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

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2023–0050 and NRC–2025–0070]

RIN 3150–AK93 and RIN 3150–AL33

List of Approved Spent Fuel Storage Casks: TN Americas LLC, NUHOMS® EOS Dry Spent Fuel Storage System, Certificate of Compliance No. 1042, Amendment Nos. 3 and 4; Corrections

AGENCY: Nuclear Regulatory Commission.

ACTION: Correcting amendments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) published two direct final rules in the **Federal Register**, which amended its spent fuel storage regulations by revising the NUHOMS® EOS Dry Spent Fuel Storage System listing within the “List of approved spent fuel storage casks” to include Amendment Nos. 3 and 4 to Certificate of Compliance No. 1042 on May 2, 2023 (88 FR 39119), and July 29, 2025 (90 FR 35640), respectively. Amendment No. 3 became effective on July 17, 2023, and Amendment No. 4 became effective on October 14, 2025. The technical specifications for the NUHOMS® EOS Dry Spent Fuel Storage System, Amendment Nos. 3 and 4 contained a typographical error. The purpose of this action is to correct the errors. The final rule contained minor errors in grammar, punctuation, and referencing. This document corrects the final rule by revising the sections that contain these errors.

DATES: The correction is effective February 2, 2026.

ADDRESSES: For Amendment No. 3, please refer to Docket ID NRC–2023–0050 and for Amendment No. 4, please refer to Docket ID NRC–2025–0070 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this

action using any of the following methods:

- **Federal Rulemaking Website:** Go to <http://www.regulations.gov> and search for Docket IDs NRC–2023–0050 or NRC–2025–0070. Address questions about NRC dockets to Helen Chang; telephone: 301–415–3228; email: Helen.Chang@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC’s Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin ADAMS Public Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.

- **NRC’s PDR:** The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John-Chau Nguyen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0262; email: John-Chau.Nguyen@nrc.gov.

SUPPLEMENTARY INFORMATION: The NRC published two direct final rules in the **Federal Register** on May 2, 2023 (88 FR 39119) and July 29, 2025 (90 FR 35598), respectively, amending its regulations in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) by revising the “List of approved spent fuel storage casks” to add Amendment Nos. 3 and 4 to Certificate of Compliance No. 1042 for the NUHOMS® EOS Dry Spent Fuel Storage System. Amendment No. 3 became effective on July 17, 2023, and Amendment No. 4 became effective on October 14, 2025. The technical

specifications for these direct final rules contained an incorrect table number in section 4.4.4, the ‘Justification and Compensatory Measures’ for reference ASME code section NB–5520.

On August 28, 2025, (ADAMS Accession No. ML25240B483), TN Americas LLC (TN) notified the U.S. Nuclear Regulatory Commission (NRC) staff that TN has identified an editorial, non-substantive error which appears in the Proposed Technical Specifications of Amendment No. 5 to CoC No. 1042 and requested a correction to be included in the Final Technical Specifications for the subject Amendment. Specifically, TN requested that in section 4.4.4, the ‘Justification and Compensatory Measures’ for reference ASME code section NB–5520 be revised to invoke Table NCA–7100–2, as opposed to the current listing of NCA–7000–1. In addition, TN also requested the correction be applied to the Technical Specifications of Amendments No. 3 and No. 4 of CoC No. 1042. The NRC staff confirmed that table NCA–7000–1 does not and has not appeared in ASME Code since the introduction of this text in the Final Technical Specifications of Amendment No. 3 to CoC No. 1042. However, Table NCA–7100–2 appears in ASME code endorsed by 10 CFR 50.55a since that time and contains the pertinent information on SNT–TC–1A indicated by the code case alternative.

The NRC is correcting the typographical error in Appendix A, section 4.4.4, the “Justification and Compensatory Measures” for reference ASME code section NB–5520 be revised to invoke Table NCA–7100–2, as opposed to the current listing of NCA–7000–1. This document corrects the final rule by revising the section that contains this error.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at <https://www.regulations.gov> under Docket ID NRC–2023–0050 or NRC–2025–0070. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) navigate to the docket folder NRC–2025–0070; (2) click the “Subscribe” button; and (3) enter an email address and click on the “Subscribe” button.

Rulemaking Procedure

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. As authorized by 5 U.S.C. 553(b)(3)(B), the NRC finds good cause to waive notice and opportunity for comment on the amendments because they will have no substantive impact and are of a minor and administrative nature dealing with a correction to a CFR section related to procedure and practice. Specifically, these amendments are to correct a minor editorial and non-substantive error. These amendments do not require action by any person or entity regulated by the NRC. Also, this final rule does not change the substantive responsibilities of any person or entity regulated by the NRC. Accordingly, for the reasons stated, the NRC finds, pursuant to 5 U.S.C. 553(d)(3), that good cause exists to make this rule effective upon publication.

List of Subjects in 10 CFR Part 72

Administrative practice and procedures, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendment to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, Certificate of Compliance 1042 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1042.
Initial Certificate Effective Date: June 7, 2017.
Amendment Number 1 Effective Date: June 17, 2020.
Amendment Number 2 Effective Date: October 26, 2021.
Amendment Number 3 Effective Date: July 17, 2023.
Amendment Number 4 Effective Date: October 14, 2025.
SAR Submitted by: TN Americas LLC.
SAR Title: Final Safety Analysis Report for the NUHOMS® EOS Dry Spent Fuel Storage System.
Docket Number: 72–1042.
Certificate Expiration Date: June 7, 2037.
Model Number: EOS–37PTH, EOS–89BTH, 61BTH Type 2.
 * * * * *

Dated: January 28, 2026.

For the Nuclear Regulatory Commission.

Araceli Billoch Colon,

Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2026–01948 Filed 1–30–26; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2025–0611; Project Identifier MCAI–2024–00763–T; Amendment 39–23243; AD 2026–02–07]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A350–941 and –1041 airplanes. This AD was prompted by reports that certain lower torque links of the nose landing gear (NLG) were manufactured without bright shot peening; the omission of bright shot peening could result in reduced fatigue life of the parts. This AD requires replacement of affected parts before exceeding their reduced life limit and limits the installation of affected parts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 9, 2026.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 9, 2026.

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2025–0611; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For Airbus material identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email continued-airworthiness.a350@airbus.com; website [airbus.com](https://www.airbus.com).

- For European Union Aviation Safety Agency (EASA) material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADS@easa.europa.eu. You may find this material on the EASA website at [ad.easa.europa.eu](https://www.ad.easa.europa.eu).

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2025–0611.

FOR FURTHER INFORMATION CONTACT:

Nicholas Benson, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3647; email: nicholas.h.benson@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A350–941 and –1041 airplanes. The NPRM was published in the **Federal Register** on April 7, 2025 (90 FR 14920). The NPRM was prompted by AD 2024–0248,

dated December 18, 2024 (EASA AD 2024–0248) (also referred to as the MCAI), issued by EASA, which is the Technical Agent for the Member States of the European Union. The MCAI states that it has been reported that certain NLG lower torque links were manufactured without bright shot peening. The omission of bright shot peening may reduce the fatigue life of the component, depending on which weight variant and NLG standard the component is installed on. This condition, if not corrected, could lead to failure of the NLG, possibly resulting in damage to the airplane and injury to occupants.

In the NPRM, the FAA proposed to require replacement of affected parts before exceeding their reduced life limit and limit the installation of affected parts, as specified in EASA AD 2024–0248. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2025–0611.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from the Airline Line Pilots Association, International (ALPA) who supported the NPRM without change.

The FAA received additional comments from Delta Airlines (Delta). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Clarify Compliance Time

Delta requested clarification regarding the compliance time for operators to implement the new life limits. Delta stated that paragraph (1) of EASA AD 2024–0248 identifies the limit for when the affected parts must be replaced but does not specify how long operators have to implement the new life limits. Delta noted, in contrast, all EASA ADs pertaining to Airworthiness Limitations Section (ALS) Part 1 allow 12 months to implement the new life limits, and the corresponding FAA ADs specify implementing all limits within 90 days after the effective date of the AD.

The FAA notes that this AD does not require operators to revise their existing maintenance or inspection program to incorporate the reduced safe life limits for the affected parts. Instead, this AD requires replacing an affected part before it exceeds the reduced safe life limit. Since the FAA has not identified any affected parts that are close to exceeding the reduced life limits, it is

not necessary to provide a 90-day compliance time for their incorporation. The FAA has not changed this AD in this regard.

Request To Omit Clearance Check if Replacement Is Done During NLG Overhaul

Delta requested that the FAA add an exception to paragraph (h) of the proposed AD to specify if the affected lower torque link is replaced during NLG overhaul by the appropriate vendor, then a clearance check is not required, as specified in paragraph 3.E of the Accomplishment Instructions of the service information referenced in EASA AD 2024–0248. Delta noted that the clearance check is identified in the service information as required for compliance. However, Delta stated that replacement of the affected part will be performed during NLG overhaul and therefore the clearance check is not needed.

The FAA disagrees with the request. If replacement of the lower torque link is accomplished while the NLG is off the airplane, the clearance check is required after the NLG is re-installed on the airplane. However, under the provisions of paragraph (i)(1) of this AD, the FAA will consider requests for AMOCs. The FAA has not changed this AD in this regard.

Request To Clarify Part Number (P/N) Definition for Component and Assembly

Delta requested that the FAA add an exception to paragraph (h) of the proposed AD to include the following clarification to the definition of “Affected parts”: Lower torque link component P/N 5035–0401 (FIN 6010GN) is the main part of lower torque link assembly P/N 5035A0400–01 (FIN 5011GN). Delta stated that EASA AD 2024–0248 requires replacement of NLG lower torque link component P/N 5035–0401 as referenced in Airbus Service Bulletin A350–32–P057, Revision 01, dated December 12, 2024 (Revision 01 of Airbus Service Bulletin A350–32–P057), but the component is a non-procurable part and therefore does not appear in the component maintenance manual (CMM) for shock strut assembly P/N 4816A0000–06 or the CMM for shock strut assembly P/N 6406A0000–01. Delta noted that the proposed AD does not address this concern.

The FAA disagrees with the request. Clarification is not needed because the Accomplishment Instructions of Revision 01 of Airbus Service Bulletin A350–32–P057 specify that the NLG lower torque link component (FIN

6010GN) is a subcomponent of lower torque link assembly (FIN 5011GN) to distinguish between NLG lower torque link component (FIN 6010GN) P/N 5035–0401 and lower torque link assembly (FIN 5011GN), and the “Life Limitations of the Affected Nose Landing Gear (NLG) Lower Torque Link Component” table in Appendix B identifies lower torque link component 6010GN as P/N 5035–0401. Further, the FAA notes that replacing the lower torque link assembly (FIN 6010GN) would constitute replacement of the affected part. The FAA has not changed this AD in this regard.

Request To Correct the Sliding Piston Assembly Part Number

Delta requested that the FAA add an exception to paragraph (h) of the proposed AD to correct the NLG sliding piston assembly part number referenced in flagnote 01 in Appendix B of Revision 01 of Airbus Service Bulletin A350–32–P057. Delta stated that service information references incorrect P/N 64072000–XX. Delta noted the CMM for shock strut assembly P/N 6406A0000–01 identifies the sliding piston assembly part number as P/N 6407A2000–XX, and that Airbus acknowledged the error in Revision 01 of Airbus Service Bulletin A350–32–P057 via a TechRequest message with Delta.

The FAA agrees that P/N 6407A2000–XX is correct, as specified in Airbus Service Bulletin A350–32–P057, dated September 30, 2024. Accordingly, the FAA has added a new exception in paragraph (h)(4) of this AD to correct the part number in Revision 01 of Airbus Service Bulletin A350–32–P057.

Conclusion

These products have been approved by the civil aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA AD 2024–0248, which specifies procedures for replacement of NLG lower torque links identified with P/N 5035–0401 and certain serial numbers before exceeding their reduced life limit. EASA AD 2024–0248 also limits installation of affected parts. The FAA also reviewed Airbus

Service Bulletin A350–32–P057, Revision 01, dated December 12, 2024, which specifies procedures for an inspection or records check to determine if an affected part is installed, replacement of an affected part with a serviceable part, and applicable clearance check.

This material is reasonably available because the interested parties have

access to it through their normal course of business or by the means identified in the ADDRESSES section.

Costs of Compliance

The FAA estimates that this AD affects 34 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
9 work-hours × \$85 per hour = \$765	\$28,000	\$28,765	\$978,010

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2026–02–07 Airbus SAS: Amendment 39–23243; Docket No. FAA–2025–0611; Project Identifier MCAI–2024–00763–T.

(a) Effective Date

This airworthiness directive (AD) is effective March 9, 2026.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports that certain lower torque links of the nose landing gear (NLG) were manufactured without bright shot peening; the omission of bright shot peening could result in reduced fatigue life of the parts. The FAA is issuing this AD to

address omitted bright shot peening. The unsafe condition, if not addressed, could lead to failure of the nose landing gear, possibly resulting in damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2024–0248, dated December 18, 2024 (EASA AD 2024–0248).

(h) Exceptions to EASA AD 2024–0248

(1) Where EASA AD 2024–0248 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2024–0248 defines a serviceable part as “Any NLG Lower Torque Link eligible for installation in accordance with Airbus instructions, which is not an affected part”, this AD requires replacing that text with “Any NLG lower torque link, eligible for installation, which is not an affected part”.

(3) This AD does not adopt the “Remarks” section of EASA AD 2024–0248.

(4) Where flagnote 01 in Appendix B of Airbus Service Bulletin A350–32–P057, Revision 01, dated December 12, 2024, specifies “PN 64072000–XX”, this AD requires replacing that text with “PN 6407A2000–XX”.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to

approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (j) of this AD and email to: AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, AIR-520, Continued Operational Safety Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any material contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Additional Information

For more information about this AD, contact Nicholas Benson, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206-231-3647; email: nicholas.h.benson@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A350-32-P057, Revision 01, dated December 12, 2024.

(ii) European Union Aviation Safety Agency (EASA) AD 2024-0248, dated December 18, 2024.

(3) For Airbus material identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No. 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email continued-airworthiness.a350@airbus.com; website airbus.com.

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

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

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

Issued on January 15, 2026.

Peter A. White,

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

[FR Doc. 2026-02095 Filed 1-30-26; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2026-0732; Project Identifier MCAI-2026-00008-R; Amendment 39-23249; AD 2026-01-51]

RIN 2120-AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Helicopters Model H160-B helicopters. The FAA previously sent this AD as an emergency AD to all known U.S. owners and operators of

these helicopters. This emergency AD was prompted by a report of the main rotor pitch rod rupturing during flight. This AD requires replacing the upper and lower pitch rod end bearings on the pitch rods of the main rotor with new pitch rod end bearings and reporting information after accomplishment of the replacement. This emergency AD also prohibits installing any affected main rotor lower and upper pitch rod end bearings on any helicopter, unless it is a serviceable part. The FAA is issuing this emergency AD to address the unsafe condition on these products.

DATES: This AD is effective February 17, 2026. Emergency AD 2026-01-51, issued on January 12, 2026, which contained the requirements of this amendment, was effective with actual notice.

The Director of the Federal Register approved the incorporation by reference of a certain publication identified in this AD as of February 17, 2026.

The FAA must receive comments on this AD by March 19, 2026.

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

- *Federal eRulemaking Portal:* Go to regulations.gov. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA-2026-0732; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

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

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

Parkway, Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110. It is also available at *regulations.gov* under Docket No. FAA-2026-0732.

FOR FURTHER INFORMATION CONTACT:

Evan Weaver, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (316) 946-4152; email: *evan.p.weaver@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments using a method listed under **ADDRESSES**. Include "Docket No. FAA-2026-0732; Project Identifier MCAI-2026-00008-R" at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

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

Background

The FAA issued Emergency AD 2026-01-51, dated January 12, 2026 (Emergency AD 2026-01-51) (also referred to as the emergency AD), to address an unsafe condition on all Airbus Helicopters Model H160-B helicopters. The FAA sent the emergency AD to all known U.S. owners and operators of these helicopters. The emergency AD requires replacing the upper and lower pitch rod end bearings on the pitch rods of the main rotor with new pitch rod end bearings and reporting information after accomplishment of the replacement. The emergency AD also prohibits installing any affected main rotor lower and upper pitch rod end bearings on any helicopter, unless it is a serviceable part.

Emergency AD 2026-01-51 was prompted by Emergency AD 2026-0001-E, dated January 8, 2026; corrected January 9, 2026 (EASA Emergency AD 2026-0001-E) (also referred to as the MCAI), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition on all Airbus Helicopters Model H160-B helicopters. The MCAI states that pilots reported significant vibrations during flight and a subsequent investigation revealed a rupture of a main rotor pitch rod. The MCAI was intended to address the failure of the main rotor lower pitch rod end bearing part number (P/N) U623A30T1002 and U623A30T1006 (manufacturer P/N 12-14043P and 12-14631P), and main rotor upper pitch rod end bearing P/N U623A30T1001 and U623A30T1005 (manufacturer P/N 12-14042P and 12-14630P). EASA considers the MCAI an interim action. This condition, if not addressed, could result in structural failure of the main rotor pitch rod with consequent loss of control of the helicopter.

The FAA is issuing this emergency AD to address the structural failure of the main rotor lower and upper pitch rod end bearings. This condition, if not addressed, could result in structural failure of the main rotor pitch rod with consequent loss of control of the helicopter.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA-2026-0732.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA Emergency AD 2026-0001-E, which specifies procedures for replacing the upper and lower pitch rod end bearings on the pitch rods of the main rotor with new

pitch rod end bearings. EASA Emergency AD 2026-0001-E also prohibits installing any affected main rotor lower and upper pitch rod end bearings that are not new parts on any helicopter.

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

FAA's Determination

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

AD Requirements

This emergency AD requires accomplishing the actions specified in EASA Emergency AD 2026-0001-E, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this emergency AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some CAA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA Emergency AD 2026-0001-E is incorporated by reference in this emergency AD. This emergency AD requires compliance with EASA Emergency AD 2026-0001-E in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA Emergency AD 2026-0001-E does not mean that operators need comply only with that section. For example, where the emergency AD requirement refers to "all required actions and compliance times," compliance with this emergency AD requirement is not limited to the section titled "Required Action(s) and Compliance Time(s)" in EASA Emergency AD 2026-0001-E. Material required by EASA Emergency AD 2026-

0001–E for compliance will be available at regulations.gov under Docket No. FAA–2026–0732 after this AD is published.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that required the immediate adoption of Emergency AD 2026–01–51, issued on January 12, 2026, to all known U.S.

owners and operators of these helicopters. The FAA found that the risk to the flying public justified forgoing notice and comment prior to adoption of this rule because there is a significant risk of structural failure in the lower or upper main rotor pitch rod end bearings of helicopters that have exceeded 160 hours time-in-service (TIS) on the affected parts. Given the urgency, the FAA permits only one additional flight of maximum duration of 5 hours TIS before the mandatory replacement of these parts. This compliance time is shorter than the time necessary for the public to comment and for the publication of the final rule. These conditions still exist, therefore, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in

less than 30 days, for the same reasons the FAA found good cause to forego notice and comment.

Regulatory Flexibility Act

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

Interim Action

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

Costs of Compliance

The FAA estimates that this AD affects 13 helicopters of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace the upper and lower pitch rod end bearings.	8 work-hours × \$85 per hour = \$680.	Up to \$134,570	Up to \$135,250	Up to \$1,758,250
Report per replacement cycle	1 work-hour × \$85 per hour = \$85	\$0	\$85	\$1,105
Return of parts per replacement cycle.	1 work-hour × \$85 per hour = \$85	\$50	\$135	\$1,755

The FAA has received no definitive data to provide cost estimates for the return of parts, except the FAA estimates that it would take about 1 work-hour per product to comply with the associated paperwork necessary for the return of parts and cost approximately \$50 to ship.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send

comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2026–01–51 Airbus Helicopters:

Amendment 39–23249; Docket No. FAA–2026–0732; Project Identifier MCAI–2026–00008–R.

(a) Effective Date

The FAA issued Emergency Airworthiness Directive (AD) 2026–01–51 on January 12, 2026 (also referred to as the emergency AD), directly to affected owners and operators. As a result of such actual notice, that emergency AD was effective for those owners and operators on the date it was received. This emergency AD contains the same requirements as the emergency AD and, for those who did not receive actual notice, is effective on February 17, 2026.

(b) Affected ADs

None.

(c) Applicability

This emergency AD applies to all Airbus Helicopters Model H160–B helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6200, Main Rotor System.

(e) Unsafe Condition

This emergency AD was prompted by a report of the main rotor pitch rod rupturing during flight. The FAA is issuing this emergency AD to address the structural failure of the main rotor lower and upper pitch rod end bearings. This condition, if not addressed, could result in structural failure of the main rotor pitch rod with consequent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with European Union Aviation Safety Agency Emergency AD 2026–0001–E, dated January 8, 2026; corrected January 9, 2026 (EASA Emergency AD 2026–0001–E).

(h) Exceptions to EASA Emergency AD 2026–0001–E

(1) Where EASA Emergency AD 2026–0001–E refers to its effective date, this AD requires using the date of receipt of this emergency AD.

(2) Where EASA Emergency AD 2026–0001–E requires compliance in terms of flight hours, this emergency AD requires using hours time-in-service.

(3) Where the material referenced in EASA Emergency AD 2026–0001–E specifies “check”, this emergency AD requires replacing that text with “inspect”.

(4) This emergency AD does not adopt the “Remarks” section of EASA Emergency AD 2026–0001–E.

(i) Special Flight Permits

Special flight permits are prohibited.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Additional Information

For more information about this emergency AD, contact Evan Weaver, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (316) 946–4152; email: evan.p.weaver@faa.gov.

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) Emergency AD 2026–0001–E, dated January 8, 2026; corrected January 9, 2026.

(ii) [Reserved]

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

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

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

Issued on January 28, 2026.

Steven W. Thompson,

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

[FR Doc. 2026–01955 Filed 1–30–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2026–0733; Project Identifier MCAI–2025–01329–R; Amendment 39–23251; AD 2026–03–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH (AHD) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2014–13–09, which applied to certain Airbus Helicopters Deutschland GmbH (AHD) helicopters Model EC135P1, EC135P2, EC135P2+, EC135T1, EC135T2, and EC135T2+ helicopters. AD 2014–13–09 required repetitive visual inspections of the ring frame X9227 for a crack, and if there is a crack, replacing the ring frame. Since the FAA issued AD 2014–13–09, AHD Helicopters determined that this unsafe condition also applies to AHD Model EC135P3 and EC135T3 helicopters. This AD continues to require some of the actions required by AD 2014–13–09 and expands the applicability by including AHD Model EC135P3 and EC135T3 helicopters and also reduces the compliance time for the repetitive inspections. This AD also allows the modification of the ring frame X9227 as terminating action for the repetitive visual inspections. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 17, 2026.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 17, 2026.

The FAA must receive comments on this AD by March 19, 2026.

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

- *Federal eRulemaking Portal:* Go to regulations.gov. Follow the instructions for submitting comments.

- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of

Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2026–0733; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

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

- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2026–0733.

FOR FURTHER INFORMATION CONTACT:

Shailesh Malla, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (817) 222–5584; email: shailesh.malla@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments using a method listed under the **ADDRESSES** section. Include “Docket No. FAA–2026–0733; Project Identifier MCAI–2025–01329–R” at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR

11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

Confidential Business Information

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

Background

The FAA issued AD 2014–13–09, Amendment 39–17885 (79 FR 41095, July 15, 2014) (AD 2014–13–09), for AHD Model EC135P1, EC135P2, EC135P2+, EC135T1, EC135T2, and EC135T2+ helicopters with mounting ring frame X9227, part number (P/N) L535H2120301, P/N L535H2120303, or P/N L535H2120304, installed, except those with frame reinforcement P/N L535H2100201 installed. AD 2014–13–09 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued EASA Emergency AD 2013–0289–E, dated December 6, 2013 (EASA Emergency AD 2013–0289–E), to correct an unsafe condition identified as a fatigue crack in the ring frame. AD 2014–13–09 required visually inspecting the ring frame X9227 for a crack between the rivets and if there is a crack, replacing the ring frame with an airworthy part. The FAA issued AD 2014–13–09 to detect a crack in the ring frame and prevent loss of the tail rotor and consequent loss of control of the helicopter.

Actions Since AD 2014–13–09 Was Issued

Since the FAA issued AD 2014–13–09, EASA superseded EASA Emergency AD 2013–0289–E and issued EASA AD 2025–0174, dated August 5, 2025, which retained the requirements of EASA Emergency AD 2013–0289–E and expanded the applicability to apply to Model EC135P3 and EC135T3 helicopters. Additionally, EASA issued EASA AD 2025–0174R1, dated September 22, 2025 (EASA AD 2025–0174R1) (also referred to as the MCAI). The MCAI states that an additional occurrence of a crack, this time running along six rivets of the ring frame rather than only three, was reported.

Accordingly, the manufacturer revised the service information, which consisted of reducing the repetitive inspection intervals and also specifying modification instructions, which is a terminating action for the repetitive inspections. The MCAI also states the compliance time for the required modification can be extended.

The FAA is issuing this AD to detect a crack in the ring frame and prevent loss of the tail rotor and consequent loss of control of the helicopter. The FAA is also considering separate rulemaking to address the requirements for modifying the helicopter which may constitute as terminating action for the required repetitive inspections.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2026–0733.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA AD 2025–0174R1, which specifies procedures for visually inspecting ring frame X9227 for a crack, and depending on the results of the inspection, contacting AHD for approved repair instructions. EASA AD 2025–0174R1 also specifies procedures for modifying the ring frame X9227 which is considered terminating action for the repetitive inspections.

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

FAA’s Determination

These products have been approved by the civil aviation authority (CAA) of another country and are approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing

this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

AD Requirements

This AD requires accomplishing the actions specified in EASA AD 2025–0174R1, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD. See “Differences Between this AD and the MCAI” for a discussion of the general differences included in this AD.

Differences Between This AD and the MCAI

The MCAI applies to EC635P2+ and EC635T1 helicopters, whereas this AD does not because those models do not have an FAA type certificate.

The MCAI requires contacting the manufacturer if a crack is found, whereas this AD requires replacing the ring frame if there is a crack.

The MCAI specifies to modify the helicopter by installing a new frame reinforcement. The FAA is considering requiring this modification; in the interim, this AD allows the modification as an optional terminating action for the repetitive inspections, but does not require it.

Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some CAA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2025–0174R1 by reference in the

FAA final rule. This AD would, therefore, require compliance with EASA AD 2025–0174R1 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2025–0174R1 does not mean that operators need comply only with that section. For example, where the AD requirement refers to “all required actions and compliance times,” compliance with this AD requirement is not limited to the section titled “Required Action(s) and Compliance Time(s)” in EASA AD 2025–0174R1. Material required in EASA AD 2025–0174R1 for compliance will be available at *regulations.gov* under Docket No. FAA–2026–0733 after the FAA final rule is published.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this

rule because the affected components are part of an assembly that is critical to the control of a helicopter. In addition, cracking could lead to instantaneous failure before detection. A crack running along six rivets of the ring frame was reported. As the FAA currently lacks definitive information pertaining to the extent of cracking of the affected components that may already exist in helicopters or how quickly the condition may propagate to failure. Thus, for certain helicopters the initial instance of the actions required by this AD must be accomplished within 50 hours time-in-service (TIS) and thereafter within intervals not to exceed 25 hours TIS. These compliance times are shorter than the time necessary for the public to comment and for publication of the final rule. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b).

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

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 370 helicopters of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect ring frame X9227	1 work-hour × \$85 per hour = \$85	\$0	\$85	\$31,450

The FAA estimates the following costs to do any replacements that would

be required based on the results of the inspection. The agency has no way of

determining the number of helicopters that might need this replacement.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacing the ring frame X9227	40 work-hours × \$85 per hour = \$3,400	\$10,000	\$13,400
Modify ring frame X9227 with retrofit kit SB–135–53–030–2C1	17 work-hours × \$85 per hour = \$1,445	3,688	5,133
Modify ring frame X9227 with retrofit kit SB–135–53–030–2C2	17 work-hours × \$85 per hour = \$1,445	1,438	2,883

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
 - a. Removing Airworthiness Directive 2014–13–09, Amendment 39–17885 (79 FR 41095, July 15, 2014); and
 - b. Adding the following new airworthiness directive:

2026–03–02 Airbus Helicopters

Deutschland GmbH (AHD): Amendment 39–23251; Docket No. FAA–2026–0733; Project Identifier MCAI–2025–01329–R.

(a) Effective Date

This airworthiness directive (AD) is effective February 17, 2026.

(b) Affected ADs

This AD replaces AD 2014–13–09, Amendment 39–17885 (79 FR 41095, July 15, 2014).

(c) Applicability

This AD applies to Airbus Helicopters Deutschland GmbH (AHD) Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, EC135T3, and EC635T2+ helicopters, certificated in any category with mounting ring frame X9227, part number (P/N) L535H2120301, L535H2120303, or L535H2120304, installed, except those with frame reinforcement P/N L535H2100201 or L535H2100202 installed.

Note 1 to paragraph (c): Helicopters with an EC135P3H designation are Model EC135P3 helicopters. Helicopters with EC135T3H designation are Model EC135T3 helicopters.

(d) Subject

Joint Aircraft System Component (JASC) Code 5302, Rotorcraft Tail Boom.

(e) Unsafe Condition

This AD was prompted by fatigue crack found on the ring frame ring that attaches the fuselage tail boom structure to the tail rotor housing. The FAA is issuing this AD to detect and address fatigue cracking in the ring frame. The unsafe condition, if not addressed, could result in loss of a tail rotor and consequent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraphs (h) and (i) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2025–0174R1, dated September 22, 2025 (EASA AD 2025–0174R1).

(h) Exceptions to EASA AD 2025–0174R1

(1) Where EASA AD 2025–0174R1 refers to its effective date or the effective date of August 19, 2025 [the effective date of EASA AD 2025–0174], this AD requires using the effective date of this AD.

(2) Where EASA AD 2025–0174R1 specifies compliance in terms of flight hours, this AD requires using hours time-in-service.

(3) Where paragraph (2) of EASA AD 2025–0174R1 specifies to contact AHD for approved repair instructions and accomplish those actions accordingly, this AD requires accomplishing those actions using a method approved by the Manager, International Validation Branch, FAA; EASA; or AHD's EASA Design Organization Approval (DOA).

If approved by the DOA, the approval must include the DOA-authorized signature.

(4) This AD does not require compliance with paragraph (3) of EASA AD 2025–0174R1. This AD considers that modification an optional action and does not require it.

(5) Where the material referenced in EASA AD 2025–0174R1 specifies "if necessary, use a flashlight. A magnifying glass (at least x10 magnification) can be used", this AD requires replacing that text with "use a light source and at least 10X magnification".

(6) Where paragraph (5) of EASA AD 2025–0174R1 specifies that modification of a helicopter as required by paragraph (3) of EASA AD 2025–0174R1 constitutes a terminating action for the repetitive inspections as required by paragraph (1) of EASA AD 2025–0174R1, this AD considers that modification an optional action and does not require this action. For this AD, the modification terminates the repetitive inspection requirement.

(7) This AD does not adopt the "Remarks" section of EASA AD 2025–0174R1.

(i) No Reporting Requirement

Although the material referenced in EASA AD 2025–0174R1 specifies to submit certain information to the manufacturer, this AD does not require that action.

(j) Special Flight Permits

Special flight permits are prohibited.

(k) Alternative Methods of Compliance (AMOCs)

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

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

(l) Additional Information

For more information about this AD, contact Shailesh Malla, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (817) 222–5584; email: shailesh.malla@faa.gov.

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2025–0174R1, dated September 22, 2025.

(ii) [Reserved]

(3) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221

8999 000; email: ADs@easa.europa.eu; website: easa.europa.eu. You may find the EASA material on the EASA website at ad.easa.europa.eu.

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

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

Issued on January 28, 2026.

Steven W. Thompson,

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

[FR Doc. 2026-01956 Filed 1-30-26; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2025-1103; Project Identifier AD-2024-00141-T; Amendment 39-23246; AD 2026-02-10]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2024-01-01, which applied to certain The Boeing Company Model 787-8, 787-9, and 787-10 airplanes. AD 2024-01-01 required repetitive general visual inspections (GVIs) of the area under all lavatory washbasins for evidence of intermittent and active leaks at the faucet control module (FCM) and applicable on-condition actions. This AD was prompted by development of an FCM with an improved design that is not susceptible to leaking. This AD continues to require the actions of AD 2024-01-01 and requires replacement of the FCM as terminating action for the repetitive GVIs, a leak test, installation of moisture management devices, and applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products. **DATES:** This AD is effective March 9, 2026.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 9, 2026.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of March 7, 2024 (89 FR 6422, February 1, 2024).

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA-2025-1103; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

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

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at regulations.gov under Docket No. FAA-2025-1103.

FOR FURTHER INFORMATION CONTACT:

Joshua Baek, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 562-627-6725; email: Joshua.Y.Baek@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2024-01-01, Amendment 39-22652 (89 FR 6422, February 1, 2024) (AD 2024-01-01). The NPRM was published in the **Federal Register** on June 16, 2025 (90 FR 25166). AD 2024-01-01 applied to certain The Boeing Company Model 787-8, 787-9, and 787-10 airplanes. AD 2024-01-01 was prompted by reports of undetected water leaks from the FCM migrating below the passenger floor in multiple lavatory locations during flight, and into the electronic equipment bay(s). The NPRM was prompted by development of an FCM with an improved design that is not susceptible to leaking. In the NPRM, the FAA proposed to continue to require repetitive GVIs of the area under all lavatory washbasins for evidence of intermittent and active leaks at the FCM and applicable on-condition actions. The NPRM also proposed to require

replacement of the FCM as terminating action for the repetitive GVIs, a leak test, installation of moisture management devices, and applicable on-condition actions. The FAA is issuing this AD to address undetected water leaks, which could damage flight critical equipment. The unsafe condition, if not addressed, could result in loss of multiple line replaceable units and subsequent loss of continued safe flight and landing.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from Air Line Pilots Association, International (ALPA) and United Airlines, who supported the NPRM without change.

The FAA received additional comments from three commenters, including All Nippon Airways (All Nippon), Boeing, and Jetstar Airways (Jetstar). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Update the Description for Group 4 Airplanes

Boeing requested that the FAA update the description for Group 4 airplanes in Boeing Alert Requirements Bulletin B787-81205-SB250291-00 RB, Issue 002, dated November 22, 2024 (Issue 002 of Boeing Alert Requirements Bulletin B787-81205-SB250291-00 RB), to include airplanes that have completed Work Package 1 in Boeing Alert Service Bulletin B787-81205-SB250291-00, Issue 001, dated August 30, 2023 (Issue 001 of Boeing Alert Requirements Bulletin B787-81205-SB250291-00 RB). Boeing stated that the Group 4 description does not account for the fact that FCM part number (P/N) AFUT000200A0004 was installed on Group 4, Configuration 3 airplanes as part of Work Package 1 of Issue 001 of the Boeing Alert Requirements Bulletin B787-81205-SB250291-00 RB. For this reason, Boeing also requested that the proposed AD be revised to clarify there is no action for those airplanes in Work Package 1 of Issue 002 of Boeing Alert Requirements Bulletin B787-81205-SB250291-00 RB.

The FAA agrees that Group 4, Configuration 3 airplanes are not required to accomplish Work Package 1 of Issue 002 of Boeing Alert Requirements Bulletin B787-81205-SB250291-00 RB because, per the Group 4, Configuration 3 description, those airplanes incorporated Issue 001 of Boeing Alert Requirements Bulletin B787-81205-SB250291-00, which includes installation of FCM P/N

AFUT000200A0004. However, no change to this AD is necessary in this regard because Boeing's concern is addressed in paragraph (j)(2) of this AD.

The FAA acknowledges Boeing's concern regarding the Group 4 description in Issue 002 of Boeing Alert Requirements Bulletin B787–81205–SB250291–00 RB but has determined that revising the AD in this regard is not necessary. The Group 4, Configuration 3 description, along with the exception in paragraph (j)(2) of this AD, provide sufficient clarification regarding the requirements for Group 4, Configuration 3 airplanes.

Request To Address Airplanes With Devices Installed in Production

Boeing requested that the FAA update the Configuration 1 descriptions for Groups 4 and 5 in table 1 of paragraph A.1 of Issue 002 of Boeing Alert Requirements Bulletin B787–81205–SB250291–00 RB to include airplanes that had the intent of “Boeing Service Bulletin B787–81205–SB250249–00” incorporated during production. Boeing identified some airplanes within these groups that had the P200 panel moisture management device changes incorporated in production. Boeing noted that the current configuration descriptions only account for the P200 panel moisture management device changes installed in accordance with “Boeing Service Bulletin B787–81205–SB250249–00” after production.

All Nippon requested that the FAA add an exception to the proposed AD to clarify that airplane line numbers included in paragraph (c) of the proposed AD but not included in the effectivity of Boeing Service Bulletin B787–81205–SB250249–00, Issue 002, dated February 26, 2024 (Issue 002 of Boeing Service Bulletin B787–81205–SB250249–00), are not subject to the requirement to install moisture management devices for the P200 panel. All Nippon asserted that airplanes not included in the effectivity of Issue 002 of Boeing Service Bulletin B787–81205–SB250249–00 have already had the P200 panel moisture management device installed during production. All Nippon noted those airplanes do not fall under Configuration 1 or 2 for any of the groups identified in Issue 002 of Boeing Alert Requirements Bulletin B787–81205–SB250291–00 RB.

The FAA agrees with Boeing's request to revise the Configuration 1 descriptions for Groups 4 and 5 by including airplanes that had the P200 panel moisture management device changes incorporated during production. Accordingly, the FAA has added a new exception to paragraph

(j)(3) of this AD. The FAA notes that this exception also addresses All Nippon's concern, so no additional change to this AD is necessary in regard to that comment.

Request To Correct Certain Station (STA) Numbers

Boeing and Jetstar requested that the FAA replace references to STA 1256 and STA 1232 with STA 1281 and STA 1257, respectively, in figure 1 of task 7 in Issue 002 of Boeing Alert Requirements Bulletin B787–81205–SB250291–00 RB. Boeing, Jetstar, and All Nippon also requested that STA 1218 be replaced with STA 1233 in figures 1, 4, 5, and 6 of task 7 in Issue 002 of Boeing Alert Requirements Bulletin B787–81205–SB250291–00 RB. Boeing stated that the wrong STA numbers were inadvertently included.

The FAA agrees. The FAA has added new exceptions in paragraphs (j)(4) and (5) of this AD to correct the errors.

Request To Correct Certain Table Instructions

Jetstar stated it found discrepancies while accomplishing the instructions in table 1 of task 7 in Issue 002 of Boeing Alert Requirements Bulletin B787–81205–SB250291–00 RB. Jetstar noted step 1 in table 1 of task 7 specifies to remove/keep 10 bolts, P/N BACB30NX6K3, but only specifies to remove/keep 6 collars, P/N BACC30BH6K. Jetstar also noted step 3 in table 1 of task 7 specifies to install the 10 kept bolts, P/N BACB30NX6K3, but only specifies to install 6 kept collars, P/N BACC30BH6K. Jetstar also noted that the collars cannot be reused. The FAA infers that Jetstar is requesting that the FAA revise the AD to align the quantity of bolts and collars specified in steps 1 and 3 and to allow for the installation of new collars.

The FAA acknowledges the difference in the quantity of bolts and collars specified in steps 1 and 3, as noted by the commenter. However, no change to the AD is necessary in this regard because according to Boeing only 6 collars and the supporting hardware are required to remove the clips from the foreign object debris (FOD) deflector.

The FAA agrees an exception is needed to allow installation of new collars because the instruction to install kept collars is required for compliance. Accordingly, the FAA has added a new exception to paragraph (j)(6) of this AD to specify this AD allows installation of a new or serviceable part with the same part number as an alternative to reinstalling a kept part.

Request To Address Omitted Part Number

All Nippon requested that the FAA add an exception to the proposed AD to clarify that FCM P/N

AFUT000200A0001 is subject to the replacement procedures in Jamco Service Bulletin B80–25–4041, Revision 1, dated June 20, 2023, and Revision 2, dated March 15, 2024. The commenter noted Issue 002 of Boeing Alert Requirements Bulletin B787–81205–SB250291–00 RB refers to the Jamco service information as the method of compliance for replacement of FCM P/Ns AFUT000200A0001 and AFUT000200A0002, but the Jamco service information omits FCM P/N AFUT000200A0001.

The FAA agrees. Although FCM P/N AFUT000200A0001 is not referenced in the Jamco service information, the FAA has determined that the procedures in that service information may be used for replacing FCM P/N AFUT000200A0001 with FCM P/N AFUT000200A0004. Accordingly, the FAA has added a new exception to paragraph (j)(7) of this AD of this AD.

Conclusion

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

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin B787–81205–SB250290–00 RB, Issue 002, dated January 31, 2025. This material specifies procedures for repetitive GVIs of the area under all lavatory washbasins for evidence of intermittent and active leaks at the FCM and applicable on-condition actions. On-condition actions include replacing the affected FCM with new or serviceable FCM at affected lavatory washbasin(s) and performing a leak test. If a leak is found during the leak test, this material specifies completing applicable corrective action, repeating the leak test, and making sure no leak is found.

The FAA reviewed Boeing Alert Requirements Bulletin B787–81205–SB250291–00 RB, Issue 002, dated November 22, 2024. This material specifies procedures for replacing the

FCM, performing a leak test and repairing any leaks, and installing moisture management devices if not previously installed. This material also specifies procedures for reviewing and updating, if necessary, the existing maintenance program documentation to include Maintenance Review Board Report item number 38–025–00. This material specifies that replacement of the FCM terminates the repetitive

inspections (which are required by AD 2024–01–01).
This AD also requires Boeing Alert Requirements Bulletin B787–81205–SB250290–00 RB, Issue 001, dated November 1, 2022, which the Director of the Federal Register approved for incorporation by reference as of March 7, 2024 (89 FR 6422, February 1, 2024).
This material is reasonably available because the interested parties have

access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 155 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS *

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
GVI of area under all lavatory washbasins (retained actions from AD 2024–01–01).	2 work-hour × \$85 per hour = \$170 per inspection cycle.	\$0	\$170 per inspection cycle	\$26,350 per inspection cycle.
Replacement of FCM (new action).	3 work-hours × \$85 per hour = \$255.	6,021	6,276	972,780.
Install moisture management devices (new action).	79 work-hours × \$85 per hour = \$6,715.	1,610	8,325	432,900 (52 airplanes).
Review maintenance program documentation (new action).	1 work-hour × \$85 per hour = \$85.	0	85	13,175.

* The FAA has received no definitive data on which to base the cost estimate for the FCM replacement parts.

The FAA estimates the following costs to do any replacements that would

be required based on the results of the inspection. The agency has no way of

determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	1 work-hour × \$85 per hour = \$85	\$6,021	\$6,106

The FAA has determined that revising the existing maintenance or inspection program would take an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the average total cost per operator would be \$7,650 (90 work-hours × \$85 per work-hour).

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:
Authority: 49 U.S.C. 106(g), 40113, 44701.
- **§ 39.13 [Amended]**
- 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2024–01–01, Amendment 39–22652 (89 FR 6422, February 1, 2024); and

■ b. Adding the following new AD:

2026–02–10 The Boeing Company:

Amendment 39–23246; Docket No. FAA–2025–1103; Project Identifier AD–2024–00141–T.

(a) Effective Date

This airworthiness directive (AD) is effective March 9, 2026.

(b) Affected ADs

This AD replaces AD 2024–01–01, Amendment 39–22652 (89 FR 6422, February 1, 2024) (AD 2024–01–01).

(c) Applicability

This AD applies to The Boeing Company Model 787–8, 787–9, and 787–10 airplanes, certificated in any category, having line numbers 6 through 687 inclusive, 689 through 954 inclusive, 956 through 970 inclusive, 972 through 982 inclusive, 984 through 989 inclusive, 991 through 996 inclusive, 999, 1001 through 1008 inclusive, 1012, 1013, 1016 through 1019 inclusive, 1021, 1022, 1024 through 1026 inclusive, 1029 through 1032 inclusive, 1038, 1040, 1041, 1044, 1045, 1047, 1048, 1054 through 1062 inclusive, 1071, 1072, 1074, 1075, 1082, 1085, 1087, 1091, 1094, 1095, 1098, 1099, 1103, 1109, 1112 through 1114 inclusive, 1117, 1118, 1121, 1122, 1125, 1126, 1128 through 1134 inclusive, 1136 through 1145 inclusive, 1147, 1148, 1151, 1161, and 1167.

(d) Subject

Air Transport Association (ATA) of America Code 38, Water/waste.

(e) Unsafe Condition

This AD was prompted by reports of undetected water leaks from the faucet control module (FCM) migrating below the passenger floor in multiple lavatory locations during flight, and into the electronic equipment bay(s). The FAA is issuing this AD to address undetected water leaks, which could damage flight critical equipment. The unsafe condition, if not addressed, could result in loss of multiple line replaceable units and subsequent loss of continued safe flight and landing.

(f) Compliance

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

(g) Retained Inspection, With Revised Service Information

This paragraph restates the requirements of paragraph (g) of AD 2024–01–01, with revised service information. Except as specified by paragraph (h) of this AD: At the applicable times specified in the “Compliance” paragraph of Boeing Alert Requirements Bulletin B787–81205–SB250290–00 RB, Issue 001, dated November 1, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–

SB250290–00 RB, Issue 001, dated November 1, 2022, or Issue 002, dated January 31, 2025. As of the effective date of this AD, only use Boeing Alert Requirements Bulletin B787–81205–SB250290–00 RB, Issue 002, dated January 31, 2025, for the actions required by this paragraph.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by paragraph (g) of this AD can be found in Boeing Alert Service Bulletin B787–81205–SB250290–00, Issue 002, dated January 31, 2025, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB250290–00 RB, Issue 002, dated January 31, 2025.

(h) Retained Exception to Requirements Bulletin B787–81205–SB250290–00 RB, With No Change

This paragraph restates the exception in paragraph (h) of AD 2024–01–01, with no change. Where the Compliance Time column of the table in the “Compliance” paragraph of Boeing Alert Requirements Bulletin B787–81205–SB250290–00 RB, Issue 001, dated November 1, 2022, uses the phrase “the Issue 001 date of the Requirements Bulletin B787–81205–SB250290–00 RB,” this AD requires using March 7, 2024 (the effective date of AD 2024–01–01).

(i) New Required Actions

Except as specified by paragraph (j) of this AD: At the applicable times specified in the “Compliance” paragraph of Boeing Alert Requirements Bulletin B787–81205–SB250291–00 RB, Issue 002, dated November 22, 2024, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB250291–00 RB, Issue 002, dated November 22, 2024.

Note 2 to paragraph (i): Guidance for accomplishing the actions required by paragraph (i) of this AD can be found in Boeing Alert Service Bulletin B787–81205–SB250291–00, Issue 002, dated November 22, 2024, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB250291–00 RB, Issue 002, dated November 22, 2024.

(j) Exceptions to Requirements Bulletin B787–81205–SB250291–00 RB

(1) Where the Boeing Recommended Compliance Time columns of the tables in the “Compliance” paragraph of Boeing Alert Requirements Bulletin B787–81205–SB250291–00 RB, Issue 002, dated November 22, 2024, refer to the Issue 001 date of Requirements Bulletin B787–81205–SB250291–00 RB, this AD requires using the effective date of this AD.

(2) For Group 4, Configuration 3 airplanes identified in Boeing Alert Requirements Bulletin B787–81205–SB250291–00 RB, Issue 002, dated November 22, 2024: The actions in Table 1 and Table 2 of the Accomplishment Instructions in Boeing Alert Requirements Bulletin B787–81205–SB250291–00 RB, Issue 002, dated November 22, 2024, are not required by this AD.

(3) Where the Description column for Groups 4 and 5, Configuration 1, in table 1 of the “Effectivity” paragraph of Boeing Alert

Requirements Bulletin B787–81205–SB250291–00 RB, Issue 002, dated November 22, 2024, refers to “Airplanes that have incorporated the P200 panel moisture management device changes in service bulletin B787–81205–SB250249–00”, this AD requires replacing that text with “Airplanes that have incorporated the P200 panel moisture management device changes in service bulletin B787–81205–SB250249–00 or had the intent of service bulletin B787–81205–SB250249–00 incorporated during production”.

(4) Where “Task 7 Figure 1” of Boeing Alert Requirements Bulletin B787–81205–SB250291–00 RB, Issue 002, dated November 22, 2024, refers to stations (STAs) “1218”, “1232”, and “1256”, this AD requires replacing that text with “1233”, “1257”, and “1281”, respectively.

(5) Where “Task 7 Figure 4,” “Task 7 Figure 5”, and “Task 7 Figure 6” of Boeing Alert Requirements Bulletin B787–81205–SB250291–00 RB, Issue 002, dated November 22, 2024, refer to STA “1218”, this AD requires replacing that text with “1233”.

(6) Where of the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB250291–00 RB, Issue 002, dated November 22, 2024, specify to install a kept part, this AD allows installation of a new or serviceable part with the same part number as an alternative to the kept part.

(7) Where the Jamco service information identified in Boeing Alert Requirements Bulletin B787–81205–SB250291–00 RB, Issue 002, dated November 22, 2024, specifies procedures for replacing FCM part number (P/N) AFUT000200A0002 with FCM P/N AFUT000200A0004, those procedures are acceptable for compliance for replacing FCM P/N AFUT000200A0001 with FCM P/N AFUT000200A0004.

(k) Terminating Action for Repetitive Inspections

Replacing FCM P/N AFUT000200A0001 or P/N AFUT000200A0002 with FCM P/N AFUT000200A0004 terminates the repetitive inspections required by paragraph (g) of this AD.

(l) Credit for Previous Actions

For Group 1, 2, 3, 5, 6, and 7 airplanes and Group 4, Configuration 1 and 2 airplanes, as identified in Boeing Alert Requirements Bulletin B787–81205–SB250291–00 RB, Issue 002, dated November 22, 2024: This paragraph provides credit for the actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Requirements Bulletin B787–81205–SB250291–00 RB, Issue 001, dated August 30, 2023.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the Continued Operational

Safety Branch, send it to the attention of the person identified in paragraph (n)(1) of this AD. Information may be emailed to: AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(3) AMOCs approved for AD 2024-01-01 are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD.

(n) Additional Information

(1) For more information about this AD, contact Joshua Baek, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 562-627-6725; email: Joshua.Y.Baek@faa.gov.

(2) Material identified in this AD that is not incorporated by reference is available at the address specified in paragraph (o)(5) of this AD.

(o) Material Incorporated by Reference

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

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

(3) The following material was approved for IBR on March 9, 2026.

(i) Boeing Alert Requirements Bulletin B787-81205-SB250290-00 RB, Issue 002, dated January 31, 2025.

(ii) Boeing Alert Requirements Bulletin B787-81205-SB250291-00 RB, Issue 002, dated November 22, 2024.

(4) The following material was approved for IBR on March 7, 2024 (89 FR 6422, February 1, 2024).

(i) Boeing Alert Requirements Bulletin B787-81205-SB250290-00 RB, Issue 001, dated November 1, 2022.

(ii) [Reserved]

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

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

(7) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA,

visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on January 27, 2026.

Peter A. White,

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

[FR Doc. 2026-02096 Filed 1-30-26; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2026-0729; Project Identifier MCAI-2025-00063-T; Amendment 39-23247; AD 2026-02-11]

RIN 2120-AA64

Airworthiness Directives; Embraer S.A. (Type Certificate Previously Held by Yaborá Indústria Aeronáutica S.A.; Embraer S.A.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Embraer S.A. Model ERJ 190-300 and -400 airplanes. This AD was prompted by an inconsistency identified in the takeoff calculation module of the computerized airplane flight manual (CAFM). This AD requires revising the airplane flight manual (AFM) to incorporate a new CAFM version. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 17, 2026.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 17, 2026.

The FAA must receive comments on this AD by March 19, 2026.

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

- **Federal eRulemaking Portal:** Go to regulations.gov. Follow the instructions for submitting comments.

- **Fax:** 202-493-2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- **Hand Delivery:** Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA-2026-0729; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

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

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at regulations.gov under Docket No. FAA-2026-0729.

FOR FURTHER INFORMATION CONTACT: Rori Fortmann, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206-742-7295; email: Rori.K.Fortmann@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments using a method listed under the **ADDRESSES** section. Include “Docket No. FAA-2026-0729; Project Identifier MCAI-2025-00063-T” at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Rori Fortmann, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206-742-7295; email: Rori.K.Fortmann@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2023-26-01, Amendment 39-22644 (89 FR 253, January 3, 2024) (AD 2023-26-01), for all Embraer S.A. Model ERJ 190-300 and -400 airplanes. AD 2023-26-01 was prompted by a MCAI originated by ANAC, which is the aviation authority for Brazil. ANAC issued ANAC AD 2023-04-02, effective April 11, 2023 (which corresponds to FAA AD 2023-26-01), to correct an unsafe condition.

AD 2023-26-01 requires revising the existing AFM to incorporate CAFM version 1.9 (for Model ERJ 190-300 airplanes) or CAFM version 1.5 (for Model ERJ 190-400 airplanes), or later versions. The FAA issued AD 2023-26-01 to address the possibility that, in the event of an engine failure during takeoff, an airplane may not be able to overcome obstacles when the airport is limited to obstacle clearance in the acceleration segment.

Actions Since AD 2023-26-01 Was Issued

Since the FAA issued AD 2023-26-01, ANAC has issued ANAC AD 2025-01-01, effective January 20, 2025 (ANAC AD 2025-01-01) (also referred to as the MCAI), to correct an unsafe condition for all Embraer S.A. Model

ERJ 190-300 and -400 airplanes. The MCAI states that an inconsistency was identified in the takeoff calculation module of the CAFM for the ERJ 190-300 and -400 airplane models. This inconsistency could lead to an erroneous calculation that, in certain operating conditions and airports, could result in the airplane being unable to overcome obstacles in the first segment of the takeoff flight path in the event of an engine failure during takeoff.

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

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2026-0729.

Material Incorporated by Reference Under 1 CFR Part 51

ANAC AD 2025-01-01 specifies procedures for revising Supplement 1 of the AFM to incorporate the CAFM version 2.0 or later versions, as approved versions in the Limitations block.

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

FAA's Determination

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

Requirements of This AD

This AD requires accomplishing the actions specified in ANAC AD 2025-01-01 described previously, except for any differences identified as exceptions in the regulatory text of this AD.

Accomplishing the actions required by this AD terminates the requirements of AD 2023-26-01.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of

information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, ANAC AD 2025-01-01 is incorporated by reference in this AD. This AD requires compliance with ANAC AD 2025-01-01 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Material required by ANAC AD 2025-01-01 for compliance will be available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2026-0729 after this AD is published.

Justification for Immediate Adoption and Determination of the Effective Date

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

There are currently no domestic operators of these products. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b). In addition, for the foregoing reasons, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. If an affected airplane is imported and placed on the U.S. Register in the future, the FAA provides the following cost estimates to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hour × \$85 per hour = \$85	\$0	\$85

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2026-02-11 Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.): Amendment 39-23247; Docket No. FAA-2026-0729; Project Identifier MCAI-2025-00063-T.

(a) Effective Date

This airworthiness directive (AD) is effective February 17, 2026.

(b) Affected ADs

This AD affects AD 2023-26-01, Amendment 39-22644 (89 FR 253, January 3, 2024) (AD 2023-26-01).

(c) Applicability

This AD applies to all Embraer S.A. (Type Certificate previously held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.) Model ERJ 190-300 and -400 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Unsafe Condition

This AD was prompted by an inconsistency identified in the takeoff calculation module of the computerized airplane flight manual (CAFM). The FAA is issuing this AD to address the inconsistency which could lead to an erroneous calculation that, in certain operating conditions and airports, could result in the airplane being unable to overcome obstacles in the first segment of the takeoff flight path in the event of an engine failure during takeoff.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Agência Nacional de Aviação Civil (ANAC) AD 2025-01-01, effective January 20, 2025 (ANAC AD 2025-01-01).

(h) Exceptions to ANAC AD 2025-01-01

(1) Where ANAC AD 2025-01-01 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt paragraph (c) of ANAC AD 2025-01-01.

(i) Terminating Action for AD 2023-26-01

Accomplishing the actions required by this AD terminates all requirements of AD 2023-26-01.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Manager, AIR-520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of AIR-520, Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (k) of this AD and email to: AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, AIR-520, Continued Operational Safety Branch, FAA; or ANAC; or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(k) Additional Information

For more information about this AD, contact Rori Fortmann, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206-742-7295; email: Rori.K.Fortmann@faa.gov.

(l) Material Incorporated by Reference

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

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

(i) Agência Nacional de Aviação Civil (ANAC) AD 2025-01-01, effective January 20, 2025.

(ii) [Reserved]

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

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

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

Issued on January 22, 2026.

Peter A. White,

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

[FR Doc. 2026-02097 Filed 1-30-26; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2025-1120; Project Identifier MCAI-2025-00019-T; Amendment 39-23250; AD 2026-03-01]

RIN 2120-AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A350-941 and -1041 airplanes. This AD was prompted by reports of electronic centralized aircraft monitor (ECAM) messages requiring flight control remote module (FCRM) replacement linked to solder structural fatigue. This AD requires replacement of affected parts before exceeding the life limit and limits the installation of affected parts under certain conditions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 9, 2026.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 9, 2026.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA-2025-1120; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

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

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at regulations.gov under Docket No. FAA-2025-1120.

FOR FURTHER INFORMATION CONTACT: Kin Suen Chan, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 847-294-7496; email: kin.suen.chan@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A350-941 and -1041 airplanes. The NPRM was published in the **Federal Register** on June 27, 2025 (90 FR 27485). The NPRM was prompted by AD 2025-0008, dated January 9, 2025 (EASA AD 2025-0008) (also referred to as the MCAI), issued by EASA, which is the Technical Agent for the Member States of the European Union. The MCAI states occurrences of ECAM messages requiring FCRM replacement have been reported, and further investigation identified an issue linked to solder structural fatigue. This condition, if not corrected, could lead to failure of a flight control actuator, possibly resulting in reduced control of the airplane.

In the NPRM, the FAA proposed to require replacement of affected parts before exceeding the life limit and limit the installation of affected parts under certain conditions, as specified in EASA AD 2025-0008. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA-2025-1120.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from Air Line Pilots Association, International (ALPA) who supported the NPRM without change.

The FAA received additional comments from Delta Air Lines (Delta)

and the Foundation for Aviation Safety. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Replace Parts Using Standard Maintenance Procedures

Delta requested the FAA confirm that the proposed AD would only require replacing each affected part with a serviceable part within the compliance time specified in table 1 of EASA AD 2025-0008 and testing the installed serviceable part in accordance with paragraph 3.E. of Airbus Service Bulletin A350-27-P066, dated November 12, 2024. Delta stated that if this is correct, then using standard maintenance manuals instead of the Airbus service bulletin would provide an acceptable level of safety. Delta noted the service bulletin also specifies collecting FCRM part and serial numbers but reporting of that information is not mandatory according to paragraph (i) of the proposed AD. Delta concluded that allowing operators to use standard maintenance manuals and maintenance records to replace affected parts will provide more flexibility to address the safety condition.

The FAA confirms this AD requires replacing each affected part with a serviceable part within the applicable compliance time specified in table 1 of EASA AD 2025-0008, except as provided by paragraph (h)(1) of this AD. This AD also requires testing each installed serviceable part in accordance with paragraph 3.E. of the Airbus service bulletin and limits the installation of affected parts under certain conditions. The FAA notes the replacement and testing procedures in paragraphs 3.C. and 3.E. of the Airbus service bulletin refer to the applicable A350 maintenance procedures. If an operator would like to use other maintenance procedures not referenced in the Airbus service bulletin, the FAA will consider requests for alternative methods of compliance (AMOCs) under the provisions of paragraph (j)(1) of this AD. The FAA has not changed this AD in regard to this comment.

Request To Clarify Condition for Replacement

Delta requested the FAA add an exception to paragraph (h) of the proposed AD to clarify the condition in paragraph 3.C(1)(a)1c of Airbus Service Bulletin A350-27-P066, dated November 12, 2024, for when the replacement of the FCRMs must be done. Delta stated it is not clear whether that paragraph requires replacement when any FCRM reaches the threshold,

or all 22 FCRMs reach it. Delta noted paragraph (1) of EASA AD 2025–0008 and paragraph (h)(3) of the proposed AD imply each FCRM must be replaced prior to reaching the threshold, and replacement of the other FCRMs may be postponed until closer to their thresholds.

The FAA agrees that this AD requires replacement of each affected FCRM before it reaches the life limit required by this AD, and that all 22 FCRMs may not need to be replaced at the same time. Additionally, the FAA notes that the requirements of the AD take precedence over any instructions specified in the referenced Airbus service bulletin. Operators must comply with the requirements of this AD and use the relevant procedures in the Airbus service bulletin to replace an affected FCRM and test the installed serviceable FCRM. The FAA has determined no change to this AD is necessary in this regard.

Request To Clarify Inspection Requirement for FCRMs With Different Conditions

Delta requested the FAA add exceptions to paragraph (h) of the proposed AD to clarify that the procedures in paragraphs 3.C(1)(a)2, 4, and 5 of Airbus Service Bulletin A350–27–P066, dated November 12, 2024, apply if any of the 22 FCRMs meet the conditions of those paragraphs. Delta stated it is not clear whether the procedures in those paragraphs should be accomplished if all or any of the 22 FCRMs meet the conditions of those paragraphs. Delta also stated that access to the FCRMs and replacement should be based on each affected part and not the condition of all 22 FCRMs.

The FAA agrees with Delta’s interpretation of paragraphs 3.C(1)(a)2, 4, and 5 in the Airbus service bulletin, but has determined that no change to this AD is necessary in this regard. The FAA notes that this AD does not require the inspection procedures in the Airbus service bulletin. Instead, this AD requires replacement of each affected FCRM, as defined in EASA AD 2025–0008, before it reaches the life limit required by this AD. To comply with the requirements of this AD, operators must use the relevant procedures in the Airbus service bulletin to replace an affected FCRM and test the installed serviceable FCRM.

Request To Identify Root Cause and Prevention of Component Failure

The Foundation for Aviation Safety asked what the root cause of the component failure is and what is being done to prevent this from happening in the future.

As noted in EASA AD 2025–0008, investigation of the reported FCRM failures identified an issue linked to solder structural fatigue in the affected FCRMs. Safety analysis conducted by Airbus demonstrated that the FCRM failure rate increases with part utilization (*i.e.*, the number of accumulated in-service flight cycles and/or flight hours), and that the FCRMs must be replaced before reaching 9,000 flight cycles (FC) or 50,000 flight hours (FH), whichever occurs first. To prevent failure of an affected FCRM from occurring in the future, the FAA is requiring operators to replace each affected FCRM before it exceeds the life limit of 9,000 FC or 50,000 FH, whichever occurs first. The FAA also requires testing of any serviceable part

installed on an airplane prior to returning the airplane to service.

Conclusion

These products have been approved by the civil aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA AD 2025–0008, which specifies procedures for replacing affected FCRMs with serviceable FCRMs and testing the serviceable FCRMs. EASA AD 2025–0008 also limits the installation of affected parts under certain conditions. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

Costs of Compliance

The FAA estimates that this AD affects 35 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × \$85 per hour = \$85	\$28,000	\$28,085	\$982,975 (per FCRM).

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on

the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2026–03–01 Airbus SAS: Amendment 39–23250; Docket No. FAA–2025–1120; Project Identifier MCAI–2025–00019–T.

(a) Effective Date

This airworthiness directive (AD) is effective March 9, 2026.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Unsafe Condition

This AD was prompted by reports of electronic centralized aircraft monitor (ECAM) messages requiring flight control remote module (FCRM) replacement linked to solder structural fatigue. The FAA is issuing this AD to address potential failure of a flight control actuator. The unsafe condition, if not addressed, could result in reduced control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2025–0008, dated January 9, 2025 (EASA AD 2025–0008).

(h) Exceptions to EASA AD 2025–0008

(1) Where EASA AD 2025–0008 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2025–0008 defines a serviceable part as an “FCRM, eligible for installation in accordance with Airbus instructions, which is not an affected part; or an affected part that has accumulated less than 9 000 flight cycles (FC) and less than 50 000 flight hours (FH) since first installation on any aeroplane (see Note 1 of this AD)”, this AD requires replacing that text with “FCRM, eligible for installation, which is not an affected part; or an affected part that has accumulated less than 9,000 flight cycles (FC) and less than 50,000 flight hours (FH) since first installation on any airplane (see Note 1 of this AD)”.

(3) Where paragraph (1) of EASA AD 2025–0008 specifies to “replace each affected part with a serviceable part, as defined in this AD, in accordance with the instructions of the SB”, this AD requires replacing that text with “replace each affected part with a serviceable part, as defined in this AD, and test in accordance with paragraph 3.E. of the Accomplishment Instructions of the SB”.

(4) Where paragraph (2) of EASA AD 2025–0008 specifies “the affected part is replaced as required by paragraph (1)”, this AD requires replacing that text with “the affected part is replaced with a serviceable part at the applicable time specified in row A of Table 1”.

(5) This AD does not adopt the “Remarks” section of EASA AD 2025–0008.

(i) No Reporting Requirement

Although the material referenced in EASA AD 2025–0008 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (k) of this AD and email to: AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, AIR–520, Continued Operational Safety Branch, FAA; or EASA; or Airbus SAS’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD, if any material contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified

as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator’s maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Additional Information

For more information about this AD, contact Kin Suen Chan, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 847–294–7496; email: kin.suen.chan@faa.gov.

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2025–0008, dated January 9, 2025.

(ii) [Reserved]

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

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

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

Issued on January 27, 2026.

Peter A. White,

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

[FR Doc. 2026–02098 Filed 1–30–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125, and 135

[Docket No.: FAA–2023–2270; Amdt. Nos. 91–382, 121–395, 125–77 and 135–149]

RIN 2120–AL92

25-Hour Cockpit Voice Recorder (CVR) Requirement, New Aircraft Production

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

ACTION: Final rule.

SUMMARY: This final rule increases the recording time of cockpit voice recorders (CVRs) from the currently mandated 2 hours to 25 hours for all affected future manufactured aircraft. This action provides accident investigators, aircraft operators, and civil aviation authorities with substantially more CVR data to help determine the probable causes of incidents and accidents and prevent future incidents and accidents. The action will also align the Federal Aviation Administration's (FAA) regulations more closely with existing international requirements.

DATES: February 2, 2026.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see "How to Obtain Additional Information" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Charisse Green, AFS-340, Aircraft Maintenance Division, Office of Safety Standards, Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC 20591; telephone (202) 267-1675; email Charisse.Green@faa.gov.

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- B. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments
- C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use
- D. Executive Order 13609, Promoting International Regulatory Cooperation
- VII. Privacy
- VIII. Additional Information
 - A. Electronic Access and Filing
 - B. Small Business Regulatory Enforcement Fairness Act

I. Authority for This Rulemaking

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

This rulemaking is issued under the authority described in subtitle VII, part A, subpart III, section 44701. Under that section, FAA is charged with prescribing regulations providing minimum standards for other practices, methods, and procedures necessary for safety in air commerce. This regulation is within the scope of that authority since cockpit voice and flight data recorders are the only means available to account for aircraft movement and flight crew actions critical to determining the probable cause of incidents and accidents, including data that could prevent future incidents and accidents.

The 2024 FAA Reauthorization Act¹ ("Act") states that covered operators may not operate a covered aircraft manufactured later than one year after the enactment date of the Act, May 16, 2025, unless the aircraft has a CVR installed that retains the last 25 hours of recorded information using a recorder that meets the standards of Technical Standard Order *TSO-C123c, Cockpit Voice Recorder Equipment*, or any later revision. "Covered aircraft" is defined by the Act as aircraft operated by an air carrier under 14 CFR part 121 or a transport category aircraft designed for operations by an air carrier or foreign air carrier type-certificated with a passenger seat capacity of 30 or more or an all-cargo or combi derivative of such an aircraft.² "Covered operator" is defined by the Act as an operator of a covered aircraft.³

FAA finds the definition of covered aircraft as found in Section 366(f)(1)(B) pertains to aircraft already required to be equipped and operate a 2-hour

capable CVR, specifically where the definition states "all-cargo or combi derivative of such an aircraft." Extending the applicability to aircraft that are not currently required to carry a CVR would contradict the savings clause provided in Section 366(d). This states "[n]othing in this section shall be construed as rescoping, constraining, or otherwise mandating delays to FAA actions in the notice of proposed rulemaking titled '25-Hour Cockpit Voice Recorder (CVR) Requirements, New Aircraft Production,' issued on December 4, 2023 (88 FR 84090)." ⁴ Adopting the "all-cargo or combi derivative of such an aircraft" portion of the Act's definition of covered aircraft as written may be construed to include aircraft not already carrying a CVR. As such, FAA intends for this rule to apply to newly manufactured aircraft operating under part 91, 121, 125, or 135 and configured such that the aircraft must currently comply with the CVR requirements found in the corresponding part. The part of the "covered aircraft" definition adopted by FAA in this action pertains only to aligning the effective date of this rule for those aircraft with the self-enacting effective date of the Act.

As such, regulations pertaining to part 121 operators or operators of transport category aircraft designed for operations by an air carrier or foreign air carrier type-certificated with a passenger seat capacity of 30 or more derive from requirements established by the Act.

II. Executive Summary**A. Purpose of the Regulatory Action**

This rulemaking amends the CVR regulations to increase the recording duration of CVRs. Currently, CVRs are required to retain the last two hours of recorded information. Once this 2-hour limit is reached, a CVR overwrites the oldest data to maintain a rolling 2-hour recording. This regulation increases the minimum duration of CVR recordings to 25 hours.

FAA is establishing three compliance timeframes for certain aircraft and operators in response to the Act and comments received on the associated notice of proposed rulemaking with this final rule. First, per the Act, covered aircraft manufactured one year or more after the enactment of the Act, or May 16, 2025, and operating under 14 CFR part 121 or transport category aircraft designed for operations by an air carrier or foreign air carrier type-certificated with 30 or more passenger seats must be equipped with a CVR capable of

¹ Securing Growth and Robust Leadership in American Aviation Act, Public Law 118-63, Sec. 366, May 16, 2024.

² *Id.* at Sec. 366(f)(1)(A)-(B).

³ *Id.* at Sec. 366(f)(2).

⁴ *Id.* at Sec. 366(d).

recording 25 hours of information.⁵ Second, aircraft required to be equipped with a CVR, operating under parts 91, 125, or 135 with a Maximum Certificated Takeoff Weight (MCTOW) of 59,525lbs./27,000 kg with 29 or fewer passenger seats are required to be equipped with a 25-hour CVR one year after the effective date of the final rule. Third, aircraft manufactured on or after three years from the effective date of the final rule, required to be equipped with a CVR, operating under parts 91, 125, or 135, and with a 59,524 lbs./26,999 kg or less MCTOW must be equipped with a CVR capable of recording for 25 hours.

B. Changes Made in This Final Rule

FAA adopts modifications to the published notice of proposed rulemaking⁶ (NPRM). As a result of comments received by aircraft manufacturers, FAA is amending 14 CFR 91.609, 125.227, and 135.151 to reflect longer compliance deadlines for 29 or fewer passenger seat aircraft that are not covered aircraft as defined by the 2024 FAA Reauthorization Act. FAA

determined a longer compliance deadline is necessary based on the manufacturers' need to modify their certification plans as these aircraft types did not have a compliance timeframe mandated by the 2024 FAA Reauthorization. FAA does not have the discretion to modify the compliance deadline for covered aircraft (aircraft operating under part 121 or with 30 or more passenger seats) set forth in Sec. 366 of the Act.

C. Summary of the Costs and Benefits

The modified compliance timeframes have been factored into the cost analysis. FAA has also updated the final rule analysis with a refined current fleet estimate, and an updated aerospace forecast and valuation of a statistical life (VSL).

The benefits of the rule are based on a reduction in accident risk. Specifically, the additional audio captured by longer-duration CVRs provides authorities with more information on events and procedures undertaken in the flight deck for investigated incidents. This increased

data may lead to new or more informed FAA recommendations or policy changes that could further enhance safety and reduce the risk that an incident becomes an accident. In response to public comments, other potential benefits, such as time savings, have been removed from the analysis due to uncertainty regarding their positive effects.

For costs, FAA assessed the final rule using the incremental cost of equipping a 25-hour capable CVR over a comparable 2-hour unit to all applicable future manufactured aircraft. Market research indicates that the difference between these units is minimal, ranging from near parity to an upper bound of approximately \$5,209 (2024 dollars). Using that upper bound as the price, the updated total cost over 20 years at a seven percent discount rate is estimated to be \$69.7 million, with annualized costs of \$6.6 million (table 1). As technical standards and operational procedures are similar between the 2-hour and 25-hour models, FAA anticipates no other notable costs.

TABLE 1—COSTS OVER 20 YEARS BY CFR PART BY DISCOUNT FACTOR
[Millions of 2024\$]

14 CFR operational part	Total costs		Annualized costs	
	7%	3%	7%	3%
Part 91 ^A	\$36.7	\$54.6	\$3.5	\$3.7
Part 121	22.8	33.9	2.2	2.3
Part 125	0.2	0.3	0.0	0.0
Part 135	10.0	15.0	0.9	1.0
Total	69.7	103.7	6.6	7.0

^A Consists of part 91 and 91K Aircraft.

Note: Columns may not sum to total due to rounding.

III. Background

A. Summary of the NPRM

On December 4, 2023, FAA published the NPRM for *25-Hour Cockpit Voice Recorder (CVR) Requirement, New Aircraft Production*. FAA proposed to amend the CVR regulations to increase the minimum duration of CVR recordings from two to 25 hours for all newly manufactured aircraft operating under 14 CFR parts 91, 121, 125, and 135, effective one year after the date of the final rule.

B. Statement of the Problem

The current 2-hour recording duration requirement does not meet the National

Transportation Safety Board's (NTSB) needs for investigations and subsequent safety recommendations. Since the NTSB issued a Safety Recommendation, it has investigated numerous accidents and incidents where CVR data relevant to the accident or incident has been overwritten because the relevant recording occurred earlier than the available two hours of recording.

NTSB has investigated incidents and accidents across parts 121, 129, and 135 in which CVRs were overwritten affecting investigator ability to obtain pertinent data. In October 2018, NTSB issued Safety Recommendation A-18-030 requesting that FAA increase the

recording duration of CVRs to 25 hours. The accompanying recommendation report, *Extended Duration Cockpit Voice Recorders*, ASR1804, lists 14 events in which installed CVRs were overwritten between 2003 and 2018.⁷ ASR1804 also lists events from 2002 to 2017 in which the CVR was overwritten by continued operation of flights beyond two hours after the event. On January 31, 2024, NTSB sent a letter to the Department of Transportation, stating that since 2018 it has investigated at least 14 additional events that were hampered by overwritten CVRs since issuing recommendations

⁵ SEC. 366. 25-HOUR COCKPIT VOICE RECORDER.

(a) IN GENERAL.—(1) COCKPIT VOICE RECORDER FOR NEWLY MANUFACTURED AIRCRAFT.—A covered operator may not operate a

covered aircraft manufactured later than the date that is 1 year after the date of enactment of this Act unless such aircraft has a cockpit voice recorder installed that retains the last 25 hours of recorded information using a recorder that meets the

standards of Technical Standard Order TSO-C123c, or any later revision.

⁶ 88 FR 84090.

⁷ <https://www.ntsb.gov/investigations/AccidentReports/Reports/ASR1804.pdf>.

A–18–030 and A–18–031.⁸ NTSB has consistently recommended the implementation of 25-hour capable CVRs across operating parts, not just parts 121 and 135.

C. Cockpit Voice Recorder Capabilities and Investigative Use

Aircraft currently operating under parts 91, 121, 125, and 135 already are required to be equipped with a CVR that records radio transmissions and sounds in the flight deck to aid subsequent investigation should an accident or incident occur. The recorder's flight deck area microphone is usually located on the overhead instrument panel between the two pilots.

CVRs preserve the recent history of sounds in the flight deck and provide unique information such as engine noise, stall warnings, landing gear extension and retraction, and other clicks and pops. These sounds help an investigator to determine parameters such as engine rpm, system failures, speed, and the time at which certain events occur. The CVR also records communications with Air Traffic Control, automated radio weather briefings, conversations between the pilots and ground or cabin crew, flight crew verbalizations of intentions and coordination, as well as the pilots' awareness of the aircraft and flight deck information.⁹

Access to this information allows investigators to investigate accident and incident factors more thoroughly. Incident factors include the flight crew's procedural compliance, distraction, decision-making, workload, fatigue, and situational awareness.

A CVR starts recording when an aircraft is powered up and will continue to record until the aircraft is powered down or the CVR is deactivated. Once a CVR reaches the end of its recording limit, it will overwrite existing data with a new recording.

CVRs typically deactivate due to two forms of power loss. The first occurs when the CVR is deactivated after a major or catastrophic event causing a loss of electrical power. When this event occurs, the CVR preserves relevant audio recorded in the two hours prior to the accident. The second form occurs during less severe incidents, such as when the flight crew manually deactivates the CVR immediately upon

landing to prevent the relevant audio from being overwritten.

After an accident or incident, the CVR data is transferred to an NTSB lab for retrieval. The NTSB will eventually receive a readout from the CVR software.

Since CVRs were implemented in 1966, recording capabilities have significantly increased from the original duration of 30 minutes. The latest designs employ more easily expandable solid-state memory and use a fault tolerant digital recording technique with an incorporated battery so recording can continue until the end of flight, even when the aircraft's electrical system fails.

