *FTM* if it is directly connected to a grid and its primary purpose is to provide electricity to one or more offsite

locations via such grid or utility meters with which it does not have an electrical connection; alternatively, a FTM facility is defined as a facility that is not a BTM facility. For the purpose of Category 4 facilities, an applicable facility is also FTM if 50 percent or more of its electricity generation on an annual basis is exported physically to the broader electricity grid.

(j) *Process of application evaluation*—(1) *In general.* Applications for a Capacity Limitation allocation will be evaluated according to the procedures specified in guidance published in the Internal Revenue Bulletin.

(2) *Information required as part of application.* With each application for a Capacity Limitation allocation, applicants are required to submit information, documentation, and attestations to demonstrate eligibility for an allocation and project viability as specified in guidance published in the Internal Revenue Bulletin.

(3) *No administrative appeal of Capacity Limitation allocation decisions.* An applicant may not administratively appeal decisions regarding Capacity Limitation allocations.

(4) *Application period*—(i) *Opening and closing dates.* For calendar year 2026 and each succeeding calendar year of the Program, the application period will open the first Monday of February at 9 a.m. EST and close the first Friday of August at 11:59 p.m. EST. The application period for calendar year 2025 will be announced in guidance published in the Internal Revenue Bulletin.

(ii) *Initial 30-day period.* For each year, there will be an initial 30-day period during which all applications submitted will be considered to be submitted at the same time and date. The initial 30-day period will begin on the opening day of the application period described in paragraph (j)(4)(i) of this section, and end at 11:59 p.m. EST on the 30th calendar day after the opening day of the application period. The opening day is included in calculating the 30-day period. All applications submitted within the 30-day period will be ordered for review and consideration of an allocation of Capacity Limitation within the same category based on a process described in procedural guidance published in the Internal Revenue Bulletin. If during the initial 30-day period, an Additional Selection Criteria reservation for a category or Category 1 sub-reservation is oversubscribed with Additional Selection Criteria applications, Capacity Limitation from the applicable category or sub-reservation may be reallocated to

prioritize review and consideration of Additional Selection Criteria applications. Additional Selection Criteria applications received during the initial 30-day period receive priority over other applications received during the initial 30-day period.

(iii) *Applications submitted after the initial 30-day period*—(A) *In general.* Applications submitted after the close of the initial 30-day period will be held for review and consideration of an allocation of Capacity Limitation after the applications in the same category or Category 1 sub-reservation which were submitted during the initial 30-day period. Review of such applications will occur only if sufficient Capacity Limitation remains to be allocated in a given category or Category 1 sub-reservation, and in conjunction with the redistribution provisions described under paragraph (g)(2) of this section. Provided sufficient Capacity Limitation remains in a given category or Category 1 sub-reservation, these applications submitted after the initial 30-day period will be reviewed and considered for an allocation in the order in which they are received.

(B) *Additional Selection Criteria Applications submitted after the initial 30-day period.* If the Additional Selection Criteria reservation for a category or Category 1 sub-reservation is undersubscribed after the initial 30-day period ends, then the Additional Selection Criteria reservation of 50 percent is maintained. Additional Selection Criteria applications submitted after the initial 30-day period will be prioritized for review and consideration of an allocation of Capacity Limitation from the Additional Selection Criteria reservation in the applicable category or Category 1 sub-reservation until such Additional Selection Criteria reservation is allocated or is reallocated.

(k) *Placed in service*—(1) *Requirement to report date placed in service.* For any facility that receives an allocation of Capacity Limitation, the owner of the facility must report the date the eligible property was placed in service.

(2) *Requirement to submit final eligibility information at placed in service time.* At the time that the owner reports that eligible property has been placed in service, the owner also must confirm information about the facility and submit additional documentation to demonstrate the facility is still eligible to maintain the allocation and claim the increased applicable percentage under section 48E(h)(1) as specified in guidance published in the Internal Revenue Bulletin.

(3) *Confirmation.* The placed in service documentation and attestations demonstrating that the facility meets the eligibility criteria for the owner to claim an increased applicable percentage will be reviewed. A recommendation will then be considered by the IRS regarding whether the facility continues to meet the eligibility requirements for the facility to retain its allocation or if the facility should be disqualified (as provided in paragraph (m) of this section). Based on this recommendation and underlying facts and circumstances analysis, the IRS will decide whether the facility should retain its allocation or if the facility should be disqualified. Eligibility is determined, prior to the owner (or a partner or shareholder in the case of a partnership or S corporation) claiming the increased credit amount on Form 3468, *Investment Credit* (or Form 3800, *General Business Credit*), or successor form, or, if eligible, making a transfer election under section 6418 of the Code, or an elective payment election under section 6417 of the Code.

(4) *Definition of placed in service.* For purposes of this section, eligible property is considered *placed in service* in the earlier of the following taxable years:

(i) The taxable year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to such eligible property begins; or

(ii) The taxable year in which the eligible property is placed in a condition or state of readiness and availability for a specifically assigned function, whether in a trade or business or in the production of income.

(l) *Facilities placed in service prior to an allocation award*—(1) *In general.* Applicable facilities must be placed in service after being awarded an allocation of Capacity Limitation.

(2) *Rejection or rescission.* An application for an applicable facility that is placed in service prior to submission of the application will be rejected. If a facility is placed in service after the application is submitted, but prior to the allocation of Capacity Limitation, and the facility is awarded an allocation, the allocation will be rescinded.

(m) *Disqualification.* A facility will be disqualified and lose its allocation if prior to or upon the facility being placed in service an occurrence described in one of paragraphs (m)(1) through (5) of this section takes place.

(1) The location where the facility will be placed in service materially changes or is in a different census tract.

(2) The maximum net output of the facility increases such that it exceeds

the less than five megawatts AC requirement provided in section 48E(h)(2)(A)(ii) or the nameplate capacity decreases by the greater of 2 kW or 25 percent of the Capacity Limitation awarded in the allocation. However, the amount of bonus credit capacity allocated will not be exceeded from the original allocation amount.

(3) The facility either cannot or did not satisfy the financial benefits requirements under section 48E(h)(2)(B)(ii) and paragraph (e) of this section as planned, if applicable, or cannot satisfy the financial benefits requirements under section 48E(h)(2)(C) or paragraph (f) of this section as planned, if applicable.

(4) The eligible property that is part of the facility that received the Capacity Limitation allocation is not placed in service within four years after the date the applicant was notified of the allocation of Capacity Limitation to the facility.

(5) The facility received a Capacity Limitation allocation based, in part, on meeting the ownership criteria and ownership of the facility changes prior to the facility being placed in service, unless the original applicant transfers the facility to an entity classified as a partnership for Federal income tax purposes and retains at least a one percent interest (either directly or indirectly) in each material item of partnership income, gain, loss, deduction, and credit of such partnership and is a managing member or general partner (or similar title) under State or Tribal law of the partnership (or directly owns 100 percent of the equity interests in the managing member or general partner) at all times during the existence of the partnership.

(n) *Recapture of section 48E(h) Increase to the section 48E(a) credit*—(1) *In general.* Section 48E(h)(5) provides for recapturing the benefit of any increase in the credit allowed under section 48E(a) by reason of section 48E(h) with respect to any property that ceases to be property eligible for such increase (but that does not cease to be investment credit property within the meaning of section 50(a) of the Code). Section 48E(h) provides that the period and percentage of such recapture must be determined under rules similar to the rules of section 50(a). Therefore, if, at any time during the five year recapture period beginning on the date that an applicable facility under section 48E(h) is placed in service, there is a recapture event under paragraph (n)(3) of this section with respect to such property, then the Federal income tax imposed on the taxpayer by chapter 1 of the Code for the taxable year in which the recapture

event occurs is increased by the recapture percentage of the benefit of the increase in the section 48E credit. The recapture percentage is determined according to the table provided in section 50(a)(1)(B).

(2) *Exception to application of recapture.* Such recapture may not apply with respect to any property if, within 12 months after the date the applicant becomes aware (or reasonably should have become aware) of such property ceasing to be property eligible for such increase in the credit allowed under section 48E(a), the eligibility of such property for such increase pursuant to section 48E(h) is restored. Such restoration of an increase pursuant to section 48E(h) is not available more than once with respect to any facility.

(3) *Recapture events.* Any of the following circumstances result in a recapture event if the property ceases to be eligible for the increased credit under section 48E(h):

(i) Property described in section 48E(h)(2)(A)(iii)(II) fails to provide financial benefits;

(ii) Property described under section 48E(h)(2)(B) ceases to allocate the financial benefits equitably among the occupants of the dwelling units as described under section 48E(h)(2)(B)(ii),

such as not allocating to residents the required net electricity savings of the electricity, as required by paragraph (e) of this section;

(iii) Property described under section 48E(h)(2)(C) ceases to provide at least 50 percent of the financial benefits of the electricity produced to Qualifying Households as described under section 48E(h)(2)(C)(i) or (ii), or fails to provide those households the required minimum 20 percent bill credit discount rate, as required by paragraph (f) of this section;

(iv) For property described under section 48E(h)(2)(B), the residential rental building the facility is a part of ceases to participate in a covered housing program or any other affordable housing program described in section 48E(h)(2)(B)(i), as applicable; or

(v) A facility increases its maximum net output or nameplate capacity such that the facility's maximum net output or nameplate capacity is 5 MW AC or greater.

(4) *Section 50(a) recapture.* Any event that results in recapture under section 50(a) also will result in recapture of the benefit of the increase in the section 48E credit by reason of section 48E(h). The exception to the application of recapture provided in paragraph (n)(2) of this

section does not apply in the case of a recapture event under section 50(a).

(o) *Record retention.* The applicant is required to retain records and materials related to the application for the following periods:

(1) For at least 6 years after the due date (with extensions) for filing the Federal income tax return after the tax year that return is filed to claim the increase in the section 48E credit; and

(2) For at least 6 years after the due date (with extensions) for filing the Federal income tax return for the last year that the applicant could be subject to recapture as described in paragraph (n) of this section.

(p) *Applicability date.* This section applies to applicable facilities placed in service after December 31, 2024, and during taxable years ending on or after January 13, 2025.

Douglas W. O'Donnell,

Deputy Commissioner.

Approved: December 26, 2024.

Aviva R. Aron-Dine,

Deputy Assistant Secretary of the Treasury (Tax Policy).

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Department of Homeland Security

U.S. Customs and Border Protection

19 CFR Parts 113 and 123

Automated Commercial Environment (ACE) Electronic Export Manifest for
Rail Cargo; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Parts 113 and 123

[Docket No. USCBP-2024-0030]

RIN 1651-AB52

Automated Commercial Environment (ACE) Electronic Export Manifest for Rail Cargo

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes a new regulation pursuant to the Trade Act of 2002 requiring the submission of export manifest data electronically to U.S. Customs and Border Protection (CBP) in the Automated Commercial Environment (ACE) for cargo transported by rail for any train departing the United States. The proposed regulation would mandate the electronic transmission of rail export manifest information, identify the parties eligible to transmit information, and describe the time frames prior to departure of the train in which the information is due. This rule would enable CBP to address important cargo security concerns while providing efficiencies to the trade.

DATES: Comments must be received by March 14, 2025.

ADDRESSES: Please submit comments, identified by docket number, by the following method:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2024-0030.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read the plain language summary, background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: David Garcia, Program Manager, Outbound Enforcement and Policy Branch, Office of Field Operations, CBP,

via email at cbpexportmanifest@cbp.dhs.gov, or by telephone, (202) 344-3277.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the notice of proposed rulemaking. U.S. Customs and Border Protection (CBP) also invites comments that relate to any economic, environmental or federalism effects that might result from this proposal.

Comments that will provide the most assistance to CBP in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

II. Executive Summary

A. Purpose of the Automated Commercial Environment (ACE) Electronic Export Manifest for Rail Cargo

1. Need for the Regulatory Action

Current regulations are insufficient to adequately capture cargo data for rail shipments leaving the United States. CBP is proposing this rule to reduce the data gaps existing under current regulations, and to address important cargo security concerns resulting from incomplete data. This proposed rule will apply to all rail cargo exports and provide efficiencies to the trade. CBP does not presently require the pre-departure electronic submission of data for all exported cargo as it does for imported cargo. This can result in a threat to cargo and broader U.S. national security because CBP has no regulation prescribing any method or means of review for cargo being exported by rail. The electronically transmitted cargo data that is submitted prior to departing the United States by rail is limited significantly in its scope. Currently, 19 CFR 192.14 requires a U.S. Principal Party in Interest (USPPI), the USPPI's agent, or the authorized filing agent of a Foreign Principal Party in Interest (FPPI) to transmit Electronic Export Information (EEI) to CBP through the Automated Commercial Environment (ACE). While this pre-departure data is helpful, EEI is generally only required by the Bureau of Census regulations on shipments that exceed \$2,500 per Schedule B number and is not generally required for shipments to Canada, unless certain controlled items are involved or the shipment is being transshipped to another destination. 15

CFR parts 30 and 758. Because of these limitations, there is a significant lack of electronic manifest data which inhibits the enforcement efforts by CBP for such exports because of the gaps in information. The proposed regulation would create an integrated pre-departure electronic export manifest which includes receiving advance information for risk assessment purposes from the source most likely to have correct information about the cargo. This proposed regulation closes the gap which currently exists and requires all information to be manifested which enhances the security of the rail cargo and aligns the security of exported rail cargo with the regulations that are required of rail cargo imported into the United States.

2. Statement of Legal Authority

CBP is authorized to promulgate regulations providing for the mandatory transmission of electronic cargo information by way of a CBP-authorized electronic data interchange (EDI) system before the cargo arrives or departs the United States by any mode of commercial transportation (sea, air, rail, or truck). Section 343(a) of the Trade Act of 2002, as amended (Trade Act) (19 U.S.C. 1415). The required cargo information is reasonably necessary to enable CBP to identify high-risk shipments for purposes of ensuring cargo safety and security, including compliance with export controls; preventing smuggling; and commercial risk assessment targeting, pursuant to the laws enforced and administered by CBP. 19 U.S.C. 1415(a)(3)(F). CBP needs to obtain timely and sufficient data prior to cargo arriving or departing the United States via any mode of commercial transportation in order to review and conduct risk assessment to identify high-risk shipments and inspect cargo effectively.

B. Summary of the Major Provisions of ACE EEM for Rail Cargo

This proposed rule would mandate the transmission of EEM data in addition to the EEI data required under 15 CFR part 30 for all cargo prior to departing the United States for Canada and Mexico in the rail environment in lieu of paper submissions. The new regulation that CBP is seeking to promulgate is proposed 19 CFR 123.93 which would mandate the electronic transmission of rail export manifest information, identify the parties eligible to transmit information, describe the time frames prior to departure of the train in which the information is due, and identify an initial filing that must occur 24 hours prior to departure from

the port of export while requiring the remaining data to be transmitted at least two hours prior to such departure. The proposed regulation designates information as transportation data, cargo data, or empty container data, and lists the data elements to be transmitted while calling them out as mandatory, conditional, or optional. The data elements that are identified as mandatory must be submitted, while elements identified as conditional shall be submitted if available, and optional elements may be provided at the discretion of the filers. These elements allow for CBP to inspect cargo effectively, ensure compliance with U.S. export control laws and regulations and identify high-risk shipments for purposes of ensuring cargo safety and security.

CBP proposes adding 19 CFR 123.93(c) which identifies the parties that can file the cargo and conveyance data. The outbound carrier is responsible for transmitting the export manifest transportation data and empty container data. If no other party elects to transmit the initial filing data and the export manifest cargo data, then the outbound carrier must transmit this data. If another eligible party elects to transmit either the initial filing data or export manifest cargo data, the outbound carrier may also choose to, but is not required to transmit such data. Other eligible parties include USPPI and FPPI, as defined by the provisions of section 30.1 of the FTR of the Department of Commerce, Bureau of the Census (15 CFR 30.1), or its authorized agent. Other eligible filers also include any other party with direct knowledge of the export information, such as a customs broker, Automated Broker Interface (ABI) filer, NVOCC as defined by 19 CFR 4.7(b)(3)(ii), or a freight forwarder as defined in 19 CFR 112.1. If another party does not transmit advance export information, the party that arranges for and/or delivers the cargo to the outbound carrier must fully disclose and present to the outbound carrier the data elements for the initial filing.

Proposed 19 CFR 123.93(d) requires a mandatory initial filing of seven data elements identified below to be submitted 24 hours prior to departure to a foreign port, by either the carrier, USPPI, or other qualified parties or their authorized agents. The results of the test have shown that some rail carriers would have the export manifest data available days in advance prior to departure and therefore would have all the necessary information to submit the initial filing data to CBP and all other export manifest data well in advance of

the 24-hour prior to departure deadlines. Except for the initial data elements, CBP would require electronic export manifest information in sections 123.93(e), and (f) to be transmitted two hours prior to train departure to a foreign port from the final U.S. port.

Proposed 19 CFR 123.93(g) provides for two types of referrals that may be issued by CBP after a risk assessment of an outbound export manifest data transmission. Should any rail cargo be identified by CBP as requiring review, the cargo will be held until required additional information related to the shipment is submitted or some other appropriate action is taken, as specified by CBP. Once the cargo is cleared for loading, a release message will be generated and transmitted to the filer. In addition to holds, 19 CFR 123.93(h) would provide for procedures for when a CBP officer determines during the review that cargo or a rail car may contain a potential threat to the train and its vicinity, so that a Do-Not-Load (DNL) instruction can be issued, which prohibits the rail carrier from transporting that cargo or rail car so that further examination can be conducted. These examinations allow for CBP to secure the cargo, conduct risk assessment, and inspect cargo effectively.

As an enforcement tool, CBP is also proposing changes to the relevant bond provisions in 19 CFR 113.62 (basic importation and entry bond), 19 CFR 113.63 (basic custodial bond), and 19 CFR 113.64 (International carrier bond) to provide CBP with authority to impose liquidated damages on parties that do not provide the mandatory EEM data in the manner and in the time frame required. Specifically, CBP proposes to amend 19 CFR 113.62 to add new paragraph (k)(3), amend 19 CFR 113.63 and 19 CFR 113.64, in order to address electronically provided outbound information in the time frame required as they currently address electronic transmissions for merchandise or cargo which is inbound. With each of these regulations, CBP may assess liquidated damages if a violation occurs. CBP's primary goal is compliance and CBP seeks to work alongside rail carriers and other parties to ensure that the proper data is provided in a timely manner, for CBP to properly review the data, conduct risk assessment of high-risk shipments, and enforce U.S. export laws and regulations on U.S. rail exports.

For CBP, the proposed requirement to submit an electronic export manifest will enhance cargo security in that it would allow for improvements in risk assessment capabilities by allowing CBP to use its Automated Targeting System

(ATS) to screen all of the data submitted. Port operations will enjoy considerable efficiencies through the elimination of paper manifests. Storage space currently reserved for manifest documents will be freed. Coordination and information exchange among CBP, the Department of Commerce, and other Government agencies with export jurisdiction will improve. Carriers, USPPIs, non-vessel operating common carriers (NVOCC), and other interested parties who transmit information will receive better and more rapid examination decisions from CBP and improved communication between CBP and trade members. The trade will benefit further through the ease of making information corrections and additions electronically in contradiction to the process that is required with paper submissions which is more time consuming to manually complete, distribute, edit and transmit in addition to the storage required for paper submissions. These benefits, including targeting which is necessary for security purposes, outweigh the flexibility of allowing parties to file submissions either by paper or electronically.

C. Costs and Benefits

CBP anticipates that during the time period of analysis including the test period and the regulatory period (2016–2030), this proposed rule would result in costs, cost savings and benefits to CBP and trade members engaging in exporting merchandise out of the United States in the rail environment.¹ CBP estimates present value total costs to CBP and trade members would be around \$9.3 million using a two percent discount rate, or \$0.7 million annualized. CBP identified some other potential costs from this proposed rule, but CBP was unable to monetize these costs, including time burdens to CBP officers if the proposed rule results in additional cargo examinations and trade members participating in the rail EEM would also need to adjust business practices, be required to hold or obtain a qualifying bond, be required to have staff available 24 hours a day 7 days a week to respond to CBP questions and pay liquidated damages for any violations. Present value total cost savings to CBP and trade members are expected to be around \$59.1 million using a two percent discount rate, or \$4.6 million annualized. CBP expects

¹ In the Regulatory Impact Analysis for this NPRM, CBP also discusses and provides estimates for the costs, cost savings and benefits compared to the baseline (prior to the introduction of the rail EEM test) during both the rail EEM test pilot period (2016–2025) and for the regulatory period (2026–2030).

that there would be additional cost savings to trade members that CBP was unable to monetize such as reduced paper, printing and storage costs related to paper forms, and reducing or eliminating instances where trains need to be deconstructed in order for CBP to examine cargo would typically results in a delay of up to 2 hours and results in around \$3,000 in freight movement costs. CBP anticipates that benefits from

this proposed rule would include improving CBP's security efforts by using ATS to conduct risk assessment on all rail exports, improving communication between Federal Agencies with export jurisdiction and improving efficiencies to participating trade members from transitioning from a paper to an electronic process. However, CBP was unable to monetize the expected benefits from this

proposed rule. Present value total net costs from the implementation of this final rule would be around \$49.8 million using a two percent discount rate, or approximately \$3.9 million annualized.² Table 1 displays CBP's estimates for future annualized costs, costs savings, benefits, and net costs from this proposed rule using a two percent discount rate over the period of analysis (2016–2030).

Table 1. Estimated Annualized Cost, Cost Savings, Benefits using 2% Discount Rate (2016–2030) (thousands U.S. dollars)

Costs	
Annualized monetized costs	\$726,156
Annualized quantified, but non-monetized costs	None
Qualitative (non-quantified) costs	If additional cargo examinations occur estimated cost to CBP would be around \$101.44 per additional exam.
	Rail carriers and voluntary participants may have to adjust business practices when moving from a paper to electronic process. ³
	Bond required to participate.
	Rail carriers and voluntary participants must have someone available 24 hours a day 7 days a week to respond to CBP questions about data transmitted.
	Liquidated damages, \$5,000 for each violation up to max of \$100,000 per departure.
Cost Savings	
Annualized monetized cost savings	\$4,601,091
Annualize quantified, but non-monetized cost savings	None
Qualitative (non-quantified) cost savings	Reduce paper, printing and storage costs related to paper forms.
	Rail carriers may avoid instances where trains need to be deconstructed in order for CBP to examine cargo, resulting in delays (1-2 hours) and freight movement costs (\$3,000 per occurrence).
Benefits	
Annualized monetized benefits	None
Annualized quantified, but non-monetized benefits	None
Qualitative (non-quantified) benefits	Improve CBP's security efforts on rail exports, electronic data transmissions will allow CBP to use its ATS system to conduct risk assessment on all rail exports. ⁴
	Gained efficiencies from trade by switching from paper to electronic data transmission.
	Improved communication among Federal Agencies with export jurisdiction.
Net Costs	
	\$3,874,935

² In the economic analysis for this proposed rule, CBP used a 2% discount rate for estimated future

quantified and monetized costs, costs savings and benefits based on guidance from OMB Circular A–

4 (<https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf>).

III. Statutory Authority

Section 343(a) of the Trade Act of 2002, as amended (Trade Act) (19 U.S.C. 1415), authorizes CBP to promulgate regulations providing for the mandatory transmission of electronic cargo information by way of a CBP-authorized electronic data interchange (EDI) system before the cargo is brought into or departs the United States by any mode of commercial transportation (sea, air, rail, or truck). The required cargo information is reasonably necessary to enable CBP to identify high-risk shipments for purposes of ensuring cargo safety and security, preventing smuggling, and commercial risk assessment targeting, pursuant to the laws enforced and administered by CBP. 19 U.S.C. 1415(a)(3)(F).

CBP consulted with carriers throughout the process of developing the proposed regulation and during the course of the ACE Export Manifest for Rail Cargo Test (*see* Section IV.B below) that has been administered since 2015. 19 U.S.C. 1415(a)(3)(A). As the statute requires, the proposed regulation imposes requirements on the party most likely to have direct knowledge of information to be provided. When requiring information from the party with direct knowledge of that information is not practicable, the regulations take into account how, under ordinary commercial practices, information is acquired by the party on which the requirement is imposed, and whether and how such party is able to verify the information. Where information is not reasonably verifiable by the party on which a requirement is imposed, the regulations shall permit that party to transmit information on the basis of what it reasonably believes to be true. 19 U.S.C. 1415(a)(3)(B). The proposed regulation that CBP is seeking to promulgate would require the submission of the export manifest data electronically in ACE for cargo transported by rail, pursuant to section 343(a), of the Trade Act of 2002, as amended. 19 U.S.C. 1415(a)(3)(E). The proposed regulation specifically avoids imposing requirements that are redundant with one another or that are redundant with requirements in other provisions of law, as seen below in Section VII.C. 19 U.S.C. 1415(a)(3)(I).

IV. Background

A. Current Regulations

Under the existing regulations, rail carriers are not required to submit a paper or electronic manifest for cargo exported from the United States by rail. CBP does have regulations which support the transmission of electronic export information (EEI) required by the Bureau of the Census Foreign Trade Regulations (FTR) or the Bureau of Industry and Security's Export Administration Regulations (EAR). Section 192.14 of title 19 of the Code of Federal Regulations (19 CFR 192.14) implements the requirements of the Trade Act regarding cargo departing the United States. Under 19 CFR 192.14, the U.S. Principal Party in Interest (USPPI) or its authorized agent or the authorized filing agent of the Foreign Principal Party in Interest (FPPI) is required to submit certain advance information to CBP for export cargo leaving the United States by rail.⁵

Under 19 CFR 192.14, the USPPI or its authorized agent must transmit and verify system acceptance of this EEI, generally no later than two hours prior to the arrival of the train at the border. *See* 19 CFR 192.14(b)(1)(iv). A rail carrier may not load cargo without first receiving from the USPPI or its authorized agent either the related EEI filing citation, covering all cargo for which the EEI is required, or exemption legends, covering cargo for which EEI need not be filed. *See* 19 CFR 192.14(c)(4)(i). While the rail carrier is not required to submit a rail cargo export manifest to CBP, the outbound rail carrier must annotate the carrier's outward manifest, waybill, or other export documentation with the applicable Automated Export System (AES) proof of filing, post departure, downtime, exclusion, or exemption citations, conforming to the approved data formats found in the Bureau of the Census FTR. *See* 15 CFR part 30.