The technical limit for recording time has expanded such that 25 hours is now well within CVR capability.

D. National Transportation Safety Board (NTSB) Recommendation

On October 10, 2018, the NTSB published an Aviation Safety Recommendation Report titled "Extended Duration Cockpit Voice Recorders" (Safety Recommendation A–18–030). Safety Recommendation A–18–030 recommends that FAA require all newly manufactured aircraft that must have a CVR be fitted with and operate a CVR capable of recording the last 25 hours of audio. This recommendation stems from an aircraft incident that occurred in July 2017 at San Francisco International Airport, in which the flight crew of an Air Canada Airbus A320 was cleared to land on a set runway, but instead lined up with a parallel taxiway. After descending to an altitude of 100 feet above ground level (AGL), the aircraft overflew an airplane on the taxiway. The incident aircraft subsequently overflew a second airplane on the taxiway before starting to climb.

During the investigation of the incident, the NTSB found it difficult to gather relevant information, as the CVR data was overwritten before Air Canada officials learned of the severity of the event. The report stated that, had the NTSB been able to obtain the overwritten data, investigators would have been able to assess the timing and content of the flight crew's conversations during final approach, conversations during and after the go-around, and the flight crew's crew resource management (CRM), workload, and fatigue based on verbalizations or flight deck sounds. In this instance, the NTSB identified several serious safety issues; however, this investigation lacked direct evidence of the flight crew's decision making, coordination, and perception of its environment.

E. ICAO and EASA Adoption of a 25-Hour Cockpit Voice Recorder Requirement

The European Union Aviation Safety Agency (EASA) requires CVRs capable of recording for 25 hours for any aircraft, manufactured after January 1, 2021, with a maximum takeoff weight over 27,000 kg (59,525 lbs.).¹⁰

Similarly, in 2016, the International Civil Aviation Organization (ICAO) adopted a new standard calling for the installation of CVRs capable of recording the last 25 hours of aircraft operation on all aircraft manufactured after January 1, 2021 with a maximum certificated takeoff mass of over 27,000 kg (59,525 lbs.) and engaged in commercial transport.^{11 12}

F. 2024 FAA Reauthorization Act

On May 16, 2024, the Act was signed into law. The Act states that covered operators may not operate a covered aircraft manufactured later than one year after the enactment date of the Act, or May 16, 2025, unless the aircraft has a CVR installed that retains the last 25 hours of recorded information using a recorder that meets the standards of Technical Standard Order TSO–C123c, "Cockpit Voice Recorder Equipment," or any later revision. "Covered aircraft" is defined by the Act as aircraft operated by an air carrier under 14 CFR part 121 or a transport category aircraft designed for operations by an air carrier or foreign air carrier type-certificated with a passenger seat capacity of 30 or more or an all-cargo or combi derivative of such an aircraft. "Covered operator" is defined by the Act as an operator of a covered aircraft.

Covered aircraft as defined by the Act differs from the proposal set forth in the NPRM, which more broadly proposed that all newly manufactured aircraft required to be equipped with a CVR operating under parts 91, 121, 125, and 135 must be equipped with a CVR capable of retaining the last 25 hours of recorded information within one year of the effective date of the final rule.

To promote harmony with international requirements and in response to comments received, FAA

¹⁰ Commission Regulation 2015/2338, 2015 O.J. Amending Regulation (EU) No 965/2012 as regards requirements for flight recorders, underwater locating devices and aircraft tracking systems.

¹¹ Annex 6 Part 1, 6.3.2.3.2.

¹² ICAO defines "Commercial air transport operator" as [a]n operator that, for remuneration, provides scheduled or non-scheduled air transport services to the public for the carriage of passengers, freight or mail. This category also includes small-scale operators, such as air taxis and commercial business operators, that provide commercial air transport services. Glossary—International Civil Aviation Organization. July 8, 2013.

⁸ [https://www.ntsb.gov/news/Documents/FAA%2025-Hour%20Cockpit%20Voice%20Recorder%20\(CVR\)%20Requirement,%20New%20Aircraft%20Production.pdf](https://www.ntsb.gov/news/Documents/FAA%2025-Hour%20Cockpit%20Voice%20Recorder%20(CVR)%20Requirement,%20New%20Aircraft%20Production.pdf).

⁹ NTSB, "Cockpit Voice Recorders (CVR) and Flight Data Recorders (FDR)" (2023), www.ntsb.gov/news/Pages/cvr_fdr.aspx.

has determined it will require that all aircraft manufactured one year or more after the effective date of the final rule, with a MCTOW of 59,525 lbs. or more and 29 or fewer passenger seats, have a CVR capable of retaining the last 25 hours of recorded information. These aircraft are currently subject to ICAO standards or EASA regulations requiring CVRs capable of retaining 25 hours of recorded information, so there would be no obstacle to compliance with the statutory timeline set forth in Section 366. As discussed in Section IV. C, aircraft manufactured on or after three years from the effective date of the final rule, required to be equipped with a CVR, operating under parts 91, 125, or 135, and with a 59,524 lbs./26,999 kg. or less MCTOW must be equipped with a CVR capable of recording for 25 hours. These aircraft are not currently subject to international standards or EASA regulations requiring CVRs capable of retaining 25 hours of recorded information.

The Act also included a requirement that covered operators operating covered aircraft must equip their covered aircraft with a CVR capable of retaining the last 25 hours of recorded information within six years of the enactment date of the Act. This effectively establishes a retrofit requirement for all covered aircraft.

As discussed in Section IV. A below, Congress included a savings clause in the Act to ensure the proposal found in the NPRM impacting newly manufactured aircraft moved ahead without unnecessary delay.¹³

G. General Overview of Comments

FAA received 114 comment submissions in response to the NPRM from a variety of commenters, including pilot unions, individual pilots, aircraft designers and manufacturers, an aircraft component designer and manufacturer, and private citizens. FAA received comments from the following: Air Line Pilots Association (ALPA),¹⁴ Airlines For America (A4A),¹⁵ Alaska Airlines,¹⁶ Avions de Transport Regional/Aerei da Trasporto Regionale (ATR),¹⁷ Bombardier,¹⁸ Cargo Airline Association (CAA),¹⁹ Coalition of Airline Pilots Association (CAPA),²⁰ Dassault

Aviation,²¹ Embraer,²² FedEx,²³ General Aviation Manufacturers Association (GAMA),²⁴ Gulfstream,²⁵ Helicopter Association International (HAI),²⁶ Independent Pilots Association (IPA),²⁷ International Brotherhood of Teamsters (IBT),²⁸ L3Harris,²⁹ NTSB,³⁰ Regional Airline Association (RAA),³¹ United Airlines,³² as well as numerous individuals. FAA received comments on multiple aspects of the proposal. The comments and FAA's responses are discussed in Section IV.

H. Differences Between the NPRM and the Final Rule

Upon consideration of a number of comments³³ in support of a change to the compliance timeframe for certain operations and the compliance timeline found in the Act, FAA is adopting a three-tiered compliance timeframe for covered aircraft and aircraft not defined as covered aircraft by the Act. Operators of covered aircraft must adhere to the compliance timeframe established by the Act. Operators not covered by the Act will have an extended timeframe to obtain FAA certification. Section IV.C details the compliance path FAA has adopted. Aside from the compliance date and applicability changes discussed herein, FAA adopts the proposed rule as final.

The FAA Reauthorization Act of 2024 reserved 49 U.S.C. 106(g); therefore, FAA revised the affected authority citations in this final rule to remove that U.S.C. section from the list.

IV. Discussion of Comments and the Final Rule

A. Retrofit

The NPRM proposed to increase the recording time of CVRs from the mandated 2 hours to 25 hours for all newly manufactured aircraft operating under parts 91, 121, 125, and 135, which are required to have a CVR installed.

1. Summary of the Comments

Twenty commenters expressed concern that the lack of a requirement to retrofit the current fleet with 25-hour CVRs would not adequately provide the public with the safety benefits of longer recording CVRs.

These commenters, including the NTSB and L3Harris, as well as 18 other individual commenters, discussed a lack of a retrofit requirement in the NPRM. Most of the public commenters on this issue argued safety should be paramount, so the stated cost of retrofitting did not justify its exclusion from the rule. Four individual commenters expressed interest in a phased approach regarding compliance timeframes for a hypothetical retrofit requirement. NTSB and L3Harris both argued the modeled fleet size, and therefore equipage costs of retrofit, were lower than FAA estimated. Additionally, L3Harris stated CVRs can be simple to exchange in and out of aircraft due to Aeronautical Radio, Incorporated (ARINC) and design standards, and therefore should not impose additional notable costs during retrofit besides the initial equipment purchase costs.

2. FAA Response

After considering public comments, FAA is proceeding only with forward fit in this rule. Retrofitting may increase the speed at which the benefits from newer 25-hour CVR units proliferate into the operating fleet but is not included in the final rule for two reasons. First, in the interim period between the publication of the NPRM and the implementation of the final rule, Congress passed the Act, as discussed in the previous section,³⁴ which established a retrofit requirement effective six years after its enactment date of May 16, 2024 for covered aircraft. However, the Act also specifically stated nothing in the bill “shall be construed as rescoping, constraining, or otherwise mandating delays” to the NPRM.³⁵ Accordingly, FAA is not rescoping the rule to include a retrofit requirement.

The second reason for not including the retrofit requirement in this final rule is the induced costs need further examination, as retrofitting increases the number of aircraft requiring installation of these CVRs by over two-thirds (estimated 23,273 total CVR equipped aircraft in the current fleet added to the estimated 30,363 aircraft being built in

¹³ *Id.* at (d).

¹⁴ Comment ID FAA-2023-2270-0114.

¹⁵ Comment ID FAA-2023-2270-0117.

¹⁶ Comment ID FAA-2023-2270-0110.

¹⁷ Comment ID FAA-2023-2270-0097.

¹⁸ Comment ID FAA-2023-2270-0100.

¹⁹ Comment ID FAA-2023-2270-0105.

²⁰ Comment ID FAA-2023-2270-0109.

²¹ Comment ID FAA-2023-2270-0104.

²² Comment ID FAA-2023-2270-0108.

²³ Comment ID FAA-2023-2270-0096.

²⁴ Comment ID FAA-2023-2270-0115.

²⁵ Comment ID FAA-2023-2270-0106.

²⁶ Comment ID FAA-2023-2270-0102.

²⁷ Comment ID FAA-2023-2270-0101.

²⁸ Comment ID FAA-2023-2270-0118.

²⁹ Comment ID FAA-2023-2270-0107.

³⁰ Comment ID FAA-2023-2270-0098.

³¹ Comment ID FAA-2023-2270-0113.

³² Comment ID FAA-2023-2270-0095.

³³ Commenters in support of changing the compliance date were General Aviation Manufacturers Association (GAMA), Bombardier, Embraer S.A., ATR, Dassault-Aviation, and Gulfstream.

³⁴ Securing Growth and Robust Leadership in American Aviation Act, Public Law 118-63, May 16, 2024.

³⁵ Sec. 366 (e), Public Law 118-63.

the next 20 years). As operators of the aircraft in the current fleet would be required to purchase and install a new CVR to replace their current unit, the equipment cost per aircraft would be several times higher than for future-built aircraft that only have the incremental cost of using a 25-hour CVR instead of a 2-hour model.

FAA market research showed the cost of a 25-hour CVR can be in the mid-\$20,000s at the lower end. Assuming no replacement, applying a \$25,000 unit cost to purchase a new CVR across the estimated 23,273 aircraft in the current fleet would result in roughly \$581.83 million (undiscounted) in equipment cost, compared to the \$150.74 million (undiscounted) incremental costs for future built aircraft, to upgrade their CVRs. Furthermore, although ARINC standards may allow some retrofitting to be quick and efficient, there is the potential that portions of the fleet would require additional effort to replace the CVR, inducing further costs. As such, FAA is implementing forward fit requirements to begin proliferating 25-hour CVRs into the operating fleet as proposed in the NPRM.

B. Privacy

1. Summary of the Comments

Thirty-seven commenters (which are identified in the subtopics below) have shared concerns about how the increase in recording time could impact flight crew privacy in differing ways, as discussed below.

i. Misuse of Data

Thirteen individual commenters, as well as the International Brotherhood of Teamsters (IBT), Independent Pilots Association (IPA), Coalition of Airline Pilots Association (CAPA), Air Line Pilots Association (ALPA), and Allied Pilots Association (APA), shared concerns over the misuse of expanded data if the CVR recording time increased to 25 hours. The concerns are associated with the dissemination of data without authorization. An individual commenter detailed concerns over data being accessed by foreign adversaries for inappropriate use. Three individual commenters in agreement with the NPRM proposal thought the ability to obtain usable and useful CVR data for investigative purposes to benefit the safety of the flying public outweighed concerns over flight crew privacy.

ii. Erosion of Crew Resource Management

Four individual commenters, as well as IBT, shared concerns about how the increase in recording time would impact

the flight crew's willingness to communicate openly and the potential for disruption of the free flow of information. In addition, these commenters' concerns center around the potential for conversations to be misinterpreted or misunderstood by employers, which could force flight crews to censor themselves. From their perspective, this could lead to mishaps.

iii. Disciplinary Actions

Fourteen individual commenters, as well as IPA, commented on the potential for disciplinary, punitive, and criminal actions as a result of capturing more information in the recording by extending the recording time to 25 hours. IPA asserted, contrary to ICAO Annex 13, other countries are using CVR data to criminalize aviation incidents and accidents. Additionally, United States Federal law enforcement has also been involved in investigations where law enforcement has determined a pilot action was deemed as a criminal act.

Three individual commenters were concerned that extending the 25-hour CVR's data capture capability would result in obtaining data from previous, unrelated flights, thereby opening the flight crews to scrutiny that otherwise would not exist.

Three individual commenters, as well as IBT, discussed concerns about possible disciplinary or punitive actions against the flight crew, as well as civil litigation based on investigative findings.

2. FAA Response

FAA chose to continue with the 25-hour CVR mandate as written in the NPRM. FAA acknowledges the privacy concerns of pilot organizations specifically related to how FAA would use the CVR data collected for investigative purposes. Pursuant to 14 CFR 91.609(g), 121.359(h), 125.227(f), and 135.151(c), FAA is prohibited from using information obtained from the record for the purpose of civil penalties or certificate action.

After an incident or accident, the NTSB often retrieves the CVR from the aircraft or location of the incident or accident. FAA may then obtain CVR data through the NTSB for investigative purposes. When the NTSB does not participate in an investigation, FAA may convene an investigative team and takes possession of the CVR. Upon completion of the investigation, FAA returns the CVR to the owner or operator, as applicable. If the CVR is crash-damaged, FAA returns the device to the insurance company or owner.

When voluntarily supplied, CVRs and the information contained therein are protected by 14 CFR part 193. The regulations in part 193 will also apply to a future CVR of any duration, including 25-hour CVRs. The current regulations protect CVR information of any duration. Altering the length of the required CVR recording will not impact FAA's handling of acquired CVR information. To date, there have not been any reports of FAA misusing or disseminating the contents of a CVR to non-authorized parties.

Additionally, FAA does not control or regulate the use of the CVR or its data once the CVR is returned to the owner or operator. Use of CVR data by the owner or operator is outside FAA's jurisdiction and beyond FAA's regulatory reach. Moreover, FAA's authority does not extend to how operators intend to use the CVR data in their possession.

FAA is required by statute to proceed with requiring CVRs for certain newly manufactured aircraft to be capable of recording 25 hours of data, and has also identified critically important equities that justify finalizing the proposal for other applicable aircraft, as proposed. FAA has determined the investigative need and safety benefit of this information outweighs the potential privacy concerns of CVR data under the control of FAA. The increased CVR recording duration would further improve current investigative capabilities. This could lead to new or more fully informed FAA recommendations or policy changes that could further enhance safety and reduce the risk that an incident becomes an accident. Concerns over the handling of CVR data outside the possession of FAA should be addressed with the operators that own the CVRs. Accordingly, FAA adopts the proposal for this topic as final.

C. Compliance

1. Summary of the Comments

Comments from ATR, Bombardier, GAMA, and one individual questioned FAA's proposal to require aircraft operating under part 91 to carry 25-hour CVRs. They believe aircraft operating under part 91, although capable of long-duration flights, are often used for shorter duration flights and therefore do not need a CVR capable of recording for 25 hours.

Bombardier, Dassault-Aviation, Embraer S.A., and Gulfstream expressed concern that the increase in recording time could impact the certification applications for smaller aircraft operators since existing ICAO standards

and EASA regulations do not apply to aircraft under a 27,000 kg MCTOW. Currently, the parallel EASA regulations and ICAO standards only require the installation of 25-hour CVRs on aircraft manufactured after January 1, 2021 that have a MCTOW at or over 59,525 lbs./27,000 kg. Unlike ICAO standards and EASA regulations, the NPRM proposed a compliance date of one year after the effective date of the final rule by operating part instead of MCTOW. This is consistent with past FAA practice of updating CVR regulations by operating part.

GAMA, Bombardier, Embraer S.A., ATR, Dassault-Aviation, and Gulfstream shared concerns with 25-hour CVRs being required on aircraft manufactured one year after the effective date of the rule. The current international 25-hour CVR requirement does not impact aircraft under a 59,525 lbs./27,000 kg MCTOW. These commenters represent aircraft manufacturers with aircraft below the certified takeoff weight threshold used by ICAO and EASA that continue to carry a 2-hour CVR. Thus, including this requirement for these aircraft could potentially increase aircraft certification timelines beyond the 1-year compliance date, according to commenters.

2. FAA Response

Based on the NTSB's and FAA's investigations of accidents and incidents, important data has been overwritten during part 91 operations. There were instances in which a reportable incident occurred in the first leg of a flight, but the aircraft continued onto multiple legs before the incident was reported. This prevented accident investigators from obtaining the data to help determine the cause of the incident.

Bombardier, Dassault-Aviation, Embraer S.A., GAMA, and Gulfstream shared concerns over the proposed compliance timeframe to equip with 25-hour CVRs. They came up with several paths for FAA to consider, but due to the enactment of the Act in the interim period between the NPRM and final rule, FAA no longer has discretion over the compliance timeframe for covered aircraft. Covered aircraft manufactured after May 16, 2025 must comply with this final rule.

FAA agrees with commenters that some aircraft not defined as covered aircraft under the Act warrant an extended compliance time. Accordingly, FAA extends the compliance date for part 91, 125, and 135 operators of newly manufactured aircraft with 29 passenger seats or less. FAA recognizes that the full implementation of this rule

includes more aircraft than current ICAO standards and EASA regulations, which necessitates a modification to current certification plans and review processes for aircraft to come into compliance. This is because the rule will be implemented across all operating rules and, unlike international rules and standards, is not limited by aircraft size to only aircraft with a 59,525 lbs./27,000kg or more MCTOW.

Since aircraft with a 59,524 lbs./26,999 kg or less MCTOW or with 29 passenger seats or less were not included under the 25-hour CVR EASA/ICAO regulations and standards or the Act, this final rule provides manufacturers of such aircraft with additional time to complete certification work for compliance. FAA believes three separate compliance timeframes for covered aircraft or aircraft with 29 or fewer passenger seats, either above or below the 59,525 lbs./27,000 kg. MCTOW threshold, are appropriate to account for manufacturer certification, production of CVRs capable of recording for a minimum of 25 hours, and installation.

Accordingly, aircraft manufactured on or after May 16, 2025, operating under part 121 or transport category aircraft with 30 or more passenger seats and required to be equipped with a CVR are required to be equipped with a CVR capable of retaining the last 25 hours of recorded information on or after May 16, 2025.

Next, part 91, 125, and 135 aircraft with a MCTOW of 59,525 lbs./27,000 kg. or more with 29 or fewer passenger seats and required to be equipped with a CVR are required to be equipped with a CVR capable of retaining the last 25 hours of recorded information on or after one year from the effective date of this rule. This is consistent with the original timeline proposed in the NPRM and consistent with ICAO standards discussed in Section III.E of this final rule.

Aircraft manufactured on or after three years from the effective date of the final rule operating under part 91, 125, or 135 with a MCTOW of 59,524 lbs./26,999 kg. or less that are already required to be equipped with a CVR are required to be equipped with a CVR capable of retaining the last 25 hours of recorded information.

V. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned

determination that the benefits of the intended regulation justify the costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is \$187 million using the most current (2024) Implicit Price Deflator for the Gross Domestic Product. This portion of the preamble contains FAA's analysis of the economic impacts of this rule.

In conducting these analyses, FAA has determined this rule: is a “significant regulatory action” as defined in section 3(f)(1) of Executive Order 12866, as amended; will not have a significant economic impact on a substantial number of small entities; will not create unnecessary obstacles to the foreign commerce of the United States; and will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. This final rule is considered an E.O. 14192 regulatory action. Details on the estimated costs of this final rule can be found in the rule's economic analysis.

A. Regulatory Impact Analysis (RIA)

The final rule increases the recording time of CVRs from the mandated 2 hours to a 25-hour recording time for all future manufactured aircraft required to be equipped with a CVR. In addition, in response to public comments, the final rule adds a one-year delayed compliance start date for non-Act covered aircraft at or over a 59,525 lbs. MCTOW, and a three-year delayed compliance start for aircraft that have a 59,524 lbs. or less MCTOW. In addition to factoring in the new compliance start date for the final rule analysis, FAA updated the incremental cost difference between CVR units to 2024 dollars and incorporated the annual updates to the FAA Aerospace Forecast and Department of Transportation (DOT) valuation of a statistical life (VSL). FAA also refined the current fleet totals by further removing some aircraft that may not require a CVR. The resulting final

rule analysis has an annualized cost, at a seven percent discount rate, of \$6.6 million. With only minor revisions from the NPRM to the final rule, the RIA has been merged with the preamble of the final rule to help keep all the necessary information contained within one document.

1. Public Comments to the RIA

FAA received 114 public comments on the NPRM, including nine relating to the economic analysis. Below are FAA's responses to the RIA related comments.

i. Cost of Retrofit

Eighteen individual commenters, as well as NTSB and L3Harris, disagreed with the proposed rule for not including retrofit. While these commenters stated generally the cost of retrofitting was insignificant or unimportant compared to the benefits of increased safety, the NTSB and L3Harris specifically argued the fleet size FAA estimated was higher than it should be and therefore the equipage cost was lower than estimated in the proposed rule. Both entities used Cirium fleet data to estimate their fleet totals.³⁶ L3Harris found 8,243 commercial aircraft and the NTSB found 13,500 aircraft that met the characteristics that require a CVR. Both commenters further argued the other costs besides equipment for retrofitting were negligible.

a. FAA Response

The updated FAA estimates are 23,273 aircraft in the fleet that meet the criteria that require a CVR. The reason for the discrepancy between fleet estimates appears to be L3Harris only included commercial aircraft, which does not account for portions of 14 CFR part 91 or other noncommercial operations. The NTSB estimate was made by searching Cirium fleet data on all multi-engine turbine powered aircraft with 10 or more passenger seats. However, FAA's internal estimates also include six to nine passenger multi-engine turbine powered aircraft, as these require a CVR when type certificated with two pilots. In addition, there are cargo aircraft with zero passenger seats that still require CVRs, and FAA included these aircraft in its fleet estimate. These two categories account for the roughly 10,000 aircraft difference between the NTSB and FAA applicable fleets.

On other costs of retrofitting, FAA agrees with L3Harris and the NTSB that some of the fleet would see those as minimal. Overall technical

specifications guiding CVR design and ARINC wiring standards mean modern aircraft can replace their CVR unit without much difficulty during regular maintenance cycles. However, FAA acknowledges this will not be the case for every aircraft, and older portions of the fleet may see notable costs if they require extra time, labor, and parts to retrofit their CVR.

ii. CVR Base Equipment Cost

L3Harris commented the estimate of \$25,000 for a CVR was too high. They commented the catalog price does not accurately reflect average sales prices, and competition would lower this price.

a. FAA Response

FAA has limited data on prices and therefore continues to use publicly available catalog prices. However, FAA acknowledges there is potential variability in realized pricing after negotiation between operators and vendors.

iii. Aircraft Manufacturer Certification Costs

Gulfstream commented there may be additional manufacturer costs for certification that should be included in the cost analysis. It recommended FAA conduct a survey of manufacturers to determine how many aircraft types are affected that have not already been updated to 25-hour CVRs and the associated projected cost for certification efforts. It additionally stated FAA should also internally assess what resources and costs were required within their certification offices.

a. FAA Response

FAA acknowledges there may be some potential unquantified costs for manufacturers to certify some of their fleet to the newer CVR models. FAA lacks data to assess both the average costs to certify with new CVR models and how many aircraft types would need to undergo this process. In addition, as these newer generation CVRs become standard equipment due to congressional requirements and supply chain changeover, it is expected most aircraft would eventually have to certify with them regardless of the rule. Due to these factors, FAA agrees and will add a statement to the cost analysis acknowledging there may be a certification cost to manufacturers that have not previously been required to use a 25-hour CVR, but cannot estimate what those costs amount to and can only assess the impact qualitatively.

On certification, FAA does not anticipate expending additional resources to approve aircraft with 25-

hour CVRs, so these actions are considered within normal duty.

iv. CVR Benefits Analysis

ATR commented on several aspects of the cost-benefit analysis. It argued downloading CVR data is three to five times longer due to larger memory to download, leading to higher maintenance costs and recurring analysis costs. It additionally stated the newer download tools have no direct link with the recorded memory itself as they can analyze both 2- and 25-hour CVRs. It further argued these new recorders require a change of ground support Equipment (CVR interface tools) for operators, meaning additional equipment and potential costs are not accounted for in the analysis.

a. FAA Response

FAA agrees the amount of data is larger; however, the newer download tools support higher transfer speeds and direct cloud uploads that offset the increase (Universal Serial Bus (USB) 3.0 has a five to ten times faster data transfer than a USB 2.0, for example). Overall, data download times are considered insignificant compared to the weeks or months it takes to complete an incident or accident investigation. However, due to the uncertain nature of the benefits derived from the retrieval tools, these potential time savings have been removed from the analysis.

Regarding ground support equipment, operators would potentially be required to purchase either software or new tools to interface with the 25-hour CVRs. FAA did not include this cost in the proposal as it lacks data on the costs of these tools (either original manufacture or third party). In addition, operators are already purchasing these tools for 25-hour CVRs being proliferated into the fleet due to EASA and Congressional requirements, and FAA cannot determine how many units would be required to meet the needs of this rule.

v. Uncalculated Benefits of CVRs

L3Harris commented that the NPRM did not include the financial benefits of having CVR information during incident and accident investigations. Applying data from a Transport Canada Regulatory Impact Analysis to their predicted fleet impacted by retrofit upgrades, L3Harris commented there would be financial benefits of \$31 million on an annualized basis, or \$191 million net present value (NPV) across 10 years, assuming retrofit upgrades over a 4-year period at a seven percent discount rate.

³⁶ Cirium is a private company that provides aviation data and analytics.

a. FAA Response

While there have been benefits from previous safety improvements due to data collected by CVRs, FAA cannot predict the certainty of a future incident, or that subsequent safety changes generating benefits similar to those cited by L3Harris would solely stem from the CVR data analysis portion of the investigation. Therefore, FAA continues to assess the benefits

qualitatively, similar to the Air Transport Canada analysis that only described qualitative CVRs safety benefits that could “include aircraft, airport or operational improvements” and do not, or were not able to, assign a monetary value to these improvements.³⁷

2. Need for the Regulation

This final rule increases the recording duration of CVRs to address the need to

increase the duration of CVRs by investigative authorities. With several notable aviation incidents missing vital information about events in the cockpit due to the CVR data being overwritten, investigative and regulatory agencies are hampered in their ability to analyze the probable causes fully and, thus, could not create effective policies or procedures to address the risks that led to these events. Notable incidents include the following:

TABLE 2—SAFETY EVENTS FOR WHICH PERTINENT CVR DATA WERE OVERWRITTEN
[Up to 2018]

Date	Event type	NTSB No.	Location	Event description
6/21/2018	Incident	OPS18IA015	Chicago, IL	Runway excursion.
4/18/2018	Accident	DCA18LA163	Atlanta, GA	Engine fire.
7/07/2017	Incident	DCA17IA148	San Francisco, CA	Taxiway line-up and overflight of 4 air carrier airplanes by an Airbus A320 (46-hour notification delay).
5/09/2014	Accident	CEN14LA239	Columbus, OH	Ground engine fire.
9/12/2013	Incident	CEN13IA563	Austin, TX	Loss of pitch control during takeoff (4-day notification delay).
7/31/2012	Incident	CEN12IA502	Denver, CO	Bird strike.
12/1/2011	Accident	WPR12LA053	Oakland, CA	Enroute turbulence.
6/21/2011	Incident	ENG11IA035	Atlanta, GA	Engine fire.
2/09/2011	Incident	ENG11IA016	Minneapolis, MN	Tailpipe fire following push back.
11/23/2010	Accident	WPR11LA058	Salt Lake City, UT	On ground collision with tow tractor.
6/28/2010	Accident	CEN10LA363	Pioneer, LA	En route turbulence.
12/31/2009	Incident	DCA10IA015	Charlotte, NC	Wing tip strike during landing.
6/29/2007	Incident	LAX07IA198	Los Angeles, CA	Blown tires on takeoff.
3/21/2006	Incident	DEN06IA051	Denver, CO	Tail strike on landing.
10/16/2003	Accident	MIA04LA004	Tampa, FL	Taxiway excursion.
6/03/2002	Accident	DCA02MA039	Subic Bay, Philippines	Abrupt maneuver due to ground proximity warning system alert and elevator damage.
6/02/2002	Accident	DCA02MA042	Subic Bay, Philippines	Flight control malfunction during approach.

EASA decided to address the issue in 2015 by requiring airplanes over 27,000 kg (59,525 lbs.) manufactured after January 1, 2021 to be equipped with a 25-hour capable CVR.³⁸ ICAO, in 2016, also adopted a new CVR standard matching the EASA requirements.³⁹ The United States Congress also moved to this standard in the FAA Reauthorization Act of 2024, adding requirements for covered operators to forward fit with 25-hour CVRs one year after the law’s enactment.

This rule expands FAA’s ability to understand events and procedures in

the cockpit during incidents or accidents. The increased awareness of how pilots operate their aircraft in adverse events will allow FAA to update its guidance and regulations to ensure the best practices to maximize safety in the NAS.

3. Baseline for the Analysis

Operations under 14 CFR parts 91, 121, 125, and 135 are currently required to use a CVR that retains at least the last two hours of recorded information. The economic analysis assesses the incremental costs and benefits of the rule against this baseline. Table 3 below

compares the baseline CVR recording length requirements to the final rule. The final rule has revised the compliance start date for applicable non-Act covered aircraft to one year from publication for those with a 59,525 lbs. or more MCTOW and 29 or fewer passenger seats, and by three years for aircraft under the MCTOW. Cost estimates for the final rule were updated to reflect this compliance schedule, 2024-dollar cost of the CVR upgrade, refined fleet estimates, and annual updates to the aerospace forecast and VSL.

³⁷ Government of Canada, Regulations Amending the Canadian Aviation Regulations (Parts I and VI—Flight Data Recorder and Cockpit Voice Recorder): SOR/2019–130, Canada Gazette, Part II, Volume 153, Number 11, May 09, 2019.

³⁸ European Union Aviation Safety Agency, Commission Regulation 2015/2338, 2015 O.J. Amending Regulation (EU) No 965/2012 as regards requirements for flight recorders, underwater

locating devices and aircraft tracking systems, Dec. 11, 2015.

³⁹ Updated ICAO CVR requirements can be found in Section 6.3.2.3 in Annex 6.

TABLE 3—SUMMARY OF REGULATORY CHANGES

14 CFR operation	Current requirement	Final rule
Part 91: § 91.609 (i)(2). Part 125: § 125.227 (g)(2) and (h)(2). Part 135: § 135.151 (g)(1)(iii) and (g)(2)(iii).	Retains at least the last two hours of recorded information using a recorder that meets the standards of TSO–C123a, or later revision.	(i) The last 25 hours of recorded information using a recorder that meets the standards of TSO–C123c, or later revision, if: (A) Manufactured on or after May 16, 2025, for airplanes or rotorcraft for transport category aircraft type-certificated with 30 or more passenger seats; (B) Manufactured on or after one year after the effective date of the rule, for airplanes or rotorcraft with a maximum certified takeoff weight (MCTOW) of 59,525 pounds or more and 29 passenger seats or less; or (C) Manufactured on or after February 2, 2029, for airplane or rotorcraft with a maximum certified takeoff weight (MCTOW) of 59,524 pounds or less; or (ii) The last two hours of recorded information using a recorder that meets the standards of TSO–C123a, or later revision unless the airplane or rotorcraft meets the manufacturing date and requirements found in (i)(2)(A) or (i)(2)(B) of this paragraph.
Part 121: § 121.359 (i)(2) and (j)(2).	Retains at least the last two hours of recorded information using a recorder that meets the standards of TSO–C123a, or later revision.	(i) The last 25 hours of recorded information using a recorder that meets the standards of TSO–C123c, or later revision, if manufactured on or after May 16, 2025; or (ii) The last two hours of recorded information using a recorder that meets the standards of TSO–C123a, or later revision if the airplane is manufactured before May 16, 2025.

The final rule affects CVR manufacturers that design and build CVRs to meet the new recording duration. FAA records indicate six domestic manufacturers have currently received a Technical Standard Orders (TSO) Authorization (TSOA) to make a TSO–C123a or later revision CVR.

4. Benefits Analysis

This section describes the benefits qualitatively because FAA lacks data on the level of risk reduction and time savings that would be achieved by the final rule. Specifically, FAA does not have sufficient data to estimate the exact reduction in risk and total subsequent safety benefits.

The benefits of the final rule include the value of changes in safety from the reduction in accident risk. This final rule provides investigative authorities with more data on events and procedures undertaken in the cockpit during runway incursions or other investigated incidents that are lacking due to being overwritten in the currently mandated 2-hour recording loop. This data may lead to new recommendations or policy changes that could further reduce the risk that an incident or incursion becomes an accident. The Department of Transportation (DOT) determined the VSL in 2024 to be \$13.7 million.⁴⁰ Given this rule’s total maximal cost at a seven percent discount rate of \$69.7 million, preventing five fatalities at any time in the next 20 years would generate benefits matching the estimated costs. In

response to ATR’s comment about the uncertainty of the effects of other potential benefits, such as time savings for updated CVR retrieval tools, FAA has removed that section from the analysis.

5. Costs

FAA estimates this final rule results in the incremental cost increase of equipping a newer 25-hour capable CVR unit over a 2-hour capable unit to all new aircraft. From market research, FAA determined the cost increase between the older and newer units was expected to be minimal, ranging from near parity to an upper bound of approximately \$5,209 (2024 dollars).⁴¹ Even though manufacturers have already designed and certified newer 25-hour capable CVRs as a result of the updated EASA and ICAO requirements, costs would still be incurred. Aircraft over the MCTOW could still use a 2-hour CVR if they only operated in U.S. airspace, but with this final rule operators will also have to upgrade, resulting in the incremental cost being applied to all future manufactured aircraft required to have a CVR in the affected CFR operations. FAA recognizes this cost is likely overestimated due to the following assumptions:

(1) This model assumes there is a consistent incremental cost to upgrade to the newer 25-hour models over the analysis period, which may not hold true as the newer units become the industry standard, and the older 2-hour

variants are phased out of production chains.

(2) Should there be an incremental cost difference between the 25-hour and 2-hour models, this model assumes the CVR is always purchased at the top \$5,209 price difference (2024 dollars), even though operators may negotiate deals for better pricing, as L3Harris noted in its public comment.

(3) The cost model assumes all future-built U.S. aircraft would have to be upgraded to a 25-hour CVR due to the final rule. However, new aircraft intended for international operations would likely already comply due to EASA and ICAO standards, and therefore, these costs are not attributable to this final rule. Since FAA does not have data on the number of aircraft also subject to EASA and ICAO 25-hour standards, these costs could not be excluded from the total.

FAA estimates in this final rule, the applicable fleet will increase from around 23,273 aircraft to 35,535 over 20 years. This change was projected by applying the year-to-year percentage fleet growths from the FAA Aerospace Forecasts.⁴² Specifically, general aviation turbo-jet/fan, turbo-piston, and turbine powered rotorcraft rates from forecast table 28 are applied to their CFR part 91 and 135 respective populations shown below in table 3, while part 121 and 125 jet aircraft are grown from the mainline jet totals in forecast table 21, and piston totals by non-jet regional growth in forecast table 27.

⁴⁰ U.S. Department of Transportation (DOT), Treatment of the Value of Preventing Fatalities and Injuries in Preparing Economic Analyses. Office of the Secretary of Transportation, 2024.

⁴¹ Updated from 2021 price difference of \$4,500 using the Consumer Price Index for All Urban Consumers (CPI–U).

⁴² The FY 2024–2044 FAA Aerospace Forecast and associated data tables can be found at: https://www.faa.gov/data_research/aviation/aerospace_forecasts.

TABLE 4—CVR APPLICABLE FLEET MAKEUP BY CFR PART ^A

14 CFR operational part	Turbine powered jets	Turbine powered piston	Turbine powered rotorcraft	Total
Part 91 ^B	10,436	1,125	267	11,828
Part 121	7,706	103	.....	7,809
Part 125	68	13	.....	81
Part 135	2,269	908	378	3,555
Total	20,479	2,149	645	23,273

^A Based on July 2024 data.^B Consists of part 91 and 91K Aircraft.

Source: FAA July 2024.

Besides new demand growth, Boeing and Airbus, in their 2023 commercial market outlooks (CMO) estimated somewhere between 75 to 80 percent of the current operating North American commercial fleet will be replaced with new aircraft by 2042.^{43 44} These

replacement aircraft are not reflected in the total fleet growth (new aircraft built to handle increased demand), but at the utilized value of 78.3 percent replacement of the current fleet, there are 18,101 new aircraft would still require a 25-hour CVR and therefore add

to the total incremental costs. The breakouts by CFR part for the total fleet over 20 years, including both aircraft built for new demand and current fleet replacement, are shown in table 5 below.

TABLE 5—ESTIMATED FLEET NUMBERS BY CFR PART OVER 20 YEARS

14 CFR operational part	First year fleet ^A	Year 20 estimated fleet	Future demand increase ^B	Replaced first year fleet ^C	Total aircraft built ^D
Part 91 ^E	11,828	19,191	7,363	9,200	16,563
Part 121	7,809	10,838	3,029	6,074	9,103
Part 125	81	102	21	63	84
Part 135	3,555	5,403	1,848	2,765	4,613
Total	23,273	35,535	12,262	18,101	30,363

^A FAA estimated current applicable fleet size as of July 2024.^B Future demand increase is calculated with the first-year fleet grown over the 20 years by respective propulsion type.^C Replacement of first year fleet consists of 77.78 percent of the first-year fleet evenly spread over the 20 years.^D Total consists of aircraft built to replace current fleet and increase to handle future demand.^E Consists of part 91 and 91K aircraft.**Note:** Columns may not sum to total due to rounding.

The 20-year timeframe is used as the estimated replacement of over 78 percent of aircraft of the fleet, in addition to new aircraft built to handle future demand, should result in a significant portion of the active fleet being equipped with 25-hour CVRs.

FAA estimates the maximal total cost to upgrade these projected newly built aircraft over 20 years to a 25-hour capable CVR, at a seven percent discount rate, to be \$69.7 million, with

an annualized cost of \$6.6 million (table 5). These values were based on the upper bound maximum difference cost of \$5,209 between the two CVR models applied to all newly built aircraft requiring a CVR. Aircraft type certified for 30 or more passenger seats are assumed to begin equipping in 2025 to meet the requirements of the 2024 FAA Reauthorization Act. New aircraft that are type certified for under 30 passengers, but with a 59,525 lbs. or

more MCTOW, are expected to begin equipping in the second half of 2026 to meet FAA requirements. All other newly built CVR applicable aircraft are assumed to only begin equipping with 25-hour models in the second half of 2028. Cost estimates are based on these compliance dates, so any aircraft that are built and equipped with a 25-hour CVR ahead of their associated compliance start are not included.

TABLE 6—COSTS OVER 20 YEARS BY CFR PART BY DISCOUNT FACTOR

[Millions of 2024\$]

14 CFR operational part	Total costs		Annualized costs	
	7%	3%	7%	3%
Part 91 ^A	\$36.7	\$54.6	\$3.5	\$3.7
Part 121	22.8	33.9	2.2	2.3
Part 125	0.2	0.3	0.0	0.0
Part 135	10.0	15.0	0.9	1.0

⁴³ For more information on Boeing's CMO and replacement ratio (replacement total/current fleet total) see: <https://www.boeing.com/resources/>

boeingdotcom/market/assets/downloads/2023-CMO_Hulst-Presentation.pdf.

⁴⁴ For further information on Airbus's CMO and replacement ratio see: https://www.airbus.com/sites/g/files/jlcbta136/files/2023-06/GMF%202023-2042%20Presentation_0.pdf.

TABLE 6—COSTS OVER 20 YEARS BY CFR PART BY DISCOUNT FACTOR—Continued
[Millions of 2024\$]

14 CFR operational part	Total costs		Annualized costs	
	7%	3%	7%	3%
Total	69.7	103.7	6.6	7.0

^A Consists of part 91 and 91K Aircraft.
Note: Columns may not sum to total due to rounding.

FAA does not anticipate any other notable costs to comply with the final rule. This rule only updates the minimal required recording time and does not change the technical specifications or core operating components. As such, the newer 25-hour models are built with similar dimensions and wiring standards that make them near drop-in replacements. Therefore, operational procedures and subsequent costs should remain equivalent to the 2-hour CVR models.

In a public comment, Gulfstream noted there may be some additional unquantified costs for aircraft manufacturers to certify their products with the new CVRs. FAA lacks data to assess both the average costs to certify with new CVR models and the number of aircraft models that would need to undergo this process. In addition, as these newer generation CVRs become the standard equipment due to congressional and international requirements alongside supply chain changes, it is expected most aircraft would eventually have to certify with them regardless of the final rule. Due to these factors, FAA agrees there may be a certification cost to manufacturers that have not previously been required to use a 25-hour CVR, but could not estimate those costs.

6. Summary

The final rule increases the mandated minimum recording time for CVRs from 2 to 25 hours for all applicable future manufactured aircraft operating in 14 CFR parts 91, 121, 125, and 135. The estimated maximal total cost of equipping these new aircraft over 20 years, at a seven percent discount rate, is \$69.7 million with annualized costs of \$6.6 million. Benefits are primarily expected from the savings due to potential risk reduction from avoided accidents as investigative authorities have access to more audio data to aid in prescribing preventative measures. However, there is not sufficient data for FAA to estimate the exact reduction in risk. Given the assigned level of VSL of \$13.7 million, should the risk reduction amount to preventing five fatalities in

the next 20 years, benefits would match the costs of the final rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) and the Small Business Jobs Act of 2010 (Pub. L. 111–240), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

FAA published an Initial Regulatory Flexibility Analysis (IRFA) in the proposed rule to aid the public in commenting on the potential impacts to small entities. FAA considered public comments in developing the final rule and this Final Regulatory Flexibility Analysis (FRFA). A FRFA must contain the following:

- (1) A statement of the need for, and objectives of, the rule;
- (2) A statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- (3) The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;
- (4) A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
- (5) A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the

type of professional skills necessary for preparation of the report or record;

(6) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected.

As described in the RIA, FAA identified six U.S. manufacturers affected by the rule. Based on the Small Business Administration (SBA) 2023 size standard for Other Aircraft Part and Auxiliary Equipment Manufacturing (NAICS 336413),⁴⁵ and on publicly available data on employment for these entities, all six identified manufacturers exceed the 1,250-employee size maximum for a small business. Therefore, FAA certifies the rule will not have a significant economic impact on a substantial number of small entities because the rule does not impact any small entity.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

⁴⁵ SBA Size Standards, effective March 17, 2023, can be found at <https://www.sba.gov/document/support-table-size-standards>.

FAA has assessed the effects of this final rule and determined it promotes the safety of the American public and does not exclude imported aircraft that have a CVR meeting the recording length requirement. As a result, FAA does not consider this final rule as creating an unnecessary obstacle to foreign commerce.

D. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal government having first provided the funds to pay those costs. FAA determined this rule will not result in the expenditure of \$187 million or more by State, local, or tribal governments, in the aggregate, or the private sector, in any one year.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This action contains the following amendments to the existing information collection requirements previously approved under OMB Control Number 2120–0700. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), FAA has submitted these proposed information collection amendments to OMB for its review.

Summary: In this final rule, FAA is increasing the recording time of cockpit voice recorders (CVRs) from the current 2-hour to 25-hours for all newly manufactured aircraft that are required to have a CVR installed. This rulemaking will provide accident investigators, aircraft operators, and civil aviation authorities with substantially more CVR data to help find the probable causes of incidents and accidents and use the information to prevent future incidents and accidents. The rule is influenced by a NTSB safety recommendation, as well as EASA's and ICAO's 25-hour CVR requirements and standards. However, this rulemaking will encompass more aircraft than EASA and ICAO as the

requirement is set by not only maximum certified takeoff weight, but operation type and passenger capacity as well.

Public Comments: No public comments were received on the proposed rule's burden on information collection.

Additionally, FAA's Aircraft Certification Service and Flight Standards offices collect public comments through feedback links, to include:

- https://www.faa.gov/about/office_org/headquarters_offices/avs/stakeholder_feedback/air
- https://www.faa.gov/about/office_org/headquarters_offices/avs/stakeholder_feedback/afx

Use: The collection of FDR and CVR data is a valuable tool used in the accident investigation process. The data can provide information that may be difficult or impossible to obtain by other means. This assists the NTSB in reconstructing the events leading to an aircraft accident or incident and determining the probable cause. Understanding the probable cause of aviation accidents and incidents allows FAA and aviation industry to improve aircraft design, operation, and maintenance, thus improving aviation safety overall.

This collection of information supports the Department of Transportation's strategic goal for *Safety: Reduce Transportation-Related Fatalities and Serious Injuries Across the Transportation System*.

In addition, FAA has continuous goals of ensuring the National Air Space (NAS) is the safest and most efficient aircraft operating space in the world.⁴⁶ This requirement gives FAA the ability to analyze the events and procedures affecting the aircraft during incidents/accidents.

Respondents (including number of): FAA estimates in the next three years there will be 28,003 operating aircraft that are required to have a CVR and FDR installed. The compliance time for aircraft that have a 59,524 lbs./26,999 kg or less MCTOW to install 25-hour CVRs is three years after final rule publication, so it is assumed in this estimate that these aircraft will be using older 2-hour CVR models during the 3-year period.

Frequency: The collection is continuous while the aircraft is operating; however, the information is only provided to FAA during an investigation (about 75 cases per year.)

Annual Burden Estimate: FAA estimates the burden to 28,003

respondents (population within the next three years) to this collection of information is 809,105 hours and \$21,996, annually.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified the following differences with these regulations. With the FAA mandate, there are differences in its requirement for 25-hour CVRs for newly manufactured aircraft. ICAO's 25-hour CVR rule is based solely on the certified takeoff weight of the aircraft. Its existing rule requires aircraft over 27,000 kg (59,525 pounds) MCTOW to install a 25-hour CVR. FAA's existing regulatory scheme differentiates aircraft by operation type rather than by weight. For that reason, FAA's mandate will encompass more aircraft, including aircraft that have a MCTOW less than 27,000 kg (59,525 pounds).

The effective date of the rule depends on aircraft's operational part, passenger seat capacity, and MCTOW. Aircraft manufactured on or after May 16, 2025, required to be equipped with a CVR, and a more than 27,000 kg/59,525 pounds MCTOW, with 30 or more passenger seats, or operating in Part 121 are required to use a 25-hour CVR in alignment with the requirements of the Act. Aircraft manufactured on or after one year from the effective date of the rule, required to be equipped with a CVR, and a more than 27,000 kg/59,525 pounds MCTOW, with 29 or fewer passenger seats, are required to be equipped with a 25-hour CVR in alignment with the requirements of the Act. Aircraft manufactured three years after the effective date of the rule, operated under parts 91, 125, 135, and with a MCTOW of 59,524 pounds or less, are required to use a 25-hour CVR. FAA intends to file a difference with ICAO.

G. Environmental Analysis

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). FAA has determined this rule is categorically excluded pursuant to Paragraph B–2.6(f) of Appendix B to FAA Order 1050.1G, FAA National Environmental Policy Act Implementing Procedures (90 FR 29615, July 3, 2025). Categorical exclusions are categories of

⁴⁶ See FAA 2024 Business Plan.

actions that the agency has determined normally do not significantly affect the quality of the human environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See DOT Order 5610.1D § 9. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* § 9(b). This rulemaking, which amends, restructures, and consolidates the CVR regulations presently located throughout title 14 of the CFR, is categorically excluded pursuant to appendix B–2.6(f) of FAA Order 1050.1G: “Regulations, standards, and exemptions (excluding those that if implemented may cause a significant impact on the human environment).” FAA does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

VI. Executive Order Determinations

A. Executive Order 13132, Federalism

FAA has analyzed this final rule under the principles and criteria of Executive Order (E.O.) 13132, Federalism. FAA has determined this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, will not have Federalism implications.

B. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,⁴⁷ and FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures,⁴⁸ FAA ensures Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes; or to affect uniquely or significantly their respective Tribes. At this point, FAA

has not identified any unique or significant effects, environmental or otherwise, on tribes resulting from this final rule.

C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

FAA analyzed this final rule under E.O. 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). FAA has determined it is not a “significant energy action” under the executive order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

D. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined this action will have no effect on international regulatory cooperation.

E. Executive Order 14192, Unleashing Prosperity Through Deregulation

This final rule is considered an E.O. 14192 regulatory action. FAA estimates that this rule generates \$4.9 million in annualized costs at a 7 percent discount rate, discounted relative to year 2024, over a perpetual time horizon.

VII. Additional Information

A. Electronic Access and Filing

A copy of the NPRM, all comments received, this final rule, and all background material may be viewed online at <https://www.regulations.gov> using the docket number listed above. A copy of this final rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register’s website at <https://www.federalregister.gov> and the Government Publishing Office’s website at <https://www.govinfo.gov>. A copy may also be found at FAA’s Regulations and Policies website at https://www.faa.gov/regulations_policies.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of

Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or notice number of this rulemaking.

All documents FAA considered in developing this final rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit https://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects

14 CFR Part 91

Aircraft, Aviation safety.

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Charter flights, Safety, Transportation.

14 CFR Part 125

Aircraft, Aviation safety.

14 CFR Part 135

Air taxis, Aircraft, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); Pub. L. 118–383; articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. Amend § 91.609 by revising paragraph (i)(2) to read as follows:

§ 91.609 Flight data recorders and cockpit voice recorders.

* * * * *

(i) * * *

⁴⁷ 65 FR 67249 (Nov. 6, 2000).

⁴⁸ FAA Order No. 1210.20 (Jan. 28, 2004), available at <https://www.faa.gov/documentLibrary/media/1210.pdf>.

(2) Retains at least—

(i) The last 25 hours of recorded information using a recorder that meets the standards of TSO-C123c, or later revision, if:

(A) Manufactured on or after May 16, 2025, for transport category aircraft type-certificated with 30 or more passenger seats; or

(B) Manufactured on or after February 2, 2027, for airplanes or rotorcraft with a maximum certified takeoff weight (MCTOW) of 59,525 pounds or more and type-certificated for 29 or fewer passenger seats; or

(C) Manufactured on or after February 2, 2029, for airplanes or rotorcraft with a maximum certified takeoff weight (MCTOW) of 59,524 pounds or less; or

(ii) The last 2 hours of recorded information using a recorder that meets the standards of TSO-C123a, or later revision, unless the airplane or rotorcraft meets the manufacturing date and requirements found in (i)(2)(i)(A), (i)(2)(i)(B), or (i)(2)(i)(C) of this paragraph.

* * * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

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

Authority: 49 U.S.C. 106(f), 40103, 40113, 40119, 41706, 42301 preceding note added by Pub. L. 112–95, sec. 412, 126 Stat. 89, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44729, 44732; 46105; Pub. L. 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note); Pub. L. 112–95, 126 Stat. 62 (49 U.S.C. 44732 note); Pub. L. 115–254, 132 Stat. 3186 (49 U.S.C. 44701 note); Pub. L. 118–383.

■ 4. Amend § 121.359 by revising paragraphs (i)(2) and (j)(2) to read as follows:

§ 121.359 Cockpit voice recorders.

* * * * *

(i) * * *

(2) Retains at least—

(i) The last 25 hours of recorded information using a recorder that meets the standards of TSO-C123c, or later revision, if manufactured on or after May 16, 2025; or

(ii) The last 2 hours of recorded information using a recorder that meets the standards of TSO-C123a, or later revision, if the airplane is manufactured before May 16, 2025; and

* * * * *

(j) * * *

(2) Retains at least—

(i) The last 25 hours of recorded information using a recorder that meets the standards of TSO-C123c, or later

revision, if manufactured on or after May 16, 2025; or

(ii) The last 2 hours of recorded information using a recorder that meets the standards of TSO-C123a, or later revision, if manufactured before May 16, 2025; and

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRCRAFT HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 5. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722; Pub. L. 118–383.

■ 6. Amend § 125.227 by revising paragraphs (g)(2) and (h)(2) to read as follows:

§ 125.227 Cockpit voice recorders.

* * * * *

(g) * * *

(2) Retains at least—

(i) The last 25 hours of recorded information using a recorder that meets the standards of TSO-C123c, or later revision, if:

(A) Manufactured on or after May 16, 2025, for a transport category aircraft type-certificated with 30 or more passenger seats;

(B) If manufactured on or after February 2, 2027, for airplanes with a maximum certified takeoff weight (MCTOW) of 59,525 pounds or more and type-certificated with 29 or fewer passenger seats; or

(C) If manufactured on or after February 2, 2029, for airplanes with a maximum certified takeoff weight (MCTOW) of 59,524 pounds or less.

(ii) The last 2 hours of recorded information using a recorder that meets the standards of TSO-C123a, or later revision, unless the airplane meets the manufacturing date and requirements found in (g)(2)(i)(A), (g)(2)(i)(B), or (g)(2)(i)(C) of this paragraph; and

* * * * *

(h) * * *

(2) Retains at least—

(i) The last 25 hours of recorded information using a recorder that meets the standards of TSO-C123c, or later revision, if:

(A) Manufactured on or after May 16, 2025, for airplanes with a maximum certified takeoff weight (MCTOW) of 59,525 pounds or more, or a transport category aircraft type-certificated with 30 or more passenger seats;

(B) If manufactured on or after February 2, 2027, for airplanes with a maximum certified takeoff weight (MCTOW) of 59,525 pounds or more type-certificated for 29 or fewer passenger seats; or

(C) If manufactured on or after February 2, 2029, for airplanes with a maximum certified takeoff weight (MCTOW) of 59,524 pounds or less; or

(ii) The last 2 hours of recorded information using a recorder that meets the standards of TSO-C123a, or later revision, unless the airplane meets the manufacturing date and requirements found in (h)(2)(i)(A), (h)(2)(i)(B), or (h)(2)(i)(C) of this paragraph; and

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 7. The authority citation for part 135 continue to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 41706, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 44730, 45101–45105; Pub. L. 112–95, 126 Stat. 58 (49 U.S.C. 44730), Pub. L. 118–383.

■ 8. Amend § 135.151 by revising paragraphs (g)(1)(iii) and (g)(2)(iii) to read as follows:

§ 135.151 Cockpit voice recorders.

* * * * *

(g) * * *

(1) * * *

(iii) Retains at least—

(A) The last 25 hours of recorded information using a recorder that meets the standards of TSO-C123c, or later revision, if:

a. Manufactured on or after May 16, 2025, for a transport category aircraft type-certificated for 30 or more passenger seats; or

b. Manufactured on or after February 2, 2027, for airplanes or rotorcraft with a maximum certified takeoff weight (MCTOW) of 59,525 pounds or more or type-certificated for 29 or fewer passenger seats; or

c. Manufactured on or after February 2, 2029, for airplanes or rotorcraft with a maximum certified takeoff weight (MCTOW) of 59,524 pounds or less; or

(B) The last 2 hours of recorded information using a recorder that meets the standards of TSO-C123a, or later revision, unless the airplane or rotorcraft meets the manufacturing date and requirements found in (g)(1)(iii)(A)(a), (g)(1)(iii)(A)(b), or (g)(1)(iii)(A)(c).

* * * * *

(2) * * *

(iii) Retains at least—

(A) The last 25 hours of recorded information using a recorder that meets the standards of TSO-C123c, or later revision, if:

a. Manufactured on or after May 16, 2025, for airplanes or rotorcraft type-certificated for 30 or more passenger seats;

b. Manufactured on or after February 2, 2027, for airplanes or rotorcraft with a maximum certified takeoff weight (MCTOW) of 59,525 pounds or more with 29 or fewer passenger seats; or

c. Manufactured on or after February 2, 2029, for airplanes or rotorcraft with a maximum certified takeoff weight (MCTOW) of 59,524 pounds or less.

(B) The last 2 hours of recorded information using a recorder that meets the standards of TSO-C123a, or later revision, unless the airplane or rotorcraft meets the manufacturing date and requirements found in (g)(2)(iii)(A)(a), (g)(2)(iii)(A)(b), or (g)(2)(iii)(A)(c).

* * * * *

Issued under authority provided by 49 U.S.C. 106(f) and 44701(a) in Washington, DC.

Christopher J. Rocheleau,
Deputy Administrator.

[FR Doc. 2026-02110 Filed 1-30-26; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 375

[Docket No. RM26-10-000; Order No. 916]

Transfer of Delegation of Authority From the Office of Energy Policy and Innovation to the Office of Technical Reporting and Economics and to the Office of the General Counsel

AGENCY: Federal Energy Regulatory Commission (Commission or FERC).

ACTION: Final rule.

SUMMARY: The Commission is issuing this final rule to revise its delegations of authority to align with an internal Commission reorganization, which reassigned certain responsibilities from the former Office of Energy Policy and Innovation (OEPI), which has been disbanded, to the new Office of Technical Reporting and Economics (OTRE) and to the Office of the General Counsel (OGC). This final rule transfers delegated authority from the Director of OEPI to the Director of OTRE and to the General Counsel, to allow their

respective offices to process routine, non-controversial matters efficiently.

DATES: This final rule is effective February 2, 2026.

FOR FURTHER INFORMATION CONTACT:

Kaitlin Johnson, Office of Technical Reporting and Economics, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-8542. kaitlin.johnson@ferc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

1. In order to expeditiously complete its business, the Commission delegates specific authority for certain routine and non-controversial decision-making to Office Directors, as enumerated in the Commission's regulations. Following an internal reorganization, the Commission may need to revise such delegations to align with that reorganization.

II. Discussion

2. As of October 5, 2025, the Commission's former Office of Energy Policy and Innovation (OEPI) has been disbanded as part of an internal reorganization. That reorganization also included establishment of a new Office of Technical Reporting and Economics (OTRE), which will undertake some functions that were carried out by OEPI. Certain other formerly OEPI functions will be carried out by the Office of the General Counsel (OGC). In order to process routine and non-controversial matters efficiently, including forms, filings, and data requests, the authority that the Commission had previously delegated to the Director of OEPI in 18 CFR 375.315 will be revised such that this authority is now delegated to the Director of OTRE, or the Director's designee. The authority over Report of Transmission Investment Activity (FERC-730), as described in 18 CFR 375.315(a)(2)-(4), will be delegated to the General Counsel or their designee.

III. Information Collection Statement

3. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.¹ This final rule, however, results in no new, additional, or different public reporting burden. This final rule does not require public utilities or natural gas companies to file new, additional, or different information, and it does not change the frequency with which they must file information.

¹ 5 CFR 1320.13.

IV. Environmental Analysis

4. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.² Excluded from this requirement are rules that are procedural, ministerial, or internal administrative and management actions, programs or decisions.³ This rule falls within this exception; consequently, no environmental consideration is necessary.

V. Regulatory Flexibility Act

5. The Regulatory Flexibility Act of 1980 (RFA)⁴ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This final rule changes the Commission's delegations of authority to take certain actions and does not create any additional requirements for filers. The Commission thus certifies that it will not have a significant economic impact upon participants in Commission proceedings. An analysis under the RFA is therefore not required.

VI. Regulatory Planning and Review

6. Executive Order 12866 (Regulatory Planning and Review),⁵ as amended by Executive Orders 14215 (Ensuring Accountability for All Agencies)⁶ and 13563 (Improving Regulation and Regulatory Review),⁷ 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. This final rule regards "agency organization, management, or personnel matters" and is not subject to regulatory planning and review pursuant to section 3(d)(3) of Executive Order 12866.

² *Reguls. Implementing the Nat'l Env't Pol'y Act of 1969*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

³ 18 CFR 380.4(a)(1).

⁴ 5 U.S.C. 601-612.

⁵ 58 FR 51735 (Oct. 4, 1993).

⁶ 90 FR 10447 (Feb. 18, 2025).

⁷ 76 FR 3821 (Jan. 18, 2011).

VII. Executive Order 13132 (Federalism)

7. Executive Order 13132 (Federalism)⁸ imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Commission has determined that this final rule would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Commission has not prepared a federalism assessment.

VIII. Document Availability

8. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>).

9. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document (*i.e.*, the sub docket number, 000) in the docket number field.

10. User assistance is available for eLibrary, the Public Reference Service, and the Commission's website during normal business hours from FERC Online Support at (202) 502-6652 (toll free at (866) 208-3676) or email at ferconlinesupport@ferc.gov.

IX. Effective Date and Congressional Notification

11. The Commission is issuing this rule as an instant final rule without a

period for public comment. These regulations are effective on February 2, 2026. The Commission finds that notice and public comments are unnecessary because this final rule concerns only internal agency procedure and practice. Therefore, the Commission finds good cause to waive the notice period otherwise required before the effective date of this final rule.

List of Subjects in 18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

By the Commission.

Issued: January 28, 2026.

Debbie-Anne A. Reese,
Secretary.

In consideration of the foregoing, the Commission amends part 375, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

PART 375—THE COMMISSION

■ 1. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 2. Revise and republish § 375.315 to read as follows:

§ 375.315 Delegations to the Director of the Office of Technical Reporting and Economics.

The Commission authorizes the Director or the Director's designee to:

(a) Take appropriate action on:

(1) Any notice of intervention or motion to intervene, filed in an uncontested proceeding processed by Office of Technical Reporting and Economics;

(2) Applications or motions for extensions of time to file required filings, reports, data and information and to perform other acts required at or within a specific time by any rule, regulation, license, permit, certificate, or order by the Commission, including applications or motions for extensions of time to file the Annual Report of Natural Gas Transactions (FERC Form No. 552);

(3) Requests or petitions for waiver of the requirements of the Annual Report

of Natural Gas Transactions (FERC Form No. 552); and

(4) Notification to a party if a submitted Annual Report of Natural Gas Transactions (FERC Form No. 552) fails to comply with applicable statutory requirements, and with all applicable Commission rules, regulations, and orders for which a waiver has not been granted, or, when appropriate notify a party that a submission is acceptable.

(b) Undertake the following actions:

(1) Issue reports for public information purposes. Any report issued without Commission approval must

(i) Be of a noncontroversial nature, and

(ii) Contain the statement, “This report does not necessarily reflect the views of the Commission,” in bold face type on the cover;

(2) Issue and sign requests for additional information regarding applications, filings, reports and data processed by the Office of Technical Reporting and Economics; and

(3) Accept for filing data and reports required by Commission regulations, rules, orders, or presiding officers' initial decisions upon which the Commission has taken no further action, if such filings are in compliance with such regulations, rules, orders or decisions and, when appropriate, notify the filing party of such acceptance.

■ 3. Amend § 375.309 by adding paragraph (j) to read as follows:

§ 375.309 Delegations to the General Counsel.

* * * * *

(j) Take appropriate action on the Report of Transmission Investment Activity (FERC–730), including: applications or motions for extensions of time to file the Report of Transmission Investment Activity (FERC–730); requests or petitions for waiver of the requirements of the Report of Transmission Investment Activity (FERC–730); and notification to a party if a submitted Report of Transmission Investment Activity (FERC–730) fails to comply with applicable statutory requirements.

[FR Doc. 2026–02033 Filed 1–30–26; 8:45 am]

BILLING CODE 6717–01–P

⁸ 64 FR 43255 (Aug. 10, 1999).

Proposed Rules

Federal Register

Vol. 91, No. 21

Monday, February 2, 2026

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 141

[Docket No. FAA-2024-2531]

Notice of Public Meeting and Request for Comment on the Modernization of Pilot Schools

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

ACTION: Notice of public meeting for proposed rulemaking; request for comment.

SUMMARY: The Federal Aviation Administration (FAA) announces public meetings to solicit input on the modernization of pilot school regulations.

DATES: The FAA will hold virtual public meetings on Tuesday, March 10, 2026 and Wednesday, March 11, 2026, from 9:00 a.m.–4:00 p.m. Eastern Time.

ADDRESSES: The meetings will be held virtually on Zoom. See website for registration information link for the meetings: https://www.faa.gov/about/office_org/headquarters_offices/avs/offices/afx/afs/afs800/afs810/modernization_of_part-141_initiative.

Comments: Written comments are requested no later than April 10, 2026. Send comments identified by docket number FAA-2024-2531 using any of the following methods:

- **Federal eRulemaking Portal:** Go to www.regulations.gov and follow the online instructions for sending your comments electronically.
- **Mail:** Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- **Hand Delivery or Courier:** Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- **Fax:** Fax comments to Docket Operations at (202) 493-2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.govinfo.gov/content/pkg/FR-2008-01-17/pdf/E8-785.pdf>.

Docket: Background documents or comments received may be read at www.regulations.gov at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lyndsay Carlson with the Part 141 Modernization Initiative Team, Office of Safety Standards, General Aviation and Commercial Division, Training and Certification Group (AFS-810), Federal Aviation Administration; telephone (202) 267-1100; email 9-AFS-Modernization-Part141-Comments@faa.gov.

SUPPLEMENTARY INFORMATION: Title 14 Code of Federal Regulations (14 CFR) part 141 (Pilot Schools) prescribes the requirements for issuing pilot school air agency certificates, provisional pilot school air agency certificates, and associated ratings, and the general operating rules applicable to a holder of a certificate or rating issued under part 141. Through a part 141 pilot school, a student may obtain equivalent levels of aeronautical experience in fewer hours than required by 14 CFR part 61 (Certification: Pilots, Flight Instructors, and Ground Instructors). Part 141 schools are required to have FAA certification and supplementary oversight. Specifically, part 141 includes curricula standards for training and procedures to ensure a training course used by a school is adequate, appropriate, and administered by qualified personnel.

The process of licensing or certification of pilot schools in the United States is approaching 100 years

of existence. Although the FAA has revised certain regulatory requirements pertaining to pilot schools during this time, part 141 still has many foundational ties to Civil Air Regulations (CAR) part 50, which was implemented in the 1940s. Regulations for pilot schools are typically promulgated to improve safety, reduce aircraft accidents, and embrace changes such as advances in technology and the need for data collection and analysis. Modernizing part 141 is essential for addressing challenges pertaining to certification, certification management, examining authority, and evolving technology and learning methods. The objective of modernizing part 141 is to increase safety and create a foundation for a more structured and robust training environment to aid in the reduction of general aviation fatal accidents.

Therefore, part 141 must be analyzed to determine how it can evolve with the changing aviation industry. Over the course of the project, the FAA is seeking engagement from the flight training industry through participation in public meetings. Collaboration is encouraged to stimulate the innovation of a modern part 141 that will serve the needs of current and future pilot schools, as well as provide a robust and safe training environment that instills the necessary knowledge, skills, critical thinking, and aeronautical decision making in its pilots to create a safer national airspace system.

Public Meeting

Information concerning the docket and public meetings, including upcoming meeting topics and previous meeting resources, will be posted at the following website: https://www.faa.gov/about/office_org/headquarters_offices/avs/offices/afx/afs/afs800/afs810/modernization_of_part-141_initiative.

DOT is committed to providing equal access to the meetings for all participants. If you require an alternative version of files provided or alternative accommodations, such as sign language, interpretation, or other ancillary aids, please contact the Part 141 Modernization Initiative Team, at 9-AFS-Modernization-Part141-Comments@faa.gov no later than February 24, 2026.

Comments Encouraged

The FAA encourages the public to submit comments to www.regulations.gov, Docket No.: FAA–2024–2531. Comments that the FAA would find helpful include validated data and reports, unique discussion topics or scenarios, and/or feedback specific to modernizing part 141. The public is encouraged to provide feedback regarding innovative ideas; methods; solutions; products; and/or services that have, or could have, a significant impact on pilot school training. We encourage you to submit comments during these public meetings or electronically to Docket No.: FAA–2024–2531. If you submit your comments electronically, it is not necessary to also submit a hard copy.

The submission of public comments is encouraged but not required for meeting participation. The FAA will consider public feedback to determine the need for future considerations to the CFR. The FAA will review comments that are post-marked, or submitted electronically, on or before the comment closing date of April 10, 2026.

Authority: 14 CFR 11.53.

Issued in Washington, DC, on January 28, 2026.

Everette C. Rochon, Jr.,

Manager, Training and Certification Group, General Aviation and Commercial Division, Office of Safety Standards, Flight Standards Service.

[FR Doc. 2026–02010 Filed 1–30–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 141**

[Docket No. FAA–2024–2531; Document No. 2025–23113]

Notification of Public Meeting and Request for Comment on the Modernization of Pilot Schools

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

ACTION: Notification of public meeting for proposed rulemaking; request for comment; withdrawal.

SUMMARY: The FAA is withdrawing the Notification of Public Meeting and Request for Comment on the Modernization of Pilot Schools for the meeting scheduled on February 5, 2026, that was published in the **Federal Register** on December 17, 2025.

DATES: The Notification of Public Meeting and Request for Comment on the Modernization of Pilot Schools published on December 17, 2025, at 90 FR 58524, is withdrawn effective February 2, 2026.

FOR FURTHER INFORMATION CONTACT:

Lyndsay Carlson with the Part 141 Modernization Initiative Team, Office of Safety Standards, General Aviation and Commercial Division, Training and Certification Group (AFS–810), Federal Aviation Administration; telephone (202) 267–1100; email 9-AFS-Modernization-Part141-Comments@faa.gov.

SUPPLEMENTARY INFORMATION:**Background**

On December 17, 2025, the FAA published in the **Federal Register** a Notification of Public Meeting and Request for Comment on the Modernization of Pilot Schools, Document No. 2025–23113, Docket No. FAA–2024–2531, 90 FR 58524. The public meeting on February 5, 2026, was scheduled to be the closing public meeting, during which the industry groups would present their report.

Reason for Withdrawal

Industry working groups requested the FAA postpone the meeting to provide additional time to prepare their report for presentation at the closing meeting. To accommodate the industry groups' request, the FAA is withdrawing the previously published notice of the hybrid public meeting and issuing a superseding Notification of Public Meeting and Request for Comment.

Conclusion

The Notification of Public Meeting and Request for Comment on the Modernization of Pilot Schools, Document No. 2025–23113, Docket No. FAA–2024–2531, published at 90 FR 58524, is therefore withdrawn. See website for public meeting schedule: https://www.faa.gov/about/office_org/headquarters_offices/avs/offices/afx/afx/afx800/afx810/modernization_of_part-141_initiative.

Authority: 14 CFR 11.53.

Issued in Washington, DC, on January 28, 2026.

Everette C. Rochon, Jr.,

Manager, Training and Certification Group, General Aviation and Commercial Division, Office of Safety Standards, Flight Standards Service.

[FR Doc. 2026–02009 Filed 1–30–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Transit Administration****23 CFR Part 450**

RIN 2132–AB45

Statewide and Nonmetropolitan Planning; Metropolitan Transportation Planning

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

ACTION: Notification of termination.

SUMMARY: FTA is announcing its decision to terminate its rulemaking titled “Statewide and Nonmetropolitan Planning; Metropolitan Transportation Planning” which would have proposed updates to its transportation planning regulations. FTA formally withdrew the rule from FTA’s Spring 2025 Unified Agenda of Regulatory and Deregulatory Actions (“Unified Agenda”).

DATES: This termination was made on February 2, 2026.

ADDRESSES: You may submit comments by any of the following methods:

U.S. Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W58–213, Washington, DC 20590.

Hand Delivery or Courier: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W58–213, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Fax: 202–493–2251.

FOR FURTHER INFORMATION CONTACT: Mr. Fleming El-Amin, Office of Planning and Environment, (202) 604–7927, Fleming.El-Amin@dot.gov; or Ms. Nicole Seymour, Office of the Chief Counsel, (202) 924–6339, Nicole.Seymour@dot.gov, Federal Transit Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:**Electronic Access and Filing**

This document may be viewed online through the Federal eRulemaking portal at <https://www.regulations.gov> using the docket number listed above. The website is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded by accessing the Office of the **Federal Register’s** home page at: <https://www.federalregister.gov>.

Background

FTA had initiated a rulemaking titled “Statewide and Nonmetropolitan Planning; Metropolitan Transportation Planning” under Regulation Identifier Number (RIN) 2132–AB45, to update the regulations pertaining to FTA’s transportation planning requirements in 23 CFR part 450.

Consistent with President Donald J. Trump’s commitment to ending unlawful, unnecessary, and onerous regulations, FTA is reviewing its existing regulations and ongoing regulatory activities for alignment with law and Administration priorities. FTA is withdrawing this rulemaking activity because further rulemaking action does not align with agency needs, priorities, and objectives. FTA continues to consider the best means of addressing some or all the issues surrounding its transportation planning regulations, and the scope of any agency actions FTA concludes may be necessary to address these issues.

In addition, all agencies participate in the semi-annual Unified Agenda, which provides a summary description of the regulatory actions that each agency is considering or reviewing. Agencies’ agendas are posted on the public website of the Office of Information and Regulatory Affairs, and portions are published in the **Federal Register** in the spring and fall of each year. The Unified Agenda is often used as a tool to solicit interest and participation from stakeholders. Withdrawal of this rulemaking will allow FTA to better align its entries on the Department’s Unified Agenda with the agency’s needs, priorities, and objectives.

Accordingly, for these independently sufficient reasons, FTA is terminating the rulemaking associated with RIN 2132–AB45. By terminating the rulemaking, FTA is indicating that it no longer considers this rulemaking to be pending. Should FTA decide at a future date to initiate the same or similar rulemaking, FTA will issue a new NPRM under a new RIN, subject to the requirements of the Administrative Procedure Act, 5 U.S.C. 553.

Issued in Washington, DC, under authority delegated in 49 CFR 1.91(c).

Marcus J. Molinaro,
Administrator.

[FR Doc. 2026–02042 Filed 1–30–26; 8:45 am]

BILLING CODE 4910–57–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 174 and 180

[EPA–HQ–OPP–2025–0028; FRL–12474–12–OCSPP]

Receipt of Pesticide Petitions Filed for Residues of Pesticide Chemicals In or On Various Commodities—December 2025

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency’s receipt of and solicits public comment on initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities. The Agency is providing this notice in accordance with the Federal Food, Drug, and Cosmetic Act (FFDCA). EPA uses the month and year in the title to identify when the Agency compiled the petitions identified in this notice of filing. Unit II. of this document identifies certain petitions received in 2024 and 2025 that are currently being evaluated by EPA, along with information about each petition, including who submitted the petition and the requested action.

DATES: Comments must be received on or before March 4, 2026.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition (PP) of interest identified in Unit II. of this document, online at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Each application summary in Unit II. specifies a contact division. The appropriate division contacts are identified as follows:

- BPPD (Biopesticides and Pollution Prevention Division) (Mail Code 7511M); Shannon Borges; main telephone number: (202) 566–1400; email address: BPPDFRNotices@epa.gov.

- RD (Registration Division) (Mail Code 7505T); Charles Smith; main telephone number: (202) 566–1030; email address: RDFRNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action provides information that is directed to the public in general.

B. What is the Agency’s authority for taking this action?

EPA regulations for residues of pesticide chemicals in or on various food commodities are established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), requires EPA to publish a notice of receipt of these petitions in the **Federal Register** and provide an opportunity for public comment on the requests.

C. What action is the Agency taking?

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the receipt of pesticide petitions filed under FFDCA section 408 that request the establishment or modification of regulations for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioner. Pursuant to 40 CFR 180.7(f), a summary of the petition identified in this document, prepared by the petitioner, is included in a docket. EPA has determined that the pesticide petitions described in this document contain data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2), and 40 CFR 180.7(b); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting the pesticide petitions. 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 these pesticide petitions.

Based upon review of the data supporting these petitions and in accordance with its authority under FFDCA section 408(d)(4)(A)(i), EPA may establish a final tolerance or tolerance exemption that “may vary from that sought by the petitioner.” For example, EPA may determine that it is appropriate to vary the commodity name for consistency with EPA’s Food and Feed Commodity Vocabulary, which is located here <https://www.epa.gov/pesticide-tolerances/food-and-feed-commodity-vocabulary>, or vary the tolerance level based on available data, harmonization interests,

or the trailing zeros policy. In addition, when evaluating a petition's requests for a tolerance or exemption, EPA will consider how use of the pesticide on a crop for which a tolerance is requested may result in residues in or on commodities related to that requested commodity (e.g., whether use on sugar beets for which a tolerance was requested on sugar beet root also requires a tolerance on sugar beet tops or whether use on a cereal grain for which a grain tolerance was requested also requires a tolerance on related animal feed commodities derived from that cereal grain). Public commenters should consider the possibility of such revisions in preparing comments on these petitions.

D. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through <https://www.regulations.gov> or email. If you wish to include CBI in your comment, please follow the applicable instructions at <https://www.epa.gov/dockets/commenting-epa-dockets#rules> and clearly mark the information that you claim to be CBI. In addition to one complete version of the comment that includes CBI, a copy of the comment without CBI must be submitted for inclusion in the public docket. Information marked as CBI 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/menting-epa-dockets>.

II. Petitions Received

This unit provides the following information about the petitions:

- The Pesticide Petition (PP) Identification (IN) number;
- EPA docket ID number for the petition;
- Information about the petition (i.e., name of the petitioner, name of the pesticide chemical residue and the commodities for which a tolerance or exemption is sought);
- The analytical method available to detect and measure the pesticide chemical residue or the petitioner's statement about why such a method is not needed; and
- The division to contact for that petition.

Additional information on the petitions may be obtained through the petition summaries that were prepared by the petitioners pursuant to 21 U.S.C. 346a(d)(2)(A)(i)(I) and 40 CFR 180.7(b)(1), which are included in the docket for the petition as identified in this unit.

- *PP IN-11918.* (EPA-HQ-OPP-2024-0356). SpayVac-for-Wildlife, Inc., 1202 Ann Street, Madison, WI, USA 53713, requests to establish an exemption from the requirement of a tolerance for residues of cholesterol (CAS Reg. No. 57-88-5), when used as an inert ingredient in pesticide formulations applied to animals (i.e., equine, cervid, bovine, porcine, pinniped, elephant, raccoon, feral dog, and feral cat) under 40 CFR 180.930. The company submitted a revised Notice of Filing to expand the use pattern to include additional taxa from the original notice published in the **Federal Register** on August 27, 2024. The revised notice also corrects the CAS Reg. No. for cholesterol; therefore, EPA is re-issuing this notice. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

- *PP IN-12206.* (EPA-HQ-OPP-2025-3192). GFBiochemicals SAS c/o Lewis & Harrison, LLC, 2461 South Clark Street, Suite 710, Arlington, VA 22202, requests to establish an exemption from the requirement of a tolerance for residues of butyl levulinate (CAS Reg. No. 2052-15-5), when used as an inert ingredient at a concentration not to exceed 40% in pesticide formulations used pre- and post-harvest under 40 CFR 180.910. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

- *PP 4F9162.* (EPA-HQ-OPP-2025-1345). Bayer CropScience LLC, 800 N Lindbergh Blvd., St. Louis, MO 63167, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 174 for residues of the plant-incorporated protectants (PIPs) *Bacillus thuringiensis* Cry1Da_7 and *Bacillus thuringiensis* Cry1B.3 proteins and the genetic material necessary for their production in or on food and feed commodities of cotton, and *Paenibacillus spp* Vip3Cb1 protein and the genetic material necessary for its production in or on food and feed commodities of cotton and maize. The petitioner believes no analytical method is needed because this petition is for a permanent exemption from the requirement of a tolerance without numerical limitation, thus an analytical detection method should not be required. *Contact:* BPPD.

- *PP 5F9189.* (EPA-HQ-OPP-2025-3953). GreenLight Biosciences, Inc., 200 Boston Ave., Suite 1000, Medford, MA 02155, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the biochemical pesticide

Unecyna in or on all food and feed commodities. The petitioner believes no analytical method is needed because an exemption from the requirement of a tolerance is being sought. *Contact:* BPPD.

- *PP 5F9200.* (EPA-HQ-OPP-2025-3295). Drexel Chemical Company, P.O. Box 13327, Memphis, TN 38113, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide trifluralin on pennycress at 0.05 parts per million (ppm). The LC/MS/MS method is used to measure and evaluate the chemical trifluralin. *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: January 23, 2026.

Edward Messina,

Director, Office of Pesticide Programs.

[FR Doc. 2026-01991 Filed 1-30-26; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 84

[Docket Number OCR-2026-0034]

RIN 0945-AA27

Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance

AGENCY: Office for Civil Rights (OCR), Office of the Secretary, Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking; re-opening of public comment period.

SUMMARY: The Department of Health and Human Services (HHS or Department) published a notice of proposed rulemaking (NPRM) in the **Federal Register** on December 19, 2025. As a result of administrative technical issues, HHS is re-opening the public comment period for the public to submit comments. The purpose of the NPRM is to limit ambiguity by clarifying that the statutory exclusion of "gender identity disorders not resulting from physical impairments" from the scope of what constitutes discrimination includes "gender dysphoria not resulting from a physical impairment."

DATES: The comment period for the NPRM published at 90 FR 59478 on December 19, 2025, is re-opened. Comments should be received on or before February 20, 2026.

ADDRESSES: Submit comments, identified by agency name and Docket No. OCR–2026–0034, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. If you are submitting comments electronically, the department strongly encourages you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), the Department strongly encourages you to convert the PDF to “print-to-PDF” format, or to use some other commonly used searchable text format. Please do not submit the PDF in scanned format. Using a print-to-PDF allows the Department to electronically search and copy certain portions of your submissions to assist in the rulemaking process.

Written Submissions

Submit written submissions in the following ways:

- **Mail:** U.S. Department of Health and Human Services, Office for Civil Rights, Attention: Disability NPRM, RIN 0945–AA27, Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue SW, Washington, DC 20201.

- **Instructions:** All comments received by the methods and due date specified above, or officially post marked by the due date above, will be posted without change to content to <https://www.regulations.gov>, including any personal information provided, and such posting may occur after the closing of the comment period.

However, the Department may redact certain non-substantive content from comments before posting, including threats, hate speech, profanity, graphic images, or individually identifiable information about an individual third-party other than the commenter. In addition, comments or material designated as confidential or not to be disclosed to the public will not be accepted. Comments may be redacted or rejected as described above without notice to the commenter, and the Department will not consider in rulemaking any redacted or rejected content that would not be made available to the public as part of the administrative record. Because of the large number of public comments normally received on **Federal Register** documents, the Office for Civil Rights is

not able to provide individual acknowledgements of receipt.

Please allow sufficient time for mailed comments to be timely received in the event of delivery or security delays.

Please note that comments submitted by fax or email and those submitted or postmarked after the comment period will not be accepted.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and follow the instructions provided for conducting a search, using the docket number(s) found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: John Thompson, Office for Civil Rights, Department of Health and Human Services at (202) 545–4884 or (800) 537–7697 (TDD), or via email at 504@hhs.gov.

SUPPLEMENTARY INFORMATION: Because of administrative technical issues, HHS is re-opening the public comment period for the December 19, 2025 (on 90 FR 59478), NPRM regarding limiting ambiguity by clarifying that the statutory exclusion of “gender identity disorders not resulting from physical impairments” from the scope of what constitutes discrimination includes “gender dysphoria not resulting from a physical impairment.”

Robert F. Kennedy, Jr.,
Secretary, Department of Health and Human Services.

[FR Doc. 2026–02038 Filed 1–30–26; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 260123–0032]

RIN 0648–BN38

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Sea Ice Road and Trail Construction, Use, and Maintenance Activities Along the Beaufort Sea Coast in Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from Hilcorp Alaska, LLC (Hilcorp) for

promulgation of incidental take regulations (ITR) and issuance of an associated Letter of Authorization (LOA) that would authorize continued take of marine mammals over 5 years (2026–2031) incidental to the construction, maintenance and use of sea ice roads, trails and adjacent ice pads after the expiration of the existing ITR and LOA. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations setting forth permissible methods of taking, other means of effecting the least practicable adverse impact on such marine mammal stocks (*i.e.*, mitigation measures), and requirements pertaining to monitoring and reporting takes and requests comments on the proposed rule. NMFS will consider public comments prior to making any final decision on the promulgation of the requested ITR and issuance of the LOA; agency responses to public comments will be summarized in the final rule, if promulgated.

DATES: Comments and information must be received no later than March 4, 2026.

ADDRESSES: A plain language summary of this proposed rule is available at: <https://www.regulations.gov/docket/NOAA-NMFS-2026-0265>.

Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2026–0265 in the Search box (*note:* copying and pasting the FDMS Docket Number directly from this document may not yield search results). Click on 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 NMFS. All comments received are a part of the public record and will generally be posted for public viewing at: <https://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. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401.

Purpose of Regulatory Action

This proposed rule, if promulgated, would establish a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to authorize, for a 5-year period

(2026–2031), take of marine mammals incidental to Hilcorp's annual ice roads, trails, and pads construction, use, and maintenance activities along the Beaufort Sea coast in Alaska. NMFS received an application from Hilcorp requesting the 5-year ITR and LOA to take a single stock of marine mammal (Arctic stock of ringed seals). Take would occur by Level B harassment incidental to ice roads, trails and pads construction, use, and maintenance activities. A limited number of takes by serious injury and mortality (M/SI) is also proposed to be authorized due to the potential for such takes from ice roads, trails, and pads construction, use, and maintenance activities.

Legal Authority for the Proposed Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made, regulations are promulgated, and public notice and an opportunity for public comment are provided.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). If such findings are made, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on (1) the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and (2) the availability of the species or stocks for taking for certain subsistence uses (referred to as “mitigation”) and requirements pertaining to the monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms used above are included in the relevant sections below.

Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for proposing and, if appropriate, promulgating 5-year regulations and for issuance of any subsequent associated LOA. This rule would also establish required mitigation, monitoring, and reporting requirements for Hilcorp's activities.

Summary of Major Provisions Within the Proposed Rule

The major provisions of this proposed rule are as follows:

- The proposed authorization of take of a single marine mammal stock by Level B harassment;
- The proposed authorization of a limited number of takes of a single marine mammal stock by serious injury and mortality;
- Monitoring of the construction areas to detect the presence of marine mammals before beginning construction activities;
- Any proposed new or workarounds ice trail routes will avoid suspected seal structures by 150 m after March 1;
- Required wildlife training for all project personnel; and
- Submission of annual and final marine mammal monitoring reports.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review its proposed action (*i.e.*, promulgation of regulations and subsequent issuance of a LOA thereunder) with respect to potential impacts on the human environment.

Accordingly, in 2020 NMFS prepared an Environmental Assessment (EA) that considered environmental impacts associated with the issuance of an ITR and LOAs for the same activities, including the construction, maintenance, and operation of ice roads, trails, and pads. That ITR and those LOAs expire on November 30, 2025 (85 FR 83451, December 22, 2020). NMFS developed a Supplemental Information Report (SIR) to assist in determining whether a supplemental NEPA document is necessary (Companion Manual for NOAA Administrative Order 216–6A, 2025). After reviewing the SIR, NMFS has preliminarily determined that the proposed action falls within the scope of the 2020 EA. NMFS will consider all comments submitted in response to this notice prior to concluding the NEPA process associated with the proposed ITR and LOA request.

Summary of Request

On December 22, 2020, NMFS promulgated regulations and issued LOAs to Hilcorp and Eni US Operating Co. Inc. (Eni) for the take of the Arctic stock of ringed seal incidental to ice roads, trails, and pads construction, maintenance, and use activities on the Beaufort Sea coast (85 FR 83451). The current regulations and LOAs are effective through November 20, 2025.

On November 1, 2024, Hilcorp became the owner and operator of the Nikaitchuq Unit and Oooguruk Unit (*i.e.*, Western North Slope (WNS), which includes Spy Island Drillsite (SID) and Oooguruk Drillsite (ODS)), previously owned and operated by Eni. NMFS issued a revised LOA to Hilcorp on November 6, 2024, following its acquisition of Eni (89 FR 88014). With the exception of changing the LOA holder's name, no other changes were made to the revised LOA. Hilcorp and Eni complied with all the requirements (*e.g.*, mitigation, monitoring, and reporting) of the previous LOAs and information regarding its monitoring results may be found in the Estimated Take of Marine Mammals section.

On September 12, 2024, NMFS received an application from Hilcorp requesting authorization for the take of marine mammals incidental to construction, maintenance and use of ice roads, trails, and pads along the Beaufort Sea coast. A revised application was submitted on April 3, 2025. We determined the application was adequate and complete on May 5, 2025. This request is similar to that submitted by Hilcorp and Eni for the previous ITR and LOAs. The project area is unchanged, but the methodology used to estimate take, the final take estimates, and the mitigation and monitoring requirements are revised to reflect the best scientific information available. On May 16, 2025, we published a notice of receipt of Hilcorp's application in the **Federal Register**, requesting comments and information related to the request for 30 days (90 FR 21011). We received no public comments. Hilcorp requests authorization to take members of the Arctic stock of ringed seal (*Pusa hispida*) by Level B harassment M/SI. The proposed regulations would be valid for 5 years (2026–2031).

Description of Proposed Activity

Overview

Hilcorp conducts oil and gas operations at Northstar and SID, respectively, in coastal Beaufort Sea waters off of Alaska (figure 1). During the ice-covered season, Hilcorp annually constructs sea ice roads, trails, and pads to connect and allow access between West Dock and Northstar. Prior to the new ownership by Hilcorp, Eni constructed and utilized an ice road or trail connecting the Oliktok Production Pad (OPP) and SID as well as an annual ice road from shore to the ODS.

Dates and Duration

The proposed regulations would be valid for a period of 5 years. Ice roads, trails, and pads activities within Hilcorp’s project area would occur between December 1 and May 31 each year (*i.e.*, up to 181 days each year), depending on weather and ice conditions. Hilcorp begins constructing ice roads, trails, and pads as early as possible, usually early to mid-December, depending on weather and ice conditions. If weather conditions are not favorable, construction may be delayed as late as January. Ice road construction takes about six weeks from initial surveying until the ice is thick

enough to allow travel by wheeled vehicles. Maintenance and use of the ice roads, trails, and pads continues until the ice becomes too unstable to access, usually sometime between mid-April and mid-May.

Specific Geographic Region

Northstar, an artificial gravel island, is located in State of Alaska coastal waters about 9.7 km (6 mi) offshore from Point Storkersen in the Beaufort Sea (figure 1). Water depths along the ice routes range from 0 to 10 m, the majority of which are at depths <9 m.

The 0.05 square kilometer [km²] (11-acre) SID is also an artificial, gravel

island constructed in shallow (1.8–2.4 m, 6–8 ft), State of Alaska coastal waters approximately 4.8 km (3 mi) north of Oliktok Point and just south of the Spy Island barrier island.

ODS consists of a 0.024 km² (6-acre) gravel drill site approximately 8 km (5 mi) offshore in 1.4 m (4.5 ft) of water. The site is connected to an onshore facility by a flowline system consisting of a 9.2 km (5.7 mi) subsea buried flowline bundle which transitions onshore to a 3.7 km (2.3 mi) traditional North Slope aboveground flowline support system.

All three of these locations are covered by landfast ice during winter.

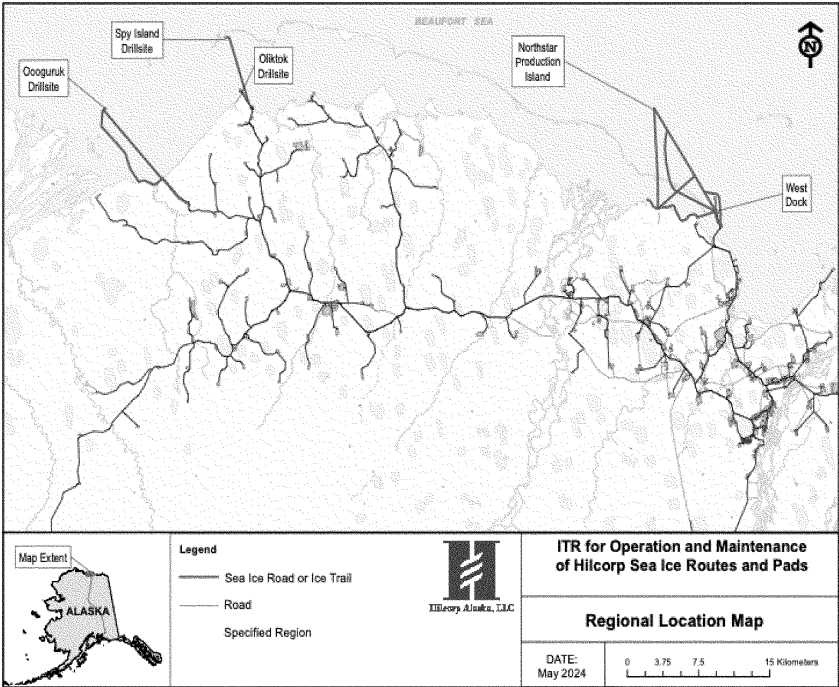


Figure 1. Project Site for Hilcorp Sea Ice Routes and Trails

Detailed Description of the Specified Activity

The proposed activities include building, maintaining, and operating vehicles on ice roads, trails, and adjacent ice pads. These ice roads, trails, and pads are constructed each winter to transport personnel, equipment, and supplies to the Northstar, ODS, and SID production facilities. Below are more detailed descriptions of what construction, maintenance and use activities would be employed at the Northstar, ODS, and SID production facilities.

Northstar to West Dock

Annually, during the ice-covered season, Hilcorp builds sea ice routes

connecting the mainland to Northstar. These routes, which are in water depths ranging from 0 to 10 meters (mostly under 9 meters), allow for the transport of personnel, equipment, materials, and supplies.

The specific routes (shown in figure 1–3 in the application) can change each year due to operational needs and weather. Not all routes depicted are built every year. These routes can be thicker ice roads for heavy vehicles or unimproved ice trails for tracked vehicles like Tuckers or PistenBullys®. Ice trails are more frequently used, while ice roads are built only when heavy construction or large equipment is needed. Any ice trail built near the shoreline (in <1 meter water) is on grounded ice. Because the exact routes vary, Hilcorp has assumed that there is

a 40 km² area where sea ice routes may be constructed each year, with the understanding that not all routes are built annually.

Depending on the specific operational needs from year-to-year (*i.e.*, what equipment is needed on the island), Northstar may construct a sea ice road that connects Production Module 2, or this route may also be constructed as an ice trail. For an ice road in water deeper than about 3 m, sea ice must be approximately 2.5 m thick to support the weight of heavier vehicles and equipment. The sea ice road is typically constructed by special pumps with ice augers. Seawater for creating the offshore ice road is obtained by drilling holes through the existing sea ice using the augers and pumping salt water to flood the existing ice surface. Rolligons®

move along the planned ice road corridor while flooding the surface. Water trucks are used to spray a freshwater cap over the thickened sea ice for durability. Sea ice road construction activities occur 24 hours a day, 7 days a week during the construction phase and are halted during unsafe conditions such as high winds or extremely low temperatures.

Following construction, the ice road surface is maintained using graders with snow wings and blowers, or front-end loaders with snow blower attachments. Snow can also be cleared by personnel operating snow blowers. Care is taken so that large berms or large piles of snow are not created adjacent to the road or on the road shoulders. When clearing snow with blowers, any active wind is used to disperse the blown snow over a large area. Delineators may be used to mark the roadway in about 15-m increments down the centerline of the road, and at no more than 0.4 km increments on both sides of the ice road to demarcate the intended path of vehicle travel and areas to be maintained. Corners of rig mats, steel plates, and other materials used to bridge sections of hazardous ice, are clearly marked or mapped using global positioning system (GPS) coordinates of the locations. Ice roads are generally constructed only in years when construction or large maintenance projects are planned to facilitate access by large vehicles and heavy loads. Depending on weather and ice conditions, portions of the sea ice road may become unsafe for travel due to unstable sections. If this occurs, Hilcorp may use unimproved sea ice trails to provide safe transit to and from the island. Construction of sea ice trails may occur later in the season (*i.e.*, March through mid-May), depending on conditions, as described in the following section.

Sea ice trails serve as unimproved access routes for tracked vehicles. Unlike ice roads, ice trail construction does not involve seawater flooding or freshwater caps. Instead, a tracked vehicle typically pulls a drag to smooth the ice surface. This method eliminates the need for augers, pumps, backhoes, or ditchwitches. While a bulldozer might be used to build a ramp from the trail to the island, it is not used on the ice trail itself. Occasionally, small rough patches on a trail might require minor seawater flooding to allow tracked vehicles to pass. For this, a hand auger powered by a small generator can be used to drill into the ice and draw up water.

To establish a trail, snow machines and lightweight tracked vehicles

initially mark the corridor once it is deemed safe for access. The unimproved sea ice trail then naturally thickens as ice and snow are compacted by larger tracked vehicles. Generally, significant snow removal or surface modifications are not needed for ice trails. For grounded ice trails and roads, minimal freshwater flooding may be used to cap the ice or repair cracks. Flooding ice, however, requires seawater flooding until it reaches a desired thickness, which is determined by the required strength and integrity for safe travel. Once the desired thickness is achieved, floating ice areas can also be flooded with freshwater to cap the ice or repair cracks, minimizing the overall freshwater needed.

Hilcorp may construct some or all of the sea ice trails depicted in Figure 1–3 in the application each year. These trails typically range from 15 to 52 km in length. As the season progresses, if unstable or unsafe ice areas develop, Hilcorp may build several shorter “work-around” or detour trails in previously undisturbed areas adjacent to the main corridors. Due to safety considerations, these detours might need to be constructed after March 1st. Work-around routes are constructed as ice trails and are not flooded or capped with water. Typically, these detours deviate approximately 20 to 45 meters from the original road or trail, allowing crews to safely bypass soft spots or cracks. Any such work-arounds or detours would remain within the 40 km² area shown in Figure 1–3 in the application.

WNS: Oliktok Production Pad to SID

SID, an artificial gravel island offshore, serves as the base for an annual ice road that extends about 7 km offshore to OPP and connects to three ice pads (Figure 1–4 in the application). This road incorporates both floating and grounded ice sections, with the initial portion near the shore being grounded. Two of the three ice pads are on floating ice: a 150-m by 60-m pad southeast of SID and a 90-m by 45-m pad northeast of the island. The third ice pad is on grounded ice near Oliktok Point at the end of the ice road. All ice pads are situated within the ice road/trail buffer zone and are used for estimating potential seal takes.

The construction of the SID sea ice road begins with surveying and staking the route once the ice is thick enough to support personnel on snow machines. Small vehicles equipped with augers and pumps then bore holes and flood the staked route. The free-flood method is used for the floating sections of the road. This involves using low-pressure

pumps to apply an initial 8-centimeter layer of seawater to the ice surface, some of which may flow to lower areas. After the first water layer has frozen, the next flood is then applied and so on until the desired ice thickness is reached. Hand augers can be used to check the ice thickness. Flooding operations occur 24 hours a day, 7 days a week during this phase. The ice needs to be 41 to 51 cm thick to support Rolligons®, which have large tires designed to distribute weight over a wider area. For heavier vehicles like passenger trucks, vacuum trucks, drill trucks, and tractor trailers, the ice must reach approximately 183 cm thick. The maintained ice road, including its shoulder areas, is approximately 50 meters wide.

Rig mats are used to bridge small leads and cracks during both construction and maintenance. For road surfacing and repairs during maintenance activities, fresh water is utilized. Once the ice road is fully flooded and open to traffic, snow loads on the surface must be managed. Snow is cleared frequently, and the 50-meter width of the ice road (including shoulders) is consistently maintained.

Using the same construction methods as at Northstar, an unimproved ice trail is built near SID each year just west of and parallel to the sea ice road corridor. The ice trail is located approximately 15 to 30 m west of the western edge of the ice road shoulder and is used when the ice road is being constructed. Once the ice road is open to regular traffic, the ice trail is not used. After March 1st, due to safety considerations, Hilcorp may also need to use several shorter length trails in undisturbed areas to work around unstable and unsafe areas of ice as the season progresses. As described above, these work-around or detour trails allow PistenBullys® or other tracked vehicles to safely go around soft spots or cracks.

After March 1st, Hilcorp may also construct shorter, temporary work-around or detour trails in previously undisturbed areas. These detours are built to safely navigate unstable or unsafe ice sections, allowing PistenBullys® and other tracked vehicles to go safely around soft spots or cracks.

WNS: Oooguruk Drill Site Ice Route

ODS, a gravel drill site located 8 km offshore, constructs an annual ice road and a staging area ice pad for its operations. The ice road construction process is the same as that for the OPP to SID ice road, as described previously. While ODS, similar to SID, is in water depths generally unsuitable for ringed seal habitat, Hilcorp has included ODS

in since there may be potential changes in ice conditions and ringed seal habitat.

The typical or proposed ice road shown in figure 1–5 in the application extends approximately 9 km offshore to ODS. An alternative route (figure 1–6 in the application) is located in shallower water, allowing it to be grounded and used earlier in the season. This alternative route, extending about 11 km offshore, is used when early road completion is necessary or when extra-heavy loads, such as a drill rig, are anticipated. Each ice road can be up to 50 m wide, including shoulders used for detours around equipment or during maintenance.

Additionally, a grounded ice pad staging area, measuring 140 m by 180 m, is constructed next to the southwest edge of ODS (figures 1–5 and 1–6 in the application). ODS is in 1–2 m of water, and the area from the site to the shore typically becomes grounded landfast ice in winter. Therefore, both the typical and alternative ice road routes are on grounded, rather than floating, ice. Offshore ice trails are not required for ODS operations.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see

Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS’ Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS’ website (<https://www.fisheries.noaa.gov/find-species>).

Table 1 lists the only stock of marine mammals for which take is expected and proposed to be authorized for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by

the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS’ SARs). PBR and annual serious injury and mortality (M/SI) from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in Table 1 represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS’ stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS’ U.S. Alaska SARs. All values presented in table 1 are the most recent available at the time of publication (including from the draft 2024 SARs) and are available online at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>.

TABLE 1—SPECIES WITH ESTIMATED TAKE FROM THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA /MMPA status; strategic (Y/N) ²	Stock abundance (CV, N _{min} , most recent abundance survey) ³	PBR	Annual M/SI ⁴
Order Carnivora—Pinnipedia						
Family Phocidae (earless seals): Ringed Seal	<i>Pusa hispida</i>	Arctic	T, D, Y	342,836 ⁵ (UND, UND, 2013).	UND	6,459

¹ Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy’s Committee on Taxonomy (<https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/>).

² Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

³ NMFS marine mammal stock assessment reports online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region/>. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

⁴ These values, found in NMFS’ SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

⁵ Using a subset of data collected in 2012 by Moreland *et al.* (2013) from aerial abundance and distribution surveys over the entire ice-covered portions of the Bering Sea, Conn *et al.* (2014) calculated an abundance estimate of 171,418 ringed seals (95% CI: 141,588–201,090). This estimate is considered to be low by a factor of 2 or more because availability bias due to seals in the water at the time of the surveys was not accounted for and the estimate did not include ringed seals in the shorefast ice zone (Young *et al.* 2023). Therefore, abundance of 171,418 has been multiplied by a factor of 2 for this analysis (i.e., 342,836 animals).

As indicated above, only the Arctic stock of ringed seals temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. While bearded seals (*Erignathus barbatus*), spotted seals (*Phoca largha*), bowhead whales (*Balaena mysticetus*) and beluga whales (*Delphinapterus leucas*) have been documented in the area, the temporal occurrence of these species is such that

take is not expected to occur and they are not discussed further beyond the explanation provided here. Bearded seals (*Erignathus barbatus*) and spotted seals (*Phoca largha*) occur in the Beaufort Sea only during the open water season (mid-July through mid-November) and are not likely to be encountered in the project area during the ice-covered months. Additionally, bowhead whales and beluga whales are

not proposed for authorized take because there is no temporal overlap of cetaceans during the ice-covered season.

Ringed seals are distributed in all seasonally ice-covered seas of the Northern Hemisphere (Lang *et al.* 2021, Muto *et al.* 2020). Five subspecies of ringed seals are currently recognized, with only the Arctic stock occurring in U.S. waters of the Arctic Ocean and Bering Sea (Rice and Society for Marine

Mammalogy 1998). They are year-round residents of the Chukchi and Beaufort seas and are generally the most encountered seal in the U.S. Arctic.

Ringed seals are abundant in the winter and spring on shorefast and pack ice in the northern Bering Sea, Norton Sound, Kotzebue Sound, Chukchi Sea, and Beaufort Sea, where they utilize sea ice for pupping and nursing as well as resting. Landfast ice has been shown to be the best habitat for ringed seal pupping (Kelly 1988). Moulton *et al.* (2002) found the highest concentrations of ringed seals on stable, shorefast ice over water depths of about 10–20 m in late May and early June; but waters less than 5 m deep are not preferred wintering areas for ringed seals (Frost *et al.* 2004, Moulton *et al.* 2002). In the summer months, they use sea ice as a platform for molting and resting, although ringed seals can remain pelagic in productive foraging areas for long periods of time. In the fall, ringed seals utilize sea ice as a platform for resting, and rarely haul out in terrestrial habitats.

During the winter, ringed seals excavate and maintain breathing holes in the ice and occupy lairs in accumulated snow (Smith and Stirling 1975). Ringed seals give birth in lairs from mid-March through April, nurse their pups in the lairs for 5 to 8 weeks, and mate in late April and May (Hammill *et al.* 1991; Lydersen and Hammill 1993; as cited in (Ireland *et al.* 2016)). Seal mothers continue to forage throughout lactation and move young pups between a network of four to six lairs (Ireland *et al.* 2016). Arctic ringed seals generally prefer landfast ice along the shoreline for pupping. Frost *et al.* (2004) conducted aerial surveys over the Beaufort Sea coast from Utqiagvik to Kaktovik and determined that ringed seal density was greatest in water depths between 16 and 115 ft. (5 and 35 m), and in relatively flat ice close to the fast ice edge. Aerial surveys conducted in association with construction near the Northstar facility found ringed seal annual densities ranged from 0.39 to 0.83 seals per km² (Moulton *et al.* 2005).

The ringed seal diet is composed predominantly of pelagic fish such as cod (Crain *et al.* 2021) but also includes shrimp and planktonic crustaceans; the relative importance of each type of prey depends on local availability and season (Lowry *et al.* 1980, as cited in (Ireland *et al.* 2016)). They have been shown to dive to depths of up to 46 m or more while foraging. Ringed seals are hunted by killer whales and polar bears. Spatial distributions and population fluctuations of ringed seals and polar bears appear to be tightly correlated in

some areas (Stirling and Øritsland 1995 as cited in (Ireland *et al.* 2016)).

Optimal overwintering areas for ringed seals in the Beaufort Sea occur in waters between 10 and 35 m deep, preferably in the landfast ice along the shoreline close to lead systems. In May 2022, two trained wildlife-detection dogs were used to survey an area in Prudhoe Bay near Northstar Island. A total of 61 ringed seal structures (47 breathing holes and 14 lairs) were identified in an 88.2 km² area resulting in a density of 0.68 structures/km². Lair density was higher in water deeper than 5m; however, seal structures were found in all water depths (Quakenbush *et al.* 2022). Ringed seal movements during winter and spring are typically quite limited, especially where ice cover is extensive (Kelly *et al.* 2010a).

On April 1, 2022, NMFS designated critical habitat for the Arctic subspecies of ringed seals (87 FR 19232). On September 26, 2024, the Alaska district court issued a decision in which it ruled in part for Alaska, vacated NMFS' ice seal critical habitat designations, and remanded the ringed and bearded seal critical habitat designation to NMFS. *State of Alaska v. Nat'l Marine Fisheries Serv.*, No. 3:23-cv-32-SLG, 2024 WL 4298114 (Sept. 26, 2024) (1–FedER–003). Notwithstanding the court decision vacating NMFS' critical habitat designations for ice seals, the underlying information regarding the importance of the area and associated features to ringed seals and their habitat remains relevant to the discussion here. The critical habitat designation covered areas of marine habitat in the Bering, Chukchi, and Beaufort Seas. During the designation, NMFS considered three physical and biological features (PBFs): (1) snow covered sea ice suitable for subnivean birth lair formation and maintenance defined as waters 3 m or more in-depth containing area of shorefast ice or dense stable pack ice that contain snow drifts at least 54 cm deep to maintain lairs; (2) sea ice suitable for basking and molting defined as waters 3 m or more in depth with 15 percent or higher concentrations of sea ice; and (3) primary prey resources to support ringed seals defined as small, schooling fish and small crustaceans. The critical habitat designation covered areas of marine habitat in the Bering, Chukchi, and Beaufort seas and overlapped with the Hilcorp project area as shown in figure 4–6 in the application. Note that identified ringed seal habitat surrounds only Northstar; neither SID nor ODS is located in identified ringed seal habitat as delineated by the 3 m isopleth offshore (see Figure 4–6 in the application).

However, as described later and in more detail in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section, we do not anticipate physical impacts to any marine mammal habitat as a result of Hilcorp's activities, including impacts to ringed seal sea ice habitat suitable as a platform for basking and molting and impacts on prey availability. Further, this proposed rule includes mitigation measures, as described in the Proposed Mitigation section, which would minimize or prevent impacts to sea ice habitat suitable for the formation and maintenance of subnivean birth lairs.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Proposed Mitigation section to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Ringed seals could be adversely affected by disturbance resulting from visual stimuli. The majority of impacts are likely to occur due to the physical presence of machinery and vehicles used for ice roads, trails, and pads construction as well as associated human workers. In an unlikely scenario, these activities could result in M/SI if an animal is crushed by construction machinery or vehicle while in its subnivean lair. While this is not expected, there is a prior record of such an occurrence from 1998.

As described in Quakenbush *et al.* (2022, 2023b), respectively, two different basking seals were observed not to be affected by the close passage of a hovercraft and were observed to remain on the ice in 2022, and “active structures were found within 19.5 m of facilities and within an active ice road.” Annual marine mammal reports were submitted to NMFS by Hilcorp and Eni in 2020, 2021, 2022 and 2023 (Eni US Operating Co. Inc. 2020, 2021, 2022, Hilcorp 2022, 2023). The few seals observed (49 seals total over 4 years)

from the ice routes were noted as sleeping, resting or basking, which seems to indicate a lack of overt behavioral response to ice roads, trails, and pads activities.

The associated noise from the machinery and vehicles could cause pinniped behavioral modification and temporary displacement within the vicinity of the project area if in-water and airborne noise levels are high enough. As noted previously, nearly all construction, maintenance and use activities would occur on the ice surface. While it is possible that underwater noise associated with ice roads, trails, and pads activities could potentially result in take, it is not considered likely due to relatively low sound source levels associated with construction, maintenance and use of ice roads/trails/pads. NMFS recommends the use of acoustic criteria that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur auditory injury (AUD INJ) of some degree (equated to Level A harassment). We note that the criteria for AUD INJ have been recently updated (NMFS 2024). Auditory injury for marine mammal hearing (MMPA Level A harassment) is defined as permanent threshold shift (PTS) from exposure to non-impulsive, acoustic sources >195 dB re 1 μ Pa at 1 m. Greene *et al.* (2008) presented in-water auditory data recorded at Northstar for ice road construction including dozing snow off the frozen surface, augering holes through the ice, and pumping seawater up through the holes to flood the ice surface. The highest recorded sound underwater was 189 dB re 1 Pa and was associated with the bulldozer, which is less than 195 dB re 1 μ Pa. Therefore, take by Level A harassment is not reasonably expected to occur. The current threshold for Level B harassment (non-impulsive source) in-water is 120 dB re 1 μ Pa (NMFS 2016). Southall *et al.* (2007) assessed relevant studies, found considerable variability among pinnipeds, and determined exposures between approximately 90 and 140 dB generally do not induce strong behavioral responses of pinnipeds in water, but an increasing probability of avoidance and other behavioral effects exists in the 120 to 160 dB range. The use of the Ditchwitch to cut ice or from pumping at Northstar did not exceed 120 dB at 100 m (Greene *et al.* 2008). At closer distances to the ice roads, trails, or pads Level B thresholds could be exceeded by some

construction equipment such as a bulldozer. Kelly *et al.* (1986) reported that some ringed seals temporarily departed their lairs when sound sources were within 97 to 3,000 m but later returned to their lairs.

In-air noise associated with ice trail activities is not expected to cause disturbance to ringed seals, as construction noise is not likely to exceed 100 dB re 20 μ Pa at the source. Airborne sounds for the bulldozer and Ditchwitch according to Greene *et al.* (2008) ranged between 64.7 to 76.3 dB re 20 μ Pa. During the winter of 2000, background unweighted in air noise levels from various machines measured in the vicinity of Northstar ranged from 59 to 84 dB re 20 μ Pa, and this background noise level was related to wind speed (Greene *et al.* 2008). Similar levels were reported during the winter of 2001 and 2002 by Blackwell *et al.* (2004a, b) with minimum background unweighted in air noise levels of 44 to 52 dB re 20 μ Pa measured in ice-covered conditions with low wind up to 10 km (6 mi) from Northstar in Prudhoe Bay. As a result of the expected low levels, in-air noise during construction, operation, and use of the ice roads, trails, and pads is not expected to result in harassment of seals.

For ringed seals, the effects of underwater noise are contingent upon their hearing capabilities. Due to the predominantly airborne and relatively low noise levels generated by ice trail construction, it is highly unlikely that seals in the vicinity would suffer any permanent or temporary hearing damage (PTS or TTS). The most common reaction of marine mammals to increased noise is a short-term behavioral change or avoidance of the disturbed area (Richardson *et al.* 1995). While minor disturbance from in-air or underwater noise (under ice) might occur due to ice trail activities, any potential impacts on ringed seals exposed to low-level noise would be more likely to involve masking and temporary displacement. However, the probability that acoustic noise associated with ice trail construction would result in masking any acoustic signals of ringed seals during construction is very low. Ice trail construction activities would be initiated prior to March 1st when animals begin constructing dens prior to pupping and during pupping when seals are minimally vocal in the dens to prevent predation (Ireland *et al.* 2016). The probability that the noise producing activities associated with Hilcorp's proposed project would result in masking acoustic signals important to the behavior and survival of marine

mammal species in the project area is so low as to be considered negligible.

Permanent displacement of seals from ice trail construction is considered unlikely but could occur. As described in Williams *et al.* (2006), during three surveys conducted in November/December, March and May of 2001 during Northstar construction activities, 181 ringed seal structures were located and 118 (65 percent) were still actively used by late May 2001. Active ringed seal structures appeared to be evenly distributed across the Northstar study area in relation to the facility. The noise heard through snow and ice and into the subnivean lair or den location of the animal should be considerably weaker than at the source due to sound being attenuated in the ice and snow. In March 2002, sounds and vibrations from vehicles traveling along an ice road along Flaxman Island (a barrier Island east of Prudhoe Bay) were recorded in artificially constructed polar bear dens. Sounds were attenuated strongly by the snow cover of the artificial dens; broadband vehicle traffic noise was reduced by 30–42 dB. Due to attenuation of noise through ice and snow, it is less likely that seals in lairs would be exposed to levels exceeding 120 dB re 1 μ Pa underwater and that such exposure would result in displacement.

Potential Effects on Marine Mammal Habitat

The construction and maintenance of ice trails is not expected to cause significant impacts on habitat used by ringed seals or on their food sources. Landfast ice near the shoreline is the best habitat for ringed seal pupping (Kelly 1988), with water depth strongly dictating whether ringed seals overwinter in a given area. Depths greater than about 3 m (10 ft) are typically the minimum depth suitable for successful lair construction (Miller *et al.* 1998, Link *et al.* 1999) although more shallow areas with open leads or cracks can be attractive to seals as described for the road between OPP and SID.

Though ringed seals might be present in the proposed project areas during winter, their numbers are generally expected to be low during ice trail activities. Ice trail construction is a short-term activity likely to cause only minor habitat disruptions. Ringed seals primarily feed on fish and various benthic species like crabs and shrimp. Crucially, ice trail construction within the proposed project areas will not impact the distribution of fish or zooplankton. Since these trails melt annually, they have no lasting effect on

water circulation, substrate, fish presence, or benthic populations.

As noted previously, NMFS' identification of important habitat for ringed seals identified three PBFs essential to the conservation of the species. Disturbance associated with construction, operation and maintenance of ice trails is unlikely to have long-term effects on the availability of suitable sea ice habitat for the formation and maintenance of subnivean birth lairs or as a platform for basking and molting. Disturbances due to ice trail construction and maintenance activities are not expected to have any effect on availability of primary prey resources to support Arctic ringed seals because these activities would not cause injury or mortality to fish species nor would they displace food resources of ringed seals. Therefore, NMFS does not expect meaningful impacts to marine mammal habitat, including prey, from Hilcorp's proposed activities.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization under the rulemaking, which informs NMFS' consideration of "small numbers," the negligible impact determinations, and impacts on subsistence uses.

Harassment is one type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Most authorized takes would be by Level B harassment in the form of behavioral reactions for individual marine mammals resulting from disturbance associated with the use of various construction equipment and vehicles and personnel on the ice. Level A harassment is neither anticipated nor proposed to be authorized.

Based on a single mortality event which occurred in 1998 (*i.e.*, a Caterpillar® was clearing a trail for seismic vehicles in an area where water depths were about 9 m when it went over a ringed seal lair, resulting in mortality of the pup inside), there is a small probability for take by M/SI for which Hilcorp requested take coverage.

Take Estimation

NMFS estimated take by analyzing previously submitted marine mammal monitoring data from the Northstar, SID and ODS locations as described below, and assuming that similar numbers of animals as were previously observed may be present and taken as a result of the specified activities.

Here, we describe how the best available data were synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization. Hilcorp and NMFS reviewed the monitoring reports from Hilcorp and Eni between 2019 and 2023 (Eni US Operating Co. Inc. 2020, 2021, 2022 and Hilcorp 2022, 2023). Observations from four of these reports were tallied as shown in table 2. Seal structures observed between 2019–2023 by Hilcorp and Eni are shown in table 3.

The observations performed under the Hilcorp and Eni LOAs were taken at the same locations, at the same time of year, and while engaged in the same activities as those presented in this proposed rule. For these reasons, NMFS considers the data from these monitoring reports to be the best available information for estimating take likely to result from the specified activities.

TABLE 2—RINGED SEAL OBSERVATIONS FROM HILCORP FACILITIES 2019–2023¹

Location	2019–2020	2020–2021	2021–2022	2022–2023	Total	Annual average
Northstar ²	0	4	14	29	47	16
SID	2	0	0	0	2	1
SID/ODS	0	0	0	0	0	0

¹ All observations were at distances beyond 50 m.

² Northstar records for 2019–2020 are not available.

TABLE 3—OBSERVED RINGED SEAL STRUCTURES FROM HILCORP FACILITIES 2019–2023¹

Location	2019–2020	2020–2021	2021–2022	2022–2023	Total	Annual average
Northstar	0	0	1	1	2	0
SID	0	0	0	0	0	0
SID/ODS	0	0	0	0	0	0

The combined results from table 2 and table 3 are shown in table 4 which shows the average annual observations between 2019 and 2023. While monitoring data for the 2023–2024 and 2024–2025 seasons has been submitted, it does not specify the locations of observations or the number of seal structures observed and is considered incomplete. Therefore, for the purpose of estimating take for the proposed ITR,

Hilcorp and NMFS considered monitoring data from 2019 through 2023 and assumed that all of the observations were equivalent to takes by Level B harassment. This approach was taken since previous monitoring reports submitted by Hilcorp and Eni recorded only animal observations and did not clearly identify potential behavioral disturbances. The resulting total takes requested by Hilcorp and proposed by

NMFS are shown in table 4. Note that this take estimate assumes that a seal structure (*i.e.* breathing hole or lair) may contain a female and a pup; though this was not observed during the reporting period. At that time of year, pups are often inhabiting lairs. Nonetheless, the annual take estimate for Northstar includes an additional 4 takes based on the conservative assumption that a seal structure may include 2 seals.

TABLE 4—ESTIMATED RINGED SEAL TAKE BY LEVEL B HARASSMENT

	<50m of ice route	>50m of ice route	Observed ice seal structures	Annual Level B takes requested *	Total Requested Level B takes over 5-year period
WNS: OPP–SID	0	1	0	1	5
WNS: Oooguruk	0	0	0	0	0
Northstar	0	16	2	* 20	100
Total Estimate—All Sites					105

* The take estimate assumes that a seal structure may contain a female and a pup; though this was not observed during the reporting period. Nonetheless, the annual take estimate for Northstar includes an additional 4 takes based on the assumption that a seal structure may include 2 seals.

Routine monitoring results from all three sites (Northstar, SID and ODS) from 2019–2023 indicate that serious injury and mortality of ringed seals during ice road, trail, and pad construction, use, and maintenance activities did not occur and is unlikely to occur in future. As noted above, however, the probability of serious injury and mortality is not zero. Thus,

to account for the very low probability of serious injury and mortality during ice roads, trails, and pads construction, use, and maintenance activities, Hilcorp is requesting and NMFS proposes to authorize a total of four serious injury/mortality takes over the 5-year period. This total is based on the possibility, albeit unlikely, that one serious injury/mortality take each would occur at SID

and ODS and two takes for serious injury/mortality would occur in the larger Northstar area. The number of takes requested by Hilcorp and proposed by NMFS by Level B Harassment as well as by serious injury and mortality is shown in table 5. The maximum percentage of stock taken in a single year is shown in table 6.

TABLE 5—SUMMARY OF ALL MARINE MAMMAL EXPOSURES REQUESTED OVER 5-YEAR PERIOD

	Annual Level B harassment	Level B harassment over 5-year period	Serious injury/mort	Total takes requested over 5-year period
WNS: SID, ODS	1	5	2	7
Northstar	20	100	2	102
Total				109

TABLE 6—MAXIMUM PERCENTAGE OF STOCK TAKEN IN A SINGLE YEAR

Species	Stock	Total Level B harassment	Maximum serious injury/mortality	Population estimate	Take as a percentage of the population
Ringed Seal	Arctic	21	2	^a 342,836	<0.01

^aConn *et al.* (2014) calculated an abundance estimate of 171,418 using a subset of aerial survey data collected in 2012 by Moreland *et al.* (2013) that covered the entire ice-covered portions of the Bering Sea. This estimate is considered to be low and was multiplied by a factor of two (Young *et al.* 2023).

Proposed Mitigation

In order to allow the incidental take of marine mammals under section 101(a)(5)(A) of the MMPA, NMFS must prescribe regulations setting forth the permissible methods of taking pursuant to the activity and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility

(economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or

stocks, and their habitat, as well as subsistence uses, considering the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) and the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

The mitigation requirements described below were included in Hilcorp's application or are the result of

subsequent coordination between NMFS and Hilcorp. Many of the proposed mitigation requirements are similar to those currently in effect, and Hilcorp has agreed that all are practicable. NMFS has fully reviewed the specified activities and the mitigation measures and has determined preliminarily that the proposed measures would result in the least practicable adverse impact on marine mammals and their habitat.

The primary purposes of these mitigation measures would be to minimize human-seal interactions, to avoid takes by serious injury/mortality from the activities, and minimize the impact of any Level B harassment.

The proposed mitigation measures and specific monitoring measures that would be required to implement them are described below. Additional proposed monitoring measures necessary for data collection and reporting purposes are described in the Proposed Monitoring and Reporting section.

Wildlife Training

Prior to initiation of ice roads, trails, and pads-related activities, project personnel associated with ice road construction, maintenance, use or decommissioning (*i.e.*, ice road construction workers, surveyors, security personnel, and the environmental team) would receive annual training on implementing mitigation and monitoring measures. Personnel would be advised that interactions with, or approaching, any wildlife is prohibited. Annual training would also include reviewing the company's Wildlife Management Plan. In addition to the mitigation and monitoring plans, other topics in the training would include Ringed Seal Identification and Brief Life History, Physical Environment (habitat characteristics and how to potentially identify habitat), Ringed Seal Use in the Ice Road Region (timing, location, habitat use, birthing lairs, breathing holes, basking, etc.), Potential Effects of Disturbance, and Importance of Lairs, Breathing Holes and Basking to Ringed Seals.

In addition, personnel would be required to follow these mitigation measures:

- Do not approach or interact with ringed seals;
- When traveling the ice road/trail, follow directions of Security and posted signs;
- Notify appropriate personnel if a seal is observed within 50 m, or if a seal structure (*i.e.*, breathing hole or lair) is observed within 150 m of the centerline

of the ice road/trail; or the edge of the ice pad or on the ice pad; and

- Stay in the vehicle and continue traveling at a constant speed if a seal is observed near the ice road/trail/pad. Do not slow down, stop, or exit the vehicle.

General Mitigation Measures Implemented Throughout the Ice Road/Trail Season

The following general mitigation measures would be required to be implemented through the entire ice road/trail season (December through May), including during construction, maintenance, use, and decommissioning.

- Ice road/trail speed limits must be no greater than 45 miles per hour (mph)
- Delineators must mark the sea ice roads in a minimum of 0.4-km increments on both sides of the route to delineate the path of vehicle travel. Delineators may also be used to mark the centerline of the roadway. Delineators must be color-coded to indicate the direction of travel and location of the ice road. These measures must ensure that vehicles stay on disturbed ice roads/trails and must not deviate to undisturbed areas.
- Corners of rig mats, steel plates, and other materials used to bridge sections of hazardous ice must be clearly marked or mapped using GPS coordinates of the locations to prevent vehicles traveling on ice roads/trails from deviating to undisturbed areas.
- Personnel must remain in the vehicle and safely continue if they encounter a ringed seal while driving on the road.

If a ringed seal or seal structure is observed within 50 m or 150 m (respectively) of the centerline of the ice road/trail, the company Environmental Specialist would be required to be informed of the observation and the following would be required to occur:

- The seal must be avoided and the location of the seal must be verbally described on the monitoring form relative to the location of the ice road/trail and the observer's location.
- A seal structure must be physically marked within 15 m of the edge of the sea ice road noting the location of the seal/seal structure along the axis/edge of the road (maintaining a distance of at least 15 m from the seal/structure);
- Construction or maintenance work must not occur within 50 m of the seal. These activities may continue if the seal is 50 m or greater away. If the seal is within 50 m of these activities, they may continue as soon as the seal, of its own accord, moves farther than 50 m distance away from activities or has not been observed within that area for 24

hours. Transport vehicles may continue within the designated route without stopping.

- All other personnel using the area must be notified following the notification protocols described in the Wildlife Management Plan;
- During the period in which a seal structure is periodically monitored, as described in the Communication and Monitoring Procedures for Seal and Seal Structure Observations section (below), maintenance work must proceed in a manner that minimizes impacts or disturbance to the area.

Blading and snow blowing of ice roads would be required to be limited to the disturbed ice trail/shoulder areas to the extent safe and practicable. Snow would be required to be plowed or blown from the ice road surface. If snow is accumulating on a road within a 150-m radius of an identified downwind seal or seal lair, measures would be required to be implemented to avoid seal impacts, such as pushing snow further down the road before blowing it off the roadway. Vehicles would be prohibited from stopping within 50 m of identified seals or within 150 m of known seal structures.

Mitigation Measures After March 1st

Additional proposed mitigation measures proposed to be required after March 1st would mitigate any potential disturbances to seals that are actively pupping. If safety concerns due to unstable ice road/trail conditions warrant the creation of a new or workaround route, the route would be required to be surveyed for seal structures using a trained observer in a tracked vehicle approximately 2 days prior to establishing the route, weather permitting. During the construction of the ice trail, behavioral disturbance of ringed seals may occur but is expected to be limited given the proposed mitigation and monitoring measures. The following protocol would be required to be used for these surveys:

- During daylight hours with good visibility, a trained wildlife observer must survey the route 2 days prior to route construction to search for potential seal structures. The observer must be dedicated to monitoring for seal structures while the driver operates the tracked vehicle.
- If a suspected seal structure is observed within 150 m of the centerline of the proposed new or workaround route, a marker must be placed 15 m from the location and GPS coordinates must be recorded. The new route must avoid any suspected seal structures by a 150-m distance.

- To ensure a safe travel route, flooding and ice buildup or maintenance activities may be conducted in new routes during non-daylight hours, avoiding any identified seal structures by 150 m.

- Once the new ice trail is established, tracked vehicle operation must be limited to the disturbed area to the extent practicable and while ensuring the safety of personnel.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an LOA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of taking authorized by the LOA. The MMPA implementing regulations at 50 CFR 216.104(a)(13) provide that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical to both compliance and ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements proposed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic) through better understanding of: (1) action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or

cumulative impacts from multiple stressors;

- How anticipated responses to stressors impact either (1) long-term fitness and survival of individual marine mammals or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Monitoring

The monitoring and reporting requirements described below were proposed by Hilcorp and/or are the result of subsequent coordination between NMFS and Hilcorp. They are similar to the requirements contained in the current 5-year regulations, and Hilcorp has agreed that they are practicable.

If an ice road, trail or pad is being actively used, a dedicated observer would be required to conduct either a ground-based survey (by vehicle) or a survey assisted by Unmanned Aerial Systems (UAS) during daylight conditions with good visibility to observe if any ringed seals are within 50 m or ringed seal structures are within 150 m of the centerline of the route(s). The following protocols would be required to be followed:

- Surveys must be conducted once per week during daylight hours. Survey protocol consists of either driving the ice road/trail or using UAS to observe the route while stopping every 800 m to observe each side of the corridor within 50 m to check for the presence of seals and 150 m to check for seal structures.
- Use of UAS must comply with applicable Federal Aviation Administration (FAA) regulations and applicable sections of NOAA's UAS Policy 220–1–5 (*NMFS 2021, NOAA 2019*). UAS must be flown by only an experienced operator. UASs must not be flown directly over pinnipeds hauled out.
- UAS must be flown at altitudes between 60 and 120 m with maximum altitude less than 457 m following FAA protocol (14 CFR part 107).

Observers for ice road/trail activities would not be required to be trained Protected Species Observers, but they would be required to have received the training described under Wildlife Training and understand the applicable sections of the Wildlife Management Plan. Observers would be required to be capable of detecting, observing and monitoring ringed seal presence and behaviors, and recording data

accurately, consistent with the following protocol:

- Observers must have no other primary duties other than to watch for and report observations related to ringed seals during surveys.

- If the observer is driving a vehicle, then the survey must be performed when the driver stops, at periodic intervals sufficient to complete a thorough assessment of the area. If weather conditions become unsafe, the monitoring activity must be discontinued until it is safe to resume.

- If monitoring is conducted using UAS, a trained operator must fly the aircraft while a dedicated observer monitors the aerial imaging for the presence of ringed seals or seal structures within 50 m or 150 m (respectively) of the ice routes.

If a seal or seal structure is observed within 50 m or 150 m (respectively) of the centerline of the ice route, the location of the seal or seal structure would be required to be reported to the Environmental Specialist or Project Manager, who must relay the location to all personnel using the ice road. In addition, the proposed rule would require that personnel responsible for Wildlife Interaction Management be notified following protocols described in each company's specific Wildlife Interaction Plan. The following monitoring procedures would also be required to be followed:

- As soon as practicable after the initial seal observation, the Environmental Specialist or designated person must observe the seal for approximately 15 minutes either on the ground (*i.e.*, if safe and logistically practicable to do so from a vehicle) or using UAS to document the animal's location relative to the ice road/trail/pad.
- All work that is occurring when the seal is observed and the behavior of the seal during this observation period must be documented until the animal moves more than 50 m from the center of the ice road/trail or is no longer observed. If the seal remains in the area after the 15-minute observation period, monitoring must continue every 6 hours during daylight conditions.
- Monitoring of a seal structure by the Environmental Specialist or designated person must continue every 6 hours during daylight conditions on the day of the initial observation to determine whether a seal is present. Monitoring must consist of observing the structure from a distance of at least 150 m for approximately 15 minutes each time. After the first 24 hours, monitoring (ground-based or using UAS) for the seal must occur every other day while the

ice road/trail/pad is being used, unless it is determined the structure is not actively being used (*i.e.*, a seal is not observed at that location during monitoring for 10 consecutive monitoring sessions). During this monitoring period, maintenance work must proceed in a manner that minimizes impacts or disturbance to the area and the animal.

Data Collection and Reporting

This proposed rule would require the Environmental Specialist or designated person to record the following information during survey efforts and observation events:

- The date and start/stop time for each survey including total number of hours of observation and a summary of environmental conditions, such as visibility, that can affect the detection of seals or seal structures (*i.e.*, breathing holes and lairs);
- Date and time of each observation event (*e.g.*, initial observation of a seal or seal structure) and subsequent monitoring;
- Number of animals per observation event and number of adults/juveniles/pups per observation event;
- Behaviors of seals during each observation event;
- Geographic coordinates of the observed animals or structure (breathing hole or lair), with the position recorded by using the most precise coordinates practicable (coordinates must be recorded in decimal degrees, or similar standard, and defined coordinate system);
- For observation events, mitigation measures implemented to minimize impacts; and
- Observers must use standardized electronic data forms to record data, and Hilcorp must submit all datasheets and/or raw sighting data with the draft report.

NMFS proposes to require Hilcorp to submit a company-specific annual monitoring report after the end of the ice road/trail season that summarizes the activities performed during ice road/trail/pad construction, maintenance, use, and de-commissioning that year. Records associated with observations and monitoring of seals or seal structures would be required to be transmitted to NMFS 90 days after the decommissioning of the ice road/trail. The proposed rule would require this report to be submitted with the measures specified in the Data Collection described above and include:

- (i) Date, time, location of observation;
- (ii) Ringed seal characteristics (*i.e.*, adult or pup) and behavior (avoidance, resting, etc.);

(iii) Activities occurring during observation including equipment being used and its purpose and approximate distance to ringed seal(s);

(iv) Actions taken to mitigate effects of interaction emphasizing (A) which mitigation and/or monitoring measures were successful, (B) which mitigation and/or monitoring measures may need to be improved to reduce interactions with ringed seals, (C) the effectiveness and practicality of implementing mitigation and monitoring measures, (D) any issues or concerns regarding implementation of mitigation and/or monitoring measures, and (E) potential effects of interactions based on observation data.

Reporting Dead or Injured Marine Mammals

In the event that personnel involved in the project activities covered by the authorization discover an injured or dead marine mammal, this proposed rule would require Hilcorp to report the incident to the Office of Protected Resources (OPR), NMFS (PR.ITP.MonitoringReports@noaa.gov and ITP.pauline@noaa.gov) and to the Alaska regional stranding coordinator (907-586-7209) as soon as feasible. The report would be required to include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken”

through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.*, intensity, duration), the context of any impacts or responses (*e.g.*, critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’ implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

The discussion of our analysis applies only to the ringed seal, which is proposed for take by Level B harassment and serious injury and mortality.

Level B Harassment

Hilcorp requested and NMFS is proposing to authorize take of ringed seals by Level B harassment. The amount of taking proposed to be authorized is small relative to the stock’s abundance. Potential impacts of Hilcorp’s proposed ice roads, trails, and pads construction activities would mostly result from behavioral disturbances due to exposure to machinery and human activity. It is highly unlikely that behavioral disturbance from in-water exposure to machinery would result in biologically significant effects on the seals (individually or to the population). Additional proposed mitigation measures required after March 1st would mitigate any potential disturbances to seals that are actively pupping. During the construction of the ice trail, behavioral disturbance of ringed seals may occur but is expected to be limited given the proposed mitigation and monitoring measures. The potential effect of the Level B harassment is expected to be localized and brief. Furthermore, much of the construction, operation and use of ice roads, trails, and pads is expected to be conducted entirely on grounded sea ice which would not be suitable habitat for ringed seals and, therefore, no harassment would be expected to occur in those areas.

Habitat

Identified ringed seal habitat surrounds only Northstar in the project

area. Neither SID nor ODS are located in ringed seal habitat as delineated by the 3 m isopleth. Disturbance associated with construction, operation, and maintenance of ice roads/trails/pads is unlikely to have long-term effects on the availability of sea ice habitat identified in two of the three PBFs essential to the conservation of the species. Disturbances due to ice road/trail/pad construction, operation, and maintenance activities are not expected to have any effect on the third PBF regarding availability of prey species because these activities would not cause injury or mortality to fish species, nor would they displace food resources of ringed seals.

Serious Injury and/or Mortality

NMFS is proposing to authorize a very limited number of mortalities or serious injuries that could occur incidental to ice road/trail/pad construction, operation, and maintenance. NMFS considers many factors in making a negligible impact determination, including, but not limited to, the status of the species or stock relative to the optimum sustainable population (OSP) level (if known); whether the recruitment rate for the species or stock is increasing, decreasing, stable, or unknown; the size and distribution of the population; and existing impacts and environmental conditions. The potential biological removal (PBR) metric can help inform the potential effects of serious injury and mortality caused by activities authorized under 101(a)(5)(A) on marine mammal stocks.

PBR is defined in the MMPA (16 U.S.C. 1362(20)) as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population, and is a measure to be considered when evaluating the effects of serious injury and mortality on a marine mammal species or stock. Optimum sustainable population (OSP) is defined by the MMPA (16 U.S.C. 1362(9)) as the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element. PBR values are calculated by NMFS as the level of annual removal from a stock that will allow that stock to equilibrate within OSP at least 95 percent of the time.

To specifically use PBR, along with other factors, to evaluate the effects of serious injury and mortality, we first

calculate a metric called “residual PBR” that incorporates information regarding ongoing anthropogenic serious injury and mortality into the PBR value (*i.e.*, PBR minus the total annual anthropogenic mortality/serious injury estimate). We then consider how the anticipated potential incidental serious injury and mortality from the activities being evaluated compares to residual PBR. Anticipated or potential serious injury and mortality that exceeds residual PBR is considered to have a higher likelihood of adversely affecting rates of recruitment or survival, while anticipated serious injury and mortality that is equal to or less than residual PBR has a lower likelihood (both examples given without consideration of other types of take, which also factor into a negligible impact determination). For a species or stock with incidental serious injury and mortality less than 10 percent of residual PBR, we consider serious injury and mortality from the specified activities to represent an insignificant incremental increase in ongoing anthropogenic serious injury and mortality that alone (*i.e.*, in the absence of any other take) should not affect annual rates of recruitment and survival.

The PBR for the Arctic stock is 4,755 seals ($158,507 \times 0.06 \times 0.5$). This PBR is negatively biased (*i.e.*, lower than expected) because of its dependence on the negatively biased NMN estimate. The best estimate of the mean annual level of human-caused mortality and serious injury in the U.S. waters portion of the stock is 6,459 ringed seals, which is greater than the negatively biased PBR of 4,755 seals (Muto *et al.*, 2021). However, because this exceedance of PBR stems from an unrealistically low N_{MIN} , it should not be taken as indicative of a risk to this stock. The PBR was obtained from an N_{MIN} that is known to be an extreme underestimate of the abundance in the U.S. waters of the Bering Sea, which in turn is just a portion of the Arctic ringed seal stock in U.S. waters, and the best estimate of human-caused mortality and serious injury is for the entire U.S. portion of the stock, including, for example, Alaska Native subsistence takes in the Chukchi and Beaufort seas. Previous estimates from the U.S. waters of the Chukchi Sea (Bengtson *et al.* 2005) and results from a recent (2016) NOAA survey of those waters indicate that there are several hundreds of thousands of ringed seals in that region that are not included in N_{MIN} because the former results are outdated and the latter have not yet been published. Furthermore, ringed seals are known to remain

abundant in the U.S. waters of the Beaufort Sea (which are also not included in N_{MIN}) based, for example, on hunter reports to the ISC and NOAA test surveys conducted in 2019. NMFS believes with high confidence that the number of ringed seals in Alaska waters greatly exceeds the number of individuals that would be required for the current take to balance the PBR (*i.e.*, $N_{MIN} \times \text{Mortality and Serious Injury} / \text{PBR} = 215,310$ individuals). Therefore, the apparent exceedance of PBR in this case reflects inadequacy in the abundance estimates rather than an indication of excessive take. The minimum estimated mean annual rate of U.S. commercial fishery-related mortality and serious injury (5 seals) added to the maximum annual M/SI total of 2 for the proposed Hilcorp project is less than 10% of the negatively biased PBR (10% of PBR = 476) and, therefore, can be considered negligible.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- Only 4 ringed seals would be authorized to be taken by serious injury/mortality over 5 years, which would represent less than 0.1 percent of residual PBR;
- No Level A harassment (auditory injury) would be expected;
- No long-lasting modification in marine mammal habitat, including designated critical habitat, would be expected;
- The only harassment would be Level B harassment in the form of brief and localized behavioral disturbance and avoidance;
- The amount of takes proposed to be authorized overall is low compared to population size; and
- The total area affected by ice route activities would be a small portion of ringed seals' range.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections

101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The NMFS does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the maximum number of individuals taken in any year to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted maximum annual number of individuals to be taken is less than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The number of takes NMFS proposes to authorize is far below one-third of the modeled abundance for the Arctic stock of ringed seal (specifically, take of individuals is less than <0.01 percent). Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an “unmitigable adverse impact” on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined “unmitigable adverse impact” in 50 CFR 216.103 as 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.

Given the nature of the activity and the required mitigation measures, serious injury and mortality of marine mammals is not expected to occur. However, due to a single seal mortality event in 1998, very limited take by serious injury and mortality has been proposed for authorization. The only marine mammals likely to be affected are ringed seals and, beyond the aforementioned take by M/SI, any

impacts would be limited to temporary behavioral disturbances. As described above, the required mitigation and monitoring measures are expected to reduce the frequency and severity of takes of marine mammals.

There is no documented subsistence hunting or use of ringed seals in the project area. While subsistence use of ringed seals occurs within proximity of three communities along the Beaufort Sea coast (*i.e.*, Utqiagvik, Nuiqsut and Kaktovik), these communities are 25 to 50 km from the project area. SID, ODS, and Northstar are not known ringed seal hunting locations. The distances from communities to the project are not conducive to subsistence hunting. Subsistence hunters harvest ice seals primarily during the open water period of July through August, when boat crews hunt ringed, spotted and bearded seals. Additionally, since ice trail/road/pad activities occur during winter months when it is dark most of the day, it is not likely hunting would occur near those locations and during the activities.

Hilcorp frequently engages the subsistence communities along the North Slope as part of routine operations. Hilcorp has and will continue to meet with the North Slope Borough Department of Wildlife Management and the Ice Seal Committee (ISC) to discuss planned activities. Hilcorp has engaged in multiple coordination efforts with the ISC and the North Slope Borough Department of Wildlife Management (NSB DWM). These entities have never expressed concerns that ice trail/road/pad activities at these locations are affecting the availability of ringed seals for subsistence. For these reasons, a formal Plan of Cooperation (POC) is not required.

Hilcorp plans to continue to engage with affected subsistence communities regarding its ongoing North Slope operations, attend established upcoming relevant meetings, and periodically meet with affected communities in either one-on-one meetings or community presentations. Hilcorp has requested and encourages all stakeholders to contact Hilcorp directly if there are any concerns with Hilcorp operations interfering with subsistence activities. There are no mitigation or monitoring measures proposed specifically to address subsistence use.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an

unmitigable adverse impact on subsistence uses from Hilcorp’s proposed activities.

Adaptive Management

The regulations governing the take of marine mammals incidental to Hilcorp’s ice road/trail/pad activities would contain an adaptive management component. The reporting requirements associated with this proposed rule, if adopted, are designed to provide NMFS with monitoring data to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from Hilcorp regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or LOAs issued pursuant to these regulations.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of incidental take authorizations, NMFS Office of Protected Resources (OPR) consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the Alaska Regional Office (AKRO).

NMFS is proposing to authorize take of ringed seal which are listed under the ESA.

NMFS OPR has requested initiation of Section 7 consultation with the NMFS AKRO for the issuance of the LOA. NMFS will conclude the ESA consultation prior to reaching a

determination regarding the proposed issuance of the authorization.

Request for Information

NMFS requests interested persons to submit comments, information, and suggestions concerning Hilcorp's request and the proposed regulations (see **ADDRESSES**). All comments germane to this rulemaking will be reviewed and evaluated as we prepare a final rule and make final determinations on whether to issue the requested authorization. This proposed rule and referenced documents provide all environmental information relating to our proposed action for public review.

Classification

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866. This proposed rule is not an Executive Order 14192 regulatory action because this rule is not significant under Executive Order 12866.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Hilcorp is the sole entity that would be subject to the requirements in these proposed regulations, and Hilcorp is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. This proposed rule contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648-0151 and include applications for regulations, subsequent LOAs, and reports.

Dated: January 26, 2026.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 217 is proposed to be amended as follows:

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

■ 2. Add subpart P to part 217 to read as follows:

Subpart P—Takes of Marine Mammals Incident to Specified Activities; Taking Marine Mammals Incident to Sea Ice Road and Trail Activity Along the Beaufort Sea Coast

Sec.

217.150 Specified activity and specified geographical region.

217.151 Effective dates.

217.152 Permissible methods of taking.

217.153 Prohibitions.

217.154 Mitigation requirements.

217.155 Requirements for monitoring and reporting.

217.156 Letters of Authorization.

217.157 Renewals and modifications of Letters of Authorization.

217.158–217.159 [Reserved]

§ 217.150 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to Hilcorp Alaska, LLC (Hilcorp) and those persons they authorize or fund to conduct activities on their behalf for the taking of marine mammals that occurs in the areas outlined in paragraph (b) of this section and that occurs incidental to construction, use, and maintenance of ice roads/trails/pads. Requirements imposed on Hilcorp must be implemented by those persons it authorizes or funds to conduct activities on its behalf.

(b) The taking of marine mammals by Hilcorp may be authorized in a Letter of Authorization (LOA) only if it occurs along the Beaufort Sea coast on Alaska's North Slope.

§ 217.151 Effective dates.

Regulations in this subpart are effective for a period of 5 years from the date of issuance.

§ 217.152 Permissible methods of taking.

Under LOAs issued pursuant to this subpart, the Holder of the LOA (hereinafter "Hilcorp") may incidentally, but not intentionally, take marine mammals within the area described in § 217.150(b) by mortality, serious injury or Level B harassment associated with ice road/trail/pad construction, maintenance, and use activities, provided the activities are in compliance with all terms, conditions,

and requirements of the regulations in this subpart and the appropriate LOAs.

§ 217.153 Prohibitions.

Except for the taking described in § 217.152 and authorized by the LOAs issued under this subpart, it is unlawful for any person to do any of the following in connection with the activities described in § 217.150:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under this subpart;

(b) Take any marine mammal not specified in such LOAs;

(c) Take any marine mammal specified in such LOAs in any manner other than as specified;

(d) Take a marine mammal specified in such LOAs after NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOAs after NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

§ 217.154 Mitigation requirements.

When conducting the activities identified in § 217.150(a), the mitigation measures contained in any LOA issued under this subpart must be implemented. These mitigation measures shall include but are not limited to:

(a) General conditions.

(1) Copies of any issued LOAs must be in the possession of Hilcorp, their designees, and work crew personnel operating under the authority of the issued LOAs;

(2) Prior to initiation of sea ice road/trail/pad-related activities, project personnel associated with ice road construction, maintenance, use or decommissioning must receive annual training on implementing mitigation and monitoring measures, including the following:

(i) Personnel must be advised that interactions with any wildlife, including approaching wildlife, is prohibited;

(ii) When traveling the ice road/trail, project personnel must follow directions of security and posted signs;

(iii) Annual training must include reviewing Hilcorp's Wildlife Management Plan;

(iv) Personnel must notify appropriate personnel if a seal is observed within 50 m or if a seal structure (*i.e.*, breathing hole or lair) is observed within 150 m of the centerline of the ice road/trail or the edge of the ice pad or on the ice pad;

(v) Personnel must stay in the vehicle and continue traveling at a constant

speed if a seal is observed near the ice road/trail/pad and must not slow down, stop, or exit the vehicle; and

(b) General mitigation measures throughout the Ice Road/Trail Season (December through May).

(1) Sea ice routes must be surveyed and the snow/ice surface altered (*i.e.*, tracked) or route established prior to March 1st.

(2) Ice road/trail speed limits must be no greater than 45 miles per hour (mph).

(3) Delineators must mark the sea ice roads in a minimum of 0.4-km increments on both sides of the route to delineate the path of vehicle travel. Delineators may also be used to mark the centerline of the roadway. Delineators must be color-coded to indicate the direction of travel and location of the ice road.

(4) Corners of rig mats, steel plates, and other materials used to bridge sections of hazardous ice must be clearly marked or mapped using GPS coordinates of the locations.

(5) Blading and snow blowing of ice roads must be limited to the previously disturbed ice road/shoulder areas to the extent safe and practicable. Snow must be plowed or blown from the ice road surface.

(6) In the event snow is accumulating on a road within a 150-m radius of an identified downwind seal or seal lair, measures must be taken to avoid seal impacts, such as pushing snow further down the road before blowing it off the roadway. Vehicles must not stop within 50 m of identified seals or within 150 m of known seal structures.

(7) Personnel must be instructed to remain in the vehicle and safely continue if they encounter a ringed seal while driving on the road.

(8) If a ringed seal or seal structure is observed within 50 m or 150 m (respectively) of the centerline of the ice road/trail, the company Environmental Specialist must be informed of the observation and the following will occur:

(i) The seal must be avoided and the location of the seal will be verbally described on the monitoring form relative to the location of the ice road/trail and the observer's location;

(ii) A seal structure must be physically marked within 15 m of the edge of the sea ice road noting the location of the seal/seal structure along the axis/edge of the road (maintaining a distance of at least 15 m from the seal/structure);

(iii) Construction or maintenance work must not occur within 50 m of the seal. These activities may continue if the seal is 50 m or greater away. If the seal is within 50 m of these activities,

they may continue as soon as the seal, of its own accord, moves farther than 50 m distance away from activities or has not been observed within that area for 24 hours. Transport vehicles may continue within the designated route without stopping;

(iv) All other personnel using the area must be notified following the notification protocols described in the Wildlife Management Plan, North Slope Fields, Alaska; and

(v) During the period in which a seal structure is periodically monitored, as described in the Communication and Monitoring Procedures for Seal and Seal Structure Observations section (below), maintenance work must proceed in a manner that minimizes impacts or disturbance to the area.

(c) Additional mitigation measures after March 1st: In addition to the general mitigation measures listed in § 217.154(b), the following measures must be implemented after March 1st:

(1) If safety concerns due to unstable ice road/trail conditions warrant the creation of a new or workaround route, the route must be surveyed for seal structures using a trained observer in a tracked vehicle approximately 2 days prior to establishing the route, weather permitting. The following protocol must be used for these surveys:

(i) During daylight hours with good visibility, a trained wildlife observer must survey the route 2 days prior to route construction to search for potential seal structures. The observer must be dedicated to monitoring for seal structures while the driver operates the tracked vehicle.

(ii) If a suspected seal structure is observed within 150 m of the centerline of the proposed new or workaround route, a marker must be placed 15 m from the location and GPS coordinates must be recorded. The centerline of the new route must avoid any suspected seal structures by a 150-m distance.

(2) To ensure a safe travel route, flooding and ice buildup or maintenance activities may be conducted in new routes during non-daylight hours, avoiding any identified seal structures by 150 m.

(3) Once the new ice trail is established, tracked vehicle operation must be limited to the disturbed area to the extent practicable and when safety of personnel is ensured.

§ 217.155 Requirements for monitoring and reporting.

(a) If an ice road or trail is being actively used, a dedicated observer must conduct either a ground-based survey (by vehicle) or with the assistance of Unmanned Aerial Systems (UAS) along

the ice road/trail/pad during daylight conditions with good visibility to observe if any ringed seals are within 50 m or ringed seal structures are within 150 m of the centerline of the route(s).

(b) The following protocols must be followed:

(1) Surveys must be conducted once per week during daylight hours. Survey protocol consists of either driving the ice road/trail or using UAS to observe the route while stopping every 800 m to observe each side of the corridor within 50 m to check for the presence of seals and 150 m to check for seal structures.

(2) Use of UAS must comply with applicable Federal Aviation Administration (FAA) regulations. UAS must be flown by only an experienced operator. UAS must not be flown directly over pinnipeds hauled out.

(3) UAS must be flown at altitudes between 60 and 120 m with maximum altitude less than 457 m following FAA protocol (14 CFR part 107).

(4) UAS flights must be conducted in accordance with FAA regulations and in accordance with applicable sections of NOAA's UAS Policy 220–1–5 (NMFS 2021, NOAA 2019).

(5) A trained operator must fly the aircraft while a dedicated observer monitors the aerial imaging for the presence of ringed seals or seal structures within 50 m or 150 m (respectively) of the ice routes.

(c) Observers for ice road/trail/pad activities need not be trained Protected Species Observers, but they must have received the training described under Wildlife Training and understand the applicable sections of the Wildlife Management Plan. Observers must be capable of detecting, observing, and monitoring ringed seal presence and behaviors and accurately and completely recording data.

(d) Observers must have no other primary duties other than to watch for and report observations related to ringed seals during surveys.

(e) If the observer is driving a vehicle, then the survey must be performed when the driver stops at periodic intervals sufficient to complete a thorough assessment of the area, given visibility conditions. If weather conditions become unsafe, the monitoring activity must be discontinued until it is safe to resume.

(f) If a seal or seal structure is observed within 50 m or 150 m (respectively) of the centerline of the ice route, the location of the seal or seal structure must be reported to the Environmental Specialist or Project Manager, who will relay the location to all personnel using the ice road. In addition, the personnel responsible for

Wildlife Interaction Management must be notified following protocols described in each company's specific Wildlife Management Plan. The following monitoring procedures must also be followed:

(1) As soon as practicable after the initial seal observation, the Environmental Specialist or designated person must observe the seal for approximately 15 minutes either on the ground (*i.e.*, if safe and logistically practicable to do so from a vehicle) or using UAS to document the animal's location relative to the ice road/trail/pad.

(2) All work that is occurring when the seal is observed and the behavior of the seal during this observation period must be documented until the animal moves more than 50 m from the center of the ice road/trail or is no longer observed. If the seal remains in the area after the 15-minute observation period, monitoring must continue every 6 hours during daylight conditions.

(3) Monitoring of a seal structure by the Environmental Specialist or designated person must continue every 6 hours during daylight conditions on the day of the initial observation to determine whether a seal is present.

(4) Monitoring must consist of observing the structure from a distance of at least 150 m for approximately 15 minutes each time.