The current regulations found in 19 CFR 192.14 also require the USPPI, the USPPI's authorized agent, or the authorized filing agent of the FPPI to electronically transmit to CBP through AES certain EEI. This information supports statistical gathering; however, it falls short of addressing important cargo security considerations to include almost all shipments with a value less

than \$2,500.00 per Schedule B number and shipments directed to Canada, other than those containing certain items controlled under the EAR or intended for transshipment through Canada, creating a gap in security which the proposed regulation seeks to resolve by requiring information on all exports for rail cargo. CBP seeks to require the submission of manifest information providing CBP the opportunity to review and examine cargo such that high risk shipments such as narcotics, weapons or ammunition, including any that may not be subject to EEI filing requirements under the FTR or EAR, have a means of being discovered and withheld thereby enhancing the security of the United States. This proposed regulation will close that security gap by requiring compliance with the regulation in order to export the cargo as parties will have to provide electronic manifest information which CBP can screen and inspect for the safety of the United States and its neighboring countries. This proposed regulation also aligns with the regulation for rail cargo imported into the United States.

The transmission of EEI is a Bureau of the Census filing regulated by 15 CFR part 30 and, with few exceptions, only submitted when the value of merchandise is above \$2,500.00 per Schedule B number. The requirement also does not apply to rail shipments bound for Canada unless such shipments contain certain export-controlled items or are destined for transshipment to third countries. This regulatory gap leaves many shipments outside of CBP security review. The lack of pre-departure information, which includes commodity information submitted by rail carriers into CBP targeting systems, hinders CBP's ability to conduct risk assessment and inspect cargo effectively to ensure compliance with U.S. export control laws and regulations. The proposed regulation would create an integrated pre-departure electronic export manifest which includes receiving advance information for risk assessment purposes from the source most likely to have correct information about the cargo.

Currently, for exporting purposes, each carrier submits a train consist in a format it develops and with the data elements that it believes should be reported. The train consist identifies what is on the train, the order of the train, and what the train is consisted of as it prepares to depart the country. These data elements provide export information similar to that required by the provisions of 19 CFR 123.91, which

³ These costs to participants are discussed in further detail in the Regulatory Period Costs section in the Regulatory Impact Analysis below.

⁴ Details on how CBP conducts targeting and risk assessment prior to this proposed rule using paper forms is discussed in the 'Baseline' section of the regulatory impact analysis for this proposed rule.

⁵ The USPPI is defined in the Bureau of the Census FTR as the person or legal entity in the United States that receives the primary benefit, monetary or otherwise, from the export transaction. Generally, that person or entity is the U.S. seller, manufacturer, or order party, or the foreign entity while in the United States when purchasing or obtaining the goods for export. 15 CFR 30.1.

describes electronic information for rail cargo required in advance of arrival, and 19 CFR 123.6, which includes a train sheet for arriving railroad trains.

B. The ACE Export Manifest for Rail Cargo Test

On September 9, 2015, CBP published a general notice in the **Federal Register** (80 FR 54305) announcing the National Customs Automation Program (NCAP) Test for the transmission through ACE of Electronic Export Manifest (EEM) information for rail shipments, the Automated Commercial Environment (ACE) Export Manifest for Rail Cargo Test (“Test”), which was limited to nine rail carriers.

1. The National Customs Automation Program

The NCAP was established in Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057, 2188 (1993) (Customs Modernization Act) (19 U.S.C. 1411–14). Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of ACE, the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for CBP and its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP’s business functions and the information technology that supports those functions. CBP’s modernization efforts are accomplished through phased releases of ACE component functionality.

In part, the Test has been used in furtherance of International Trade Data System (ITDS) key initiatives, set forth in section 405 of the Security and Accountability for Every Port Act of 2006, Public Law 109–347, 120 Stat. 1884, 1929–1931 (SAFE Port Act) (19 U.S.C. 1411(d)) and Executive Order 13659, Streamlining the Export/Import Process for America’s Businesses, 79 FR 10655 (February 25, 2014). The purpose of ITDS, as stated in section 405, § 411(d)(1)(B) of the SAFE Port Act (19 U.S.C. 1411(d)(1)(B)), is to eliminate redundant information requirements, efficiently regulate the flow of commerce, and effectively enforce laws and regulations relating to international trade, by establishing a single portal

system operated by CBP for the collection and distribution of standard electronic import and export data required by all participating Federal agencies. ACE was developed by CBP as the “single window” for the trade community to comply with the ITDS requirement established by the SAFE Port Act. *See* sec. 405, § 411(d)(1)(B) (19 U.S.C. 1411(d)(1)(B)).

2. Data Elements in the Test

The data elements as set forth in the original Test have been mandatory unless otherwise indicated below. The Test has required that five conditional data elements must be transmitted to CBP only if the particular information pertains to the shipment or cargo. The data elements are required to be submitted at the lowest bill level. The data elements in the Test for all shipments, including empty rail cars, consist of:

- (1) Mode of Transportation (containerized rail cargo or non-containerized rail cargo)
- (2) Port of Departure from the United States
- (3) Date of Departure
- (4) Manifest Number
- (5) Train Number
- (6) Rail Car Order
- (7) Car Locator Message
- (8) Hazmat Indicator (Yes/No)
- (9) 6-character Hazmat Code (conditional) (If the hazmat indicator is yes, then UN (for United Nations Number) or NA (North American Number) and the corresponding 4-digit identification number assigned to the hazardous material must be provided.)
- (10) Marks and Numbers
- (11) SCAC (Standard Carrier Alpha Code) for exporting carrier
- (12) Shipper name and address (For empty rail cars, the shipper may be the railroad from whom the rail carrier received the empty rail car to transport.)
- (13) Consignee name and address (For empty rail cars, the consignee may be the railroad to whom the rail carrier is transporting the empty rail car.)
- (14) Place where the rail carrier takes possession of the cargo shipment or empty rail car
- (15) Port of Unlading
- (16) Country of Ultimate Destination
- (17) Equipment Type Code
- (18) Container Number(s) (for containerized shipments) or Rail Car Number(s) (for all other shipments)
- (19) Empty Indicator (Yes/No)

If the empty indicator is no, then the following data elements must also be provided, as applicable:

- (20) Bill of Lading Numbers (Master and House)
- (21) Bill of Lading Type (Master, House, Simple or Sub)
- (22) Number of House Bills of Lading
- (23) Notify Party name and address (conditional)
- (24) AES Internal Transaction Number or AES Exemption Statement (per shipment)
- (25) Cargo Description
- (26) Weight of Cargo (may be expressed in either pounds or kilograms)
- (27) Quantity of Cargo and Unit of Measure
- (28) Seal Number
- (29) Split Shipment Indicator (Yes/No)
- (30) Portion of split shipment (e.g., 1 of 10, 4 of 10, 5 of 10—Final, etc.) (conditional)
- (31) In-bond Number (conditional)
- (32) Mexican Pedimento Number (only for shipments for export to Mexico) (conditional)

3. Test Expansion, Extension, Modification and Second Extension

On August 14, 2017, CBP extended the Test for an additional two-year period (82 FR 37893). At the same time, the Test began accepting additional applications for all parties that met the eligibility requirements of the original nine stakeholders composed of rail carriers. CBP consulted with the Commercial Customs Operations Advisory Committee (COAC) to address issues concerning the quality, accessibility, and timeliness of export manifest data received during the Test. One issue of concern was the availability of certain data elements required under the Test two hours prior to loading of the cargo on the train in preparation for departure from the United States. COAC urged CBP to change the filing condition of those data elements.

After evaluating the initial phase of the Test and considering COAC’s comments, CBP determined that, to better test the functionality and feasibility of submitting the specified export data two hours prior to loading of the cargo on the train, the filing condition for nine of the data elements should be changed. The modified filing conditions enabled CBP to better determine the appropriate reporting requirements for each data element. Data elements which are “mandatory” must be provided to CBP for every shipment. Data elements which are “conditional” must be provided to CBP only if the particular information pertains to the cargo. Data elements which are “optional” may be provided to CBP but are not required.

CBP modified the Test to change the following eight mandatory or conditional data elements to optional:

- Mode of Transportation (containerized rail cargo or non-containerized rail cargo) (Data Element #1)
- Place where the carrier took possession (Data Element #14)
- Country of Ultimate Destination (Data Element #16)
- Equipment Type Code (Data Element #17)
- Number of House Bills of Lading (Data Element #22)
- Split Shipment Indicator (Data Element #29)
- Portion of Split Shipment (Data Element #30)
- Mexican Pedimento Number (Data Element #32)

CBP also modified the Test to change Data Element #10, Marks and Numbers, from mandatory to conditional.

The remaining data elements under the extended Test continued to be mandatory, conditional, or optional as provided in the September 9, 2015, notice, and as detailed in Section IV.B.2. above.

CBP identified in the expansion and modification of the Test that it would reevaluate the filing conditions for each data element to determine the feasibility of requiring that data element to be filed electronically in ACE within a specified time before the cargo is loaded on the train should CBP decide to conduct rulemaking. Accordingly, as discussed in more detail below, the proposed regulation changes the timing of presentation of most electronic export manifest data from two hours prior to loading on the train to two hours prior to departure of the train to a foreign port.

On April 27, 2022, CBP extended the Test for an additional two years. (87 FR 25037.)

V. Results of the Test, Modification, Expansion and Extensions

Since its inception, the Test has assessed the feasibility of requiring rail carriers to file export manifest data for which CBP did not have regulations established for specific data elements and obtained train consists in the format and manner in which the rail carriers chose to provide such elements. In addition, the Test has assessed the functionality regarding the filing of export manifest data for rail cargo electronically to ACE in furtherance of the ITDS initiatives described above. CBP also re-engineered AES to move it to the ACE platform. The re-engineering and incorporation of AES into ACE

resulted in the creation of a single automated export processing platform for certain export manifest, commodity, licensing, export control, and export targeting transactions. This reduces costs for CBP, partner government agencies, and the trade community, and improves facilitation of export shipments through the supply chain.

Additionally, the Test has examined the feasibility of requiring the rail carrier to submit manifest information electronically in ACE generally within a specified time before the cargo has been loaded on the train. Test participants were and are required to submit export manifest data electronically to ACE at least two hours prior to loading of the cargo or, for empty rail cars, upon assembly of the train. This time frame has enabled CBP to link the EEI submitted by the USPPI with the export manifest information. Much of that success has resulted from the fact that a high percentage of information is being transmitted well before the two-hour prior to departure deadline. Upon a random review of data identifying compliance with time frame submission, CBP found that nearly 94% of data transmissions occurred more than 24 hours prior to conveyance departure.

The success of the Test has allowed CBP to determine that the electronic submission of manifests provides improvements in capabilities at the departure level. As a result of these improvements, CBP is now seeking to end the Test and codify this program by proposing new regulations in this document.

VI. Purpose and Need of the Rule

CBP proposes a new regulatory requirement because it does not currently have regulations in place requiring the submission of an electronic export manifest for cargo transported by rail to assess cargo security. The proposed regulatory changes are the culmination of CBP's efforts with the Test described above.

The proposed regulation will leverage the data elements and train consist requirements in advance of departure to Mexico and Canada. The data elements are already included in the current Test, which has been operational since September 9, 2015. 80 FR 54305. The proposed regulation identifies the mandatory, conditional, and optional data elements and who would be required to submit the data. The proposed regulation also would add an initial filing for seven data elements to be presented 24 hours prior to departure of the train.

For CBP, the proposed requirement to submit an electronic export manifest will enhance cargo security in that it would allow for improvements in risk assessment capabilities at the port level. Port operations will enjoy considerable efficiencies through the elimination of paper manifests. Storage space currently reserved for manifest documents will be freed. Coordination and information exchange among CBP, the Department of Commerce, and other Government agencies with export jurisdiction will improve. Carriers, USPPIs, non-vessel operating common carriers (NVOCC), and other interested parties who transmit information will receive better and more rapid examination decisions from CBP. The trade will benefit through the ease of making information corrections and additions electronically, a process that requires cumbersome manifest discrepancy reporting in a paper world.

The ACE Export Manifest data submission is used to conduct risk assessment to identify high-risk rail cargo includes but is not limited to weapons, ammunition, currency or narcotics. High risk shipments are based on the totality of the review which includes party name, country of destination, cargo description, and/or a combination of data elements. Data supports a conclusion that Test participants have access to the manifest data early in the planning stages of an export rail cargo transaction and will be able to comply with these time frames. As stated, CBP anticipates that these timeframes will provide adequate time to perform proper risk assessment and identification of shipments to be inspected early enough in the supply chain to enhance security while minimizing disruption to the flow of goods. At present, regulations do not provide for any method to screen or secure rail cargo exports which this proposed regulation seeks to address. ACE Export Manifest data submission allows CBP to use its Automated Targeting System (ATS) to screen all of the data submitted which allows CBP to make better examination decisions while also reducing the time required to make such decisions. Although CBP will aim to identify shipments for inspection prior to loading, inspections could potentially happen at any time before the train departs the United States.

Any rail cargo identified by CBP as requiring review will be held until required additional information related to the shipment is submitted to clarify non-descriptive, inaccurate, or insufficient information, a physical inspection is performed, or some other

appropriate action is taken, as specified by CBP. Once the cargo is cleared for loading, a release message will be generated and transmitted to the filer.

VII. Proposed Requirements

CBP is seeking to promulgate a new regulation, proposed 19 CFR 123.93, requiring the submission of export manifest data electronically in ACE for cargo transported by rail, pursuant to section 343(a), of the Trade Act of 2002, as amended. The proposed regulation would mandate the electronic transmission of rail export manifest information, identify the parties eligible to transmit information, describe the time frames prior to departure of the train in which the information is due, and identify an initial filing that must occur 24 hours prior to departure from the port of export while requiring the remaining data to be transmitted at least two hours prior to such departure.

Further, to comply with Section 343 of the Trade Act of 2002, as amended (19 U.S.C. 1415), new 19 CFR 123.93 would require parties with the most direct knowledge to provide certain information to CBP. In furtherance of that goal, the proposed regulatory language sets forth differences between transportation data (always required of the carrier and carrier only) and cargo data, which can be provided by the party with direct knowledge of that information.

Consistent with the provisions of 19 U.S.C. 1415(a)(3)(B), when requiring information from the party with direct knowledge of the information is not practicable, the proposed regulation would take into account how, under ordinary commercial practices, information is acquired by the party on which the requirement is imposed and whether and how such party is able to verify the information. Where information is not reasonably verifiable by the party, the proposed regulation would permit the party to transmit information on the basis of what it reasonably believes to be true.

The proposed regulation designates information as transportation data, cargo data, or empty container data, and lists the data elements to be transmitted while calling them out as mandatory, conditional, or optional. The data elements that are identified as mandatory must be submitted. These elements are necessary for CBP to inspect cargo effectively, ensure compliance with U.S. export control laws and regulations and identify high-risk shipments for purposes of ensuring cargo safety and security. Data elements that are identified as conditional must be provided if available. Data elements

identified as optional provide additional information for purposes of clarity and may facilitate the clearance process but are not required to be submitted.

The proposed regulation provides for direction regarding enforcement referrals, Do-Not-Load messages, and Hold messages. Any rail cargo identified by CBP as requiring review would be held until required additional information related to the shipment is submitted to clarify non-descriptive, inaccurate, or insufficient information, a physical inspection is performed, or some other appropriate action is taken, as specified by CBP. If the cargo is cleared for loading, a release message would be generated and transmitted to the filer. If a potential high-risk cargo is identified, then a CBP officer would conduct an examination. The rail carriers would be notified of these holds through the integrated system and if a mandatory examination of the cargo and/or freight car is required or if CBP needs to conduct further review of the data transmitted. In addition to holds, if a CBP officer determines during review that cargo or a rail car may contain a potential threat to the train and its vicinity, a Do-Not-Load (DNL) instruction would be issued, which prohibits the rail carrier from transporting that cargo or railcar. The rail carrier should not transport any cargo or rail car with a DNL. The advance transmission of EEM data would help CBP review and issue holds before cargo is loaded or before a train reaches the U.S. port of export, thus facilitating a more efficient export process.

Specifically, CBP is proposing to require seven data elements, characterized as an initial filing, to be transmitted no less than 24 hours prior to train departure. The seven data elements chosen for mandatory transmission 24 hours prior to departure would be those data elements that would provide CBP with the cargo information it needs to perform the appropriate security analysis, including: Bill of Lading Number, Total Quantity, Total Weight, Cargo Description, Shipper's Name and Address, Consignee Name and Address, and Automated Export System (AES) Exemption Statement, as applicable. The proposed rule provides for the submission of transportation, conveyance, and empty container information two hours prior to departure of the train rather than two hours prior to loading (or on assembly of the train in the case of information pertinent to empty rail cars). This change in transmission timing for all other data elements would combine with the initial transmission to afford

CBP the ability to better assess risk and effectively target and inspect shipments prior to the cargo departing the United States to ensure compliance with all U.S. export laws.

A. Initial Data Elements

Different from the Test's time periods for data presentation, proposed 19 CFR 123.93 requires a mandatory initial filing of seven data elements identified below to be submitted 24 hours prior to departure to a foreign port, by either the carrier, USPPI, or other qualified parties or their authorized agents. In proposed 19 CFR 123.93(b)(1), CBP has determined that requiring this initial filing in a time frame even earlier than prescribed in the Test is necessary to allow for complete vetting of cargo and transportation information for security purposes. The high percentage of data available for transmission 24 hours prior to departure supports the feasibility of requiring this initial filing. In further support of this proposal, some validations would be relaxed until the carrier links the master bill and house bill to allow for the submission of advance data. Upon receipt of the initial filing submission, CBP would validate and notify the filer of the master bill and house bill data, if any data is required, or if the house bill has been placed on hold pending the updating of the bill. Under the proposed regulation, the carrier would have the ultimate responsibility to load, hold, or not load the cargo. The carrier, USPPIs and other parties qualified to transmit data (or their authorized agent) would be eligible to submit the initial data filing as discussed below.

CBP proposes adding 19 CFR 123.93(c) which identifies the parties that can file the cargo and conveyance data. The outbound carrier is responsible for transmitting export manifest transportation data and empty container data. The outbound carrier must also transmit the initial filing data and the export manifest cargo data if no other eligible party elects to do so. If another eligible party elects to transmit either the initial filing data or export manifest cargo data, the outbound carrier may also choose to, but is not required to, transmit such data. Other eligible parties include USPPI and FPPI, as defined by the provisions of section 30.1 of the FTR of the Department of Commerce, Bureau of the Census (15 CFR 30.1), or its authorized agent. Other eligible filers also include any other party with direct knowledge of the export information, such as a customs broker, Automated Broker Interface (ABI) filer, NVOCC as defined by 19 CFR 4.7(b)(3)(ii), or a freight forwarder

as defined in 19 CFR 112.1. If another party does not transmit advance export information, the party that arranges for and/or delivers the cargo to the outbound carrier must fully disclose and present to the outbound carrier the data elements for the initial filing. Any party transmitting any of the data described in this subsection must be in possession of either a CBP Basic Importation and Entry Bond containing the provisions found in 19 CFR 113.62, a Basic Custodial Bond containing the provisions found in 19 CFR 113.63, or an International Carrier Bond containing the provisions found in 19 CFR 113.64.

CBP also proposes adding 19 CFR 123.93(d) which identifies the seven data elements from the Test that are required in the mandatory initial filing. Descriptions of those data elements have been revised in the proposed rule to clarify the kind and character of data that is required. The revised data elements in the proposed rule for the initial filing and the Test data elements to which they correspond are as follows:

(1) Bill of lading number, which is necessary to link the transmission to the cargo throughout the entire electronic manifest process;

(2) The numbers and quantities of the cargo laden aboard the train as contained in the carrier's bill of lading, either master or house, as applicable (this means the quantity of the lowest external packaging unit; numbers or quantities of containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons) [Test data element of Quantity of Cargo and Unit of Measure];

(3) Total weight of cargo expressed in pounds or kilograms [Test data element of Weight of Cargo (may be expressed in either pounds or kilograms)];

(4) A precise cargo description (or the Harmonized Tariff Schedule (HTSUS) number(s) to the 6-digit level under which the cargo is classified if that information is received from the shipper and weight of the cargo; or for a sealed container, the shipper's declared description and weight of the cargo (generic descriptions, specifically those such as "FAK" ("freight of all kinds"), "general cargo", and "STC" ("said to contain") are not acceptable) [Test data element of Cargo Description];

(5) The shipper's complete name and address, or identification number, from the bills of lading (for each house bill in a consolidated shipment) [Test data element of Shipper name and address];

(6) The consignee's complete name and address, or identification number, from the bill(s) of lading. (The consignee

is the party to whom the cargo will be delivered to in a foreign country. However, in the case of cargo shipped "to order of [a named party]," the "to order" party must be named as the consignee; and if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party's identity and contact information including address in the "Notify party" field.) [Test data element of Consignee name and address]; and

(7) The Automated Export System (AES) Exemption Statement, as applicable [Test data element of AES Exemption Statement (per shipment)].

Except for these seven data elements re-described or re-formatted above, CBP would require electronic export manifest information in sections 123.93(e), and (f) to be transmitted two hours prior to train departure to a foreign port. That data comprises all additional data elements to be described as export manifest transportation data, cargo data, and empty container data. While 32 data elements are described in the Test, experience has shown that some are no longer necessary for inclusion in the proposed rule.

B. Transportation Data Elements

Proposed 19 CFR 123.93(e)(1) establishes the obligation on the carrier or its agent to supply transportation data. The transportation data elements carried forward from the Test to the proposed rule include the following:

(1) Port of Departure from the United States (mandatory);

(2) Date of Departure (mandatory);

(3) Mode of Transportation (containerized rail cargo or non-containerized rail cargo) (optional);

(4) Equipment Type Code (optional);

(5) Place where the rail carrier takes possession of the cargo shipment or empty rail car (optional);

(6) Carrier-assigned conveyance name, equipment number and trip number (mandatory);

(7) 6-character Hazmat Code. If the Hazmat Code is provided, then UN (for United Nations Number) or NA (North American Number) and the corresponding 4-digit identification number assigned to the hazardous material must be provided.) (conditional);

(8) Marks and Numbers (conditional);

(9) SCAC (Standard Carrier Alpha Code) for the exporting carrier (mandatory);

(10) Container or Equipment Numbers (for containerized shipments) or Rail Car Numbers (for all other shipments) (mandatory);

A transportation data element carried over from the Test to the proposed 19 CFR 123.3(e) with an expanded definition is as follows:

Seal Number (conditional, only required if container was sealed). The seal numbers for all seals affixed to containers and/or rail cars to the extent that CBP's data system can accept this information (for example, if a container has more than two seals, and only two seal numbers can be accepted through the system per container, electronic presentation of two of these seal numbers for the container would be considered as constituting full compliance with this data element).

In proposed 19 CFR 123.3(e), CBP is adding the transportation data element of "Estimated Time of Departure" (mandatory) to be supplied by the carrier or its agent that was not required in the Test but provides important information to CBP.

Proposed 19 CFR 123.3(e) also adds the transportation data element of "Train Consist" (mandatory) to be supplied by the carrier or its agent. The Train Consist provides CBP with what is on the train from the engine through the last car and how the cargo is lined up for departure from the United States. The Train Consist is composed of the following data elements that were required in the Test:

(1) Manifest Number

(2) Train Number

(3) Rail car order

(4) Empty containers.

C. Cargo Data Elements

Proposed 19 CFR 123.93(f) establishes the obligation on the party with knowledge of the facts or its agent to supply manifest cargo data. The cargo data elements carried forward from the Test to the proposed rule in addition to the seven data elements forming the Initial Data Filing include the 17 data elements listed below. CBP recognizes that some cargo data elements would already be requested in the initial data elements; those data elements would not need to be transmitted again unless there are updates or changes made. The proposed cargo data elements are as follows:

(1) Shipper name and address (for empty rail cars, the shipper may be the railroad from whom the rail carrier received the empty rail car to transport) (mandatory);

(2) Consignee name and address (for empty rail cars, the consignee may be the railroad to whom the rail carrier is transporting the empty rail car) (mandatory);

(3) Port of Lading (mandatory);

(4) Port of Unlading (mandatory);

- (5) Bill of Lading Type (Master, House, Simple or Sub) (mandatory);
- (6) Bill of Lading Numbers (Master, House, Simple or Sub) (mandatory);
- (7) AES Internal Transaction Number or In-bond Number (per shipment) (mandatory);
- (8) Cargo description (mandatory);
- (9) Weight of cargo (may be expressed in either pounds or kilograms) (mandatory);
- (10) Quantity of cargo and unit of measure (mandatory);
- (11) In-bond type (conditional);
- (12) Notify party name and address (conditional);
- (13) Secondary notify party name and address (conditional);
- (14) Mexican Pedimento Number (only for shipments for export to Mexico) (optional);
- (15) Secondary notify party SCAC (optional);
- (16) Country of ultimate destination (optional); and
- (17) Number of house bills of lading (optional).

CBP has determined that the collection of the following data elements required in the Test were found to be problematic or superfluous or are addressed by other regulations and will not be carried forward in the proposed rule:

- (1) Car Locator Message;
- (2) Empty Indicator (yes/no);
- (3) Hazmat Indicator;
- (4) Split Shipment Indicator (Yes/No)⁶; and
- (5) Portion of split shipment (e.g., 1 of 10, 4 of 10, 5 of 10—Final, etc.)

D. Examination Referrals

Proposed 19 CFR 123.93(g) provides for two types of referrals that may be issued by CBP after a risk assessment of an outbound export manifest data transmission. A referral for information will be delivered to the rail carrier or its agent if the information provided fails to appropriately describe the cargo or if the information provided is inaccurate or insufficient. The data transmitter must then add or correct the information prior to the departure of the train from the United States. A referral for screening will be issued if the potential risk of the cargo is deemed high enough to warrant enhanced screening. In this instance, the rail carrier is notified of these holds and the notification lets the rail carrier know that a mandatory examination of the cargo and or freight car is required or if CBP needs to

conduct further review of the data transmitted.