(5) After the first 24 hours, monitoring (ground-based or using UAS) for the seal must occur every other day the ice road/trail/pad is being used, unless it is determined the structure is not actively being used (*i.e.*, a seal is not observed at that location during monitoring for 10 consecutive monitoring sessions). During this monitoring period, maintenance work must proceed in a manner that minimizes impacts or disturbance to the area and the animal.

(g) The following information must be recorded:

(1) Date and time of each observation event (*e.g.*, initial observation of a seal or seal structure) and subsequent monitoring;

(2) Environmental conditions during each observation event;

(3) Number of animals per observation event and number of adults/juveniles/pups per observation event;

(4) Behaviors of seals during each observation event;

(5) Geographic coordinates of the observed animals or structure (breathing hole or lair), with the position recorded by using the most precise coordinates practicable (coordinates must be recorded in decimal degrees or similar standard and defined coordinate system); and

(6) For observation events, mitigation measures implemented to minimize impacts.

(h) Observers must use standardized electronic data forms to record data, and Hilcorp must submit all datasheets and/or raw sighting data with the draft report.

(i) A final end-of-season report compiling all ringed seal observations must be submitted to NMFS Office of Protected Resources within 90 days of decommissioning the ice road/trail. The report must include:

(1) Date, time, location of each observation;

(2) Ringed seal characteristics (*i.e.*, adult or pup) and behavior (avoidance, resting, etc.);

(3) Activities occurring during observation including equipment being used and its purpose and approximate distance to ringed seal(s);

(4) Actions taken to mitigate effects of interaction emphasizing:

(i) which mitigation and/or monitoring measures were successful;

(ii) which mitigation and/or monitoring measures may need to be improved to reduce interactions with ringed seals;

(iii) the effectiveness and practicality of implementing mitigation and monitoring measures;

(iv) any issues or concerns regarding implementation of mitigation and/or monitoring measures; and

(v) potential effects of interactions based on observation data.

(j) In the event a seal is killed or seriously injured by ice road/trail/pad activities, Hilcorp must immediately cease the specified activities and report the incident to the NMFS Office of Protected Resources NMFS (PR.ITP.MonitoringReports@noaa.gov and ITP.pauline@noaa.gov) and Alaska Region Stranding Coordinator (907-586-7209). The report must include the following information:

(1) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

(2) Species identification (if known) or description of the animal(s) involved;

(3) Condition of the animal(s) (including carcass condition if the animal is dead);

(4) Observed behaviors of the animal(s), if alive;

(5) If available, photographs or video footage of the animal(s); and

(6) General circumstances under which the animal was discovered.

§ 217.156 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations,

Hilcorp must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, Hilcorp may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, Hilcorp must apply for and obtain a modification of the LOA as described in § 217.157.

(e) The LOAs shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOAs shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within thirty days of a determination.

§ 217.157 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under this subpart for the activity identified in § 217.150(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOAs under these regulations were implemented.

(b) For LOAs modification or renewal requests by the applicants that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOAs in the **Federal Register**, including

the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) The LOAs issued under §§ 216.106 of this chapter and 217.156 for the activity identified in § 217.150(a) may be modified by NMFS under the following circumstances:

(1) Adaptive management. NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with Hilcorp regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from Hilcorp's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 217.156, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

§ 217.158–217.159 [Reserved]

[FR Doc. 2026–02048 Filed 1–30–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 260123–0033]

RIN 0648–BN95

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Cordell Bank Groundfish Conservation Area Revisions

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues these proposed regulations to remove the Cordell Bank Groundfish Conservation Area off central California for all groundfish fisheries and implement a new Groundfish Exclusion Area for all groundfish fisheries to protect sensitive habitat. The purpose of this proposed rule is to simplify regulatory complexity associated with overlapping fishery closures in the Cordell Bank area, and to increase fishing opportunity, while still protecting the Cordell Bank ecosystem. NMFS also announces the availability of a draft environmental assessment that analyzes the potential effects of the proposed rule.

DATES: Comments on this proposed rule must be received on or before March 4, 2026.

ADDRESSES: A plain language summary of this proposed rule is available at <https://www.regulations.gov/docket/NOAA-NMFS-2025-0047>. You may submit comments on this document, identified by NOAA–NMFS–2025–0047, by the following method:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and type NOAA–NMFS–2025–0047 in the Search box. Click on 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 NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://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. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of the proposed rule may be obtained from <https://www.regulations.gov> and the NMFS West Coast Region website at <https://www.fisheries.noaa.gov/region/west-coast>. The draft integrated analysis that addresses the National Environmental Policy Act (NEPA), Presidential Executive Order 12866, the Regulatory Flexibility Act (RFA), and the statutory requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (collectively referred to as “the Analysis”), may be obtained from the Groundfish Actions NEPA website at <https://www.fisheries.noaa.gov/west-coast/laws-policies/groundfish-actions-nepa-documents>.

FOR FURTHER INFORMATION CONTACT:

Lynn Massey, phone: 858–334–2851, or email: Lynn.Massey@noaa.gov.

SUPPLEMENTARY INFORMATION: The Pacific Coast groundfish fishery in the U.S. exclusive economic zone (EEZ) seaward of Washington, Oregon, and California is managed under the Pacific Coast Groundfish Fishery Management Plan (FMP). The Pacific Fishery Management Council (Council) developed the Pacific Coast Groundfish FMP pursuant to the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* The Secretary of Commerce approved the Pacific Coast Groundfish FMP and implemented the provisions of the plan at 50 CFR part 660, subparts C through G. Species managed under the Pacific Coast Groundfish FMP include roundfish, flatfish, rockfish, sharks, and skates.

This proposed rule (also referred to interchangeably as the “proposed action”) includes regulations that would remove the Cordell Bank Groundfish Conservation Area (GCA) off central California for all groundfish fisheries and implement a new Groundfish Exclusion Area (GEA) for all groundfish fisheries within the same geographic footprint as the Cordell Bank (50-fm isobath) bottom contact Essential Fish Habitat Conservation Area (EFHCA), which partially overlaps with the current GCA. GEAs are authorized as an area closure type under section 6.8.10 of the FMP, therefore no further changes to the FMP are necessary to designate a new GEA.

Background

In the early 2000s, several types of GCAs (defined at § 660.11) were implemented to protect overfished groundfish species off the U.S. West Coast, including the Cowcod Conservation Areas (CCAs) in the Southern California Bight (66 FR 2338, January 11, 2001), the coastwide Trawl Rockfish Conservation Area (RCA) (67 FR 57973, September 13, 2002), the coastwide Non-Trawl RCA (68 FR 907, January 7, 2003), and the Cordell Bank GCA off central California (69 FR 11063, March 9, 2004). The first iteration of the Cordell Bank GCA was implemented as a recreational groundfish closure in 2004 to protect species that had been declared overfished in preceding years, namely widow, bocaccio, canary, and yelloweye rockfishes and lingcod. Trawl fishing was later prohibited via an inseason action that expanded the boundaries of the Trawl RCA to encompass the recreational Cordell Bank closure (69 FR 23440, April 29, 2004). Then, as part of the 2005–06 Biennial Harvest Specifications and Management Measures process, the Cordell Bank GCA was specified in regulation with its own coordinates and prohibited all groundfish fishing, except for fishing for the Other Flatfish complex by the non-trawl commercial and recreational sectors (69 FR 77011, December 23, 2004). Currently, the Cordell Bank GCA prohibits take of groundfish, except for non-trawl commercial take of the Other Flatfish complex (§§ 660.230(d)(16) and 660.330(d)(18)), and recreational take of the Other Flatfish complex, petrale sole, and starry flounder (§ 660.360(c)(3)(i)(C)). The Cordell Bank GCA does not restrict other non-groundfish fisheries from operating in the area.

The Cordell Bank GCA has historically overlapped with four other closures: (1) the Trawl RCA, which prohibits commercial groundfish fishing with trawl gear; (2) the Non-Trawl RCA, which prohibits commercial groundfish fishing with most types of non-trawl gear; (3) the Cordell Bank Biogenic EFHCA, which prohibits fishing with bottom trawl gear (except for demersal seine) by all fisheries (hereafter referred to as the “bottom trawl EFHCA”); and (4) the Cordell Bank (50-fm isobath) EFHCA, which prohibits fishing with bottom contact gear by all fisheries (hereafter referred to as the “bottom contact EFHCA”). These closures can be viewed on figure 1 of the Analysis (see ADDRESSES). Each closure has different regulations that prohibit different fisheries from operating and different

gear types from being used (see table 1 of the Analysis), consequently creating confusion among fishermen and challenges for enforcement officers. The Council and NMFS addressed the overlap issues with the Trawl RCA via Amendment 28 to the Pacific Coast Groundfish FMP (Amendment 28), which removed the Trawl RCA off the coasts of Oregon and California (84 FR 63966, November 19, 2019). The Council and NMFS addressed the overlap issues between the Cordell Bank GCA and the Non-Trawl RCA by adjusting select coordinates on the 75 fm (137 m) depth contour to align with the eastern boundary of the Cordell Bank GCA (see agenda item F.4.a, CDFW Report 1, March 2023 at <https://pcouncil.org>). Despite these efforts, challenges with other existing overlapping closures (*i.e.*, the bottom trawl and bottom contact EFHCAs) still remain.

With the rebuilt status of almost all groundfish species originally declared overfished in the early 2000s, the Council began prioritizing increased fishing access to the Non-Trawl RCA and CCAs in November 2019. In alignment with the Council’s resulting recommendation, in January 2024, NMFS implemented Amendment 32 to the Pacific Coast Groundfish FMP (Amendment 32; 88 FR 83830, December 1, 2023), which reduced the size of the Non-Trawl RCA for commercial non-trawl groundfish fisheries and removed the CCAs for the non-trawl commercial and recreational groundfish fisheries. The Cordell Bank GCA was not included in the Amendment 32 action because the Council’s scope for Amendment 32 focused on non-trawl fishery closures only; the Cordell Bank GCA prohibits all groundfish fishing by non-trawl and trawl fisheries. However, during the development of Amendment 32, it became apparent via Council discussions in the Groundfish Advisory Subpanel (GAP) and the Enforcement Committee that there was a need to open the Cordell Bank GCA, via a future action, to address regulatory and enforcement challenges associated with the overlapping closures. Therefore, in March 2023, the Council prioritized scoping of removing the Cordell Bank GCA and other associated changes (agenda item F.8.a, Supplemental CDFW Report 1, March 2023 at <https://pcouncil.org>). In September 2023, the California Department of Fish and Wildlife (CDFW) proposed to remove the Cordell Bank GCA and create a new GEA that overlays the existing bottom contact EFHCA, which is intended to

minimize impacts to sensitive environments from certain groundfish fishing activities. After additional deliberation, consistent with Magnuson-Stevens Act section 303(c)(1), the Council deemed the proposed regulations consistent with and necessary to implement the proposed action. After its own review, NMFS has determined that the proposed rule meets the appropriate legal standards and now solicits public comment on its provisions.

Removal of the Cordell Bank GCA

If implemented, this proposed rule would remove the Cordell Bank GCA closure from § 660.70, as well the associated groundfish prohibitions for the trawl, limited entry fixed gear (LEFG), open access (OA), and recreational fishery sectors specified at §§ 660.130, 660.230, 660.330, and 660.360, respectively. Although the Cordell Bank GCA is 64 square miles (sq mi) (165.8 square kilometers (km)), only 40.1 sq mi (104 sq km) would be opened to non-trawl gear and 10.2 sq mi (26.4 sq km) to almost all trawl gear. The bottom contact and bottom trawl EFHCAs and their associated prohibitions would remain in place, and a GEA would overlay the exact geographic footprint of the bottom contact EFHCA (see next section).

The coordinates for the Cordell Bank GCA include coordinates commonly referred to as the “100-fm ring.” These coordinates are distinct from the 100 fm (183 meter (m)) depth contour line defined at § 660.73. Per the trawl management measure regulations at § 660.130(c)(1)(ii), trawling with large footrope gear is prohibited shoreward of 100 fm (183 m) and in the area south of 46°16′ North latitude (N lat.). Removing the Cordell Bank GCA coordinates from Federal regulations entirely would default to allow trawling with large footrope gear in the 10.2 sq mi (26.4 sq km) opened to trawl gear. In order to maintain this prohibition, the coordinates for the 100-fm ring would be transferred to § 660.73, which is where the coordinates for the coastwide 100-fm (183-m) line and other lines around islands and banks are defined.

Creation of the Cordell Bank GEA

GEAs were first created by and used via Amendment 32 (88 FR 83830, December 1, 2023), which implemented eight GEAs in the Southern California Bight to protect sensitive coral ecosystems from groundfish fishing impacts when the CCAs were removed for non-trawl commercial and recreational groundfish fisheries. The Pacific Coast Groundfish FMP

authorizes the creation of additional GEAs via rulemaking (see section 6.8.10). GEAs are a different type of closure from GCAs in that their primary purpose is not to protect groundfish species, but to protect habitat. Amendment 19 designated the Cordell Bank as a habitat area of particular concern (HAPC) because it contains a substantive amount of rocky reef habitat and, therefore, although there is no longer a need for the Cordell Bank GCA to protect overfished groundfish species, there remains a need to protect sensitive habitat (see next section). If implemented, this proposed rule would establish the Cordell Bank GEA at § 660.70. All groundfish fishing would be prohibited within the Cordell Bank GEA. Groundfish vessels would be able to continuously transit through the Cordell Bank GEA as long as all groundfish gear is stowed. The Cordell Bank GEA would be 26.4 sq mi (68.3 sq km), of which 23.9 sq mi (61.9 sq km) is inside the current Cordell Bank GCA and the remaining 2.5 sq mi (6.5 sq km) is outside of the GCA. The 2.5 sq mi (6.5 sq km) that is outside of the GEA overlaps with the bottom contact EFHCA and Non-Trawl RCA, meaning groundfish fishing with non-bottom contact gear (e.g., troll gear) is currently allowed. The new GEA would prohibit all groundfish fishing, thereby taking away the ability to use non-bottom contact gear in this 2.5 sq mi (6.5 sq km). After the addition of the proposed GEA, approximately 37 percent of the Cordell Bank GCA footprint would remain closed to all groundfish fishing, and most of the rest of the area would still have restrictions from the bottom contact and bottom trawl EFHCAs. Only the 10.2 sq mi (26.4 sq km, 16 percent of the GCA) opened to trawl gear would be entirely open, as there are no other overlapping closures in this area. Overall, the proposed action would open a net area of 10.2 sq mi (26.4 sq km) to trawl gear and 40.1 sq mi (103.9 sq km) to non-trawl commercial and recreational gear. The Cordell Bank GEA coordinates would be the same as the coordinates for the existing bottom contact EFHCA (listed at § 660.79(r)), which would substantively reduce regulatory complexity and enforcement challenges.

This proposed rule would also revise the regulations at § 660.10 to remove the definition of GEA from the list of defined GCAs and categorize it as its own closure type. This change would better reflect the regulatory purpose of GEAs, which is to protect sensitive habitats from groundfish fishing as

opposed to overfished groundfish species from groundfish fishing.

Summary of Habitat Impacts

Known for its extensive rocky reef habitat, the Cordell Bank area is designated as groundfish essential fish habitat (EFH) and a HAPC via Amendment 19 to the Pacific Coast Groundfish FMP (71 FR 27408, May 11, 2006). It is also located within the Cordell Bank National Marine Sanctuary. The draft Analysis for this proposed action (see **ADDRESSES**) discloses potential impacts to habitat that may result from the opening of the Cordell Bank GCA. Specifically, the Analysis includes maps of varying benthic substrates (e.g., sandy bottom vs. hard substrate) as well as corals, sponges, and sea pens that occur in the areas proposed to be opened to groundfish trawl and non-trawl gear types. The Analysis also discusses potential shifts in fishery effort by each relevant fishery sector.

Trawl Gear Impacts

Under the proposed action, approximately 10.2 sq mi (26.4 sq km) of new area would be exposed to trawl gear. As described in the Analysis, available data shows that approximately 3.3 percent (0.54 sq mi or 1.4 sq km) of that area is rocky reef habitat, with limited coral, sponge, and sea pen observations. The remaining area is primarily made up of sand substrate with some unconsolidated mineral substrate. The Analysis also explains that significant fishing effort with trawl gear is not anticipated, as the area proposed to be opened is only 10.2 sq mi (26.4 sq km), and there has been limited to no trawl effort in the vicinity of the Cordell Bank GCA since 2018. Bottom trawl vessels typically avoid high relief rocky habitat to avoid gear damage; therefore, even if trawl vessels came to the area proposed to be opened, they would likely fish over the areas with a flatter bottom. Additionally, trawl regulations at § 660.130(c)(1)(ii) prohibit the use of large footrope gear in the area south of 46°16' N lat. and shoreward of the 100-fm (183-m) depth contour; therefore, only small footrope gear (generally considered to be less damaging than large footrope gear) would be permitted in the 10.2 sq mi (26.4 sq km) area opened. Overall, the Analysis concludes that a minimal amount of rocky reef habitat would be exposed to trawl gear, and minimal impact from fishing would occur if trawl effort shifted into that area. For a more detailed analysis on potential habitat impacts from trawl gear, see section 3.1.2 the Analysis.

Non-Trawl Gear Impacts

Under the proposed action, approximately 40.1 sq mi (103.9 sq km) of new area would be exposed to non-trawl gear (e.g., pots, bottom longline, hook-and-line), which is generally considered to be less destructive than trawl gear (see appendix C to the Pacific Coast Groundfish FMP). As described in the Analysis, available data shows that approximately 8.9 percent (3.6 sq mi or 9.3 sq km) of the 40.1 sq mi (103.9 sq km) area proposed to be opened is rocky substrate with an additional 43.2 percent (17.3 sq mi or 44.8 sq km) categorized as unconsolidated mineral substrate. The remaining half of the proposed area to be open is categorized as sand. Additionally, there are limited coral, sponge, and sea pen observations in the area proposed to be opened.

The Analysis also predicts some effort shift into the 40.1 sq mi (103.9 sq km) area proposed to be opened from the non-trawl catch share sector fisheries, as effort data since 2021 indicates those vessels have been fishing in the vicinity of the Cordell Bank GCA. However, these vessels would likely use hook-and-line gear, which is generally considered to be less impactful on benthic habitat than non-trawl gear types that are actively fished on the bottom (e.g., pot or longline). In their November 2024 statement (see agenda item I.5.a, Supplemental GAP Report 1 at <https://pcouncil.org>), the Council's GAP discussed that limited pot gear activity would likely occur in the area due to the high relief habitat features and the fact that the area is too shallow for sablefish (the primary target species for pot gear). Hook-and-line gear for midwater stocks would likely be the targeted fishery occurring in the proposed action area.

Effort shift from the recreational sector is also anticipated, as the Cordell Bank area has historically been a recreational fishing ground, and public comments from the November 2024 Council meeting (see <https://pcouncil.org>) indicate interest in adding the Cordell Bank area to a rotation of recreational fishing locations to spread out effort on other nearby fishing locations. Overall, the Analysis anticipates some, but not significant, potential impact in the area proposed to be opened to non-trawl gear due to anticipated effort shift from the commercial and recreational non-trawl sectors. For a more detailed analysis on potential habitat impacts from non-trawl gear, see section 3.1.2 the Analysis.

In addition to opening the 40.1 sq mi (103.9 sq km) of area discussed above, NMFS proposes to close approximately

2.5 sq mi (6.5 sq km) in the Cordell Bank area that is currently open to non-trawl non-bottom contact gear. This 2.5 sq mi (6.5 sq km) area is currently within the bottom contact EFHCA, and therefore, non-bottom contact gears are permitted. However, the proposed GEA would close this small 2.5 sq mi (6.5 sq km) area to all groundfish fishing.

Essential Fish Habitat

The Magnuson-Stevens Act requires that FMPs describe and identify EFH and minimize to the extent practicable adverse effects on EFH caused by fishing. As such, EFH is described in appendices B and C to the Pacific Coast Groundfish FMP and includes the Cordell Bank area. The Pacific Coast Groundfish FMP authorizes the use of EFHCAs to protect groundfish EFH from specific types of fishing activity. As a result of the Council’s 2006 EFH review process, a bottom trawl EFHCA and a bottom contact EFHCA were implemented in the Cordell Bank area via Amendment 19 to the Pacific Coast Groundfish FMP (71 FR 27408, May 11, 2006). The coordinates for these EFHCAs are listed at § 660.79(q) and (r), respectively. As a result of the 2014 EFH process, which included review of the Cordell Bank area, the bottom trawl EFHCA was later expanded via Amendment 28 (84 FR 63966, November 19, 2019). The bottom contact EFHCA was not changed because there was not new, definitive information on the benthic habitat effects of non-trawl bottom contact gear that compelled revisions. During the development of this action, the Council’s Habitat Committee reviewed new information on the potential impact to EFH in the Cordell Bank area from the proposed opening, which is documented in the Analysis (see section 3.1.2). Overall, the Analysis concludes that there will not be significant impacts to EFH that would require additional mitigative measures.

Conclusion

As described in the Analysis, significant habitat impact from this action (including to designated EFH) is not anticipated. Although there would be some expected effort shift from the commercial and recreational non-trawl

sectors, the primary gear type used would be hook-and-line, as fishermen tend to avoid high relief rocky habitat with bottom gear to avoid gear damage. Additionally, the area proposed to be opened is too shallow for sablefish, which is the primary target for non-trawl bottom gear types. The vast majority of coral, sponge, and sea pen observations occur within the proposed GEA and, therefore, would remain protected from groundfish fishing impacts.

Classification

Pursuant to sections 303(c) and 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of

Executive Order 12866

There are no relevant Federal rules that may duplicate, overlap, or conflict with this action.

Executive Order 14192

This proposed rule is not an Executive Order 14192 regulatory action because this rule is not significant under Executive Order 12866.

Regulatory Impact Review (RIR)

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. A copy of this Analysis is available from NMFS (see ADDRESSES section). NMFS is recommending this proposed rule based on its assessment of the net benefits to the Nation of these measures.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial

number of small entities. The basis for this conclusion is provided here. In addition to comments on the analysis below, the agency requests comments on the decision to certify this proposed rule.

For purposes of the RFA (5 U.S.C. 601 *et seq.*) only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. This standard applies to all businesses classified under North American Industry Classification System (NAICS) code 11411 for commercial fishing, including all businesses classified as commercial finfish fishing (NAICS 114111), commercial shellfish fishing (NAICS 114112), and other commercial marine fishing (NAICS 114119) businesses (13 CFR 121.201; 50 CFR 200.2).

A Description and Estimate of the Number of Small Entities to Which the Proposed Rule Applies

All commercial and recreational groundfish participants in the EEZ off Washington, Oregon, and California managed under the Pacific Coast Groundfish FMP may be affected by this action. However, the likely impact would be to those that fish in the action area, which includes commercial and recreational non-trawl vessels that fish out of nearby ports in central California (*i.e.*, Bodega Bay and San Francisco). Table 1 shows the number of distinct vessels by commercial sector potentially affected by this action, the range of vessels, and average participation from 2019 to 2024 between the latitudes of 40°30’ to 36° N lat. (*i.e.*, the latitudinal range that encompasses the action area). The majority of vessels participate in the open access (OA) Fixed Gear fishery. Due to confidentiality, individual fishing quota (IFQ) gear switching vessels were combined with limited entry fixed gear (LEFG) vessels.

TABLE 1—NUMBER OF DISTINCT VESSELS, RANGE OF VESSELS, AND AVERAGE VESSELS FOR PACFIN CATCH AREA 1b (40°10’ TO 36° N LAT.) IN TOTAL AND ONLY FROM THE BODEGA BAY/SAN FRANCISCO PORT GROUPS, 2019–2024

Fishery sector	All ports			Bodega Bay/San Francisco		
	Distinct vessels	Range	Average	Distinct vessels	Range	Average
Bottom Trawl	17	8–11	10	4	<3	3
LE Fixed Gear DTL	35	11–23	17	8	<5	3

TABLE 1—NUMBER OF DISTINCT VESSELS, RANGE OF VESSELS, AND AVERAGE VESSELS FOR PACFIN CATCH AREA 1b (40°10' TO 36° N LAT.) IN TOTAL AND ONLY FROM THE BODEGA BAY/SAN FRANCISCO PORT GROUPS, 2019–2024—Continued

Fishery sector	All ports			Bodega Bay/San Francisco		
	Distinct vessels	Range	Average	Distinct vessels	Range	Average
Limited Entry Sablefish ^a	32	16–21	19	9	4–6	5
OA Fixed Gear	445	99–177	149	178	37–71	59

All OA Fixed Gear vessels are assumed to be small entities, with ex-vessel revenues for all landings (groundfish and non-groundfish) averaging \$88,386. In 2024, 25 of the 28 LEFG permits associated with vessels that would likely be subject to this action (*i.e.*, required to fish in the primary or LE trip limit fisheries) were owned by small entities (self-reported). For gear switching vessels likely affected by this action, all reported as small entities in 2024. Note that there is

not a strict one-to-one correlation between vessels or permits and entities; some persons or firms likely have ownership interests in more than one vessel or permit. Given these factors, the actual number of entities regulated by this action could be lower than the preceding estimates.

For recreational participants, it is likely that the participants impacted by the action would be from Bodega Bay. Available data includes only the number of angler trips, which is likely

to overestimate the number of participants as one individual could take multiple angler trips in the time frame. The maximum number of participants that may therefore be affected would be 419 (total of angler trips in 2023, table 2) but is likely substantially lower given the likelihood of multiple angler trips per participant in the counts. All recreational participants are assumed to be small entities.

TABLE 2—NUMBER OF ANGLER TRIPS TARGETING GROUND FISH OUTSIDE OF 3 nm (5.6 km) IN THE PARTY/CHARTER AND PRIVATE/RENTAL BOAT MODES AT BODEGA BAY RECREATIONAL ANGLER SAMPLING SITES FROM 2019 TO 2023 BY MODE [RecFIN, 10/22/2024]

Year	Party/charter boats	Private/rental boats
2019	0	17
2020	0	6
2021	0	16
2022	0	14
2023	116	303

Description and Estimate of Economic Effects on Entities, by Entity Size and Industry

The economic impact of the proposed action would be positive for the affected commercial and recreational small entities, as the proposed regulations would open a small amount of historically used fishing area, thus expanding fishing opportunity and increasing potential profitability. The proposed GEA restricts 37 percent of the area that could have been opened, and therefore the positive impacts are considered marginal. Still, the proposed regulations would provide a net increase in fishing grounds for groundfish participants by removing the GCA, which is no longer warranted given the status of the previously overfished stocks. The proposed action would also reduce regulatory complexity by streamlining overlapping area-based closures. This is expected to reduce participant confusion, as well as provide cost savings for enforcement agencies. There are three LEFG commercial permits associated with vessels that would be affected by this

action that self-reported as large entities. These entities would be subject to the same positive effects as small entities, including marginally improved fishing opportunity and reduced regulatory complexity.

An Explanation of the Criteria Used To Evaluate Whether the Proposed Rule Would Impose “Significant” Economic Effects

The criteria used to evaluate this rule are disproportionality and profitability. Given that the proposed action is opening areas to fishing, with the exception of 2.5 sq mi (6.5 sq km) of the bottom contact EFHCA within the Non-Trawl RCA that will be closed to non-bottom contact gears, there are no anticipated significant economic effects that would disproportionately impact small entities or affect their profitability. The proposed action would increase opportunity overall.

An Explanation of the Criteria Used To Evaluate Whether the Proposed Rule Would Impose Effects on “A Substantial Number” of Small Entities

While this action would apply to the entirety of all entities fishing groundfish off the U.S. West Coast, and the majority of those entities are considered small entities, this rule is expected to have an impact on a minimal number of small entities given its limited geographic scope and the limited anticipated effort shift into the area.

A Description of, and an Explanation of the Basis for, Assumptions Used

Section 5.3 of the Analysis describes the data sources and methods used to determine the population of potential affected entities and those that would classify as small entities. Overall, fishing participation levels can change over time, leading to uncertainty in the number of affected entities. However, it is likely that the estimates provided are representative of the potential affected parties.

Paperwork Reduction Act

This proposed rule contains no new information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Fishing vessels.

Dated: January 26, 2026.

Samuel D. Rauch III,

*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 16 U.S.C. 1801 *et seq.*, and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.11, amend the definition of “Conservation area(s)” by:

- a. Revising introductory text;
- b. Revising paragraph (1) introductory text;
- c. Removing paragraphs (1)(iii) and (1)(v);
- d. Redesignating paragraph (1)(iv) as paragraph (1)(iii) and paragraphs (1)(vi) and (1)(vii) as paragraphs (1)(iv) and (1)(v);
- e. Adding paragraph (4).

The revisions and addition read as follows:

§ 660.11 General definitions.

* * * * *

Conservation area(s) means an enclosed geographic area defined by coordinates expressed in degrees of latitude and longitude where NMFS may prohibit fishing with particular gear types. Conservation areas include Groundfish Conservation Areas (GCA), Essential Fish Habitat Conservation Areas (EFHCA), Deep-sea Ecosystem Conservation Areas (DECA) and Groundfish Exclusion Areas (GEA).

(1) *Groundfish Conservation Area* or *GCA* means a conservation area created or modified and enforced to control catch of groundfish or protected species. Regulations at § 660.60(c)(3) describe the various purposes for which NMFS may implement certain types of GCAs through routine management measures. Regulations at § 660.70 further describe and define coordinates for certain GCAs, including Yelloweye Rockfish Conservation Areas and Cowcod Conservation Areas. GCAs also include closures bounded by the EEZ or depth-based lines approximating depth contours, including Bycatch Reduction

Areas or BRAs, or bounded by depth contours and lines of latitude, including Block Area Closures, or BACs, and Rockfish Conservation Areas, or RCAs, which may be closed to fishing with particular gear types. BRA, BAC, and RCA boundaries may change seasonally according to conservation needs. Regulations at §§ 660.71 through 660.74, and 660.76 define depth-based boundary lines with latitude/longitude coordinates that may be used to enact depth-based closures. Regulations in this section describe commonly used geographic coordinates that define lines of latitude. Fishing prohibitions associated with GCAs are in addition to those associated with other conservation areas.

* * * * *

(4) *Groundfish Exclusion Areas* or *GEAs* are closed areas intended to mitigate potential impacts to sensitive environments from certain groundfish fishing activity. GEAs may prohibit fishing by certain groundfish sectors or certain groundfish gear types. Geographic coordinates for GEAs are defined at § 660.70.

* * * * *

■ 3. Amend § 660.70 by:

- a. Revising the section heading;
- b. Revising paragraph (a);
- c. Revising paragraph (t) introductory text and adding paragraph (t)(10); and
- d. Removing paragraph (u).

The revisions and addition read as follows:

§ 660.70 Groundfish Conservation Areas and Groundfish Exclusion Areas.

(a) *General.* Groundfish conservation area (GCA) and groundfish exclusion area (GEA) are defined in § 660.11. This section defines GCAs and GEAs whose shapes are not exclusively defined by boundary lines approximating depth contours found in §§ 660.71 through 660.74 or commonly used geographic coordinates at § 660.11. Fishing activity that is prohibited or permitted within a particular GCA or GEA is detailed at subparts C through G of part 660.

* * * * *

(t) *Groundfish Exclusion Areas.* The Groundfish Exclusion Areas (GEAs) are closed areas intended to protect sensitive areas, including areas with coral and sea pens. GEAs are closed to both commercial and recreational groundfish fisheries unless otherwise noted.

* * * * *

(10) *Cordell Bank.* The Cordell Bank GEA is defined by the straight lines connecting the following specific latitude and longitude coordinates in the order listed and connecting back to 37°57.62' N lat., 123°24.22' W long.:

- (i) 37°57.62' N lat., 123°24.22' W long.;
- (ii) 37°57.70' N lat., 123°25.25' W long.;
- (iii) 37°59.47' N lat., 123°26.63' W long.;
- (iv) 38°00.24' N lat., 123°27.87' W long.;
- (v) 38°00.98' N lat., 123°27.65' W long.;
- (vi) 38°02.81' N lat., 123°28.75' W long.;
- (vii) 38°04.26' N lat., 123°29.25' W long.;
- (viii) 38°04.55' N lat., 123°28.32' W long.;
- (ix) 38°03.87' N lat., 123°27.69' W long.;
- (x) 38°04.27' N lat., 123°26.68' W long.;
- (xi) 38°02.67' N lat., 123°24.17' W long.;
- (xii) 38°00.87' N lat., 123°23.15' W long.;
- (xiii) 37°59.32' N lat., 123°22.52' W long.; and
- (xvi) 37°58.24' N lat., 123°23.16' W long.

■ 4. Amend § 660.73 by redesignating paragraphs (b) through (y) as paragraphs (c) through (z), and adding new paragraph (b) to read as follows:

§ 660.73 Latitude/longitude coordinates defining the 100-fm (183-m) through 150-fm (274-m) depth contours.

* * * * *

(b) *Cordell Bank 100 fm ring.* The 100-fm (183-m) depth contour around Cordell Bank off the State of California is defined by straight lines connecting all of the following points in the order stated:

- (1) 38°03.18' N lat., 123°20.77' W long.;
- (2) 38°06.29' N lat., 123°25.03' W long.;
- (3) 38°06.34' N lat., 123°29.32' W long.;
- (4) 38°04.57' N lat., 123°31.30' W long.;
- (5) 38°02.32' N lat., 123°31.07' W long.;
- (6) 38°00.00' N lat., 123°28.40' W long.;
- (7) 37°58.10' N lat., 123°26.66' W long.;
- (8) 37°55.07' N lat., 123°26.81' W long.;
- (9) 38°00.00' N lat., 123°23.08' W long.; and connecting back to 38°03.18' N lat., 123°20.77' W long.

* * * * *

■ 5. Amend § 660.130 by:

- a. Removing paragraph (e)(2);
- b. Redesignating paragraph (e)(3) through (e)(7) as (e)(2) through (e)(6); and
- c. Adding paragraph (h)

The revisions and additions read as follows:

§ 660.130 Trawl fishery—management measures.

* * * * *

(e) * * *

(1) * * *

(2) *Trawl RCA*. This GCA is off the coast of Washington, between the US/Canada border and 46°16' N lat. Boundaries for the trawl RCA applicable to groundfish trawl vessels throughout the year are provided in the header to table 1a (North) of this subpart and may be modified by NMFS inseason pursuant to § 660.60(c). Prohibitions at § 660.112(a)(5) do not apply under the following conditions and when the vessel has a valid declaration for the allowed fishing:

* * * * *

(3) *Block area closures or BACs*. BACs, defined at § 660.111, are applicable to vessels with groundfish bottom trawl or midwater trawl gear on board that is not stowed, per the prohibitions in § 660.112(a)(5). When in effect, BACs are areas closed to bottom trawl and/or midwater trawl fishing. A vessel operating, for any purpose other than continuous transiting, in the BAC must have prohibited trawl gear stowed, as defined at § 660.111. Nothing in these Federal regulations supersedes any state regulations that may prohibit trawling shoreward of the fishery management area, defined at § 660.11. Prohibitions at § 660.112(a)(5) do not apply under any of the following conditions and when the vessel has a valid declaration for the allowed fishing:

* * * * *

(4) *Bycatch reduction areas or BRAs*. Vessels using midwater groundfish trawl gear during the applicable Pacific whiting primary season may be prohibited from fishing shoreward of a boundary line approximating the 75 fm (137 m), 100 fm (183 m), 150 fm (274 m), or 200 fm (366 m) depth contours.

(5) *Eureka management area midwater trawl trip limits*. No more than 10,000-lb (4,536 kg) of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished with midwater groundfish trawl gear in the fishery management area shoreward of the boundary line approximating the 100 fm (183 m) depth contour in the Eureka management area, defined at § 660.11. See also midwater trawl depth restrictions in paragraph (c) of this section.

(6) *Salmon conservation zones*. Fishing with midwater trawl gear and bottom trawl gear, other than selective flatfish trawl gear, is prohibited in the

Klamath River Salmon Conservation Zone and the Columbia River Salmon Conservation Zone (defined at § 660.111).

* * * * *

(h) *Groundfish Exclusion Areas (GEAs)*. GEAs are closed areas defined by specific latitude and longitude coordinates (specified at § 660.70) where recreational and/or commercial fishing for groundfish is prohibited unless otherwise noted at § 660.70(t). It is unlawful to fish for, take and retain, possess (except for the purpose of continuous transit) or land groundfish within the GEAs unless otherwise specified at § 660.70(t). All prohibited fishing gear for targeting groundfish, as specified at § 660.70(t), must be stowed while transiting through a GEA. If fishing for non-groundfish species within a GEA, where all groundfish fishing is prohibited, then no groundfish may be on board the vessel.

■ 6. Amend § 660.230 by removing paragraphs (d)(15) and (16) and adding paragraph (h) to read as follows:

§ 660.230 Fixed gear fishery—management measures.

* * * * *

(h) *Groundfish exclusion areas (GEAs)*. GEAs are closed areas defined by specific latitude and longitude coordinates (specified at § 660.70) where recreational and/or commercial fishing for groundfish is prohibited unless otherwise noted at § 660.70(t). It is unlawful to fish for, take and retain, possess (except for the purpose of continuous transit) or land groundfish within the GEAs unless otherwise specified at § 660.70(t). All prohibited fishing gear for targeting groundfish, as specified at § 660.70(t), must be stowed while transiting through a GEA. If fishing for non-groundfish species within a GEA, where all groundfish fishing is prohibited, then no groundfish may be on board the vessel.

■ 7. Amend § 660.330 by removing paragraphs (d)(17) and (18), and adding paragraph (h) to read as follows:

§ 660.330 Open access fishery—management measures.

* * * * *

(h) *Groundfish exclusion areas (GEAs)*. GEAs are closed areas defined by specific latitude and longitude coordinates (specified at § 660.70) where recreational and/or commercial fishing for groundfish is prohibited unless otherwise noted at § 660.70(t). It is unlawful to fish for, take and retain, possess (except for the purpose of continuous transit) or land groundfish within the GEAs unless otherwise specified at § 660.70(t). All prohibited

fishing gear for targeting groundfish, as specified at § 660.70(t), must be stowed while transiting through a GEA. If fishing for non-groundfish species within a GEA, where all groundfish fishing is prohibited, then no groundfish may be on board the vessel.

■ 8. Amend § 660.360 by:

■ a. Revising paragraphs (c)(3)(i)(A)(3) and (c)(3)(i)(B);

■ b. Removing paragraph (c)(3)(i)(C); and

■ d. Redesignating paragraphs (c)(3)(i)(D) through (I) as paragraphs (c)(3)(i)(C) through (H).

The revisions read as follows:

§ 660.360 Recreational fishery—management measures.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(A) * * *

(3) Between 38°57.50' N lat. and 37°11' N lat. (San Francisco Management Area), recreational fishing for the RCG Complex and lingcod is closed in the EEZ from January 1 through March 31, is prohibited in the EEZ shoreward of the boundary line approximating the 50-fm (91-m) depth contour along the mainland coast and along islands and offshore seamounts from April 1 through April 30, is closed in the EEZ from May 1 to September 30, is prohibited in the EEZ shoreward of the boundary line approximating the 50-fm (91-m) depth contour along the mainland coast and along islands and offshore seamounts from October 1 through October 31, closed in the EEZ from November 1 through November 30, and prohibited in the EEZ shoreward of the boundary line approximating the 50-fm (91-m) depth contour along the mainland coast and along islands and offshore seamounts from December 1 through December 31.

* * * * *

(B) *Groundfish exclusion areas (GEAs)*. GEAs are closed areas defined by specific latitude and longitude coordinates (specified at § 660.70) where recreational and/or commercial fishing for groundfish is prohibited unless otherwise noted at § 660.70(t). It is unlawful to fish for, take and retain, possess (except for the purpose of continuous transit) or land groundfish within the GEAs unless otherwise specified at § 660.70(t). Recreational fishing gear for targeting groundfish may not be deployed while transiting through a GEA. If fishing for non-groundfish species within a GEA, then

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Amendment 57 would not affect the status of the resource, harvest specifications, fishery operations, or communities engaged in BSAI crab fisheries. Amendment 57 includes the following changes. First, it restructures the Crab FMP into six main chapters: (1) Introduction, (2) Goals and Objectives, (3) Conservation and Fishery Management Measures, (4) Description of Stocks and Fishery, (5) Relationship to Applicable Law and Other Fisheries,

and (6) References. This structure aligns with other North Pacific FMPs. Second, it provides updated information on stock statuses, essential fish habitat, and fishing communities engaged in BSAI crab fisheries in Sections 4.2, 4.3.2, and 4.5, respectively. Finally, throughout the Crab FMP, other changes include revisions to the organizational structure, improved content summarization, and grammatical corrections. A more complete list of proposed administrative changes and restructuring of the document in amendment 57 to the Crab FMP is available in Section 2.1 and Appendix A of the Analysis.

Amendment 57 would incorporate the best scientific information available, reflecting the current status of crab stocks, fishing operations, and fishing communities consistent with the Magnuson-Stevens Act.

NMFS is soliciting public comments on proposed amendment 57 through the end of the comment period (see **DATES**). All relevant written comments received by the end of the applicable comment period will be considered by NMFS in the approval/partial approval/disapproval decision for amendment 57, and will be addressed in the response to comments in the final decision. Comments received after the end of the

applicable comment period will not be considered in the approval/partial approval/disapproval decision on amendment 57. To be considered, comments must be received by the last day of the comment period (see **DATES**), regardless of the date of postmarking or other transmittal.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: January 29, 2026.

Kelly Denit,

*Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.*

[FR Doc. 2026-02068 Filed 1-30-26; 8:45 am]

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Notices

Federal Register

Vol. 91, No. 21

Monday, February 2, 2026

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

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

[Docket No. RBS-26-BUSINESS-0034]

Notice of Funding Opportunities for the Strategic Economic and Community Development Program for FY 2026

AGENCY: Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: The Under Secretary for Rural Development (RD or Agency) is seeking applications for the Strategic Economic and Community Development (SECD) priority, as reauthorized by Section 6401 of the Agriculture Improvement Act of 2018 (2018 Farm Bill) for projects that support multi-jurisdictional and multi-sectoral strategic community investment plans. In Fiscal Year (FY) 2026, the covered RD programs will implement SECD by reserving loan and grant funds from the appropriations of the programs covered by this funding priority. This notice describes the requirements by which RD will consider projects eligible for covered programs' reserved funds and information needed to submit an application. Information on FY 2026 funding amounts can be found under **SUPPLEMENTARY INFORMATION**, section B. Federal Award Information of this notice.

DATES: Each of the participating covered programs has a different established deadline for receipt of applications. Please refer to the RD website or the appropriate covered program's **Federal Register** Notice for application deadline information.

ADDRESSES: SECD applications, except for the covered Community Connect

Grant Program and Water and Waste Disposal Loans and Grants Programs, must be submitted electronically to the USDA RD Office servicing the area where the project is located. Community Connect Grant Program applicants must submit SECD applications electronically at: <https://www.rd.usda.gov/community-connect>. Applications for Water and Waste Disposal Loans and Grants Programs must be submitted electronically at <https://rdapply.sc.egov.usda.gov/>. For lenders assigned an OneRD Loan Guarantee Initiative Customer Relationship Manager (CRM), SECD applications must be submitted to their assigned CRM.

All applicants are responsible for any expenses incurred in preparing and submitting applications.

To apply for SECD funding in FY 2026, applicants must follow the instructions as published in this notice:

- All applicants must submit the Form RD 1980-88, "Strategic Economic and Community Development (Section 6401)" located at <https://forms.sc.egov.usda.gov/eForms/>, with their program application to the appropriate covered program.
- SECD applications, except for the Community Connect Grant Program and Water and Waste Disposal Loans and Grant Program SECD applications, must be submitted to the USDA RD Office servicing the area where the project is located. Each SECD application must be accompanied by a covered program application. USDA RD State Offices will assist with covered program and SECD applications. A list of the USDA RD State Offices can be found at: <https://www.rd.usda.gov/browse-state>. Business Programs, Community Programs and Water and Waste Disposal Programs staff can be located and contacted in USDA RD State Offices found at the link provided.

- Community Connect Grant Program applicants must submit SECD applications electronically at: <https://www.rd.usda.gov/community-connect>.

- Water and Waste Disposal Loans and Grant Program applicants must submit SECD applications electronically at <https://rdapply.sc.egov.usda.gov/>.

- For lenders assigned a OneRD Loan Guarantee Initiative Customer Relationship Manager (CRM), SECD applications must be submitted to their assigned CRM.

FOR FURTHER INFORMATION CONTACT: For more information, please contact your respective RD State Office listed here: <https://www.rd.usda.gov/browse-state>.

All other inquiries may be submitted to gregory.dale@usda.gov.

A checklist of all required application information for regional planning priority can be found at: <https://www.rd.usda.gov/programs-services/business-programs/strategic-economic-and-community-development>.

SUPPLEMENTARY INFORMATION:

Overview

Federal Awarding Agency Name: Rural Business-Cooperative Service, Rural Housing Service, Rural Utilities Service.

Funding Opportunity Title: Strategic Economic and Community Development.

Announcement Type: Notice of Funding Opportunity.

The following covered programs with their Assistance Listing (AL) numbers are listed as follows:

- Community Facilities (CF) Loans; see 7 CFR part 1942, subpart A; AL: 10.766.
 - Community Facilities Grants; see 7 CFR part 3570, subpart B; AL: 10.766.
 - Community Facilities Guaranteed Loans; see 7 CFR part 5001; AL: 10.766.
 - Water and Waste Disposal Program Guaranteed Loans; see 7 CFR part 5001; AL: 10.766.
 - Water and Waste Disposal Loans and Grants; see 7 CFR part 1780; AL: 10.760.
 - Rural Business Development Grants; see 7 CFR part 4280, subpart E; AL: 10.351.
 - Community Connect Grants; see 7 CFR part 1739, subpart A; AL: 10.863.
- Dates:* See information provided in the **DATES** section of this notice.

A. Program Description

1. Purpose of the Program

SECD supports projects that promote and partially or completely implement strategic community investment plans. These plans use the unique strengths of rural communities to advance prosperity. USDA RD helps finance and/or fund these projects to build community prosperity by using community assets, identifying resources, convening partners, and leveraging Federal, state, local or private funding.

In FY 2026, the Agency plans to implement SECD through reserving funds from the covered programs' appropriations as provided in 7 CFR part 1980, subpart K. This notice provides requirements to applicants submitting applications for the covered programs' reserved funds and establishes the above-mentioned priority effective upon the publication of this notice.

2. Statutory and Regulatory Authority

These funds are made available under Section 379H of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 2008v).

3. The Covered Programs

Section 379H of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 2008v), authorizes any program under the Consolidated Farm and Rural Development Act (Pub. L. 87–128), as determined by the Secretary, to give priority to

applications that support the implementation of multi-jurisdictional and multi-sectoral strategic community investment plans.

Accordingly, the Agency is giving priority to projects implementing strategic community investment plans in FY 2026 through the following RD programs:

- Community Facilities Loans; see 7 CFR part 1942, subpart A.
- Community Facilities Grants; see 7 CFR part 3570, subpart B.
- Community Facilities Guaranteed Loans; see 7 CFR part 5001.
- Water and Waste Disposal Programs Guaranteed Loans; see 7 CFR part 5001.
- Water and Waste Disposal Loans and Grants; see 7 CFR part 1780.
- Rural Business Development Grants; see 7 CFR part 4280, subpart E.
- Community Connect Grants, see 7 CFR part 1739.

4. Application of Awards

The Agency will review, evaluate, and score each application based on the

criteria specified in 7 CFR 1980.1020, to award points for each program's competition for the SECD reserved funds.

B. Federal Award Information

Type of Awards: Guaranteed loans, direct loans and grants.

Fiscal Year Funds: FY 2026 appropriated funds.

Available Funds: The amount of reserved funds available for SECD projects is dependent on the amount of available appropriated funding provided to each of the covered programs during the fiscal year. Successful applications will be selected by the Agency for funding and subsequently awarded. The Agency advises that all interested parties bear the financial burden of preparing and submitting an application in response to this Notice.

For FY 2026 applications, the following table specifies the anticipated percentage of funds being reserved for the covered SECD programs:

Program	Anticipated percentage of funds reserved for SECD (percent)
Community Connect Grants	10
Community Facilities Loans	10
Community Facilities Grants	5
Community Facilities Guaranteed Loans	5
Water and Waste Disposal Guaranteed Loans	10
Water and Waste Disposal Direct Loans	5
Water and Waste Disposal Grants	3
Rural Business Development Grants	5

Award Amounts: Guaranteed loans, direct loans and grants will be awarded in amounts consistent with the requirements of each applicable covered program.

Anticipated Award Dates: Awards for SECD applications submitted to the covered programs in FY 2026 will be obligated on or before June 30, 2026, for Community Facilities (CF) and Water and Waste Disposal Loans and Grants; on or before July 31, 2026 for Rural Business Development Grant (RBDG); and on or before September 30, 2026, for Community Connect Grants. The Agency will return any reserved funds that are not obligated by the obligation deadline to each covered program's regular funding account for obligation of eligible projects in that program.

Performance Period: Performance period will vary by covered program.

Renewal or Supplemental Awards: N/A.

Type of Assistance Instrument: Grants, direct loans, and loan guarantees.

C. Eligibility Information

1. Eligible Applicants

To be considered for SECD reserved funds, both the applicant and project must meet the eligibility requirements of the covered program. These requirements vary among the covered programs and applicants should refer to the regulations for those programs, which are referenced in Section A.3. of this notice.

The Agency supports community and regional planning through the SECD regulation without making any changes to the applicant eligibility requirements of the covered programs. The SECD regulation includes three criteria that a project must meet to be considered for the SECD reserve funding (see 7 CFR 1980.1010).

The first criterion, as noted above, is that the project meets the applicable eligibility requirements of the covered program for which the applicant is applying.

The second criterion is that the project is "carried out in a rural area"

as defined in 7 CFR 1980.1005. As defined, this means either the entire project is physically located in a rural area, or all the beneficiaries of the service(s) provided through the project must either reside in or be located in a rural area. Note that the definition of "rural" varies among the covered programs and the SECD regulation (7 CFR part 1980, subpart K) does not change those definitions. Therefore, the applicable program regulations as outlined in Section A.2 of this notice should be reviewed as necessary.

The third criterion is that the project supports partial or complete implementation of a strategic community investment plan on a multi-jurisdictional and multi-sectoral basis as defined in 7 CFR 1980.1005.

To be considered for the reserved funds from covered programs in FY 2026, applicants must: (1) meet all requirements of the covered program; (2) meet all requirements in accordance with 7 CFR part 1980, subpart K (see 7 CFR 1980.1010); and (3) submit Form RD 1980–88 and the supporting

documentation required in 7 CFR 1080.1015, in addition to their program application, which includes:

- Sufficient information to show that the project will be carried out in a rural area, as defined by the appropriate covered program; and
- Identification of any current or previous applications the applicant has submitted for funds from the covered programs.

2. Cost Sharing or Matching

All cost sharing, matching, and cost participation requirements of the applicable covered program apply to projects seeking SECD reserved funds.

3. Other

All other eligibility requirements (beyond those identified in Section C.1 of this notice) found in the covered programs' regulations applying to applicants, their projects, and the beneficiaries of those projects are unchanged by either this notice or the regulations for the SECD program (7 CFR part 1980, subpart K).

D. Application and Submission Information

1. Address To Request Application Package

Information on how to submit applications is provided in the **ADDRESSES** section of this notice.

2. Content and Form of Application Submission

Applicants must submit the Form RD 1980-88, "Strategic Economic and Community Development (Section 6401)," located at <https://forms.sc.egov.usda.gov/eForms/>, with their program application to the appropriate covered program.

3. System for Award Management (SAM) and Unique Entity Identifier (UEI)

(a) At the time of application, each applicant must have an active registration in the System for Award Management (SAM) before submitting its application in accordance with 2 CFR part 25 (<https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-25>). To register in SAM, entities will be required to obtain a Unique Entity Identifier (UEI). Instructions for obtaining the UEI are available at <https://sam.gov/entity-registration>.

(b) Applicant must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active Federal award or an application under consideration by a federal awarding agency.

(c) Applicant must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

(d) Applicant must provide a valid UEI in its application, unless determined exempt under 2 CFR 25.110 (<https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-25/subpart-A/section-25.110>).

(e) The Agency will not make an award until the applicant has complied with all SAM requirements including providing the UEI. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the applicant is not qualified to receive a federal award and use that determination as a basis for making a federal award to another applicant.

4. Application Submission Deadlines

Each of the participating covered programs has different established deadlines for receipt of applications. Please refer to the Agency website or the appropriate covered program's **Federal Register** Notice for application deadline information. The Agency will not solicit or consider new scoring or eligibility information that is submitted after the application deadline. The covered RD programs also reserve the right to ask applicants for clarifying information and additional verification of assertions in the application.

5. Intergovernmental Review

This Notice is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

6. Funding Restrictions

All applicants are responsible for any expenses incurred in preparing and submitting applications.

7. Other Submission Requirements

(a) SECD applications must be submitted electronically to the USDA RD Office servicing the area where the project is located. RD State Offices can be found here: <https://www.rd.usda.gov/browse-state>.

(b) Water and Waste Disposal Loans and Grant Program applicants must submit SECD applications electronically at https://usdagcc.sharepoint.com/sites/rd_ic/SECD.

(c) For lenders assigned an OneRD Loan Guarantee Initiative Customer Relationship Manager (CRM), SECD applications must be submitted to their assigned CRM.

(d) Community Connect Grant Program applicants must submit SECD

applications electronically at: <https://reconnect-apply.rd.usda.gov>.

E. Application Review Information

1. Criteria

All FY 2026 applications for covered programs will be reviewed, evaluated, and scored based on the covered program's scoring criteria. This notice does not affect that process. This notice only affects the scoring of SECD applications competing for a covered program's SECD reserve funds.

For applicants wishing to be considered for reserved SECD funds in FY 2026, the Agency will review, evaluate, and score each application based on the criteria specified in 7 CFR 1980.1020, to award points for each covered program's SECD reserved funds.

2. Review and Selection Process

The Agency will prioritize applications competing for a covered program's reserved funds based on the covered program's awarded points plus the SECD earned points to determine which projects receive reserved funds. SECD points awarded are added to the covered program's application score to elevate and prioritize projects for accessing reserved funds. The RD covered programs reserve the right to offer the applicant less than the funding requested.

F. Federal Award Administration Information

1. Federal Award Notices

The Agency will notify SECD applicants who receive funding in a manner consistent with award notifications for the covered program.

2. Administrative and National Policy Requirements

Any and all additional requirements of the applicable covered programs apply to projects receiving funding in response to this notice. Please see the regulations for the applicable covered program.

3. Reporting Requirements

Any and all post-award covered program reporting requirements apply to all projects receiving reserved funds in response to this notice.

G. Federal Awarding Agency Contact(s)

For general questions about this notice, please contact your respective Rural Development State Office listed at: <https://www.rd.usda.gov/browse-state> and other points of contact provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

H. Build America, Buy America

Funding to Non-Federal Entities. Awardees that are Non-Federal Entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of Section 70914 of the Build America, Buy America Act (BABAA) within the Infrastructure Investment and Jobs Act, Public Law 117–58. Any requests for waiver of these requirements must be submitted pursuant to USDA's guidance available online at <https://www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver>.

I. Other Information

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements contained in 7 CFR part 1980, subpart K, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0068.

National Environmental Policy Act

All recipients under this notice are subject to the requirements of 7 CFR part 1b.

Federal Funding Accountability and Transparency Act

All applicants, in accordance with 2 CFR part 25, must be registered in SAM and have a UEI number as stated in Section D.3 of this notice. All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

Civil Rights

All awards of Federal financial assistance made under this notice are subject to applicable civil rights laws, which may include Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title VIII of the Civil Rights Act of 1968, Title IX of the Education Amendments of 1973, and the Equal Credit Opportunity Act.

Equal Opportunity for Religious Organizations

(1) Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at, and subject to the protections and requirements of, this part and any applicable constitutional and statutory requirements, including 42 U.S.C. 2000bb *et seq.* USDA will not, in the

selection of recipients, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

(2) A faith-based organization that participates in this program will retain its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law. Religious accommodations may also be sought under many of these religious freedom and conscience protection laws.

(3) A faith-based organization may not use direct Federal financial assistance from USDA to support or engage in any explicitly religious activities except when consistent with the Establishment Clause of the First Amendment and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by USDA, or in their outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Nondiscrimination Statement

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

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the State or local Agency that administers the program or contact USDA through the Telecommunications Relay Service at 711 (voice and TTY). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program

Discrimination Complaint Form, AD–3027, found online at How to File a Program Discrimination Complaint (<https://www.usda.gov/about-usda/general-information/staff-offices/office-assistant-secretary-civil-rights/how-file-program-discrimination-complaint>) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

- (1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Mail Stop 9410, Washington, DC 20250–9410;
- (2) *Fax:* (202) 690–7442; or
- (3) *Email:* program.intake@usda.gov.

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

Anthony Priest,

Acting Chief of Staff, Rural Development.

[FR Doc. 2026–01934 Filed 1–30–26; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission automatically initiate and conduct reviews to determine whether revocation of an antidumping duty or countervailing duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for March 2026

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in March 2026 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Department Contact
Antidumping Duty Proceedings	
Common Alloy Aluminum Sheet from Bahrain, A-525-001 (1st Review)	Thomas Martin, (202) 482-3938.
Common Alloy Aluminum Sheet from Brazil, A-351-854 (1st Review)	Thomas Martin, (202) 482-3938.
Silicon Metal from Bosnia and Herzegovina, A-893-001 (1st Review)	Thomas Martin (202) 482-3938.
Diamond Sawblades from China, A-570-900 (3rd Review)	Mary Kolberg, (202) 482-1785.
Polyvinyl Alcohol from China, A-570-879 (4th Review)	Mary Kolberg, (202) 482-1785.
Twist Ties from China, A-570-131 (1st Review)	Mary Kolberg, (202) 482-1785.
Common Alloy Aluminum Sheet from Croatia, A-891-001 (1st Review)	Thomas Martin, (202) 482-3938.
Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Czech Republic, A-851-804 (1st Review).	Walter Ankner, (202) 482-8374.
Common Alloy Aluminum Sheet from Egypt, A-729-803 (1st Review)	Thomas Martin, (202) 482-3938.
Common Alloy Aluminum Sheet from Germany, A-428-849 (1st Review)	Thomas Martin, (202) 482-3938.
Silicon Metal from Iceland, A-400-001 (1st Review)	Thomas Martin, (202) 482-3938.
Common Alloy Aluminum Sheet from India, A-533-895 (1st Review)	Thomas Martin, (202) 482-3938.
Common Alloy Aluminum Sheet from Indonesia, A-560-835 (1st Review)	Thomas Martin, (202) 482-3938.
Common Alloy Aluminum Sheet from Italy, A-475-842 (1st Review)	Thomas Martin, (202) 482-3938.
Polyvinyl Alcohol from Japan, A-588-861 (4th Review)	Mary Kolberg, (202) 482-1785.
Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Korea, A-580-909 (1st Review).	Walter Ankner, (202) 482-8374.
Silicon Metal from Malaysia, A-557-820 (1st Review)	Thomas Martin, (202) 482-3938.
Standard Steel Welded Wire Mesh from Mexico, A-201-853 (1st Review)	Mary Kolberg, (202) 482-1785.
Common Alloy Aluminum Sheet from Oman, A-523-814 (1st Review)	Thomas Martin, (202) 482-3938.
Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Russia, A-821-826 (1st Review).	Walter Ankner, (202) 482-8374.
Common Alloy Aluminum Sheet from Romania, A-485-809 (1st Review)	Thomas Martin, (202) 482-3938.
Common Alloy Aluminum Sheet from Serbia, A-801-001 (1st Review)	Thomas Martin, (202) 482-3938.
Common Alloy Aluminum Sheet from Slovenia, A-856-001 (1st Review)	Thomas Martin, (202) 482-3938.
Common Alloy Aluminum Sheet from South Africa, A-791-825 (1st Review)	Thomas Martin, (202) 482-3938.
Common Alloy Aluminum Sheet from Spain, A-469-820 (1st Review)	Thomas Martin, (202) 482-3938.
Common Alloy Aluminum Sheet from Taiwan, A-583-867 (1st Review)	Thomas Martin, (202) 482-3938.
Common Alloy Aluminum Sheet from Türkiye, A-489-839 (1st Review)	Thomas Martin, (202) 482-3938.
Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine, A-823-819 (1st Review).	Walter Ankner, (202) 482-8374.
Countervailing Duty Proceedings	
Common Alloy Aluminum Sheet from Bahrain, C-525-002 (1st Review)	Mary Kolberg, (202) 482-1785.
Twist Ties from China, C-570-132 (1st Review)	Thomas Martin, (202) 482-3938.
Common Alloy Aluminum Sheet from India, C-533-896 (1st Review)	Thomas Martin, (202) 482-3938.
Silicon Metal from Kazakhstan, C-834-811 (1st Review)	Thomas Martin, (202) 482-3938.
Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Korea, C-580-910 (1st Review).	Walter Ankner, (202) 482-8374.
Standard Steel Welded Wire Mesh from Mexico, C-201-854 (1st Review)	Thomas Martin, (202) 482-3938.
Phosphate Fertilizers from Morocco, C-714-001 (1st Review)	Mary Kolberg, (202) 482-1785.
Phosphate Fertilizers from Russia, C-821-825 (1st Review)	Mary Kolberg, (202) 482-1785.
Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Russia, C-821-827 (1st Review).	Mary Kolberg, (202) 482-1785.
Common Alloy Aluminum Sheet from Türkiye, C-489-840 (1st Review)	Walter Ankner, (202) 482-8374.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in March 2026.

Commerce's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year (Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service lists, it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹ An electronically-filed document must be received successfully in its entirety via Commerce's online e-filing and

¹ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule*, 88 FR 67069 (September 29, 2023)

document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS) by 5:00 p.m. Eastern Time on the day on which it is due. For further information on procedures for filing information with Commerce through ACCESS, refer to User Guide found at <https://access.trade.gov/login.aspx>.

In prior proceedings we have encouraged interested parties to provide an executive summary of their comments, including footnotes. In these sunset reviews, we request that interested parties provide, at the beginning of their comments, an executive summary for each issue raised in their comments. Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including

citations. We intend to use the public executive summaries as the basis of the comment summaries included in the decision memorandum that will accompany the notice to be published in the **Federal Register**. Finally, we request that interested parties include footnotes for relevant citations in the public executive summary of each issue.

Notification to Interested Parties

This notice is not required by statute but is published as a service to the international trading community.

Dated: January 22, 2026.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2026-02089 Filed 1-30-26; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping duty (AD) and countervailing duty (CVD) orders and suspended investigations listed below. The U.S. International Trade Commission (ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same orders and suspended investigations.

DATES: Applicable February 2, 2026.

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue

NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205-3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following AD and CVD orders and suspended investigations:

Commerce case No.	ITC case No.	Country	Product	Commerce contact
Antidumping Duty Proceedings				
A-337-804	731-TA-776	Chile	Preserved Mushrooms, (5th Review)	Walter Ankner, (202) 482-8374.
A-570-122	731-TA-1473	China	Corrosion Inhibitors, (1st Review)	Mary Kolberg, (202) 482-1785.
A-570-895	731-TA-1070-A	China	Crepe Paper, (4th Review)	Thomas Martin, (202) 482-3938.
A-570-121	731-TA-1472	China	Difluoromethane (R-32), (1st Review)	Thomas Martin, (202) 482-3938.
A-570-891	731-TA-1059	China	Hand Trucks, (4th Review)	Walter Ankner, (202) 482-8374.
A-570-119	731-TA-1471	China	Large Vertical Shaft Engines, (1st Review)	Walter Ankner, (202) 482-8374.
A-570-851	731-TA-777	China	Preserved Mushrooms, (5th Review)	Walter Ankner, (202) 482-8374.
A-533-813	731-TA-778	India	Preserved Mushrooms, (5th Review)	Walter Ankner, (202) 482-8374.
A-560-802	731-TA-779	Indonesia	Preserved Mushrooms, (5th Review)	Walter Ankner, (202) 482-8374.
Countervailing Duty Proceedings				
C-570-123	701-TA-638	China	Corrosion Inhibitors, (1st Review)	Mary Kolberg, (202) 482-1785.
C-570-120	701-TA-637	China	Large Vertical Shaft Engines, (1st Review)	Mary Kolberg, (202) 482-1785.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: <https://enforcement.trade.gov/sunset/>. All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of

documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.

In accordance with section 782(b) of the Act, any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. Parties must use the certification formats provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does

not comply with applicable revised certification requirements.

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the

publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.¹

Information Required From Interested Parties

Domestic interested parties, as defined in sections 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.²

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning AD and CVD proceedings at

Commerce. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).³ An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the day on which it is due.

In prior proceedings we have encouraged interested parties to provide an executive summary of their comments, including footnotes. In these sunset reviews, we request that interested parties provide at the beginning of their comments, an executive summary for each issue raised in their comments. Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment memorandum that will accompany the notice to be published in the **Federal Register**. Finally, we request that interested parties include footnotes for relevant citations in the public executive summary of each issue.

Notification to Interested Parties

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: January 22, 2026.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2026–02090 Filed 1–30–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT:

Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping duty (AD) or countervailing duty (CVD) order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the U.S. Department of Commerce (Commerce) conduct an administrative review of that AD or CVD order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review (POR). We intend to release the CBP data under administrative protective order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

1. In general, Commerce finds that determinations concerning whether particular companies should be “collapsed” (*i.e.*, treated as a single entity for purposes of calculating AD rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this AD proceeding

¹ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19*, 85 FR 41363 (July 10, 2020).

² See 19 CFR 351.218(d)(1)(iii).

³ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule*, 88 FR 67069 (September 29, 2023).

(i.e., investigation, administrative review, new shipper review, or changed circumstances review).

2. For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection.

3. Parties are requested to: (a) identify which companies subject to review previously were collapsed; and (b) provide a citation to the proceeding in which they were collapsed.

4. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general, each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity,

complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.¹ Section 773(e) of the Act states that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under

this subtitle or any other calculation methodology.” When an interested party submits a PMS allegation, pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

Opportunity to Request a Review: Not later than the last day of February 2026,² interested parties may request an administrative review of the following orders, findings, or suspended investigations, with anniversary dates in February for the following periods:

	Period
Antidumping Duty Proceedings	
ARGENTINA: Prestressed Concrete Steel Wire Strand, A-357-822	2/1/25-1/31/26
BRAZIL: Lemon Juice, A-351-858	2/1/25-1/31/26
COLOMBIA: Prestressed Concrete Steel Wire Strand, A-301-804	2/1/25-1/31/26
EGYPT: Prestressed Concrete Steel Wire Strand, A-729-804	2/1/25-1/31/26
INDIA: Certain Cut-To-Length Carbon-Quality Steel Plate, A-533-817	2/1/25-1/31/26
INDIA: Certain Preserved Mushrooms, A-533-813	2/1/25-1/31/26
INDIA: Certain Frozen Warmwater Shrimp, A-533-840	2/1/25-1/31/26
INDIA: Sodium Nitrite, A-533-906	2/1/25-1/31/26
INDIA: Stainless Steel Bar, A-533-810	2/1/25-1/31/26
INDONESIA: Certain Cut-To-Length Carbon-Quality Steel Plate, A-560-805	2/1/25-1/31/26
INDONESIA: Certain Preserved Mushrooms, A-560-802	2/1/25-1/31/26
ITALY: Stainless Steel Butt-Weld Pipe Fittings, A-475-828	2/1/25-1/31/26
JAPAN: Carbon Steel Butt-Weld Pipe Fittings, A-588-602	2/1/25-1/31/26
MALAYSIA: Stainless Steel Butt-Weld Pipe Fittings, A-557-809	2/1/25-1/31/26
MEXICO: Large Residential Washers, A-201-842	2/1/25-1/31/26
PHILIPPINES: Stainless Steel Butt-Weld Pipe Fittings, A-565-801	2/1/25-1/31/26
REPUBLIC OF KOREA: Certain Cut-To-Length Carbon-Quality Steel Plate, A-580-836	2/1/25-1/31/26
REPUBLIC OF TÜRKİYE: Certain Carbon and Alloy Steel Cut-To-Length Plate, A-489-828	2/1/25-1/31/26
REPUBLIC OF TÜRKİYE: Prestressed Concrete Steel Wire Strand, A-489-842	2/1/25-1/31/26
SAUDI ARABIA: Prestressed Concrete Steel Wire Strand, A-517-806	2/1/25-1/31/26
SOCIALIST REPUBLIC OF VIETNAM: Certain Frozen Warmwater Shrimp, A-552-802	2/1/25-1/31/26
SOCIALIST REPUBLIC OF VIETNAM: Steel Wire Garment Hangers, A-552-812	2/1/25-1/31/26
SOCIALIST REPUBLIC OF VIETNAM: Utility Scale Wind Towers, A-552-814	2/1/25-1/31/26
SOUTH AFRICA: Carbon and Alloy Steel Cut-To-Length Plate, A-791-822	2/1/25-1/31/26
SOUTH AFRICA: Lemon Juice, A-791-827	2/1/25-1/31/26
TAIWAN: Carbon and Alloy Steel Threaded Rod, A-583-865	2/1/25-1/31/26
TAIWAN: Crystalline Silicon Photovoltaic Products, A-583-853	2/1/25-1/31/26
TAIWAN: Prestressed Concrete Steel Wire Strand, A-583-868	2/1/25-1/31/26
THAILAND: Certain Frozen Warmwater Shrimp, A-549-822	2/1/25-1/31/26
THE NETHERLANDS: Prestressed Concrete Steel Wire Strand, A-421-814	2/1/25-1/31/26
THE PEOPLE'S REPUBLIC OF CHINA: Certain Preserved Mushrooms, A-570-851	2/1/25-1/31/26
THE PEOPLE'S REPUBLIC OF CHINA: Common Alloy Aluminum Sheet, A-570-073	2/1/25-1/31/26

¹ See Trade Preferences Extension Act of 2015, Pub. L. 114-27, 129 Stat. 362 (2015).

² Or the next business day, if the deadline falls on a weekend, Federal holiday or any other day when Commerce is closed.

	Period
THE PEOPLE'S REPUBLIC OF CHINA: Crystalline Silicon Photovoltaic Products, A-570-010	2/1/25-1/31/26
THE PEOPLE'S REPUBLIC OF CHINA: Certain Frozen Warmwater Shrimp, A-570-893	2/1/25-1/31/26
THE PEOPLE'S REPUBLIC OF CHINA: Gas Powered Pressure Washers, A-570-148	2/1/25-1/31/26
THE PEOPLE'S REPUBLIC OF CHINA: Heavy Forged Hand Tools, With or Without Handles, A-570-803	2/1/25-1/31/26
THE PEOPLE'S REPUBLIC OF CHINA: Large Residential Washers, A-570-033	2/1/25-1/31/26
THE PEOPLE'S REPUBLIC OF CHINA: Small Diameter Graphite Electrodes, A-570-929	2/1/25-1/31/26
THE PEOPLE'S REPUBLIC OF CHINA: Truck and Bus Tires, A-570-040	2/1/25-1/31/26
THE PEOPLE'S REPUBLIC OF CHINA: Uncovered Innerspring Units, A-570-928	2/1/25-1/31/26
THE PEOPLE'S REPUBLIC OF CHINA: Utility Scale Wind Towers, A-570-981	2/1/25-1/31/26
THE PEOPLE'S REPUBLIC OF CHINA: Wood Mouldings and Millwork Products, A-570-117	2/1/25-1/31/26
UNITED ARAB EMIRATES: Prestressed Concrete Steel Wire Strand, A-520-809	2/1/25-1/31/26
Countervailing Duty Proceedings	
INDIA: Brass Rod, C-533-916	1/1/25-12/31/25
INDIA: Certain Cut-To-Length Carbon-Quality Steel Plate, C-533-818	1/1/25-12/31/25
INDIA: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, C-533-874	1/1/25-12/31/25
INDIA: Prestressed Concrete Steel Wire Strand, C-533-829	1/1/25-12/31/25
INDIA: Sodium Nitrite, C-533-907	1/1/25-12/31/25
INDONESIA: Certain Cut-To-Length Carbon-Quality Steel Plate, C-560-806	1/1/25-12/31/25
REPUBLIC OF KOREA: Certain Cut-To-Length Carbon-Quality Steel Plate, C-580-837	1/1/25-12/31/25
REPUBLIC OF TÜRKİYE: Prestressed Concrete Steel Wire Strand, C-489-843	1/1/25-12/31/25
SOCIALIST REPUBLIC OF VIETNAM: Steel Wire Garment Hangers, C-552-813	1/1/25-12/31/25
THE PEOPLE'S REPUBLIC OF CHINA: Cold-Drawn Mechanical Tubing, C-570-059	1/1/25-12/31/25
THE PEOPLE'S REPUBLIC OF CHINA: Common Alloy Aluminum Sheet, C-570-074	1/1/25-12/31/25
THE PEOPLE'S REPUBLIC OF CHINA: Crystalline Silicon Photovoltaic Products, C-570-011	1/1/25-12/31/25
THE PEOPLE'S REPUBLIC OF CHINA: Gas Powered Pressure Washers, C-570-149	1/1/25-12/31/25
THE PEOPLE'S REPUBLIC OF CHINA: Truck and Bus Tires, C-570-041	1/1/25-12/31/25
THE PEOPLE'S REPUBLIC OF CHINA: Utility Scale Wind Towers, C-570-982	1/1/25-12/31/25
THE PEOPLE'S REPUBLIC OF CHINA: Wood Mouldings and Millwork Products, C-570-118	1/1/25-12/31/25

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that Commerce conduct an administrative review. For both AD and CVD reviews, the interested party must specify the individual producers or exporters covered by an AD finding or an AD or CVD order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires Commerce to review those particular producers or exporters. If the interested party intends for Commerce to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the

review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for Commerce to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (June 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to AD findings and orders.³

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an AD administrative review.⁴ Accordingly, the NME entity will not be under review

unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.⁵ In administrative reviews of AD orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an AD administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on

³ See Enforcement and Compliance's website at <https://www.trade.gov/us-antidumping-and-countervailing-duties>.

⁴ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

⁵ In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

Enforcement and Compliance's ACCESS website at <https://access.trade.gov>.⁶ Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).⁷

Commerce will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of February 2026. If Commerce does not receive, by the last day of February 2026, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period of the order, if such a gap period is applicable to the period of review.

Establishment of and Updates to the Annual Inquiry Service List

On September 20, 2021, Commerce published the final rule titled "*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*" in the **Federal Register**.⁸ On September 27, 2021, Commerce also published the notice entitled "*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*" in the **Federal Register**.⁹ The *Final Rule* and

Procedural Guidance provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.¹⁰

In accordance with the *Procedural Guidance*, for orders published in the **Federal Register** before November 4, 2021, Commerce created an annual inquiry service list segment for each order and suspended investigation. Interested parties who wished to be added to the annual inquiry service list for an order submitted an entry of appearance to the annual inquiry service list segment for the order in ACCESS and, on November 4, 2021, Commerce finalized the initial annual inquiry service lists for each order and suspended investigation. Each annual inquiry service list has been saved as a public service list in ACCESS, under each case number, and under a specific segment type called "AISL-Annual Inquiry Service List."¹¹

As mentioned in the *Procedural Guidance*, beginning in January 2022, Commerce will update these annual inquiry service lists on an annual basis when the *Opportunity Notice* for the anniversary month of the order or suspended investigation is published in the **Federal Register**.¹² Accordingly, Commerce will update the annual inquiry service lists for the above-listed AD and CVD proceedings. All interested parties wishing to appear on the updated annual inquiry service list must take one of the two following actions: (1) new interested parties who did not previously submit an entry of appearance must submit a new entry of appearance at this time; (2) interested parties who were included in the preceding annual inquiry service list must submit an amended entry of appearance to be included in the next

year's annual inquiry service list. For these interested parties, Commerce will change the entry of appearance status from "Active" to "Needs Amendment" for the annual inquiry service lists corresponding to the above-listed proceedings. This will allow those interested parties to make any necessary amendments and resubmit their entries of appearance. If no amendments need to be made, the interested party should indicate in the area on the ACCESS form requesting an explanation for the amendment that it is resubmitting its entry of appearance for inclusion in the annual inquiry service list for the following year. As mentioned in the *Final Rule*,¹³ once the petitioners and foreign governments have submitted an entry of appearance for the first time, they will automatically be added to the updated annual inquiry service list each year.

Interested parties have 30 days after the date of this notice to submit new or amended entries of appearance. Commerce will then finalize the annual inquiry service lists five business days thereafter. For ease of administration, please note that Commerce requests that law firms with more than one attorney representing interested parties in a proceeding designate a lead attorney to be included on the annual inquiry service list.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at <https://access.trade.gov>.

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule*, Commerce stated that, "after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow."¹⁴ Accordingly, as stated above and pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries

⁶ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

⁷ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule*, 88 FR 67069 (September 29, 2023).

⁸ See *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300 (September 20, 2021) (*Final Rule*).

⁹ See *Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*, 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

¹⁰ *Id.*

¹¹ This segment has been combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A-000-000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as "AISL-January Anniversary." Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

¹² See *Procedural Guidance*, 86 FR at 53206.

¹³ See *Final Rule*, 86 FR at 52335.

¹⁴ *Id.*

of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

Notification to Interested Parties

This notice is not required by statute but is published as a service to the international trading community.

Dated: January 26, 2026.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2026-02082 Filed 1-30-26; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 260127-0036]

RIN 0625-XC059

Procedures for Submissions by Importers of Medium- and Heavy-Duty Vehicles Qualifying for Preferential Tariff Treatment Under the USMCA To Determine U.S. Content

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Procedures for submission of documentation related to medium- and heavy-duty vehicles tariffs.