E. Do-Not-Load (DNL)/Hold Instructions

CBP is also proposing to add 19 CFR 123.93(h) to provide for procedures for when a CBP officer determines during the review that cargo or a rail car may contain a potential threat to the train and its vicinity, so that a Do-Not-Load (DNL) instruction can be issued, which prohibits the rail carrier from transporting that cargo or rail car. The rail carrier should not transport any cargo or rail car with a DNL. A Hold instruction will be issued, even after loading, if further examination is required. In order to address such issues, data transmitters must provide a telephone number and email address that is monitored 24 hours a day/seven days a week. Data transmitters must respond and fully cooperate when such an instruction or hold is issued.

F. Other Technical Amendments to Part 123

By adding new subpart J, CBP is revising the scope provision (19 CFR 123.0) to reflect that customs procedures at the Canadian and Mexican borders would include electronic information for cargo in advance of departure which is not presently addressed in the regulation.

G. Proposed Amendments to CBP Bond Conditions

As an enforcement tool, CBP is also proposing changes to the relevant bond provisions in 19 CFR 113.62 (basic importation and entry bond), in 19 CFR 113.63 (basic custodial bond), and 19 CFR 113.64 (International carrier bond) to provide CBP with authority to impose liquidated damages on parties that do not provide the mandatory EEM data in the manner and in the time frame required. Specifically, CBP proposes to amend 19 CFR 113.62 to add new paragraph (k)(3) to address electronically provided outbound information. Section 113.62(k) currently addresses electronic transmissions for merchandise or cargo which is inbound. CBP also proposes to amend 19 CFR 113.63 to include advance outbound information provided to CBP electronically and in the manner and in the time period required under 19 CFR 123.93. CBP is also seeking to amend 19 CFR 113.64 to include outbound information provided electronically by international carriers in the manner and time period required under 19 CFR 123.93. With each of these regulations, CBP may assess liquidated damages if a violation occurs. Any party that violates the bond conditions for outbound data

transmission as described above in this proposed rule agrees to pay liquidated damages of \$5,000 for each violation and up to a maximum of \$100,000 per departure. Compliance is CBP's goal and CBP aspires to work alongside rail carriers and other parties to ensure that trade members provide the proper data in a timely manner, so that CBP can properly review the data, conduct risk assessment of high-risk shipments, and enforce U.S. export laws and regulations on U.S. rail exports.

VIII. Regulatory Analyses

A. Executive Orders 12866 and 13563 (Regulatory Planning and Review)

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review) 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Management and Budget (OMB) has designated this rule a "significant regulatory action" as defined under section 3(f) of E.O. 12866, as amended by Executive Order 14094. Accordingly, OMB has reviewed this rule.

In summary, CBP expects that this proposed rule would result in a present value total combined net cost savings of \$49.8 million using a two percent discount rate, or approximately \$3.8 million annualized (2023 U.S. dollars) to CBP, outbound rail carriers and other related parties during the period of analysis (2016 to 2030). CBP anticipates that this proposed rule would also provide added benefits from enhanced cargo security measures by improving compliance and the enforcement of U.S. export laws and regulations on U.S. rail exports, while also improving the facilitation of the export process. The following is the economic analysis of the potential impacts from this proposed rule.

Purpose and Background

CBP's mission includes ensuring cargo security and preventing smuggling, while enforcing U.S. trade laws and regulations. CBP needs to obtain timely and sufficient data prior to

⁶ Although split shipment and portion of split shipment were data elements identified in the Test, CBP decided it was unnecessary to carry them into the proposed rule because they are elements required, to the extent necessary, by 15 CFR 30.28.

cargo arriving or departing the United States via any mode of commercial transportation in order to review and conduct risk assessment to identify high-risk shipments and inspect cargo effectively. According to Section 343(a) of the Trade Act of 2002, as amended (Trade Act) (19 U.S.C. 1415), CBP is authorized to establish regulations that provide for the mandatory electronic transmission of data by way of a CBP-approved electronic data interchange before cargo arrives or departs the United States in all environments (sea, air, rail, and truck). Transmitting export manifest data electronically, instead of on paper or via email, allows CBP to use its Automated Targeting System (ATS) to screen all of the data submitted. This allows CBP to make better examination decisions while also reducing the time required to make such decisions. Trade members also experience efficiencies through quicker CBP examination decisions and improved communication between CBP and trade members. The requirement to submit manifest data through an electronic data interchange (ACE) which is the same system through which data is incorporated from AES is also important to help facilitate a more efficient trade process for all federal agencies and trade members involved. Submitting electronic manifest data (specifically pre-arrival or pre-departure) significantly increases CBP's ability to conduct risk assessment and identify high-risk cargo to ensure cargo security and to prevent smuggling. The electronic environment would improve and expedite communications between CBP and trade members in resolving examinations where additional or corrected information of the transmission is required.

Baseline

In the rail environment, CBP currently requires the advance electronic submission of data for all cargo being brought into the United States, but CBP does not require the pre-departure electronic submission of data for all exported cargo. CBP requires some electronically transmitted cargo data prior to departing the United States by rail but this data is significantly limited in scope. Current regulations⁷ require the U.S. Principal Party in Interest (USPPI), the USPPI's agent, or the authorized filing agent of the Foreign Principal Party in Interest (FPPI) to transmit Electronic Export Information (EEI) to CBP through the Automated Commercial Environment (ACE), no later than two hours prior to the arrival of the train at the border. Although this

pre-departure data is helpful, the information provided by EEI falls short of what CBP requires for proper enforcement.

The required transmission of EEI is subject to certain exemptions, as established by the Bureau of the Census regulations,⁸ which generally only require EEI transmission on shipments greater than \$2,500 and do not require the transmission of EEI for shipments destined for Canada, unless the shipment contains certain controlled items or is being transshipped to another destination.⁹ Therefore, numerous low dollar value shipments and/or Canadian-bound shipments of merchandise departing the United States by rail do not have EEI transmitted for CBP to review. The lack of detailed electronic manifest data for some shipments and the unavailability of electronic cargo data on lower value merchandise shipments impedes CBP's enforcement efforts on rail exports.

Although CBP receives limited pre-departure electronic data for rail exports, CBP usually receives additional pre-departure data from rail carriers or their agents. This information, however, is submitted via attachments to an email, which is not the most efficient or effective method to obtain such data and perform risk assessment.¹⁰ During the export cargo process, the rail carrier may not load cargo without first receiving from the USPPI or its authorized agent either the related EEI filing citation, covering all cargo for which the EEI is required, or exemption legends, covering cargo for which EEI need not be filed. While the rail carrier is not required to submit a rail cargo export manifest to CBP, the outbound rail carrier must annotate the carrier's outward manifest, waybill, or other export documentation with the applicable Automated Export System (AES) proof of filing, post departure, downtime, exclusion, or exemption citations, conforming to the approved data formats found in the Bureau of the Census Foreign Trade Regulations.¹¹

In the baseline rail carriers or their agents submit finalized train consists to CBP in a format of the rail carrier's choosing before a train is granted permission to depart from the U.S. port of export.^{12 13} Rail carriers or their

agents can provide this data via email prior to a train's arrival at the U.S. port of export (pre-departure) or present this data to a CBP officer at departure when the train arrives at the U.S. port of export (at departure). The submission of such data pre-departure via email is not mandatory, nor is there a required time frame for submitting such information. However, rail carriers have the incentive to provide this information pre-departure so that CBP has time to review the information before the train reaches the U.S. port of export, expediting the export process and usually rail carriers send this information to CBP at least two hours prior to a train's arrival at the United States border.¹⁴ If rail carriers or agents choose not to provide this data pre-departure, they must present the finalized train consists to CBP upon arrival at the U.S. port of export at which point CBP officers must complete the review of the train consists while the train is at the U.S. port of export, resulting in a delay in the train's departure.

Once this information is received by CBP (either via email or in person at the port of export) CBP officers will then conduct a review of the export information, which includes manually reviewing the finalized train consist (paper version or emailed) and address any issues. CBP officers must then also compare this data with any EEI information electronically submitted for that train along with any other documents. To ensure proper cargo security, during this review CBP officers must also conduct their targeting, risk assessment measures and determine if any cargo needs to be examined before a train departs the United States. In the baseline scenario, CBP is not able to automatically use ATS for risk assessment on the export information contained on the train consists provided by rail carriers to CBP.¹⁵ Although CBP officers can manually query ATS with information provided on the finalized train consists, CBP notes this is a cumbersome and time-consuming process and is not a frequent

¹³ A train consist is document that generally refers to the contents of a train including the position of the locomotives and cars, as well as both non-hazardous and hazardous freight within those cars.

¹⁴ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on June 21, 2022.

¹⁵ In the baseline scenario CBP is not able use ATS for risk assessment on export data submitted on paper forms (or via email) and paper forms cannot be automatically uploaded or submitted to ATS for risk assessment. A primary benefit of this proposed rule would be allowing CBP to automatically use ATS for risk assessment on all rail EEM data provided.

⁸ See 15 CFR part 30.

⁹ See 15 CFR 30.36.

¹⁰ This information is submitted by rail carriers for trains transporting cargo out of the United States and is provided regardless of whether an EEI submission is required.

¹¹ See 15 CFR part 30.

¹² Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on February 25, 2022.

⁷ See 19 CFR 192.14.

occurrence. If during CBP's review of this information, prior to the train's arrival at the U.S. port of export, CBP officers find any discrepancies or missing data, CBP communicates via email to the rail carrier that submitted the data, requesting updates or corrections to the data provided. The CBP review process, including communications between CBP and rail carriers about discrepancies discovered while reviewing train consist information, can be unnecessarily cumbersome and time consuming because this data is provided via email attachments and the formats can be inconsistent across rail carriers. If CBP is not provided the pre-departure data or is not provided the data in a time frame that allows for CBP to properly review, request, and receive updates from rail carriers, and conduct proper risk assessment or manually examine high-risk cargo or shipment, then a CBP officer must resolve these issues at the U.S. port of export. This usually results in a delay to the train's departure.

CBP does not track how often rail carriers provide this pre-departure data nor to what extent CBP officers are able to conduct some or all of their manual review of the data prior to the train's arrival to the U.S. port of export. Sometimes CBP identifies a high-risk cargo or shipment during manual review at the U.S. port of export or while reviewing pre-departure data but does not have time to adjudicate the shipment prior to a train's arrival at the U.S. port of export. In this situation, the CBP officer holds the train until one or more freight car(s) can be removed from the already constructed train for examination, which can cause delays and can be costly to rail carriers.¹⁶

This proposed rule would establish a requirement for the electronic transmission of export manifest data pre-departure from the United States for all cargo in the rail environment. CBP defines the process described above as the regulatory baseline and the analysis of this proposed rule attempts to measure any incremental costs, cost savings or benefits compared to the baseline scenario.

The ACE Export Manifest for Rail Cargo Test

CBP has been working toward developing a new process to require the transmission of electronic export manifest (EEM) data for all cargo departing the United States by rail to

enhance CBP's efforts to ensure cargo security while also preventing smuggling, and to be compliant with the Trade Act. CBP expects that the transmission of pre-departure EEM data would help CBP obtain all the necessary data to successfully review and conduct risk assessment measures before trains reach the U.S. port of export, thereby limiting the number of issues that CBP must address at the U.S. port of export and reducing potential delays. Rail carriers have also acknowledged that the baseline process of sending forms of rail export data by email is unnecessarily costly, time burdensome and inconsistent with the process for providing data on cargo entering the United States.¹⁷ As such, rail carriers have been supportive of CBP's efforts to provide a more efficient process by allowing for the transmission of rail EEM data.

In September of 2015, CBP introduced a two-year pilot test program, referred to in this analysis as the ACE Export Manifest for Rail Cargo Test (the Test), to determine the feasibility for rail carriers or their agents to provide pre-departure EEM data for rail exports to CBP via ACE within a specified time before cargo departs the United States. To test the functionality of this new process, CBP initially limited participation in the Test to nine rail carriers. During this initial phase of the Test, CBP worked with rail carriers who agreed to participate and submit EEM data to CBP via ACE in addition to providing paper forms. The participants were large rail companies, similar in most respects to those that did not participate. As such, CBP believes their experience with the test is informative for analyzing the effects of the rule. CBP requests comment on any meaningful differences between the participants and the non-participants that would affect the analysis. CBP requested that participants continue to submit data in paper forms as they did before the Test so that CBP could capture any inconsistencies or issues with the electronic transmission of rail export manifest data to CBP. In the Test, CBP requested that participants provide rail EEM data to CBP at least two hours prior to loading the cargo onto the train, or in the case of empty rail cars upon assembly of the train.¹⁸ Because the

ACE system would conduct a majority of the risk assessment and review of electronically transmitted data, CBP anticipated that this two-hour window would provide enough time for CBP to review pre-departure EEM data prior to the cargo being loaded onto trains and before the trains have been assembled. The two-hour time frame also provided CBP the opportunity to notify rail carriers or agents to revise and correct export manifest data where necessary before the cargo is loaded. This increased the chance that CBP could conduct cargo inspections before cargo is loaded and trains are assembled, avoiding costly time burdens if issues were to be addressed after the train has been constructed. The required deadline for EEM data also provided CBP an opportunity to compare any EEI submitted by the USPPI with the export manifest data to properly conduct safety and security screening for cargo departing the United States on rail.

One major improvement of the Test is that rail carriers can provide and revise export manifest data electronically on a flow basis when the export data becomes available during the export process. Typically, rail carriers provide export manifest data in documents known as bills of lading (bills), which act as a receipt and contract of transporting cargo and goods. These bills can come from a number of sources depending on which party is privy to the information and the timing of when the information is provided. A house bill contains cargo details and is issued directly by a party such as a Non-Vessel Operating Common Carrier (NVOCC) or freight forwarder. This bill acts as the receipt of exported goods and provides export manifest data at its lowest level. Carriers issue a master bill which includes all other export manifest information such as transportation details for the transporting train covering any number of house bills that are included on that train. Additionally, in the case where a NVOCC or freight forwarder is not involved in the shipment transaction and the carrier has the specific cargo data available, the carrier can issue a "simple bill," which is similar to a house bill and contains cargo details at the lowest bill level of export manifest data. In the rail environment, house bills and master bills are not typically issued because rail carriers usually issue simple bills for all cargo and then submit finalized

manifest data was not submitted within the time frames of the Test. However, CBP experienced high levels of compliance with submitting EEM data transmissions with 94 percent of all data transmissions were submitted greater than 24 hours prior to the departure time.

¹⁶ Unfortunately, CBP does not track how often manual examinations occur on average each year as these examinations are not entered into a system of record.

¹⁷ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on June 21, 2022.

¹⁸ CBP notes that although the Test requested export manifest data to be provided within certain deadlines, participants were not required to provide data within these time frames. Participants were given flexibility to provide the data to CBP electronically and were not penalized if export

train consists to CBP. These consists include the simple bills associated with all the cargo on the train and any other transportation data for the train prior to departure from the U.S. port of export. The Test allows participants to transmit these simple bills on a flow basis when the information becomes available. This differs from the baseline scenario where rail carriers typically waited for simple bills to be finalized before sending the export manifest data in the finalized train consist in a paper format to CBP for review. The transmission of EEM data, via ACE, allows for the integrated system to conduct a large portion of the review process using data validations, checks and risk assessment measures prior to the rail carriers loading cargo onto freight cars or constructing the train. Additionally, upon transmission of the pre-departure EEM data, CBP can review data on a flow basis while rail carriers provide updated data throughout the export process.

The integrated system will generate two types of holds when rail carriers transmit bills: 2H Documentation holds, which notifies the rail carriers or their agents in the integrated system of outstanding issues with the data provided, and 1H Enforcement holds, which result from risk assessment. In the instance of a 2H Documentation hold, the rail carrier or agent must add or revise the missing or incorrect reference data in order to release the hold on the cargo prior to departure from the United States. The 2H Documentation holds automatically generated by ACE do not require any action or response from CBP or CBP officers and only affect rail carriers or their agents. The integrated system assists CBP in its risk assessment efforts and the identification of high-risk cargo. If during the integrated systems risk assessment, a potential high-risk cargo is identified, then a 1H Enforcement hold is generated which requires a CBP officer to conduct a review of the export manifest data submitted.¹⁹ The rail carriers are notified of these holds through the integrated system which lets them know if a mandatory examination of the cargo and or freight car is required or if CBP needs to conduct further review of the data transmitted. These holds can be issued and addressed even after rail carriers load the cargo. If a 1H Enforcement hold is issued to a rail carrier after loading the cargo and CBP requests to inspect the cargo, the rail carrier must provide CBP with a location where CBP can

conduct a proper examination. In addition to holds, if a CBP officer determines during review that cargo or a rail car may contain a potential threat to the train and its vicinity, a Do-Not-Load (DNL) instruction is issued, which prohibits the rail carrier from transporting that cargo or rail car. The rail carrier should not transport any cargo or rail car with a DNL. The transmission of EEM data in advance would help CBP review and issue holds before cargo is loaded or before a train reaches the U.S. port of export. This transmission facilitates a more efficient export process by reducing the likelihood of a freight car or cargo being removed from a constructed train and the resulting delays when departing the U.S. port of export.

Rail carriers participating in the Test provide a number of mandatory and conditional data elements electronically to CBP via ACE. CBP determined that the selected data elements (listed below) would provide the information necessary to conduct proper cargo security enforcement. Rail carriers were already providing these data elements by the time of departure from the U.S. port of export to CBP prior to the Test but in paper form within the finalized train consists. The Test also required participating rail carriers to submit these data elements at the lowest bill level possible. The necessary data elements CBP selected during this initial phase of the Test, including empty rail cars, consisted of the following:

- (1) Mode of Transportation (containerized rail cargo or non-containerized rail cargo)
- (2) Port of Departure from the United States
- (3) Date of Departure
- (4) Manifest Number
- (5) Train Number
- (6) Rail Car Order
- (7) Car Locator Message
- (8) Hazmat Indicator (Yes/No)
- (9) 6-character Hazmat Code (conditional) (If the hazmat indicator is yes, then UN (for United Nations Number) or NA (North American Number) and the corresponding 4-digit identification number assigned to the hazardous material must be provided.)
- (10) Marks and Numbers
- (11) SCAC (Standard Carrier Alpha Code) for exporting carrier
- (12) Shipper name and address (For empty rail cars, the shipper may be the railroad from whom the rail carrier received the empty rail car to transport.)
- (13) Consignee name and address (For empty rail cars, the consignee may be

the railroad to whom the rail carrier is transporting the empty rail car.)

- (14) Place where the rail carrier takes possession of the cargo shipment or empty rail car
 - (15) Port of Unlading
 - (16) Country of Ultimate Destination
 - (17) Equipment Type Code
 - (18) Container Number(s) (for containerized shipments) or Rail Car Number(s) (for all other shipments)
 - (19) Empty Indicator (Yes/No)
- Additionally, if the rail carrier identified that the rail car is not empty (empty indicator is no), then CBP also required information for the following data elements for non-empty rail cars, as applicable:
- (20) Bill of Lading Numbers (Master and House)
 - (21) Bill of Lading Type (Master, House, Simple or Sub)
 - (22) Number of house bills of lading
 - (23) Notify Party name and address (conditional)
 - (24) AES Internal Transaction Number or AES Exemption Statement (per shipment)
 - (25) Cargo Description
 - (26) Weight of Cargo (may be expressed in either pounds or kilograms)
 - (27) Quantity of Cargo and Unit of Measure
 - (28) Seal Number
 - (29) Split Shipment Indicator (Yes/No)
 - (30) Portion of split shipment (e.g., 1 of 10, 4 of 10, 5 of 10—Final, etc.) (conditional)
 - (31) In-bond Number (conditional)
 - (32) Mexican Pedimento Number (only for shipments for export to Mexico) (conditional)

After the initial two-year period, CBP determined that the initial phase of the Test had been feasible and functional for participating rail carriers to provide EEM data and therefore CBP extended the test in 2017. At that time, CBP expanded the Test and made it available to all rail carriers and other trade members (beyond the initial nine rail carrier limit) which met the eligibility criteria.²⁰ After the first two years of the

²⁰ Limited to those parties able to electronically transmit manifest data in the identified acceptable format. Prospective ACE Export Manifest for Rail Cargo Test participants must have the technical capability to electronically submit data to CBP and receive response message sets via Cargo-ANSI X12 (also known as "Rail X12") or Unified XML and must successfully complete certification testing with their client representative. Once parties have applied to participate, they must complete a test phase to determine if the data transmission is in the required readable format. Applicants will be notified once they have successfully completed testing and are permitted to participate fully in the test. In selecting participants, CBP takes into consideration the order in which the applications are received.

¹⁹ CBP officers can also issue 1H Enforcement holds during manual review of electronic export manifest data transmitted.

Test, CBP received feedback from rail carriers from the Commercial Customs Operations Advisory Committee (COAC), which stressed that rail carriers may not have access to certain export manifest data elements requested by CBP two hours prior to loading of cargo. Therefore, CBP determined to change the filing condition for nine of the pre-departure export manifest data elements for the Test moving forward. As part of the Test extension, CBP separated EEM data elements into three categories, mandatory, conditional, and optional data, and requested this information for all cargo and empty rail cars, at least two hours prior to loading of the cargo. CBP changed the following pre-departure EEM data elements (which were originally mandatory) to optional for the Test extension.

- Mode of Transportation (containerized rail cargo or non-containerized rail cargo) (Original Data Element #1)
- Place where the carrier took possession (Original Data Element #14)
- Country of Ultimate Destination (Original Data Element #16)
- Equipment Type Code (Original Data Element #17)
- Number of house bills of lading (Original Data Element #22)
- Split Shipment Indicator (Original Data Element #29)
- Portion of split shipment (Original Data Element #30)
- Mexican Pedimento Number (Original Data Element #32)

CBP also modified the Test by changing the following data element from mandatory to conditional:

- Marks and Numbers (Data Element #10)

CBP has continuously extended or renewed the Test to gauge the functionality and feasibility of implementing the requirement of providing EEM data to CBP prior to a train's departure. CBP believes that the Test has been successful and CBP is proposing to make the transmission of pre-departure EEM data mandatory for all cargo departing the United States in the rail environment.

The ACE Export Manifest for Rail Cargo Program

This proposed rule would mandate the transmission of EEM data for all cargo prior to departing the United States in the rail environment in lieu of paper submissions, see Section VII 'Proposed Requirements' above for discussion on the regulatory requirements of this proposed rule. CBP anticipates that providing this

requirement for the transmission of pre-departure EEM data would significantly improve CBP's ability to conduct proper cargo security, prevent smuggling, and aid in facilitating a more effective and efficient trade process. Under this proposed rule, the parties most likely to have the correct data on rail export cargo would be able to provide it to CBP through ACE. The experience and knowledge CBP gained during the Test influenced CBP to change some of the requirements for providing EEM data in this proposed rule.

CBP evaluated the time frames for electronic manifest data transmission during the Test, the most important data elements needed for risk assessment and screening cargo, and the unavailability to rail carriers of certain data elements at given time frames and decided to group the rail EEM data elements based on the deadlines for submission of data and on which party likely has the correct information to provide the export manifest data. The proposed rule would allow rail carriers, carrier's agents, NVOCCs, freight forwarders, customs brokers (CHB), or anyone with direct knowledge of the export manifest data to provide specific pre-departure export manifest data to CBP, using CBP's ACE as a data transmission portal. The proposed rule mandates that a party transmitting any specific EEM data must have a bond on file with CBP. Additionally, the party that transmits any EEM data electronically to CBP is also the responsible party for addressing any questions, issues, instructions or holds resulting from CBP's review of that specific data. Therefore, CBP would require that any party transmitting EEM data to CBP provide a telephone number and email address that the party monitors 24 hours per day and seven days a week to quickly address any instructions or holds that CBP issues.

To improve CBP's risk assessment and screening efforts using pre-departure EEM data, this proposed rule would require an initial filing of seven mandatory data elements, which must be transmitted to CBP by any eligible party at least 24 hours prior to the departure from the U.S. port of export. The rail carrier is responsible for providing the initial filing data elements to CBP if no other eligible party elects to transmit the data. Eligible parties should transmit all other pre-departure EEM data elements to CBP no later than two hours prior to departure from the U.S. port of export, except for data on empty containers which would be required upon assembly of the train. From CBP's experience during the Test, CBP does not anticipate that changing the time frames for data transmission in

this proposed rule would cause any data transmission issues for parties submitting the information.²¹ Depending on the party providing the EEM data, the required export data may be available at different points in time during the export rail transaction process. Some rail carriers would have the export manifest data available days in advance prior to departure and therefore would have all the necessary information to submit the initial filing data to CBP and all other export manifest data well in advance of the 24-hour and 2-hour prior to departure deadlines.²² CBP anticipates that all rail carriers would likely obtain the necessary export data elements to provide the required transportation and cargo EEM data within the two-hour prior to departure deadline.²³ However, for some rail carriers acquiring the necessary data for the initial filing 24 hours prior to departure may require a change in business practices and additional coordination with other trade members or parties that have the required export manifest data. CBP does not believe that in such instances the export manifest data does not exist rather, the other trade members have not yet provided this information to the rail carrier.²⁴ CBP expects that in such instances the costs to rail carriers to obtain this information from other trade members a few hours earlier would be minimal. Additionally, if other trade members are reluctant to provide this information to rail carriers within the 24-hour prior to departure deadlines, the other trade members would be able to provide this data to CBP directly as participant in the rail EEM process.

CBP notes that during the Test, participants were already providing most of the data required in the initial filing well in advance of departure and within the 24 hours prior to departure time frame.²⁵ CBP expects that rail carriers and other trade members would

²¹ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on June 21, 2022.

²² CBP obtained feedback and information from Trade members on when in the export transaction process, the export manifest data is typically available for them to submit to CBP. Information obtained in February 2023.

²³ CBP obtained feedback and information from Trade members on when in the export transaction process, the export manifest data is typically available for them to submit to CBP. Information obtained in February 2023.

²⁴ Information provided during discussion with some Trade members in regard to the timeline for when export manifest data is available to provide to CBP and challenges to providing pre-departure data well in advance. Data obtained in February 2023.