SUMMARY: In Presidential Proclamation 10984 of October 17, 2025, “Adjusting Imports of Medium- and Heavy-Duty Vehicles, Medium- and Heavy-Duty Vehicle Parts, and Buses Into the United States” (Proclamation 10984), the President imposed additional tariffs on imports of specified medium- and heavy-duty vehicles (MHDVs), medium- and heavy-duty vehicles parts (MHDVPs), and buses to eliminate the threat to national security posed by such imports. That Proclamation also provided that for MHDVs that qualify for preferential tariff treatment under the United States-Mexico-Canada Agreement (USMCA), importers of such MHDVs may submit documentation to the Secretary of Commerce (Secretary) identifying the amount of U.S. content in each model imported into the United States. This notice announces procedures for submission and review of such documentation by the Department of Commerce (Department). **DATES:** Importers may begin submitting documentation as described below on or after February 2, 2026.

ADDRESSES: Applications must be submitted electronically to: mail to: *MHDV232USMCAContent@trade.gov*.

FOR FURTHER INFORMATION CONTACT:

Emily Davis, Director for Public Affairs, International Trade Administration, U.S. Department of Commerce, 202-482-3809, *Emily.Davis@trade.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On October 17, 2025, the President issued Proclamation 10984, “Adjusting Imports of Medium- and Heavy-Duty Vehicles, Medium- and Heavy-Duty Vehicle Parts, and Buses Into the United States” (90 FR 48451) (the Proclamation), finding that imports of medium- and heavy-duty vehicles (MHDVs), medium- and heavy-duty vehicle parts (MHDVPs), and buses threaten to impair the national security of the United States and determining that it is necessary and appropriate to impose specified tariffs to adjust imports of MHDVs, MHDVPs, and buses so that such imports will not threaten to impair national security pursuant to section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). The Proclamation imposed a 25 percent tariff on certain imports of MHDVs and MHDVPs, effective November 1, 2025, and a 10 percent tariff on certain imports of buses, effective November 1, 2025. However, the Proclamation also provided that for MHDVs that qualify for preferential tariff treatment under the USMCA, importers of such MHDVs may submit documentation to the Secretary identifying the amount of United States content in each model imported into the United States. The Proclamation specified that “United States content” refers to the value of MHDVs attributable to United States-based activity supporting domestic production, as determined by the Secretary. The Secretary has determined that, for purposes of this process, U.S. content should be understood as U.S. production and U.S. production-related activity directly supporting the manufacture of the imported vehicle and in a manner consistent with the definition of “production” in Article 4.1 of USMCA (available at: <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>). The Proclamation authorized the Secretary to approve imports of such MHDVs to be eligible to apply the additional tariff exclusively to the value of the non-U.S. content of the MHDVs and provided that the non-U.S. content of the MHDVs is to be calculated by subtracting the value of the U.S. content in a MHDV from the total value of the MHDV.

II. Eligibility

Only MHDVs imported from Mexico and Canada that qualify for preferential tariff treatment under the USMCA may be found to be eligible to apply the additional tariff exclusively to the value of the non-U.S. content of the MHDV. MHDVs imported from non-USMCA countries and MHDVs from Canada and Mexico that do not qualify for preferential tariff treatment under the USMCA may not be found to be eligible.

III. Opportunity To Submit Documentation

Importers of MHDVs qualifying for preferential treatment under the USMCA seeking preferential tariff treatment on the U.S. content of their MHDVs may submit documentation, on a model basis, identifying the type and value of U.S. content attributable to each model imported into the United States.

Each submission should include documentation certified by an importer’s Chief Financial Officer, General Counsel, or an equivalent-level of senior officer that identifies the following:

1. The total declared customs value of an MHDV in the model at the time of importation based on 19 U.S.C 1401a. If the customs value varies within the model, the importer may provide an average value consistent with an averaging methodology set forth in Article 5 of the Appendix to Annex 4-B, “Provisions Related to the Product-Specific Rules of Origin for Automotive Goods,” of Chapter 4 of the USMCA (“Automotive Appendix”) (available at: <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>).

2. The total value of U.S. content for an MHDV in that model, as determined by calculating the portion of the vehicle’s value, based on 19 U.S.C. 1401a, that is attributable to United States-based activity supporting domestic production, as determined by the Secretary. The Secretary has determined that, for purposes of this process, “U.S. content” should be understood as U.S. production and U.S. production-related activities that directly support the manufacture of the imported vehicle and in a manner consistent with the definition of “production” in Article 4.1 of USMCA (available at: <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>). If the U.S. content varies within a model, the importer may provide an average value consistent with an averaging

methodology set forth in the USMCA Automotive Appendix Article 5.

3. Total value of non-U.S. content of an MHDV for that model, calculated by subtracting the value of the U.S. content for an MHDV in the model from the total value of the MHDV. If the value varies within the model, the importer may provide an average consistent with an averaging methodology set forth in the USMCA Automotive Appendix Article 5.

4. MHDV production location(s) and country of final assembly. MHDV production locations may include more than one country.

5. Certification of eligibility for USMCA preference (*i.e.*, the signed origin certification that supports the import meeting the rules of origin requirements as well as the approved producer-submitted certifications, jointly reviewed/approved by U.S. Customs and Border Protection and the Department of Labor, for meeting North American steel and aluminum content, and North American labor value content requirements) for the model as submitted to U.S. Customs and Border Protection (CBP), including whether the model is subject to an approved Alternative Staging Regime outlined in the USMCA Automotive Appendix Article 8 of Chapter 4 of the USMCA (available at: <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>).

6. The importer name, importer of record number, manufacturer name, manufacturer facility, country of origin, and model information for every model requested in the submission. If retroactive treatment is requested, the importer should provide entry numbers for previously imported medium- and heavy-duty vehicles.

IV. Review Process

The Department will review each submission for completeness and compliance. The Department may request supplemental documentation or clarification. Upon verification by the Department that a submission is consistent with this notice and upon a determination of the value of the U.S. content and non-U.S. content for the requested model, the Department will inform the importer and CBP of that determination and of the value of the non-U.S. content for each model. The Commerce Department will provide CBP with a list of importers and MHDVs authorized by Commerce, including importer name, importer of record number, manufacturer name, manufacturer facility, country of origin, and model of each authorized MHDV.

The additional tariff will apply exclusively to the value of the non-U.S. content for the relevant model. The Secretary may retroactively extend this treatment to qualifying models for vehicles imported on or after November 1, 2025, at his discretion, and provide CBP with the entry numbers of the previously imported MHDVs subject to any retroactive treatment. If a change in sourcing or production results in a decrease in U.S. content relevant to the eligibility determination, the importer must promptly inform the Department and request a new eligibility determination by providing the documentation described above. If a change in sourcing or production results in an increase in U.S. content, the importer may inform the Department and request a new eligibility determination by providing a new submission containing the information required by section III. Regardless, eligibility determinations issued in 2026 are only valid for vehicles imported in 2025 or 2026, and importers seeking eligibility for a model imported in 2027 must submit new documentation no later than October 1, 2026 to ensure timely processing. Eligibility determinations issued for imports after December 31, 2026 shall only be valid for one calendar year, and importers seeking eligibility for a model imported after December 31, 2026 must submit documentation supporting eligibility no later than the October 1 before the start of the calendar year of importation to ensure timely processing. Importers of a new model may apply at any time for a U.S. content eligibility determination, which shall remain valid only until the end of the calendar year in which the importer's application is made.

V. Consequences for Misreporting

If CBP determines that the declared U.S. content is overstated or inconsistent with a U.S. content figure approved by the Secretary, the 25 percent tariff will apply retroactively (from November 1, 2025, to the date of the inaccurate overstatement) and prospectively (from the date of the inaccurate overstatement to the date the importer corrects the overstatement, as verified by CBP) to the full value of all medium- and heavy-duty vehicles of the same model imported by the same importer, as provided for in Proclamation 10984. This does not apply to or otherwise affect any other applicable fees or penalties.

VI. Confidential Business Information

Submissions containing confidential business information must be clearly marked as such.

VII. No Effect on USMCA Preferential Status

This process does not affect or alter the determination of whether a vehicle qualifies for USMCA preferential tariff treatment.

VIII. Authority

This notice is issued pursuant to the authority delegated to the Secretary by Proclamation 10984 consistent with section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862).

IX. Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the Office of Management and Budget (OMB) implementing regulations at 5 CFR 1320.13, this collection is covered under OMB control number 0625-0143, Domestic and International Client Export Services and Customized Forms Renewal. With this notice, ITA is establishing a process for importers of MHDVs that qualify for USMCA duty preference to submit documentation supporting a claim that certain parts of the MHDVs are U.S. content. In the notice, ITA estimated the burden to the public for this notification will average 800 hours (20 respondents * 20 hours per response * 2 expected responses per year), including the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. The estimated total annual cost to the Federal Government is \$37,000. The public may access this ITA request, including all supporting materials, at www.reginfo.gov/public/do/PRAMain and inserting the OMB control number or the name of the collection. Please send written comments to Emily Davis, Director for Public Affairs, 202-482-3809, Emily.Davis@trade.gov. A comment to OMB is best assured of having its full effect if OMB receives it within 60 days of publication of this notice. All written 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 substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. Written comments will be publicly available on the internet via <https://www.regulations.gov>.

We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility.

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used.

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 20 hours per response.

Respondents: Private Sector.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 2.

Estimated annual number of responses: 40.

Estimated total annual burden on respondents: 800.

(Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Emily Davis, Director for Public Affairs, 202-482-3809, Emily.Davis@trade.gov.

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

William Kimmitt,

*Under Secretary for International Trade,
United States Department of Commerce.*

[FR Doc. 2026-02049 Filed 1-30-26; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XF399]

Magnuson-Stevens Fishery Conservation and Management Act; General Provisions for Domestic Fisheries; Applications for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: NMFS received two exempted fishing permit (EFP) applications for U.S. West Coast highly migratory species (HMS) fisheries that warrant further consideration at this time. Both EFP applicants request exemptions from regulatory provisions pertaining to the use of authorized gear types under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). The applicants propose to test the effects and efficacy of using alternative fishing practices to harvest swordfish and other HMS off of the U.S. West Coast. During the November 2025 Pacific Fishery Management Council (Council) meeting, the Council reviewed and endorsed these two EFP applications and recommended that NMFS approve them. NMFS has determined that these applications warrant further consideration and is requesting public comment on them, as well as the Council's recommendations on them.

DATES: Comments must be submitted in writing by March 4, 2026.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2026-0133, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2026-0133 in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Chris Fanning, NMFS West Coast Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier "NOAA-NMFS-2026-0133" in the 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 NMFS. All comments

received are a part of the public record, and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT:

Chris Fanning, NMFS, West Coast Region, 562-980-4198, Chris.Fanning@noaa.gov.

SUPPLEMENTARY INFORMATION:

On November 17, 2025, the Council reviewed and was supportive of three applications for HMS EFPs. The Council recommended that NMFS approve the night-set buoy gear (NSBG) and multi-species extended linked buoy gear (MSXLBG) applications and that the proponents of the third application bring it back for additional discussion and consideration at the Council's March 2026 meeting. The Council further recommended that NMFS build in flexibility when considering EFP applications to allow for variations in the fishing configurations within environmental review processes and analyses. When making its recommendations for flexibility, the Council considered the utility of allowing for a greater range of target depths and time for gear deployment, as well as modifications to monofilament configurations, bait type, and light placement.

The MSXLBG EFP application from the Pflieger Institute of Environmental Research¹ requests flexibility on hook depth, set time and bait type to allow for both deep and shallow setting to occur, including on the same sets, to target the highly migratory species complex. If issued, this EFP would modify a current extended linked buoy gear (XLBG) EFP that exempts the permitted vessels from regulations at 50 CFR 660.712(a)(1) prohibiting use of longline-type gear in federal waters off the U.S. West Coast. The terms and conditions for the current XLBG EFP restrict target depths to below 100 meters. Based on the new application, and taking into account Council recommendations, NMFS is considering modifications to the current terms and conditions to allow for targeting depths shallower than 100 meters and testing a broader range of gear options and deployment strategies, including timing of sets, large circle

¹ <https://www.pccouncil.org/documents/2025/10/i-3-attachment-2-draft-efp-application-multi-species-extended-link-buoy-gear.pdf/>.

hook size, bait type, and light placement.

The NSBG EFP application from Andrew Hemstreet² requests an exemption from the prohibition on deploying deep-set buoy gear (DSBG) until local sunrise and retrieving the gear no later than 3 hours after local sunset, which would otherwise be prohibited by 50 CFR 660.715(c)(3). In addition, the applicant has conveyed his interest in also having more flexibility to use a standard or linked buoy gear configuration at night to target a broader range of depths (*i.e.*, including depths shallower than 90 meters) than is currently authorized in regulations for DSBG at 50 CFR 660.715(a)(1) and (2). NMFS is therefore considering his application to be requesting exemptions under § 660.715(a)(1) and (2), and (c)(3).

At this time, NMFS is requesting public comment on the NSBG EFP and MSXLBG applications and Council recommendations discussed above. NMFS will take the Council's comments into consideration along with public comments on whether to issue these EFPs. Aside from regulatory exemptions to conduct the proposed EFP activities, vessels fishing under an EFP would be subject to all other regulations implemented at 50 CFR part 660, subpart K and 50 CFR part 300, subpart C, including measures to protect sea turtles, marine mammals, sharks, and seabirds.

NMFS will consider all public comments submitted in response to this **Federal Register** notice prior to issuance of any EFP. Additionally, NMFS will analyze the effects of issuing EFPs in accordance with the National Environmental Policy Act and NOAA's Administrative Order 216-6A, as well as for compliance with other applicable laws, including section 7(a)(2) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), which requires the agency to consider whether the proposed action is likely to jeopardize the continued existence and recovery of any endangered or threatened species or result in the destruction or adverse modification of critical habitat.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 28, 2026.

Kelly Denit,

*Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.*

[FR Doc. 2026-02065 Filed 1-30-26; 8:45 am]

BILLING CODE 3510-22-P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038-0013: Position Limits

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on collections of information related to the Commission's position limits rule under part 150 of the Commission's regulations and related Commission Regulation 19.02.

DATES: Comments must be submitted on or before April 3, 2026.

ADDRESSES: You may submit comments, identified by "Position Limits," or "OMB Control No. 3038-0013," by any of the following methods:

- The Agency's website, at <http://comments.cftc.gov/>. Follow the instructions for submitting comments through the website.

- **Mail:** Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- **Hand Delivery/Courier:** Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to www.cftc.gov.

FOR FURTHER INFORMATION CONTACT:

Andrew Stein, Assistant Chief Counsel, Division of Market Oversight, (202) 418-6054, email: astein@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.*, Federal agencies must obtain approval from the Office of Management and Budget ("OMB") for each collection of information they conduct or sponsor. "Collection of Information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or

requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing this notice of the proposed collection of information listed below. 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.

Title: Position Limits (OMB Control No. 3038-0013). This is a request for extension of a currently approved information collection.

Abstract: Commodity Exchange Act ("CEA") section 4a directs the Commission to establish limits on speculative positions, as the Commission determines to be necessary, to prevent the harms caused by excessive speculation. This collection includes collections of information required under both the Final Rule and the Aggregation Rule (as each is defined below).

In 2021, the Commission issued a final rule on position limits that implemented CEA section 4a and established the Commission's new position limits regime found in part 150 of the Commission's Regulations ("Final Rule").¹ The Final Rule, among other things, includes: new and amended Federal spot-month limits for the 25 core referenced futures contracts; (2) amended Federal non-spot limits for the nine legacy agricultural contracts subject to existing Federal position limits; (3) amended rules governing exchange-set limit levels and grants of exemptions therefrom; (4) an amended process for requesting certain spread exemptions and non-enumerated bona fide hedge recognitions for purposes of Federal position limits directly from the Commission; (5) a new streamlined process for recognizing non-enumerated bona fide hedge positions from Federal limit requirements; and (6) amendments to part 19 of the Commission's Regulations and related provisions that eliminated certain reporting obligations that require traders to submit a Form 204 and Parts I and II of Form 304.

Separately, in 2016 the Commission issued a final rule amending Commission Regulation 150.4, which sets forth requirements regarding the

² <https://www.pcouncil.org/documents/2025/10/i-3-attachment-1-efp-application-hemstreet.pdf/>.

¹ See "Position Limits for Derivatives," 86 FR 3236 (January 24, 2021).

aggregation of positions subject to federal position limits (the "Aggregation Rule").² Among other things, Regulation 150.4 includes standards for the aggregation of accounts and procedures for seeking an exemption from position aggregation requirements under the Commission's federal position limits.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.³

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

² See "Aggregation of Positions," 81 FR 91454 (December 16, 2016). The position aggregation requirements set forth in Regulation 150.4 are the subject of no-action letter 25-21 and have been the subject of similar no-action positions since the rule's effective date. As such, as of the date of this notice, market participants do not submit the reports set forth in Regulation 150.4. Accordingly, all collections of informations and related burden estimates under Regulation 150.4 are hypothetical.

³ 17 CFR 145.9.

Burden Statement: The respondent burden for this collection is estimated to be as follows:

Currently Affected Entities: Designated Contract Markets and market participants.

Estimated number of respondents: 776.

Estimated Average Burden Hours per Respondent: 15.14 hours.

Estimated total annual burden on respondents: 11,748 hours.

Frequency of collection: As needed.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: January 29, 2026.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2026-02085 Filed 1-30-26; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA-2025-HQ-0102]

Submission for OMB Review; Comment Request

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 4, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Reginald Lucas, (571) 372-7574, whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Exchange Credit Program; OMB Control Number 0702-0137.

Type of Request: Revision of a currently approved collection.

Number of Respondents: 130,854.

Responses per Respondent: 1.

Annual Responses: 130,854.

Average Burden per Response: 2 minutes.

Annual Burden Hours: 4,362.

Needs and Uses: The Army and Air Force Exchange Service (Exchange) is collecting this information to operate the Military Star credit program. This program is essential for the proper performance of the Exchange's mission as mandated by Title 10 United States Code section 2481, which requires the Exchange to enhance the quality of life for service members and generate earnings to support Family, Morale, Welfare and Recreation (FMWR) programs.

The information is used to determine an applicant's creditworthiness and eligibility for the Military Star card, which facilitates retail and military clothing purchases. For approved applicants, the information is used to manage their account, provide statements, and, if necessary, to collect government debts.

The affected public includes authorized Exchange patrons who voluntarily apply for credit. Without this information collection, the Exchange would be unable to assess credit risk or manage its credit program, hindering its ability to support its patrons and generate funds for critical FMWR programs.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

DOD Clearance Officer: Mr. Reginald Lucas.

Dated: January 28, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2026-01957 Filed 1-30-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD-2026-OS-0168]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the OUSD(P&R) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of

information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 3, 2026.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Director of Administration and Management, Privacy, Civil Liberties, and Transparency Directorate, Regulatory Division, 4800 Mark Center Drive, Mailbox #24, Suite 05F16, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Personnel Analytics Center, 4800 Mark Center Drive, Alexandria, VA 22350, Dr. Rachel Lipari, 703.309.6714.

SUPPLEMENTARY INFORMATION: The Status of Forces Active-Duty Survey (SOFs-A)

is the primary source for reliable and generalizable survey data on active-duty military members. The survey assesses topics: financial well-being, retention intention, stress, tempo, readiness, nutrition, and suicide awareness. The majority of SOFS-A sample members will receive the full survey; while a subset of SOFS-A sample members will receive an abbreviated version of the survey content (*i.e.*, a module). The purpose of the module experiment is to assess the ability to reduce survey burden while attaining generalizable results by fielding two short modules rather than a single survey.

Title; Associated Form; and OMB Number: Status of the Forces Survey of Active-Duty Members; OMB Control Number 0704-0624.

Needs and Uses: The SOFS-A is an annual Department wide large-scale survey of active-duty members that is used in evaluating existing policies and programs, establishing baseline measures before implementing new policies and programs, and monitoring the progress of existing policies/programs. The survey assesses topics such as financial well-being, retention intention, stress, tempo, readiness, nutrition, and suicide awareness. Data are aggregated by appropriate demographics, including Service, paygrade, and other indicators. To be able to meet reporting requirements for Department leadership, the Military Services, and Congress, the survey needs to be completed in 2026. The legal requirements for the SOFS-A can be found in the FY2016 NDAA, Title VI, Subtitle F, Subpart 661. This legal requirement mandates that the SOFS-A solicit information on financial literacy and preparedness. Results will be used by the Service Secretaries to evaluate and update financial literacy training and will be submitted in a report to the Committees on Armed Services of the Senate and the House of Representatives.

Affected Public: Individuals and households.

Annual Burden Hours: 8,250 hours.

Number of Respondents: 16,500.

Responses per Respondent: 1.

Annual Responses: 16,500.

Average Burden per Response: 30 minutes.

Frequency: Annually.

Dated: January 28, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2026-01960 Filed 1-30-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25-11]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695-6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25-1I.

Dated: January 29, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

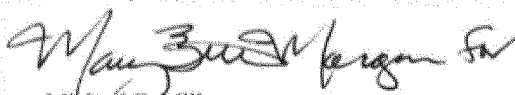
October 3, 2025

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 25-11. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 22-63 of November 8, 2022.

Sincerely,


Michael F. Miller
Director

Enclosure:
1. Transmittal

Transmittal No. 25-11

**REPORT OF ENHANCEMENT OR
UPGRADE OF SENSITIVITY OF
TECHNOLOGY OR CAPABILITY (SEC.
36(B)(5)(C), AECA)**

(i) *Prospective Purchaser:* Government of Belgium

(ii) *Sec. 36(b)(1), AECA Transmittal No.:* 22-63

Date: November 8, 2022

Implementing Agency: Air Force

(iii) *Description:* On November 8, 2022, Congress was notified by congressional certification transmittal number 22-63 of the possible sale, under Section 36(b)(1) of the Arms Export Control Act, of the Government of Belgium's request to buy one hundred twenty (120) AIM-120C-8 Advanced Medium Range Air-to-Air Missiles (AMRAAM); and ten (10) AMRAAM C-8 Guidance Sections. Also included were spare AIM-120 control sections and containers; AIM-120C Captive Air Training Missiles (CATM); other spare parts, consumables, accessories, and repair/return support; classified software; books, technical documentation, and other publications; training and training equipment; munitions support and support

equipment; and other related elements of logistics and program support. The estimated total cost was \$380 million. Major Defense Equipment (MDE) constituted \$358 million of this total.

On March 3, 2025, Congress was notified by congressional certification transmittal number 25-0D of the possible sale, under Section 36(b)(1) of the Arms Export Control Act, of the addition of the following MDE items: one hundred fifty-nine (159) AIM-120D-3 Advanced Medium Range Air-to-Air Missiles (AMRAAM); one (1) AMRAAM D-3 guidance section; and one AIM-120D Integrated Test Vehicle. The following non-MDE items were also included: weapon system support to include software, and KGV-135A COMSEC chips. The total cost of the new MDE articles was \$479 million, and the total cost of the new non-MDE items articles was \$30 million. The total notified cost of MDE increased to \$837 million, and the total notified case value increased to \$889 million.

This transmittal notifies the inclusion of the following additional MDE items: up to nine hundred ninety-seven (997) AIM-120D-3 Advanced Medium Range Air-to-Air Missiles (AMRAAMs) and up

to one hundred nineteen (119) AMRAAM D-3 guidance sections. The following non-MDE items will be included: AMRAAM support equipment and other related elements of logistics and program support. The estimated total cost of the new items is \$3.131 billion. The estimated MDE value will increase by \$2.853 billion to a revised \$3.69 billion. The estimated non-MDE value will increase by \$0.278 billion to a revised \$0.33 billion. The estimated total case value will increase by \$3.131 billion to a revised \$4.02 billion.

(iv) *Significance:* This notification is provided as the additional MDE items were not enumerated in the original notification. The inclusion of this MDE represents an increase in capability over what was previously notified.

(v) *Justification:* This proposed sale will support the foreign policy and national security objectives of the United States by improving the security of a NATO Ally that is a force for political stability and economic progress in Europe. The proposed sale will improve Belgium's capability to meet current and future threats by maintaining its F-16 and F-35 fleets in

combat-ready status and providing a credible deterrent to regional threats.

(vi) *Sensitivity of Technology*: The Sensitivity of Technology Statement contained in the original notification applies to items reported here.

The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

(vii) *Date Report Delivered to Congress*: October 3, 2025

[FR Doc. 2026–02057 Filed 1–30–26; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Department of Defense (DoD).

ACTION: Notice of closed federal advisory committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the DoD Wage Committee will take place.

DATES: Tuesday, November 25, 2025, from 10:00 a.m. to 1:00 p.m. and will be closed to the public.

ADDRESSES: The closed meeting will be held by Microsoft Teams.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Fendt, Designated Federal Officer (DFO) (571) 372–1618 (voice), karl.h.fendt.civ@mail.mil (email), 4800 Mark Center Drive, Suite 05G21, Alexandria, Virginia 22350 (mailing address). Any agenda updates can be found at the DoD Wage Committee's official website: <https://wageandsalary.dcpas.osd.mil/BWN/DoDWC/>.

SUPPLEMENTARY INFORMATION: These meetings are 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”), subsection 552b(c) of title 5, U.S.C., and 41 CFR 102–3.140 and 102–3.155.

Purpose of the Meeting: The purpose of these meetings is to provide independent advice and recommendations on matters relating to the conduct of wage surveys and the establishment of wage schedules for all appropriated fund and non-appropriated fund areas of blue-collar employees within the DoD.

Agenda

November 25, 2025

Opening Remarks by Chair, Mr. Eric Clayton, and DFO, Mr. Karl Fendt.

Reviewing survey results and/or survey specifications for the following Nonappropriated Fund areas:

1. Any items needing further clarification or action from the previous meeting.
2. Wage Schedule (Full Scale) for the Monroe, Florida wage area (AC–160).
3. Wage Schedule (Wage Change) for the Orange, Florida wage area (AC–062).
4. Wage Schedule (Wage Change) for the Bay, Florida wage area (AC–063).
5. Survey Specifications for the Orleans, Louisiana wage area (AC–006).
6. Survey Specifications for the McLennan, Texas wage area (AC–022).
7. Survey Specifications for the Bell, Texas wage area (AC–028).
8. Survey Specifications for the Curry, New Mexico wage area (AC–030).
9. Survey Specifications for the Tom Green, Texas wage area (AC–032).
10. Survey Specifications for the Cobb, Georgia wage area (AC–034).
11. Survey Specifications for the Houston, Georgia wage area (AC–036).
12. Survey Specifications for the Cascade, Montana wage area (AC–040).
13. Survey Specifications for the Montgomery, Alabama wage area (AC–048).
14. Survey Specifications for the Columbus, Georgia wage area (AC–067).
15. Survey Specifications for the Jefferson, New York wage area (AC–101).
16. Survey Specifications for the Orange, New York wage area (AC–103).
17. Survey Specifications for the Macomb, Michigan wage area (AC–162).
18. Survey Specifications for the Niagara, New York wage area (AC–163).
19. Wage Schedule (Full Scale) for the Sacramento, California wage area (AC–002).
20. Wage Schedule (Full Scale) for the San Joaquin, California wage area (AC–008).
21. Wage Schedule (Full Scale) for the Bernalillo, New Mexico wage area (AC–019).
22. Wage Schedule (Full Scale) for the Dona Ana, New Mexico wage area (AC–021).
23. Wage Schedule (Full Scale) for the El Paso, Texas wage area (AC–023).
24. Wage Schedule (Wage Change) for the Onslow, North Carolina wage area (AC–097).
25. Wage Schedule (Wage Change) for the Shelby, Tennessee wage area (AC–098).
26. Wage Schedule (Wage Change) for the Christian, Kentucky/Montgomery, Tennessee wage area (AC–099).

27. Wage Schedule (Wage Change) for the Charleston, South Carolina wage area (AC–120).

28. Wage Schedule (Wage Change) for the San Juan-Guaynabo, Puerto Rico wage area (AC–155).

29. Survey Specifications for the Grand Forks, North Dakota wage area (AC–017).

30. Survey Specifications for the Davis-Weber-Salt Lake, Utah wage area (AC–018).

31. Survey Specifications for the Ada-Elmore, Idaho wage area (AC–038).

32. Survey Specifications for the Spokane, Washington wage area (AC–043).

33. Survey Specifications for the Burlington, New Jersey wage area (AC–071).

34. Survey Specifications for the Kent, Delaware wage area (AC–076).

35. Survey Specifications for the Richmond-Chesterfield, Virginia wage area (AC–082).

36. Survey Specifications for the Morris, New Jersey wage area (AC–090).

37. Wage Schedule (Full Scale) for the Lauderdale, Mississippi wage area (AC–001).

38. Wage Schedule (Full Scale) for the Lowndes, Mississippi wage area (AC–004).

39. Wage Schedule (Full Scale) for the Rapides, Louisiana wage area (AC–024).

40. Wage Schedule (Full Scale) for the Caddo-Bossier, Louisiana wage area (AC–025).

41. Wage Schedule (Full Scale) for the Chatham, Georgia wage area (AC–037).

42. Wage Schedule (Full Scale) for the Dougherty, Georgia wage area (AC–046).

43. Wage Schedule (Wage Change) for the Oklahoma, Oklahoma wage area (AC–052).

44. Wage Schedule (Wage Change) for the Harrison, Mississippi wage area (AC–070).

45. Wage Schedule (Wage Change) for the Hardin-Jefferson, Kentucky wage area (AC–096).

46. Wage Schedule (Wage Change) for the Wayne, North Carolina wage area (AC–107).

47. Wage Schedule (Wage Change) for the Cumberland, North Carolina wage area (AC–108).

48. Wage Schedule (Wage Change) for the Richland, South Carolina wage area (AC–110).

49. Wage Schedule (Wage Change) for the Wichita, Texas wage area (AC–122).

50. Wage Schedule (Wage Change) for the Comanche, Oklahoma wage area (AC–123).

51. Wage Schedule (Wage Change) for the Craven, North Carolina wage area (AC–164).

52. Survey Specifications for the Monterey, California wage area (AC-003).
53. Survey Specifications for the Kern, California wage area (AC-010).
54. Survey Specifications for the San Diego, California wage area (AC-054).
55. Survey Specifications for the Solano, California wage area (AC-059).
56. Wage Schedule (Full Scale) for the Richmond, Georgia wage area (AC-035).
57. Wage Schedule (Full Scale) for the Houston, Georgia wage area (AC-036).
58. Wage Schedule (Full Scale) for the Pulaski, Arkansas wage area (AC-045).
59. Wage Schedule (Full Scale) for the Montgomery, Alabama wage area (AC-048).
60. Wage Schedule (Full Scale) for the Sedgwick, Kansas wage area (AC-078).
61. Wage Schedule (Full Scale) for the Montgomery-Greene, Ohio wage area (AC-166).
62. Wage Schedule (Wage Change) for the Madison, Alabama wage area (AC-105).
63. Wage Schedule (Wage Change) for the Lake, Illinois wage area (AC-145).
64. Wage Schedule (Wage Change) for the Douglas-Sarpy, Nebraska wage area (AC-149).
65. Wage Schedule (Wage Change) for the Leavenworth, Kansas/Jackson-Johnson, Missouri wage area (AC-151).
66. Wage Schedule (Wage Change) for the St. Clair, Illinois wage area (AC-157).
67. Survey Specifications for the Grand Forks, North Dakota wage area (AC-017).
68. Survey Specifications for the Davis-Weber-Salt Lake, Utah wage area (AC-018).
69. Wage Schedule (Full Scale) for the McLennan, Texas wage area (AC-022).
70. Wage Schedule (Full Scale) for the Jefferson, New York wage area (AC-101).
71. Wage Schedule (Full Scale) for the Orange, New York wage area (AC-103).
72. Wage Schedule (Full Scale) for the Macomb, Michigan wage area (AC-162).
73. Wage Schedule (Full Scale) for the Niagara, New York wage area (AC-163).
74. Wage Schedule (Wage Change) for the Cumberland, Pennsylvania wage area (AC-092).
75. Wage Schedule (Wage Change) for the York, Pennsylvania wage area (AC-093).
76. Wage Schedule (Wage Change) for the Christian, Kentucky/Montgomery, Tennessee wage area (AC-099).
77. Wage Schedule (Wage Change) for the Charleston-South Carolina wage area (AC-120).
78. Wage Schedule (Wage Change) for the San Juan-Guaynabo, Puerto Rico wage area (AC-155).
79. Wage Schedule (Full Scale) for the Orleans, Louisiana wage area (AC-006).
80. Wage Schedule (Full Scale) for the Bell, Texas wage area (AC-028).
81. Wage Schedule (Full Scale) for the Curry, New Mexico wage area (AC-030).
82. Wage Schedule (Full Scale) for the Taylor, Texas wage area (AC-031).
83. Wage Schedule (Full Scale) for the Tom Green, Texas wage area (AC-032).
84. Wage Schedule (Full Scale) for the Cobb, Georgia wage area (AC-034).
85. Wage Schedule (Full Scale) for the Columbus, Georgia wage area (AC-067).
86. Wage Schedule (Wage Change) for the Pennington, South Dakota wage area (AC-086).
87. Wage Schedule (Wage Change) for the Nueces, Texas wage area (AC-115).
88. Wage Schedule (Wage Change) for the Bexar, Texas wage area (AC-117).
89. Wage Schedule (Wage Change) for the Anchorage, Alaska wage area (AC-118).
90. Wage Schedule (Wage Change) for the Kitsap, Washington wage area (AC-142).
91. Wage Schedule (Wage Change) for the Dallas, Texas wage area (AC-152).
92. Wage Schedule (Wage Change) for the Tarrant, Texas wage area (AC-156).
93. Wage Schedule (Full Scale) for the Grand Forks, North Dakota wage area (AC-017).
94. Wage Schedule (Full Scale) for the Davis-Weber-Salt Lake, Utah wage area (AC-018).
95. Wage Schedule (Full Scale) for the Ada-Elmore, Idaho wage area (AC-038).
96. Wage Schedule (Full Scale) for the Cascade, Montana wage area (AC-040).
97. Wage Schedule (Full Scale) for the Spokane, Washington wage area (AC-043).
98. Wage Schedule (Wage Change) for the Arapahoe, Colorado wage area (AC-084).
99. Wage Schedule (Wage Change) for the El Paso, Colorado wage area (AC-085).
100. Wage Schedule (Wage Change) for the Laramie, Wyoming wage area (AC-087).
101. Wage Schedule (Wage Change) for the New London, Connecticut wage area (AC-136).
102. Wage Schedule (Wage Change) for the Snohomish, Washington wage area (AC-141).
103. Wage Schedule (Wage Change) for the Pierce, Washington wage area (AC-143).
104. Wage Schedule (Wage Change) for the Newport, Rhode Island wage area (AC-167).
105. Survey Specifications for the Washoe-Churchill, Nevada wage area (AC-011).
106. Survey Specifications for the Bay, Florida wage area (AC-063).
107. Survey Specifications for the Clark, Nevada wage area (AC-140).
- Reviewing survey results and/or survey specifications for the following Appropriated Fund areas:
 108. Survey Specifications for the Savannah, Georgia wage area (AC-042).
 109. Survey Specifications for the Waco, Texas wage area (AC-137).
 110. Wage Schedule (Full Scale) for the Denver, Colorado wage area (AC-022).
 111. Wage Schedule (Full Scale) for the Jacksonville, Florida wage area (AC-030).
 112. Wage Schedule (Full Scale) for the Miami, Florida wage area (AC-031).
 113. Wage Schedule (Full Scale) for the Detroit, Michigan wage area (AC-070).
 114. Wage Schedule (Full Scale) for the Southeastern North Carolina wage area (AC-101).
 115. Wage Schedule (Full Scale) for the Cincinnati, Ohio wage area (AC-104).
 116. Wage Schedule (Full Scale) for the Columbus, OH wage area (AC-106).
 117. Wage Schedule (Full Scale) for the Narragansett Bay, Rhode Island wage area (AC-118).
 118. Wage Schedule (Wage Change) for the Birmingham, Alabama wage area (AC-002).
 119. Wage Schedule (Wage Change) for the Southern Colorado wage area (AC-023).
 120. Wage Schedule (Wage Change) for the Hagerstown-Martinsburg-Chambersburg, MD wage area (AC-067).
 121. Wage Schedule (Wage Change) for the New York, New York wage area (AC-094).
 122. Wage Schedule (Wage Change) for the Dayton, Ohio wage area (AC-107).
 123. Wage Schedule (Wage Change) for the Harrisburg, Pennsylvania wage area (AC-114).
 124. Wage Schedule (Wage Change) for the Wyoming wage area (AC-150).
 125. Survey Specifications for the Augusta, Georgia wage area (AC-038).
 126. Survey Specifications for the Macon, Georgia wage area (AC-041).
 127. Survey Specifications for the Southeastern Washington-Eastern Oregon wage area (AC-144).
 128. Special Pay—Jacksonville, Florida Special Rates.
 129. Special Pay—Narragansett Bay, RI Special Rates.
 130. Survey Specifications for the Duluth, Minnesota wage area (AC-074).
 131. Survey Specifications for the San Antonio, Texas wage area (AC-135).
 132. Survey Specifications for the Milwaukee, Wisconsin wage area (AC-148).

133. Special Pay—Southeast Power Rate.
134. Wage Schedule (Full Scale) for the Fresno, California wage area (AC–012).
135. Wage Schedule (Full Scale) for the Sacramento, California wage area (AC–014).
136. Wage Schedule (Full Scale) for the Stockton, California wage area (AC–020).
137. Wage Schedule (Full Scale) for the Louisville, Kentucky wage area (AC–059).
138. Wage Schedule (Full Scale) for the Jackson, Mississippi wage area (AC–078).
139. Wage Schedule (Full Scale) for the Meridian, Mississippi wage area (AC–079).
140. Wage Schedule (Full Scale) for the Eastern Tennessee wage area (AC–123).
141. Wage Schedule (Wage Change) for the Salinas-Monterey, California wage area (AC–015).
142. Wage Schedule (Wage Change) for the Lexington, Kentucky wage area (AC–058).
143. Wage Schedule (Wage Change) for the Northern Mississippi wage area (AC–077).
144. Wage Schedule (Wage Change) for the Rochester, New York wage area (AC–096).
145. Wage Schedule (Wage Change) for the Memphis, Tennessee wage area (AC–124).
146. Wage Schedule (Wage Change) for the Nashville, Tennessee wage area (AC–125).
147. Survey Specifications for the Boise, Idaho wage area (AC–045).
148. Survey Specifications for the Utah wage area (AC–139).
149. Survey Specifications for Spokane, Washington wage area (AC–145).
150. Survey Specifications for Puerto Rico wage area (AC–151).
151. Special Pay—Fresno, California Special Rates.
152. Special Pay—Stockton, California Special Rates.
153. Special Pay—Northern Mississippi Special Rates.
154. Special Pay—Louisville, Kentucky Special Rates.
155. Special Pay—Salinas-Monterey, California Special Rates.
156. Survey Specifications for the Dothan, Alabama wage area (AC–003).
157. Survey Specifications for the Pittsburgh, Pennsylvania wage area (AC–116).
158. Wage Schedule (Full Scale) for the Northeastern Arizona wage area (AC–008).
159. Wage Schedule (Full Scale) for the Phoenix, Arizona wage area (AC–009).
160. Wage Schedule (Full Scale) for the Tucson, Arizona wage area (AC–010).
161. Wage Schedule (Full Scale) for the Minneapolis-St Paul, Minnesota wage area (AC–075).
162. Wage Schedule (Full Scale) for the Albany-Schenectady-Troy, New York wage area (AC–091).
163. Wage Schedule (Full Scale) for the Northern New York wage area (AC–095).
164. Wage Schedule (Full Scale) for the West Virginia wage area (AC–146).
165. Wage Schedule (Wage Change) for the Reno, Nevada wage area (AC–086).
166. Wage Schedule (Wage Change) for the Syracuse-Utica-Rome, New York wage area (AC–097).
167. Wage Schedule (Wage Change) for the North Dakota wage area (AC–103).
168. Wage Schedule (Wage Change) for the Houston-Galveston-Texas City, Texas wage area (AC–133).
169. Survey Specifications for the Washington, District of Columbia wage area (AC–027).
170. Survey Specifications for the Columbus, Georgia wage area (AC–040).
171. Survey Specifications for the Charlotte, North Carolina wage area (AC–100).
172. Survey Specifications for the Oklahoma City, Oklahoma wage area (AC–109).
173. Special Pay—Pacific Northwest Special Rates.
174. Special Pay—Northern New York Special Rates.
175. Survey Specifications for the Albany, Georgia wage area (AC–036).
176. Survey Specifications for the Northwestern Michigan wage area (AC–071).
177. Survey Specifications for the Tulsa, Oklahoma wage area (AC–111).
178. Survey Specifications for the Scranton-Wilkes Barre, Pennsylvania wage area (AC–117).
179. Wage Schedule (Full Scale) for the New Haven-Hartford, Connecticut wage area (AC–024).
180. Wage Schedule (Full Scale) for the Albuquerque, New Mexico wage area (AC–089).
181. Wage Schedule (Full Scale) for the Texarkana, Texas wage area (AC–136).
182. Wage Schedule (Wage Change) for the Anniston-Gadsden, Alabama wage area (AC–001).
183. Wage Schedule (Wage Change) for the Huntsville, Alabama wage area (AC–004).
184. Wage Schedule (Wage Change) for the Tampa-St. Petersburg, Florida wage area (AC–035).
185. Wage Schedule (Wage Change) for the Lake Charles-Alexandria, Louisiana wage area (AC–060).
186. Wage Schedule (Wage Change) for the El Paso, Texas wage area (AC–132).
187. Survey Specifications for the San Francisco, California wage area (AC–018).
188. Wage Schedule (Full Scale) for the Cleveland, Ohio wage area (AC–105).
189. Survey Specifications for the San Diego, California wage area (AC–017).
190. Survey Specifications for the Pensacola, Florida wage area (AC–034).
191. Survey Specifications for the Des Moines, Iowa wage area (AC–054).
192. Survey Specifications for the Buffalo, New York wage area (AC–092).
193. Wage Schedule (Full Scale) for the Atlanta, Georgia wage area (AC–037).
194. Wage Schedule (Wage Change) for the Shreveport, Louisiana wage area (AC–062).
195. Wage Schedule (Wage Change) for the Central North Carolina wage area (AC–099).
196. Wage Schedule (Wage Change) for the Columbia, South Carolina wage area (AC–120).
197. Wage Schedule (Wage Change) for the Norfolk-Portsmouth-Newport News-Hampton, Virginia wage area (AC–140).
198. Survey Specifications for the Central Illinois wage area (AC–046).
199. Special Pay—Washington, District of Columbia Special Rates.
200. Wage Schedule (Full Scale) for the Savannah, Georgia wage area (AC–042).
201. Wage Schedule (Full Scale) for the Western Texas wage area (AC–127).
202. Wage Schedule (Full Scale) for the Waco, Texas wage area (AC–137).
203. Wage Schedule (Wage Change) for the Augusta, Maine wage area (AC–063).
204. Survey Specifications for the Cocoa Beach-Melbourne, Florida wage area (AC–028).
205. Survey Specifications for the Eastern South Dakota wage area (AC–121).
206. Special Pay—Western Texas Special Rates.
207. Wage Schedule (Full Scale) for the Augusta, Georgia wage area (AC–038).
208. Wage Schedule (Full Scale) for the Macon, Georgia wage area (AC–041).
209. Wage Schedule (Full Scale) for the Southeastern Washington-Eastern Oregon wage area (AC–144).

210. Wage Schedule (Wage Change) for the Hawaii wage area (AC-044).

211. Wage Schedule (Wage Change) for the Central and Western Massachusetts wage area (AC-069).

212. Wage Schedule (Wage Change) for the Southwestern Wisconsin wage area (AC-149).

213. Survey Specifications for the Davenport-Rock Island-Moline, Iowa wage area (AC-053).

214. Survey Specifications for the Southwestern Michigan wage area (AC-073).

215. Survey Specifications for the Philadelphia, Pennsylvania wage area (AC-115).

216. Special Pay—Macon, Georgia Special Rates.

217. Wage Schedule (Full Scale) for the Duluth, Minnesota wage area (AC-074).

218. Wage Schedule (Full Scale) for the San Antonio, Texas wage area (AC-135).

219. Wage Schedule (Full Scale) for the Milwaukee, Wisconsin wage area (AC-148).

220. Wage Schedule (Wage Change) for the Central and Northern Maine wage area (AC-064).

221. Wage Schedule (Wage Change) for the Asheville, North Carolina wage area (AC-098).

222. Wage Schedule (Wage Change) for the Southwestern Oregon wage area (AC-113).

223. Wage Schedule (Wage Change) for the Austin, Texas wage area (AC-129).

224. Wage Schedule (Wage Change) for the Corpus Christi, Texas wage area (AC-130).

225. Survey Specifications for the Topeka, Kansas wage area (AC-056).

226. Survey Specifications for the Wichita, Kansas wage area (AC-057).

227. Survey Specifications for the Biloxi, Mississippi wage area (AC-076).

228. Survey Specifications for the Roanoke, Virginia wage area (AC-142).

229. Special Pay—Southwestern Oregon Special Rates.

230. Wage Schedule (Full Scale) for the Boise, Idaho wage area (AC-045).

231. Wage Schedule (Full Scale) for the Utah wage area (AC-139).

232. Wage Schedule (Full Scale) for the Spokane, Washington wage area (AC-145).

233. Wage Schedule (Full Scale) for the Puerto Rico wage area (AC-151).

234. Wage Schedule (Wage Change) for the Alaska wage area (AC-007).

235. Wage Schedule (Wage Change) for the Montana wage area (AC-083).

236. Wage Schedule (Wage Change) for the Charleston, South Carolina wage area (AC-119).

237. Special Pay—Puerto Rico Special Rates.

238. Any items needing further clarification from this agenda may be discussed during future scheduled meetings.

Closing Remarks by Chair, Mr. Eric Clayton.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b(c)(4), the DoD has determined that the meeting shall be closed to the public. The USD(P&R), in consultation with the DoD Office of General Counsel, has determined in writing that each of these meetings is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Due to negative impacts to pay for Federal Wage System employees that directly support national defense the 15-day notice period was unable to be met. The delay was unavoidable for the lead agency and additional delays would have increased the severity of negative implications for all agencies that employ Federal Wage System employees.

Due to circumstances, beyond the control of the Designated Officer and the Department of Defense, the Department of Defense Wage Committee was unable

to provide public notification required by 41 CFR 102-3.150(a) concerning its November 25, 2025, meeting. 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.

Dated: January 29, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2026-02069 Filed 1-30-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25-76]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695-6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25-76, Policy Justification, and Sensitivity of Technology.

Dated: January 29, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

October 1, 2025

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 25-76, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Canada for defense articles and services estimated to cost \$1.75 billion. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

Michael F. Miller
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 25-76

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser:* Government of Canada

(ii) *Total Case Estimated Value:*

Major Defense Equipment *	\$1.58 billion
Other	\$ 170 million

TOTAL \$1.75 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Twenty-six (26) M142 High Mobility Artillery Rocket Systems (HIMARS)
One hundred thirty-two (132) M31A2 Guided Multiple Launch Rocket System (GMLRS) Unitary pods with Insensitive Munitions Propulsion System (IMPS)
One hundred thirty-two (132) M30A2 GMLRS Alternative Warhead (AW)

Pods with IMPS
Thirty-two (32) M403 Extended Range (ER) GMLRS AW pods with IMPS
Thirty-two (32) M404 ER GMLRS Unitary pods with IMPS

Sixty-four (64) M57 Army Tactical Missile System (ATACMS) pods
Non-Major Defense Equipment:

The following non-MDE items will also be included: Low Cost Reduced Range Practice Rocket pods; interactive electronic technical manuals; integration support services; spare parts; tool kits; test equipment; contractor logistics support; training; training equipment; technical assistance; technical publications; transportation; Type 1 radios (AN/PRC-160 and AN/PRC-167); 7800I intercom equipment; Simple Key Loaders (SKL); United States (U.S.) Government and contractor technical, engineering, and logistics personnel services; and other related elements of logistics and program support.

(iv) *Military Department:* Army (CN-B-VBV)

(v) *Prior Related Cases, if any:* None
(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* October 1, 2025

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Canada—M142 High Mobility Artillery Rocket Systems

The Government of Canada has requested to buy twenty-six (26) M142 High Mobility Artillery Rocket Systems (HIMARS); one hundred thirty-two (132) M31A2 Guided Multiple Launch Rocket System (GMLRS) Unitary pods with Insensitive Munitions Propulsion System (IMPS); one hundred thirty-two

(132) M30A2 GMLRS Alternative Warhead (AW) pods with IMPS; thirty-two (32) M403 Extended Range (ER) GMLRS AW pods with IMPS; thirty-two (32) M404 ER GMLRS Unitary pods with IMPS; and sixty-four (64) M57 Army Tactical Missile System (ATACMS) pods. The following non-MDE items will be included: Low Cost Reduced Range Practice Rocket pods; interactive electronic technical manuals; integration support services; spare parts; tool kits; test equipment; contractor logistics support; training; training equipment; technical assistance; technical publications; transportation; Type 1 radios (AN/PRC-160 and AN/PRC-167); 7800I intercom equipment; Simple Key Loaders (SKL); U.S. Government and contractor technical, engineering, and logistics personnel services; and other related elements of logistics and program support. The estimated total cost is \$1.75 billion.

This proposed sale will support the foreign policy and national security objectives of the U.S. by helping to improve the military capability of Canada, a North Atlantic Treaty Organization (NATO) Ally that is an important force for ensuring political stability and economic progress and is a contributor to military, peacekeeping, and humanitarian operations around the world.

The proposed sale will improve Canada's ability to meet current and future threats by providing the M142 HIMARS long range precision strike system and munitions. This capability will protect Canada by improving Canada's contribution to collective hemispheric defense and to defense and deterrence in Europe, as directed by NATO's defense plans. Canada will have no difficulty absorbing these articles and services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Lockheed Martin, located in Grand Prairie, TX. At this time, the U.S. Government is not aware of any offset agreement proposed in connection with this potential sale. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will require multiple trips to Canada involving up to twenty U.S. Government and up to fifteen contractor representatives for program management reviews to support the program. Travel is expected to occur approximately twice per year as needed to support equipment fielding and training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 25-76

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The M142 High Mobility Artillery Rocket System (HIMARS) is a C-130 transportable wheeled launcher mounted on a 5-ton Family of Medium Tactical Vehicles truck chassis. HIMARS is the modern Army-fielded version of the Multiple Launch Rocket System (MLRS) M270 launcher and can fire all the MLRS Family of Munitions (FOM), including the Guided Multiple Launch Rocket System (GMLRS) and Army Tactical Missile System (ATACMS). Utilizing the MLRS FOM, the HIMARS can engage targets between 15 and 300 kilometers with GPS-aided precision accuracy.

2. The GMLRS M31A2 Unitary (GMLRS-U) is the Army's primary munition for units fielding the M142 HIMARS and M270A1 MLRS launchers. The M31 Unitary is a solid propellant artillery rocket that uses Global Positioning System/Precise Positioning Service (GPS/PPS) aided inertial guidance provided by Selective Availability Anti-Spoofing Module (SAASM) or M-Code. It accurately and quickly delivers a single high-explosive blast fragmentation warhead to targets at ranges from 15-70 kilometers. The rockets are fired from a launch pod container that also serves as the storage and transportation container for the rockets. Each rocket pod holds six rockets.

3. The M30A2 GMLRS Alternative Warhead (GMLRS-AW) shares a greater than 90% commonality with the M31A1 Unitary. The GMLRS-AW replaces the GMLRS-U's high explosive warhead with a 200-pound fragmentation warhead of pre-formed tungsten penetrators to optimize for effectiveness against large area and imprecisely located targets. The munitions otherwise share a common motor, GPS/PPS-aided inertial guidance provided by SAASM or M-Code, control system, fusing mechanism, multi-option height of burst capability, and effective range between 15 and 70 kilometers.

4. The Extended Range Guided Multiple Launch Rocket System (ER GMLRS) provides a persistent, responsive, all-weather, rapidly deployed, long-range, surface-to-surface, area- and point-precision strike

capability. The M403 Alternative Warhead variant carries a 200-pound fragmentation assembly filled with high explosives which are optimized for effectiveness against large area and imprecisely located targets. The M404 Unitary variant is a 200-pound class Unitary with a steel blast fragmentation case designed for low collateral damage against point targets. The ER GMLRS maintains the accuracy and effectiveness demonstrated by the baseline GMLRS out to a maximum range of 150 km (double that of the baseline GMLRS) while also including a new height of burst capability.

5. The M57 Army Tactical Missile System (ATACMS) is a conventional, semi-ballistic missile that utilizes a 500-pound high explosive warhead. It has an effective range of between 70 and 300 kilometers and has increased accuracy over previous versions of the ATACMS due to a GPS/PPS aided navigation system provided by SAASM or M-Code.

6. The AN/PRC-160 is a high frequency tactical radio communications for vehicular and dismounted command and control operations. The final end-items are L3Harris AN/PRC-160 multi-channel manpack radios with a Micro Global Positioning System (GPS) receiver application module (MicroGRAM) receiver card and SAASM.

7. The AN/PRC-167 is a multi-domain, multi-channel, tactical, narrow and wide-band dual transceiver radio system with Type 1 encryption and SAASM GPS location and timing capabilities. The system can provide wide-band high-assurance self-healing networking capabilities and Mobile User Objective System over-the-horizon capabilities. Each transceiver is software programmable and operates in the 30-512 MHz and 764-2600 MHz frequency ranges.

8. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

9. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

10. A determination has been made that Canada can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

11. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Canada.

[FR Doc. 2026-02059 Filed 1-30-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25-1G]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695-6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of

Representatives with attached Transmittal 25-1G.

Dated: January 29, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

September 26, 2025

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 25-1G. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 22-35 of July 15, 2022.

Sincerely,


Michael P. Miller
Director

Enclosure:

1. Transmittal

BILLING CODE 6001-FR-C

Transmittal No. 25-1G

REPORT OF ENHANCEMENT OR UPGRADE OF SENSITIVITY OF TECHNOLOGY OR CAPABILITY (SEC. 36(B)(5)(C), AECA)

(i) *Prospective Purchaser:* Government of Estonia

(ii) *Sec. 36(b)(1), AECA Transmittal No.:* 22-35

Date: July 15, 2022

Implementing Agency: Army

Funding Source: National Funds

(iii) *Description:* On July 15, 2022, Congress was notified by congressional certification transmittal number 22-35, of the possible sale under Section 36(b)(1) of the Arms Export Control Act, of six (6) M142 High Mobility Artillery Rocket System (HIMARS) Launchers; thirty-six (36) M30A2 Guided Multiple Launch Rocket System (GMLRS) Alternative Warhead (AW) Missile Pods with Insensitive Munitions Propulsion System (IMPS) and Frequency

Modulated Continuous Wave—Directional Doppler Ranging (FMCW—DDR) Proximity Height-of-Burst (HOB) Sensor Capability; thirty-six (36) M31A2 GMLRS Unitary High Explosive (HE) Missile Pods with IMPS and FMCW—DDR Proximity HOB Sensor Capability; thirty-six (36) XM403 Extended Range GMLRS (ER GMLRS) Alternative Warhead (AW) Missile Pods with IMPS and Side Mounted Proximity Sensor (SMPS) HOB Capability; thirty-six (36) XM404 ER GMLRS Unitary Pods with

IMPS and SMPS HOB Capability; and eighteen (18) M57 Army Tactical Missile System (ATACMS) Missile Pods. Also included were M28A2 Low Cost Reduced Range Practice Rocket (LCRRPR) pods; ruggedized laptops; training equipment; publications for HIMARS and munitions/missiles; and other related elements of program and logistics support. The total estimated cost was \$500 million. Major Defense Equipment (MDE) constituted \$455 million of this total.

This transmittal notifies the inclusion of the following additional MDE items: six (6) M142 High Mobility Artillery Rocket Systems (HIMARS); two hundred fifty (250) M31A2 Guided Multiple Launch Rocket System (GMLRS) Unitary Alternative Warhead (AW), unitary High Explosive missile pods with Insensitive Munition Propulsion System (IMPS) capability; two hundred fifty (250) M30A2 GMLRS AW missile pods with IMPS; two hundred fifty (250) XM403 Extended Range (ER) GMLRS AW missile pods with IMPS and Side Mounted Proximity Sensor (SMPS) Height-of-Burst (HOB) capability; two hundred fifty (250) XM404 ER GMLRS Unitary pods with IMPS and SMPS HOB capability; and two hundred (200) M57 Army Tactical Missile Systems (ATACMS). The following non-MDE items are also included: M282 Low Cost Reduced Range Practice Rocket (LCRRPR) pods; communications equipment; publications for HIMARS and munitions/missiles; and other related

elements of program and logistics support. The estimated total value of the new items is \$4.23 billion. The estimated non-MDE value will increase by \$125 million to a revised \$170 million. The estimated total case value will increase by \$4.23 billion to a revised \$4.73 billion. MDE constitutes \$4.56 billion of this total.

(iv) *Significance*: This notification is being provided as the additional MDE items were not enumerated in the original notification. The inclusion of this MDE represents an increase in capability over what was previously notified. The proposed sale will improve Estonia's capability to meet current and future threats and enhance its interoperability with United States (U.S.) and other allied forces. It will also allow for continued modernization of Estonia's armed forces while expanding capability to strengthen homeland defense and deter regional threats.

(v) *Justification*: This proposed sale will support the foreign policy and national security objectives of the U.S. by improving the security of a NATO Ally that continues to be an important force for political stability and economic progress in Europe.

(vi) *Sensitivity of Technology*: The Sensitivity of Technology statement contained in the original notification applies to items reported here.

The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

(vii) *Date Report Delivered to Congress*: September 26, 2025

[FR Doc. 2026-02056 Filed 1-30-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25-71]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695-6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrcmgt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25-71, Policy Justification, and Sensitivity of Technology.

Dated: January 29, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

October 1, 2025

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 25-71, concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Republic of Korea for defense articles and services estimated to cost \$34 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,


Michael F. Miller
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 25-71

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Republic of Korea

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$32 million
Other	\$ 2 million
Total	\$34 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Forty-four (44) AGM-65G2 Maverick tactical missiles

Non-Major Defense Equipment:

The following non-MDE items will be included: United States (U.S.) Government and contractor engineering; technical, and logistics support services; and other related elements of logistics and program support.

(iv) *Military Department:* Air Force (KS-D-YBC)

(v) *Prior Related Cases, if any:* KS-D-YHF

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* October 1, 2025

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Republic of Korea—AGM-65G2 Maverick Tactical Missiles

The Republic of Korea has requested to buy forty-four (44) AGM-65G2 Maverick tactical missiles. The following non-Major Defense Equipment items will be included: U.S. Government and contractor engineering; technical, and logistics support services; and other related elements of logistics

and program support. The estimated total cost is \$34 million.

This proposed sale will support the foreign policy and national security objectives of the U.S. by improving the security of a major ally that is an important force for political stability and economic progress in the Indo-Pacific region.

This proposed sale will improve the Republic of Korea's capability to meet current and future threats by increasing its critical air defense capability to deter aggression in the region and to ensure interoperability with U.S. forces. The Republic of Korea already has Maverick missiles in its inventory and will have no difficulty absorbing these articles into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be RTX Corporation, located in Arlington, VA. The purchaser typically requests offsets. At this time, the U.S. Government is not aware of any offset agreement proposed

in connection with this potential sale. Any offset agreement will be defined in negotiations between the purchaser and the contractor

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the Republic of Korea.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 25–71

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AGM–65G2 Maverick tactical missile is an air-to-ground missile with a lock on before launch, day or night capability. The AGM–65G2 has an imaging infrared (IIR) guidance system that allows for locking onto larger targets, such as ships. The IIR can track heat generated by a target and provides the pilot with a pictorial display of the target during darkness and hazy or inclement weather. The warhead on the

AGM–65G2 is a heavyweight penetrator warhead.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the Republic of Korea can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Republic of Korea.

[FR Doc. 2026–02058 Filed 1–30–26; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25–0C]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695–6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25–0C.

Dated: January 29, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

February 28, 2025

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

On February 28, 2025, the Secretary of State, pursuant to section 36(b) of the Arms Export Control Act, as amended, determined that an emergency exists which requires the immediate sale of the defense articles and defense services identified in the attached transmittals to the Government of Israel through the Foreign Military Sales process, including any further amendment specific to costs, quantity, or requirements occurring within the duration of circumstances giving rise to this emergency sale.

Please find attached (Tab 1) the Secretary of State Determination and Justification waiving the congressional review requirements under Section 36(b)(1) and 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended for the attached lists of transmittals of proposed Letters of Offer and Acceptance to the Government of Israel. The determination and detailed justification are a part of each transmittal. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

A handwritten signature in black ink, appearing to read "M. F. Miller".

Michael F. Miller
Director

Enclosures:

1. Secretary of State Determination and Justification Letter
2. Transmittal 24-38
3. Transmittal 25-0C
4. Transmittal 25-26
5. Transmittal 25-34

UNCLASSIFIED

DETERMINATION UNDER SECTION 36(b)(1) OF THE ARMS EXPORT
CONTROL ACT

Pursuant to section 36(b)(1) of the Arms Export Control Act, 22 U.S.C. 2776, I hereby determine that an emergency exists which requires the immediate sale through the following foreign military sales cases, including any further amendments specific to the cost, quantity, or requirements of these cases, in the national security interest of the United States:

For Israel:

- Bulldozers
- Administrative Price Change to Munitions
- 1,000-lb Warheads and JDAM Kits
- 2,000-lb Warheads

This determination shall be published in the *Federal Register* and, along with the accompanying Memorandum of Justification, shall be transmitted to Congress with the applicable notifications.

2/28/2025
Date



Marco Rubio
Secretary of State

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(U) MEMORANDUM OF JUSTIFICATION
FOR EMERGENCY ARMS TRANSFERS TO ISRAEL UNDER SECTION 36(b)(1) OF
THE ARMS EXPORT CONTROL ACT

(U) On October 7, Hamas launched the worst attack on Israel since the 1973 Yom Kippur War, firing thousands of rockets, striking civilians and locations as far as Tel Aviv and Jerusalem. Hamas gunmen crossed into Israel, entering towns and communities as far as 15 miles from Gaza, slaughtering men, women, and children. More than 230 hostages were taken and dragged back into Gaza, including U.S. citizens. Hamas' act of terrorism has claimed the lives of nearly 1,200 in Israel, including at least 31 U.S. citizens, and wounded thousands more. The attack was the single deadliest day for the Jewish people since the Holocaust, and it was reminiscent of the worst rampages of ISIS. The following day, the Government of Israel formally declared war on Hamas in accordance with its Basic Law.

(U) Israel has the right to defend itself, and the United States strongly supports Israel taking necessary action to defend its country and protect its people from Hamas terrorists, consistent with international law, including the law of war. The Department of State and the Department of Defense are coordinating with Israeli partners to meet their military requirements and ensure Israel has what it needs to continue to defend itself, its people, and U.S. citizens living, working, and traveling in Israel.

(U) The United States' commitment to Israel's security is ironclad, which is reflected in decades of close political-military dialogues and high-level defense policy exchanges. The historic ten-year U.S.-Israel Memorandum of Understanding to provide Israel with \$38 billion in security assistance is a bulwark against regional threats. Should hostilities resume, Israel will need urgent and substantial support to respond to the immediate threat raised by Hamas' failure to uphold the terms of the ceasefire. Forced to respond to a resurgent Hamas, Israel must replenish stocks of key defense articles to fight and destroy Hamas, maintain its Qualitative Military Edge in the region, and continue to deter broader-scale regional conflict.

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- 2 -

(U) It is essential to the United States' national security interest to swiftly provide Israel with the military equipment and arms required to defend itself and reinforce deterrence against other significant regional threats. These threats are very likely to increase should hostilities resume. Israel has communicated an urgent requirement for air-to-ground munitions and D9 bulldozers. The urgency of Israel's requirement has been validated by the Department of Defense in consultation with the Department of State. Should hostilities resume, we anticipate Israel will recommence its military operations in Gaza in the near-term. In order to effectively do so and ensure it is prepared for any other attacks, it has an urgent and ongoing need for these defense articles. The immediacy of the challenge at hand requires overcoming the statutory 15-day Congressional Notification timeline to expedite transfers to Israel.

(U) Further, over the 15 months between Hamas' October 7 attack and implementation of the ceasefire, Israel has faced attacks from Hizballah in Lebanon, the Houthis in Yemen, Iranian Aligned Militia Groups in Iraq and Syria, and two direct ballistic attacks from Iran. With the resumption of hostilities, such threats will likely increase and Israel remains at urgent risk of extremists in Lebanon, Iraq, Syria, and Yemen exploiting the resumption of hostilities.

(U) For the reasons cited above, an emergency exists requiring immediate provision of these defense articles to Israel in the national security interest of the United States. These transfers, through Foreign Military Sales, will provide Israel as soon as possible with defense articles that are necessary to allow it to defend itself in its war with Hamas as well as sending a strong, unwavering message that the United States will stand by and support Israel as it continues its fight against Hamas and other regional threats. The Secretary of State, therefore, has certified an emergency exists under sections 36(b)(1) of the Arms Export Control Act, 22 U.S.C. 2776, thereby waiving the congressional review requirement of that provision.

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BILLING CODE 6001-FR-P

Transmittal No. 25-0C

REPORT OF ENHANCEMENT OR
UPGRADE OF SENSITIVITY OF
TECHNOLOGY OR CAPABILITY (SEC.
36(B)(5)(C), AECA)

(i) Purchaser: Government of Israel
(ii) Sec. 36(b)(1), AECA Transmittal
No.: 12-69
Date: December 14, 2012

Implementing Agency: Air Force
Funding Source: Foreign Military
Financing

(iii) Description: On December 14, 2012, Congress was notified by congressional certification transmittal number 12-69 of the possible sale, under Section 36(b)(1) of the Arms Export Control Act, of 6,900 Joint Direct Attack Munitions (JDAM) tail kits (which include 3,450 JDAM Anti-Jam

KMU-556 (GBU-31) for MK-84 warheads; 1,725 KMU-557 (GBU-31) for BLU-109 warheads and 1,725 KMU-572 (GBU-38) for MK-82 warheads; 3,450 MK-84 2000 lb General Purpose Bombs; 1,725 MK-82 500 lb General Purpose Bombs; 1,725 BLU-109 Bombs; 3,450 GBU-39 Small Diameter Bombs; 11,500 FMU-139 Fuses; 11,500 FMU-143 Fuses; and 11,500 FMU-152 Fuses. Also included were spare and repair

parts, support equipment, personnel training and training equipment, publications and technical documentation, United States (U.S.) Government and contractor engineering and technical support, and other related elements of program support. The estimated total cost was \$647 million. Major Defense Equipment (MDE) constituted \$466 million of this total.

On November 29, 2017, Congress was notified by congressional certification transmittal number 0S-17 of the supplemented description of JDAM tail kit component KMU-556 (GBU-31) for MK-84 warheads, KMU-557 (GBU-31) for BLU-109 warheads and KMU-572 (GBU-38) for MK-82 warheads as either C/B or E/B variants (MDE items). The supplementation of this information did not result in a change to the estimated MDE cost of \$466 million. The estimated total case value remained at \$647 million.

This transmittal notifies an increase in MDE value by \$624 million and non-MDE value by \$269 million, due to recent cost increases. There are no additional MDE or non-MDE items being reported with this notification. The estimated total case value will increase by \$893 million to \$1.54

billion. MDE will constitute \$1.09 billion of this total.

(iv) *Significance*: Recent cost increases have brought about the need to add value to the original notification. The proposed value increase will improve Israel's capability to meet current and future threats.

(v) *Justification*: This proposed sale will support the foreign policy goals and national security of the U.S. by improving the security of a strategic regional partner that is a force for political and economic stability in the Middle East.

(vi) *Sensitivity of Technology*:

The Sensitivity of Technology Statement contained in the original notification applies to items reported here.

The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

(vii) *Date Report Delivered to Congress*: February 28, 2025

[FR Doc. 2026-02053 Filed 1-30-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25-0E]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695-6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25-0E.

Dated: January 29, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

February 3, 2025

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 25-0E. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 24-08 of August 13, 2024.

Sincerely,

Michael F. Miller
Director

Enclosure:

1. Transmittal

BILLING CODE 6001-FR-C

Transmittal No. 25-0E

**REPORT OF ENHANCEMENT OR
UPGRADE OF SENSITIVITY OF
TECHNOLOGY OR CAPABILITY (SEC.
36(B)(5)(C), AECA)**

(i) *Purchaser:* Government of Israel

(ii) *Sec. 36(B)(1), AECA Transmittal*
No.: 24-08

Date: August 13, 2024

Implementing Agency: Air Force

Funding Source: Foreign Military
Financing

(iii) *Description:* On August 13, 2024, Congress was notified by congressional certification transmittal number 24-08 of the possible sale, under Section 36(b)(1) of the Arms Export Control Act, of thirty (30) AIM-120C-8 Advanced Medium Range Air-to-Air Missiles (AMRAAM); and one (1) AMRAAM guidance section (spare). The following non-MDE items were also included: AMRAAM control sections and containers; Common Munitions Built-In-Test/Reprogramming Equipment (CMBRE); ADU-891/E Adapter Group Computer Test Sets; spare parts, consumables, accessories, repair and return support, classified and

unclassified publications, and technical documentation; classified software delivery and support; munitions support and support equipment; test support and support equipment; personnel training and training equipment; warranties; studies and surveys; contractor logistics support services; United States (U.S.) Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support. The estimated total cost was \$102.5 million. Major Defense Equipment (MDE) constituted \$66 million of this total.

This transmittal notifies the inclusion of the following additional MDE items: one hundred eight (108) AIM-120C-8 AMRAAMs; and two (2) AIM-120C-8 AMRAAM guidance sections. The following non-MDE items will also be included: weapon system support, to include software, and other related elements of logistics and program support. The estimated total value of the new items is \$305 million. The estimated MDE value will increase by \$259 million to a revised \$325 million. The estimated non-MDE value will increase by \$46 million to a revised

\$82.5 million. The estimated total case value will increase by \$305 million to a revised \$407.5 million.

(iv) *Significance:* The inclusion of this additional MDE represents an increase in quantity over what was previously notified. The proposed sale will improve Israel's capability to meet current and future threats, strengthen its homeland defense, and serve as a deterrent to regional threats.

(v) *Justification:* The U.S. is committed to the security of Israel, and it is vital to U.S. national interests to assist Israel to develop and maintain a strong and ready self-defense capability. This proposed sale is consistent with those objectives.

(vi) *Sensitivity of Technology:*

The Sensitivity of Technology Statement contained in the original notification applies to items reported here.

The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

(vii) *Date Report Delivered to Congress:* February 3, 2025

[FR Doc. 2026-02054 Filed 1-30-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE**Office of the Secretary****[Docket ID: DoD–2025–OS–0078]****Proposed Collection; Comment Request**

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 4, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Reginald Lucas, (571) 372–7574, whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Statement of Disposition of Civilian Remains, DD Form 3004; OMB Control Number 0704–AABF.

Type of Request: Existing Collection W/O OMB Number.

Number of Respondents: 60.

Responses per Respondent: 1.

Annual Responses: 60.

Average Burden per Response: 1 hour.

Annual Burden Hours: 60 hours.

Needs and Uses: The information collection requirement is necessary to obtain and document the selection (as applicable) of the Person Authorized to Effect Disposition (PAED), who is authorized to direct disposition of human remains of decedents. As stated in 10 United States Code section 1481, ‘Recovery, Care, and Disposition of Remains: Decedents Covered,’ the DoD may provide for the recovery, care, and disposition of the remains for active-duty Regulars, Reserve Component members, applicants, trainees, military prisoners, and others. The DoD is further authorized, per section 1482 and section 1482a to provide reimbursement, cover expenses, or otherwise provide mortuary services for decedents, including civilian employees

serving with the armed forces. In order to provide reimbursement or these services, the DoD is charged with electing and documenting the elections of PAED of the remains, to whom the payment/reimbursement is made.

Affected Public: Individuals and households.

Frequency: As required.

DOD Clearance Officer: Mr. Reginald Lucas.

Dated: January 28, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2026–01958 Filed 1–30–26; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE**Office of the Secretary****[Docket ID: DOD–2026–HA–0166]****Proposed Collection; Comment Request**

AGENCY: The Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Defense Health Agency (DHA) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency’s estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 3, 2026.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Director of Administration and Management, Privacy, Civil Liberties, and Transparency Directorate, Regulatory Division, 4800 Mark Center

Drive, Mailbox #24 Suite 05F16, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Health Agency, 7700 Arlington Blvd., Falls Church, VA 22042, Amanda Grifka, 703–681–1771.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: RELATIONS® for Healthcare Transformation Course Survey; OMB Control Number 0720–RHTS.

Needs and Uses: RELATIONS® for Healthcare Transformation is an interactive and immersive training that is being implemented across the DHA to foster performance-driven culture improving both patient and staff experience. RELATIONS® leverages decades of rigorous clinical training and clinically informed methodology targeted at understanding and elevating the human condition holistically: physically, mentally, emotionally. The course will include a pre- and post-course survey as well as an evaluation survey.

Affected Public: Federal government; individuals or households.

Annual Burden Hours: 15,050.

Number of Respondents: 53,750.

Responses per Respondent: 3.

Annual Responses: 96,750.

Average Burden per Response: 4 minutes and 10 minutes for the two surveys.

Frequency: Annually.

Dated: January 28, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2026–01962 Filed 1–30–26; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE**Office of the Secretary****[Transmittal No. 24–38]****Arms Sales Notification**

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695-6233, urooj.zahra.civ@mail.mil, or

dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of

Representatives with attached Transmittal 24-38 and Policy Justification.

Dated: January 29, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

February 28, 2025

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

On February 28, 2025, the Secretary of State, pursuant to section 36(b) of the Arms Export Control Act, as amended, determined that an emergency exists which requires the immediate sale of the defense articles and defense services identified in the attached transmittals to the Government of Israel through the Foreign Military Sales process, including any further amendment specific to costs, quantity, or requirements occurring within the duration of circumstances giving rise to this emergency sale.

Please find attached (Tab 1) the Secretary of State Determination and Justification waiving the congressional review requirements under Section 36(b)(1) and 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended for the attached lists of transmittals of proposed Letters of Offer and Acceptance to the Government of Israel. The determination and detailed justification are a part of each transmittal. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

Michael F. Miller
Director

Enclosures:

1. Secretary of State Determination and Justification Letter
2. Transmittal 24-38
3. Transmittal 25-0C
4. Transmittal 25-26
5. Transmittal 25-34

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DETERMINATION UNDER SECTION 36(b)(1) OF THE ARMS EXPORT
CONTROL ACT

Pursuant to section 36(b)(1) of the Arms Export Control Act, 22 U.S.C. 2776, I hereby determine that an emergency exists which requires the immediate sale through the following foreign military sales cases, including any further amendments specific to the cost, quantity, or requirements of these cases, in the national security interest of the United States:

For Israel:

- Bulldozers
- Administrative Price Change to Munitions
- 1,000-lb Warheads and JDAM Kits
- 2,000-lb Warheads

This determination shall be published in the *Federal Register* and, along with the accompanying Memorandum of Justification, shall be transmitted to Congress with the applicable notifications.

2/28/2025
Date



Marco Rubio
Secretary of State

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(U) MEMORANDUM OF JUSTIFICATION
FOR EMERGENCY ARMS TRANSFERS TO ISRAEL UNDER SECTION 36(b)(1) OF
THE ARMS EXPORT CONTROL ACT

(U) On October 7, Hamas launched the worst attack on Israel since the 1973 Yom Kippur War, firing thousands of rockets, striking civilians and locations as far as Tel Aviv and Jerusalem. Hamas gunmen crossed into Israel, entering towns and communities as far as 15 miles from Gaza, slaughtering men, women, and children. More than 230 hostages were taken and dragged back into Gaza, including U.S. citizens. Hamas' act of terrorism has claimed the lives of nearly 1,200 in Israel, including at least 31 U.S. citizens, and wounded thousands more. The attack was the single deadliest day for the Jewish people since the Holocaust, and it was reminiscent of the worst rampages of ISIS. The following day, the Government of Israel formally declared war on Hamas in accordance with its Basic Law.

(U) Israel has the right to defend itself, and the United States strongly supports Israel taking necessary action to defend its country and protect its people from Hamas terrorists, consistent with international law, including the law of war. The Department of State and the Department of Defense are coordinating with Israeli partners to meet their military requirements and ensure Israel has what it needs to continue to defend itself, its people, and U.S. citizens living, working, and traveling in Israel.

(U) The United States' commitment to Israel's security is ironclad, which is reflected in decades of close political-military dialogues and high-level defense policy exchanges. The historic ten-year U.S.-Israel Memorandum of Understanding to provide Israel with \$38 billion in security assistance is a bulwark against regional threats. Should hostilities resume, Israel will need urgent and substantial support to respond to the immediate threat raised by Hamas' failure to uphold the terms of the ceasefire. Forced to respond to a resurgent Hamas, Israel must replenish stocks of key defense articles to fight and destroy Hamas, maintain its Qualitative Military Edge in the region, and continue to deter broader-scale regional conflict.