²⁵ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on August 2, 2022.

have access to most export manifest data early in the planning stages of an export rail cargo transaction and would be able to comply with these time frames. Additionally, participating parties would be able to transmit EEM data to CBP on a flow basis whenever it becomes available to help facilitate CBP's review of the export data and the overall export process. CBP anticipates that these time frames would provide CBP adequate time to perform proper risk assessment and identify any cargo CBP should examine, early enough in the supply chain to enhance security while minimizing disruption to the flow of goods. Upon submission of the initial filing, CBP would validate or notify the responsible party of any holds or DNLs. The party that transmits the data is responsible for providing answers and updates on the data to CBP but the ultimate responsibility to load, hold, or not load cargo falls on the rail carrier.

The seven data elements CBP selected for the initial filing were mandatory data elements in the Test; however, CBP revised the descriptions of these elements in this proposed rule to provide additional clarity on the data required. The initial filing data elements required in this proposed rule include the following, listed as well are the data elements' corresponding descriptions during the Test:

(1) Bill of lading number,
(2) The numbers and quantities of the cargo laden aboard the train as contained in the carrier's bill of lading, either master or house, as applicable (this means the quantity of the lowest external packaging unit; the numbers or quantities of containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons [Test data element of Quantity of Cargo and Unit of Measure],

(3) Total weight of cargo expressed in pounds or kilograms [Test data element of Weight of Cargo (may be expressed in either pounds or kilograms)],

(4) A precise cargo description (or the Harmonized Tariff Schedule (HTSUS) number(s) to the 6-digit level under which the cargo is classified if that information is received from the shipper and weight of the cargo); or for a sealed container, the shipper's declared description and weight of the cargo (generic descriptions, specifically those such as "FAK" ["freight of all kinds"], "general cargo", and "STC" ["said to contain"] are not acceptable) [Test data element of Cargo Description],

(5) The shipper's complete name and address, or identification number, from the bills of lading (for each house bill in

a consolidated shipment) [Test data element of Shipper name and address],

(6) The consignee's complete name and address, or identification number, from the bill(s) of lading (The consignee is the party to whom the cargo will be delivered in a foreign country. However, in the case of cargo shipped "to order of [a named party]," the "to order" party must be named as the consignee; and if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party's identity and contact information including address in the "Notify party" field.) [Test data element of Consignee name and address], and

(7) AES Exemption Statement, as applicable [Test data element AES Exemption Statement (per shipment)].

In this proposed rule, CBP groups the remaining rail EEM data elements based on CBP's understanding of which parties may have the best knowledge of the export manifest data elements. CBP categorizes these remaining data elements as export manifest transportation data, export manifest cargo data, and empty container data. According to this proposed rule, the rail carrier or its agent is responsible for transmitting to CBP the EEM data on any empty container rail cars.²⁶ This data must be submitted electronically no later than the time of assembly of the train. For EEM transportation data, the rail carrier or its agent must also transmit this data at least two hours prior to departure from the U.S. port of export. The rail carrier or its agent is responsible for providing the following EEM transportation data elements to CBP in this proposed rule:

Mandatory Elements

- (1) Port of departure from the United States
- (2) Date of departure
- (3) Estimated time of departure
- (4) Carrier-assigned conveyance name, equipment number and trip number
- (5) Train Consist, which includes: (A) manifest number, (B) train number, (C) rail car order, and (D) empty containers (if applicable)
- (6) The rail carrier identification SCAC code (the unique Standard Carrier Alpha Code assigned for each carrier by the National Motor Freight Traffic Association; *see* § 4.7a(c)(2)(iii) of this chapter)

²⁶ If applicable, empty container rail car data would be included in the Train Consist data element of the mandatory data elements for transportation data. Empty containers are listed in the train consist and do not require any additional data to be provided as per this proposed rule.

- (7) Container or equipment numbers (for containerized shipments) or Rail Car Numbers (for all other shipments)

Conditional Elements

- (1) 6-character Hazmat Code. (If the Hazmat indicator is yes, then UN (for United Nations Number) or NA (North American Number) and the corresponding 4-digit identification number assigned to the hazardous material must be provided)
- (2) Marks and numbers
- (3) Seal number (only required if container was sealed.)²⁷

Optional Elements

- (1) Mode of transportation (containerized rail cargo or non-containerized rail cargo)
- (2) Equipment type code
- (3) Place where the rail carrier takes possession of the cargo shipment or empty rail car

CBP provides additional flexibility in this proposed rule by allowing any eligible party with the most direct information to provide EEM cargo data to CBP two hours prior to departure from the U.S. port of export. However, the rail carrier or its agent may also elect to transmit the mandatory EEM cargo data and in the case that no other party elects to provide the required EEM cargo data, it is the rail carrier's responsibility to provide this EEM cargo data to CBP.²⁸ The following data elements comprise the CBP-requested EEM cargo data for rail EEM in this proposed rule. CBP notes that if the data was provided during the initial filing it does not need to be transmitted again unless there were updates or changes made to the data.

Mandatory Elements

- (1) Shipper name and address (For empty rail cars, the shipper may be the railroad from whom the rail carrier received the empty rail car to transport.)
- (2) Consignee name and address (For empty rail cars, the consignee may be the railroad to whom the rail carrier is transporting the empty rail car.)
- (3) Port of lading
- (4) Port of unloading
- (5) Bill of lading type (Master, House, Simple or Sub)

²⁷ The seal numbers for all seals affixed to containers and/or rail cars to the extent that CBP's data system can accept this information (for example, if a container has more than two seals, and only two seal numbers can be accepted through the system per container, electronic presentation of two of these seal numbers for the container would be considered as constituting full compliance with this data element).

²⁸ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on June 21, 2022.

- (6) Bill of lading numbers (Master, House, Simple or Sub)
- (7) AES Internal Transaction Number or In-bond number (per shipment)
- (8) Cargo description
- (9) Weight of cargo (may be expressed in either pounds or kilograms)
- (10) Quantity of cargo and unit of measure

Conditional Elements

- (1) In-bond type
- (2) Notify party name and address
- (3) Secondary notify party name and address

Optional Elements

- (1) Mexican Pedimento Number (only for shipments for export to Mexico)
- (2) Secondary notify party SCAC
- (3) Country of ultimate destination
- (4) Number of house bills of lading

After participants transmit the EEM cargo and transportation data to CBP via ACE, CBP would validate or notify the responsible party of any holds. Additionally, a CBP officer would review the finalized train consist prior to the train's departure from the U.S. port of export. CBP anticipates that obtaining this data through the integrated system would help CBP work with rail carriers and other parties to address almost all issues identified during the CBP review before the train reaches the U.S. port of export and possibly some before loading of the cargo. This would significantly reduce any delays at the U.S. port of exports from instances where CBP officers conduct review and address issues while the train is at the U.S. port of export. CBP anticipates that through the obtaining of pre-departure rail EEM data, CBP officers would be able to conduct the appropriate risk assessment and screening and complete their review of all export manifest data prior to a train's arrival at the U.S. port of export.²⁹

In the initial Test, CBP requested that 32 data elements be submitted two hours prior to the cargo loading. The experience gained during the Test has allowed CBP to revise which data elements should be mandatory, conditional, optional, and unnecessary. Of the original 32 data elements put forth in the initial Test, five data elements were determined by CBP to be unnecessary and CBP no longer requests these EEM data elements in this proposed rule. CBP lists these below.

- (1) Car Locator Message
- (2) Empty Indicator (yes/no)

²⁹ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on November 8, 2022.

- (3) Hazmat Indicator
- (4) Split Shipment Indicator (Yes/No)
- (5) Portion of split shipment (e.g., 1 of 10, 4 of 10, 5 of 10—Final, etc.)

As an enforcement tool, this proposed rule provides CBP with authority to impose liquidated damages on parties that do not provide the mandatory EEM data in the manner and in the time frame required. CBP retains the enforcement discretion to assess liquidated damages when a violation occurs. Any party that violates the requirements for data transmission as described above in this proposed rule is subject to pay liquidated damages of \$5,000 for each violation and up to a maximum of \$100,000 per departure. Although there is the possibility for liquidated damages, compliance is CBP's goal and CBP aspires to work alongside rail carriers and other parties to ensure that trade members provide the proper data in a timely manner, so that CBP can properly review the data, conduct risk assessment of high-risk shipments, and enforce U.S. export laws and regulations on U.S. rail exports.³⁰

Time Periods of Analysis

This analysis primarily focuses on the potential impacts of this proposed rule after it would be in effect, but it also includes a discussion of the impacts during the Test that is in place before the proposed rule is finalized. The costs, cost savings and benefits of the Test are sunk (already incurred and cannot be recovered) for the purposes of deciding whether to proceed with the proposed rule, but they are important for understanding the full costs and benefits of implementing the rail EEM as a whole. To give the reader a full view of the effects of CBP's requiring rail EEM data through the entire span of time, CBP analyzes the effects of implementing rail EEM collection over two time periods comparing each time period to the baseline scenario that existed prior to the rail EEM test. First, CBP analyzes the effects from Test used for the collection of pre-departure manifest data on rail exports during the pilot period, fiscal years 2016–2025.³¹ Second, CBP analyzes the effects of the proposed rule when CBP assumes it

³⁰ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on June 21, 2022.

³¹ CBP anticipates that the Test would still be active until fiscal year 2026 when the proposed rule would be finalized; however, at the time this analysis was written CBP only had actual data up through fiscal year 2023. Therefore, CBP provides estimates, not actual data, for the fiscal years 2024 and 2025 in this analysis. CBP compares the costs, cost savings and benefits during the Test to the baseline scenario, CBP assumes these effects to be sunk and are not incremental to this rule.

would be implemented as a final rule which would mandate the transmission of EEM data in the rail environment during the five-year regulatory period, beginning in fiscal year 2026 and ending in fiscal year 2030. For the regulatory period, CBP estimates, to the extent data is available, the additional total projected costs, cost savings and benefits to the Federal Government, rail carriers and other trade members as a result of requiring the transmission of EEM data for trains departing the United States, compared to the baseline scenario. In the analysis for this proposed rule, CBP defines the pilot period as fiscal years 2016–2025 and the regulatory period as fiscal years 2026–2030. At the conclusion of the analysis, CBP includes tables showing the effects of the proposed rule across both periods—effectively showing the full results of the pilot and the proposed rule against the baseline (the world without the rail EEM test). While CBP provides information about the two time periods separately for full transparency and to make clear which costs are sunk and which are incremental to this proposed rule, CBP also sums the two time periods for a full accounting of the effects of the rail EEM program as a whole. Additionally, all references to years are for fiscal years unless otherwise noted.

Population Affected by Rule

CBP expects that this proposed rule would affect a number of different parties. During the regulatory period, as the transmitting of EEM data expands, CBP expects broader effects on rail carriers, other trade members (such as USPPIs, FPPIs, NVOCCs, freight forwarders, Customhouse Brokers (CHB), or other parties with knowledge of manifest data elements), CBP, and other government agencies that oversee U.S. exports. CBP expects that this proposed rule would affect all seven rail carrier companies currently exporting cargo from the United States by rail. Although CBP does not have the necessary data to provide an exact estimate for how many other trade members this proposed rule would affect, CBP acknowledges that this proposed rule could result in some minor effects to a large number of other trade members, specifically in case they elect to provide EEM cargo data directly to CBP via ACE. CBP expects that this proposed rule would also improve the facilitation of the export process at around 68 U.S. ports of export, currently conducting the exportation of goods from the United States in the rail environment.

Because the Test was limited in scope, the effects were largely experienced by a few rail carriers, possibly some other trade members and CBP during the pilot period. Although CBP only made the initial Test available to nine carriers, CBP then extended the test to all eligible parties; however, only two rail carriers actively participated in the Test. The two rail carriers participating in the rail EEM test have similar business characteristics to the remaining rail carriers that would be affected by this proposed rule. All are large carriers that operate internationally. Therefore, CBP anticipates that the effects on the rail carriers participating in the rail EEM Test accurately represents the effects that the remaining rail carriers would experience from this proposed rule. CBP requests comment on this matter.

Rail EEM Test Data and Export Rail Projections

CBP was able to identify the number of export manifest data transmissions and train consists transmitted electronically by participating rail carriers during the Test from 2016–2023. Because CBP’s pilot period includes future years, CBP does not have actual Test data available for 2024 and 2025. To address this issue CBP had to provide estimates the final two years of the pilot period. These estimates are based on actual data in previous years. From 2016–2023 rail EEM test participants provided a total of 1,563,694 export manifest data transmissions and 10,308 train consists electronically to CBP via ACE.³² To estimate the number of export manifest data transmissions that would occur during the final two years of the pilot

period CBP used the average number of rail EEM data transmissions from 2017–2023 (211,225) and the average number of train consists submitted electronically to CBP from 2021–2023 (2,911).³³ According to CBP’s projections for the final two years of the pilot period and the actual data obtained (2016–2023), CBP expects that during the entire pilot period rail EEM test participants would submit around 1,986,143 export manifest data transmissions and 16,129 electronic train consists. Total electronic data transmissions to CBP from participants in the rail EEM test would be 2,002,276 during the pilot period.³⁴ Table 2 below displays CBP’s actual and estimated number of export manifest data transmissions and train consists submitted electronically to CBP during the pilot period.

Table 2. Rail EEM Test Data and Pilot Period Estimates

Pilot Period	EEM Data Transmissions	EEM Train Consists Submitted	Total Data Transmissions
2016	85,122	-	85,122
2017	218,235	308	218,543
2018	224,518	-	224,518
2019	219,413	159	219,572
2020	183,070	1,109	184,179
2021	200,963	2,601	203,564
2022	223,793	2,912	226,705
2023	208,580	3,219	211,799
2024*	211,225	2,911	214,137
2025*	211,225	2,911	214,137
Total	1,986,143	16,129	2,002,276

*Pilot period years with estimated not actual values.

Unfortunately, outside of the limited EEM data provided by Test participants, all other export rail data (excluding data for EEI requirements) submitted by rail carriers was on paper forms and therefore CBP was unable to obtain actual rail export volumes (by train or by train car). Therefore, CBP used train import volume data as a proxy for train export volume data to calculate the possible number of EEM data

transmissions as a result from this proposed rule during the regulatory period. CBP anticipates that the number of train cars entering the United States with rail imports is likely comparable to the number of train cars exiting the United States for rail exports.³⁵ CBP used existing internal data on inbound train cars to project the volume of outbound train cars during the final two years of the pilot period and the

regulatory period. Inbound train car volumes have been largely consistent from 2017–2023 and CBP anticipates that on average, rail volume should remain relatively constant in future years as compared to the volumes recorded over the past seven years.

CBP estimates that from 2016–2023 there were a total of around 35.6 million train cars departing the United States, or

³² Information provided by CBP’s Cargo and Conveyance Security, Office of Field Operations, subject matter expert on December 6, 2022, and May 10, 2024. Data obtained from CBP’s ACE.

³³ CBP excluded 2016 from the average for export manifest data transmissions due to lack of participation in that year. CBP used only three years of data 2021–2023 for the electronic train consists

transmitted, because these were the only full years of data during the pilot period when all train consists were actually transmitted by participating rail carriers in the Test.

³⁴ This number represents the total number of electronic transmissions sent to CBP by rail EEM test participants (export manifest data transmissions + electronic train consists).

³⁵ Information provided by CBP’s Cargo and Conveyance Security, Office of Field Operations, subject matter expert on June 21, 2022. CBP used car volume instead of train volume because import volumes by train would be inaccurate since they tracked by rail car fee payments which are capped per year.

on average 4.4 million each year.³⁶ Because CBP anticipates that the outbound train volume will remain relatively constant during future years, CBP used the average number of estimated outbound train cars during 2017–2023 (4.19 million) for the number of expected outbound train cars for each future year.³⁷ Although CBP has data available on the number of train cars, CBP does not know how many actual trains would engage in exporting goods in the rail environment during the regulatory period. Therefore, CBP does not know exactly how many train consists rail carriers would submit requiring a CBP officer to review each year during the regulatory period. To provide an estimate for how many train departures would likely be involved in

exporting goods in the rail environment during the regulatory period, CBP used 2021, 2022 and 2023 Test data on the number of simple bills transmitted compared to the number of train consists transmitted. Over the course of these three years a total of 633,336 simple bills and 8,732 train consists were electronically transmitted to CBP as part of the Test, or on average approximately 72.5 simple bills per train consist.³⁸ CBP used this ratio of simple bills (train cars) to train consists (trains) and the expected outbound train cars to estimate the total number of trains that would transmit electronic train consists when exporting goods from the United States during future years.

CBP anticipates that each year during the regulatory period, approximately 4,191,807 train cars and 57,794 trains would depart the United States with export goods requiring the transmission of export manifest data. In total CBP expects that during the regulatory period, rail EEM participants would transmit approximately 21,248,006 data transmissions to CBP or around 4,249,601 annually. Table 3 below displays CBP's estimate for total outbound train cars and trains during 2016–2023 and projected outbound train cars and trains for the final two years of the pilot period and the regulatory period, and the estimated total EEM data transmissions during the regulatory period.

Table 3. Estimated Outbound Rail Volume and Regulatory Period Rail EEM Data Transmissions³⁹

Year	Total Cars	Estimated Cars per Train	Estimated Train Departures	Regulatory Period Data Transmissions
Pilot Period				
2016	5,776,802	72.5	79,647	
2017	4,061,164	72.5	55,993	
2018	4,189,839	72.5	57,767	
2019	4,423,305	72.5	60,986	
2020	4,026,695	72.5	55,518	
2021	4,217,447	72.5	58,148	
2022	4,304,395	72.5	59,346	
2023	4,119,807	72.5	56,801	
2024*	4,191,807	72.5	57,794	
2025*	4,191,807	72.5	57,794	
Total	43,503,069		599,793	
Regulatory Period				
2026	4,191,807	72.5	57,794	4,249,601
2027	4,191,807	72.5	57,794	4,249,601
2028	4,191,807	72.5	57,794	4,249,601
2029	4,191,807	72.5	57,794	4,249,601
2030	4,191,807	72.5	57,794	4,249,601
Total	20,959,037		288,969	21,248,006

*Pilot period years with estimated not actual values.

³⁶ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on December 6, 2022, and May 9, 2024. Data obtained from CBP's Borderstat and OMR databases on inbound rail statistics from FY 2017–FY 2023.

³⁷ Inbound rail volume decreased significantly between 2016 to 2017 and volume remained relatively the same between 2017–2023. Therefore, CBP omitted the 2016 inbound rail volumes for the

estimate for the regulatory period volume because CBP believes this would have skewed the annual volume upward.

³⁸ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on December 6, 2022, and May 10, 2024. Data obtained from CBP's ACE. CBP used only three years of data 2021–2023, because these were the only full years of data during the pilot period when all train consists were actually

transmitted by participating rail carriers in the Test. Additionally, CBP notes that most of the time the ratio of a simple bill to train car is 1 to 1, however a simple bill could be submitted for multiple train cars or vice versa. Because CBP only knows the number of simple bills transmitted during the Test and not the number of train cars, CBP assumes in this analysis that the ratio of a simple bill to train car is 1 to 1, essentially the number of simple bills represents the number of train cars.

In addition to the number of export manifest data transmissions and train consists submitted electronically from 2016–2023, CBP also obtained information from the Test on the number of 2H Documentation and 1H Enforcement holds that were issued during these years. According to CBP internal data as part of the rail EEM test from 2016–2023 CBP issued a total of 31,202 2H Documentation holds and 795 1H Enforcement holds.⁴⁰ To determine the number of holds that would be issued by CBP in the final two years of the pilot period CBP used the percent of export manifest data transmissions submitted that resulted in a 2H Documentation or a 1H Enforcement hold. Based on the information obtained during the Test, on average a 2H Documentation hold

was issued on approximately 3.78 percent of all export manifest data transmissions and on average a 1H Enforcement hold was issued on 0.05 percent of all export manifest data transmissions.⁴¹

To estimate the number of holds issued in 2024 and 2025 CBP multiplied the percentage of EEM data transmissions resulting in a 2H Documentation hold (3.78%) and 1H Enforcement hold (0.05%) by the expected total number of rail EEM data transmissions during 2024 and 2025 (see Table 2). CBP anticipates that during the pilot period CBP would issue around 47,375 2H Documentation holds and around 1,049 1H Enforcement holds.

CBP expects that these holds would be issued at a similar frequency during

the regulatory period. Therefore, to estimate the number of CBP holds that would be issued during the regulatory period, CBP multiplied the percentage of data transmissions that were issued 2H Documentation holds (3.78%) and 1H Enforcement holds (0.05%) by the estimated number of total data transmissions (see Table 3), for each year of the regulatory period. According to CBP's estimates, CBP would issue a total of 802,400 2H Documentation holds or on average 160,480 annually and around 11,137 1H Enforcement holds or on average 2,227 annually during the regulatory period. Table 4 displays CBP's estimates for total holds that would be issued during the regulatory period.

Table 4. Actual and Estimated Holds Issued during 2016-2030

Year	Total EEM Data Transmissions	Percent of Data Transmissions with 2H Hold	Percent of Data Transmissions with 1H Hold	2H Holds Issued	1H Holds Issued	Total Holds Issued
Pilot Period						
2016	85,122				30	30
2017	218,543				37	37
2018	224,518				34	34
2019	219,572				41	41
2020	184,179			691	353	1,044
2021	203,564			3,779	115	3,894
2022	226,705			9,281	113	9,394
2023	211,799			17,451	102	17,553
2024*	214,135	3.78%	0.05%	8,087	112	8,199
2025*	214,135	3.78%	0.05%	8,087	112	8,199
Total	2,002,272			47,375	1,049	48,424
Regulatory Period						
2026	4,249,601	3.78%	0.05%	160,480	2,227	162,707
2027	4,249,601	3.78%	0.05%	160,480	2,227	162,707
2028	4,249,601	3.78%	0.05%	160,480	2,227	162,707
2029	4,249,601	3.78%	0.05%	160,480	2,227	162,707
2030	4,249,601	3.78%	0.05%	160,480	2,227	162,707
Total	21,248,006			802,400	11,137	813,537

*Pilot period years with estimated not actual values.

³⁹ To estimate the number of total outbound train cars in future years, CBP used the average volume of train cars during the seven year period (2017–2023) = 4,191,807 annually.

⁴⁰ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations,

subject matter expert on December 6, 2022, and May 10, 2024. Data obtained from CBP's ACE.

⁴¹ Based on data from CBP's ACE tracking the total number of holds issued during the rail EEM test. 2H holds were not initially issued as complete functionality of the Test was gradually implemented. CBP notes that 2H holds were only

generated starting in 2020 and to calculate the average percent of data transmission that had a 2H hold issued CBP only used 2020–2023 data. 1H Enforcement holds were being issued during the entire Test and therefore CBP calculated the average percent of data transmissions that had a 1H hold issued using data from 2016–2023.

CBP believes that it is possible that the total number of holds could be less than these estimates during the regulatory period as rail carriers and other trade members become more familiar and efficient at providing the pre-departure EEM data, potentially improving compliance and limiting the number of holds CBP issues. CBP did not issue any DNL holds during the Test and does not expect a significant number of DNL holds to be issued during the regulatory period. If DNL holds are issued this would be an additional cost to rail carriers, who are ultimately responsible for loading and not loading cargo.

Pilot Period

Costs

CBP expects that CBP, participating rail carriers, other trade members incur some costs during the pilot period when compared to the baseline.⁴² CBP's primary cost during the pilot period was from implementing the Test EEM data tool into ACE. ACE was already in place prior to the Test; therefore, CBP did not need to develop an entirely new system. However, there were some development and ongoing systems costs to CBP during the introduction and operation of the Test. Initially, CBP incurred systems costs of approximately \$608,000 to develop and implement the Test EEM tool into ACE.⁴³ During the pilot period, CBP incurs ongoing operations and maintenance costs associated with the Test, which costs CBP on average approximately \$101,350 each year. CBP estimates that total systems costs to CBP for developing and operating the Test would be approximately \$1.6 million during the pilot period.

CBP also incurs some time burdens while conducting additional review of EEM data when compared to the

baseline. As stated earlier, in the baseline scenario the rail carriers provided export rail data to CBP all at once in the finalized train consists at or prior to departure from the United States. Therefore, under the baseline scenario, CBP was unable to review export data until the finalized train consist was submitted. During the Test, participants provide EEM data on a flow basis, so CBP is able to review the data when participants transmitted the EEM data and does not have to wait for rail carriers to finalize all the data and submit it together in the train consist. When participants transmit the EEM data to CBP via ACE, the integrated system can identify potential high-risk cargo and issue a 1H Enforcement hold, which requires manual review from a CBP officer. As discussed earlier, 2H Documentation holds generated by ACE do not require any action or response from CBP officers, therefore CBP does not anticipate any time burden to CBP when a 2H Documentation hold is issued. CBP estimates that this additional review of each 1H Enforcement hold imposes an average time burden of approximately 5 minutes (0.083 hours) to CBP officers.⁴⁴ In addition to reviewing the EEM data transmitted, CBP officers also incur time burdens when addressing and resolving 1H Enforcement holds. Depending on the complexity of the 1H Enforcement hold, the time burden to CBP officers to address and resolve these holds varies from a few minutes to a few hours if a hold requires a CBP officer to manually examine cargo or a train car.⁴⁵ CBP does not know how many issued 1H Enforcement holds result in cargo examinations during the pilot period or if the Test result in additional examinations when compared to the baseline scenario. However, CBP notes that the majority of these 1H

Enforcement holds do not result in a cargo examination and CBP officers are able to address and resolve the majority of these holds in a few minutes.⁴⁶ CBP estimates that, on average, CBP officers incur an additional time burden of 10 minutes (0.167 hours) to address and resolve each 1H Enforcement hold.⁴⁷ In total, CBP expects on average a CBP officer incurs a time burden of approximately 15 minutes (0.25 hours) to review and resolve each 1H Enforcement hold.

During the pilot period, CBP estimates that rail carriers will transmit a total of 2,002,272 EEM data submissions as part of the Test, resulting in approximately 1,049 1H Enforcement holds issued which require additional review by a CBP officer.⁴⁸ CBP calculates the time burden to CBP officers during the pilot period by multiplying the estimated number of 1H Enforcement holds (1,049) by the expected average time burden to CBP officers to review, address and resolve the average 1H Enforcement hold (15 minutes, 0.25 hours). CBP expects that CBP officers incurs a time burden of approximately 262 hours (1,049 holds × 0.25 hours) during the pilot period. CBP estimates the costs to CBP officers by multiplying the total time burden (262 hours) by the average hourly loaded rate for a CBP officer (\$101.44) = \$26,608.⁴⁹ Table 5 shows CBP's estimate for the time and cost burden to CBP officers when reviewing and resolving 1H Enforcement holds during the pilot period.

⁴⁶ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on November 8, 2022.

⁴⁷ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on November 21, 2022. Data obtained from CBP's OMR database.

⁴⁸ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on December 6, 2022 and May 10, 2024. Data obtained by CBP's ACE and based on CBP estimates for years 2024–2025.

⁴⁹ CBP bases this wage on the FY 2023 salary, benefits, premium pay, non-salary costs, and awards of the national average of CBP Officer Positions, which is equal to a GS–11, Step 10. Source: Email correspondence with CBP's Office of Finance on September 26, 2023.

⁴² Other trade members would include USPPIs, FPPIs, NVOCCs, freight forwarders, or other third parties with knowledge of manifest data elements.

⁴³ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on December 7, 2022. Rail EEM ACE cost estimates were provided by CBP's Office of Information and Technology and provided development and ongoing costs that increase at a fixed rate each year.

⁴⁴ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on August 2, 2022. 1H Enforcement holds can also be issued by CBP officers upon manual review of export manifest data.

⁴⁵ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on June 21, 2022.

Table 5. Estimated Time Burden and Costs to CBP from 1H Enforcement Holds during Pilot Period 2016-2025 (time in hours, costs in undiscounted 2023 U.S. Dollars)

Year	1H Enforcement Holds Issued	Average Time Burden	Total Time Burden	Wage Rate	Total Cost
2016	30	0.25	7.50	\$101.44	\$761
2017	37	0.25	9.25	\$101.44	\$938
2018	34	0.25	8.50	\$101.44	\$862
2019	41	0.25	10.25	\$101.44	\$1,039
2020	353	0.25	88.23	\$101.44	\$8,950
2021	115	0.25	28.74	\$101.44	\$2,916
2022	113	0.25	28.24	\$101.44	\$2,865
2023	102	0.25	25.49	\$101.44	\$2,586
2024*	112	0.25	28.05	\$101.44	\$2,846
2025*	112	0.25	28.05	\$101.44	\$2,846
Total	1,049		262		\$26,608

*Pilot period years with estimated not actual values.

In addition to CBP, rail carrier participants and some other trade members incur costs during the pilot period. The Test implements a few changes that affect rail carrier participants, such as providing advance EEM data within CBP-requested deadlines prior to cargo loading onto trains, transmitting the requested EEM data elements to CBP, and responding to and addressing any issued holds or questions from CBP about the data provided. So far during the pilot period, the participating rail carriers demonstrate very high levels of compliance with providing data within the requested deadlines of the Test, as approximately 94 percent of EEM data provided to CBP was transmitted on time.⁵⁰ From 2016–2023, the participating rail carriers electronically transmitted a total of 1,574,002 EEM data submissions, including 1,563,694 simple bills and 10,308 train consists, representing around 4 percent of all estimated export manifest data submissions.⁵¹

Since CBP requests that rail carriers participating in the Test continue to provide the paper forms in addition to the EEM data, these rail carriers incur an additional time burden to submit the new electronic data during the Test. CBP estimates that on average rail carriers incur a time burden of approximately 40 minutes (0.667 hours) per train to transmit the EEM data.⁵² Unfortunately, CBP does not have data on the exact number of total trains for which the participating rail carriers provide electronic data during the pilot period.⁵³ Therefore, to provide an estimate, CBP used 2021–2023 data from the Test on the number of simple bills transmitted compared to the number of train consists transmitted.⁵⁴

export manifest data submissions during the pilot period by accounting for if all export manifest data were transmitted electronically and by assuming one simple bill per estimated departing train car and one train consist per departing train, based on the volume of inbound train cars and CBP's estimate for the number of simple bills (train cars) per train.

⁵² Information was obtained from feedback and discussions with Trade members on the potential impacts of providing EEM data in addition to the paper forms. Data obtained in February 2023.

⁵³ Rail EEM test participants didn't start providing the train consists electronically to CBP on a consistent basis until 2021, therefore CBP does not know how many actual trains had electronic data transmitted to CBP earlier in the pilot period.

⁵⁴ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on December 6, 2022, and May 10, 2024. Data obtained from CBP's ACE. CBP used only three years of year of data 2021–2023, because these were the only full years of data during the pilot period when all train consists were actually transmitted by participating rail carriers in the Test.

Over the course of these years rail carriers electronically transmitted to CBP a total of 633,336 simple bills and 8,732 train consists as part of the Test, or on average approximately 72.5 simple bills per train consist. CBP used this ratio of simple bills (train cars) to train consists (trains) and the total estimated number of simple bills that would be transmitted during each year of the pilot period (2016–2025) to estimate the total number of trains for which rail carriers will transmit electronic export manifest data to CBP. According to CBP's estimates, there will be approximately 27,384 trains that will have EEM data transmitted to CBP when departing the United States. Assuming that the Test participants will transmit EEM data for approximately 27,384 trains, CBP estimates that these rail carrier participants incur a time burden of 18,256 hours for transmission purposes (27,384 trains × 0.667 hours). To estimate the time burden costs, CBP multiplied the time burden hours by the average hourly loaded wage rate for exporters (\$35.62).⁵⁵ CBP estimates that,

⁵⁵ Source of median wage rate: U.S. Bureau of Labor Statistics, Occupational Employment and Wage Statistics, "May 2022 National Occupational Employment and Wage Estimates United States." Updated April 25, 2023. Available at https://www.bls.gov/oes/2022/may/oes_nat.htm. Accessed August 21, 2023. The total compensation to wages and salaries ratio is equal to the total compensation cost per hour worked for Office and Administrative Support occupations (\$32.52) divided by the wages and salaries cost per hour worked for the same occupation category (\$22.01). See "Table 2. Employer Costs for Employee Compensation for civilian workers by occupational and industry group." Bureau of Labor Statistics, "Employer Costs

Continued

⁵⁰ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on June 21, 2022.

⁵¹ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on December 6, 2022 and May 10, 2024. Data obtained from CBP's ACE, Borderstat and OMR databases. CBP notes that most of the time the ratio of a simple bill to train car is 1 to 1, however a simple bill could be submitted for multiple train cars or vice versa. Because CBP only knows the number of simple bills transmitted during the Test and not the number of train cars, CBP assumes in this analysis that the ratio of a simple bill to train car is 1 to 1, essentially the number of simple bills represents the number of train cars. CBP determined the number of total

during the pilot period when submitting the EEM data to CBP, Test participants incur a total cost of around \$650,273 or on average \$65,027 annually. Table 6

below displays CBP's estimate for the number of trains that depart the United States and provide EEM data, the estimated time burden and costs to rail

carriers during each year of the pilot period.

Table 6. Estimated Time Burden and Costs to Rail Carriers when Providing EEM to CBP during Pilot Period 2016-2025 (undiscounted 2023 U.S. Dollars)

Year	Simple Bills Transmitted	Estimated Simple Bills per Train	Estimated Train Departures	Time Burden per Train Departure	Total Time Burden	Wage Rate	Total Cost
2016	85,122	72.5	1,174	0.67	782	\$35.62	\$27,869
2017	218,235	72.5	3,009	0.67	2,006	\$35.62	\$71,451
2018	224,518	72.5	3,096	0.67	2,064	\$35.62	\$73,508
2019	219,413	72.5	3,025	0.67	2,017	\$35.62	\$71,837
2020	183,070	72.5	2,524	0.67	1,683	\$35.62	\$59,938
2021	200,963	72.5	2,771	0.67	1,847	\$35.62	\$65,796
2022	223,793	72.5	3,086	0.67	2,057	\$35.62	\$73,271
2023	208,580	72.5	2,876	0.67	1,917	\$35.62	\$68,290
2024*	211,225	72.5	2,912	0.67	1,941	\$35.62	\$69,156
2025*	211,225	72.5	2,912	0.67	1,941	\$35.62	\$69,156
Total	1,986,143		27,384		18,256		\$650,273

*Pilot period years with estimated not actual values.

CBP expects that rail carriers participating in the Test and other trade members also face time burdens and costs when responding to 2H Documentation holds and 1H Enforcement holds. According to CBP internal data and estimates for 2024 and 2025, during the pilot period, CBP will issue a total of 47,375 2H Documentation holds and 1,049 1H Enforcement holds. CBP has not issued any DNL instructions during the Test.⁵⁶ By the end of 2023, rail carriers have shown high rates of compliance and responsiveness to CBP holds during the Test, with over 99.8% of holds being resolved and cargo released.⁵⁷ CBP expects that the time burden to respond

to each hold depends on the complexity of the issue and if the hold results in an examination of cargo which would be more time consuming. When responding to holds, if a rail carrier does not have the necessary information and needs to obtain the data from another trade member, that would also impose a time burden on the other trade member. CBP believes that on average the overall time burden to trade (rail carriers and other trade members) when reviewing and addressing these holds is approximately 12.5 minutes (0.21 hours) per hold.⁵⁸ Based on CBP Test data and estimates for 2024 and 2025, there will be a total of 48,424 holds issued during the pilot period (see Table 4) and CBP

estimates these holds will impose a time burden to trade of around 10,088 hours (48,424 holds × 0.21 hours per hold). CBP estimated the cost to trade by multiplying the total expected hours spent reviewing and addressing holds (10,088) by the average hourly loaded wage rate for exporters (\$35.62). CBP expects that during the pilot period reviewing and addressing holds issued by CBP cost trade approximately \$359,350 or on average \$35,935 annually. Table 7 shows CBP estimates for the total number of holds issued, the estimated time burden and costs to rail carriers during each year of the pilot period.

for Employee Compensation—December 2022.” Released March 17, 2023. Available at <https://www.bls.gov/news.release/archives/eccec03172023.pdf>. Accessed August 29, 2023. CBP assumes an annual growth rate of 7.01% based on the prior year's change in the implicit price deflator, published by the Bureau of Economic Analysis. To adjust to 2023 dollars, multiply by the 2021–2022 percent change in the Bureau of Economic Analysis's Implicit Price Deflators for Gross Domestic Product (127.224/118.895–1). See “Table 1.1.9. Implicit Price Deflators for Gross Domestic Product,” Line 1 Gross Domestic Product, annual. Bureau of Economic Analysis. Updated

August 30, 2023. Available at [⁵⁶ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on December 6, 2022, and May 10, 2024.](https://apps.bea.gov/iTable/?reqid=19&step=2&isuri=1&categories=survey#eyJhcHBpZC16MTksInN0ZXBzIjpbMSWYLDMSM10sImRhGEiOlthImNhdGVnb3JpZXMiLCJTdXJ2ZXkiXSxbIk5JUEFfVGFibGVVVGZdClslJzI0sWyJCaXJzdF9ZZWFyYiwiMjAxNiJdLFsiTGZzdF9ZZWFyYiwiMjAyMyJdLFsiU2NhbgUiLCJlIiw0sWyJTZXJpZXMiLCJBIll1dQ==. Accessed September 20, 2023.</p>
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⁵⁷ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on June 21, 2022, and May 10, 2024. Data obtained from CBP's ACE.

⁵⁸ Data obtained from CBP discussion with Trade members on the potential costs to review and resolve holds issued by CBP in response to EEM data transmitted. Time burdens vary greatly depending on the complexity of the issue; CBP took this into consideration when calculating the average time burden to review and address an issued hold. Data obtained in February 2023.

Table 7. Estimated Time Burden and Costs to Rail Carriers Responding to CBP Issued Holds during Pilot Period 2016-2025 (time in hours, costs in undiscounted 2023 U.S. Dollars)

Year	2H Documentation Holds Issued	1H Enforcement Holds Issued	Average Time Burden	Total Time Burden	Wage Rate	Total Cost
2016		30	0.21	6.3	\$35.62	\$223
2017		37	0.21	7.7	\$35.62	\$275
2018		34	0.21	7.1	\$35.62	\$252
2019		41	0.21	8.5	\$35.62	\$304
2020	691	353	0.21	217.5	\$35.62	\$7,747
2021	3,779	115	0.21	811.3	\$35.62	\$28,897
2022	9,281	113	0.21	1957.1	\$35.62	\$69,711
2023	17,451	102	0.21	3656.9	\$35.62	\$130,258
2024*	8,087	112	0.21	1708.1	\$35.62	\$60,841
2025*	8,087	112	0.21	1708.1	\$35.62	\$60,841
Total	47,375	1,049		10,088		\$359,350

*Pilot period years with estimated not actual values.

From the Test, CBP does not know to what extent obtaining pre-departure EEM data improves CBP's enforcement, resulting in identifying additional high-risk cargo or other compliance issues, beyond what CBP would have identified prior to the Test. CBP notes that for all pre-departure EEM that was transmitted to the Test, CBP was able to use ATS for risk assessment compared to the baseline scenario where CBP was only able to use ATS on a very limited number of export cargo data in the rail environment.⁵⁹ If CBP identifies more high-risk cargo as a result of the Test, that may result in larger time burdens on rail carriers to respond to and address CBP requests for cargo examination.

During the pilot period, rail carriers that voluntarily participate in the Test, incur costs to adjust and maintain their IT systems to interact with CBP's ACE and provide the required pre-departure EEM data to CBP. The EEM data requirements are very similar to data

requirements for advance electronic import manifest data required during the import process.⁶⁰ Because rail carriers have already developed systems for those electronic processes at import, Test participants do not need to develop entirely new IT systems to transmit EEM data for the Test, but rather rail carriers make adjustments to their already existing internal systems.⁶¹ As rail carriers already have systems to interface with ACE for import filings, among other things, systems needed to be modified rather than developed. In addition, rail carrier employees who file information for imports are typically the same who file for export. The cost of adjusting and maintaining internal systems to support providing EEM data to CBP can vary depending on the rail carrier or trade member. Therefore, CBP provides a range of estimates for the internal system costs to the average Test participant during the pilot period. CBP anticipates that the annual internal systems costs required to participate in

the Test could range from \$10,000 to \$60,000 each year.⁶² CBP used the midpoint within the range, \$35,000, as CBP's primary estimate for annual internal systems costs to the average rail carrier participating in the Test. As alternate estimates, CBP used a low estimate of \$10,000 and the high estimate of \$60,000 for the annual internal systems costs per year. According to CBP's primary estimate, the two Test participants will incur approximately \$700,000 in total costs to adjust and maintain their internal systems for providing electronic export manifest data to CBP during the pilot period. CBP's alternate low and high estimate show that internal systems total costs to the two rail carriers will be between \$200,000 and \$1,200,000 during the pilot period. Table 8 displays CBP's range of cost estimates for annual internal systems costs to the two rail carrier participants during the pilot period.

⁵⁹ CBP can only use ATS on electronically transmitted data; therefore, because the majority of export manifest data provided to CBP prior to this proposed rule was submitted in paper and or via email, CBP was not able to use ATS to screen any cargo associated with these paper forms.

⁶⁰ Data obtained from feedback provided by Trade members on similarities between providing

electronic import manifest data and the requested EEM. Data obtained in December 2022 and February 2023.

⁶¹ Data obtained from feedback provided by Trade members on potential necessary development, adjustments and maintenance of existing internal systems to support providing EEM to CBP via ACE.

Data obtained in December 2022 and February 2023.

⁶² Data was obtained from feedback from Trade members on the potential costs to internal systems to support providing EEM to CBP via ACE. Data was obtained in December 2022 and February 2023.

Table 8. Estimated Systems Costs to Rail Carriers during Pilot Period 2016-2025 (undiscounted 2023 U.S. Dollars)

Year	Primary Estimate (\$35,000)	Low Estimate (\$10,000)	High Estimate (\$60,000)
2016	70,000	20,000	120,000
2017	70,000	20,000	120,000
2018	70,000	20,000	120,000
2019	70,000	20,000	120,000
2020	70,000	20,000	120,000
2021	70,000	20,000	120,000
2022	70,000	20,000	120,000
2023	70,000	20,000	120,000
2024	70,000	20,000	120,000
2025	70,000	20,000	120,000
Total	700,000	200,000	1,200,000

CBP estimates that total overall costs from the Test during the pilot period will be approximately \$3.6 million or on average \$335,767. Total estimated costs to CBP and trade as a result of the Test

are displayed below in Table 9. CBP estimates that during the pilot period CBP will incur costs of approximately \$1.6 million or on average \$164,805 annually. According to CBP's primary

estimate for total costs to trade from participating in the Test during the pilot period, costs will be approximately 1.7 million or on average \$170,962 annually.

Table 9. Estimated Total Costs during Pilot Period 2016-2025 (undiscounted 2023 U.S. Dollars)

Year	CBP Systems Costs	CBP Review and Address Holds	Total CBP Costs	Trade Costs to Provide EEM	Trade Review & Address Holds	Trade Systems Costs	Total Trade Costs	Total Costs
2016	\$700,868	\$761	\$701,629	\$27,869	\$223	\$70,000	\$98,092	\$799,721
2017	\$94,690	\$938	\$95,628	\$71,451	\$275	\$70,000	\$141,726	\$237,354
2018	\$96,489	\$862	\$97,351	\$73,508	\$252	\$70,000	\$143,761	\$241,112
2019	\$98,322	\$1,039	\$99,361	\$71,837	\$304	\$70,000	\$142,141	\$241,503
2020	\$100,190	\$8,950	\$109,140	\$59,938	\$7,747	\$70,000	\$137,685	\$246,825
2021	\$102,094	\$2,916	\$105,010	\$65,796	\$28,897	\$70,000	\$164,693	\$269,703
2022	\$104,034	\$2,865	\$106,899	\$73,271	\$69,711	\$70,000	\$212,982	\$319,881
2023	\$106,115	\$2,586	\$108,701	\$68,290	\$130,258	\$70,000	\$268,548	\$377,249
2024*	\$108,237	\$2,846	\$111,083	\$69,156	\$60,841	\$70,000	\$199,997	\$311,080
2025*	\$110,402	\$2,846	\$113,247	\$69,156	\$60,841	\$70,000	\$199,997	\$313,245
Total	\$1,621,440	\$26,608	\$1,648,048	\$650,273	\$359,350	\$700,000	\$1,709,623	\$3,357,671

*Pilot period years with estimated not actual values.

Cost Savings

CBP anticipates that the implementation of the Test also provides cost savings during the pilot period. As CBP expected, obtaining EEM data through the Test is a more

efficient process than obtaining export data from paper forms. As stated earlier, CBP officers manually review all finalized train consists prior to a train's departure from the United States, regardless of whether rail carriers

submit the train consists in paper or electronic form. During the pilot period, when CBP receives electronic finalized train consists from participating rail carriers the time burden to review those consists decreased substantially

compared to reviewing the paper consists. Additionally, CBP officers are able to conduct and complete their review of a transmitted electronic train consist prior to that train's arrival to the U.S. port of export.⁶³ CBP's review of these train consists requires on average 35 minutes (0.583 hours) when submitted electronically compared to an average of 2.5 hours when they were submitted to CBP on paper forms.⁶⁴ To

estimate the total time savings, CBP multiplied the average time savings of reviewing a train consist transmitted electronically (2.5 hours – 35 minutes = 1.92 hours) by the total number of estimated train consists that will be transmitted electronically during the pilot period (16,129, see Table 2). CBP estimates that the Test will generate time savings of approximately 30,915 hours to CBP officers. CBP then

multiplied the estimated time savings (30,915 hours) by the average hourly loaded rate for a CBP officer (\$101.44) to estimate the total cost savings of approximately \$3.1 million to CBP during the pilot period. Table 10 shows CBP's estimates for the time savings and cost savings to CBP officers from swifter review of electronic train consists for each year of the pilot period.

Table 10. Estimated Time and Cost Savings to CBP From Improved Review of Electronic Train Consists during Pilot Period 2016-2025 (time in hours, cost savings in undiscounted 2023 U.S. Dollars)

Year	Train Consists Transmitted Electronically	Average Time Savings per Electronic Train Consists	Total Time Savings	Wage Rate	Total Cost Savings
2016		1.92		\$101.44	\$0
2017	308	1.92	590	\$101.44	\$59,883
2018		1.92		\$101.44	\$0
2019	159	1.92	305	\$101.44	\$30,914
2020	1,109	1.92	2,126	\$101.44	\$215,619
2021	2,601	1.92	4,985	\$101.44	\$505,704
2022	2,912	1.92	5,581	\$101.44	\$566,170
2023	3,219	1.92	6,170	\$101.44	\$625,859
2024*	2,911	1.92	5,579	\$101.44	\$565,911
2025*	2,911	1.92	5,579	\$101.44	\$565,911
Total	16,129		30,915		\$3,135,973

*Pilot period years with estimated not actual values.

CBP anticipates that rail carriers may also experience time and cost savings from the Test resulting in a more efficient export process at the U.S. port of export. Rail carriers support CBP's transition to EEM data because rail carriers acknowledge that the former process of providing export information on paper forms is inefficient and unnecessarily burdensome to all parties involved. Additionally, the existing export process using paper forms is inconsistent with the import process which has already transitioned to electronic data transmission. Rail carriers have experienced a more efficient import process as a result, and they acknowledge the potential for improvements to the export process from providing electronic data.

CBP's review of electronic train consists is significantly quicker than

train consists in paper form. In the baseline scenario, CBP does not know how often rail carriers sent finalized train consists by email in advance of departure and to what extent CBP officers were able to fully conduct their review of the paper train consist prior to the train's arrival to the U.S. port of export. If CBP officers, prior to the Test, were unable to start their review of a train's consist before the train reached the U.S. port of export and the train was held at the U.S. port of export until CBP officers conducted a review of the train consist, then participants in the Test experience a time savings similar to that estimated above for CBP's officers during CBP's review process (1.92 hours) when transmitting an electric train consist. However, CBP does not know in the baseline scenario the extent to which rail carriers sent finalized pre-

departure data via email to CBP providing CBP officers enough time to review the paper train consists prior to the train's arrival to the U.S. port of export. Therefore, during the pilot period CBP does not know exactly how much time savings rail carriers experience from a swifter CBP review of electronic train consists at the U.S. port of export. To estimate the potential time savings to rail carrier participants during the pilot period from quicker CBP processing time, CBP provides a range of time savings under a few situations that could occur in the baseline scenario depending on the amount of review CBP officers complete before the train's arrival to the U.S. port of export.

In Scenario 1, where CBP officers did not begin the review of paper train consists until the train arrived at the

⁶³ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on November 8, 2022. With electronic transmitted data, the system assists in

much of the cargo screening and review of the data allowing CBP to conduct a quicker and more thorough review of export manifest data.

⁶⁴ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on August 2, 2022.

port, rail carriers participating in the Test would experience on average a time savings of 1.92 hours per train from a more efficient CBP review using electronic train consists, assuming no 1H Enforcement holds, or other issues CBP identified during the review of the consist. In Scenario 2, during the baseline, where rail carriers sent finalized train consists by email pre-departure and CBP officers were able to complete their review of these paper train consists prior to all trains arriving at the U.S. port of export, rail carriers participating in the Test would likely not experience any time savings from transmitting electronic train consists. CBP anticipates that in this scenario CBP officers were able to fully complete their review of the paper or electronic train consist prior to the train's arrival to the U.S. port of export avoiding any delays to departure from CBP officers conducting their review at the U.S. port

of export. CBP is uncertain to what extent these time savings are experienced by rail carriers during the pilot period; however, CBP believes that it would likely be between the 1.92 hours and zero hours per train. For the purposes of this analysis, CBP uses Scenario 3, which is the mid-point between the two values (0.96 hours), as the primary estimate for time savings per electronic train consist reviewed during the pilot period. CBP also considered a Scenario 4 which assumes CBP officers were able to complete 25 percent of the review of finalized train consists prior to a train's arrival at the U.S. port of export during the baseline. For illustrative purposes, CBP presents these potential time savings to rail carriers in range estimates based on how much review CBP officers completed prior to a train's arrival to the port in the baseline. CBP multiplied the average time savings per train by the

estimated number of electronic train consists transmitted to CBP (16,129, see Table 2) during the pilot period to estimate the total potential time savings from expedited CBP processing at the U.S. port of export. To calculate the cost savings CBP multiplied these potential time savings by the average hourly loaded wage rate for exporters (\$35.62). CBP's primary estimate for time savings and costs savings to rail carriers from swifter CBP review of train consists will be approximately 15,484 hours and \$551,546. Table 11 displays CBP's primary estimate along with range estimates for potential time savings and cost savings to rail carriers at the U.S. port of export during the pilot period depending on if during the baseline CBP officers were able to complete 0 percent of their review of train consists, 25 percent of their review and 100 percent of their review prior to a train's arrival at the U.S. port of export.⁶⁵

Table 11. Estimated Time and Cost Savings to Rail Carriers from Improved CBP Review during Pilot Period 2016-2025 (time in hours, costs in undiscounted 2023 U.S. dollars)

	Time Savings Per Consist	Total Train Consists	Total Time Savings	Wage Rate	Total Cost Savings
Scenario 1 (0 percent)	1.92	16,129	30,968	\$34.81	\$1,103,092
Scenario 2 (100 percent)	0	16,129	-	\$34.81	\$0
CBP's Primary Estimate: Scenario 3 (50 percent)	0.96	16,129	15,484	\$34.81	\$551,546
Scenario 4 (25 percent)	0.48	16,129	7,742	\$34.81	\$275,773

CBP expects that participating rail carriers also experience additional time savings from the Test when compared to the baseline when making corrections to submitted data.⁶⁶ Making updates and corrections to data transmitted electronically is significantly more efficient than making updates and corrections to emailed paper forms. Additionally, the Test allows participants to transmit data when it becomes available, and the Test allows them to continuously edit and update data in ACE on a flow basis. CBP estimates that during the pilot period

making such corrections when transmitting EEM data save Test participants on average 15 minutes (0.25 hours) per train.⁶⁷ To calculate the time savings, CBP used the estimate discussed earlier for total trains that had electronic data submitted during the pilot period (27,384 see Table 6) multiplied by the expected time savings per train (0.25 hours). CBP estimates that the total time savings to rail carriers from making data corrections in the electronic environment will be approximately 6,846 hours during the pilot period. CBP multiplied the

estimated time savings by the average hourly loaded wage rate for exporters (\$35.62) and anticipates the total cost savings to rail carrier participants from making data corrections in the electronic environment will be approximately \$243,852 or on average \$24,385 annually during the pilot period. Table 12 shows CBP's estimate for time savings and cost savings to rail carrier participants while making data corrections to EEM compared to paper forms during the pilot period.