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(U) It is essential to the United States' national security interest to swiftly provide Israel with the military equipment and arms required to defend itself and reinforce deterrence against other significant regional threats. These threats are very likely to increase should hostilities resume. Israel has communicated an urgent requirement for air-to-ground munitions and D9 bulldozers. The urgency of Israel's requirement has been validated by the Department of Defense in consultation with the Department of State. Should hostilities resume, we anticipate Israel will recommence its military operations in Gaza in the near-term. In order to effectively do so and ensure it is prepared for any other attacks, it has an urgent and ongoing need for these defense articles. The immediacy of the challenge at hand requires overcoming the statutory 15-day Congressional Notification timeline to expedite transfers to Israel.

(U) Further, over the 15 months between Hamas' October 7 attack and implementation of the ceasefire, Israel has faced attacks from Hizballah in Lebanon, the Houthis in Yemen, Iranian Aligned Militia Groups in Iraq and Syria, and two direct ballistic attacks from Iran. With the resumption of hostilities, such threats will likely increase and Israel remains at urgent risk of extremists in Lebanon, Iraq, Syria, and Yemen exploiting the resumption of hostilities.

(U) For the reasons cited above, an emergency exists requiring immediate provision of these defense articles to Israel in the national security interest of the United States. These transfers, through Foreign Military Sales, will provide Israel as soon as possible with defense articles that are necessary to allow it to defend itself in its war with Hamas as well as sending a strong, unwavering message that the United States will stand by and support Israel as it continues its fight against Hamas and other regional threats. The Secretary of State, therefore, has certified an emergency exists under sections 36(b)(1) of the Arms Export Control Act, 22 U.S.C. 2776, thereby waiving the congressional review requirement of that provision.

UNCLASSIFIED**BILLING CODE 6001–FR–C**

Transmittal No. 24–38

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) *Prospective Purchaser:* Government of Israel

(ii) *Total Estimated Value:*

Major Defense Equipment * .. \$ 0

Other \$295 million

TOTAL \$295 million

Funding Source: Foreign Military Financing

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

None

Non-MDE:

D9R and D9T Caterpillar bulldozers; spare and repair parts; corrosion protection; publications and technical documentation; pre-delivery inspections; United States (U.S.) Government and contractor support; technical and logistics support services; storage; and other related elements of logistics and program support.

(iv) *Military Department: Army* (IS-B-ZZX)

(v) *Prior Related Cases, if any:* IS-B-ZEU; IS-B-ZLT; IS-B-ZYS

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* February 28, 2025

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel—Caterpillar D9 Bulldozers

The Government of Israel has requested to buy D9R and D9T Caterpillar bulldozers; spare and repair parts; corrosion protection; publications and technical documentation; pre-delivery inspections; U.S. Government and contractor support; technical and logistics support services; storage; and other related elements of logistics and program support. The estimated total cost is \$295 million.

The U.S. is committed to the security of Israel, and it is vital to U.S. national interests to assist Israel to develop and maintain a strong and ready self-defense capability. This proposed sale is consistent with those objectives.

The proposed sale will improve Israel's capability to meet current and future threats by improving the ability of the Israeli Ground Forces to defend Israel's borders, vital infrastructure, and population centers. Israel will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Caterpillar Inc., located in Irving, TX. At this time, the U.S. Government is not aware of any offset agreement proposed in connection with this potential sale. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2026-02063 Filed 1-30-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD-2026-OS-0167]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the OUSD(P&R), announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 3, 2026.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Director of Administration and Management, Privacy, Civil Liberties, and Transparency Directorate, Regulatory Division, 4800 Mark Center Drive, Mailbox #24, Suite 05F16, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Military Community Advocacy Directorate, Family Advocacy

Program, 4800 Mark Center Drive, Suite 06G18, Alexandria, VA 22350, Angela Perryman, 703-504-8349.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Department of Defense Form 2967, Domestic Abuse Victim Reporting Option Statement, OMB Control Number 0704-0666, "Domestic Abuse Victim Reporting Option Statement".

Needs and Uses: Information on this form documents a victim of domestic abuse decision of whether to file a restricted or unrestricted report. This document is filed in accordance with the appropriate OSD and Military Department Family Advocacy Program System of Records Notice (SORN).

The information collected will be used for purposes of filing an official report. When a restricted report is filed, the victim is able to receive advocacy and counseling services without a report being made to command or law enforcement. In cases of an unrestricted report, command and law enforcement will be notified, and the victim is eligible to receive advocacy and counseling services from the Family Advocacy Program. The information collected for the form in unrestricted report cases may be used to initiate an investigation and subsequently make an incident status determination following the Incident Determination Committee procedures and processes outlined in DoD Manual 6400.01, Volume 3. If an incident meets the definitions outlined in DoDM 6400.01, Volume 3, the incident is subject to entry into the Central Registry (DoDM 6400.01, Volume 2).

Affected Public: Individuals or households.

Annual Burden Hours: 25,000 hours.

Number of Respondents: 20,000.

Responses per Respondent: 1.

Annual Responses: 20,000.

Average Burden per Response: 1.25 hours.

Frequency: On occasion.

Dated: January 28, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2026-01961 Filed 1-30-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21-47]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Urooj Zahra at (703) 695-6233, urooj.zahra.civ@mail.mil, or

dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of

Representatives with attached Transmittal 21-47, Policy Justification, and Sensitivity of Technology.

Dated: January 29, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

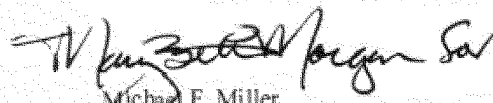
August 13, 2025

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 21-47 concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Nigeria for defense articles and services estimated to cost \$346 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,


Michael F. Miller
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 21-47

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Nigeria

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$223 million
Other	\$123 million

TOTAL \$346 million

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

One thousand two (1,002) MK-82 general purpose 500 lb bombs

One thousand two (1,002) MXU-650 air foil groups (AFGs) for 500 lb Paveway II GBU-12

Five hundred fifteen (515) MXU-1006 AFGs for 250 lb Paveway II GBU-58

One thousand five hundred seventeen (1,517) MAU-169 or MAU-209 computer control groups for Paveway II GBU-

12/GBU-58

One thousand two (1,002) FMU-152 joint programmable fuzes

Five thousand (5,000) Advanced Precision Kill Weapon System II all-up-rounds (each consisting of one WGU-59/B guidance section, high-explosive warhead, and MK66-4 rocket motor)

Major Defense Equipment (MDE):

The following non-MDE items will also be included: FMU-139 joint programmable fuzes; bomb components, impulse cartridges, and high-explosive and practice rockets; integration support and test

equipment; United States (U.S.) Government and contractor technical, engineering, and logistics support; personnel services; and other related elements of logistical and program support.

(iv) *Military Department:* Air Force (NI-D-AAA); Army (BA-B-AAA); Navy (NI-P-AAB)

(v) *Prior Related Cases, if any:* NI-D-SAB, NI-D-QAG, NI-D-YAB, NI-B-UBC, NI-P-AAA, NI-D-FAA

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* August 13, 2025

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Nigeria—Munitions, Precision Bombs, and Precision Rockets

The Government of Nigeria has requested to buy one thousand two (1,002) MK-82 general purpose 500 lb bombs; one thousand two (1,002) MXU-650 air foil groups for 500 lb Paveway II GBU-12; five hundred fifteen (515) MXU-1006 AFGs for 250 lb Paveway II GBU-58; one thousand five hundred seventeen (1,517) MAU-169 or MAU-209 computer control groups for Paveway II GBU-12/GBU-58; one thousand two (1,002) FMU-152 joint programmable fuzes; and five thousand (5,000) Advanced Precision Kill Weapon System II all-up-rounds (each consisting of one WGU-59/B guidance section, high-explosive warhead, and MK66-4 rocket motor). The following non-MDE items will also be included: FMU-139 joint programmable fuzes; bomb components, impulse cartridges, and high-explosive and practice rockets; integration support and test equipment; U.S. Government and contractor technical, engineering, and logistics support; personnel services; and other related elements of logistical and program support. The total estimated program cost is \$346 million.

This proposed sale will support the foreign policy goals and national security objectives of the U.S. by improving the security of a strategic partner in Sub-Saharan Africa.

The proposed sale will improve Nigeria's capability to meet current and future threats through operations against terrorist organizations and to counter illicit trafficking in Nigeria and the Gulf of Guinea. Nigeria will have no difficulty absorbing these munitions into its armed forces.

The proposed sale of this equipment will not alter the basic military balance in the region.

The principal contractors will be RTX Missiles and Defense, located in Tucson, AZ; Lockheed Martin Corporation, located in Archibald, PA; and BAE Systems, located in Hudson, NH. At this time, the U.S. Government is not aware of any offset agreement proposed in connection with this potential sale. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Nigeria.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 21-47

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The Advance Precision Kill Weapon System II (APKWS II) all-up-round (AUR) is an air-to-ground weapon that consists of an APKWS II guidance section (GS), legacy 2.75-inch MK66 mod 4 rocket motor, and legacy MK152, MK282, or MK435/436 warhead and fuze. After launch, the GS activates, and the seeker detects laser energy reflected from a target designated with a remote or autonomous laser. The control system then guides the rocket to the target. APKWS II increases stowed kills by providing precise engagements at standoff ranges with sufficient accuracy for a high single-shot probability of hit against soft and lightly armored targets, thereby minimizing collateral damage. The APKWS II is capable of day and night operation and performance in many adverse environments.

2. GBU-12/58 Paveway II (PW-II) 500 lb (GBU-12) and 250 lb (GBU-58) munitions are maneuverable, free-fall, laser-guided bombs (LGBs) that guide to reflected laser energy from the desired target. Employment of the LGB is the same as a normal general purpose (GP) warhead, except the semi-active guidance corrects for employment errors inherent in any delivery system. Laser designation for the weapon can be provided by a variety of laser target markers or designators from the air or ground. The Paveway system consists of a computer control group (CCG), a warhead-specific air foil group (AFG) that attaches to the nose and tail respectively of the MK-81 and MK-82

GP bombs, and a fuze. The weapon is primarily used for precision bombing against non-hardened targets.

a. The MAU-169 or the MAU-209 are the CCG for the GBU-12 and GBU-58.

b. The MXU-650 is the AFG for the 500-pound GBU-12.

c. MXU-1006/B is the AFG for the 250-pound GBU-58.

3. The FMU-152 and -139 joint programmable fuzes are multi-delay sensors compatible with general purpose kits, tail kits, high-explosive bombs, and reduced collateral damage weapons which provide all arming and detonation event functions combined in a single fuze system.

4. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

5. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

6. A determination has been made that Nigeria can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

7. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Nigeria.

[FR Doc. 2026-02055 Filed 1-30-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25-88]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695-6233, urooj.zahra.civ@mail.mil, or dscs.ncr.rsrgmgt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of

Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached

Transmittal 25-88, Policy Justification, and Sensitivity of Technology.

Dated: January 29, 2026.
Stephanie J. Bost,
 Alternate OSD Federal Register Liaison
 Officer, Department of Defense.



DEFENSE SECURITY COOPERATION AGENCY
 2800 Defense Pentagon
 Washington, DC 20301-2800

September 30, 2025

The Honorable Mike Johnson
 Speaker of the House
 U.S. House of Representatives
 H-209, The Capitol
 Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 25-88, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Australia for defense articles and services estimated to cost \$705 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

Michael F. Miller
 Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 25-88

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Australia

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$605 million
Other	\$100 million

Total \$705 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Forty-eight (48) M142 High Mobility Artillery Rocket Systems (HIMARS)

Non-Major Defense Equipment:

The following non-MDE items will also be included: M1084A2

HIMARS resupply vehicles; M1095 trailers; Low Cost Reduced Range Practice Rocket (LCRRPR) pods; intercom systems; radio and communication mounts; spares parts and services; United States (U.S.) Government and contractor engineering, technical, and logistics support services; studies and surveys; and other related elements of logistics and program support.

(iv) *Military Department:* Army (AT-B-UOU)

(v) *Prior Related Cases, if any:* AT-B-UNP, AT-B-UMJ, AT-B-UMK

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or*

Defense Services Proposed to be Sold: See Attached Annex.

(viii) *Date Report Delivered to Congress:* September 30, 2025

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Australia—M142 High Mobility Artillery Rocket Systems

The Government of Australia has requested to buy forty-eight (48) M142 High Mobility Artillery Rocket Systems (HIMARS). The following non-MDE items will also be included: M1084A2 HIMARS resupply vehicles; M1095 trailers; Low Cost Reduced Range Practice Rocket (LCRRPR) pods; intercom systems; radio and communication mounts; spare parts and

services; U.S. Government and contractor engineering, technical, and logistics support services; studies and surveys; and other related elements of logistics and program support. The estimated total cost is \$705 million.

This proposed sale will support the foreign policy and national security objectives of the U.S. Australia is one of the United States' most important allies in the Western Pacific. The strategic location of this political and economic power contributes significantly to ensuring peace and economic stability in the Western Pacific. It is vital to the U.S. national interest to assist this ally in developing and maintaining a strong and ready self-defense capability.

The proposed sale will improve Australia's capability to meet current and future threats and will enhance interoperability with U.S. forces and other allied forces. Australia will use the capability to strengthen its homeland defense and provide greater security for its critical infrastructure. Australia will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Lockheed Martin, located in Grand Prairie, TX; L3Harris Corporation, located in Melbourne, FL; Leonardo DRS, located in Arlington, VA; and Oshkosh Corporation, located in Stafford, VA. At this time, the U.S. Government is not aware of any offset agreement proposed in connection with this potential sale. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will not require the assignment of any

additional U.S. Government or contractor representatives to Australia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 25–88

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The M142 High Mobility Artillery Rocket System (HIMARS) is a C–130 transportable wheeled launcher with Global Positioning System (GPS) Precise Positioning Service capability mounted on a 5-ton Family of Medium Tactical Vehicles (FMTV) truck chassis. HIMARS is the modern Army-fielded version of the Multiple Launch Rocket System (MLRS) M270 launcher and can fire all the MLRS Family of Munitions (FOM), including Guided Multiple Launch Rocket System (GMLRS) variants and the Army Tactical Missile System. Utilizing the MLRS FOM, the HIMARS can engage targets between 15 and 300 kilometers with GPS-aided precision accuracy.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Australia can provide the same degree of protection for the sensitive

technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Australia.

[FR Doc. 2026–02061 Filed 1–30–26; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25–1H]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695–6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25–1H.

Dated: January 29, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

October 1, 2025

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 25-1H. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 15-06 of March 23, 2015.

Sincerely,

Michael F. Miller
Director

Enclosure:

1. Transmittal

Transmittal No. 25-1H

**REPORT OF ENHANCEMENT OR
UPGRADE OF SENSITIVITY OF
TECHNOLOGY OR CAPABILITY (SEC.
36(B)(5)(C), AECA)**

(i) *Prospective Purchaser:* Government of the Netherlands

(ii) *Sec. 36(b)(1), AECA Transmittal No.:* 15-06

Date: March 23, 2015

Implementing Agency: Army

(iii) *Description:* On March 23, 2015, Congress was notified by congressional certification transmittal number 15-06, of the possible sale, under Section 36(b)(1) of the Arms Export Control Act, of seventeen (17) CH-47F Cargo Helicopters with customer unique post-modifications; forty-six (46) T55-GA-714A Aircraft Turbine Engines with Hydro-Mechanical Assembly, (thirty-four (34) installed and twelve (12) spares); forty-one (41) Embedded Global Positioning System/Inertial Navigation Systems (EGIs); fifty-four (54) AN/ARC-231 Ultra High Frequency/Very High Frequency Radios; twenty-one (21) AN/ARC-220 High Frequency Radios; twenty-one (21) AN/APX-123A Identification Friend or Foe

Transponders; and forty-one (41) AN/ARC-201D Very High Frequency Radios. Also included were spare and repair parts, support equipment, tools and test equipment, aircraft ferry and refueling support, personnel training and training equipment, publications and technical documentation, United States (U.S.) government and contractor technical, and logistics support services, and other related elements of logistics and program support. The estimated total cost was \$1.05 billion. Major Defense Equipment (MDE) constituted \$900 million of this total.

On January 24, 2017, Congress was notified by congressional certification transmittal number 0Z-16 of the inclusion of sixteen (16) AN/AAR-57A(V)8 Common Missile Warning Systems (CMWS), eight (8) AN/ALQ-212 Advance Threat Infrared Countermeasures (ATIRCM), seven (7) APR-39C(V)1 Radar Signal Detecting Sets, and fourteen (14) CN-1689-(H-764GU) Embedded Global Positioning System/Inertial Navigation (EGI) Systems. All four of these systems are MDE. Also included in this possible sale were associated equipment, support, and services. The addition of these systems resulted in an increase in MDE cost of \$425 million. The notified MDE total increased to \$1.342 billion with the

estimated cost of MDE increased to \$917.2 million.

On July 10, 2017, Congress was notified by congressional certification transmittal number 0E-17 of the inclusion of sixteen (16) AN/APR-39A(V)1 Radar Signal Detecting Sets. The addition of this item did not result in a change to the estimated cost of MDE of \$917.2 million. The total estimated case value remained \$1.05 billion.

On August 8, 2018, Congress was notified by congressional certification transmittal number 18-0E of the inclusion of seven (7) AN/AAR-57A(V)8 Common Missile Warning Systems (CMWS), eight (8) AN/ALQ-212 Advance Threat Infrared Countermeasures (ATIRCM), seven (7) APR-39C(V)1 Radar Signal Detecting Sets, and fourteen (14) CN-1689-(H-764GU) Embedded Global Positioning System/Inertial Navigation (EGI) Systems. All four of these systems are MDE. Also included in this possible sale were associated equipment, support, and services. The addition of these systems resulted in an increase in MDE cost of \$425 million. The notified MDE total increased to \$1.342 billion with the

total case value increasing to \$1.475 billion.

On July 28, 2022, Congress was notified by congressional certification transmittal number 0M-22 of the inclusion of fifty-two (52) AN/ARC-231A (RT 1987) radios. The estimated value of the additional MDE items is \$15 million, but the addition did not result in a change to the notified MDE total of \$1.342 billion. The total case value remained \$1.475 billion.

This transmittal notifies the inclusion of the following MDE items: ten (10) OT-228/U, Common Infrared Countermeasure (CIRCM) systems. The following non-MDE items will be included: U.S. Government technical assistance; incidental travel; transportation; new equipment training; technical data; reports; compatibility testing; firing tables; ancillary items; and other related elements of logistics and program support. The estimated total cost of the new items is \$85 million. The estimated total cost of the new MDE items is \$65 million, resulting in a revised estimated MDE cost of \$1.407 billion. The revised estimated total case value is \$1.560 billion.

(iv) *Significance*: This notification is being provided as the MDE items were not enumerated in the original notification. The inclusion of this MDE represents an increase in capability over what was previously notified.

(v) *Justification*: This proposed sale will support the foreign policy and national security objectives of the U.S. by improving the security of a NATO Ally which is an important force for

political stability and economic progress in Europe.

(vi) *Sensitivity of Technology*:

Common Infrared Countermeasure (CIRCM) is the next-generation lightweight, laser-based, infrared countermeasure system for rotary-wing, tilt-rotor, and small fixed-wing aircraft across the DoD. CIRCM provides near spherical coverage of the host platform to defeat Infrared (IR)-seeking threat missiles. CIRCM receives an angular bearing hand-off from the Missile Warning System (CMWS or LIMWS), employs a pointing and tracking system that acquires and tracks the incoming missile. CIRCM jams the missile by using modulated laser energy, thus degrading the tracking capability of the missile and causing it to miss the aircraft. The highest level of information that may be transferred in support of this proposed sale is classified SECRET.

If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

A determination has been made that the Netherlands can provide substantially the same degree of protection of this technology as the U.S. Government. This proposed sale is necessary in furtherance of U.S. foreign policy and national security objectives outlined in the Policy Justification.

All defense articles, technical data, and services listed in this transmittal are

authorized for release and export to the Government of The Netherlands.

(vii) *Date Report Delivered to Congress*: October 1, 2025

[FR Doc. 2026-02060 Filed 1-30-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25-26]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695-6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25-26, Policy Justification, and Sensitivity of Technology.

Dated: January 29, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P

**DEFENSE SECURITY COOPERATION AGENCY**

2800 Defense Pentagon
Washington, DC 20301-2800

February 28, 2025

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

On February 28, 2025, the Secretary of State, pursuant to section 36(b) of the Arms Export Control Act, as amended, determined that an emergency exists which requires the immediate sale of the defense articles and defense services identified in the attached transmittals to the Government of Israel through the Foreign Military Sales process, including any further amendment specific to costs, quantity, or requirements occurring within the duration of circumstances giving rise to this emergency sale.

Please find attached (Tab 1) the Secretary of State Determination and Justification waiving the congressional review requirements under Section 36(b)(1) and 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended for the attached lists of transmittals of proposed Letters of Offer and Acceptance to the Government of Israel. The determination and detailed justification are a part of each transmittal. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

Michael F. Miller
Director

Enclosures:

1. Secretary of State Determination and Justification Letter
2. Transmittal 24-38
3. Transmittal 25-0C
4. Transmittal 25-26
5. Transmittal 25-34

UNCLASSIFIED

DETERMINATION UNDER SECTION 36(b)(1) OF THE ARMS EXPORT
CONTROL ACT

Pursuant to section 36(b)(1) of the Arms Export Control Act, 22 U.S.C. 2776, I hereby determine that an emergency exists which requires the immediate sale through the following foreign military sales cases, including any further amendments specific to the cost, quantity, or requirements of these cases, in the national security interest of the United States:

For Israel:

- Bulldozers
- Administrative Price Change to Munitions
- 1,000-lb Warheads and JDAM Kits
- 2,000-lb Warheads

This determination shall be published in the *Federal Register* and, along with the accompanying Memorandum of Justification, shall be transmitted to Congress with the applicable notifications.

2/28/2025
Date



Marco Rubio
Secretary of State

UNCLASSIFIED

202500434

UNCLASSIFIED

(U) MEMORANDUM OF JUSTIFICATION
FOR EMERGENCY ARMS TRANSFERS TO ISRAEL UNDER SECTION 36(b)(1) OF
THE ARMS EXPORT CONTROL ACT

(U) On October 7, Hamas launched the worst attack on Israel since the 1973 Yom Kippur War, firing thousands of rockets, striking civilians and locations as far as Tel Aviv and Jerusalem. Hamas gunmen crossed into Israel, entering towns and communities as far as 15 miles from Gaza, slaughtering men, women, and children. More than 230 hostages were taken and dragged back into Gaza, including U.S. citizens. Hamas' act of terrorism has claimed the lives of nearly 1,200 in Israel, including at least 31 U.S. citizens, and wounded thousands more. The attack was the single deadliest day for the Jewish people since the Holocaust, and it was reminiscent of the worst rampages of ISIS. The following day, the Government of Israel formally declared war on Hamas in accordance with its Basic Law.

(U) Israel has the right to defend itself, and the United States strongly supports Israel taking necessary action to defend its country and protect its people from Hamas terrorists, consistent with international law, including the law of war. The Department of State and the Department of Defense are coordinating with Israeli partners to meet their military requirements and ensure Israel has what it needs to continue to defend itself, its people, and U.S. citizens living, working, and traveling in Israel.

(U) The United States' commitment to Israel's security is ironclad, which is reflected in decades of close political-military dialogues and high-level defense policy exchanges. The historic ten-year U.S.-Israel Memorandum of Understanding to provide Israel with \$38 billion in security assistance is a bulwark against regional threats. Should hostilities resume, Israel will need urgent and substantial support to respond to the immediate threat raised by Hamas' failure to uphold the terms of the ceasefire. Forced to respond to a resurgent Hamas, Israel must replenish stocks of key defense articles to fight and destroy Hamas, maintain its Qualitative Military Edge in the region, and continue to deter broader-scale regional conflict.

BILLING CODE 6001-FR-C

Transmittal No. 25-26

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Israel

(ii) *Total Estimated Value:*

Major Defense Equipment* ... \$557.5 million

Other \$118.2 million

TOTAL \$675.7 million

Funding Source: Foreign Military Financing

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Two hundred one (201) MK 83 MOD 4/MOD 5 General Purpose 1,000-

pound bomb bodies
Four thousand seven hundred ninety-nine (4,799) BLU-110A/B General Purpose 1,000-pound bomb bodies
One thousand five hundred (1,500) KMU-559C/B Joint Direct Attack Munition (JDAM) guidance kits for the MK 83 bomb body
Three thousand five hundred (3,500) KMU-559J/B JDAM guidance kits for the MK 83 bomb body

Non-Major Defense Equipment:

The following non-MDE items will also be included: United States (U.S.) Government and contractor engineering, logistics, and technical support services; and other related elements of logistics and program support.

(iv) *Military Department:* Navy (IS-P-AVH), Air Force (IS-D-AFK)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to*

Congress: February 28, 2025

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION*Israel—Munitions, Guidance Kits, and Munitions Support*

The Government of Israel has requested to buy two hundred one (201) MK 83 MOD 4/MOD 5 General Purpose 1,000-pound bomb bodies; four thousand seven hundred ninety-nine (4,799) BLU-110A/B General Purpose 1,000-pound bomb bodies; one thousand five hundred (1,500) KMU-559C/B Joint Direct Attack Munition (JDAM) guidance kits for the MK 83 bomb body; three thousand five hundred (3,500) KMU-559J/B JDAM guidance kits for the MK 83 bomb body. The following non-MDE items will also be included: U.S. Government and contractor engineering, logistics, and technical support services; and other related elements of logistics and program support. The estimated total cost is \$675.7 million.

The Secretary of State has determined and provided detailed justification that an emergency exists that requires the immediate sale to the Government of Israel of the above defense articles (and defense services) in the national security interests of the U.S., thereby waiving the Congressional review requirements under Section 36(b) of the Arms Export Control Act, as amended.

The U.S. is committed to the security of Israel, and it is vital to U.S. national interests to assist Israel to develop and maintain a strong and ready self-defense capability. This proposed sale is consistent with those objectives.

The proposed sale improves Israel's capability to meet current and future threats, strengthen its homeland defense, and serves as a deterrent to regional threats. Israel already has these weapons in its inventory and will have

no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Repkon USA, located in Tampa, FL; and The Boeing Company, located in St. Charles, MO. At this time, the U.S. Government is not aware of any offset agreement proposed in connection with this potential sale. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 25-26

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) Sensitivity of Technology:

1. The MK 83 MOD 4 and MK 83 MOD 5 are general purpose 1,000-pound bombs used by the United States Navy, Marine Corps, and Air Force, as well as foreign partners. The MK 83 series is used for unguided delivery in either low or high drag mode, or guided delivery when a guidance kit is attached. It is designed for soft, fragment-sensitive targets and is not intended for hard targets or penetrations.

2. The BLU-110 A/B is a general purpose 1,000-pound bomb used by the United States Navy, Marine Corps, and Air Force, as well as foreign partners. The BLU-110 series is a 1,000-pound warhead used for unguided delivery in either low or high drag mode, or guided delivery when a guidance kit is attached. It is designed for soft, fragment-sensitive targets and is not intended for hard targets or penetrations.

3. KMU-559 Joint Direct-Attack Munitions (JDAM) tail kits contain an Inertial Navigation System (INS)/Global Positioning System (GPS) (using either Selective Availability Anti-Spoofing Module (SAASM) or M-code) guidance capability that converts unguided free-fall bombs into accurate, adverse weather "smart" munitions. The KMU-559 tail kit is paired with a MK 83 class warhead to build a GBU-32 JDAM. The JDAM weapon can be delivered from modest standoff ranges at high or low altitudes against a variety of land and surface targets during the day or night. The JDAM can receive target

coordinates via preplanned mission data from the delivery aircraft, by onboard aircraft sensors (e.g., forward-looking infrared, radar, etc.) during captive carry, or from a third-party source via manual or automated aircrew cockpit entry.

4. The highest level of classification of defense articles, components, and services included in this potential sale is UNCLASSIFIED.

5. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

6. A determination has been made that Israel can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

7. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Israel.

[FR Doc. 2026-02079 Filed 1-30-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Transmittal No. 25-34]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695-6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25-34, Policy Justification, and Sensitivity of Technology.

Dated: January 29, 2026.

Stephanie J. Bost,

*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY

2800 Defense Pentagon
Washington, DC 20301-2800

February 28, 2025

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

On February 28, 2025, the Secretary of State, pursuant to section 36(b) of the Arms Export Control Act, as amended, determined that an emergency exists which requires the immediate sale of the defense articles and defense services identified in the attached transmittals to the Government of Israel through the Foreign Military Sales process, including any further amendment specific to costs, quantity, or requirements occurring within the duration of circumstances giving rise to this emergency sale.

Please find attached (Tab 1) the Secretary of State Determination and Justification waiving the congressional review requirements under Section 36(b)(1) and 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended for the attached lists of transmittals of proposed Letters of Offer and Acceptance to the Government of Israel. The determination and detailed justification are a part of each transmittal. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

A handwritten signature in black ink, appearing to read "M.F. Miller".

Michael F. Miller
Director

Enclosures:

1. Secretary of State Determination and Justification Letter
2. Transmittal 24-38
3. Transmittal 25-0C
4. Transmittal 25-26
5. Transmittal 25-34

UNCLASSIFIED

DETERMINATION UNDER SECTION 36(b)(1) OF THE ARMS EXPORT
CONTROL ACT

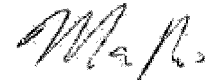
Pursuant to section 36(b)(1) of the Arms Export Control Act, 22 U.S.C. 2776, I hereby determine that an emergency exists which requires the immediate sale through the following foreign military sales cases, including any further amendments specific to the cost, quantity, or requirements of these cases, in the national security interest of the United States:

For Israel:

- Bulldozers
- Administrative Price Change to Munitions
- 1,000-lb Warheads and JDAM Kits
- 2,000-lb Warheads

This determination shall be published in the *Federal Register* and, along with the accompanying Memorandum of Justification, shall be transmitted to Congress with the applicable notifications.

2/28/2025
Date



Marco Rubio
Secretary of State

UNCLASSIFIED

202500434

UNCLASSIFIED

(U) MEMORANDUM OF JUSTIFICATION
FOR EMERGENCY ARMS TRANSFERS TO ISRAEL UNDER SECTION 36(b)(1) OF
THE ARMS EXPORT CONTROL ACT

(U) On October 7, Hamas launched the worst attack on Israel since the 1973 Yom Kippur War, firing thousands of rockets, striking civilians and locations as far as Tel Aviv and Jerusalem. Hamas gunmen crossed into Israel, entering towns and communities as far as 15 miles from Gaza, slaughtering men, women, and children. More than 230 hostages were taken and dragged back into Gaza, including U.S. citizens. Hamas' act of terrorism has claimed the lives of nearly 1,200 in Israel, including at least 31 U.S. citizens, and wounded thousands more. The attack was the single deadliest day for the Jewish people since the Holocaust, and it was reminiscent of the worst rampages of ISIS. The following day, the Government of Israel formally declared war on Hamas in accordance with its Basic Law.

(U) Israel has the right to defend itself, and the United States strongly supports Israel taking necessary action to defend its country and protect its people from Hamas terrorists, consistent with international law, including the law of war. The Department of State and the Department of Defense are coordinating with Israeli partners to meet their military requirements and ensure Israel has what it needs to continue to defend itself, its people, and U.S. citizens living, working, and traveling in Israel.

(U) The United States' commitment to Israel's security is ironclad, which is reflected in decades of close political-military dialogues and high-level defense policy exchanges. The historic ten-year U.S.-Israel Memorandum of Understanding to provide Israel with \$38 billion in security assistance is a bulwark against regional threats. Should hostilities resume, Israel will need urgent and substantial support to respond to the immediate threat raised by Hamas' failure to uphold the terms of the ceasefire. Forced to respond to a resurgent Hamas, Israel must replenish stocks of key defense articles to fight and destroy Hamas, maintain its Qualitative Military Edge in the region, and continue to deter broader-scale regional conflict.

UNCLASSIFIED
- 2 -

(U) It is essential to the United States’ national security interest to swiftly provide Israel with the military equipment and arms required to defend itself and reinforce deterrence against other significant regional threats. These threats are very likely to increase should hostilities resume. Israel has communicated an urgent requirement for air-to-ground munitions and D9 bulldozers. The urgency of Israel’s requirement has been validated by the Department of Defense in consultation with the Department of State. Should hostilities resume, we anticipate Israel will recommence its military operations in Gaza in the near-term. In order to effectively do so and ensure it is prepared for any other attacks, it has an urgent and ongoing need for these defense articles. The immediacy of the challenge at hand requires overcoming the statutory 15-day Congressional Notification timeline to expedite transfers to Israel.

(U) Further, over the 15 months between Hamas’ October 7 attack and implementation of the ceasefire, Israel has faced attacks from Hizballah in Lebanon, the Houthis in Yemen, Iranian Aligned Militia Groups in Iraq and Syria, and two direct ballistic attacks from Iran. With the resumption of hostilities, such threats will likely increase and Israel remains at urgent risk of extremists in Lebanon, Iraq, Syria, and Yemen exploiting the resumption of hostilities.

(U) For the reasons cited above, an emergency exists requiring immediate provision of these defense articles to Israel in the national security interest of the United States. These transfers, through Foreign Military Sales, will provide Israel as soon as possible with defense articles that are necessary to allow it to defend itself in its war with Hamas as well as sending a strong, unwavering message that the United States will stand by and support Israel as it continues its fight against Hamas and other regional threats. The Secretary of State, therefore, has certified an emergency exists under sections 36(b)(1) of the Arms Export Control Act, 22 U.S.C. 2776, thereby waiving the congressional review requirement of that provision.

UNCLASSIFIED

BILLING CODE 6001–FR–C

Transmittal No. 25–34

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Israel

(ii) *Total Estimated Value:*
Major Defense Equipment * .. \$1.90 billion

Other	\$.14 billion
TOTAL	\$2.04 billion
Funding Source: Foreign Military Financing and National Funds	
(iii) <i>Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:</i>	
<i>Major Defense Equipment (MDE):</i>	
Thirty-five thousand five hundred twenty-nine (35,529) MK 84 or	

BLU–117 General Purpose (GP) bomb bodies, or a combination of both
Four thousand (4,000) I–2000 Penetrator warheads
<i>Non-MDE:</i>
The following non-MDE items will also be included: spare parts, consumables, accessories, and repair and return support; transportation support; United

States (U.S.) Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support.

(iv) *Military Department*: Air Force (IS-D-ADC, IS-D-AHA)

(v) *Prior Related Cases, if any*: IS-D-ABX, IS-D-ACA, IS-D-QFZ

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Attached Annex

(viii) *Date Report Delivered to Congress*: February 28, 2025

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel—Munitions and Munitions Support

The Government of Israel has requested to buy thirty-five thousand five hundred twenty-nine (35,529) MK 84 or BLU-117 General Purpose (GP) bomb bodies, or a combination of both; and four thousand (4,000) I-2000 Penetrator warheads. The following non-MDE items will also be included: spare parts, consumables, accessories, and repair and return support; transportation support; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support. The estimated total cost is \$2.04 billion.

The Secretary of State has determined and provided detailed justification that an emergency exists that requires the immediate sale to the Government of Israel of the above defense articles (and defense services) in the national security interests of the U.S., thereby waiving the Congressional review requirements under Section 36(b) of the Arms Export Control Act, as amended.

The U.S. is committed to the security of Israel, and it is vital to U.S. national interests to assist Israel to develop and maintain a strong and ready self-defense capability. This proposed sale is consistent with those objectives.

The proposed sale will improve Israel's capability to meet current and future threats, strengthen its homeland defense, and serve as a deterrent to

regional threats. Israel will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be General Dynamics, located in Garland, TX; Ellwood National Forge Company, located in Irvine, PA; and McAlester Army Ammunition Plant, located in McAlester, OK. There is a possibility that a portion of this procurement will come from U.S. stock. At this time, the U.S. Government is not aware of any offset agreement proposed in connection with this potential sale. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 25-34

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The MK 84 General Purpose (GP) bomb is a 2,000-pound, free-fall, unguided, low-drag weapon. The MK-84 is designed for soft, fragment sensitive targets and is not intended for hard targets or penetrations. The explosive filling is usually tritonal, though other compositions have sometimes been used.

2. The BLU-109 bomb is a 2,000-pound, free-fall, unguided, low-drag, hard target penetration warhead designed to penetrate hardened structures before detonating.

3. The BLU-117 GP bomb is a 2,000-pound, free-fall, unguided, high and low-drag weapon equivalent to the MK-84 but slightly differs in explosive filler or manufacturer details.

4. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

5. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

6. A determination has been made that Israel can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

7. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Israel.

[FR Doc. 2026-02077 Filed 1-30-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25-101]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695-6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25-101, Policy Justification, and Sensitivity of Technology.

Dated: January 29, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

January 08, 2026

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 25-101, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Denmark for defense articles and services estimated to cost \$45 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

Michael F. Miller
Director

Enclosures:

- 1. Transmittal
- 2. Policy Justification
- 3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 25-101

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Denmark

(ii) *Total Estimated Value:*

Major Defense Equipment	....	\$42 million
Other	.....	\$ 3 million
TOTAL	.....	\$45 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

- One Hundred (100) AGM-114R Hellfire missiles
- Three (3) AGM-114R Captive Air Training Missile units
- Six (6) M299 launchers
- Two (2) MHU-191A/M trailers
- Three (3) BRU-14 bomb racks

Non-Major Defense Equipment:

The following non-MDE items will also be included: containers,

training aids, weapon software, training, support equipment, spare and repair parts, publications and technical documentation, and transportation; United States (U.S.) Government and contractor engineering, technical, and logistical support services; and other related elements of logistical and program support.

(iv) *Military Department:* Navy (DE-P-AEJ)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* January 8, 2026

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Denmark—AGM-114R Hellfire Missiles

The Government of Denmark has requested to buy up to one hundred (100) AGM-114R Hellfire missiles; three (3) AGM-114R Captive Air Test Missiles; six (6) Hellfire (Longbow) M299 Hellfire Launchers; two (2) MHU-191/M trailers; and three (3) BRU-14 bomb racks. The following non-MDE items will be included: containers, training aids, weapon software, training, support equipment, spare and repair parts, publications and technical documentation, and transportation; U.S. Government and contractor engineering, technical, and logistical support services; and other related elements of logistical and program support. The estimated total cost is \$45 million.

This proposed sale will support the foreign policy goals and national security objectives of the U.S. by improving the security of a NATO Ally that is a force for political stability and economic progress in Europe.

The proposed sale will improve Denmark's capability to meet current and future threats by ensuring aviation forces' interoperability with U.S. and other allied forces as well as their ability to contribute to missions of mutual interest by delivering follow-on support and sustainment. By operating the AGM-114R Hellfire missiles, Denmark contributes to global readiness and enhances the capability for the U.S. forces operating globally alongside them. Denmark will have no difficulty absorbing these articles and services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Lockheed Martin Missile and Defense, Ocala, FL. At this time, the U.S. Government is not aware of any offset agreement proposed in connection with this potential sale. Any offset agreement will be defined in negotiations.

Implementation of the proposed sale will not require the assignment of U.S. Government and contractor representatives to Denmark on a temporary basis in conjunction with program technical oversight and support requirements.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 25-101

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The Hellfire missile is a precision air-to-ground missile primarily used to target a variety of threats including tanks, armored vehicles, bunkers, and even other aircraft. The AGM-114R provides a semi-active laser guidance system and a multi-purpose warhead, allowing it to effectively engage a wide range of targets, including armored vehicles, fortified positions, and soft targets.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Denmark can provide substantially

the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Denmark.

[FR Doc. 2026-02078 Filed 1-30-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN-2025-HQ-0137]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 4, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Reginald Lucas, (571) 372-7574, whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: USMC Dependency Statement Child Born Out of Wedlock Under Age 21, NAVMC 1750-13; OMB Control Number 0712-0010.

Type of Request: Extension.

Number of Respondents: 20.

Responses per Respondent: 1.

Annual Responses: 20.

Average Burden per Response: 75 minutes.

Annual Burden Hours: 25.

Needs and Uses: The United States Marine Corps (USMC) must collect information to properly adjudicate Basic Allowance for Housing (BAH) entitlements for cases where a service member claims as a dependent a child

born out of wedlock who does not reside in the service member's household. This collection uses NAVMC Form 1750/13, "USMC Dependency Statement Child Born Out of Wedlock Under Age 21," to provide a standardized method to document financial support and other case facts. To complete the collection, the service member and the child's non-service member guardian complete their respective sections of the form, which the guardian must then have notarized before submission.

The information is used by USMC Installation command representatives and the Marine and Family Programs Division (MFP-1) to make informed and legitimate dependency determinations, which is particularly critical in cases where the claim to BAH is questionable. This collection is mandated by the DoD Financial Management Regulation 7000.14-R, Vol. 7A, Ch. 26 and Marine Corps Order 1751.3. Without this collection, the USMC would lack the necessary documentation to validate dependency claims, potentially leading to incorrect BAH payments and an inability to fulfill its administrative responsibilities under DoD policy.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

DOD Clearance Officer: Mr. Reginald Lucas.

Dated: January 28, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2026-01959 Filed 1-30-26; 8:45 am]

BILLING CODE 6001-FR-P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: Election Assistance Commission.

ACTION: Sunshine Act notice; Notice of Public Meeting Agenda.

SUMMARY: Public Meeting: U.S. Election Assistance Commission.

DATES: Wednesday, February 18, 2026, 1:30 p.m.–3:30 p.m. ET.

ADDRESSES: The meeting will be held in person at the Election Assistance Commission hearing room at 633 3rd St. NW, Washington, DC 20001. The meeting is open to the public and will be livestreamed on the U.S. Election Assistance Commission YouTube Channel: <https://www.youtube.com/@u.s.electionassistancecomm2110>. Public

comments on the meeting must be in writing and submitted not later than 24 hours prior to the meeting start time. Written public comments on the meeting can be submitted electronically via <https://www.regulations.gov> (docket ID: EAC-2026-0034). Written public comments on the meeting can also be sent to the U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001. Email submissions of public comments on the meeting will not be accepted.

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897-9285, Email: kmuthig@eac.gov.

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94-409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct an open meeting on Election Audit Standards.

Agenda: During the meeting, the EAC's Commissioners will lead discussions with election officials and audit professionals to discuss how election audits can be used to boost public trust in elections. EAC staff will also present information on the work the agency has done to gather information on audit principles. The full agenda will be posted in advance on the EAC website: <https://www.eac.gov/events/2026/02/18/eac-election-audit-standards-hearing>.

Background: The Help America Vote Act of 2002 (HAVA) charged the EAC to serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of federal elections. Election audits are a vital tool for analyzing and enhancing the quality of election administration throughout the United States. With numerous types of audits targeting different aspects of the election process and a variety of methodologies employed across the country, each state is responsible for establishing its own audit policies and procedures. This meeting will provide information on election audit principles and best practices to help inform election officials, stakeholders, the general public, and members of the media.

Status: This meeting will be open to the public.

Seton Parsons,

Associate Counsel, U.S. Election Assistance Commission.

[FR Doc. 2026-01967 Filed 1-29-26; 11:15 am]

BILLING CODE 4810-71-P

DEPARTMENT OF ENERGY

[DOE-HQ-2025-0405]

Categorical Exclusion for Advanced Nuclear Reactors

AGENCY: Department of Energy.

ACTION: Notice of new categorical exclusion and request for comment.

SUMMARY: The U.S. Department of Energy (DOE or the Department) is establishing a categorical exclusion for authorization, siting, construction, operation, reauthorization, and decommissioning of advanced nuclear reactors for inclusion in its National Environmental Policy Act (NEPA) implementing procedures. DOE is including the categorical exclusion in the component of its NEPA implementing procedures that it maintains outside of the Code of Federal Regulations. The new categorical exclusion is based on the experience of DOE and other Federal agencies, current technologies, regulatory requirements, and accepted industry practice.

DATES: This new categorical exclusion is effective on February 2, 2026.

Comments on the new categorical exclusion are due by March 4, 2026.

ADDRESSES: This notice and the written record for this categorical exclusion are available on the DOE NEPA website at www.energy.gov/nepa. Also, documents relevant to this notice, including this notice and the written record, are posted on the Federal eRulemaking Portal at www.regulations.gov (Docket: DOE-HQ-2025-0405).

Submit comments, labeled "DOE categorical exclusion for advanced nuclear reactors," using the Federal eRulemaking Portal: www.regulations.gov.

Instructions: All submissions must include the agency name, "Department of Energy," and docket number, DOE-HQ-2025-0405, for this notice. All comments received will be posted without change to www.regulations.gov, including any personal information provided. Do not submit any information you consider to be private, Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Docket: For access to the docket to read comments received, go to www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: For questions concerning this notice, contact Ms. Carrie Abravanel, Acting Director, Office of NEPA Policy and Compliance, at askNEPA@hq.doe.gov or (202) 586-4600.

SUPPLEMENTARY INFORMATION:

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I. Introduction

Executive Order (E.O.) 14301, *Reforming Nuclear Reactor Testing at the Department of Energy* (May 23, 2025), Section 6 *Streamlining Environmental Reviews*, directs the Secretary of Energy to create "categorical exclusions as appropriate for reactors within certain parameters." E.O. 14301 states, "[d]ecades of research and engineering have produced prototypes of advanced nuclear technologies that incorporate passive safety mechanisms, improve the physical architecture of reactor designs, increase reactor operational flexibility and performance, and reduce risk in fuel disposal. Advanced reactors—including microreactors, small modular reactors, and Generation IV and Generation III+ reactors—have revolutionary potential."

Further, E.O. 14299, *Deploying Advanced Nuclear Reactor Technologies for National Security* (May 23, 2025), directs the Secretaries of Defense and Energy to consult with the Chairman of the Council on Environmental Quality regarding "applying the Department of Defense's and the Department of Energy's established categorical exclusions under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, for the construction of advanced nuclear reactor technologies on certain Federal sites within the United States and for any other appropriate measures for the purposes of implementing this order" and "establishing new categorical exclusions for the same purposes," among other things. E.O. 14299 states that "[a]dvanced nuclear reactors include nuclear energy systems like Generation III+ reactors, small modular reactors, microreactors, and stationary and mobile reactors that have the potential to deliver resilient, secure, and reliable power to critical defense facilities and other mission capability resources."

NEPA establishes three types of environmental review for proposed major Federal actions that are not otherwise excused from the obligation to undergo NEPA review, *see* 42 U.S.C. 4336: environmental impact statement, environmental assessment, and categorical exclusion—each involving different levels of information and analysis. An environmental impact statement is a detailed analysis of

reasonably foreseeable environmental effects prepared for a major Federal action significantly affecting the quality of the human environment (42 U.S.C. 4336(e)(6); 42 U.S.C. 4332). An environmental assessment is a concise public document prepared by a Federal agency to set forth the basis for its finding of no significant impact or its determination that an environmental impact statement is necessary (42 U.S.C. 4336(e)(4); 42 U.S.C. 4336(b)(2)). A categorical exclusion is a category of actions that the agency has determined, as established in its agency NEPA procedures, normally does not significantly affect the quality of the human environment and therefore does not require preparation of an environmental assessment or environmental impact statement (42 U.S.C. 4336(e)(1)).

In preparing this categorical exclusion, DOE developed supporting technical information briefly summarized in section III of this notice and consulted with the Council on Environmental Quality, the Department of War (formerly the Department of Defense), and the Nuclear Regulatory Commission.

DOE consulted with the Department of War on this categorical exclusion in alignment with E.O. 14299, *Deploying Advanced Nuclear Reactor Technologies for National Security* (May 23, 2025) with respect to a potential future siting, construction, and operation of advanced nuclear reactor technologies on Department of War installations to accelerate deployment of resilient power solutions in support of mission assurance objectives for critical infrastructure, and ensure military readiness.

DOE consulted with the Nuclear Regulatory Commission for establishing this categorical exclusion and to help the Nuclear Regulatory Commission understand DOE's approach for considering extraordinary circumstances when applying this categorical exclusion as well as a discussion of how DOE's integral elements for all categorical exclusions listed in 10 CFR part 1021 and DOE's NEPA implementing procedures outside the CFR, appendix B, condition application of this categorical exclusion.¹

In deciding whether to apply this categorical exclusion to a particular project, DOE would consider each of the conditions in the categorical exclusion

itself, the integral elements listed in appendix B of DOE's NEPA implementing procedures, and other conditions contained in DOE's NEPA implementing procedures, including whether extraordinary circumstances exist such that a normally excluded action may have a significant environmental effect.

As mentioned previously, DOE's NEPA implementing procedures include "integral elements" that apply to all categorical exclusions listed in appendix B to DOE's NEPA implementing procedures. 10 CFR part 1021 and DOE's NEPA implementing procedures outside the CFR, appendix B, paragraphs (1) through (5).² Although the integral elements are not repeated for each categorical exclusion, they are part of the definition of each categorical exclusion listed in appendix B, and DOE must consider them as part of its determination of whether the proposed action fits within a categorical exclusion (10 CFR 1021.102(b)(1) and Section 5.4(c)(1) of DOE's NEPA implementing procedures). Integral elements require that, to fit within a categorical exclusion, the proposed action must not threaten a violation of applicable environment, safety, and health requirements; require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities; disturb hazardous substances, pollutants, or contaminants that preexist in the environment such that there would be uncontrolled or unpermitted releases; have the potential to cause significant impacts on environmentally sensitive resources; or involve genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species, unless certain conditions are met.³ DOE defines "environmentally sensitive resource" as a resource that has typically been identified as needing protection through Executive order, statute, or regulation by Federal, state, or local government, or a federally recognized Indian tribe.

Environmentally sensitive resources include historic properties, threatened and endangered species or their habitat, floodplains, and wetlands, among others

(appendix B of 10 CFR part 1021 and DOE's NEPA implementing procedures).

In determining whether a proposed action fits within a categorical exclusion, DOE may review information provided by an applicant, in its application and during follow-up requests; information from systems maintained by DOE, another Federal agency, or external party (e.g., geographic information systems); information from site visits; information from discussions or consultations with Federal, state, local, or tribal governments; and information from other sources as needed. During this review, DOE can determine that additional information is needed to decide whether to make a categorical exclusion determination or decide to prepare an environmental assessment or environmental impact statement. Only if DOE determines that all the applicable requirements and conditions of the categorical exclusion (including the integral elements, as applicable) have been met will it proceed to review the proposed action for extraordinary circumstances, and potentially proceed to issue a categorical exclusion determination, thus completing NEPA review, or to prepare an environmental assessment or environmental impact statement. DOE regularly posts its categorical exclusion determinations at www.energy.gov/nepa/doe-categorical-exclusion-cx-determinations.

II. Categorical Exclusion

DOE is adding the following new categorical exclusion to appendix B of the DOE NEPA implementing procedures, which is published outside the Code of Federal Regulations and available at www.energy.gov/nepa:

B5.26 Advanced Nuclear Reactors

Authorization, siting, construction, operation, reauthorization, and decommissioning of advanced nuclear reactors, provided DOE determines that:

(1) the project's attributes, including potential fission product inventory, fuel type, reactor design, and operational plans, reduce sufficiently the risk of adverse offsite consequences from the release of radioactive or hazardous materials, and

(2) the project demonstrates that any hazardous waste, radioactive waste, or spent nuclear fuel generated by the project can be managed in accordance with applicable requirements.

For the purposes of this category, a project may include multiple reactors within a nuclear facility.

¹ DOE's NEPA implementing procedures outside the CFR are available at: <https://www.energy.gov/nepa/articles/doe-nepa-implementing-procedures-june-2025>.

² See 10 CFR part 1021, appendix B, and DOE's NEPA implementing procedures, appendix B: www.ecfr.gov/current/title-10/chapter-X/part-1021 and <https://www.energy.gov/nepa/articles/doe-nepa-implementing-procedures-june-2025>.

³ This is a summary description of the integral elements. See 10 CFR part 1021, appendix B, and DOE's NEPA implementing procedures, appendix B, for the full text: www.ecfr.gov/current/title-10/chapter-X/part-1021 and <https://www.energy.gov/nepa/articles/doe-nepa-implementing-procedures-june-2025>.

III. Support

DOE's full written record to explain the basis for the new categorical exclusion, including a discussion of relevant NEPA reviews, is available at www.energy.gov/nepa.

In summary, advanced nuclear reactors have key attributes such as safety features, fuel type, and fission product inventory that limit adverse consequences from releases of radioactive or hazardous material from construction, operation, and decommissioning. Although past advanced reactor projects have been for solely experimental, testing and demonstration purposes, the advanced fuel forms, inherently safe designs, and inventories of potential fission products associated with these reactors indicate that reactors in this category developed for additional purposes, such as power production and industrial applications, are also appropriate for this categorical exclusion.

Advanced reactor projects in this category typically employ inherent safety features and passive safety systems, in addition to well-established fuel, coolant, and structural materials that support their associated DOE safety design basis. Performance of these fuels, systems, and materials is sufficient to provide reasonable assurance of adequate protection to the public, workers, and environment. New reactor designs and their associated fuels ensure containment of radionuclides in the event of an accident. Operational periods for these projects will be bounded by the potential fission product inventory and will vary depending on the design and fuel type. Previously completed NEPA reviews have established that advanced reactors, including construction, operation, and decommissioning, characterized by technologies and materials (1) that have been verified to prevent adverse offsite consequences from release of radioactive or hazardous materials and (2) demonstrate that any hazardous waste, radioactive waste, or spent nuclear fuel generated by the project can be managed in accordance with applicable requirements do not significantly affect the quality of the human environment.

IV. DOE Solicits Comment

As explained previously, DOE is adding the new categorical exclusion for advanced nuclear reactors to its NEPA implementing procedures published outside the Code of Federal Regulations. DOE previously received public comments requesting that DOE add a categorical exclusion for nuclear power

reactors (e.g., 84 FR 34074). DOE has elected voluntarily to solicit comments on its new categorical exclusion for advanced nuclear reactors. DOE is soliciting comment on this new categorical exclusion and the associated written record, and may make revisions to this categorical exclusion, if DOE's review of any comments submitted suggests that further revisions are warranted. Commenters have 30 days from the date of publication of this notice to submit comments.⁴

Signing Authority

This document of the Department of Energy was signed on January 28, 2026, by Chris Wright, Secretary of Energy, U.S. Department 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 29, 2026.

Jennifer Hartzell,

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

[FR Doc. 2026-02071 Filed 1-30-26; 8:45 am]

BILLING CODE 6450-01-P

⁴ Before February 2025, the executive branch's historical practice was to receive public comments before promulgating a categorical exclusion. This practice was established by CEQ's NEPA implementing regulations. See 43 FR 56003 through 56004 (November 29, 1978) (establishing 40 CFR 1508.4, which defined, in part, a categorical exclusion as "procedures adopted by a Federal agency in implementation of these regulations" and cross-cited 40 CFR 1507.3 which required those procedures to be "publish[ed] . . . in the **Federal Register** for comment and . . . adopted only after an opportunity for public review"); see also 89 FR 35573-35575 (May 1, 2024) (analogous provisions in the 2024 final rule revising CEQ's NEPA implementing regulations). This historical practice is no longer applicable to the executive branch given that CEQ's NEPA implementing regulations have been rescinded in their entirety. See 90 FR 10610 (February 25, 2025); see also 90 FR 8353 (January 29, 2025) Executive Order 14154 (Unleashing American Energy), section 5(c) (directing revision of agency NEPA implementing procedures to "[c]onsistent with applicable law, . . . prioritize efficiency" over all other policy objectives).

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: RP26-413-000.

Applicants: ANR Pipeline Company.

Description: 4(d) Rate Filing; Just Energy NR Agmts 140994 & 140996 to be effective 8/1/2025.

Filed Date: 1/27/26.

Accession Number: 20260127-5235.

Comment Date: 5 p.m. ET 2/9/26.

Docket Numbers: RP26-414-000.

Applicants: Southern LNG Company, L.L.C.

Description: 4(d) Rate Filing; Dredging Surcharge Cost Adjustment—2026 to be effective 3/1/2026.

Filed Date: 1/28/26.

Accession Number: 20260128-5097.

Comment Date: 5 p.m. ET 2/9/26.

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: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502-6595 or OPP@ferc.gov.

Dated: January 28, 2026.

Carlos D. Clay,
Deputy Secretary.

[FR Doc. 2026-02006 Filed 1-30-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Combined Notice of Filings #1**

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG26–140–000.
Applicants: BNB Tennyson Solar LLC.
Description: BNB Tennyson Solar LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 1/28/26.
Accession Number: 20260128–5207.
Comment Date: 5 p.m. ET 2/18/26.
Docket Numbers: EG26–141–000.
Applicants: 26SB 8me LLC.
Description: 26SB 8me LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 1/28/26.

Accession Number: 20260128–5209.
Comment Date: 5 p.m. ET 2/18/26.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER24–1163–002.
Applicants: CPV Backbone Solar, LLC.
Description: Notice of Change in Status of CPV Backbone Solar, LLC.
Filed Date: 1/27/26.
Accession Number: 20260127–5298.
Comment Date: 5 p.m. ET 2/17/26.
Docket Numbers: ER25–198–002.
Applicants: Power Authority of the State of New York, New York Independent System Operator, Inc.
Description: Compliance filing: New York Independent System Operator, Inc. submits tariff filing per 35: NYPA Compliance: Base ROE Settlement to be effective 11/1/2024.

Filed Date: 1/28/26.
Accession Number: 20260128–5236.
Comment Date: 5 p.m. ET 2/18/26.

Docket Numbers: ER26–37–001.
Applicants: Nighthawk Energy Storage, LLC.

Description: Notice of Non-Material Change in Status of Nighthawk Energy Storage, LLC.
Filed Date: 1/27/26.

Accession Number: 20260127–5297.
Comment Date: 5 p.m. ET 2/17/26.

Docket Numbers: ER26–103–001.
Applicants: Six One Commodities LLC.

Description: Tariff Amendment: Response to Deficiency Letter and Request for Expedited Comment Deadline to be effective 12/10/2025.
Filed Date: 1/28/26.

Accession Number: 20260128–5201.
Comment Date: 5 p.m. ET 2/18/26.

Docket Numbers: ER26–628–001.
Applicants: Midcontinent Independent System Operator, Inc., Sam Houston Electric Cooperative, Inc.
Description: Tariff Amendment: Sam Houston Electric Cooperative, Inc. submits tariff filing per 35.17(b): 2026–01–28 Amendment for SHECO TO Integration Attachment O to be effective 2/1/2026.

Filed Date: 1/28/26.
Accession Number: 20260128–5106.
Comment Date: 5 p.m. ET 2/18/26.

Docket Numbers: ER26–702–001.
Applicants: Mid-Atlantic Interstate Transmission, LLC.

Description: Tariff Amendment: Amendment to Amended IA, SA No. 4578 in ER26–702 to be effective 2/9/2026.

Filed Date: 1/28/26.
Accession Number: 20260128–5128.
Comment Date: 5 p.m. ET 2/18/26.

Docket Numbers: ER26–858–000.
Applicants: Chula Vista Energy Center 2, LLC.

Description: Report Filing: Amendment to MBR Application to be effective N/A.

Filed Date: 1/22/26.
Accession Number: 20260122–5064.
Comment Date: 5 p.m. ET 2/12/26.

Docket Numbers: ER26–1074–000.
Applicants: Chalan CA Solar Storage, LLC.

Description: Supplement to 01/16/2026, tariff filing.
Filed Date: 1/20/26.

Accession Number: 20260120–5299.
Comment Date: 5 p.m. ET 2/10/26.

Docket Numbers: ER26–1138–000.
Applicants: Consumers Energy Company.

Description: Cost Recover Filing of Consumers Energy Company.
Filed Date: 1/23/26.

Accession Number: 20260123–5236.
Comment Date: 5 p.m. ET 2/13/26.

Docket Numbers: ER26–1147–000.
Applicants: Idaho Power Company.
Description: 205(d) Rate Filing: SA 305, SA 306, SA 334—NITSAs Between IPC and BPA to be effective 4/1/2026.

Filed Date: 1/27/26.
Accession Number: 20260127–5261.
Comment Date: 5 p.m. ET 2/17/26.

Docket Numbers: ER26–1148–000.
Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: Western Area Power Administration—RMR Formula Rate Filing to be effective 4/1/2026.
Filed Date: 1/28/26.

Accession Number: 20260128–5066.
Comment Date: 5 p.m. ET 2/18/26.

Docket Numbers: ER26–1149–000.

Applicants: Platte River Power Authority, Southwest Power Pool, Inc.
Description: 205(d) Rate Filing: Platte River Power Authority submits tariff filing per 35.13(a)(2)(iii): Platte River Power Authority Formula Rate Filing (Zone 104) to be effective 4/1/2026.

Filed Date: 1/28/26.
Accession Number: 20260128–5086.
Comment Date: 5 p.m. ET 2/18/26.

Docket Numbers: ER26–1150–000.
Applicants: Tri-State Generation and Transmission Association, Inc., Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): Tri-State Generation and Transmission Association, Inc. Formula Rate to be effective 4/1/2026.

Filed Date: 1/28/26.
Accession Number: 20260128–5122.
Comment Date: 5 p.m. ET 2/18/26.

Docket Numbers: ER26–1151–000.
Applicants: Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc.

Description: 205(d) Rate Filing: Duke Energy Ohio, Inc. submits tariff filing per 35.13(a)(2)(iii): DEOK Revisions to PJM Tariff, Attachment H–22A to be effective 3/30/2026.

Filed Date: 1/28/26.
Accession Number: 20260128–5161.
Comment Date: 5 p.m. ET 2/18/26.

Docket Numbers: ER26–1152–000.
Applicants: Midcontinent Independent System Operator, Inc.

Description: 205(d) Rate Filing: 2026–01–28 SA 3795 Ameren Missouri-Kelso Solar 2nd Rev GIA (J1087) to be effective 12/31/2025.

Filed Date: 1/28/26.
Accession Number: 20260128–5180.
Comment Date: 5 p.m. ET 2/18/26.

Docket Numbers: ER26–1153–000.
Applicants: AEP Texas Inc.

Description: 205(d) Rate Filing: AEPTX-Abilene GCE Generation Interconnection Agreement to be effective 12/31/2025.

Filed Date: 1/28/26.
Accession Number: 20260128–5183.
Comment Date: 5 p.m. ET 2/18/26.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC26–1–000.
Applicants: Aurora Utilities Limited.

Description: Aurora Utilities Limited submits Notice of Self-Certification of Foreign Utility Company Status.

Filed Date: 1/28/26.
Accession Number: 20260128–5081.
Comment Date: 5 p.m. ET 2/18/26.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/>)

fercgensearch.asp) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502-6595 or OPP@ferc.gov.

Dated: January 28, 2026.

Carlos D. Clay,
Deputy Secretary.

[FR Doc. 2026-02007 Filed 1-30-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2077-130]

Great River Hydro, LLC; Notice of Intent To Prepare an Environmental Assessment

On November, 12, 2025, supplemented January 5, 2026, Great River Hydro, LLC filed an application for a temporary variance from minimum flows under Article 401 for the Fifteen Mile Falls Hydroelectric Project No. 2077. The project is located on the Connecticut River in Grafton County, New Hampshire, and Caledonia County, Vermont. The project does not occupy federal lands.

Due to drought conditions, Great River Hydro, LLC reduced minimum flows from the Comerford Development, beginning on September 29, 2025. A variance in the minimum flows required by Article 401 was necessary to preserve the depleted storage capacity of its upstream Moore reservoir. The variance allowed the licensee to decrease the seasonal minimum flows of 818 cubic feet per second (cfs) from June 1 to September 30, and 1,145 cfs from October 1 to March 31, to 600 cfs. The

reduction in flows occurred from September 29 to December 15, 2025. A public notice was issued on December 5, 2025, and no comments were received.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) for the project.¹ Commission staff plans to issue an EA by April 10, 2026. Revisions to the schedule may be made as appropriate. The EA will be issued for a 30-day comment period. All comments filed on the EA will be reviewed by staff and considered in the Commission's final decision on the proceeding.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502-6595 or OPP@ferc.gov.

Any questions regarding this notice may be directed to Erik Hazelton at (212) 273-5911 or erik.hazelton@ferc.gov.

(Authority: 18 CFR 2.1)

Dated: January 28, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026-02035 Filed 1-30-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2242-159]

Eugene Water & Electric Board; Notice of Intent To Prepare an Environmental Assessment

On June 21, 2021, supplemented May 16, 2024, July 3, 2024, April 21, 2025, and January 21, 2026, Eugene Water and Electric Board filed an application to install a load bank in lieu of a turbine bypass valve under license Article 3 for the Carmen-Smith Hydroelectric Project No. 2242. The project is located on the McKenzie and Smith Rivers in Lane and Linn counties, near McKenzie Bridge, Oregon, and occupies U.S. Forest Service Land within the Willamette National Forest.

Eugene Water and Electric Board proposed to install a load bank at the Carmen Power Plant for protecting the Smith Bypass Reach and its associated environment against spill events from Smith Dam. The load bank would

¹ The unique identification number for documents relating to this environmental review is EAXX-019-20-000-1767861898.

dissipate electricity produced at the Carmen Power Plant equivalent to at least 800 cubic feet per second of spill that is required to be diverted from the Smith Bypass Reach. On May 22, 2025, the Commission noticed the application for a 30-day comment period. On June 20, 2025, the Oregon Department of Environmental Quality and Oregon Department of Fish and Wildlife filed motions to intervene. On June 23, 2025, Oregon Wild filed comments on the application.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) for the project.¹ Commission staff plans to issue an EA by July 31, 2026. Revisions to the schedule may be made as appropriate. The EA will be issued for a 30-day comment period. All comments filed on the EA will be reviewed by staff and considered in the Commission's final decision on the proceeding.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502-6595 or OPP@ferc.gov.

Any questions regarding this notice may be directed to Erich Gaedeke at 503-552-2716 or erich.gaedeke@ferc.gov.

(Authority: 18 CFR 2.1)

Dated: January 28, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026-02034 Filed 1-30-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF26-2-000]

Western Area Power Administration; Notice of Filing

Take notice that on January 23, 2026, Western Area Power Administration submitted a tariff filing: Sierra Nevada Region-Pacific Alternating Current Interie-Western Area Power Administration 211-20260122 to be effective April 1, 2026.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214).

¹ The unique identification number for documents relating to this environmental review is EAXX-019-20-000-1769181469.

Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502-6595 or OPP@ferc.gov.

Comment Date: 5:00 p.m. Eastern Time on February 23, 2026.

Dated: January 28, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026-02036 Filed 1-30-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD24-7-000]

Federal and State Current Issues Collaborative; Notice of Meeting and Agenda

As first announced in the Commission’s January 14, 2026 Notice in this docket,¹ the fourth public meeting of the Federal and State Current Issues Collaborative (Collaborative) will be held on Wednesday, February 11, 2026, from approximately 1:00 p.m. to 3:30 p.m. EST, at the Potomac Ballroom in the Westin DC Downtown hotel in Washington, DC. Commissioners may attend and participate in this meeting.

¹ *Fed. and State Current Issues Collaborative*, Notice Announcing Meeting, Docket No. AD24-7-000 (issued Jan. 14, 2026).

Attached to this Notice is an agenda for the meeting.

The purpose of this meeting is to discuss how affordability considerations are being addressed at the state and regional levels as load growth and transmission expansion accelerate in response to rapid AI and other demand growth. Commissioners do not intend to discuss at this meeting any specific proceeding before the Commission, including proceedings that involve similar issues. A non-exhaustive list of these proceedings can be found in the Appendix to this Notice.

The meeting will be open to the public for listening and observing and will be on the record. There is no fee for attendance and registration is not required. The public may attend in person or via Webcast.² This meeting will be transcribed. Transcripts will be available for a fee from Ace Reporting, 202-347-3700.

Commission meetings are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to accessibility@ferc.gov or call toll free 1-866-208-3372 (voice) or 202-208-8659 (TTY), or send a fax to 202-208-2106 with the required accommodations.

More information about the Collaborative is available here: <https://www.ferc.gov/federal-state-current-issues-collaborative>. For questions related to the Collaborative, please contact: Robert Thormeyer, 202-502-8694, robert.thormeyer@ferc.gov, Joseph Popely, 202-502-8513, joseph.popely@ferc.gov, Zoe Philippides, 202-502-8826, zoe.philippides@ferc.gov, or Kimberly Duffley, 202-898-1305, kduffley@naruc.org.

Agenda not attached

Dated: January 28, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026-02032 Filed 1-30-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15094-002]

Ohio Power and Light, LLC; Notice Of Schedule for The Final License Order for The Robert C. Byrd Locks and Dam Hydroelectric Project

On January 23, 2025, Ohio Power and Light, LLC filed an original application, pursuant to Part I of the Federal Power Act, for the proposed Robert C. Byrd Locks and Dam Hydroelectric Project No. 15094. On January 14, 2026, the Commission issued a combined Notice of Application Ready for Environmental Analysis and Intent to Prepare an Environmental Assessment (EA), which established an anticipated issuance date for the EA of September 29, 2026.¹

The project is covered under Title 41 of the Fixing America’s Surface Transportation Act (FAST-41). Under FAST-41, agencies are to publish completion dates for all federal environmental reviews and authorizations. This notice identifies the Commission’s anticipated schedule for issuance of the final license order for the project, which is dependent on the completion of consultation under section 7 of the Endangered Species Act and the issuance of a water quality certification under section 401 of the Clean Water Act. We currently anticipate issuing the final order no later than:

Issuance of Final Order—March 18, 2027

If a schedule change becomes necessary, additional notice will be provided so that interested parties and the relevant agencies are kept informed of the project’s progress.

(Authority: 18 CFR 2.1)

Dated: January 28, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026-02064 Filed 1-30-26; 8:45 am]

BILLING CODE 6717-01-P

¹ For tracking purposes under the National Environmental Policy Act, the unique identification number for documents relating to this environmental review is EAXX-019-20-000-1767861985.

² A link to the Webcast will be available here on the day of the event: <https://www.ferc.gov/federal-state-current-issues-collaborative>.

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP26–34–000; Docket No. CP26–35–000]

Forza Pipeline LLC, Bull Run Pipeline LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Forza Pipeline Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the Forza Pipeline Project involving construction and operation of facilities by Forza Pipeline LLC (Forza) and Bull Run Pipeline LLC (Bull Run) in Lea County, New Mexico as well as Loving and Winkler Counties, Texas. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as “scoping.” The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission’s NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on February 27, 2026. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to

avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on December 3, 2025, you will need to file those comments in Docket No. CP26–34–000 and CP26–35–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission’s current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Forza and Bull Run provided landowners with a fact sheet prepared by the FERC entitled “An Interstate Natural Gas Facility On My Land? What Do I Need To Know?” which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission’s proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (www.ferc.gov) under the Natural Gas, Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing

of comments and has staff available to assist you at (866) 208–3676 or FercOnlineSupport@ferc.gov.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission’s website (www.ferc.gov) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission’s website (www.ferc.gov) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on “eRegister.” You will be asked to select the type of filing you are making; a comment on a particular project is considered a “Comment on a Filing”; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP26–34–000 and CP26–35–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or OPP@ferc.gov.

Summary of the Proposed Project

Forza proposes to construct and operate a new interstate natural gas pipeline (Line FZA–A) and certain other facilities located in New Mexico and Texas. According to Forza, the project would provide up to 750 million standard cubic feet of natural gas per

day (MMcf/d) of firm interstate natural gas transportation service from the rapidly growing Delaware Basin production areas in southeastern New Mexico to multiple delivery points at or near the Waha Hub in Texas. Forza also requests authorization to enter into a lease agreement pursuant to which Forza will lease 750,000 dekatherms per day of natural gas transportation from Bull Run.

The Forza Pipeline Project would consist of the following facilities:

- installation of Line FZA–A, a 35.94-mile-long new 36-inch-diameter natural gas pipeline beginning in Lea County, New Mexico and terminating in Winkler County, Texas;
- construction of a new meter station (the Desert Ram Junction) in Lea County, New Mexico, including the installation of a new riser;
- installation of a new mainline valve (MLV) along the proposed Line FZA–A pipeline in Loving County, Texas; and
- installation of a new riser at the existing Wildcat Junction site in Winkler County, Texas.

The general location of the project facilities is shown in appendix 1.¹

Land Requirements for Construction

Construction of the proposed facilities would disturb about 738.6 acres of land for the aboveground facilities and the pipeline. Following construction, Forza would maintain about 473.2 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife and threatened and endangered species;
- cultural resources;
- land use;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to

lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/ Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary² and the Commission's natural gas environmental documents web page (<https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents>). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.³ Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is

using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.⁴ The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to GasProjectAddressChange@ferc.gov stating your request. You must include the docket number CP26–34–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached "Mailing List Update Form" (appendix 2).

¹ The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the link called "eLibrary." For instructions on connecting to eLibrary, refer to the last page of this notice. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll free, (886) 208–3676 or TTY (202) 502–8659.

² For instructions on connecting to eLibrary, refer to the last page of this notice.

³ Cooperating agency responsibilities are addressed in Section 107(a)(3) of NEPA (42 U.S.C. 4336(a)(3)).

⁴ The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Additional Information

Additional information about the project is available from the FERC website at www.ferc.gov using the eLibrary link. Click on the eLibrary link, click on “General Search” and enter the docket number in the “Docket Number” field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission’s calendar located at <https://www.ferc.gov/news-events/events> along with other related information.

(Authority: 18 CFR 2.1)

Dated: January 28, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026–02037 Filed 1–30–26; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2025–0024; FRL–12473–12–OCSPP]

Pesticide Product Registration; Receipt of Applications for New Active Ingredients (December 2025)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt and request for comment.

SUMMARY: This document announces the Agency’s receipt of and solicits comment on applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. The Agency is providing this notice in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). EPA uses the month and year in the title to identify when the Agency complied the applications identified in this notice of receipt. Unit II. of this document identifies certain applications received in 2025 that are currently being evaluated by EPA, along with information about each application, including when it was received, who submitted the application, and the purpose of the application.

DATES: Comments must be received on or before March 4, 2026.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and the *EPA File Symbol* or the *EPA Registration Number* of interest as shown in Unit II. of this document, online at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Each application summary in Unit II. specifies a contact division. The appropriate division contacts are identified as follows:

- BPPD (Biopesticides and Pollution Prevention Division) (Mail Code 7511M); Shannon Borges; main telephone number: (202) 566–1400; email address: BPPDFRNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action provides information that is directed to the public in general.

B. What is the Agency’s authority for taking this action?

EPA is taking this action pursuant to section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136a(c)(4), and 40 CFR 152.102.

C. What action is the Agency taking?

EPA is hereby providing notice of receipt and opportunity to comment on applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Notice of receipt of these applications does not imply a decision by the Agency on these applications. The applications identified in this document were received since the last notice that was issued and are currently being evaluated by EPA in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). For actions being evaluated under EPA’s public participation process for registration actions, there will be an additional opportunity for public comment on the proposed decisions. Please see EPA’s public participation website for additional information on this process (<https://www.epa.gov/registration/>

public-participation-process-registration-actions).

D. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through <https://www.regulations.gov> or email. If you wish to include CBI in your comment, please follow the applicable instructions at <https://www.epa.gov/dockets/commenting-epa-dockets#rules> and clearly mark the information that you claim to be CBI. In addition to one complete version of the comment that includes CBI, a copy of the comment without CBI must be submitted for inclusion in the public docket. Information marked as CBI 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/commenting-epa-dockets>.

II. Registration Applications Received

This unit provides the following information about the applications received: The EPA File Symbol or Registration number(s); EPA docket ID number for the application; Name and address of the applicant; Name of the active ingredient, product type and proposed uses; and the division to contact for that application. Additional information about the application may also be available in the docket for the application as identified in this unit.

- *File Symbol:* 279–OTGE. *Docket ID number:* EPA–HQ–OPP–2025–3786. *Applicant:* FMC Corporation 2929 Walnut Street Philadelphia, PA 19104. *Product name:* W8S11 110 SC. *Active ingredients:* *Bacillus licheniformis* strain FMCH001 DSM 32154 at 4.5% and *Bacillus subtilis* strain FMCH002 DSM 32155 at 5%. *Product type:* Microbial Fungicide and Nematicide. *Proposed use:* Commercial use for sprinkler and drip chemigation on crops. *Date of Receipt:* February 1, 2025. *Contact:* BPPD.

- *File Symbols:* 94614–A, 94614–T, 94614–I. *Docket ID number:* EPA–HQ–OPP–2025–3952. *Applicant:* GreenLight Biosciences, Inc., 200 Boston Ave., Suite 1000, Medford, MA 02155. *Product names:* PF–ES43–F–018 (at 1%), PF–ES43–F–022 (at 1%), and ES43 MUP (at 2.2%). *Active ingredient:* Biochemical pesticide—Unecyna. *Proposed use:* Fungicide. *Date of receipt:* May 31, 2025. *Contact:* BPPD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: January 23, 2026.

Edward Messina,

Director, Office of Pesticide Programs.

[FR Doc. 2026–01964 Filed 1–30–26; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2025–0026; FRL–12472–12–OCSPP]

Pesticide Product Registration; Receipt of Applications for New Uses (December 2025)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt and request for comment.

SUMMARY: This document announces the Agency's receipt of and solicits comment on applications to register new pesticide products containing currently registered active ingredients that would entail a change in use pattern. The Agency is providing this notice in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). EPA uses the month and year in the title to identify when the Agency complied the applications identified in this notice of receipt. Unit II. of this document identifies certain applications received in 2025 that are currently being evaluated by EPA, along with information about each application, including when it was received, who submitted the application, and the purpose of the application.

DATES: Comments must be received on or before March 4, 2026.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and the *EPA File Symbol* or the *EPA Registration Number* of interest as shown in Unit II. of this document, online at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/>.

FOR FURTHER INFORMATION CONTACT: Each application summary in Unit II. specifies a contact division. The appropriate division contacts are identified as follows:

- RD (Registration Division) (Mail Code 7505T); Charles Smith; main

telephone number: (202) 566–1030; email address: RDfRNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action provides information that is directed to the public in general.