⁶⁵ To provide additional possible outcomes CBP also includes Scenario 4 which assumes CBP officers were able to complete 25 percent of the review of finalized train consists prior to a train's arrival at the U.S. port of export.

⁶⁶ Information was obtained from feedback and discussions with Trade members on the potential effects of providing EEM data. Data obtained in February 2023.

⁶⁷ Information was obtained from feedback and discussions with Trade members on the potential effects of providing EEM data. Data obtained in February 2023.

Table 12. Estimated Time and Cost Savings to Rail Carriers from Making Corrections to EEM Data during the Pilot Period 2016-2025 (time in hours, costs in undiscounted 2023 U.S. Dollars)

Year	Trains Departed providing EEM	Average Time Savings per Train	Total Time Savings	Wage Rate	Total Cost Savings
2016	1,174	0.25	293	\$35.62	\$10,451
2017	3,009	0.25	752	\$35.62	\$26,794
2018	3,096	0.25	774	\$35.62	\$27,566
2019	3,025	0.25	756	\$35.62	\$26,939
2020	2,524	0.25	631	\$35.62	\$22,477
2021	2,771	0.25	693	\$35.62	\$24,674
2022	3,086	0.25	771	\$35.62	\$27,477
2023	2,876	0.25	719	\$35.62	\$25,609
2024*	2,912	0.25	728	\$35.62	\$25,933
2025*	2,912	0.25	728	\$35.62	\$25,933
Total	27,384		6,846		\$243,852

*Pilot period years with estimated not actual values.

CBP anticipates there would be a savings to rail carriers during the Test when CBP identifies issues before trains are loaded and assembled. In the baseline scenario, when CBP identifies a high-risk cargo, the cargo has usually already been loaded onto the train, requiring a burdensome and time-consuming process to detach or unload the cargo from an assembled train. CBP estimates that to physically detach a freight car from an assembled train typically costs around \$3,000 and can result in a delay of up to two hours.⁶⁸

This includes the freight and labor costs to safely decouple a train car from a built train. Under this rule, the pre-departure EEM data transmitted to CBP would improve CBP's ability to identify high-risk cargo before it is loaded onto a train, avoiding the costly action of deconstructing trains and unloading cargo for examination. CBP does not track the number of cargo examinations and was unable to generate an estimate for the average number of cargo examinations each year, but feedback received from trade members suggests

that such examinations are not a frequent occurrence.⁶⁹

CBP estimates that during the pilot period total cost savings as a result of the Test will be approximately \$3.9 million or on average \$393,137 annually. CBP expects that trade will experience a total cost savings of approximately \$795,398 or on average \$79,539 annually. Table 13 displays CBP's estimates for cost savings to CBP, trade and total overall cost savings during the pilot period as a result of the Test.

⁶⁸Information was obtained from feedback and discussions with Trade members on the potential costs and time burden to remove a train car from a constructed train in order for CBP to conduct an

examination of the cargo or container. Data obtained in February 2023.

⁶⁹Information was obtained from feedback and discussions with Trade members on the frequency

of cargo examinations prior to the Test and during the Test suggesting such an occurrence was fairly uncommon. Data obtained in February 2023.

Table 13. Estimated Cost Savings from Rail EEM during the Pilot Period 2016-2025 (undiscounted 2023 U.S. Dollars)

Year	CBP Cost Savings	Trade Cost Savings from Improved CBP Review	Trade Cost Savings from Making Corrections to EEM Data	Total Cost Savings to Trade	Total Overall Cost Savings
2016	\$0	\$0	\$10,451	\$10,451	\$10,451
2017	\$59,883	\$10,532	\$26,794	\$37,326	\$97,210
2018	\$0	\$0	\$27,566	\$27,566	\$27,566
2019	\$30,914	\$5,437	\$26,939	\$32,376	\$63,290
2020	\$215,619	\$37,922	\$22,477	\$60,399	\$276,018
2021	\$505,704	\$88,942	\$24,674	\$113,615	\$619,319
2022	\$566,170	\$99,576	\$27,477	\$127,053	\$693,223
2023	\$625,859	\$110,074	\$25,609	\$135,683	\$761,543
2024*	\$565,911	\$99,531	\$25,933	\$125,464	\$691,376
2025*	\$565,911	\$99,531	\$25,933	\$125,464	\$691,376
Total	\$3,135,973	\$551,546	\$243,852	\$795,398	\$3,931,371

*Pilot period years with estimated not actual values.

Note: CBP cost savings and trade cost savings from improved CBP review are based on the estimated number of electronic train consists transmitted as seen in Table 2. Trade cost savings from making corrections to EEM data are based on CBP's estimate for the number of trains that provided EEM data to CBP during the Test as seen in Table 6.

CBP requests feedback and comments from rail carriers and other trade members on the costs and cost savings to rail carriers and other trade members during the Test pilot period discussed above and any other costs or cost savings to rail carriers and other trade members that CBP did not address in this analysis.

Benefits

According to Section 343(a) of the Trade Act of 2002, as amended (Trade Act) (19 U.S.C. 1415), CBP is authorized to establish regulations that provide for the mandatory electronic transmission of data by way of a CBP-approved electronic data interchange before cargo arrives in or departs the United States in all environments (sea, air, rail, and truck). The Test was developed and

implemented as a way for CBP to test a feasible process to meet its requirements as per the Trade Act. In addition to meeting its statutory requirements, CBP likely experiences benefits during the pilot period. CBP does not have the data available to quantify these benefits and therefore will discuss these benefits qualitatively. The primary benefit of requiring pre-departure EEM data is improving CBP's security efforts and its ability to use ATS to identify high-risk cargo prior to departing the United States, while minimizing the disruption to the export process. In the baseline, CBP officers usually manually review train consists at the time of departure without using CBP's ATS, so CBP cannot take advantage of the ATS risk assessment during the rail exit process. All EEM data transmitted to CBP as part

of the Test are screened by CBP using ATS prior to departure, providing a more robust review and improving CBP's security efforts. Additionally, the gained efficiencies from obtaining data in an integrated system allow CBP to review export rail data more efficiently prior to departure and provide CBP officers the ability to allocate more time to mission-critical activities of cargo security and safety.

Net Impact

CBP has provided its primary estimates for the total costs and cost savings from the Test during the pilot period, displayed in Table 14. CBP estimates that the net cost savings will be approximately \$573,700 or on average \$57,370 annually.

Table 14. Estimated Net Cost Savings during Pilot Period 2016-2025 (undiscounted 2023 U.S. Dollars)

Year	CBP Costs	Trade Costs	Total Costs	CBP Cost Savings	Trade Cost Savings	Total Cost Savings	Net Cost Savings
2016	\$701,629	\$98,092	\$799,721	\$0	\$10,451	\$10,451	-\$789,270
2017	\$95,628	\$141,726	\$237,354	\$59,883	\$37,326	\$97,210	-\$140,144
2018	\$97,351	\$143,761	\$241,112	\$0	\$27,566	\$27,566	-\$213,546
2019	\$99,361	\$142,141	\$241,503	\$30,914	\$32,376	\$63,290	-\$178,213
2020	\$109,140	\$137,685	\$246,825	\$215,619	\$60,399	\$276,018	\$29,193
2021	\$105,010	\$164,693	\$269,703	\$505,704	\$113,615	\$619,319	\$349,616
2022	\$106,899	\$212,982	\$319,881	\$566,170	\$127,053	\$693,223	\$373,342
2023	\$108,701	\$268,548	\$377,249	\$625,859	\$135,683	\$761,543	\$384,294
2024*	\$111,083	\$199,997	\$311,080	\$565,911	\$125,464	\$691,376	\$380,296
2025*	\$113,247	\$199,997	\$313,245	\$565,911	\$125,464	\$691,376	\$378,131
Total	\$1,648,048	\$1,709,623	\$3,357,671	\$3,135,973	\$795,398	\$3,931,371	\$573,700

*Pilot period years with estimated not actual values.

Table 15 displays CBP's primary estimate for quantifiable net cost savings from the Test adjusted for discounting. As shown, CBP expects that this

proposed rule will result in total net cost savings to CBP, rail carriers and other trade members during the pilot period of around \$343,946 using a two

percent discount rate. CBP estimates that annualized net cost savings will be around \$38,290 using a two percent discount rate.

Table 15. Total Monetized Present Value and Annualized Net Cost Savings of Pilot Period 2016-2025 (2023 U.S. Dollars)

	2% Discount Rate
Present Value Net Cost Savings	\$343,946
Annualized Net Cost Savings	\$38,290

Regulatory Period

For the regulatory period, CBP estimated the future costs, cost savings, and benefits to rail carriers, the Federal Government, and other trade members as a result of requiring EEM data in the rail environment. CBP anticipates the effects of the proposed rule would be similar to those experienced during the pilot period but on a larger scale as the proposed rule would make transmission of pre-departure EEM data mandatory for all U.S. exports in the rail environment.

Costs

CBP anticipates that this proposed rule would result in costs to both CBP and trade members during the regulatory period. CBP will bear technology and opportunity costs by expanding the existing test to a requirement for all rail carriers. CBP does not anticipate it will incur any costs to develop new systems during the regulatory period because CBP

completed the system development and implementation of the rail EEM data tool application into ACE during the pilot period. CBP does expect to incur some ongoing systems operations and maintenance costs associated with the rail EEM data application in ACE. Over the course of the regulatory period, CBP estimates that ongoing systems costs in ACE would be approximately \$586,026 or on average \$117,205 each year.⁷⁰

In addition to the ongoing systems costs, CBP expects to incur additional time burdens as a result of CBP officers manually reviewing, addressing and resolving 1H Enforcement holds. CBP estimates that a total of 11,137 1H Enforcement holds would be issued during the regulatory period (see Table 4 above). CBP expects that the time

burden to a CBP officer to manually review a 1H Enforcement hold on average is about 5 minutes (0.083 hours). CBP also anticipates that CBP officers will incur an additional time burden to address and resolve these 1H Enforcement holds. Depending on the complexity of the hold and if it is determined that a CBP officer needs to manually examine cargo, the time burden to CBP officers to address and resolve these holds varies from a few minutes to a few hours.⁷¹ CBP expects that the majority of these 1H Enforcement holds issued would not result in a cargo examination.⁷² CBP estimates that the average time burden incurred by CBP officers during the regulatory period for addressing and resolving 1H Enforcement holds is the

⁷⁰ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on December 7, 2022. Rail EEM ACE cost estimates were provided by CBP's Office of Information and Technology, ongoing costs are expected increase at a fixed rate each year.

⁷¹ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on June 21, 2022.

⁷² Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on November 8, 2022.

same as during the pilot period, 10 minutes (0.167 hours).⁷³ Combined, CBP expects that that on average the total time burden to CBP officers during the regulatory period to review, address and resolve a 1H Enforcement hold is approximately 15 minutes (0.25 hours). CBP estimates that the proposed rule would result in 1H Enforcement holds that would cause an additional time

burden to CBP officers of approximately 2,784 hours (11,137 1H Enforcement holds $\times$ 0.25 hours per hold). CBP calculated the costs to CBP officers in the regulatory period, by multiplying the total time burden (2,784) hours by the average hourly loaded rate for a CBP Officer (\$101.44) = \$282,433. Table 16 shows CBP estimates for total costs to CBP during the regulatory period

including ongoing systems and maintenance costs and the time burden and cost to CBP officers from additional review of 1H Enforcement holds during the regulatory period. Over the regulatory period this proposed rule would cost CBP approximately \$868,459 or on average \$173,691 annually.

Table 16. Estimated Time Burden and Costs to CBP during the Regulatory Period 2026-2030 (time in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
1H Enforcement Holds	2,227	2,227	2,227	2,227	2,227	11,137
Time Burden per Hold	0.25	0.25	0.25	0.25	0.25	
Time Burden	557	557	557	557	557	2,784
Time Burden Costs	\$56,487	\$56,487	\$56,487	\$56,487	\$56,487	\$282,433
Rail EEM System O&M Costs	\$112,610	\$114,862	\$117,159	\$119,502	\$121,892	\$586,026
Total Costs	\$169,096	\$171,349	\$173,646	\$175,989	\$178,379	\$868,459

CBP does not expect that this proposed rule would result in additional cargo examinations when compared to the baseline. In the case where CBP determines it is necessary to conduct a physical examination of cargo or a container on average a CBP officer is able to complete the examination and submit the findings in about 60 minutes.⁷⁴ Given the CBP officer hourly loaded wage rate of \$101.44, CBP estimates the average time burden cost to CBP to conduct a cargo or container examination is approximately \$101.44 per examination. If there are more manual examinations of cargo as a result of 1H Enforcement holds when compared to the baseline, then the time burden to CBP officers during the regulatory period could be larger than CBP expected. Unfortunately, CBP does not have data on how many 1H Enforcement holds typically result in a cargo examination. However, because the EEM data is provided in advance of departure CBP would likely be able to issue holds before trains reach the U.S. port of export and possibly before cargo is loaded, limiting the time burden and costs of conducting these cargo examinations when compared to the baseline scenario.

CBP anticipates that this proposed rule would result in costs to trade members in the form of both systems and opportunity costs. CBP expects that the remaining rail carriers (five) that did not participate in the Test would incur costs to adjust and maintain their IT systems to provide the electronic export manifest data directly to CBP via ACE. CBP anticipates that the cost of adjusting and maintaining internal systems can vary depending on the rail carrier or trade member and therefore CBP provides a range of estimates for the annual internal system costs to the rail EEM participants during the regulatory period. CBP anticipates that the annual internal systems costs would range from the low end \$10,000 to as high as \$60,000 each year.⁷⁵ For the primary estimate during the regulatory period CBP used the same estimate as proposed during the pilot period, \$35,000 in internal system costs to the average rail EEM participant to maintain its internal systems each year. To provide a range of cost estimates, CBP also provides estimates if maintaining the internal systems cost the average Rail EEM participant \$10,000 each year or \$60,000 each year. CBP expects that at least the seven rail carriers will incur these systems costs each year of the

regulatory period; however, CBP does not know how many other trade members would also elect to participate and provide the EEM cargo data directly to CBP via ACE thus incurring systems costs. CBP notes that it is voluntary for the other trade members to provide the EEM cargo data. If no other party provides this EEM cargo data, then it must be provided by rail carriers. CBP believes that other trade members would only participate if it were beneficial for their business or company. Therefore, CBP does not anticipate these other trade members would participate if it resulted in a net cost. To estimate the cost to rail carriers from operating and maintaining their internal systems to support participation in providing EEM data, CBP multiplied the average annual cost by the number of expected rail carrier participants each year (seven). According to CBP's primary estimate for operating and maintaining internal systems, rail EEM participants would incur costs of approximately \$1.2 million or on average \$245,000 annually. Under CBP's low estimate, rail EEM participants would incur costs of around \$350,000 or \$70,000 annually and the high estimate shows internal systems costs of approximately \$2.1

⁷³ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on November 21, 2022.

⁷⁴ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on December 15, 2022.

⁷⁵ Data obtained from feedback and discussions with Trade members on the potential costs associated with internal systems to support providing EEM to CBP via ACE. Data was obtained in December 2022 and February 2023.

million or \$420,000 annually. Table 17 displays CBP's estimates of internal

systems costs to trade members during the regulatory period.

Table 17. Estimated Internal Systems Costs to Trade during Regulatory Period 2026-2030 (undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Primary Estimate	\$245,000	\$245,000	\$245,000	\$245,000	\$245,000	\$1,225,000
Low Estimate	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000	\$350,000
High Estimate	\$420,000	\$420,000	\$420,000	\$420,000	\$420,000	\$2,100,000

The proposed rule adjusted data elements and deadlines for the transmission of EEM data from what CBP established during the Test. Rail EEM participants (rail carriers and other trade members such as USPPs, FPPs, NVOCCs, freight forwarders, CHB, or other third-parties with knowledge of manifest data elements) would provide the initial filing data elements to CBP 24 hours prior to the cargo and train departing the U.S. port of export. As stated earlier, during the Test CBP considered what data elements were most important, CBP's needs, and what trade members could provide, given the time frames recommended and CBP adjusted the required data elements for this proposed rule. CBP expects that most rail carriers would have access to most export manifest data early in the planning stages of an export rail cargo transaction and would be able to comply with the new deadlines imposed by the proposed rule. CBP notes that some rail carriers will have the export manifest data available days in advance prior to departure and therefore would have all the necessary information to submit the initial filing data to CBP and all other export manifest data well in advance of the 24-hour and 2-hour prior to departure deadlines.⁷⁶ CBP anticipates that all parties that would participate in transmitting EEM data to CBP would have the necessary export data elements to provide the required EEM data within the two-hour prior to departure deadline.⁷⁷ However, for some rail carriers acquiring the necessary data for the initial filing 24 hours prior to departure may require a change in

business practices and additional coordination with other trade members or parties that have the required export information. CBP does not believe that in such instances the export manifest data does not exist; rather, the other trade member has not yet provided this information to the rail carrier.⁷⁸ Based on input from the trade community, CBP expects that in such instances the net costs to rail carriers to obtain this information earlier from other trade members would be minimal. Additionally, if other trade members are reluctant to provide this information to the rail carriers within the 24-hour prior to departure deadlines the other trade members would be able to provide this data to CBP directly as a rail EEM participant.

The transition from a paper form process to an electronic data process could also result in parties that provide EEM data adjusting business practices. CBP expects any costs related to adjusting business practices would be minimal and should not have a large effect on rail carriers and other trade members, specifically because they likely already have such practices developed to provide manifest data for rail imports.⁷⁹ Additionally, participation in directly providing the rail EEM data to CBP by other trade members is voluntary; CBP expects that these parties would likely only directly provide data to CBP if the benefits outweighed the costs to their company. CBP requests comments from rail carriers and trade members on the

potential costs during the regulatory period related to internal system adjustments, operation and maintenance needed to support transmitting pre-departure EEM data to CBP via ACE. CBP also requests comment on any other costs to trade members associated with transitioning from paper forms to the transmission of EEM data that CBP did not address in this analysis.

CBP expects that rail carriers and other trade members that provide EEM data to CBP would incur time burdens and costs while responding to CBP-issued holds. During the regulatory period, the party that provides the EEM data to CBP is the party responsible for responding to any questions, holds or issues that arise from CBP's review of that export data. During the regulatory period CBP expects that the time burden to respond to each hold depends on the complexity of the issue. When a party is reviewing and responding to holds, if that party does not have the necessary information and needs to obtain the data from another trade member, that would impose an additional time burden on both parties. To estimate the time burden to trade to review and resolve the average hold (including both 2H Documentation holds and 1H Enforcement holds) during the regulatory period CBP used the same time burden estimate as proposed during the pilot period of approximately 12.5 minutes (0.21 hours) to trade when reviewing and resolving each 2H Documentation and 1H Enforcement hold.⁸⁰

CBP does not expect that such holds would result in CBP officers conducting additional cargo examinations when compared to the baseline. Cargo examinations conducted after cargo has

⁷⁶ CBP obtained feedback and information from Trade members on when in the export transaction process, the export manifest data is typically available for them to submit to CBP. Information obtained in February 2023.

⁷⁷ Data obtained from feedback and discussions with Trade members on the timeline for when export manifest data elements are made available and can be provided to CBP. Data was obtained in February 2023.

⁷⁸ Information provided during discussion with some Trade members in regard to the timeline for when export manifest data is available to be provided to CBP and challenges to providing pre-departure data well in advance. Data obtained in February 2023.

⁷⁹ CBP requested feedback from Trade members on the potential costs from adjusting business practices as a result of this proposed rule. Trade members suggested that there could be some costs but were unable to provide additional details on the costs for such adjustments to business practices or if this would be a one-time adjustment cost or ongoing adjustment costs.

⁸⁰ Data obtained from CBP discussion with Trade members on the potential costs to review and resolve holds issued by CBP in response to EEM data transmitted. Time burdens vary greatly depending on the complexity of the issue. CBP took this into consideration when calculating the average time burden to review and address an issued hold. Data obtained in February 2023.

been loaded onto the train is a burdensome and time-consuming process and would result in a larger time burden to resolve holds that result in an examination. CBP does not track the number of cargo examinations and was unable to generate an estimate for the average number of cargo examinations each year, but feedback received from trade members suggests that cargo examinations are not a frequent occurrence.⁸¹ Although CBP does not anticipate examinations would increase as a result of this proposed rule, if CBP did conduct more examinations when compared to the baseline then time burden costs to trade members to review and resolve holds could be higher than what CBP provides

in this analysis. Additionally, CBP does not track and was unable to estimate the number of holds issued that would result in multiple parties being involved in reviewing and resolving of holds. If responding to issued holds always requires multiple parties to be involved, then the time burden to review and resolve a hold would also likely be higher than the 12.5-minute estimate CBP provided above. To estimate the time burden to trade during the regulatory period when reviewing and resolving holds, CBP multiplied the total number of expected holds issued each year during the regulatory period by the estimated average time burden to review and resolve a hold (0.21 hours). CBP expects that during the regulatory period trade

will review and resolve around 813,537 holds (see Table 4) resulting in a total time burden of approximately 169,487 hours or on average 33,897 hours annually. CBP calculated the costs to trade from reviewing and resolving these holds by multiplying the total hours of time burden by the average hourly loaded wage rate for exporters (\$35.62). CBP anticipates that overall costs to trade from reviewing and resolving holds as a result of this proposed rule would be around \$6.0 million or on average \$1.2 million annually. Table 18 shows CBP’s regulatory period estimates for time burden and costs to trade associated with the review and resolution of holds issued by CBP.

Table 18. Estimated Time Burden and Costs to Trade from Issued Holds during the Regulatory Period 2026-2030 (time in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
2H Documentation Holds	160,480	160,480	160,480	160,480	160,480	802,400
1H Enforcement Holds	2,227	2,227	2,227	2,227	2,227	11,137
Total Holds	162,707	162,707	162,707	162,707	162,707	813,537
Average Time Burden	0.21	0.21	0.21	0.21	0.21	
Total Time Burden	33,897	33,897	33,897	33,897	33,897	169,487
Wage Rate	\$35.62	\$35.62	\$35.62	\$35.62	\$35.62	
Total Costs	\$1,207,424	\$1,207,424	\$1,207,424	\$1,207,424	\$1,207,424	\$6,037,119

Note: totals may not sum due to rounding.

The proposed rule prohibits rail carriers from transporting cargo with a hold across the border until the issues have been addressed and the hold has been lifted. Upon notification of a hold being issued on a specific cargo the party responsible for providing that information to CBP would need to contact CBP for specifics and further instructions regarding the hold. If CBP requires a manual examination of cargo, the rail carrier must coordinate with CBP to identify a place where a proper examination of cargo can be conducted. CBP would prohibit a train’s departure from a U.S. port of export if there are any unresolved holds issued for cargo currently loaded onto a train. Parties that do not address a CBP-issued hold on specific cargo or freight cars before

the required deadlines could face enforcement actions. Because CBP experienced very high rates of compliance during the Test (the compliance rate was over 99.8%), CBP expects excellent rates of compliance during the regulatory period.⁸² As stated earlier, CBP’s primary goal is compliance and CBP intends to work with parties providing the EEM data during this process to minimize the disruption of the flow of goods. This proposed rule would also require a party providing the EEM data to CBP to have a bond on file with CBP. Carriers and other potential filers generally are all subject to other bond requirements that would qualify them to submit EEM data to CBP.⁸³ Therefore, CBP expects that any costs to rail

carriers or other trade members from being required to have a bond to provide export manifest data electronically to CBP would be negligible. Rail carriers and other trade members could also incur some costs to meet the requirement of this proposed rule of having someone available 24 hours a day 7 days a week to respond to questions and issues that may arise from CBP’s review for EEM data transmitted. CBP anticipates that any additional staffing costs to participants would be negligible because they typically have someone working at all times for other business operations that can respond to CBP questions and issues. Rail carriers and other trade members may also be subject to claims for liquidated damages of \$5,000 for each

⁸¹ Information was obtained from feedback and discussions with Trade members on the frequency of cargo examinations prior to the Test and during the Test suggesting such an occurrence was fairly uncommon. Data obtained in February 2023.

⁸² Information provided by CBP’s Cargo and Conveyance Security, Office of Field Operations, subject matter expert on August 2, 2022.

⁸³ CBP anticipates that any of the following bonds would be appropriate depending upon the party filing, CBP Basic Importation and Entry Bond containing the provisions found in section 113.62 of this chapter, a Basic Custodial Bond containing the provisions found in 113.63 of this chapter, or an International Carrier Bond containing the provisions found in section 113.64 of this chapter.

violation and up to a maximum of \$100,000 per departure for noncompliance. These claims imposed by CBP are a compliance tool and CBP anticipates that there would be high levels of compliance from participants during the regulatory period such that violations that result in claim issuance would likely not be a common occurrence. CBP acknowledges that compliance is CBP's primary goal and CBP plans to work with rail carriers and

other trade members to ensure they provide the appropriate EEM data in a timely manner. To the extent that CBP issues claims against rail carriers or other trade members that would place an additional cost onto these parties as a result of this proposed rule, costs that would not be incurred if the charged parties are compliant.

CBP estimated that during the regulatory period total overall costs of the proposed rule would be

approximately \$8.1 million or on average \$1.6 million annually. Table 19 below displays CBP's estimates for total costs to CBP and trade members as a result of this proposed rule. CBP requests feedback and comments on the regulatory period costs from this proposed rule to rail carriers and other trade members discussed above and any other cost to rail carriers and other trade members that CBP did not address in this analysis.