B. What is the Agency's authority for taking this action?

EPA is taking this action pursuant to section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136a(c)(4), and 40 CFR 152.102.

C. What action is the Agency taking?

EPA is hereby providing notice of receipt and opportunity to comment on applications to register new pesticide products containing currently registered active ingredients that would entail a change in use pattern. EPA provides a notice of receipt on a monthly basis, using the month and year in the title to help distinguish one document from the other. This document identifies the applications that were received since the last notice that was issued and are currently being evaluated by EPA in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under EPA's public participation process for registration actions, there will be an additional opportunity for public comment on the proposed decisions. Please see EPA's public participation website for additional information on this process (<https://www.epa.gov/registration/public-participation-process-registration-actions>).

D. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through <https://www.regulations.gov> or email. If you wish to include CBI in your comment, please follow the applicable instructions at <https://www.epa.gov/dockets/commenting-epa-dockets#rules> and clearly mark the information that you claim to be CBI. In addition to one complete version of the comment that includes CBI, a copy of the comment without CBI must be submitted for inclusion in the public docket. Information marked as CBI 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/epa-dockets>.

II. Applications to Register New Uses

This unit provides the following information about each application received: The EPA File Symbol or Registration number(s); EPA docket ID number for the application; Name and address of the applicant; Name of the active ingredient, product type and proposed uses; and the division to contact for that application. Additional information about the application may also be available in the docket for the application as identified in this unit.

- *EPA Registration Number:* 100–1001; 100–1084. *Docket ID number:* EPA–HQ–OPP–2025–3296. *Applicant:* Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. *Active ingredient:* Fluzifop-p-butyl. *Product type:* Herbicide. *Proposed use:* Sod farms. *Date of Receipt:* August 27, 2025. *Contact:* RD.

- *EPA Registration Number:* 19713–254 & 19713–683. *Docket ID number:* EPA–HQ–OPP–2025–3295. *Applicant:* Drexel Chemical Company, P.O. Box 13327, Memphis, TN 38113. *Active ingredient:* Trifluralin. *Product type:* Herbicide. *Proposed use:* Pennycress. *Date of receipt:* August 7, 2025. *Contact:* RD.

- *EPA Registration Number:* 60063–87, 60063–58. *Docket ID number:* EPA–HQ–OPP–2025–3294. *Applicant:* Spicam Agro USA, Inc. 2525 Meridian Parkway, Suite 100, Durham, NC 27713. *Active ingredient:* Clomazone. *Product type:* Herbicide. *Proposed use:* Turfgrass. *Date of receipt:* June 12, 2025. *Contact:* RD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: January 23, 2026.

Edward Messina,

Director, Office of Pesticide Programs.

[FR Doc. 2026–01965 Filed 1–30–26; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0139]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice and request for comment.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC), as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing

information collection described below (OMB Control No. 3064–0139).

DATES: Comments must be submitted on or before April 3, 2026.

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:* Robert Meiers, Regulatory Counsel, MB–3013, 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.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Robert Meiers, Regulatory Attorney, Romeiers@fdic.gov, MB–3013, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

1. *Title:* CRA Sunshine.

OMB Number: 3064–0139.

Affected Public: Insured State nonmember banks and State savings associations and their affiliates and nongovernmental entities and persons.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0139]

Information Collection (IC) (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Average time per response (HH:MM)	Annual burden (Hours)
IC 1. Reporting burden by covered banks—list of agreements, 12 CFR 346.6(d)(1)(ii) (Mandatory).	Reporting (On occasion)	1	1	01:00	1
IC 2. Reporting burden by covered banks—copies of agreements, 12 CFR 346.6(d)(1)(i) (Mandatory).	Reporting (On occasion)	1	1	01:00	1
IC 3. Reporting burden by NGEPS—copies of agreements, 12 CFR 346.6(c) (Mandatory).	Reporting (On occasion)	1 ^P	0.333	01:00	0
IC 4. Reporting burden by covered banks—annual report, 12 CFR 346.7(b) (Mandatory).	Reporting (Annual)	2	1	04:00	8
IC 5. Reporting burden by NGEPS—annual report, 12 CFR 346.7(b) (Mandatory).	Reporting (Annual)	2	1	04:00	8
IC 6. Reporting burden by covered banks—filing NGEPS report, 12 CFR 346.7(f)(2)(ii) (Mandatory).	Reporting (Annual)	2	1	01:00	2
IC 7. Disclosure burden by covered banks—covered agreements to public, 12 CFR 346.6(b) (Mandatory).	Disclosure (On occasion)	1	1	01:00	1
IC 8. Disclosure burden by NGEPS—covered agreements to public, 12 CFR 346.6(b) (Mandatory).	Disclosure (On occasion)	1	1	01:00	1
IC 9. Disclosure burden by covered banks to NGEPS—CRA affiliate activities, 12 CFR 346.4(b) (Mandatory).	Disclosure (On occasion)	1	1	01:00	1
Total Annual Burden (Hours): .....	.....	.....	.....	.....	23

Source: FDIC.

General Description of Collection:

This collection implements a statutory requirement imposing reporting, disclosure, and recordkeeping requirements on some community reinvestment-related agreements between insured depository institutions or affiliates, and nongovernmental entities or persons. The information assists interested members of the public in assessing whether the parties are fulfilling their agreements, and helps the agencies understand how the institutions they regulate are fulfilling their CRA responsibilities. There is no change in the method or substance of

the collection. The overall reduction in burden hours is the result of economic fluctuation. In particular, the decline in the estimated overall annual time burden from 42 hours in 2023 to 19 hours in 2026 is the result of a reduction in the number respondents.

Request for Comment

Comments are invited on (a) whether the collections of information are 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 collections,

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 collections 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 29, 2026.

Jennifer M. Jones,
Deputy Executive Secretary.

[FR Doc. 2026-02073 Filed 1-30-26; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Benjamin W. McDonough, Deputy Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551-0001, not later than February 17, 2026.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to Applications.Comments@atl.frb.org:

1. *Dinesh V. Raju, Nita K. Parikh, Kiran J. Parikh, Mukund C. Raja, Dhaval S. Shah, Monal K. Shah; 455 Trust, Meena J. Shah and Deep J. Shah,*

individually and as co-trustees; 475 Trust, Jayendrakumar J. Shah and Shveta Shah Raju, individually and as co-trustees; 4580 Trust, Shveta Shah Raju and Asha Shah Prasad, individually and as co-trustees; 3490 Trust, Asha Shah Prasad and Deep J. Shah, individually and as co-trustees; 2764 Trust, Deep J. Shah and Shveta Shah Raju, individually and as co-trustees; all of Duluth, Georgia; Purna Nitin Parikh Rev Living Trust, Purna N. Parikh, individually and as trustee, both of Johns Creek, Georgia; and Samir N. Sheth and Rupa S. Sheth, both of Lilburn, Georgia; as the Shah Family Control Group, a group acting in concert, to retain voting shares of Touchmark Bancshares, Inc., and thereby indirectly retain voting shares of Touchmark National Bank, both of Alpharetta, Georgia. In addition, Deep J. Shah to acquire additional voting shares of Touchmark Bancshares, Inc.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2026-02080 Filed 1-30-26; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC-2026-0133, NIOSH-356]

National Institute for Occupational Safety and Health (NIOSH) Center for Firefighter Safety, Health and Well-Being Portfolio; Request for Information

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Request for information.

SUMMARY: The Centers for Disease Control and Prevention's (CDC) National Institute for Occupational Safety and Health (NIOSH), in the Department of Health and Human Services, requests public input on priority topics related to firefighter safety and health. Through its Center for Firefighter Safety, Health, and Well-Being, NIOSH conducts research and provides services to identify and help prevent new and emerging hazards in the fire service earlier and faster. As the threat from structural, wildland urban interface, and wildland fires grows, NIOSH seeks input to help refine its existing research and engagement priorities. This request is for information-gathering purposes and

does not propose new regulations, requirements, or policies.

DATES: Comments must be received on or before April 3, 2026.

ADDRESSES: Submit comments by either of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments.

- **Mail:** NIOSH Docket Office, Robert A. Taft Laboratories, MS C-34, 1090 Tusculum Avenue, Cincinnati, Ohio 45226-1998.

Instructions: All written submissions received in response to this document must include the agency name and docket number (CDC-2026-0133 NIOSH-356) for this activity. All relevant comments, including any personal information provided, will be posted without change to <https://www.regulations.gov>. Do not submit comments by email.

FOR FURTHER INFORMATION CONTACT:

Lauralynn McKernan, 1090 Tusculum Ave., MS R-14, Cincinnati, OH 45226; Telephone (513) 533-8542 (this is not a toll-free number); Email NIOSHregs@cdc.gov.

SUPPLEMENTARY INFORMATION: NIOSH has decades of experience conducting investigations and research on firefighter safety and health. The NIOSH Center for Firefighter Safety, Health, and Well-Being provides a central point for engaging with the broad spectrum of research and service NIOSH conducts around firefighters. The goal of the Center is to protect firefighters by identifying new and emerging hazards in the fire service so that those hazards can be prevented earlier and faster. Firefighters are vital to the safety of our communities. While on duty, firefighters may experience acute events such as injuries, heart attacks, and fatalities. Over time, firefighters are at risk of cancer and other chronic diseases.

Protecting firefighters' safety and health is a top priority for NIOSH. NIOSH works closely with other federal agencies, researchers, and fire-service leaders and organizations to improve firefighter safety and health. As the threat from structural, wildland urban interface (WUI), and wildland fires grows, both firefighters and other workers face risks from fire-related exposures, such as smoke inhalation, post-fire clean-up activities, and hazardous materials. NIOSH is currently engaged in the following firefighter safety and health activities:

- **Services:** NIOSH offers a range of vital services to enhance firefighter safety and health, including:

a. National Firefighter Registry (NFR) for Cancer: Actively enrolling firefighters to understand and reduce cancer risk.

b. NIOSH Respirator Approval Program (RAP): Evaluating the safety of respirators and PPE used by firefighters.

c. Health Hazard Evaluation (HHE) Program: Assessing work-related health hazards to improve worker safety and health.

d. World Trade Center Health Program (WTC Health Program): Providing healthcare to 9/11 responders and supporting internal and extramural grant research into WTC-related health conditions and treatment.

e. Fire Fighter Fatality Investigation and Prevention Program (FFFIPP): Investigating line-of-duty deaths and serious injuries to improve safety and prevent future incidents.

f. Emergency Response Support: Enhancing preparedness and response for both natural disasters and manmade crises, supporting communities with resources and tools.

- *Cancer Prevention*: NIOSH has a variety of activities and research to understand and reduce the risk of cancer in the fire industry, including the NFR, the largest effort ever undertaken to understand and reduce the risk of cancer among U.S. firefighters.

- *Research*: NIOSH conducts research to enhance the health and safety of structural and wildland firefighters. By assessing exposures related to materials burned, fire conditions, and substances encountered such as PFAS in firefighting foam, as well as ways to prevent injury and illnesses, NIOSH continues to be at the forefront of firefighter safety and health research.

- *Personal Protective Equipment (PPE)*: NIOSH evaluates the safety of PPE for structural and wildland firefighters—including respirators and turnout gear—through comprehensive research, evaluations, and the NIOSH Respirator Approval Program, safeguarding the health and safety of all responders.

- *Partnerships*: NIOSH collaborates with federal agencies, researchers, fire-service leaders, and organizations to better understand the safety and health needs of firefighters and maximize the impact of NIOSH research and activities.

- *Resources*: NIOSH develops resources and tools to support firefighters and first responders in performing their duties safely and effectively in hazardous environments.

We are seeking additional input on the NIOSH priorities, research portfolio, and service activities to help protect the firefighters and other workers who face

risks from fire-related exposures, injuries, illnesses, and fatalities. Please consider addressing these questions or provide other comments you deem relevant.

(1) How can NIOSH best leverage these priority topics to help improve firefighter safety, health, and well-being and address potential challenges?

(2) What priorities, research areas and service activities could be expanded?

(3) How can NIOSH best partner with fire service organizations and related stakeholder organizations to achieve these priorities?

John J. Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.

[FR Doc. 2026–01935 Filed 1–30–26; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Safe Access for Victims' Economic Security Data Collection for Safety in Child Support Program Research (New Collection)

AGENCY: Office of Child Support Enforcement, 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 public comments on a proposed information collection as part of the Safe Access for Victims' Economic Security (SAVES) Demonstration research on safety in the child support program. The SAVES Center, responsible for providing technical assistance and conducting evaluation for SAVES, will conduct one-time data collection activities with domestic violence (DV) survivors, advocates, and child support staff to understand their experiences and to identify barriers and promising practices related to safety in the child support system. These activities are part of ACF's efforts to improve safety in the child support program under SAVES.

DATES: *Comments due* April 3, 2026.

ADDRESSES: In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above. You can obtain copies of the

proposed collection of information and submit comments by emailing infocollection@acf.hhs.gov. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: SAVES is a 5-year demonstration project funded by ACF's Office of Child Support Enforcement that aims to increase safe access to child support, parenting time, and establishment of parentage services for survivors of DV.

The project was awarded in September 2022 to child support programs in 12 states and one tribal jurisdiction and is now entering year four. It aims to support grant recipients in implementing comprehensive domestic violence safety policies, procedures, and outreach strategies to improve access to child support and parenting time services for parents who have not engaged with the child support program due to safety concerns. The overarching goal is to ensure that DV survivors who need child support services can access them safely.

As part of the research and evaluation component for SAVES, the SAVES Center is conducting a series of data collection efforts to understand the needs of DV survivors, the perspectives of DV advocates, and the implementation experiences of child support professionals at the 13 demonstration sites.

The SAVES Center proposes collecting new information to help achieve the project's goals of increasing safety in the child support program. Data collection for each instrument will occur once in year 4 of SAVES. Each respondent will respond to one instrument in year 4 and all respondents will only provide one response to one instrument. The proposed information collection will occur through the following activities:

SAVES Mixed-Methods Information Collection with DV Survivors: This includes in-depth qualitative interviews (Instrument 1: SAVES Qualitative Interviews with DV Survivors) and a quantitative online survey (Instrument 2: SAVES Quantitative Survey with DV Survivors) with DV survivors to explore their experiences with and perceptions of the child support program. The goal is to understand how safety concerns—such as the risk of re-engagement with an abusive partner, fear of retaliation, concerns about personal information being shared, or negative experiences with legal or court processes—affect survivors' decisions to engage with or avoid the child support system. By capturing both individual- and system-

level barriers and facilitators, this data collection will provide critical insights for DV advocates, researchers, and child support agencies seeking to make the child support program more accessible and responsive to survivors' safety needs.

SAVES Quantitative Survey with DV Advocates: This activity involves a quantitative online survey (Instrument 3: SAVES Quantitative Survey with DV Advocates) with DV advocates to gather insights about the challenges and support needs of those assisting survivors who are navigating the child support system. The survey aims to understand where and how safety concerns arise for survivors—such as during court proceedings, sharing information with abusive partners, or pressure to engage with systems—that may not feel safe. It also explores how advocates assess and mitigate those risks, coordinate with child support agencies and identify gaps in policy or practice that affect survivors' safety. Findings will inform efforts to strengthen cross-agency collaboration and ensure that child support processes

better align with trauma-informed, survivor-centered practices.

SAVES Qualitative Data Collection with Child Support Staff and Clients at Demonstration Sites: This component includes focus groups with child support staff (Instrument 4: SAVES Focus Groups with Child Support Staff at Demonstration Sites) and one-on-one interviews with clients (Instrument 5: SAVES Qualitative Interviews with Clients Receiving Safety-Focused Intervention Services at Demonstration Sites) at the 13 SAVES demonstration sites. These instruments are designed to assess how safety-focused child support interventions—such as enhanced DV screening and assessment, specialized staff, modifications to court service, parenting time, and paternity establishment—are being implemented and experienced. For child support staff, the focus is on understanding how these practices are integrated into daily operations, what challenges they face, and how they perceive the impact on survivor safety. For survivor clients, interviews aim to capture how safety interventions affected their ability to

safely access services, make informed decisions, and maintain their well-being. Together, this data will help identify promising practices and inform continued improvement of survivor-centered approaches within the child support program.

Respondents:

- DV survivors who are parents and either have engaged with child support program or are eligible but have not engaged (Instruments 1 and 2).
- DV advocates who work with DV survivors accessing child support (Instrument 3).
- Child support staff at the 13 SAVES demonstration sites, who have been involved with designing and/or implementing safety-focused interventions (Instrument 4).
- DV survivors who are clients at one of the 13 SAVES demonstration sites and have been receiving safety-focused interventions (Instrument 5).

All instruments are to be completed one time in year 4. Respondents will not be asked to complete more than one instrument.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total burden (in hours)
Instrument 1: SAVES Qualitative Interviews with DV Survivors— <i>Screener Only</i>	100	1	.083	8.3
Instrument 1: SAVES Qualitative Interviews with DV Survivors— <i>Screener & Interview</i>	100	1	1	100
Instrument 2: SAVES Quantitative Survey with DV Survivors— <i>Screener Only</i>	2,000	1	0.083	166
Instrument 2: SAVES Quantitative Survey with DV Survivors— <i>Screener & Survey</i>	2,000	1	0.33	660
Instrument 3: SAVES Quantitative Survey with DV Advocates	1,200	1	0.33	396
Instrument 4: SAVES Focus Groups with Child Support Staff at Demonstration Sites	65	1	1.5	98
Instrument 5: SAVES Qualitative Interviews with Clients Receiving Safety-Focused Intervention Services at Demonstration Sites	65	1	0.75	49

Estimated Total Annual Burden Hours: 1,477.3.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given

to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 1315. (<https://www.govinfo.gov/content/pkg/USCODE-2023-title42/pdf/USCODE-2023-title42-chap7-subchapXI-partA-sec1315.pdf>).

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2026–01936 Filed 1–30–26; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is

named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357-6400. For information on HRSA's role in the Program, contact the Director, Division of Injury Compensation Programs, 5600 Fishers Lane, Room 14W-18, Rockville, Maryland 20857; 1-800-338-2382, or visit our website at: <https://www.hrsa.gov/vaccine-compensation>.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specific vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.*, provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that "[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**." Set forth below is a list of petitions received by HRSA on

October 1, 2025, through December 31, 2025. This list covers a 3-month period to expedite reporting following the government shutdown, which resolved in mid-November 2025. This list provides the name of the petitioner, city, and state of vaccination (if unknown then the city and state of the person or attorney filing the claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and
2. Any allegation in a petition that the petitioner either:
 - a. "[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by" one of the vaccines referred to in the Table, or
 - b. "[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and 3 copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Health Systems Bureau, 5600 Fishers Lane, 14W-18, Rockville, Maryland 20857. The Court's caption (*Petitioner's Name v. Secretary of HHS*) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of Title 44, United States Code, related to paperwork reduction, does not apply to

information required for purposes of carrying out the Program.

Thomas J. Engels,
Administrator.

List of Petitions Filed

1. Anthony Gillespie, Black River Falls, Wisconsin, Court of Federal Claims No: 25-1632V
2. Sean Allan, Farmington Hills, Michigan, Court of Federal Claims No: 25-1633V
3. Philip Barraco, Woodhaven, Michigan, Court of Federal Claims No: 25-1635V
4. Desirae Ada, Colorado Springs, Colorado, Court of Federal Claims No: 25-1638V
5. Jason Eirkson, Washington, District of Columbia, Court of Federal Claims No: 25-1639V
6. Amber Scheuermann, Grand Rapids, Michigan, Court of Federal Claims No: 25-1642V
7. Linda Keys, Olympia Fields, Illinois, Court of Federal Claims No: 25-1643V
8. Krista Day, Indianapolis, Indiana, Court of Federal Claims No: 25-1645V
9. Jenna S. Fritscher on behalf of the estate of S.G.S., Deceased, Baton Rouge, Louisiana, Court of Federal Claims No: 25-1646V
10. Emily Olson, Woodridge, Illinois, Court of Federal Claims No: 25-1647V
11. Mia Kelley, Grand Rapids, Minnesota, Court of Federal Claims No: 25-1649V
12. Heather M. Krug, Des Moines, Iowa, Court of Federal Claims No: 25-1650V
13. Ann C. Moore, Memphis, Tennessee, Court of Federal Claims No: 25-1653V
14. Laura Camuso, New York, New York, Court of Federal Claims No: 25-1655V
15. Lucian David Ortiz, Los Angeles, California, Court of Federal Claims No: 25-1656V
16. Randi Ramos, Secaucus, New Jersey, Court of Federal Claims No: 25-1658V
17. Mary Ann Murphy, Norridge, Illinois, Court of Federal Claims No: 25-1660V
18. Susan Bejar, Dallas, Pennsylvania, Court of Federal Claims No: 25-1661V
19. Chad Lambert, Wichita, Kansas, Court of Federal Claims No: 25-1662V
20. Sydney Fitzgibbons, Greensboro, North Carolina, Court of Federal Claims No: 25-1666V

21. Fermin Diaz, Kissimmee, Florida, Court of Federal Claims No: 25–1669V
22. John Andrew Tutmaher, Erie, Pennsylvania, Court of Federal Claims No: 25–1672V
23. Theresa Moss, Washington, District of Columbia, Court of Federal Claims No: 25–1676V
24. Stephen Nnamani, Evanston, Illinois, Court of Federal Claims No: 25–1677V
25. Anaite Balsells, Stamford, Connecticut, Court of Federal Claims No: 25–1680V
26. Cecil Mullins, Tuscola, Illinois, Court of Federal Claims No: 25–1681V
27. Odile Salley, Hewlett, New York, Court of Federal Claims No: 25–1683V
28. Rita Brown, Philadelphia, Pennsylvania, Court of Federal Claims No: 25–1684V
29. Malinda Timm, St. Peters, Montana, Court of Federal Claims No: 25–1686V
30. Jennifer Silva, Harrisonburg, Virginia, Court of Federal Claims No: 25–1687V
31. Jessica Cervantes, Westminster, Colorado, Court of Federal Claims No: 25–1689V
32. Darrick Bennett, Black River Falls, Wisconsin, Court of Federal Claims No: 25–1690V
33. Danny Mercado, Baldwin Park, California, Court of Federal Claims No: 25–1691V
34. Leah Whitaker, Peoria, Arizona, Court of Federal Claims No: 25–1692V
35. Sondra Hedges, Medford, New Jersey, Court of Federal Claims No: 25–1694V
36. Hoang Nguyen, Sacramento, California, Court of Federal Claims No: 25–1698V
37. April Smith, Vancouver, Washington, Court of Federal Claims No: 25–1699V
38. Patricia Ann Wise, Georgetown, South Carolina, Court of Federal Claims No: 25–1701V
39. Lindsey Witson, Pearland, Texas, Court of Federal Claims No: 25–1702V
40. Joan O'Reilly on behalf of the estate of Richard Platt, Deceased, New York, New York, Court of Federal Claims No: 25–1703V
41. Shelby Hartley, Lawrenceburg, Kentucky, Court of Federal Claims No: 25–1704V
42. Helen Hirtle, Rochester, New Hampshire, Court of Federal Claims No: 25–1707V
43. Kelly Mabra, Cheyenne, Wyoming, Court of Federal Claims No: 25–1708V
44. Troy Kleine, Woodridge, Illinois, Court of Federal Claims No: 25–1709V
45. William Carter, Gulf Shores, Alabama, Court of Federal Claims No: 25–1710V
46. Jeanette Rose Gruenberger, Wheat Ridge, Colorado, Court of Federal Claims No: 25–1711V
47. Rudolf Swanepoel, Sugar Hill, Georgia, Court of Federal Claims No: 25–1712V
48. Kelsy May, Johnstown, Pennsylvania, Court of Federal Claims No: 25–1713V
49. Isabella DeStefano, Bergenfield, New Jersey, Court of Federal Claims No: 25–1714V
50. Samantha Roberts, Phoenix, Arizona, Court of Federal Claims No: 25–1715V
51. Sorin Holland, Richmond, Virginia, Court of Federal Claims No: 25–1716V
52. Matthew Tippins, Puyallup, Washington, Court of Federal Claims No: 25–1719V
53. Donna Haywood, Woodridge, Illinois, Court of Federal Claims No: 25–1720V
54. Joshua Lubetkin, East Windsor, Connecticut, Court of Federal Claims No: 25–1722V
55. Stephany Brown on behalf of J.J.C., Fairfax, Virginia, Court of Federal Claims No: 25–1726V
56. Wendy De La Torre, Burlingame, California, Court of Federal Claims No: 25–1727V
57. Alejandro Villegas Peredo, San Diego, California, Court of Federal Claims No: 25–1728V
58. Lynne Voelker, Atlanta, Georgia, Court of Federal Claims No: 25–1730V
59. Quincy Purnell, Dresher, Pennsylvania, Court of Federal Claims No: 25–1731V
60. Ann Kirby, Needham, Massachusetts, Court of Federal Claims No: 25–1732V
61. Najee Baham, New Lisbon, Wisconsin, Court of Federal Claims No: 25–1733V
62. Victor Rocha, Englewood, New Jersey, Court of Federal Claims No: 25–1734V
63. Gregory Smith, Arlington, Virginia, Court of Federal Claims No: 25–1735V
64. Deborah Smith, Englewood, New Jersey, Court of Federal Claims No: 25–1736V
65. Lauren Madea, East Stroudsburg, Pennsylvania, Court of Federal Claims No: 25–1737V
66. Guzal Astanova, Philadelphia, Pennsylvania, Court of Federal Claims No: 25–1741V
67. James Lambertson, Santa Maria, California, Court of Federal Claims No: 25–1745V
68. Tracey Hollingshed, Atlanta, Georgia, Court of Federal Claims No: 25–1746V
69. Katura Gardner, Rochester, New York, Court of Federal Claims No: 25–1748V
70. Sarah Savage on behalf of R.S., Bee Cave, Texas, Court of Federal Claims No: 25–1749V
71. Saena Colonna on behalf of E.C., New York, New York, Court of Federal Claims No: 25–1752V
72. Susan Lesky, Ironwood, Michigan, Court of Federal Claims No: 25–1753V
73. Sarah Carswell on behalf of the estate of N.L.B., Deceased, New York, New York, Court of Federal Claims No: 25–1754V
74. Christy Rohrbaugh, Dresher, Pennsylvania, Court of Federal Claims No: 25–1756V
75. Jimmy Zavala, Dallas, Texas, Court of Federal Claims No: 25–1757V
76. Shira Plagman, Pearl River, New York, Court of Federal Claims No: 25–1759V
77. Cynthia Ryan, Dallas, Texas, Court of Federal Claims No: 25–1762V
78. Mark Chittenden, New York, New York, Court of Federal Claims No: 25–1763V
79. Michael Garcia, New York, New York, Court of Federal Claims No: 25–1764V
80. Vince Magistrado, Dresher, Pennsylvania, Court of Federal Claims No: 25–1765V
81. Christopher Davey, Waterford, Michigan, Court of Federal Claims No: 25–1766V
82. Michael Arons, New York, New York, Court of Federal Claims No: 25–1767V
83. Michelle Leibovitz, East Windsor, Connecticut, Court of Federal Claims No: 25–1768V
84. Willie G. Allison, Milwaukee, Wisconsin, Court of Federal Claims No: 25–1769V
85. Erika Walker-Bright, Woodridge, Illinois, Court of Federal Claims No: 25–1770V
86. Kristine Ross, Highlands Ranch, Colorado, Court of Federal Claims No: 25–1771V
87. Beth Olsen, Coon Rapids, Minnesota, Court of Federal Claims No: 25–1772V
88. Mary Muthersbaugh, Nashua, New Hampshire, Court of Federal Claims No: 25–1773V
89. Edward Torres, Dresher, Pennsylvania, Court of Federal Claims No: 25–1775V

90. Howard Eric Zinbargel, Miami, Florida, Court of Federal Claims No: 25-1776V
91. Joel Marks, Englewood, New Jersey, Court of Federal Claims No: 25-1777V
92. Anna K. Guidera, Granite Bay, California, Court of Federal Claims No: 25-1778V
93. Tashaunda McAfee, Aurora, Illinois, Court of Federal Claims No: 25-1779V
94. Sandra Miller, Port Jefferson, New York, Court of Federal Claims No: 25-1780V
95. Earl Cox, Woodridge, Illinois, Court of Federal Claims No: 25-1781V
96. Joanne Mitchell, Washington, District of Columbia, Court of Federal Claims No: 25-1783V
97. John Scholla, Dresher, Pennsylvania, Court of Federal Claims No: 25-1786V
98. Shari Weitzenkamp, Coralville, Iowa, Court of Federal Claims No: 25-1787V
99. Hannah Branning, Dresher, Pennsylvania, Court of Federal Claims No: 25-1788V
100. Sarah Ayers, Greensboro, North Carolina, Court of Federal Claims No: 25-1790V
101. Saka Pierre-Louis on behalf of S.D., New York, New York, Court of Federal Claims No: 25-1791V
102. Kyle Chay, Plymouth, Wisconsin, Court of Federal Claims No: 25-1793V
103. Linda Machado, Putnam, Connecticut, Court of Federal Claims No: 25-1794V
104. Devon D. Hanna, Deerfield, Wisconsin, Court of Federal Claims No: 25-1796V
105. Edward William Schwartz, Dresher, Pennsylvania, Court of Federal Claims No: 25-1798V
106. Marian Koehler on behalf of L.B., Los Angeles, California, Court of Federal Claims No: 25-1800V
107. Paige Osterman, Woodridge, Illinois, Court of Federal Claims No: 25-1801V
108. Andrew Chotkowski, Portland, Oregon, Court of Federal Claims No: 25-1802V
109. Michael Perez-Mesa, Colorado Springs, Colorado, Court of Federal Claims No: 25-1803V
110. Rosibel LaPointe, Springfield, Massachusetts, Court of Federal Claims No: 25-1804V
111. Kelly Stimac, Flat Rock, Missouri, Court of Federal Claims No: 25-1805V
112. Tammy Rebecca Hammond, Beverly Hills, California, Court of Federal Claims No: 25-1807V
113. Paul T. Sandoval, Brighton, Colorado, Court of Federal Claims No: 25-1808V
114. Angel Hawkins, New Orleans, Louisiana, Court of Federal Claims No: 25-1809V
115. Kristi Murphy, Washington, District of Columbia, Court of Federal Claims No: 25-1810V
116. Corrine St. Onge, Bedford, New Hampshire, Court of Federal Claims No: 25-1811V
117. Fernando Rasco, Washington, District of Columbia, Court of Federal Claims No: 25-1812V
118. Benjamin Louis Palzer, Englewood, New Jersey, Court of Federal Claims No: 25-1813V
119. Heather Wishart-Smith, Washington, District of Columbia, Court of Federal Claims No: 25-1814V
120. Jacob R. Hildebrandt, Mankato, Minnesota, Court of Federal Claims No: 25-1815V
121. Tod A. Legas on behalf of I.B.L., Fort Worth, Texas, Court of Federal Claims No: 25-1818V
122. Lori S. Stevens, Centereach, New York, Court of Federal Claims No: 25-1820V
123. Michael Morrison, New York, New York, Court of Federal Claims No: 25-1821V
124. Lina A. Christian, Richmond, Virginia, Court of Federal Claims No: 25-1823V
125. Guadalupe Melendrez, Los Angeles, California, Court of Federal Claims No: 25-1824V
126. Cameron Santa-Cruz, Woodridge, Illinois, Court of Federal Claims No: 25-1825V
127. James Folger, New York, New York, Court of Federal Claims No: 25-1831V
128. Joe McClure, Woodridge, Illinois, Court of Federal Claims No: 25-1834V
129. Andrea Yazzie, Chinle, Arizona, Court of Federal Claims No: 25-1835V
130. Vivian McCormack, Trevor, Wisconsin, Court of Federal Claims No: 25-1837V
131. Debora Bitzer, Sarasota, Florida, Court of Federal Claims No: 25-1838V
132. Sandra Watson on behalf of the estate of Lawson Little, Deceased, Washington, District of Columbia, Court of Federal Claims No: 25-1839V
133. Michelle Parsels on behalf of J.S., Woodridge, Illinois, Court of Federal Claims No: 25-1842V
134. Lauren Patricia Nelson, Beverly Hills, California, Court of Federal Claims No: 25-1843V
135. Kimberly A. Steele, Belton, Missouri, Court of Federal Claims No: 25-1847V
136. James E. Reed, Boscobel, Wisconsin, Court of Federal Claims No: 25-1849V
137. Daniel Sandoval, Dresher, Pennsylvania, Court of Federal Claims No: 25-1850V
138. Cindy Wagner, Slidell, Louisiana, Court of Federal Claims No: 25-1855V
139. Dawn Jordan, Goshen, New York, Court of Federal Claims No: 25-1856V
140. Iran Shuttlesworth, New York, New York, Court of Federal Claims No: 25-1858V
141. Kristina Morton, Edgewater, Florida, Court of Federal Claims No: 25-1859V
142. Amulya Thoranam, New York, New York, Court of Federal Claims No: 25-1860V
143. Tammi Gorniak, La Crosse, Wisconsin, Court of Federal Claims No: 25-1861V
144. Xin Jiang, Solon, Ohio, Court of Federal Claims No: 25-1864V
145. Brent Joseph Buschur, Celina, Ohio, Court of Federal Claims No: 25-1866V
146. Michael Hurley, New York, New York, Court of Federal Claims No: 25-1867V
147. Diane Brockett, Willowick, Ohio, Court of Federal Claims No: 25-1869V
148. Annabel Chyung, New York, New York, Court of Federal Claims No: 25-1870V
149. Bailey Zale McDaniel, Dresher, Pennsylvania, Court of Federal Claims No: 25-1872V
150. Dalene Kelly, Painesville, Ohio, Court of Federal Claims No: 25-1873V
151. Ryan J. Pruitt, Waupun, Wisconsin, Court of Federal Claims No: 25-1874V
152. Darlene Shore on behalf of the estate of Ronald Shore, Deceased, Washington, District of Columbia, Court of Federal Claims No: 25-1877V
153. Scott Hoogerwerf, Murrieta, California, Court of Federal Claims No: 25-1878V
154. Angela Whitaker, Dublin, Ohio, Court of Federal Claims No: 25-1879V
155. Eric D. Connor, Boscobel, Wisconsin, Court of Federal Claims No: 25-1885V
156. Eileen Poulin, Lewiston, Maine, Court of Federal Claims No: 25-1886V
157. Cynthia Matthews, Rice Lake, Wisconsin, Court of Federal Claims No: 25-1887V

158. Kenneth Gary, State College, Pennsylvania, Court of Federal Claims No: 25–1888V
159. Geoffrey Clark, Glen Rock, New Jersey, Court of Federal Claims No: 25–1889V
160. Crystal Hunter, Newark, Delaware, Court of Federal Claims No: 25–1890V
161. Elizabeth P. Reed, Greensboro, North Carolina, Court of Federal Claims No: 25–1891V
162. Cristina Osterlund, Walnut Creek, California, Court of Federal Claims No: 25–1892V
163. Sarah Ridley Gal, Washington, District of Columbia, Court of Federal Claims No: 25–1893V
164. Samuel Powell, Washington, District of Columbia, Court of Federal Claims No: 25–1894V
165. Tamera Vickerson, Largo, Florida, Court of Federal Claims No: 25–1899V
166. Catamara Rosarium, Richmond, Virginia, Court of Federal Claims No: 25–1904V
167. Mary Moore, Christiana, Tennessee, Court of Federal Claims No: 25–1905V
168. Michael Egan, Temple, Texas, Court of Federal Claims No: 25–1906V
169. Shannon O’Sullivan, Woodridge, Illinois, Court of Federal Claims No: 25–1909V
170. Gail Tarrant, New York, New York, Court of Federal Claims No: 25–1910V
171. La Nita Todd, Memphis, Tennessee, Court of Federal Claims No: 25–1911V
172. Yelitza Duran Lopez, Lowell, Massachusetts, Court of Federal Claims No: 25–1913V
173. Terri Hooper, Raleigh, North Carolina, Court of Federal Claims No: 25–1916V
174. Michael H. Taylor, Sioux City, Iowa, Court of Federal Claims No: 25–1917V
175. Rebecca Freeman, Dresher, Pennsylvania, Court of Federal Claims No: 25–1918V
176. Dion Mathews, Waupun, Wisconsin, Court of Federal Claims No: 25–1919V
177. Nancy Ortega, Woodridge, Illinois, Court of Federal Claims No: 25–1920V
178. Danielle Pagan on behalf of A.C.P., Richmond, Virginia, Court of Federal Claims No: 25–1922V
179. Loretta Nelson, Montgomery, Alabama, Court of Federal Claims No: 25–1923V
180. Jacqueline K. Harrell, Woodridge, Illinois, Court of Federal Claims No: 25–1925V
181. Christina Dorko, Dresher, Pennsylvania, Court of Federal Claims No: 25–1928V
182. Kevin Lewis, Reston, Virginia, Court of Federal Claims No: 25–1930V
183. Kimberly A. Guindazola, Fort Worth, Texas, Court of Federal Claims No: 25–1933V
184. Darla Shaffer, Du Bois, Pennsylvania, Court of Federal Claims No: 25–1934V
185. Alison Bailey, Dover, New Hampshire, Court of Federal Claims No: 25–1935V
186. James Button, Dresher, Pennsylvania, Court of Federal Claims No: 25–1936V
187. Marion Rodgers, Center Moriches, New York, Court of Federal Claims No: 25–1938V
188. Frank Lundien, Springfield, Missouri, Court of Federal Claims No: 25–1943V
189. Hector Delgado on behalf of S.D., Kennesaw, Georgia, Court of Federal Claims No: 25–1944V
190. Sera Karahoca, Dresher, Pennsylvania, Court of Federal Claims No: 25–1945V
191. Nancy Jane Aswad, Beverly Hills, California, Court of Federal Claims No: 25–1948V
192. Karen Richards, Westerville, Ohio, Court of Federal Claims No: 25–1951V
193. Kara Jackson, Englewood, New Jersey, Court of Federal Claims No: 25–1953V
194. Karlene Robinson, Woodridge, Illinois, Court of Federal Claims No: 25–1954V
195. Arthur D. Quinn, Waverly, Tennessee, Court of Federal Claims No: 25–1957V
196. Deborah B. Kendrick, Chesterfield, Virginia, Court of Federal Claims No: 25–1958V
197. Veronica Holley, New York, New York, Court of Federal Claims No: 25–1961V
198. Scott Barlow, Medford, Oregon, Court of Federal Claims No: 25–1962V
199. Sharman Bowes, Dresher, Pennsylvania, Court of Federal Claims No: 25–1963V
200. Elizabeth Larkin, Beverly Hills, California, Court of Federal Claims No: 25–1964V
201. Priya Desai, Beverly Hills, California, Court of Federal Claims No: 25–1965V
202. Ahmad Masalha, Oak Lawn, Illinois, Court of Federal Claims No: 25–1966V
203. Kim Armstrong, Louisville, Kentucky, Court of Federal Claims No: 25–1967V
204. Lauren Seeger on behalf of V.S., Dublin, Ohio, Court of Federal Claims No: 25–1969V
205. Lena Bobo, Memphis, Tennessee, Court of Federal Claims No: 25–1975V
206. Megan Marlett, State College, Pennsylvania, Court of Federal Claims No: 25–1977V
207. Stephen Beatrice, Dresher, Pennsylvania, Court of Federal Claims No: 25–1978V
208. Patricia Dawn Bowman, Washington, District of Columbia, Court of Federal Claims No: 25–1982V
209. Elizabeth Splittgerber, Dallas, Texas, Court of Federal Claims No: 25–1983V
210. Mary James Ashley, Wilmington, North Carolina, Court of Federal Claims No: 25–1986V
211. Heba Kashkosh, Dresher, Pennsylvania, Court of Federal Claims No: 25–1989V
212. Jun Sasaki, Philadelphia, Pennsylvania, Court of Federal Claims No: 25–1990V
213. Devan Kearney, Woodridge, Illinois, Court of Federal Claims No: 25–1991V
214. Connie Camp Gish, College Place, Washington, Court of Federal Claims No: 25–1992V
215. Linda Cordes, Dresher, Pennsylvania, Court of Federal Claims No: 25–1994V
216. Madhavi Ancha, Greensboro, North Carolina, Court of Federal Claims No: 25–1999V
217. Meghedi Hacopi on behalf of E.S., Glendale, California, Court of Federal Claims No: 25–2000V
218. Charly Harris, Wilkesboro, North Carolina, Court of Federal Claims No: 25–2001V
219. May Anderson, Lockhart, Texas, Court of Federal Claims No: 25–2003V
220. Claudia Brand, Gurnee, Illinois, Court of Federal Claims No: 25–2005V
221. Kelly Ansec, Solon, Ohio, Court of Federal Claims No: 25–2006V
222. Magdalena Lapuz, Woodridge, Illinois, Court of Federal Claims No: 25–2008V
223. Felicia Crivello, Beverly Hills, California, Court of Federal Claims No: 25–2009V
224. Lisa Diane Cambarare-Saunders, Elyria, Ohio, Court of Federal Claims No: 25–2014V
225. Kay Karolyshyn, Dresher, Pennsylvania, Court of Federal Claims No: 25–2017V
226. Delaney K. Watt, Boscobel, Wisconsin, Court of Federal Claims No: 25–2019V

227. Mary K. Lathers, Farmington Hills, Michigan, Court of Federal Claims No: 25–2020V
228. Crystal Musser, Marion, Virginia, Court of Federal Claims No: 25–2021V
229. Rachel Dunnivant, New Albany, Ohio, Court of Federal Claims No: 25–2023V
230. Sheila Guy, Woodridge, Illinois, Court of Federal Claims No: 25–2028V
231. Jimmy Giddings, Englewood, New Jersey, Court of Federal Claims No: 25–2029V
232. John Romanowski, Cumming, Georgia, Court of Federal Claims No: 25–2030V
233. Kimberly Fromm, Brookfield, Wisconsin, Court of Federal Claims No: 25–2031V
234. James Wetzel, White Plains, New York, Court of Federal Claims No: 25–2032V
235. Chad Deniston, Walnut Creek, California, Court of Federal Claims No: 25–2034V
236. Darlene Gendusa, Los Angeles, California, Court of Federal Claims No: 25–2035V
237. Cynthia Bogert, Waxhaw, North Carolina, Court of Federal Claims No: 25–2036V
238. Marriea Layton, Murphy, Texas, Court of Federal Claims No: 25–2037V
239. Anthony Casino, East Setauket, New York, Court of Federal Claims No: 25–2038V
240. Tracy Denison, Dresher, Pennsylvania, Court of Federal Claims No: 25–2039V
241. Lori Hogan, Valparaiso, Indiana, Court of Federal Claims No: 25–2042V
242. Kathleen Lavonne, Dallas, Texas, Court of Federal Claims No: 25–2045V
243. Zarah M. Kimble on behalf of K.I.K., San Diego, California, Court of Federal Claims No: 25–2046V
244. Joseph Timmons, Philadelphia, Pennsylvania, Court of Federal Claims No: 25–2048V
245. Donna Corporon, Dresher, Pennsylvania, Court of Federal Claims No: 25–2050V
246. Eileen Boyd, Monmouth County, New Jersey, Court of Federal Claims No: 25–2051V
247. Cindy J. Saxey, Hurlburt Field, Florida, Court of Federal Claims No: 25–2052V
248. John Vassar, Greenville, South Carolina, Court of Federal Claims No: 25–2053V
249. Machete Jaguar, Champaign, Illinois, Court of Federal Claims No: 25–2055V
250. Guyles Morris, Marblehead, Massachusetts, Court of Federal Claims No: 25–2056V
251. Sarah Ledford, Dresher, Pennsylvania, Court of Federal Claims No: 25–2057V
252. Mellissa Mannella, White Plains, New York, Court of Federal Claims No: 25–2059V
253. Suzanne Hansen, Green Bay, Wisconsin, Court of Federal Claims No: 25–2061V
254. Andrea Ash, Desloge, Missouri, Court of Federal Claims No: 25–2062V
255. Leslie Hansen, Littleton, Colorado, Court of Federal Claims No: 25–2063V
256. Tina Barton, Oceanside, California, Court of Federal Claims No: 25–2068V
257. Laura Marx, Castleton, New York, Court of Federal Claims No: 25–2069V
258. Lisa Holt, Foley, Alabama, Court of Federal Claims No: 25–2072V
259. Angelica Monroe, Novi, Michigan, Court of Federal Claims No: 25–2074V
260. Thelma Talamantes Algonquin, Illinois, Court of Federal Claims No: 25–2076V
261. Madeleine Herron, Charleston, South Carolina, Court of Federal Claims No: 25–2077V
262. Jill Kolinski, Chicago, Illinois, Court of Federal Claims No: 25–2080V
263. David Karlman, Woodridge, Illinois, Court of Federal Claims No: 25–2081V
264. Sherry Gomes, Riverside, California, Court of Federal Claims No: 25–2084V
265. Conrad E. Miller, East McKeesport, Pennsylvania, Court of Federal Claims No: 25–2085V
266. Dipika Bhavsar, Washington, District of Columbia, Court of Federal Claims No: 25–2086V
267. Vickey Gonzales, White Plains, New York, Court of Federal Claims No: 25–2087V
268. Melody Atkins, Chicago, Illinois, Court of Federal Claims No: 25–2090V
269. Justin Chin, Sarasota, Florida, Court of Federal Claims No: 25–2092V
270. Caroline Peralli on behalf of the estate of Craig Peralli, Deceased, Longview, Texas, Court of Federal Claims No: 25–2094V
271. Sueann Sweatman, Columbia, South Carolina, Court of Federal Claims No: 25–2096V
272. Dylan Waters, Dresher, Pennsylvania, Court of Federal Claims No: 25–2098V
273. Gerald Smith, Vancouver, Washington, Court of Federal Claims No: 25–2101V
274. Emily Smith, Ranburne, Alabama, Court of Federal Claims No: 25–2102V
275. Kavita Tyler, Chicago, Illinois, Court of Federal Claims No: 25–2104V
276. Matthew Schinzel, Phoenix, Arizona, Court of Federal Claims No: 25–2106V
277. Sheila Carey, Woodridge, Illinois, Court of Federal Claims No: 25–2107V
278. Gloria Dumas, New York, New York, Court of Federal Claims No: 25–2109V
279. Sundari Zamora, Sarasota, Florida, Court of Federal Claims No: 25–2110V
280. Jared Hays on behalf of A.H., Seattle, Washington, Court of Federal Claims No: 25–2111V
281. Deborah Massey and Jeffrey Massey on behalf of the estate of Shelby Massey, Deceased, Richardson, Texas, Court of Federal Claims No: 25–2112V
282. Lina Sadeq, Avon, Ohio, Court of Federal Claims No: 25–2113V
283. Joanne Holcomb, Buffalo, New York, Court of Federal Claims No: 25–2114V
284. Anna Williams, Sellersburg, Indiana, Court of Federal Claims No: 25–2115V
285. Juan Ortiz, New York, New York, Court of Federal Claims No: 25–2117V
286. Robert Wentzell, Bradenton, Florida, Court of Federal Claims No: 25–2118V
287. Harold Cameron, Boston, Massachusetts, Court of Federal Claims No: 25–2119V
288. Catherine Cather, Dresher, Pennsylvania, Court of Federal Claims No: 25–2120V
289. Margot Reynolds, Washington, District of Columbia, Court of Federal Claims No: 25–2121V
290. Steve Hinesley, Englewood, New Jersey, Court of Federal Claims No: 25–2127V
291. Emilia Gutierrez, Los Angeles, California, Court of Federal Claims No: 25–2128V
292. Jacqueline Smith, Dresher, Pennsylvania, Court of Federal Claims No: 25–2129V
293. Shawna Satterwhite, Richmond, Virginia, Court of Federal Claims No: 25–2130V
294. Mary Tomlinson, Leland, North Carolina, Court of Federal Claims No: 25–2131V
295. Stacy E. Hawkins, Oneida, New York, Court of Federal Claims No: 25–2132V

296. Caroline Moore, Longview, Texas, Court of Federal Claims No: 25–2135V
297. William Olaschinez, Marmora, New Jersey, Court of Federal Claims No: 25–2137V
298. Dominique Taylor on behalf of P.T., Tampa, Florida, Court of Federal Claims No: 25–2138V
299. Lucy Dorego, Fall River, Massachusetts, Court of Federal Claims No: 25–2139V
300. Timur Sarac, Columbus, Ohio, Court of Federal Claims No: 25–2140V
301. Erica Love, Aubrey, Texas, Court of Federal Claims No: 25–2142V
302. Julie Bard, Washington, District of Columbia, Court of Federal Claims No: 25–2144V
303. Thomas Carr, Oswego, New York, Court of Federal Claims No: 25–2146V
304. Patricia Hannum, Charlotte, North Carolina, Court of Federal Claims No: 25–2147V
305. Julie Canterbury, Overland Park, Kansas, Court of Federal Claims No: 25–2148V
306. Audrey Kim Griffin, Centennial, Colorado, Court of Federal Claims No: 25–2149V
307. Susan Friedlander, Boston, Massachusetts, Court of Federal Claims No: 25–2150V
308. Denise Bolton-Cromwell, Wynnewood, Pennsylvania, Court of Federal Claims No: 25–2152V
309. Melissa Amstadt, Rio Rancho, New Mexico, Court of Federal Claims No: 25–2153V
310. Julie Johnson, Downers Grove, Illinois, Court of Federal Claims No: 25–2154V
311. Nancy Crozier, Columbia, Tennessee, Court of Federal Claims No: 25–2155V
312. Sergey Pirogov, West Springfield, Massachusetts, Court of Federal Claims No: 25–2157V
313. Rosemane Joseph, Miami, Florida, Court of Federal Claims No: 25–2159V
314. Sarah Keegans, Chicago, Illinois, Court of Federal Claims No: 25–2164V
315. May Lei, Brookfield, Wisconsin, Court of Federal Claims No: 25–2165V
316. Khadija Gilkey, Clarksville, Tennessee, Court of Federal Claims No: 25–2166V
317. Ellen Burton, Galveston, Texas, Court of Federal Claims No: 25–2167V
318. Amanda Pittman, Washington, District of Columbia, Court of Federal Claims No: 25–2168V
319. Katelyn Brooks, Katy, Texas, Court of Federal Claims No: 25–2171V
320. Ryan Lee Beasley on behalf of the estate of Tommy Lee Beasley, Deceased, High Point, North Carolina, Court of Federal Claims No: 25–2172V
321. Stanley Hill, Palm Springs, California, Court of Federal Claims No: 25–2173V
322. April Wright, Galesburg, Illinois, Court of Federal Claims No: 25–2175V
323. Elizabeth Boston, Cincinnati, Ohio, Court of Federal Claims No: 25–2180V
324. Lisa Osterhoudt, Lebanon, Tennessee, Court of Federal Claims No: 25–2182V
325. Khalif Quran, Bonifay, Florida, Court of Federal Claims No: 25–2183V
326. Paul James Pope Sr., Hampstead, Maryland, Court of Federal Claims No: 25–2184V
327. William Korang, Forest Hills, New York, Court of Federal Claims No: 25–2187V
328. Gregory Centaro, East Orange, New Jersey, Court of Federal Claims No: 25–2188V
329. Suzanne Rankin, Cocoa Beach, Florida, Court of Federal Claims No: 25–2189V
330. Erik Halbig, Nashville, Tennessee, Court of Federal Claims No: 25–2190V

[FR Doc. 2026–01963 Filed 1–30–26; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Rural Northern Border Region Outreach Program Performance Measures Report

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than April 3, 2026.

ADDRESSES: Submit your comments to paperwork@hrsa.gov or mail the HRSA Information Collection Clearance Officer, Room 13N82, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email paperwork@hrsa.gov or call Samantha Miller, the HRSA Information Collection Clearance Officer, at (301) 443–3983.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: Rural Northern Border Region Outreach Program Performance, OMB No. 0915–xxxx–[New]

Abstract: The Rural Northern Border Region Outreach Program (RNBR–OP) is authorized under 42 U.S.C. 254c(e) (Section 330A(e) of the Public Health Service Act) to promote the delivery of health care services to rural underserved populations in Northern Border Regional Commission counties in Maine, New Hampshire, New York, and Vermont. This authority permits HRSA to “award grants to eligible entities to promote rural health care services outreach by improving and expanding the delivery of health care services to include new and enhanced services in rural areas through community engagement and evidence-based or innovative, evidence-informed models.” 42 U.S.C. 254c(e).

Need and Proposed Use of the Information: The purpose of the proposed data collection is to assess RNBR–OP awardees’ progress toward meeting RNBR–OP goals (as stated in the authorizing statute). Additionally, HRSA will be able to monitor and assess the impact of the RNBR–OP program, and identify improvements made by RNBR–OP awardees in specific topic areas. RNBR–OP grantees will submit annual reports to HRSA on performance measures covering the following topic areas: (1) capacity/organizational information; (2) workforce training; (3) access/population demographics; (4) health status and/or quality; and (5) sustainability.

Likely Respondents: The respondents will be recipients of the RNBR–OP funding.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time

needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing

and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the

information. The total annual burden hours estimated for this ICR are summarized in the table below.
Total Estimated Annualized Burden Hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
RNBR–OP Performance Measures Report	13	1	13	17	221
Total	13	1	13	17	221

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency’s functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,
Director, Executive Secretariat.
[FR Doc. 2026–02067 Filed 1–30–26; 8:45 am]
BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; NCI Genomic Data Commons (GDC) Data Submission Request Form (National Cancer Institute)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide an opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured

of having their full effect if received by April 3, 2026.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact Melissa Park, PRA Liaison, Office of Management Policy and Compliance, National Cancer Institute, 9609 Medical Center Drive, Room 2E196, Bethesda, MD 20892 or call non-toll-free number (240) 276–5717 or email your request, including your address to: *melissa.park@nih.gov*. Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: NCI Genomic Data Commons (GDC) Data

Submission Request Form, 0925–0752, Expiration Date 04/30/2026, EXTENSION. National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The purpose of the NCI Genomic Data Commons (GDC) Data Submission Request Form is to continue to provide a vehicle for investigators to request the submission of their cancer genomic data into the GDC in support of data sharing. The purpose is also to provide a mechanism for the GDC Data Submission Review Committee to review and assess the data submission request for applicability to the GDC mission. The scope of the form involves obtaining information from investigators that: (1) would like to submit data about their study into the GDC, (2) are affiliated with studies that adhere to GDC data submission conditions. The benefits of the collection are that it provides the needed information for investigators to understand the types of studies and data that the GDC supports and that it provides a standard mechanism for the GDC to assess incoming data submission requests. The only change requested in this Extension is a reduction in the number of respondents from 200 to 100, resulting in a reduction in the total annual burden hours from 50 to 25. There are no other substantive changes to this submission other than the cost-of-living changes to the federal and labor costs.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 25 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Category of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Individuals	100	1	15/60	25
Totals .....	.....	100	.....	25

Dated: January 29, 2026.

Melissa M. Park,

Project Clearance Liaison, National Cancer Institute, National Institutes of Health.

[FR Doc. 2026–02083 Filed 1–30–26; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 Nursing Research.

This will be a hybrid meeting held in-person and virtually and will be open to the public as indicated below. Individuals who plan to attend in-person or view the virtual meeting and need special assistance, such as sign language interpretation or other reasonable accommodation, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: <https://videocast.nih.gov/watch=57192>.

Name of Committee: National Advisory Council for Nursing Research.

Date: May 19, 2026.

Open: 10:00 a.m. to 3:00 p.m.

Agenda: Director's update and other Council business.

Address: National Institutes of Health, Building 31, 6C, 31 Center Drive, Bethesda, MD 20892.

Meeting Format: In Person and Virtual Meeting.

Contact Person: Elizabeth Tarlov, Ph.D., MS, RN, Director Division of Extramural Science Programs (DESP), National Institute of Nursing Research, 6700B Rockledge Drive, Bethesda, MD 20892, (301) 594–1580, elizabeth.tarlov@nih.gov.

Registration is not required to attend this meeting.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. In the

interest of security, NIH has procedures at <https://security.nih.gov/visitors/Pages/visitor-campus-access.aspx> for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <https://www.ninr.nih.gov/aboutninr/nacnr>, where an agenda and any additional information for the meeting will be posted when available. (Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: January 29, 2026.

Denise M. Santeufemio,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–02070 Filed 1–30–26; 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 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: Center for Scientific Review Special Emphasis Panel; Musculoskeletal, Oral and Skin Sciences.

Date: February 17, 2026.

Time: 2:00 p.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: Yi-Hsin Liu, Ph.D.,

Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, (301) 435–1781, liuyh@csr.nih.gov.

This notice is being published less than 15 days from the meeting date due to exceptional circumstances. As a result of the 43-day government shutdown, due to lapsed appropriations, the above meeting was canceled. This meeting was to assess the scientific and technical merit of NIH grant applications, required by statute to disburse NIH funds. The meeting must take place urgently so that evaluations of biomedical research applications addressing multiple major public health priorities can be submitted to the national advisory councils for timely funding recommendations.

(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 28, 2026.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–01937 Filed 1–30–26; 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: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Imaging Technology Development Study Section.
Date: March 5–6, 2026.

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: Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, (301) 237–9870, xuguofen@csr.nih.gov.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Bioengineering, Technology and Surgical Sciences Study Section.

Date: March 9, 2026.

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: Khalid Masood, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, 301–435–2392, masoodk@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Review of the Centers of Biomedical Research Excellence (COBRE) Phase 3.

Date: March 10–11, 2026.

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: Kimberly Hammer, Ph.D., Scientific Review Officer, National Institute of General Medical Sciences, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827–0041, kimberly.hammer@nih.gov.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Imaging Probes and Contrast Agents Study Section.

Date: March 12–13, 2026.

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: Krystyna H. Szymczyk, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD

20892, (301) 480–4198, szymczyk@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Infectious Disease Drug Development and Molecular Pharmacology.

Date: March 12–13, 2026.

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: Ekaterina Mikhailovna Nestorovich, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827–1367, ekaterina.nestorovich@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Genes, Genomes and Genetics.

Date: March 13, 2026.

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: Linda Wagner Jurata, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–8032, linda.jurata@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 28, 2026.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–01938 Filed 1–30–26; 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 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: Center for Scientific Review Special Emphasis Panel; Topics in Cognitive Disorders and Brain Aging.

Date: February 19, 2026.

Time: 1:30 p.m. to 3:30 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: Simone Chebabo Weiner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1011K, Bethesda, MD 20892, (301) 435–1042, weinersc@csr.nih.gov.

This notice is being published less than 15 days from the meeting date due to exceptional circumstances. As a result of the 43-day government shutdown, due to lapsed appropriations, the above meeting was canceled. This meeting was to assess the scientific and technical merit of NIH grant applications, required by statute to disburse NIH funds. The meeting must take place urgently so that evaluations of biomedical research applications addressing multiple major public health priorities can be submitted to the national advisory councils for timely funding recommendations.

(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 28, 2026.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–01941 Filed 1–30–26; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Board on Medical Rehabilitation Research, May 04, 2026, 10:00 a.m. to May 04, 2026, 05:00 p.m., Eunice Kennedy Shriver National Institute of Child, Health and Human Development National Institutes, 6710 B Rockledge Drive, Bethesda, MD 20817 which was published in the **Federal Register** on September 24, 2025, 364139.

Notice that the date of this meeting is changing from: May 4, 2026; 10:00 a.m.–05:00 p.m., to a two-day meeting, beginning on May 4, 2026, at 10:00 a.m.

and ending May 5, 2026, at 02:00 p.m. The meeting is open to the public.

Dated: January 28, 2026.

Margaret N. Vardanian,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-01942 Filed 1-30-26; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Partially Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be partially open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (<https://videocast.nih.gov/>).

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 Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: June 2, 2026.

Open: 9:30 a.m. to 2:00 p.m.

Agenda: Call to Order, Introductions; Consideration of Minutes and Overview of Council Operating Procedures; NIAMS Director's Report; Open Discussion and other business of Council.

Address: National Institutes of Health, Building 31, 6C Rooms A, B, and C, 31 Center Drive, Bethesda, MD 20892.

Meeting Format: In Person and Virtual Meeting—<https://videocast.nih.gov/>.

Closed: 2:15 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Building 31, 6C Rooms A, B, and C, 31 Center Drive, Bethesda, MD 20892.

Meeting Format: In Person and Virtual Meeting.

Contact Person: Timothy Erik Edgerton, MBA, Acting Deputy Director, Division of Extramural Activities, Grants Management Branch, Division of Extramural Activities, 6701 Democracy Blvd., Suite 838, Bethesda, MD 20892, (301) 594-7760, edgertont@mail.nih.gov.

Registration is not required to attend the open portion of this meeting.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at <https://security.nih.gov/visitors/Pages/visitor-campus-access.aspx>. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <https://www.niams.nih.gov/about/working-groups/advisory-council>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 28, 2026.

Denise M. Santeufemio,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-01943 Filed 1-30-26; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Partially Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Regents of the National Library of Medicine.

The meeting will be held as a virtual meeting and will be partially open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting can be

accessed from the NIH Videocast at the following link: <https://videocast.nih.gov/>.

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 materials, 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: Board of Regents of the National Library of Medicine.

Date: May 12, 2026.

Closed: May 12, 2026, 10:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Address: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Meeting Format: Virtual.

Open: May 12, 2026, 11:00 a.m. to 4:00 p.m.

Agenda: Program Discussion.

Address: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Meeting Format: Virtual.

Contact Person: Michelle Krever, Committee Management Specialist, Division of Extramural Programs, National Library of Medicine, Bethesda, MD 20892, 301-496-6132, krevert1@mail.nih.gov.

Registration is not required to attend the open portion of this meeting.

Any member of the public may submit written comments no later than 15 days in advance of the meeting. Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: www.nlm.nih.gov/od/bor/bor.html where additional information for the meeting will be posted when available. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (<http://videocast.nih.gov/>) on May 12, 2026. (Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: January 28, 2026.

Denise M. Santeufemio,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-01939 Filed 1-30-26; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) provides notice of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

FOR FURTHER INFORMATION CONTACT: Anastasia Flanagan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); Anastasia.Flanagan@samhsa.hhs.gov (email).

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) publishes a notice listing all HHS-certified laboratories and Instrumented Initial Testing Facilities (IITFs) in the **Federal Register** monthly, in accordance with Section 9.19 of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and Section 9.17 of the Mandatory Guidelines using Oral Fluid. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at <https://www.samhsa.gov/workplace/drug-testing-resources/certified-lab-list>.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR

51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); January 23, 2017 (82 FR 7920); and on October 12, 2023 (88 FR 70768).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020, and subsequently revised in the **Federal Register** on October 12, 2023 (88 FR 70814).

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for Federal agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards.

HHS-Certified Laboratories Approved To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid effective October 10, 2023 (88 FR 70814), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine effective February 1, 2024 (88 FR 70768), the following HHS-certified IITFs meet the minimum standards to conduct drug

and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190, (Formerly: Gamma-Dynacare Medical Laboratories)

Note: DOT does not allow IITFs to test DOT-regulated specimens.

HHS-Certified Laboratories Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine effective February 1, 2024 (88 FR 70768), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Desert Tox, LLC, 5425 E Bell Rd., Suite 125, Scottsdale, AZ 85254, 602–457–5411/623–748–5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630, (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem

Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)
 Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866-827-8042/800-233-6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)
 MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651-636-7466/800-832-3244
 Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612-725-2088, Testing for Veterans Affairs (VA) Employees Only
 Omega Laboratories, Inc., 2150 Dunwin Drive, Unit 1 & 2, Mississauga, ON, Canada L5L 5M8, 289-919-3188
 Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800-328-6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)
 Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888-635-5840
 US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755-5235, 301-677-7085, Testing for Department of Defense (DoD) Employees Only

Anastasia D. Flanagan,

Public Health Advisor, Division of Workplace Programs.

[FR Doc. 2026-02086 Filed 1-30-26; 8:45 am]

BILLING CODE 4160-20-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2026-0070]

Application for Recertification of Prince William Sound Regional Citizens' Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability and request for comments.

SUMMARY: The Coast Guard announces the availability of, and seeks comments on, the recertification of the Prince William Sound Regional Citizen's Advisory Council (PWSRCAC) for a period of March 1, 2026 through February 28, 2027. Under the Oil Pollution Act of 1990 (OPA 90), the Coast Guard may recertify the

PWSRCAC on an annual basis. This group monitors the activities of terminal facilities and crude oil tankers under the Prince William Sound program established by the OPA 90 statute. The current certification for the PWSRCAC will expire February 28, 2026.

DATES: Comments must be received by the Coast Guard on or before February 15, 2026.

ADDRESSES: You may submit comments identified by docket number USCG-2026-0070 at www.regulations.gov. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email LT Case Kuikhoven, United States Coast Guard Arctic District; telephone 907-463-2809, email case.a.kuikhoven@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Comments

We encourage you to submit comments (or related material) on the recertification of the PWSRCAC. We will consider all comments and material received during the comment period. If you submit a comment, please include the docket number for this notice, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments at www.regulations.gov. To do so, go to www.regulations.gov, type USCG-2026-0070 in the search box and click "Search." Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material using www.regulations.gov, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Viewing material in docket. To view documents mentioned in this notice as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the www.regulations.gov Frequently Asked Questions web page.

Personal information. We accept anonymous comments. Comments we post to www.regulations.gov will include any personal information you have provided. For more about privacy and submissions in response to this

document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

II. Background and Purpose

On December 31, 1992, the Coast Guard published Guidelines for Recertification of Alternative Voluntary Groups In Lieu of a Council (57 FR 62600) to assist groups seeking recertification under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (33 U.S.C. 2732) (the OPA 90 Act). On July 7, 1993, the Coast Guard published a notice (58 FR 36504) identifying the factors that the Coast Guard would consider in making its determination as to whether advisory groups should be certified in accordance with the OPA 90 Act, and the procedures which the Coast Guard would follow in meeting its recertification responsibilities under the OPA 90 Act. On September 16, 2002, the Coast Guard published revised recertification procedure for alternative voluntary advisory groups established in lieu of councils (67 FR 58440). According to the revised procedures, an applicant alternative group requesting recertification is required to provide the Coast Guard with a comprehensive application once every 3 years (triennially). For each of the two years between the triennial application procedures, the applicant utilizes a streamlined process and submits a recertification application describing any substantive changes to the information provided at the previous triennial recertification. Public comment is only solicited during the triennial comprehensive review. 2026 is the year in this triennial cycle that PWSRCAC must provide comprehensive information.

The Coast Guard is accepting comments concerning the recertification of PWSRCAC. At the conclusion of the comment period on February 15, 2026, the Coast Guard will review all public comments received and will take one of the following actions:

(a) Recertify the PWSRCAC under 33 U.S.C. 2732(o);

(b) Issue a conditional recertification for a period of 90 days, with a statement of any discrepancies, which must be corrected to qualify for recertification for the remainder of the year; or

(c) Deny recertification of PWSRCAC if the Coast Guard finds that the group is not broadly representative of the interests and communities in the area or is not adequately fostering the goals and purposes of 33 U.S.C. 2732.

The Coast Guard will notify PWSRCAC by letter of the action taken on its application. A notice will be

published in the **Federal Register** to advise the public of the Coast Guard's determination.

R.R. Little,

*Rear Admiral, U.S. Coast Guard, Commander,
United States Coast Guard Arctic District.*

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R7-ES-2025-1100;
FXES11607MRG01-256-FF07CMM00]

Marine Mammals; Proposed Incidental Harassment Authorization for Polar Bears in the Beaufort Sea and Arctic Ocean; Ice Exercise Activities by the U.S. Navy

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application; proposed incidental harassment authorization; 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 of 1972 (MMPA), as amended, from the U.S. Department of the Navy (Navy), propose to authorize nonlethal, incidental take by harassment of Southern Beaufort Sea polar bears (*Ursus maritimus*) from February 18, 2026, to April 18, 2026. The applicant requested this authorization for take by harassment that may result from activities associated with the mobilization, operation, and demobilization of a temporary ice camp, aircraft transportation, submarine training and testing, and research in the Beaufort Sea and Arctic Ocean. This proposed authorization, if finalized, would be for up to six takes of polar bears by Level B harassment only. No take by injury or mortality is requested, expected, or proposed to be authorized. The Navy's activities are considered military readiness activities pursuant to the MMPA. We invite comments on the proposed incidental harassment authorization and the accompanying draft environmental assessment from the public, Tribes, and local, State, and Federal agencies.

DATES: Comments must be received by March 4, 2026.

ADDRESSES:

Document Availability: You may view this proposed incidental harassment authorization, the application package, supplemental information, draft environmental assessment, and the list

of references cited herein at <https://www.regulations.gov> under Docket No. FWS-R7-ES-2025-1100. 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:** Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-R7-ES-2025-1100, which is the docket number for this rulemaking action. Then, click on the "Search" button. On the resulting page, in the panel on the left side of the screen under the "Document Type" heading, check the Notice box to locate this document. You may submit a comment by clicking on "Comment." Comments must be submitted to <https://www.regulations.gov> before 11:59 p.m. (Eastern Time) on the date specified in **DATES**.

- **U.S. mail:** Public Comments Processing, Attn: Docket No. FWS-R7-ES-2025-1100, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments only by the methods described above. 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:

Stephanie Burgess, by email at rmmmregulatory@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 (MMPA; 16 U.S.C. 1361 *et seq.*), as amended by the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136), authorizes the Secretary of the Interior (Secretary) to

allow, upon request for military readiness activities, the incidental, but not intentional, taking by harassment of marine mammals 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). The FWS shall allow this incidental taking by harassment if we make findings that the total of such taking for the period of up to 1 year:

(1) will have a negligible impact on the species or stock; and

(2) 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 military readiness activities means any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (the MMPA defines this as "Level A harassment"), or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (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 “least practicable adverse impact” is not defined in the MMPA or its enacting regulations. In processing requests for IHAs, 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. For IHAs concerning military readiness activities, the MMPA requires consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Before making the required determination, the FWS consults with the Department of Defense regarding personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

If the requisite findings are made, we shall issue an IHA, which shall set forth the following, where applicable: (i) permissible methods of taking; (ii) other means of effecting the least practicable adverse 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 April 7, 2025, the FWS received a request from the U.S. Department of the Navy (Navy) for authorization to take by nonlethal, incidental harassment of Southern Beaufort Sea (SBS) stock polar bears (*Ursus maritimus*) during a military readiness activity. The Navy’s request identified mobilization, operation, and demobilization of a temporary ice camp, aircraft transportation, submarine training and testing, and research activities in the Beaufort Sea and Arctic Ocean for the period February 9, 2026 through April 9, 2026, as activities that could

incidentally take polar bears. Through a consultative process, the FWS requested and the Navy provided additional information on their proposed activities. The Navy submitted a revised request on August 21, 2025. The FWS deemed the Navy’s revised request adequate and complete on August 21, 2025 (hereafter referred to as the “Request”).

Description of Geographic Region and Specified Activities

The Navy’s specified activities will occur in a geographic region that extends north from Deadhorse, Alaska (70.19° N), to the Arctic Ocean basin near the North Pole (90.00° N). A temporary ice camp will be established approximately 185 kilometers (km) (100 nautical miles [nm]) to 370 km (200 nm) north of Prudhoe Bay in the Beaufort Sea. The exact location of the ice camp cannot be identified in advance due to sea ice conditions required to establish the ice camp. Most submarine training and testing activities will occur near the ice camp; however, some submarine training and testing activities may occur throughout the deep Arctic Ocean basin near the North Pole (figure 1 below).

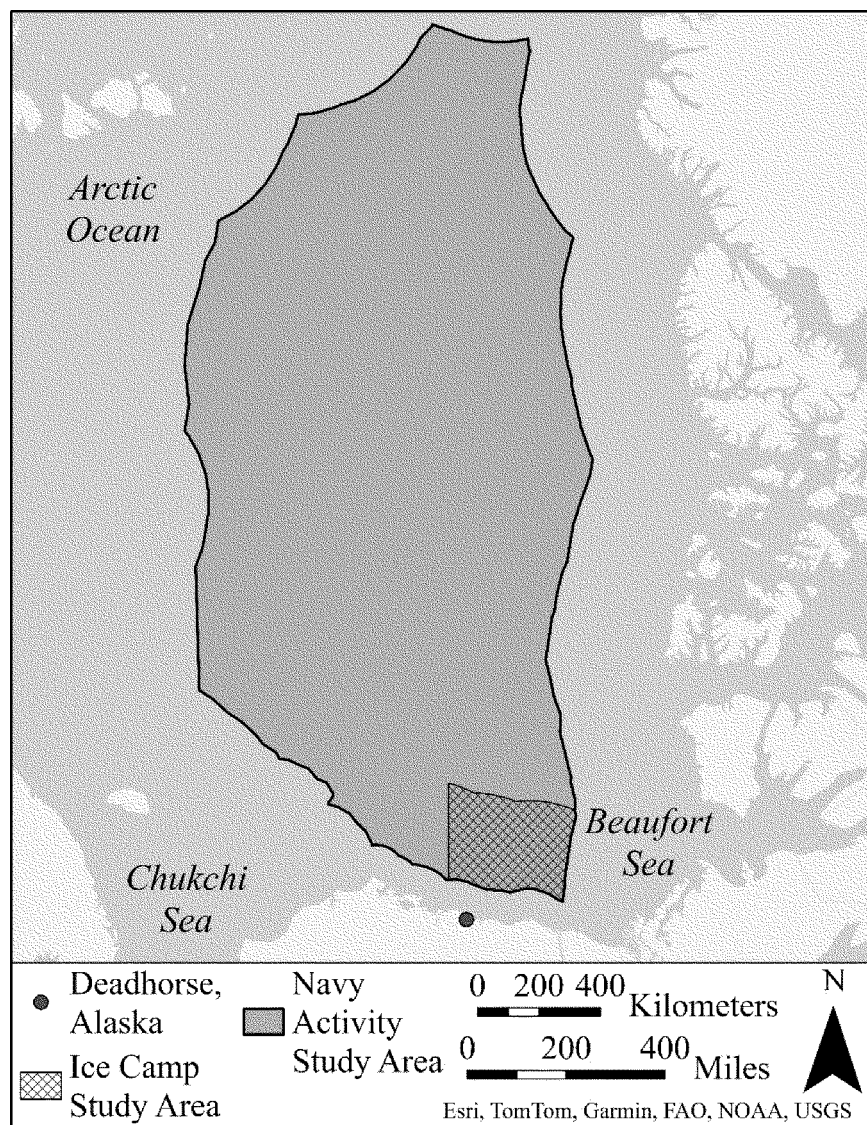


Figure 1—Geographic region of the U.S.

Navy request for incidental harassment authorization for polar bears in 2026 under the Marine Mammal Protection Act.

The specified activities consist of mobilization, operation, and demobilization of a temporary ice camp, aircraft transportation, submarine training and testing, and research activities.

Reconnaissance Flights and Mobilization

In mid-February, reconnaissance flights originating from Deadhorse will be conducted for a maximum of five days over an area approximately 70,374 square kilometers (km²) (27,172 square miles [mi²]) in the Beaufort Sea to determine the location of the ice camp. Reconnaissance flights using a single or twin otter fixed-wing aircraft will be flown at altitudes between 305 meters

(m) (1,000 feet [ft]) and 610 m (2,000 ft) for initial visual observations of the sea ice and descend to a minimum altitude of 30 m (100 ft) during closer inspections of sea ice conditions. Reconnaissance aircraft may also land on the sea ice to allow personnel to further inspect the sea ice conditions on foot. A maximum of 12 landings may occur during reconnaissance flights. After the ice camp location is determined, the Navy will mobilize equipment, supplies, and personnel from Deadhorse to the ice camp location. A maximum of nine round trip flights are anticipated each day for approximately six days during mobilization. Transportation flights will be flown at a minimum altitude of 457 m (1,500 ft).

On-Ice Activities

Ice camp operations will occur for approximately four weeks between mid-

February and early-April, 2026. The ice camp will cover an area approximately 2.0 km² (0.8 mi²) and consist of 15 to 20 tents/structures, a primary aircraft runway, a backup aircraft runway for emergency use, and a helipad. A hydrophone array will be installed around the ice camp. Hydrophones will be deployed on the ice and extend to approximately 30 m (98 ft) below the ice. Recovery of the hydrophones is planned; however, hydrophones may not be recovered if an emergency demobilization of the ice camp occurs or if the hydrophones are frozen in place and cannot be recovered.

Snowmobiles will be used to transport personnel and equipment to support research activities around the ice camp. Snowmobiles will travel a maximum of 3.2 km (2 mi) from the ice camp and cover an area approximately 32.5 km² (12.5 mi²). One snowmobile trip will occur each day for the

approximate 4-week ice camp operation period. Four to six snowmobiles will be used during the trips. Additionally, all-terrain tracked vehicles may be used to support runway construction and expeditionary forces within the ice camp area. The all-terrain tracked vehicles will cover an area approximately 2.0 km² (0.8 mi²). All-terrain tracked vehicle trips may occur each day for the approximate 4-week ice camp operation period. Unmanned on-ice vehicles (*i.e.*, electric snowmobile) may be tested around the ice camp and will always be within sight of personnel during testing operations.

Aircraft Activities

Aircraft will transport equipment, supplies, and personnel from Deadhorse to the ice camp and support research activities. One to three round trip flights will occur each day during the approximate 4-week ice camp operation period. A maximum of 6 flight hours is anticipated for large military transport aircraft. These large military transport aircraft may drop equipment and supplies by parachute at the ice camp. A maximum of 648 flight hours is anticipated for small fixed-wing aircraft. A maximum of 192 flight hours is anticipated for small rotary-wing aircraft. Unmanned aerial systems (UAS) may be used for testing and supporting research activities near the ice camp. Rotary-wing UAS activities may cover an area approximately 203.4 km² (78.5 mi²) around the ice camp and will always be within sight of personnel during operations. A maximum of 36 flight hours is anticipated for UAS activities.