Table 19. Estimated Total Costs during Regulatory Period 2026-2030 (undiscounted 2023 U.S. Dollars)

	2026	2027	2028	2029	2030	Total
CBP Systems Costs	\$112,610	\$114,862	\$117,159	\$119,502	\$121,892	\$586,026
CBP Review of Holds	\$56,487	\$56,487	\$56,487	\$56,487	\$56,487	\$282,433
Total CBP Costs	\$169,096	\$171,349	\$173,646	\$175,989	\$178,379	\$868,459
Trade Systems Costs	\$245,000	\$245,000	\$245,000	\$245,000	\$245,000	\$1,225,000
Trade Review of Holds	\$1,207,424	\$1,207,424	\$1,207,424	\$1,207,424	\$1,207,424	\$6,037,119
Total Trade Costs	\$1,452,424	\$1,452,424	\$1,452,424	\$1,452,424	\$1,452,424	\$7,262,119
Total Overall Costs	\$1,621,520	\$1,623,773	\$1,626,070	\$1,628,413	\$1,630,803	\$8,130,578

Cost Savings

The mandatory transmission of pre-departure EEM data would provide cost savings to CBP and to some trade members during the regulatory period. As discussed in the pilot period cost savings section of this analysis, obtaining, and reviewing EEM data is a more efficient process when compared to working with paper forms. During the regulatory period, CBP officers would continue to review all train consists prior to each train departing the U.S. port of export. As the transmission of

EEM data becomes mandatory for all cargo departing the United States in the rail environment, CBP would experience more time savings through the expedited review of train consists. To estimate the time savings to CBP during the regulatory period CBP uses the time savings estimate provided during the pilot period of 1.92 hours per train consist. CBP multiplied this time savings per train consist by the forecasted number of departing trains exporting goods during the regulatory period, 288,969 trains (see Table 3). CBP estimates that as a result of this

proposed rule CBP would experience time savings of approximately 110,771 hours each year or 553,857 hours in total during the regulatory period. To calculate the total cost savings, CBP multiplied the time savings estimate by the average loaded hour wage rate for a CBP officer (\$101.44). CBP estimates that the total cost savings to CBP during the regulatory period would be approximately \$56.2 million or on average \$11.2 million annually. Table 20 displays these estimated time and cost savings to CBP for each year of the regulatory period.

Table 20. Estimated Time and Cost Savings to CBP during the Regulatory Period 2026-2030 (time in hours, costs in 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Train Consists Transmitted	57,794	57,794	57,794	57,794	57,794	288,969
Time Savings Per Consist	1.92	1.92	1.92	1.92	1.92	
Time Savings	110,771	110,771	110,771	110,771	110,771	553,857
CBP Officer Wage Rate	\$101.44	\$101.44	\$101.44	\$101.44	\$101.44	
Cost Savings	\$11,236,646	\$11,236,646	\$11,236,646	\$11,236,646	\$11,236,646	\$56,183,231

Because the transmission of EEM data would be mandatory for all cargo trains departing across approximately 68 U.S. ports of export as a result of this proposed rule, rail carriers and other trade members would likely experience some time and cost savings during the regulatory period. CBP notes that during the pilot period when Test participants transmitted all EEM within the required deadlines, CBP officers are able to complete their review of those train consists prior to that train's arrival to the U.S. port of export. CBP anticipates this would also be the case during the regulatory period.⁸⁴ Therefore, the time savings to rail carriers during the regulatory period from a swifter CBP processing of an electronic train consist is dependent on how much review of a paper train consist CBP completed before the train arrives at the U.S. port of export in the baseline. CBP defines a few potential scenarios depending on when rail carriers provided export data to CBP prior to this proposed rule. In Scenario 1 rail carriers prior to this proposed rule did not provide export data pre-departure to CBP—meaning CBP officers were unable to start their review of the train consist until the train is at the U.S. port of export—in this scenario CBP anticipates these rail carriers would experience the same amount of time savings per train as CBP officers: 1.92 hours per outbound train.

For Scenario 2, rail carriers who, prior to this proposed rule, provided pre-departure export data and the finalized train consists to CBP in advance such that CBP officers were able to conduct and complete their review of this information before the train arrived at the U.S. port of export, these rail carriers would likely not experience any time savings from the expedited CBP review of train consists. As CBP does not have data prior to this proposed rule on how many trains submit pre-departure export data to CBP in time for CBP to review it, CBP anticipates that the time savings to rail carriers from the expedited review of electronic train consists would be somewhere between 1.92 hours to 0 hours per departing train. Similar to the pilot period estimate, CBP determined to use the midpoint between these two values (0.96 hours) as Scenario 3 and as CBP's primary estimate for the time savings to rail carriers per outbound train during the regulatory period. CBP also provides the potential time savings from Scenario 4 which assumes CBP officers were able to complete 25 percent of the review of finalized train consists prior to a train's arrival at the U.S. port of export.

Because of this uncertainty for the actual amount of time savings to rail carriers from this process CBP provides a range of potential time savings to rail carriers during the regulatory period using the same alternate estimates provided in the pilot period portion of this analysis, assuming CBP officers

completed 0 percent of their review of train consists in Scenario 1 (1.92 hours of time savings per train), 100 percent of their review in Scenario 2 (0 hours of time savings per train), 50 percent of their review in Scenario 3 (0.96 hours of time savings per train), and 25 percent of their review in Scenario 4 (0.48 hours of time saving per train) before the train arrives at the U.S. port of export. CBP estimated the time savings to rail carriers by multiplying the average time savings per train by the forecasted number of outbound trains (see Table 3) during each year of the regulatory period. CBP then calculated a range of potential cost savings each year of the regulatory period by multiplying the estimated time savings by the average hourly loaded wage rate for exporters (\$35.62). Under CBP's primary estimate, time savings to rail carriers during the regulatory period from swifter CBP review of electronic train consists would be approximately 277,410 hours or on average 55,482 hours annually. Cost savings to rail carriers would be approximately \$9.88 million during the regulatory period or on average \$1.98 million annually. According to CBP's range of estimates, cost savings to rail carriers from shorter review time of train consists could be anywhere from \$0 to \$19.8 million or at most on average \$3.95 million annually. Table 21 displays CBP's primary estimate and alternative range estimates for these potential time savings and cost savings to rail carriers and other trade members.

⁸⁴ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on November 8, 2022.

Table 21. Estimated Time and Cost Savings to Rail Carriers from Improved CBP Review during the Regulatory Period 2026-2030 (time in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Scenario 1 (time savings per train 1.92 hours)						
Train Consists Transmitted	57,794	57,794	57,794	57,794	57,794	288,969
Time Savings	110,964	110,964	110,964	110,964	110,964	554,820
Wage Rate	\$35.62	\$35.62	\$35.62	\$35.62	\$35.62	
Cost Savings	\$3,952,538	\$3,952,538	\$3,952,538	\$3,952,538	\$3,952,538	\$19,762,688
Scenario 2 (time savings per train 0 hours)						
Train Consists Transmitted	54,559	54,559	54,559	54,559	54,559	272,797
Time Savings	0	0	0	0	0	0
Wage Rate	\$35.62	\$35.62	\$35.62	\$35.62	\$35.62	
Cost Savings	\$0	\$0	\$0	\$0	\$0	\$0
Scenario 3 CBP's Primary Estimate (time savings per train 0.96 hours)						
Train Consists Transmitted	57,794	57,794	57,794	57,794	57,794	288,969
Time Savings	55,482	55,482	55,482	55,482	55,482	277,410
Wage Rate	\$35.62	\$35.62	\$35.62	\$35.62	\$35.62	
Cost Savings	\$1,976,269	\$1,976,269	\$1,976,269	\$1,976,269	\$1,976,269	\$9,881,344
Scenario 4 (time savings per train 0.48 hours)						
Train Consists Transmitted	57,794	57,794	57,794	57,794	57,794	288,969
Time Savings	27,741	27,741	27,741	27,741	27,741	138,705
Wage Rate	\$35.62	\$35.62	\$35.62	\$35.62	\$35.62	
Cost Savings	\$988,134	\$988,134	\$988,134	\$988,134	\$988,134	\$4,940,672

CBP expects that rail carriers and other trade members that decide to provide EEM cargo data would also experience some other time and costs savings as a result of this proposed rule. During the regulatory period, rail carriers would transmit EEM data to CBP and would no longer submit finalized train consists in paper form to CBP either via email or at the U.S. port of export. Eliminating the time burden and cost to provide the paper form train consists would be a cost savings of this proposed rule, but parties would now incur the time and cost to provide the EEM data. CBP expects providing the EEM data takes less time than providing the data on paper forms and rail EEM participants would experience a time savings when providing EEM data.⁸⁵

During the regulatory period, CBP estimates that eliminating paper forms and providing the EEM data would help rail carriers and other trade members to automate the process for providing export manifest data to CBP and would generate a time savings of approximately 20 minutes (0.333 hours) on average for each train exporting goods out of the United States.⁸⁶

CBP used the number of total outbound trains estimated above 288,969 (see Table 3) for the number of trains that would potentially be affected and experience this time savings during the regulatory period. According to CBP

effects of providing EEM data instead of paper forms. Data obtained in February 2023.

⁸⁶ Information was obtained from feedback and discussions with Trade members on the potential effects of providing EEM data instead of paper forms. Data obtained in February 2023.

calculations, trade members would experience a total of 96,323 hours (288,969 trains × 0.333 hours) in time savings from a more efficient process of providing the electronic export manifest data when compared to the baseline. To provide an estimate for the total cost savings from this process, CBP multiplied the total expected time savings (96,323 hours) by the average hourly loaded wage rate for exporters (\$35.62). CBP estimates that these cost savings to trade during the regulatory period would be approximately \$3.43 million or on average \$686,204 annually. Additionally, during the regulatory period CBP expects that rail EEM participants will experience time savings when making corrections and/or updates to electronically transmitted data in ACE when compared to making corrections and updates to paper forms

⁸⁵ Information was obtained from feedback and discussions with Trade members on the potential

in the baseline scenario. CBP uses the same time savings estimate used in the pilot period of 15 minutes (0.25 hours) per train for the time savings experienced by rail EEM participants during the regulatory period. CBP multiplied this time savings per train by the expected number of outbound trains during each year of the regulatory period (57,794 trains, see Table 3). CBP estimates that rail EEM participants would experience a time savings of

approximately 72,242 hours on average and 14,448 each year from being able to make updates and corrections to EEM data in ACE when compared to paper forms. To provide an estimate for the total cost savings from this process, CBP multiplied the total expected time savings during the regulatory period (72,242 hours) by the average hourly loaded wage rate for exporters (\$35.62). CBP estimates that these cost savings to trade during the regulatory period

would be approximately \$2.57 million or on average \$514,653 annually. Table 22 displays CBP estimates for time savings to rail EEM participants from transitioning to transmitting EEM data and making corrections and updates to electronic data in ACE. Overall, CBP estimates that transitioning to EEM data transmission would save rail EEM participants approximately \$6.0 million or on average \$1.2 million annually.

Table 22. Estimated Time and Cost Savings to Trade from Transmitting EEM during the Regulatory Period 2026-2030 (time in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Total Outbound Trains	57,794	57,794	57,794	57,794	57,794	288,969
Time Savings to Submit EEM per Train	0.333	0.333	0.333	0.333	0.333	
Total Time Savings to Submit EEM	19,265	19,265	19,265	19,265	19,265	96,323
Wage Rate	\$35.62	\$35.62	\$35.62	\$35.62	\$35.62	
Total Cost Savings from Submitting EEM	\$686,204	\$686,204	\$686,204	\$686,204	\$686,204	\$3,431,022
Time Savings to Make Corrections per Train	0.250	0.250	0.250	0.250	0.250	
Total Time Savings to Make Corrections	14,448	14,448	14,448	14,448	14,448	72,242
Wage Rate	\$35.62	\$35.62	\$35.62	\$35.62	\$35.62	
Total Cost Savings from Making Corrections	\$514,653	\$514,653	\$514,653	\$514,653	\$514,653	\$2,573,267
Total Cost Savings	\$1,200,858	\$1,200,858	\$1,200,858	\$1,200,858	\$1,200,858	\$6,004,289

Note: totals may not sum due to rounding.

CBP also expects that rail carriers would experience time and cost savings if the pre-departure EEM data results in CBP identifying a high-risk cargo prior to that cargo being loaded or added to a train, thereby avoiding the costly burden of identifying high-risk cargo after the train has been constructed. CBP did not track how often such examinations occur prior to this proposed rule and CBP was unable to provide an estimate for how often such examinations occur, but CBP expects that they are fairly uncommon.⁸⁷ Additionally, CBP does not anticipate this rule would result in additional examinations compared to the baseline. CBP estimates that the cost to rail

carriers to remove a car from a constructed train for CBP examination is approximately \$3,000 per occurrence and results in a delay of up to two hours.⁸⁸ This includes the freight and labor costs to safely decouple a train car from a built train. Rail carriers would avoid these costs if CBP receives pre-departure data and is able to issue holds and examine these cargo or train cars before constructed to the train. Additionally, moving to transmission of EEM data would reduce the space required to store and file paper form manifest documents generating savings to rail carriers and other trade members. Unfortunately, CBP does not have data available to provide a quantifiable

estimate for the savings to trade members from reduced storage space as a result of eliminating paper form manifest documents, but based on feedback from trade members, does not consider the costs to be substantial.

CBP estimates that total cost savings as a result of this proposed rule would be approximately \$72.1 million or on average \$14.4 million annually during the regulatory period. In total, CBP anticipates that trade members will experience a cost savings of \$15.9 million or on average \$3.2 million during the regulatory period, while CBP would experience cost savings of around \$56.2 million or on average \$11.2 million annually. Table 23 below displays CBP's estimates for total cost savings to CBP and trade during each year of the regulatory period. CBP requests feedback and comments from rail carriers and trade members on

⁸⁷ Information was obtained from feedback and discussions with Trade members on the frequency of cargo examinations prior to the Test and during the Test suggesting such an occurrence was fairly uncommon. Data obtained in February 2023.

⁸⁸ Information was obtained from feedback and discussions with Trade members on the potential costs and time burden to remove a train car from a constructed train in order for CBP to conduct an examination of the cargo or container. Data obtained in February 2023.

CBP's estimates for the cost savings to trade as a result of this proposed rule and any other potential cost savings

from this proposed rule that CBP may not have included in this analysis.

Table 23. Estimated Total Cost Savings during Regulatory Period 2026-2030 (undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
CBP Review of Train Consists	\$11,236,646	\$11,236,646	\$11,236,646	\$11,236,646	\$11,236,646	\$56,183,231
Trade Cost Savings from Improved CBP Review	\$1,976,269	\$1,976,269	\$1,976,269	\$1,976,269	\$1,976,269	\$9,881,344
Trade Savings from Providing EEM	\$686,204	\$686,204	\$686,204	\$686,204	\$686,204	\$3,431,022
Trade Cost Savings from Making Corrections to EEM Data	\$514,653	\$514,653	\$514,653	\$514,653	\$514,653	\$2,573,267
Total Trade Cost Savings	\$3,177,127	\$3,177,127	\$3,177,127	\$3,177,127	\$3,177,127	\$15,885,633
Total Cost Savings	\$14,413,773	\$14,413,773	\$14,413,773	\$14,413,773	\$14,413,773	\$72,068,864

Benefits

CBP expects that parties involved in U.S. rail exports would likely experience benefits as a result of this proposed rule during the regulatory period. Unfortunately, CBP does not have the data available to quantify these benefits and therefore will discuss these benefits qualitatively. A primary benefit of requiring pre-departure EEM data would be an improvement in CBP's security efforts and its ability to use CBP's ATS to conduct risk assessment for all rail export cargo prior to departing the United States, while also minimizing the disruption to the export process. This proposed rule would assist CBP in preventing illegal, dangerous, and hazardous cargo from being exported out of the United States and would allow CBP to ensure cargo safety and security for all exports in the rail environment. Additionally, transitioning to electronic data would reduce the use of paper for all parties involved and bring the outbound rail process level with existing inbound rail processing technology. The deadlines for submitting EEM data and the gained efficiencies from moving from paper forms to electronic data transmission using an integrated system would provide CBP more time to review the necessary detailed export data prior to a train's departure, allowing CBP officers to allocate more time to

mission-critical activities. CBP also anticipates this proposed rule would generate benefits to the Federal Government through improved coordination and communication among CBP, the Department of Commerce, and other Government agencies with export jurisdiction, while enforcing U.S. export laws and regulations. In addition, CBP would be compliant in the rail environment with the Trade Act, which requires CBP to establish regulations providing for the mandatory electronic transmission of data by way of a CBP-approved electronic data interchange before cargo arrives or departs the United States in all environments.

Net Impact of the Proposed Rule

CBP anticipates that the cost savings generated from this proposed rule would outweigh the costs during the regulatory period. In addition, this rule generates meaningful unquantified security benefits. During the regulatory period, CBP anticipates that this proposed rule would generate net cost savings to both CBP and trade members. CBP notes that lack of data available prevented CBP from providing exact estimates for some of the potential costs and cost savings from the implementation of rail EEM and therefore the actual net cost savings could be more or less than what CBP's

primary estimates project in this analysis. Additionally, CBP acknowledges that for other trade members, participating directly in providing rail EEM data to CBP is voluntary and CBP expects that they would only do so if it were beneficial to their company and the benefits or cost savings outweigh the costs. Because CBP does not have data on how many of these other trade members would decide to directly participate in providing rail EEM data during the regulatory period the actual costs and cost savings from this proposed rule could be higher than what CBP has provided during the regulatory period of this analysis. For this reason, CBP presents a range of estimates. CBP estimates that, during the regulatory period, CBP, rail carriers, and other trade members bear costs of approximately \$8.1 million or an average of \$1.6 million per year. Meanwhile, CBP estimates a total cost savings to CBP, rail carriers and other trade members of approximately \$72.1 million during the regulatory period, or an average of \$14.4 million per year. This results in a net cost savings of approximately \$63.9 million, or an average of \$12.8 million per year. Table 24 displays CBP's estimates for costs and cost savings to CBP and trade members during each year of the regulatory period.

Table 24. Estimated Net Cost Savings to CBP and Trade during Regulatory Period 2026-2030 (undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Costs						
CBP	\$169,096	\$171,349	\$173,646	\$175,989	\$178,379	\$868,459
Trade Members	\$1,452,424	\$1,452,424	\$1,452,424	\$1,452,424	\$1,452,424	\$7,262,119
Total Costs	\$1,621,520	\$1,623,773	\$1,626,070	\$1,628,413	\$1,630,803	\$8,130,578
Cost Savings						
CBP	\$11,236,646	\$11,236,646	\$11,236,646	\$11,236,646	\$11,236,646	\$56,183,231
Trade Members	\$3,177,127	\$3,177,127	\$3,177,127	\$3,177,127	\$3,177,127	\$15,885,633
Total Cost Savings	\$14,413,773	\$14,413,773	\$14,413,773	\$14,413,773	\$14,413,773	\$72,068,864
Net Cost Savings						
CBP Net Cost Savings	\$11,067,550	\$11,065,298	\$11,063,000	\$11,060,657	\$11,058,267	\$55,314,772
Trade Member Net Cost Savings	\$1,724,703	\$1,724,703	\$1,724,703	\$1,724,703	\$1,724,703	\$8,623,514
Total Net Cost Savings	\$12,792,252	\$12,790,000	\$12,787,703	\$12,785,360	\$12,782,970	\$63,938,286

Note: totals may not sum due to rounding.

Table 25. Total Monetized Present Value and Annualized Costs in Regulatory Period 2026-2030 (2023 U.S. dollars)

	2% Discount Rate
Present Value Cost	\$7,366,587
Annualized Cost	\$1,626,024

Table 25 shows the discounted total quantified costs during the regulatory period from this proposed rule. As shown, the total costs over the 5-year

regulatory period of analysis would be around \$7.4 million using a two percent discount rate. Expected annualized costs from this proposed rule are about

1.6 million using a two percent discount rate.

Table 26. Total Monetized Present Value and Annualized Cost Savings in Regulatory Period 2026-2030 (2023 U.S. dollars)

	2% Discount Rate
Present Value Cost Savings	\$67,938,735
Annualized Cost Savings	\$14,413,773

Table 26 displays the discounted total quantified cost savings as a result of this proposed rule during the regulatory period. CBP's primary estimates show

that this rule will provide cost savings to CBP, rail carriers and other trade members of around \$68.0 million using a two percent discount rate. Annualized

cost savings from this proposed rule would be approximately \$14.4 million.

Table 27. Total Monetized Present Value and Annualized Net Cost Savings of Regulatory Period 2026-2030 (2023 U.S. dollars)

	2% Discount Rate
Present Value Net Cost Savings	\$60,274,537
Annualized Net Cost Savings	\$12,787,749

Table 27 displays CBP's primary estimate for quantifiable net cost savings from the implementation of rail EEM. As shown, CBP expects that this proposed rule would result in total net cost savings to CBP, rail carriers and other trade members of around \$60.3 million using a two percent discount rate. CBP estimates that annualized net cost savings are approximately \$12.8 million using a two percent discount rate.

Total Impact of the Proposed Rail EEM Program

CBP anticipates that over the entire 15-year time period of analysis 2016–

2030, the proposed rail EEM program would result in overall net cost savings compared to the baseline (before the rail EEM test was introduced). Initially as the rail EEM test was introduced, costs outweighed the cost savings but CBP estimates that as the test expanded and after the proposed rule would be implemented, cost savings would far outweigh the costs incurred by this proposed rule. In addition, CBP expects that this proposed rule would generate meaningful unquantified security benefits after it is implemented as discussed above in the regulatory period net impact section. CBP estimates that

between 2016–2030 the rail EEM program would result in total costs of \$11,488,249 or on average \$765,883 annually. Additionally, the rail EEM program would result total cost savings of \$76,000,235 or on average \$5,066,682 annually between 2016–2030. CBP estimates that total net cost savings from the rail EEM program during the period of analysis 2016–2030 would be \$64,511,986 or on average \$4,300,799 annually when compared to the baseline. Table 28 displays CBP's estimates for total costs, cost savings and net cost savings as a result of this proposed rule from 2016–2030.

Table 28. Estimated Cost, Cost Savings, and Net Cost Savings from Rail EEM 2015-2030 (undiscounted 2023 U.S. dollars)

Year	Costs			Cost Savings			Net Cost Savings		
	CBP	Trade Members	Total	CBP	Trade Members	Total	CBP	Trade Members	Total
2016	\$701,629	\$98,092	\$799,721	\$0	\$10,451	\$10,451	(\$701,629)	(\$87,641)	(\$789,270)
2017	\$95,628	\$141,726	\$237,354	\$59,883	\$37,326	\$97,210	(\$35,745)	(\$104,399)	(\$140,144)
2018	\$97,351	\$143,761	\$241,112	\$0	\$27,566	\$27,566	(\$97,351)	(\$116,195)	(\$213,546)
2019	\$99,361	\$142,141	\$241,503	\$30,914	\$32,376	\$63,290	(\$68,448)	(\$109,765)	(\$178,213)
2020	\$109,140	\$137,685	\$246,825	\$215,619	\$60,399	\$276,018	\$106,479	(\$77,286)	\$29,193
2021	\$105,010	\$164,693	\$269,703	\$505,704	\$113,615	\$619,319	\$400,694	(\$51,078)	\$349,616
2022	\$106,899	\$212,982	\$319,881	\$566,170	\$127,053	\$693,223	\$459,272	(\$85,929)	\$373,342
2023	\$108,701	\$268,548	\$377,249	\$625,859	\$135,683	\$761,543	\$517,159	(\$132,865)	\$384,294
2024	\$111,083	\$199,997	\$311,080	\$565,911	\$125,464	\$691,376	\$454,829	(\$74,533)	\$380,296
2025	\$113,247	\$199,997	\$313,245	\$565,911	\$125,464	\$691,376	\$452,664	(\$74,533)	\$378,131
2026	\$169,096	\$1,452,424	\$1,621,520	\$11,236,646	\$3,177,127	\$14,413,773	\$11,067,550	\$1,724,703	\$12,792,252
2027	\$171,349	\$1,452,424	\$1,623,773	\$11,236,646	\$3,177,127	\$14,413,773	\$11,065,298	\$1,724,703	\$12,790,000
2028	\$173,646	\$1,452,424	\$1,626,070	\$11,236,646	\$3,177,127	\$14,413,773	\$11,063,000	\$1,724,703	\$12,787,703
2029	\$175,989	\$1,452,424	\$1,628,413	\$11,236,646	\$3,177,127	\$14,413,773	\$11,060,657	\$1,724,703	\$12,785,360
2030	\$178,379	\$1,452,424	\$1,630,803	\$11,236,646	\$3,177,127	\$14,413,773	\$11,058,267	\$1,724,703	\$12,782,970
Total	\$2,516,507	\$8,971,742	\$11,488,249	\$59,319,203	\$16,681,031	\$76,000,235	\$56,802,696	\$7,709,289	\$64,511,986
Average	\$167,767	\$598,116	\$765,883	\$3,954,614	\$1,112,069	\$5,066,682	\$3,786,846	\$513,953	\$4,300,799

Table 29. Total Monetized Present Value and Annualized Costs of Rail EEM 2016-2030 (2023 U.S. dollars)

	2% Discount Rate
Present Value Cost	\$9,330,571
Annualized Cost	\$726,156

Table 29 shows the discounted total quantified costs from the rail EEM program from 2016–2030 compared to the baseline scenario. As shown, the

total costs over the 15-year period of analysis would be \$9,330,571 using a two percent discount rate. Expected total annualized costs from this

proposed rule are \$726,156 using a two percent discount rate.

Table 30. Total Monetized Present Value and Annualized Cost Savings of Rail EEM 2016-2030 (2023 U.S. dollars)

	2% Discount Rate
Present Value Cost Savings	\$59,120,631
Annualized Cost Savings	\$4,601,091

Table 30 shows the discounted total quantified costs savings as a result of this proposed rule from 2016–2030. As shown, the total cost savings over the

15-year period of analysis would be \$59,120,631 using a two percent discount rate. Expected total annualized cost savings from this proposed rule

would be \$4,601,091 using a two percent discount rate.

Table 31. Total Monetized Present Value and Annualized Net Cost Savings of Rail EEM 2016-2030 (2023 U.S. dollars)

	2% Discount Rate
Present Value Net Cost Savings	\$49,790,060
Annualized Net Cost Savings	\$3,874,935

Table 31 shows the discounted total quantified net cost savings during the regulatory period from this proposed rule. As shown, the total net cost savings over the 15-year period of analysis compared to the baseline would be \$49,790,060 using a two percent discount rate. Expected total

annualized net cost savings from this proposed rule would be \$3,874,935 using a two percent discount rate. Accounting statements 1 and 2 show the expected costs, cost savings and benefits from this proposed rule for the regulatory period and the program as a whole, respectively. Though CBP

presents the costs of the program as a whole, including both the pilot period and the regulatory period, the costs of the pilot period are sunk for the purposes of decision-making. Therefore, CBP considered the net effects for the regulatory period when deciding whether to proceed with this rule.

Accounting Statement 1: Regulatory Period (Fiscal Years 2026-2030) (thousands of \$2023)

2% Discount Rate	
Costs	
Annualized monetized costs	\$1,626,024
Annualized quantified, but non-monetized costs	None
Qualitative (non-quantified) costs	If additional cargo examinations occur estimated cost to CBP would be around \$101.44 per additional exam. Rail carriers and voluntary participants may have to adjust business practices when moving from a paper to electronic process. Securing a Bond is required to participate. Rail carriers and voluntary participants must have someone available 24 hours a day 7 days a week to respond to CBP questions about data transmitted. Liquidated damages, \$5,000 for each violation up to max of \$100,000 per departure.
Cost Savings	
Annualized monetized cost savings	\$14,413,773
Annualize quantified, but non-monetized cost savings	None
Qualitative (non-quantified) cost savings	Reduce paper, printing and storage costs related to paper forms. Rail carriers may avoid CBP cargo examinations on already constructed trains, resulting in delays (up to 2 hours) and costs (\$3,000 per occurrence).
Benefits	
Annualized monetized benefits	None
Annualized quantified, but non-monetized benefits	None
Qualitative (non-quantified) benefits	Improve CBP's security efforts on rail exports, electronic data transmissions will allow CBP to use its ATS system to conduct risk assessment on all rail exports. Gained efficiencies from trade by switching from paper to electronic data transmission. Improved communication among Federal Agencies with export jurisdiction.

Accounting Statement 2: Rail EEM Program (Fiscal Years 2016-2030) (Discounted 2023 U.S. dollars)

2% Discount Rate	
Costs	
Annualized monetized costs	\$726,156
Annualized quantified, but non-monetized costs	None
Qualitative (non-quantified) costs	If additional cargo examinations occur estimated cost to CBP would be around \$101.44 per additional exam. Rail carriers and voluntary participants may have to adjust business practices when moving from a paper to electronic process. Securing a Bond is required to participate. Rail carriers and voluntary participants must have someone available 24 hours a day 7 days a week to respond to CBP questions about data transmitted. Liquidated damages, \$5,000 for each violation up to max of \$100,000 per departure.
Cost Savings	
Annualized monetized cost savings	\$4,601,091
Annualize quantified, but non-monetized cost savings	None
Qualitative (non-quantified) cost savings	Reduce paper, printing and storage costs related to paper forms. Rail carriers may avoid CBP cargo examinations on already constructed trains, resulting in delays (up to 2 hours) and costs (\$3,000 per occurrence).
Benefits	
Annualized monetized benefits	None
Annualized quantified, but non-monetized benefits	None
Qualitative (non-quantified) benefits	Improve CBP's security efforts on rail exports, electronic data transmissions will allow CBP to use its ATS system to conduct risk assessment on all rail exports. Gained efficiencies from trade by switching from paper to electronic data transmission. Improved communication among Federal Agencies with export jurisdiction.

B. Regulatory Flexibility Act

This section examines the impact on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

CBP acknowledges that this proposed rule, requiring pre-departure transmission of EEM data, could potentially affect a large number of small U.S. entities. CBP expects that all seven rail carrier companies that engage in exporting goods from the United States in the rail environment and an unknown number of other trade members (such as USPPIs, FPPIs, NVOCCs, freight forwarders, CHB, or other third parties with knowledge of export manifest data elements) at approximately 68 U.S. ports of export would be affected by this proposed rule. CBP notes that of the seven rail carriers affected by this proposed rule, two carriers are Canadian companies and the other five companies are large companies according to the U.S. Small Business Administration's size standards for small businesses.⁸⁹ Therefore, CBP does not anticipate that this proposed rule would affect any small U.S. entity rail carriers. The scope of impact on small U.S. entities depends largely on how many other trade members elect to provide electronic manifest cargo data voluntarily to CBP as a result of this proposed rule. This proposed rule does not require other trade members to provide electronic manifest cargo to CBP, and CBP expects that they would only do so if their benefits outweigh the costs. CBP expects that even if this proposed rule affects a significant number of small U.S. entities, such entities would not incur significant net costs. CBP expects that this proposed rule would save businesses time and money by transitioning from a paper process to a more efficient electronic process. CBP anticipates that providing rail export data electronically would generate time savings to those submitting data to CBP, when making any corrections to data

submitted electronically, and would reduce paper, and printing costs. According to CBP's calculations on the impacts from this proposed rule on average the estimated cost to provide a single rail EEM data transmission to CBP is approximately \$0.34, meanwhile the estimated cost savings per data transmission is around \$0.75, resulting in a net savings per data transmission.⁹⁰ CBP does not know how many of these trade members will choose to submit this data to CBP or how often, so CBP is unable to estimate the annual savings to these trade members as a result of this rule. Overall, as discussed above, this rule would result in average annual total filing costs to trade members of \$1,452,424 and savings of \$3,177,127. We note that these costs and savings will be split between rail carriers (which are not small businesses) and other trade members (which may be small businesses). CBP anticipates that cost savings outweigh costs for parties affected; hence, CBP does not expect small U.S. entities would experience net costs as a result of this proposed rule. Therefore, CBP certifies that this proposed rule would not have a significant economic impact on a substantial number of small U.S. entities. CBP requests comments from the public on CBP's certification that this proposed rule would not have a significant economic impact on a substantial number of small U.S. entities.

C. Paperwork Reduction Act

An agency may not conduct, or sponsor, and an individual is not required to respond to a collection of information unless it displays a valid OMB control number. The collections of information in the current regulations have already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB control number 1651-0001. This collection already provides estimated burdens to the public for voluntarily participating in the Rail EEM test. CBP anticipates that this proposed rule would result in an additional time burden to

respondents that would provide rail EEM directly to CBP. This proposed rule establishes new requirements for trade members to provide rail EEM data to CBP prior to a train departing from a U.S. port of export. CBP notes that prior to providing EEM data, rail carriers typically incurred time burdens to provide some export data to CBP that were not originally included on this information collection or any other information collection as the data was not a statutory or regulatory requirement. Trade members have expressed that providing export data to CBP as part of the rail EEM did provide a reduction in time burden compared to the prior process, but because the original time burden to provide export data to CBP prior to rail EEM was not included in this information collection CBP estimates that the time burden to the public from this proposed rule would be insignificant.

As a result of this proposed rule, CBP estimates that at least all seven major rail carriers that currently engage in exporting goods out of the United States in the rail environment would be affected. Collection 1651-0001 would be revised to reflect the changed burden hours for requiring trade members to provide rail EEM data to CBP prior to departure of the train from a U.S. port of export. The new information collection requirements from this proposed rule would result in the following change in the estimated time burdens to the public for the information collection number 1651-0001 from submitting rail EEM data to CBP:

Estimated number of respondents annually: 7.

Average responses per respondent: 598,830.

Total responses: 4,191,807.

Estimated time burden per respondent: 5,506 hours.

Total added time burden: 38,545 hours.

CBP estimates that this added time burden would increase the cost to the public by \$1,372,986 and adjust the total cost to the public for this information collection to \$611,127,188.

CBP also expects that this new information collection requirement would result in a decrease in the annual cost to the Federal Government through the automated review of rail EEM data by ATS. CBP officers would experience a reduced time burden from reviewing only 0.05 percent of all rail EEM responses provided by the public. This revision to the total number of responses reviewed by CBP for this information collection decreased by 12,803 responses resulting in a reduced

⁸⁹ CBP compared the five U.S. companies with the given U.S. Small Business Administration's size standards for small businesses based on the associated NAICS classification listed in Hoovers Online Company Reports, available at <http://subscriber.hoovers.com/H/home/index.html>.

⁹⁰ According to CBP's estimates each year during the regulatory period total costs to trade members would be \$1,452,424, the total cost savings to trade would be \$3,177,127 and the total expected rail EEM data transmissions each year are expected to be around 4,249,601. CBP calculated the average cost per rail EEM data submission by dividing the total cost by the estimated number of rail EEM data transmission (\$1,452,424/4,249,602 = \$0.34) and the average cost savings per rail EEM data submission by dividing the total cost saving by the estimated number of rail EEM data transmission (\$3,177,127/4,249,601 = \$0.75).

time burden of around 1,067 hours and cost reduction of around \$77,884 annually.

D. Privacy

CBP will ensure that all Privacy Act requirements and applicable DHS privacy policies are adhered to as a result of this proposed regulation.⁹¹ CBP has issued a Privacy Impact Assessment (PIA) for the Automated Commercial Environment (ACE),⁹² which outlines how CBP ensures compliance with Privacy Act protections and DHS privacy policies, including DHS's Fair Information Practice Principles (FIPPs). The FIPPs account for the nature and purpose of the information being collected in relation to DHS's mission to preserve, protect and secure the United States. The PIA addresses issues such as the security, integrity, and sharing of data, use limitation and transparency. The PIA is publicly available at: <http://www.dhs.gov/privacy-documents-us-customs-and-border-protection>.

The Privacy Act of 1974 requires that federal agencies issue a System of Record Notice (SORN) to provide the public notice regarding personally identifiable information (PII) collected in a system of records. SORNs explain how the information is used, retained, and may be accessed or corrected, and whether certain portions of the system are subject to Privacy Act exemptions for law enforcement, national security, or other reasons. CBP issued the DHS/CBP-001 Import Information Systems (IIS) System of Records and the DHS/CBP-020 Export Information System (EIS) System of Records, which provide coverage for the proposed regulation.⁹³

E. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted for inflation),

and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

IX. Signing Authority

The signing authority for these amendments falls under 19 CFR 0.2(a). Accordingly, this document is signed by the Secretary of Homeland Security (or his delegate).

List of Subjects

19 CFR Part 113

Common Carriers, Exports, Freight, Laboratories, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 123

Canada, Customs duties and inspection, Freight, International Boundaries, Mexico, Motor Carriers, Railroads, Reporting and recordkeeping requirements, Vessels.

For the reasons stated in the preamble, parts 113 and 123 of title 19, Code of Federal Regulations (19 CFR parts 113 and 123), are proposed to be amended as set forth below:

PART 113—CBP Bonds

- 1. The general authority section for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

- 2. Amend § 113.62 by adding paragraph (k)(3) to read as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(k) *Agreement to comply with electronic entry and/or advance cargo information filing requirements.* (1) * * *

(2) * * *

(3) If the principal elects to provide advance outbound information to CBP electronically, the principal agrees to provide such information in the manner and in the time period required under § 123.93 of this chapter. If the principal defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 for each violation.

* * * * *

- 3. Amend § 113.63 by revising and republishing paragraph (g) to read as follows:

§ 113.63 Basic custodial bond conditions.

* * * * *

(g) *Agreement to comply with electronic entry and/or advance cargo information filing requirements.* (1) The

principal agrees to comply with all Importer Security Filing requirements set forth in part 149 of this chapter including but not limited to providing security filing information to CBP in the manner and in the time period prescribed by regulation. If the principal defaults with regard to any obligation, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 per violation.

(2) If the principal elects to provide advance outbound information to CBP electronically, the principal agrees to provide such information in the manner and in the time period required under § 123.93 of this chapter. If the principal defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 for each violation.

* * * * *

- 4. Amend § 113.64 by revising and republishing paragraph (d) to read as follows:

§ 113.64 International carrier bond conditions.

* * * * *

(d) *Agreement to provide advance cargo information.* (1) The incoming carrier agrees to provide advance cargo information to CBP in the manner and in the time period required under §§ 4.7 and 4.7a of this chapter. If the incoming carrier, as principal, defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 for each violation, to a maximum of \$100,000 per conveyance arrival.

(2) The outbound carrier agrees to transmit advance outbound information to CBP electronically, in the manner and in the time period required under § 123.93 of this chapter. If the outbound carrier, as principal, defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 for each violation, to a maximum of \$100,000 per departure.

* * * * *

PART 123—CBP RELATIONS WITH CANADA AND MEXICO

- 1. The general authority section for part 123 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1415, 1431, 1433, 1436, 1448, 1624, 2071 note.

- 2. Revise and republish § 123.0 to read as follows:

§ 123.0 Scope.

This part contains special regulations pertaining to Customs procedures at the

⁹¹ See the DHS Privacy Policy web page, available at <https://www.dhs.gov/privacy-policy-guidance>.

⁹² See U.S. Department of Homeland Security, U.S. Customs and Border Protection, Privacy Impact Assessment for The Automated Commercial Environment, DHS/CBP/PIA-003 and all subsequent updates, available at <https://www.dhs.gov/privacy-documents-us-customs-and-border-protection>.

⁹³ See DHS/CBP-001 Import Information System, 81 FR 48826 (July 26, 2016), available at <https://www.federalregister.gov/documents/2016/07/26/2016-17596/privacy-act-of-1974-department-of-homeland-security-us-customs-and-border-protection-dhscbp-001>; and DHS/CBP-020 Export Information Systems (EIS), 80 FR 53181 (September 02, 2015), available at <https://www.federalregister.gov/documents/2015/09/02/2015-21675/privacy-act-of-1974-department-of-homeland-security-us-customs-and-border-protection-dhscbp-020>.

Canadian and Mexican borders. Included are provisions governing report of arrival, manifesting, unloading and lading, instruments of international traffic, shipments in transit through Canada or Mexico or through the United States, commercial traveler's samples transiting the United States or Canada, baggage arriving from Canada or Mexico including baggage transiting the United States or Canada or Mexico, and electronic information for rail and truck cargo in advance of arrival or departure. Aircraft arriving from or departing for Canada or Mexico are governed by the provisions of part 122 of this chapter. The arrival of all vessels from, and clearance of all vessels departing for, Canada or Mexico are governed by the provisions of part 4 of this chapter. Fees for services provided in connection with the arrival of aircraft, vessels, vehicles and other conveyances from Canada or Mexico are set forth in § 24.22 of this chapter. Regulations pertaining to the treatment of goods from Canada or Mexico under the North American Free Trade Agreement are contained in part 181 of this chapter. The requirements for the United States Postal Service to transmit advance electronic information for inbound international mail shipments are set forth in § 145.74 of this chapter.

■ 3. Revise the heading of Subpart J to read as follows:

Subpart J—Advance Information for Cargo Arriving or Departing by Rail or Truck

■ 4. Add section 123.93 to Subpart J to read as follows:

§ 123.93 Electronic information for rail conveyance and cargo required in advance of export.

(a) *General requirement.* Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 1415), for any train departing the United States, U.S. Customs and Border Protection (CBP) must receive electronically from the rail carrier, or other eligible filer as specified in paragraph (c), certain information concerning the train and cargo, as enumerated in paragraphs (d), (e), and (f) of this section. CBP must receive this information, known as outbound electronic rail manifest data, no later than the time frames prescribed in paragraph (b) of this section. The transmission of the required data must occur through the Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system. Any examination referrals must be resolved in accordance with the provisions and time frames prescribed in paragraph (g) of this

section. Any Do-Not-Load (DNL) or Hold instructions must be addressed in accordance with the provisions prescribed in paragraph (h) of this section.

(b) *Time frame for transmitting data.*

(1) *Initial filing.* The required initial filing data enumerated in paragraph (d) of this section must be transmitted as early as practicable, but no later than 24 hours prior to departure of the train from the United States.

(2) *Subsequent Filing.* The required subsequent filing will include the data identified below:

(i) *Export manifest cargo data.* Export manifest cargo data other than initial filing data must be transmitted no later than two hours prior to departure of the train from the United States.

(ii) *Export manifest transportation data.* Export manifest transportation data other than initial filing data must be transmitted no later than two hours prior to departure of the train from the United States.

(iii) *Empty container data.* Data related to empty containers must be transmitted no later than the time of assembly of the train.

(3) *Updates.* The party who transmits data must update it if, after the filing is transmitted, any of the transmitted data changes or more accurate data becomes available. Updates are required upon discovery of data changes.

(c) *Parties filing cargo and conveyance data.* (1) *Outbound carrier.* The outbound carrier is responsible for transmitting export manifest transportation data and empty container data. If no other eligible party elects to transmit the initial filing data or export manifest cargo data, the outbound carrier must transmit it. If another eligible party elects to transmit either the initial filing data or export manifest cargo data, the outbound carrier may also choose to do so.

(2) *Other filers.* In addition to the outbound carrier for whom participation is mandatory, one of the following parties meeting the qualifications of paragraph (a) of this section that require transmission of information through ACE or any other CBP-authorized electronic data interchange system may elect to transmit to CBP the initial filing data and/or the export manifest cargo data for outgoing cargo listed in paragraph (d) of this section:

(i) The U.S. Principal Party in Interest (USPPI), as defined by the provisions of section 30.1 of the Foreign Trade Regulations (FTR) of the Department of Commerce, Bureau of the Census (15 CFR 30.1), or its authorized agent;

(ii) The Foreign Principal Party in Interest (FPPI) or its authorized agent

with the FPPI being defined by the provisions of section 30.1 of the Foreign Trade Regulations (FTR) of the Department of Commerce, Bureau of the Census, (15 CFR 30.1); or

(iii) Any other party with direct knowledge of the export information, which may include a customs broker, Automated Broker Interface (ABI) filer, non-vessel operating common carrier (NVOCC) as defined by § 4.7(b)(3)(ii) of this chapter, or a freight forwarder as defined in § 112.1 of this chapter.

(3) *Nonparticipation by other party.* If another party specified in paragraph (c)(2) of this section does not transmit advance export information to CBP, the party that arranges for and/or delivers the cargo to the outbound carrier must fully disclose and present to the outbound carrier the cargo information listed in paragraph (d) of this section. The outbound carrier must transmit this information to CBP in accordance with this section.

(4) *Bond required.* A party transmitting any of the information described in this subsection must have at least one of the following bonds on file with CBP: a CBP Basic Importation and Entry Bond containing the provisions found in § 113.62 of this chapter, a Basic Custodial Bond containing the provisions found in § 113.63 of this chapter, or an International Carrier Bond containing the provisions found in § 113.64 of this chapter.

(5) *Required information in possession of third party.* Any entity, other than the outbound carrier or a party described in paragraph (c)(2) of this section, in possession of data required to be transmitted to CBP under this section must fully disclose and present the required data to either the outbound carrier or other electronic filer, as applicable, which must transmit such data to CBP.

(6) *Party receiving information believed to be accurate.* Where the party electronically transmitting the data required in paragraph (d) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the transmitting party acquired such information, and whether and how the transmitting party is able to verify this information. Where the transmitting party is not reasonably able to verify such information, CBP will permit the party to electronically transmit the information based on what that party reasonably believes to be true.

(d) *Initial Filing.* The following information comprises the initial filing which is mandatory and may be made

by any party identified in paragraph (c)(1) or (c)(2) of this section:

- (1) Bill of lading number;
 - (2) The numbers and quantities of the cargo laden aboard the train as contained in the carrier's bill of lading, either master or house, as applicable (this means the quantity of the lowest external packaging unit; numbers or quantities of containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons);
 - (3) Total weight of cargo expressed in pounds or kilograms;
 - (4) A precise cargo description (or the Harmonized Tariff Schedule (HTSUS) number(s) to the 6-digit level under which the cargo is classified if that information is received from the shipper) and weight of the cargo; or, for a sealed container, the shipper's declared description and weight of the cargo (generic descriptions, specifically those such as "FAK" ("freight of all kinds"), "general cargo," and "STC" ("said to contain") are not acceptable);
 - (5) The shipper's complete name and address, or identification number, from the bill(s) of lading (for each house bill in a consolidated shipment);
 - (6) The consignee's complete name and address, or identification number, from the bill(s) of lading (The consignee is the party to whom the cargo will be delivered in the foreign country. However, in the case of cargo shipped "to order of [a named party]," the "to order" party must be named as the consignee; and if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party's identity and contact information including address in the "Notify party" field.); and
 - (7) The Automated Export System (AES) Exemption Statement, as applicable.
- (e) *Export manifest transportation data.* (1) *Mandatory data.* The following transportation data is mandatory and must be transmitted by the rail carrier or its agent:
- (i) Port of departure from the United States;
 - (ii) Date of departure;
 - (iii) Estimated time of departure;
 - (iv) Carrier-assigned conveyance name, equipment number and trip number;
 - (v) Train Consist, which includes:
 - (A) Manifest number;
 - (B) Train number;
 - (C) Rail car order; and
 - (D) Empty containers;
 - (vi) The rail carrier identification SCAC code (the unique Standard Carrier

Alpha Code assigned for each carrier by the National Motor Freight Traffic Association; see § 4.7a(c)(2)(iii) of this chapter); and

(vii) Container or equipment numbers (for containerized shipments) or rail car Numbers (for all other shipments).

(2) *Conditional data.* The following transportation data is conditional and must be transmitted by the rail carrier or agent if applicable:

(i) 6-character Hazmat Code. The UN (for United Nations Number) or NA (North American Number) and the corresponding 4-digit identification number assigned to the hazardous material must be provided;

(ii) Marks and numbers; and

(iii) Seal number (only required if container was sealed). The seal numbers for all seals affixed to containers and/or rail cars to the extent that CBP's data system can accept this information (for example, if a container has more than two seals, and only two seal numbers can be accepted through the system per container, electronic presentation of two of these seal numbers for the container would be considered as constituting full compliance with this data element).

(3) *Optional data.* The following transportation data is optional and may be transmitted by the rail carrier or its agent:

(i) Mode of transportation (containerized rail cargo or non-containerized rail cargo);

(ii) Equipment type code; and

(iii) Place where the rail carrier takes possession of the cargo shipment or empty rail car.

(f) *Export manifest cargo data.* (1) *Mandatory data.* The following export manifest cargo data is mandatory and may be transmitted by any party eligible to transmit as described in paragraph (c) of this section. If the information has been provided in the initial filing, it need not be transmitted again unless there are updates or changes:

(i) Shipper name and address (for empty rail cars, the shipper may be the railroad from whom the rail carrier received the empty rail car to transport);

(ii) Consignee name and address (for empty rail cars, the consignee may be the railroad to whom the rail carrier is transporting the empty rail car);

(iii) Port of Lading;

(iv) Port of Unlading;

(v) Bill of Lading type (Master, House, Simple or Sub);

(vi) Bill of Lading Numbers (Master, House, Simple or Sub);

(vii) AES Internal Transaction Number or In-bond Number (per shipment);

(viii) Cargo description;

(ix) Weight of cargo (may be expressed in either pounds or kilograms); and

(x) Quantity of cargo and unit of measure.

(2) *Conditional data.* The following export manifest cargo data is conditional and must be transmitted if applicable:

(i) In-bond type;

(ii) Notify party name and address; and

(iii) Secondary notify party name and address.

(3) *Optional data.* The following export manifest cargo data is optional and may be transmitted by any party eligible to transmit as described in paragraph (c):

(i) Mexican Pedimento Number (only for shipments for export to Mexico);

(ii) Secondary notify party Standard Carrier Alpha Code (SCAC);

(iii) Country of ultimate destination; and

(iv) Number of house bills of lading.

(g) *Examination referrals.* (1) *Potential referrals.* There are two types of referrals that may be issued by CBP after a risk assessment of an outbound export manifest data transmission.

(i) *Referral for information.* A referral for information will be issued if a risk assessment of the cargo cannot be conducted due to non-descriptive, inaccurate, or insufficient data. This can be due to typographical errors, vague cargo descriptions, and/or unverifiable information; or

(ii) *Referral for screening.* A referral for screening will be issued if the potential risk of the cargo is deemed high enough to warrant enhanced screening.

(2) *Rail export referral resolution.* All outbound rail export data transmitters must respond to and take the necessary action to address all referrals, no later than prior to departure of the train. The appropriate protocols and time frame for taking the necessary action to address these referrals must be followed as directed. The parties responsible for taking the necessary action to address outbound rail export data referrals are as follows:

(i) *Referral for information.* The data transmitter is responsible for taking the necessary action to address a referral for information. The last party to file the outbound rail manifest data for which referral is sought is responsible for such action.

(ii) *Referral for screening.* If the outbound rail export manifest transmitter is the rail carrier, it may address a referral for screening directly. If the outbound rail export manifest transmitter is a party other than the

outbound rail carrier, it may choose to address the referral for screening directly while informing the outbound carrier of the referral. If the outbound rail export manifest transmitter chooses not to address the referral for screening, it must notify the outbound rail carrier of the referral for screening. Upon such notification, the outbound rail carrier is responsible for taking the necessary action to address the referral.

(3) *Prohibition on transporting cargo with unresolved referrals.* The outbound rail carrier may not transport cargo destined for departure from the United States until all referrals issued pursuant to this section with respect to such cargo have been resolved.

(h) *Do-Not-Load (DNL)/Hold instructions.* (1) A Do-Not-Load (DNL) instruction will be issued if it is determined that the cargo or rail car may contain a potential threat to the train and its vicinity.

(2) A Hold instruction will be issued, even after loading, if it is determined that further examination of the cargo or rail car is required.

(3) All outbound rail manifest data transmitters must provide a telephone number and email address that is monitored 24 hours/7 days a week in case a Do-Not-Load (DNL) instruction is issued. All transmitters and/or outbound rail carriers, as applicable, must respond and fully cooperate when

the entity is reached by phone and/or email when a Do-Not-Load (DNL) or Hold instruction is issued. The party with physical possession of the cargo will be required to carry out the Do-Not-Load (DNL) or Hold protocols and the directions provided by law enforcement authorities.

(4) The outbound rail carrier may not transport cargo with a Do-Not-Load (DNL) or Hold instruction.

Alejandro N. Mayorkas,

Secretary of Homeland Security.

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