In-Water Activities

In-water activities consist of submarine training and testing, unmanned underwater vehicle use, water sample collection, deployment of buoys, and use of underwater acoustic communication sources (*e.g.*, echosounders, transducers). Submarine training and testing activities generally consist of safety maneuvers and active sonar use to test the performance of the equipment in an Arctic environment. Submarine-launched torpedo exercises may be conducted, and the torpedoes used for these exercises are non-explosive. Submarine training and testing activities will not occur on or near the Continental Shelf. Submarines may surface in first-year ice or near polynyas. The submarines are anticipated to surface approximately five times near the ice camp during the project period. Other in-water activities will be conducted within the ice camp. These in-water activities will involve

underwater active acoustic transmissions. Information on the parameters for scientific devices with active acoustics used during the Navy's activities are provided in the Navy's Request.

Demobilization

Demobilization of the ice camp will likely occur in late March or early April. All equipment, supplies, waste, and personnel will be transported back to Deadhorse by aircraft. A maximum of nine round trip flights are anticipated each day for approximately 7 days during demobilization. Transportation flights will be flown at a minimum altitude of 457 m (1,500 ft).

Description of Marine Mammals in the Geographic Region

Polar bears are the only marine mammal species under the FWS's jurisdiction likely to be found within the geographic region. The vast majority of the Navy's project activities will occur within the range of the SBS polar bear stock. It is possible that the Navy's submarine activities may occur within the range of the Chukchi/Bering Seas (CBS) polar bear stock; however, these activities will occur under the sea ice at depths greater than a polar bear can dive, and, therefore, we do not anticipate any type of take to occur. Therefore, this proposed IHA focuses on potential impacts to the SBS polar bear stock. Information on the range, stocks, biology, and climate change impacts on polar bears is included in supplemental information, which can be found 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 are influenced by the type, duration, intensity, timing, and location of the source of disturbance. Disturbance from the specified activities would originate primarily from mobilization, operation, and demobilization of a temporary ice camp, aircraft transportation, submarine training and testing, and research 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 based on 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

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. Efficient management of attractants (*e.g.*, human food, garbage) can prevent polar bears from associating humans with food, which lowers the risk of human—polar bear interactions (Atwood and Wilder 2021). The Navy's polar bear interaction plan details the policies and procedures that they will implement to avoid attracting and interacting with polar bears and to minimize potential impacts to polar bears. The interaction plan also details how to respond to the presence of polar bears, the chain of command and communication, and required training for personnel. Information gained from monitoring polar bears near human activities can be useful for better understanding polar bear distribution, behavior, and interactions with humans. The Navy may use observers and thermal cameras to monitor for polar bears. The mitigation measures that will be implemented by the Navy will minimize the risk of possible human—polar bear interactions during the specified activities.

Effects of Aircraft Overflights on Polar Bears

Polar bears experience increased noise and visual stimuli when fixed-wing aircraft or rotary-wing aircraft 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). A TTS is a noise-induced threshold shift in hearing sensitivity that fully recovers over time (Finneran 2015). A PTS occurs when noise exposure causes damage to hair cells within the inner ear system (Ketten 2012). Although the effects of PTS are,

by definition, permanent, PTS does not equate to total hearing loss.

Sound exposure thresholds incorporate two metrics of exposure: the peak level of instantaneous exposure likely to cause PTS, and the cumulative sound exposure level (SEL_{CUM}) during a 24-hour period. They also include weighting adjustments for the sensitivity of different species to varying frequencies. PTS-based injury criteria were developed from theoretical extrapolation of observations of TTS detected in lab settings during sound

exposure trials (Finneran 2015). 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 TTS and PTS thresholds for both in-air and underwater sound (table 1, table 2 below).

TABLE 1—TEMPORARY THRESHOLD SHIFT (TTS) AND PERMANENT THRESHOLD SHIFT (PTS) THRESHOLDS FOR IN-AIR SOUNDS 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

Note: Values are weighted for other marine carnivores’ hearing thresholds and given in cumulative sound exposure level (SEL_{CUM} dB re 20μPa in air) for impulsive and non-impulsive sounds, and unweighted peak sound pressure level (SPL) in air (dB re 20μPa) for impulsive sounds only.

Federal Aviation Administration test aircraft produced sound at all frequencies measured (50 hertz to 10 kHz) (Healy 1974). At frequencies centered at 5 kHz, jets flying at 300 m (984 ft) produced ⅓ 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, 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 polar bear’s location (e.g., coastline, barrier island), and the polar bear’s activity (Quigley 2022; Quigley et al. 2024). Polar bears associated with dens exhibited various responses that ranged from increased head movement and observation of the disturbance to the initiation of rapid movement and/or den abandonment when exposed to aircraft flying at altitudes 150 m (492 ft) or less (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 their 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 implemented when it is safe to do so during aircraft activities.

Effects of In-Water Activities on Polar Bears

Underwater Sound

Noise exposure criteria for identifying underwater noise levels capable of causing Level A harassment (injury) to marine mammal species, including polar bears, have been established using the same methods as those used by the National Marine Fisheries Service (NMFS) (Southall et al. 2019). These criteria are based on estimated levels of sound exposure capable of causing a PTS (NMFS 2018). Southall et al. (2019) developed TTS thresholds for polar bears, which are included in the “other marine carnivores” category, of 188 dB SEL_{CUM} for impulsive underwater sounds and 199 dB SEL_{CUM} for nonimpulsive underwater sounds. Based on these analyses, Southall et al. (2019) predict that PTS for polar bears will occur at 232 dB peak sound pressure level or 203 dB SEL_{CUM} for impulsive underwater sound and 219 dB SEL_{CUM} for nonimpulsive underwater sound (table 2).

TABLE 2—TEMPORARY THRESHOLD SHIFT (TTS) AND PERMANENT THRESHOLD SHIFT (PTS) THRESHOLDS FOR IN-WATER SOUNDS 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
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 1μPa) for impulsive and non-impulsive sounds, and unweighted peak sound pressure level (SPL) in water (dB 1μPa) for impulsive sounds only.

The NMFS (2018) Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing does not identify thresholds for avoidance of Level B harassment, but NMFS has adopted a 160-dB threshold for Level B harassment from exposure to impulsive noise and a 120-dB threshold for nonimpulsive noise (High Energy Seismic Survey Team 1999; NMFS 2018). These thresholds were developed from observations of mysticete (baleen) whales responding to airgun operations (e.g., Malme et al. 1983; Malme and Miles 1983; Richardson et al. 1986, 1995).

We have evaluated the NMFS-recommended Level B harassment thresholds and determined that the threshold of 120 dB for nonimpulsive noise is not applicable to polar bears. The 120-dB threshold is based on studies in which gray whales (*Eschrichtius robustus*) were exposed to experimental playbacks of industrial noise (Malme et al. 1983; Malme and Miles 1983). During these playback studies, southern sea otter (*Enhydra lutris nereis*) responses to industrial noise were also monitored (Riedman 1983, 1984). While gray whales exhibited avoidance to industrial noise at the 120-dB threshold, there was no evidence of disturbance reactions or avoidance in southern sea otters. Southall et al. (2019) includes sea otters and polar bears in the same marine mammal hearing group of “other marine carnivores”, so a potential polar bear response to 120-dB underwater sound is likely more similar to that of sea otters than gray whales. Thus, given the differences in hearing and behavior between “other marine carnivores” and “low frequency cetaceans”, the NMFS 120-dB threshold based on gray whale behavior is not appropriate for predicting behavioral responses for polar bears. Based on the best available scientific information about other marine carnivores, which include polar bears, the FWS has set 160 dB of received underwater sound—for both

impulsive and nonimpulsive sound sources—as a threshold for take by Level B harassment.

The NMFS (2024) has recently updated their Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing utilizing the work of Southall et al. (2019). The FWS is evaluating the new auditory injury criteria from NMFS to determine whether they are appropriate for FWS trust species. Pending the outcome of those evaluations, the FWS will continue to use the previous version of the technical guidance (NMFS 2018) in our assessments of potential Level A harassment via underwater sound.

In-Water Activity Impacts on Polar Bears

During the specified activities, in-water sources of sound, such as submarine active sonar use and in-water device data collection activities, are unlikely to disturb polar bears. Submarine training and testing activities will occur under the sea ice at depths greater than a polar bear can dive and during a timeframe when sea ice extent and concentration are at a maximum during the year. Arctic sea ice extent, which is the area of ocean with at least 15 percent sea ice concentration, generally increases throughout February, reaches its maximum extent in March, and begins decreasing in April (National Snow and Ice Data Center 2025). The maximum extent and concentration of sea ice over the project area will limit polar bears' access to open water and reduce the likelihood of polar bears being exposed to the Navy's submarine training and testing activities. Other in-water activities will occur within the ice camp and under the sea ice. If a polar bear were to enter the ice camp, these in-water activities will cease until the polar bear left the ice camp. This measure would prevent polar bears from being exposed to in-water noise from these activities.

If polar bears are exposed to in-water noise from the Navy's activities, we

anticipate that the polar bears' exposure time to in-water noise would be limited. While polar bears swim and hunt in water, they spend less time in the water than most marine mammals. Stirling (1974) reported that polar bears observed near Devon Island, Canada during late July and early August spent 4.1 percent of their time swimming and an additional 0.7 percent engaged in aquatic stalking of prey. More recently, results from the application of tags equipped with time-depth recorders indicate that aquatic activity of polar bears is greater than was previously reported. Lone et al. (2018) reported 75 percent of polar bears swam daily during open-water months, with individuals spending an average of 9.4 percent of their time in the water throughout July. There was no significant difference in the amount of time spent in the water between polar bears that used coastal habitat and polar bears that used offshore pack-ice habitat; however, the sample size for comparison was small, and polar bears exhibited large individual variation in their aquatic behavior. While polar bears typically swim with their ears above water, there are occasions when a polar bear may dive and therefore have its ears below the surface (Lone et al. 2018).

The behavior of both polar bears in water or on ice may be impacted by the presence of humans and equipment used during the specified in-water activities. During the open-water season in 2012, Shell USA, Inc. (Shell) vessels encountered a few polar bears swimming in ice-free water more than 113 km (70 mi) offshore in the Chukchi Sea. In those instances, the polar bears were observed either to swim away from or approach the Shell vessels, sometimes swimming around a stationary vessel before leaving. In at least one encounter, a polar bear approached, touched, and investigated a stationary vessel from the water before swimming away. We anticipate that polar bears that encounter the Navy's submarines at the water's surface during

deployment, surfacing, and recovery may have an evasive or curious response similar to the polar bears in these reports. However, neither curious investigation nor swimming away are likely to result in the polar bear diving, which is typically seen during hunting.

While exposure to high levels of underwater sound may cause changes in behavior, temporary or permanent changes in hearing sensitivity, or discomfort, polar bears do not typically swim with their heads under water. Additionally, the submarine training and testing activities will occur under the sea ice at depths greater than a polar bear can dive and during a timeframe when sea ice extent and concentration are at a yearly maximum. Though polar bears have been observed in open water miles from the ice edge or ice floes, these encounters are relatively rare (although the frequency of such observations may increase due to sea ice change). If polar bears encounter the Navy's in-water operations, the effects of such encounters would likely include no more than short-term behavioral disturbance.

Effects to Denning Polar Bears

Known polar bear dens around industrial infrastructure, discovered opportunistically and/or during planned surveys for tracking marked polar bears and detecting polar bear dens, are monitored by the FWS. However, these sites are only a small percentage of the total active polar bear dens for the SBS stock in any given year. If potential den locations are identified during project activities, personnel who are operating under an incidental take authorization are required to coordinate with the FWS to avoid activity or potential disturbance within a designated distance of potential polar bear dens. However, an unknown polar bear den may be encountered during the Navy's activities. In instances when a previously unknown den is discovered near human activity, the FWS has provided guidance to personnel to implement mitigation measures such as establishing an activity exclusion zone around the den and 24-hour monitoring of the den site. The Navy will avoid establishing their ice camp in areas with pressure ridges and snow drifts greater than 1.5 m (5 ft) deep that may support polar bear dens as practicable and implement mitigation measures to minimize disturbance to a den.

The responses of denning polar bears to disturbance and the consequences of these responses can vary throughout the denning process, leading to different levels of potential take. 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 incidental take regulations (ITR) (90 FR 27398, June 26, 2025). The stage at which disturbance occurs defines the level of associated take (Level B harassment, Level A harassment, or lethal take) that either the female or cub(s) may experience, along with the probability of such take occurring (see *Denning Analysis* below).

Impacts of the Specified Activities on Polar Bear Prey Species

Information on the potential impacts of the specified activities on polar bear prey species is included in supplemental information, which can be found as described above in **ADDRESSES**.

Estimated Take

Definitions of Incidental Take Under the MMPA

Below we provide definitions of three types of take of polar bears. The FWS does not anticipate and is not authorizing either lethal take or Level A harassment 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 or running over an unknown den causing its collapse), human actions can result in polar bear mortality. Polar bears may be killed in situations where there is an imminent threat to human life, and 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), though the lethal take in these scenarios is not considered incidental. Unintentional disturbance of a female polar bear by human activity during the denning season may cause the female to abandon her den prematurely before the cubs are able to survive outside the den, which would result in incidental lethal take of the cubs.

Level A Harassment

Human activity may result in the injury of polar bears. Level A harassment for military readiness activities is defined as any act that injures or has the significant 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. In these scenarios, a cub's likelihood of survival may be reduced as a result of the disturbance (i.e., the cub experiences a negative survival likelihood consequence).

Level B Harassment

Level B harassment for military readiness activities means any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered. 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 Navy's mobilization, operation, and demobilization of a temporary ice camp, aircraft transportation, submarine training and testing, and research activities within the 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 involve 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 that a different zone of potential impact is appropriate, the current literature suggests that the 1.6-km (1.0-mi) impact area will encompass the vast majority of surface polar bear harassment events.

Estimated Harassment From Surface Interactions

We estimated Level B harassment using spatio-temporally specific encounter rates derived from the U.S. Geological Survey (USGS) polar bear satellite location data in the Southern Beaufort Sea (Pagano et al. 2021) and temporally specific harassment rates derived in the 2021–2026 Beaufort Sea ITR (90 FR 27398, June 26, 2025) in conjunction with the specified project activity information.

Polar bear encounter rates were determined by selecting SBS adult female polar bear locations that occurred within the project period (February–April) across years from 1986 to 2016 in the USGS polar bear satellite location dataset (Pagano et al. 2021). Based on these locations, we determined the number and proportion of SBS adult females that were located within the ice camp study area during the project period across years. We assumed that SBS adult female step selection patterns during the spring were similar to step selection patterns of SBS adult males and SBS subadults

based on step selection comparisons across adult females, adult males, and subadults in the Chukchi Sea region (Wilson et al. 2022). Given this assumption, we estimated the number of SBS polar bears across sex and age classes that may occur within the ice camp study area during the project period. The proportion of SBS adult females from the USGS dataset that were located within the ice camp study area during the project period was multiplied by the SBS polar bear stock abundance estimate to obtain the estimated number of SBS polar bears within the ice camp study area during the project period. Encounter rates were calculated as the number of SBS polar bears encountered per square kilometer within the ice camp study area.

There is a limited number of polar bear observations from industrial monitoring reports within the ice camp study area. Consequently, we could not estimate polar bear harassment rates specifically within the ice camp study area. Harassment rates derived in the 2021–2026 Beaufort Sea ITR (86 FR 42982, August 5, 2021) were used to calculate the number of polar bears potentially harassed during the project activities. We used the median of the posterior probability distribution for our harassment rate instead of the upper 99 percent quantile that was used in the 2021–2026 Beaufort Sea ITR (86 FR 42982, August 5, 2021) to account for acts that disturb or are likely to disturb a marine mammal as stipulated in the definition of Level B harassment for military readiness activities. We used the harassment rate calculated for the ice season (0.29) to best match the time period of the specified project activities.

Table 3 provides the definition for each variable used in the formulas to calculate the number of potential harassment events.

TABLE 3—DEFINITIONS OF VARIABLES USED IN HARASSMENT ESTIMATES OF NON-DENNING POLAR BEARS DURING SPECIFIED PROJECT ACTIVITIES

Variable	Definition
B_{es}	Polar bears encountered in an impact area for the entire project period.
a_c	Project activity impact area.
r_o	Occupancy rate.
e_{cl}	Project ice season polar bear-encounter rate in polar bears/season.
S_p	Proportion of the project period the area is occupied.
t_i	Ice season harassment rate.
B_t	Number of estimated Level B harassment events.

As a part of their Request, the Navy provided the FWS with the estimated project activity areas that included the maximum expected human occupancy (*i.e.*, rate of occupancy (r_o)) for the area

of their specified activities (*e.g.*, ice camp site, snowmobile trips) for the project period. Using the buffer tool in ArcGIS, we created a spatial file of a 1.6-km (1-mi) buffer around all activity

areas. We binned the activity areas according to their 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.

Impact areas were multiplied by the encounter rate to obtain the number of polar bears expected to be encountered in the impact area for the project period (B_{es}). Equation 1 provides an example of the calculation of polar bears encountered in the project ice season for an impact area in the project area.

$$B_{es} = a_c * e_{ci}$$

Equation 1

To generate the number of estimated Level B harassments for each impact area, we multiplied the number of polar bears in the impact area during the project period by the proportion of the project period the area is occupied, the rate of occupancy, and the harassment rate (equation 2).

$$B_t = B_{es} * S_p * r_o * t_i$$

Equation 2

The estimated total impact area for the Navy's on-ice activities is approximately 533.44 km² (205.96 mi²). The estimated polar bear encounter rate within the Navy's ice camp study area is approximately 0.0033 polar bears/km². Using the above equations, we estimated that one polar bear would be taken by Level B harassment during the Navy's on-ice activities. While we estimated that only one polar bear may be harassed during the Navy's on-ice activities using the above equations, it is

possible that personnel may encounter and harass a female with cubs (*i.e.*, family group). When a female exhibits a disturbance response, the cubs will typically respond in a similar manner. Therefore, we conservatively rounded up our one polar bear estimate to three polar bears in order to account for the potential harassment of a family group with an average group size of three polar bears.

Aircraft Impacts on Polar Bears

Polar bears in the project area would likely be exposed to the visual and auditory stimulation associated with the applicant's fixed-wing and rotary-wing aircraft activities; however, impacts of these exposures are likely to be minimal and short term. Aircraft activities may cause disruptions in the normal behavioral patterns of polar bears that see or hear the aircraft, thus resulting in incidental Level B harassment. To reduce the likelihood that polar bears are disturbed by aircraft, the Navy has committed to multiple mitigation measures, such as minimum flight altitudes over polar bears and restrictions on sudden changes to aircraft movements and direction. With these measures in place, any disturbances to polar bears 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 minimum flight altitudes submitted by the Navy for their aircraft activities and harassment rates for take-offs and landings at table 4.

TABLE 4—HARASSMENT RATES FOR FIXED-WING AIRCRAFT AND ROTARY-WING AIRCRAFT OVERFLIGHTS

Minimum flight altitude	Fixed-wing	Rotary-wing
Take-offs	>0.99	>0.99
Landings	>0.99	>0.99
15 m (50 ft)	0.99	>0.99
30 m (100 ft)	0.99	>0.99
152 m (500 ft)	0.71	>0.99
457 m (1,500 ft)	<0.01	0.05

Note: The harassment rates in this table are based on Quigley et al. 2024.

Estimating Area of Impact for Aircraft Activities

For each category of the flight path (*i.e.*, take-off, traveling segments, and landing), we calculated an impact area and duration of impact using flight hours provided in the Navy's Request. We used flight 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) will be impacted for 10 minutes per take-off. We estimated a landing distance of 4.83 km (3 mi) per 305 m (1,000 ft) of altitude will be impacted for 10 minutes per landing. For traveling segments, the aircraft was treated as a traveling impact area. We used a hypothetical flight from the

Deadhorse Airport to the northeastern corner of the ice camp study area, which would have the greatest potential impact of any flights in the ice camp study area. All flight segments were buffered by 1.6 km (1 mi), which is consistent with aircraft surveys conducted by the FWS and the USGS between August and October during most years from 2000 through 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.

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, traveling segments, and landings). The Navy submitted the maximum number of flight hours for aircraft activities. These flight hours were then used to calculate the proportion of the project period that aircraft occupied their impact areas (*i.e.*, take-off area, traveling segment area, and landing area). This proportion-of-project-period 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 polar bear encounter rate to determine the number of polar bears expected in that area for the project period (*i.e.*, B_{es} , as seen in equation 1). This number was then multiplied by the proportion of the project period to determine the number of polar bears expected in that area when flights are occurring, and by the harassment rate based on the minimum flight altitude to estimate the number of polar bears that may be harassed as a result of the flights (as seen in equation 2). We did not estimate any Level B harassment for flight hours at a minimum flight altitude in which the harassment rate was below 0.50 (*e.g.*, traveling segments at 457 m

flight altitude) to only account for acts that disturb or are likely to disturb a marine mammal as stipulated in the definition of Level B harassment for military readiness activities.

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 polar bear (rounded up from a fraction). We conservatively increased our one polar bear estimate to three polar bears in order to account for the average group size of a family group in case a family group is encountered during aircraft activities (table 5).

TABLE 5—ESTIMATED TAKES BY LEVEL B HARASSMENT OF POLAR BEARS IN THE PROJECT AREA AS A RESULT OF AIRCRAFT ACTIVITIES DURING THE PROPOSED REGULATORY PERIOD.

	Reconnaissance flights	Large military aircraft	Fixed-wing aircraft	Rotary-wing aircraft	UAS flights	Total
Number of Level B harassments	<0.01	<0.01	<0.01	<0.01	<0.01	3*

* We conservatively increased our one polar bear estimate (rounded up from a fraction) to three polar bears in order to account for the average group size of a family group in case a family group is encountered.

Estimated Harassment From In-Water Activities

Some of the Navy's in-water activities will involve underwater active acoustic transmissions, which have the potential to harass marine mammals underwater. We analyzed potential impacts to polar bears during the Navy's in-water activities based on polar bear aquatic behavior information and the description of the Navy's in-water activities. Polar bears exhibit seasonal variation in their aquatic behavior, with swimming occurring less often during winter and spring when ice cover is greater (Lone et al. 2018). Lone et al. (2018) reported that March was the month with the lowest mean time (2 percent) that polar bears spent in the water. Polar bears stay at the water's surface most of the time when they are swimming (Lone et al. 2018) and typically swim with their ears above water. While polar bears can dive up to 13.9 m (45.6 ft), most polar bears seldom dive beyond 3 to 4 m (9.8 to 13.1 ft). Polar bear diving behavior is likely associated with aquatic stalking of seals and accessing underwater resources such as carcasses and seaweed (Stirling 1974, Lone et al. 2018). Based on this information and the low polar bear encounter rate (0.0033 polar bear/km²) in the ice camp study area, we anticipate very few polar bears to be in

the project area with their heads underwater during the February–April project period, when polar bears are reported to spend less time swimming (Lone et al. 2018).

The Navy estimated that the areas of increased sound (≤ 160 dB re 1 μ Pa) within the hearing range of polar bears will be up to 1 km (0.6 mi) away from sound sources used during submarine-launched torpedo exercises and up to 0.5 km (0.3 mi) away from sound sources used during in-water activities within the ice camp. Considering the small ensonified area, the low polar bear encounter rate (0.0033 polar bear/km²) on the ice in the ice camp study area, and the low likelihood that a polar bear will be swimming with its head under water within hearing range of the Navy's in-water activities, we do not anticipate hearing threshold shifts for polar bears or behavioral responses resulting from underwater noise produced during the Navy's in-water activities. Additionally, submarine activities will occur at depths greater than a polar bear can dive. Unmanned underwater vehicle activities, in-water device data collection activities, and underwater acoustic communication activities will occur under the ice within the ice camp, and these activities will be halted if a polar bear is observed near the ice camp. Therefore, the FWS does not

anticipate any harassment of polar bears from the Navy's in-water activities during the project period.

Denning Analysis

The Navy's on-ice activities are the only potential source of impacts to denning polar bears. We determined the estimated number of polar bear dens in the ice camp study area based on the estimated number of dens that occur on sea ice (Patil et al. 2022) and the proportion of sea ice dens that may occur in the ice camp study area based on a USGS empirical dataset of locations of satellite-tagged female polar bears (Pagano et al. 2021). The SBS stock is estimated to have a median of 123 dens per year (95 percent posterior credible interval = 69–199 dens), of which 44 percent are estimated to occur on sea ice (Patil et al. 2022). Based on this information, we estimated the number of dens that occur on sea ice annually for the SBS stock by multiplying the number of dens per year by the proportion of dens on sea ice (equation 3):

$$123_{\text{dens}} * 0.440_{\text{prop. sea ice dens}} = 54.120_{\text{sea ice dens}}$$

Equation 3

We estimated the number of sea ice dens expected to occur within the ice camp study area by multiplying the

number of sea ice dens by the proportion of satellite-tagged females from the USGS dataset (Pagano et al. 2021) that were within the ice camp study area during the project period from 1986 through 2016 (equation 4).

$$54.120_{\text{sea ice dens}} \times 0.409_{\text{prop. ice camp females}} = 22.140 \text{ dens within ice camp study area}$$

Equation 4

The estimated number of dens in the ice camp study area was then divided by the area (km²) of the ice camp study area to obtain a den encounter rate for the project period (equation 5).

$$22.140_{\text{ice camp study area dens}} / 113,927_{\text{ice camp study area km}^2} = 0.000194 \text{ dens/km}^2 \text{ within ice camp study area}$$

Equation 5

The den encounter rate was then multiplied by the Navy’s on-ice activity impact area to determine the number of

dens expected in that impact area for the project period (*i.e.*, B_{es} , as seen in equation 1). Based on the FWS’s analysis of 42 case studies of denning polar bear responses to human activity, the impact area in which denning polar bears could exhibit a disturbance response if exposed to human activity was estimated as 805 m (0.5 mi) around the den site during the early denning period and 1.6 km (1 mi) around the den site during the den establishment, late denning, and post-emergence periods (90 FR 2718, January 13, 2025). We estimated that 0.070 den may be encountered in the Navy’s on-ice activity impact area during the early denning period and 0.104 den may be encountered in the impact area during the den establishment, late denning, and post-emergence periods.

Based on our den encounter estimates, we determined the number of cubs that may experience lethal take,

Level A harassment, and Level B harassment, and the number of females that may experience Level B harassment as a result of the Navy’s on-ice activities. We calculated probabilities of a den exposure resulting in the types of harassment of denning polar bears from our analysis of 42 case studies of denning polar bear responses to human activity (table 6 below). We provide two sets of harassment probabilities for the post-emergence period. The first (Post-emergence case 1) is the set of probabilities when a den has not been disturbed (*i.e.*, experienced harassment) during the late denning period. The second (Post-emergence case 2) is the set of probabilities for a den that was disturbed during the late denning period (Rode et al. 2018, Andersen et al. 2024).

TABLE 6—PROBABILITY THAT AN EXPOSURE ELICITED A RESPONSE BY DENNING POLAR BEARS THAT WOULD RESULT IN NO TAKE, LEVEL B HARASSMENT, LEVEL A HARASSMENT, OR LETHAL TAKE

Denning period	No take (female and cub(s))	Level B (female)	Level B (cub(s))	Level A (cub(s))	Den abandonment
Den establishment	0.818	0.182	NA	NA	NA
Early denning	0.941	0.059	NA	NA	0.059
Late denning	0.711	0.289	0	0.289	NA
Post-emergence case 1 ¹	0	1.000	0.280	0.720	NA
Post-emergence case 2 ²	0	1.000	0.700	0.300	NA

¹The den was not disturbed (*i.e.*, did not experience harassment) during the late denning period.

²The den was disturbed during the late denning period.

Note: Level B harassment was applicable to both females 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 cubs. During the early denning period, there was no Level A harassment for cubs, only den abandonment, which would result in mortality of any cubs in the den. Probabilities were calculated from the analysis of 42 case studies of denning polar bear responses to human activity.

To estimate the number of cubs that may experience each type of harassment, we used the average cub litter size estimated for the SBS polar bear stock. On average, SBS stock females produce litter sizes of 1.9 cubs (standard deviation=0.5; Smith et al. 2007, 2013; Robinson 2014) at intervals that vary from 1 to 3 or more years depending on cub survival (Ramsay and Stirling 1988) and foraging conditions.

Polar bear dens would either be in the early denning period (*i.e.*, cubs <60 days old) or the late denning period (*i.e.*, cubs >60 days old) at the start of the Navy’s activities. Based on den simulations obtained from the FWS’s polar bear den model (*e.g.*, Wilson and Durner 2020; 90 FR 27398, June 26, 2025), we estimated 29.0 percent of maternal dens would still have cubs <60 days old at the onset of the Navy’s activities (*i.e.*, February 19). Cubs <60 days old are not viable outside the den and would suffer a lethal outcome if the female emerged from the den early (Woodruff et al.

2022). However, this behavioral response is relatively rare. A review of case studies found that there is a probability of 0.059 (5.9 percent chance) that a den disturbed when cubs are <60 days would lead to an early emergence, resulting in cub mortality (table 6 above). Using this information, we estimated the number of cubs that may experience a lethal take if a den was disturbed during the early denning period by multiplying the proportion of dens in the early denning period by the probability of disturbance resulting in lethal take of cubs by the number of dens encountered in the early denning period and by the average cub litter size (equation 6).

$$0.290_{\text{prop. dens in early denning period}} \times 0.059_{\text{prob. of lethal take}} \times 0.070_{\text{den encountered in early denning period}} \times 1.9_{\text{average cub litter size}} = 0.002 \text{ cubs experiencing lethal take during the early denning period}$$

Equation 6

This should be considered the maximum potential for harassment because the probability of the den still being in the early denning period declines over time and, therefore, the estimated number of cubs that may experience lethal take arising from den disturbance is highest at the start of the Navy’s on-ice activities. Additionally, a disturbance causing early emergence during the early denning period would result in Level B harassment of the female (Woodruff et al. 2022). The estimated number of females that may experience Level B harassment if a den was disturbed during the early denning period is 0.001, the same as the estimated average number of dens in the early denning period potentially exposed to disturbance during the Navy’s on-ice activities.

Alternatively, if a den is disturbed during the late denning period, it could lead to early emergence and potentially have a negative survival likelihood

consequence (*i.e.*, Level A harassment) for cubs (Rode et al. 2018, Woodruff et al. 2022). The FWS's review of case studies found that a den that is disturbed during the late denning period has a 0.289 probability (28.9 percent chance) of early emergence (table 6 above). We, therefore, estimated the number of cubs that may experience Level A harassment from den disturbance during the late denning period by multiplying the probability of disturbance resulting in Level A harassment of cubs by the number of dens encountered in the late denning period and by the average cub litter size (equation 7).

$$0.289_{\text{prob. of Level A harassment}} * 0.104_{\text{den encountered in late denning period}} * 1.9_{\text{average cub litter size}} = 0.057 \text{ cubs experiencing Level A harassment during the late denning period}$$

Equation 7

Recent research has shown that the negative impacts to cubs' survival rates associated with early emergence can be offset if the female and cubs remain at the den site for a longer period of time (Andersen et al. 2024). We did not account for the female and cubs remaining at the den site after den emergence in our calculations, therefore, it is possible that the estimated number of cubs that may experience Level A harassment during the late denning period is lower than 0.057 if the female and cubs remain at the den site after early emergence. The estimated number of females that may experience Level B harassment if a den was disturbed during the late denning period is 0.030.

It is possible that cubs may experience either Level A harassment or Level B harassment if a disturbance occurs during the post-emergence period when the female and cubs are still at the den site. The FWS's review of case studies found that there is a 0.720 probability (72.0 percent chance) that disturbance of the den will lead to early departure during the post-emergence period if the den was undisturbed during the late denning period and a 0.300 probability (30.0 percent chance) that disturbance of the den will lead to early departure during the post-emergence period if the den was disturbed during the late denning period (table 6 above). We used these probabilities to estimate the probability of cubs that may experience Level A harassment during the post-emergence period accounting for all cases of disturbances in the late denning period (equation 8).

$$0.711_{\text{prob. of no take in late denning period}} * 0.720_{\text{prob. of Level A harassment in post-emergence period case 1}} + 0.289_{\text{prob. of Level A harassment in late denning period}} * 0.300_{\text{prob. of Level A harassment in post-emergence period case 2}} = 0.599 \text{ probability of cubs experiencing Level A harassment during the post-emergence period}$$

Equation 8

Based on this probability, we calculated the number of cubs that may experience Level A harassment from den disturbance during the post-emergence period by multiplying the probability of disturbance resulting in Level A harassment of cubs during the post-emergence period, which accounts for all cases of disturbances in the late denning period, by the number of dens encountered in the post-emergence period and by the average cub litter size (equation 9).

$$0.599_{\text{prob. of Level A harassment in post-emergence period}} * 0.104_{\text{den encountered in post-emergence period}} * 1.9_{\text{average cub litter size}} = 0.118 \text{ cubs experiencing Level A harassment during the post-emergence period}$$

Equation 9

Finally, we estimated the number of cubs that may experience Level B harassment occurring as a result of the Navy's on-ice activities. This implies that the polar bears had a behavioral response to disturbance that was consistent with Level B harassment, but they did not depart the den site early. As with our calculation for Level A harassment, we considered the probabilities of cubs that may experience Level B harassment if a den was disturbed during the post-emergence period accounting for all cases of disturbances in the late denning period (table 6 above). We used these probabilities to estimate the probability of cubs that may experience Level B harassment if a den was disturbed during the post-emergence period (equation 10).

$$0.711_{\text{prob. of no take in late denning period}} * 0.280_{\text{prob. of Level B harassment in post-emergence period case 1}} + 0.289_{\text{prob. of Level A harassment in late denning period}} * 0.700_{\text{prob. of Level B harassment in post-emergence period case 2}} = 0.401 \text{ probability of cubs experiencing Level B harassment during the post-emergence period}$$

Equation 10

Based on this probability, we calculated the number of cubs that may experience Level B harassment if a den was disturbed during the post-emergence period by multiplying the

probability of disturbance resulting in Level B harassment of cubs during the post-emergence period, which accounts for all cases of disturbances in the late denning period, by the number of dens encountered in the post-emergence period and by the average cub litter size (equation 11).

$$0.401_{\text{prob. of Level B harassment in post-emergence period}} * 0.104_{\text{den encountered in post-emergence period}} * 1.9_{\text{average cub litter size}} = 0.079 \text{ cubs experiencing Level B harassment during the post-emergence period}$$

Equation 11

The estimated number of females that may experience Level B harassment if a den was disturbed during the post-emergence period is 0.104.

In summary, we estimated that between 0.070 and 0.104 dens are potentially available to be disturbed during the Navy's on-ice activities if there is suitable denning habitat within the impact area. Considering that dens and polar bears are not fractional units, we note that our 0.070 and 0.104 den estimates should be interpreted as there being a 7.0 percent and 10.4 percent chance that a single den is potentially exposed to disturbance from the Navy's on-ice activities. Therefore, the most probable outcome of the Navy's on-ice activities is that no den is within the impact area, resulting in no impacts to denning polar bears. However, we further estimated the number of cubs that may experience each type of harassment during each denning period and the number of females that may experience Level B harassment during each denning period for the <1 den that we predicted could be exposed to the Navy's on-ice activities and potentially disturbed. The estimated number of cubs that may experience harassment from den disturbance ranges from 0.002 to 0.118 across the denning periods. Considering the low probability that one den is potentially exposed to disturbance during the Navy's on-ice activities, we do not anticipate any harassment to denning polar bears during the Navy's on-ice activities.

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.

Polar bear encounter rates are based on SBS adult female satellite locations within the ice camp study area during the project period from 1986 to 2016 in the USGS dataset (Pagano et al. 2021). There is limited information comparing the distribution and movements of adult

females, adult males, and subadults from the SBS stock in the ice camp study area. We assumed that adult female step selection patterns during the project period were similar to adult males and subadults from the SBS stock based on similar step selection patterns between adult females, adult males, and subadults from the CBS stock (Wilson et al. 2022). This assumption was used to estimate the number of SBS polar bears across sex and age classes that may occur within the ice camp study area during the project period.

Level B harassment is equated herein with a disturbance that causes disruption of natural behavioral patterns to a point where they are abandoned or significantly altered. There are likely some animals that respond in ways that indicate some level of disturbance but do not 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. There is not enough information on composition of the SBS polar bear stock in the project area 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 away from the project area or differential response of animals to noise or human presence due to past experiences. Our assessment assumes animals remain stationary (*i.e.*, density does not change). There is not enough information about the movement of polar bears in response to specific disturbances to refine this assumption. Additionally, estimates of behavioral response are based on polar bear monitoring reports primarily recorded on land. There is limited information on polar bear responses to human activities on the sea ice; therefore, we assume polar bear responses to human activities on the sea ice are similar to polar bear responses to human activities on land.

When we estimated that take by harassment of only one polar bear may occur in our analyses, we considered the potential for take by harassment of family groups. When a female exhibits a disturbance response, the cubs will typically respond in a similar manner. Therefore, we assumed that if a family group were to be encountered and harassed in response to the Navy's activities, then the female and all cubs would be harassed. On average, SBS stock females produce litter sizes of 1.9 cubs (standard deviation=0.5; Smith et al. 2007, 2013; Robinson 2014). We estimate an average group size of three polar bears for family groups. We

conservatively rounded up our one polar bear estimate to three polar bears in order to account for the potential harassment of a family group.

The probabilities of den exposure to human activities resulting in the types of harassment of denning polar bears are based on our analysis of 42 case studies from land-based dens. Polar bear dens on the sea ice have been reported to emerge earlier and exhibit shorter denning durations compared to land-based dens (Rode et al. 2018). An earlier den emergence date associated with sea ice dens would reduce the potential for den exposure to human activities resulting in harassment of denning polar bears. Our estimates for the harassment of denning polar bears do not account for the earlier den emergence date and shorter den duration reported for sea ice dens and, therefore, result in a more conservative estimate of harassment to denning polar bears during the project.

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 Navy's specified activities. We evaluated four potential sources of harassment/take, including surface interactions, aircraft overflights, in-water activities, and den disturbance of females 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 nor authorize take by Level A harassment or lethal take during the project.

TABLE 7—TOTAL ESTIMATED TAKES BY LEVEL B HARASSMENT OF POLAR BEARS BY SOURCE.

	Surface interactions	Aircraft overflights	In-water activities	Den disturbance	Total
Number of estimated Level B harassments	3*	3*	0	0	6

*We conservatively rounded up our one polar bear estimate to three polar bears in order to account for the average group size of a family group in case a family group is encountered.

Determinations and Findings

In making these 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.

Negligible Impact

We propose a finding that incidental take by Level B harassment of six polar bears resulting from the specified activities cannot be reasonably expected to, and is not reasonably likely to, adversely affect the SBS stock of polar bears through effects on annual rates of recruitment or survival and would, therefore, have no more than a

negligible impact on the SBS stock of polar bears.

Polar bears are likely to respond to the specified activities with short-term behavioral reactions or displacement from the project area during the project period. These reactions are unlikely to have consequences for the long-term health, reproduction, or survival of affected polar bears. Most polar bears will respond to disturbance by moving away from the source, which may cause temporary interruption of foraging, resting, or other natural behaviors. Affected polar bears are expected to resume normal behaviors soon after

exposure with no lasting consequences to their survival or reproduction. We do not anticipate or propose to authorize any lethal take or take by Level A harassment of polar bears during the specified activities. We anticipate up to six polar bears are likely to respond to disturbance with a biologically significant behavioral change during the specified activities and these responses to disturbance are temporary and would not result in measurable changes in survival or reproduction of affected polar bears.

Our proposed finding of negligible impact applies to incidental take associated with the specified activities as mitigated by the avoidance and minimization measures identified in the Navy's mitigation and monitoring plan. These mitigation measures are designed to minimize interactions with and impacts to polar bears. These measures and the monitoring and reporting procedures are required for the validity of our finding and are a necessary component of the proposed IHA. For these reasons, we propose a finding that the specified project would have no more than a negligible impact on the SBS stock of polar bears.

Least Practicable Adverse Impact

We evaluated the practicability and effectiveness of mitigation measures based on the nature, scope, and timing of the specified activities and the best available scientific information. The National Defense Authorization Act for Fiscal Year 2004 amended the MMPA as it relates to military readiness activities such that least practicable adverse impact shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. After reviewing the original Request (submitted April 7, 2025), the FWS discussed additional mitigation measures with the Navy to reduce the potential impacts of the specified activities. These additional mitigation measures included: increasing the avoidance distance to a minimum of 805 m (0.5 mi) away from polar bears; implementing a maximum avoidance distance (805 m (0.5 mi) or greater whenever possible) from steep terrain and areas with pressure ridges or snow drifts greater than 1.5 m (5 ft) to reduce potential impacts to denning polar bears; requiring personnel to use vehicle-mounted or handheld forward-looking infrared units and thermal scopes to the maximum extent practicable when transiting or entering new terrain within the project area to enhance detection of dens and/or traveling family groups following den

emergence; and requiring personnel on the ice to observe the surrounding area for polar bears prior to deploying, recovering, or surfacing of unmanned underwater vehicles and submarines to the maximum extent practicable. The Navy incorporated these additional mitigation measures in their revised Request and supporting documentation (submitted August 21, 2025). We propose a finding that the mitigation measures included within the revised Request would ensure least practicable adverse impact on polar bears.

Avoidance of potential polar bear denning habitat and maintaining the maximum distance practicable from all known polar bear dens will minimize impacts to denning females and their cubs 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 Navy will implement mitigation measures to prevent the presence and impact of attractants in the ice camp, such as storing solid waste and hazardous materials in secure containers inside camp structures. These measures are outlined in a polar bear interaction plan that was developed in coordination with the FWS and is part of the Navy's application for this IHA.

Several additional potential mitigation measures were considered but determined to be not practicable. These measures are listed below:

- *Require aerial infrared surveys to detect polar bear dens*—Aerial infrared is unable to detect polar bear dens on the sea ice.
- *Require use of den detection dogs*—It is not practicable or safe to require scent-trained dogs to detect dens due to the isolated location of the temporary ice camp and large spatial extent that would need to be surveyed within activity areas.
- *Require all activities to cease if a suspected polar bear den site is located*—It is not practicable or safe to require all activities to cease if a suspected den site is located due to the isolated location of the temporary ice camp. If a suspected den site is located, personnel will avoid the suspected den site and notify the FWS as soon as possible. The FWS has incorporated reporting requirements into this proposed IHA for all polar bear interactions.
- *Ground 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 the flight crew. For other operations, 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 or critical logistical need, such as medical supply delivery or fuel resupply.

- *Spatial and temporal restrictions on surface activity*—Some spatial and temporal restrictions of operations were included in the Request; however, additional restrictions, such as not operating during polar bear denning season, would not be practicable for the specified activities based on potential impacts on the effectiveness of the military readiness activity.

- *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 in an isolated location. Construction and deconstruction of barriers for a temporary camp would require additional flights to move equipment and extend the duration of the project, which could increase disturbance to polar bears. Personnel will monitor for polar bears approaching the temporary camp. The FWS has incorporated monitoring and reporting requirements into this proposed IHA for all polar bear interactions.

- *Require protected species observers for monitoring, recording, reporting, and implementing mitigation measures*—It is not practicable or safe to hire third-party protected species observers due to the isolated location of the ice camp, operational constraints, and the short-term, temporary nature of the specified activities. Additional personnel may require additional transit vehicles and accommodations, which could increase disturbance to polar bears. The Navy will provide polar bear avoidance training and polar bear monitoring and reporting training to personnel. The FWS has incorporated monitoring, data recording, and reporting requirements into this proposed IHA.

Impact on Subsistence Use

Based on past community consultations, locations of hunting areas, the anticipated lack of overlap of hunting areas and the specified activities, and the best scientific information available, including monitoring data from similar activities, we propose a finding that take caused by the specified activities would not have an unmitigable adverse impact on the availability of polar bears for taking for subsistence uses during the specified timeframe.

While polar bears represent a small portion, in terms of the number of animals, of the total subsistence harvest for the Kaktovik and Nuiqsut communities, their harvest is important to Alaska Native people. The Navy will be required to contact subsistence communities that may be affected by its activities to discuss potential conflicts caused by location, timing, and methods of the specified activities. The Navy 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, the Navy will develop a plan of cooperation (POC) that identifies measures to minimize any adverse effects. The POC will ensure that the specified 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 Navy 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 is not aware of information that indicates that polar bears will be deterred from hunting areas or impacted by the specified project activities in any way that diminishes their availability for subsistence use.

References Cited

A list of the references cited in this notice may be found at <https://www.regulations.gov> under Docket No. FWS-R7-ES-2025-1100.

Required Determinations

National Environmental Policy Act (NEPA)

We have prepared a draft environmental assessment in accordance with NEPA (42 U.S.C. 4321 *et seq.*). We have preliminarily concluded that the proposed action of issuing a final IHA would not significantly affect the quality of the human environment and, thus, preparation of an environmental impact statement for this IHA 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 (ESA)

Under the 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 would complete intra-service consultation under section 7 of the ESA on our proposed issuance of an IHA. These evaluations and findings would 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 are also required to consult with Alaska Native Claims Settlement Act (ANCSA) Corporations in certain circumstances. 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 Native people. Our efforts are guided by the following policies and directives:

(1) *The Native American Policy of the Service* (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) and *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 Corporations. The FWS has determined that authorizing the Level B harassment of up to six polar bears from the Navy'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 August 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 the nonlethal, incidental take by Level B harassment of up to six polar bears from the SBS stock of polar bears. Authorized take would be limited to disruption of behavioral patterns that may be caused by mobilization, operation, and demobilization of a temporary ice camp, aircraft transportation, submarine training and testing, and research activities conducted by the Navy in the Beaufort Sea and Arctic Ocean, between February 9, 2026, and April 9, 2026. We do not anticipate or propose to authorize any take by Level A harassment, injury, or death to polar bears resulting from these activities.

A. General Conditions for the IHA for the Navy

(1) Activities must be conducted in the manner described in the Navy's revised Request dated August 21, 2025, 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 six polar bears from the SBS stock by Level B harassment, a form of take other than Level B harassment, or take of one or more polar bears through methods not described in the IHA), the Navy must report the details of the incident to the FWS as soon as practicable.

(3) All operations managers, vehicle operators, and aircraft pilots 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 specified project as described in this document and in the Navy's revised Request. Changes to the specified project without prior authorization may invalidate the IHA.

(5) The Navy's revised Request is approved and fully incorporated into this IHA unless exceptions are specifically noted herein. The revised Request includes:

- The Navy's original request for an IHA, dated April 7, 2025;
- The Navy's *Polar Bear Interaction Management and Avoidance Plan*, dated April 7, 2025; and
- The Navy's revised request for an IHA, dated August 21, 2025.

(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 if it is safe to do so. "Operators" are all personnel operating under the Navy's authority, including all contractors and subcontractors.

B. Avoidance and Minimization

The Navy 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.

(1) *General Avoidance Measures.* The Navy must cooperate with the FWS and other designated Federal, State, and local agencies as appropriate 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 Navy 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 Mammals Management office and available onsite. The interaction plan must include:

- (i) A description of the specified activity (i.e., a summary of the plan of operations);
- (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 Navy 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 on-ice activities.* The Navy must undertake the following activities to limit disturbance around polar bears on the ice and known polar bear dens:

(i) Operators must observe for polar bears during travel activities on the ice.

(ii) Operators must use vehicle-mounted or handheld forward-looking infrared units and thermal scopes to the maximum extent practicable when transiting or entering new terrain within the project area to enhance detection of dens and/or traveling family groups (female with cubs) following den emergence. Areas along any pressure ridges, snow drifts greater than 1.5 m (5 ft) in height, snow piles, steep terrain, and any other areas that may provide suitable snow buildup for denning polar bears in the project area must be surveyed.

(iii) Operators must maintain a minimum avoidance distance of 805 m (0.5 mi) from all polar bears, except in the event of an emergency.

(iv) Vehicle operators must travel in a predictable manner and avoid sudden changes in speed and direction when in the vicinity of polar bears.

(v) Vehicle operators must follow established routes when available. Vehicle operators must not follow a polar bear, except in the event of actively deterring the polar bear if the situation requires.

(vi) Operators must implement infrastructure planning, design, and management, as well as snow management on the ice camp site, to eliminate potential polar bear bedding/denning areas and to reduce risk of surprise encounters.

(vii) Operators must avoid or maintain the maximum distance practicable (805 m (0.5 mi) or greater whenever possible) from steep terrain and areas with pressure ridges or snow drifts greater than 1.5 m (5 ft) in height that may support polar bear dens and ringed seal (primary polar bear prey species) subnivean lairs.

(viii) All observed or suspected polar bear dens must be reported to the FWS prior to the initiation of activities.

(ix) If a suspected den site is located, the Navy 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.

(x) Operators must observe an operational exclusion zone at the maximum distance practicable (1.6 km (1 mi) or greater whenever possible) 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 1.6 km (1 mi) of activities, work must be relocated or cease in the area of the den and the Navy must consult with the FWS as soon as practicable for additional guidance.

(6) *Mitigation measures for in-water activities.* Operators on the ice must observe the surrounding area for polar bears prior to deploying, recovering, or surfacing of unmanned underwater vehicles and submarines to the maximum extent practicable.

(i) Operators must avoid deploying, recovering, or surfacing unmanned underwater vehicles and submarines if a polar bear is within 805 m (0.5 mi) of the underwater vehicle to the maximum extent practicable.

(7) *Mitigation measures for aircraft activities.* Operators of support aircraft shall, at all times, conduct their activities at the maximum distance practicable from concentrations of polar bears.

(i) Aircraft operations within the project area will maintain a minimum altitude of 457 m (1,500 ft) above ground level, except during take-off and landing or when a lower flight altitude is necessary for operational reasons, or for safety due to weather or restricted visibility.

(ii) 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, land, or in water measured in a straight line between the polar bear and the ground/water directly underneath the aircraft. Rotary-wing aircraft 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.

(iii) Operators must plan all aircraft routes to minimize flight hours over predominantly coastal areas and sea ice over the continental shelf.

(iv) Operators must plan all aircraft routes to minimize any potential conflict with active or anticipated polar bear hunting activity as determined through community consultations.

(v) Aircraft will not land within 805 m (0.5 mi) of a polar bear. If a polar bear is observed while the aircraft is grounded in remote areas without shelter, personnel will board the aircraft and leave the area. The aircraft operator will also avoid flying over the polar bear if possible. Operators should avoid making any sudden maneuvers, especially when traveling at lower altitudes, even if such maneuvers are intended to avoid polar bears. If a polar bear is observed within the landing zone or work area, operators should travel away from the site and slowly increase altitude to 457 m (1,500 ft) or a level that is safest and viable given current traveling conditions. 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).

(vi) Operators must not track or follow polar bears with aircraft, including unmanned aircraft systems (UAS).

C. Monitoring

(1) Operators must provide onsite observers and implement the FWS-approved polar bear avoidance 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) All onsite observers shall complete an FWS-provided training course designed to familiarize individuals with monitoring and mitigation activities identified in the polar bear avoidance and interaction plan.

(3) 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.

(4) Operators shall cooperate with the FWS and other designated Federal, State, and local agencies as appropriate to monitor 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 Navy may be required to participate in joint monitoring efforts to address these information needs and ensure the least

practicable adverse impact to this resource.

D. Measures To Reduce Impacts to Subsistence Users

The Navy 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 Navy will be required to develop an 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 Navy will implement that POC.

(3) Prior to conducting the project, the Navy 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 Native Village of Kaktovik and the Native Village of Nuiqsut of the specified 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 Navy 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.*

(i) *Activity progress reports.* The Navy must:

(A) Notify the FWS at least 48 hours prior to the onset of activities;

(B) Notify the FWS within 48 hours of project completion or end of the work period.

(ii) *Polar bear observation reports.* The Navy 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). 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. Information in the observation report must include, but need not be limited to:

(A) Date and time of each observation;

(B) Locations of the observer and polar bears (GPS coordinates if possible);

(C) Number of polar bears;

(D) Sex and age class—adult, subadult, cub (if known);

(E) Observer name and contact information;

(F) Weather, visibility, and if at sea, sea state, and sea ice conditions at the time of observation;

(G) Estimated initial distance when first observed and closest distance of polar bears from personnel and facilities;

(H) Type of work being conducted at time of observation;

(I) Possible attractants present;

(J) Polar bear behavior—initial behavior when first observed (*e.g.*, walking, swimming, resting, etc.);

(K) Potential reaction—behavior of polar bear potentially in response to presence or activity of personnel and equipment;

(L) Description of the encounter;

(M) Duration of the encounter; and

(N) Mitigation actions taken.

(2) *Human-polar bear interaction reports.* The Navy must report all human-polar bear interaction incidents immediately, and not later than 48 hours after the incident. A human-polar bear interaction incident includes any situation in which there is a possibility for unauthorized take. Example scenarios include when project activities exceed those included in an IHA, when a mitigation measure was required but not enacted, or when injury or death of a polar bear occurs. Reports must include:

(i) All information specified for an observation report in paragraphs (1)(ii)(A)–(N) of this section E;

(ii) A complete detailed description of the incident; and

(iii) Any other actions taken.

(3) *Final report.* The results of monitoring and mitigation efforts identified in the polar bear 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 above in **ADDRESSES**. Please identify if 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 documents; 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** above). 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 your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Peter Fasbender,

Assistant Regional Director for Fisheries and Ecological Services, Alaska Region.

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BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R8-ES-2025-0070; FXES11140800000-256-FF08ECAR00]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for Quail Meadows Apartments Project, City of Encinitas, CA; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Quail Meadows Properties, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally threatened coastal California gnatcatcher incidental to construction of the Quail Meadows Apartments Project, in the City of Encinitas, San Diego County, California. We request public comment on the application, which includes the applicant's proposed habitat conservation plan, and the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the National Environmental Policy Act (NEPA), Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a joint draft environmental action statement and low-effect screening form, which is also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: We must receive your written comments on or before March 4, 2026.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents this notice announces, along with any comments and other materials that we receive, online in Docket No. FWS-R8-ES-2025-0070 at <https://www.regulations.gov>.

Submitting Comments: If you wish to submit comments, you may do so in writing by one of the following methods:

- **Online:** <https://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R8-ES-2025-0070.
- **Email:** fw8cfwocomments@fws.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Snyder, Assistant Field Supervisor, Carlsbad Fish and Wildlife

Office, jonathan_d_snyder@fws.gov (email) or 760-431-9440 extension 307 (telephone). Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from Quail Meadows Properties, LLC (applicant) for a 10-year incidental take permit (ITP) for one covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The application addresses the potential "take" of the threatened coastal California gnatcatcher (*Poliptila californica californica*; gnatcatcher) associated with the construction of the Quail Meadows Apartments project, in the City of Encinitas, San Diego County, California. We request public comment on the application, which includes the applicant's habitat conservation plan (HCP), and on the Service's preliminary determination that this proposed ITP qualifies as "low effect," and may qualify for a categorical exclusion pursuant to the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM Appendix 2 8.5(C)(2)). To make this preliminary determination, we prepared a joint draft environmental action statement and low-effect screening form, which is also available for public review.

Background

The Service listed the gnatcatcher as threatened on March 30, 1993 (58 FR 16742) and published a revised final rule designating critical habitat on December 19, 2007 (72 FR 72010). Section 9 of the ESA prohibits take of fish and wildlife species listed as endangered (16 U.S.C. 1538). Under the ESA, "take" is defined to include the following activities: "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532). Section 4(d) of the ESA allows the Secretary to extend protections for endangered species to those listed as threatened. Under section 10(a)(1)(B) of the ESA (16 U.S.C. 1539(a)(1)(B)), we may issue permits to authorize take of listed fish and wildlife species that is incidental to, and not the purpose of, carrying out an otherwise lawful

activity. Regulations governing incidental take permits for threatened species are in the Code of Federal Regulations (CFR) at 50 CFR 17.32. Issuance of an ITP also must not jeopardize the existence of federally listed fish, wildlife, or plant species, pursuant to section 7 of the ESA and 50 CFR 402.02. The permittee would receive assurances under our “No Surprises” regulations (50 CFR 17.32(b)(5)).

Proposed Project

The proposed 11.96-acre (ac) project site is an undeveloped property along Quail Gardens Drive, north of Encinitas Boulevard, that was formerly a greenhouse operation in the City of Encinitas, in San Diego County, California. The proposed Quail Meadows Apartments project includes the construction of 448 residential units spread across two five-story apartment buildings, a two-story fitness building/clubhouse, and 3.31 ac of land set aside as a biological open space preserve in the City of Encinitas, California. The applicant requests a 10-year ITP under section 10(a)(1)(B) of the ESA. If we approve the permit, the applicant anticipates taking gnatcatcher resulting from impacts to 8.22 ac, including about 0.54 ac of native coastal sage scrub vegetation that this species uses for breeding, feeding, and sheltering. The take would be incidental to the applicant's activities associated with the construction of the Quail Meadows Apartments project.

The applicant's proposed HCP contains measures to minimize the effects of construction activities on the gnatcatcher. During construction, a Service-approved biological monitor will be present to ensure avoidance and minimization measures are understood by the contractors and implemented as anticipated. Impacts to preserved vegetation adjacent to the project footprint will be avoided by surveying, staking, and fencing the limits of proposed impacts and controlling erosion, sedimentation, and pollution within the footprint of impacts. Vegetation removal will occur outside the breeding season to avoid active nests, and impacts to productivity will be minimized by limiting construction within 500 feet of an active nest.

The applicant proposes to increase the quality and extent of habitat for the gnatcatcher that occurs within and adjacent to the project area by restoring 2.93 ac of non-native grassland to coastal sage scrub, enhancing/preserving 0.38 ac of coastal sage scrub, and preserving 0.07 ac of wetland in a 3.31-ac on-site preserve. Further, the

preserve will be located across the street from the San Diego Botanic Gardens, which offers additional foraging and nesting habitat for gnatcatchers. In total, 3.31 ac of coastal sage scrub habitat for the coastal California gnatcatcher will be conserved through a biological conservation easement, with funding secured in a non-wasting endowment account, to ensure management and monitoring in perpetuity.

Physical conditions of the on-site preserve will be maintained for the benefit of gnatcatchers and their habitat through appropriate access controls, trash removal, and related measures. A rarely used 0.07-ac utility easement adjacent to the preserve will be planted with native coastal sage scrub species to increase gnatcatcher foraging and nesting habitat and reduce potential for non-native vegetation invasion into the preserve. Development landscaping will exclude invasive plant species as well as plants that require intensive irrigation, fertilizers, or pesticides adjacent to preserve areas. Water runoff from landscaped areas will be directed away from the biological conservation easement area and contained and/or treated within the stormwater management facilities identified in project plans. Lighting will be selectively placed, shielded, and directed away from the on-site preserve. In addition, lighting from homes abutting the preserve will be screened with vegetation, and spotlight-type lighting will be prohibited. Permanent fencing will prohibit access to the on-site preserve by homeowners and their pets, especially cats, and no-trespassing signs will be posted at likely points of entry.

Proposed Action and Alternatives

The proposed action consists of the issuance of an incidental take permit and implementation of the proposed HCP, which includes measures to avoid, minimize, and mitigate impacts to the gnatcatcher. To comply with the requirements for an HCP under ESA section 10(a), alternatives to the project and the incidental take of gnatcatcher were evaluated. Under the No Action Alternative, the project would not be constructed, and no ITP would be issued. The property owner (applicant) would have no use of the privately owned property. Under the Total Sage Scrub Avoidance Alternative, the 0.99 ac of coastal sage scrub gnatcatcher habitat onsite would be avoided. The gnatcatcher habitat is composed of 17 small and fragmented patches of native vegetation scattered throughout the site, ranging in size from 0.001 ac to 0.25 ac. Therefore, the total avoidance of habitat

would also prevent any reasonable economic use of the site. With implementation of the project, the development would be situated in the southern portion of the project site and a 3.31-ac preserve would be established in the northern portion of the project site. A previous project iteration would have developed 11.6 ac of the 11.96-ac project site and only included a 0.33-ac preserve. Therefore, the project is the most biologically conservative feasible configuration for development on the project site.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's proposed project would individually and cumulatively have a minor effect on the gnatcatcher and the human environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) ITP would be a “low-effect” ITP that individually or cumulatively would have a minor or negligible effect on the species and may qualify for application of a categorical exclusion pursuant to DOI's NEPA regulations and the DOI Departmental Manual.

Next Steps

The Service will evaluate the application and comments received to determine whether to issue the requested ITP. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue the permit to the applicant for incidental take of the gnatcatcher.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32) and the National Environmental Policy Act (42 U.S.C.

4321 *et seq.*) and its implementing regulations (43 CFR 46).

Jonathan Snyder,

Acting Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. 2026–01929 Filed 1–30–26; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R1–ES–2025–0144;
FXES11140100000–256–FF01E00000]

Receipt of Incidental Take Permit Application and Habitat Conservation Plan for the Taylor's Checkerspot Butterfly and Four Subspecies of the Mazama Pocket Gopher, Thurston and Pierce Counties, Washington; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from the Puget Sound Energy (applicant) to renew and amend an existing incidental take permit (ITP) pursuant to the Endangered Species Act. The ITP would authorize the applicant's take of four threatened subspecies of the Mazama pocket gopher and the Taylor's checkerspot butterfly incidental to otherwise lawful activities during replacement, repair, and upgrade of existing utility systems in Thurston and portions of Pierce Counties, Washington, for the benefit of energy infrastructure and public safety. The application includes a habitat conservation plan (HCP) with measures to minimize and mitigate the impacts of the taking on the covered species. We also prepared a draft environmental action statement for our preliminary determination that the HCP and our permit decision may be eligible for categorical exclusion under the National Environmental Policy Act. We invite comments from the public and local, State, Tribal, and Federal agencies regarding the documents.

DATES: Please submit written comments by March 4, 2026.

ADDRESSES:

Obtaining documents: The documents this notice announces, as well as any comments and other materials that we receive, will be available for public inspection online at <https://www.regulations.gov> in Docket No. FWS–R1–ES–2025–0144.

Submitting comments: If you wish to submit comments on any of the documents, you may do so in writing by one of the following methods:

- *Online:* <https://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS–R1–ES–2025–0144.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R1–ES–2025–0144; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT:

Marty Acker, Washington Fish and Wildlife Office, by email at Martin.Acker@fws.gov, or by telephone at 360–753–9440. 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: We, the U.S. Fish and Wildlife Service (Service), received an incidental take permit (ITP) application from Puget Sound Energy (PSE; applicant) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). PSE has an existing ITP (Permit No. TE81283D–0) with an approved five-year HCP for the three subspecies of the Mazama pocket gopher (*Thomomys mazama pugetensis*, *T. m. tumuli*, and *T. m. yelmensis*), listed under the ESA in Thurston County, Washington. PSE is proposing a 30-year HCP that would renew and amend the existing 5-year HCP for future system improvements and maintenance activities, including the addition of ITP coverage for the Taylor's checkerspot butterfly (*Euphydryas editha taylori*) and the Roy prairie pocket gopher (*T. m. glacialis*), and expand the permit area to include a small portion of Pierce County, Washington. The application includes an HCP that describes actions the applicant will take to minimize and mitigate the impacts of take of the covered species. We also prepared a draft environmental action statement (EAS) for our preliminary determination that the HCP and our permit decision may be eligible for a categorical exclusion under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). We invite the public and local, State, Tribal, and Federal agencies to comment on these documents.

Background

Section 9 of the ESA prohibits the taking of fish and wildlife species listed as endangered or threatened. Under section 3 of the ESA, the term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)).

Section 10(a)(1)(B) of the ESA contains provisions that authorize the Service to issue permits to non-Federal entities for the take of endangered and threatened species caused by otherwise lawful activities, provided the following criteria are met (16 U.S.C. 1539(a)(2)(B) and 50 CFR 17.22(b)(2) and 17.32(b)(2)): (1) the taking will be incidental; (2) the applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking; (3) the applicant will ensure that adequate funding for the conservation plan implementation will be provided; (4) the applicant has provided procedures to deal with unforeseen circumstances; (5) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (6) the applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the plan or to ensure the plan will be implemented. Regulations governing permits for endangered and threatened species are found at 50 CFR 17.22 and 17.32, respectively.

Proposed Action

PSE proposes to conduct maintenance, replacement, and upgrades of existing electric power and natural gas systems in portions of Thurston and Pierce Counties, Washington, for the benefit of energy infrastructure and public safety. Covered activities may include pole replacement, cable or pipe repairs, and tree pruning projects for purposes of safety and efficiency. Activities may also include conversion of overhead power lines to underground power lines in existing rights-of-way, short extensions of existing feeder lines, and new gas service to existing homes where the gas supply pipes already exist at the street. In some cases, project activity would occur in potential habitat for Taylor's checkerspot butterfly and its designated critical habitat, as well as potential habitat for the four subspecies of the Mazama pocket gopher. PSE would fully offset impacts to each of the covered species through the establishment and maintenance of permanent mitigation sites. Specifically, the applicant would permanently maintain suitable breeding, feeding, and

sheltering habitat for each of the covered species.

The permit area includes Thurston County and the southwest portion of Pierce County near Joint Base Lewis-McChord that occur within the ranges of the four federally listed subspecies of *Mazama* pocket gopher and portions of the range of Taylor's checkerspot butterfly, as depicted in the HCP (Figure 3–1). The permit area encompasses lands where covered activities may occur, as well as 14 parcels of mitigation lands at 7 locations where mitigation would occur, totaling roughly 81 acres. The Service proposes to issue the requested 30-year ITP renewal with amendment based on the applicant's commitment to implement the HCP, if ESA section 10(a)(2)(B) permit issuance criteria are met.

Public Comments

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We specifically request data, comments, new information, and suggestions from interested parties regarding our proposed Federal action including, without limitation, adequacy of the HCP, whether the HCP meets requirements for permits at 50 CFR parts 13 and 17, and adequacy of the EAS pursuant to the requirements of NEPA.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personally identifiable information in your comments, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable 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 on <https://www.regulations.gov>.

Next Steps

After the public comment period ends (see **DATES**), we will evaluate the permit application, associated documents, and any comments received to determine whether the permit application meets the requirements of section 10(a)(2)(B) of the ESA. We will also conduct an intra-Service consultation under section 7(a)(2) of the ESA on the proposed ITP

action. The final NEPA and permit determinations will not be completed until after the end of the 30-day comment period and will fully consider all comments received during the comment period. If we determine that all requirements are met, we will issue an ITP under section 10(A)(1)(B) of the ESA to the applicant for the take of the covered species, incidental to otherwise lawful covered activities.

Authority

We provide this notice in accordance with the requirements of section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32), and National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and Department of the Interior guidance (318 DM 3).

Bridget Fahey,

Acting Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2026–02012 Filed 1–30–26; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6901; NPS–WASO–NAGPRA–NPS0041921; PPWOCRADNO–PCU00RP14.R50000]

Notice of Inventory Completion: Indiana University of Pennsylvania, Indiana, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Indiana University of Pennsylvania (IUP) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after March 4, 2026.

ADDRESSES: Send written requests for repatriation of the human remains and associated funerary objects in this notice to Andrea Palmiotto, Indiana University of Pennsylvania, 441 North Walk, Indiana, PA 15705, email apalmiot@iup.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The

determinations in this notice are the sole responsibility of the Indiana University of Pennsylvania, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, one individual has been identified. The 11 associated funerary objects are ceramic vessels. The Ault collection is believed to have been donated to the IUP Department of Anthropology in the 1980s or 1990s from the IUP University Museum. These objects and remains were reportedly collected by an individual who worked on gas pipelines across the US. The cremains were separated from ceramic earthenware vessels at an unknown date by persons unknown. Images of the vessels were reviewed by Dr. Susanne Eckert from the Arizona State Museum, University of Arizona, towards identification.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice. The Ak-Chin Indian Community; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona comprise one cultural group known as the O'odham. Cultural continuity between the prehistoric Hohokam archeological culture and present-day O'odham peoples is supported by continuities in settlement patterns, architectural technologies, basketry, textiles, ceramic technology, and ritual practices. Oral traditions that are documented for the Ak-Chin Indian Community; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona support their cultural affiliation with Hohokam archeological sites in central and southern Arizona.

Determinations

The Indiana University of Pennsylvania has determined that:

- The human remains described in this notice represent the physical remains of at least one individual of Native American ancestry.

- The 11 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.

- There is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects described in this notice and the Ak-Chin Indian Community; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after March 4, 2026. If competing requests for repatriation are received, the Indiana University of Pennsylvania must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Indiana University of Pennsylvania is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 22, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-02028 Filed 1-30-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6897; NPS-WASO-NAGPRA-NPS0041917; PPWOCRADNO-PCU00RP14.R50000]

Notice of Inventory Completion: Field Museum, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Field Museum has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after March 4, 2026.

ADDRESSES: Send written requests for repatriation of the human remains in this notice to June Carpenter, Field Museum, 1400 S. Lake Shore Drive, Chicago, IL 60605, email jcarpenter@fieldmuseum.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Field Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, one individual have been identified. No associated funerary objects are present. The human remains are hair clippings belonging to one individual, identified with the tribal designation "Pequod, Mohegan." Field Museum staff believe they were collected under the direction of Franz Boas and Frederick Ward Putnam for the 1893 World's Columbian Exposition in Chicago. The hair clippings were accessioned into the Field Museum's collection in 1939. No information regarding the individual's name, sex, age, or geographic location has been found. There is no known presence of any potentially hazardous substances.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the

information available about the human remains described in this notice.

Determinations

The Field Museum has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a connection between the human remains described in this notice and the Mashantucket Pequot Indian Tribe and the Mohegan Tribe of Indians of Connecticut.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under

ADDRESSES. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains described in this notice to a requestor may occur on or after March 4, 2026. If competing requests for repatriation are received, the Field Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Field Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 22, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-02024 Filed 1-30-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR**National Park Service**

[N6908; NPS-WASO-NAGPRA-NPS0041938; PPWOCRADN0-PCU00RP14.R50000]

Notice of Intended Repatriation: Robert S. Peabody Institute of Archaeology, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Robert S. Peabody Institute of Archaeology (RSPI) intends to repatriate certain cultural items that meet the definition of unassociated funerary objects, sacred objects, and/or objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after March 4, 2026.

ADDRESSES: Send additional, written requests for repatriation of the cultural items in this notice to Ryan J. Wheeler, RSPI, Phillips Academy, 180 Main Street, Andover, MA 01810, email rwheeler@andover.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the RSPI, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 320 cultural items have been requested for repatriation.

The 95 unassociated funerary objects are 30 lots of ceramic items, two lots of chipped stone items, four lots of faunal remains, 23 lots of ground stone items, one lot of minerals, and 35 lots of marine shell items.

The 225 sacred objects are one lot of botanical items, 25 lots of ceramic items, 18 lots of chipped stone items, 12 lots of faunal remains, 130 lots of ground stone items, eight lots of lithic items, 26 lots of marine shell items, four lots of minerals, and one lot of wooden material.

The cultural items were removed from at least 21 localities in Apache, Gila, Maricopa, and Pinal counties, Arizona

by various individuals, including Warren K. Moorehead (1898), C.P. Borrowdale (1902), W.E. Ellsworth (1901), George Widdicomb (1910), Monroe Amsden (1922–23), the Gila Pueblo Foundation, Globe, Arizona (1940), and Donnelley Erdman (1978) and transferred to the RSPI (variably known as the Phillips Academy Department of Archaeology or Robert S. Peabody Foundation for Archaeology) at the dates indicated. There is no known presence of any potentially hazardous substances.

The Ak-Chin Indian Community; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona comprise one cultural group known as the O'odham. Cultural continuity between the prehistoric Hohokam archeological culture and present-day O'odham peoples is supported by continuities in settlement patterns, architectural technologies, basketry, textiles, ceramic technology, and ritual practices. Oral traditions that are documented for the Ak-Chin Indian Community; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona support their cultural affiliation with Hohokam archeological sites in central and southern Arizona.

Determinations

The RSPI has determined that:

- The 95 unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.

- The 225 sacred objects described in this notice are specific ceremonial objects needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, according to the Native American traditional

knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.

- There is a connection between the cultural items described in this notice and the Ak-Chin Indian Community; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after March 4, 2026. If competing requests for repatriation are received, the RSPI must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The RSPI is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: January 22, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-02023 Filed 1-30-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR**National Park Service**

[N6902; NPS-WASO-NAGPRA-NPS0041922; PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: The Museum of Kansas City, Kansas City, MO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and

Repatriation Act (NAGPRA), The Museum of Kansas City (MKC) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after March 4, 2026.

ADDRESSES: Send written requests for repatriation of the human remains in this notice to Lisa Shockley, The Museum of Kansas City, 3218 Gladstone Blvd., Kansas City, MO 64123, email lishockley@museumofkansascity.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of The Museum of Kansas City, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing at least three individuals have been identified. No associated funerary objects are present.

Human remains representing, one individual were removed from Nevada (Vernon County) MO (MKC catalogue number: 1939.62). From a former local museum (the Kansas City Historical Society) which was a founding collection of the Kansas City Museum (now MKC) in 1939.

Human remains representing, at minimum, two individuals were removed from a grave in Osage County, MO (MKC catalogue number: I.1995.267). Partial remains of at least two individuals, gender is unknown and appears to be one adult and one subadult. The clear acquisition history by the museum is unknown, although found with materials from a former local museum which merged to become part of the Kansas City Museum (MKC) in 1939.

The Museum is unaware of any hazardous substances used on these individuals.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location of the human remains described in this notice.

Determinations

The Museum of Kansas City has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- There is a connection between the human remains described in this notice and The Osage Nation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under

ADDRESSES. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains described in this notice to a requestor may occur on or after March 4, 2026. If competing requests for repatriation are received, The Museum of Kansas City must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Museum of Kansas City is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 22, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-02029 Filed 1-30-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6894; NPS-WASO-NAGPRA-NPS0041934; PPWOCRADNO-PCU00RP14.R50000]

Notice of Inventory Completion: University of Florida, Florida Museum of Natural History, Gainesville, FL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Florida, Florida Museum of Natural History (FLMNH), has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after March 4, 2026.

ADDRESSES: Send written requests for repatriation of the human remains and associated funerary objects in this notice to David Blackburn, University of Florida, Florida Museum of Natural History, 1659 Museum Road, Gainesville, FL 32611, email NagpraOffice@floridamuseum.ufl.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the FLMNH, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing at least one individual has been identified from Cape Sable 2 (8MO38). The 940 associated funerary objects are faunal bone, pumice, pottery, and shell. The collection of human remains and artifacts were transferred to FLMNH from the Department of Anthropology at the University of Florida in 1977 (Acc. 80-1). Some of the faunal remains were subsequently separated and curated in the Environmental Archaeology Program (EAP) for identification and analysis (EAP 0344). The Ancestral remains were identified within the faunal samples in EAP. The site was described by John Goggin in 1944 as a midden site, in a mangrove swamp east of the long tongue of prairie running north behind middle to northwest cape. He noted that at the time it was a virtually untouched hammock mound with mangroves around a possible burial mound. The excavation consists of a trench (Trench 1), excavated in 6" intervals to a depth of 36". There is a well-established relationship between John Goggin and the University of Florida, Department of Anthropology, so

it is possible that the remains were collected during this investigation.

Human remains representing at least one individual has been identified from Pavillion Key (8MO107). There are no associated funerary objects. There is no information relating to the excavation of this burial, although the geographic region is generally associated with the Glades Period (1000 B.C.–A.D. 1700). The Ancestor was presented to the FLMNH in January 1953 by Mr. Orin G. Fogle from Pavillion Key. There are no known hazardous or potentially hazardous substances.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

The FLMNH has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The 940 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Miccosukee Tribe of Indians; Seminole Tribe of Florida; and The Seminole Nation of Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after March 4, 2026. If competing requests for repatriation are received, the FLMNH must determine the most appropriate requestor prior to repatriation. Requests for joint

repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The FLMNH is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 22, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–02031 Filed 1–30–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6903; NPS–WASO–NAGPRA–NPS0041923; PPWOCRADNO–PCU00RP14.R50000]

Notice of Inventory Completion: California Department of Transportation, Oakland, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the California Department of Transportation (Caltrans) has completed an inventory of associated funerary objects and has determined that there is a cultural affiliation between the associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the associated funerary objects in this notice may occur on or after March 4, 2026.

ADDRESSES: Send written requests for repatriation of the associated funerary objects in this notice to Lindsay Busse, PQS Principal Investigator and Cesar Villanueva, Co-Principal Investigator—Prehistoric Archaeology, California Department of Transportation, District 4, 111 Grand Avenue, Oakland, CA 94612, email lindsay.busse@dot.ca.gov and Cesar.Villanueva@dot.ca.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Caltrans, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The

National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

The 354 associated funerary objects are catalog entries representing lithics, baked clay, battered stone, a stone bead, and fire-affected rock. Of the 354 associated funerary objects, six catalog numbers are missing, and Caltrans and Sonoma State University (SSU) continue to look for them. These collections are from Napa County along Highway 29 in Napa City and are housed at SSU. The collections are the result of Caltrans project-delivery related excavations at CA–NAP–916 (Accession Nos. 99–04 and 2001–02) between 1999 and 2001. There are no known/documented potentially hazardous substances used to treat any of the cultural items.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the associated funerary objects described in this notice.

Determinations

Caltrans has determined that:

- The 354 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between associated funerary objects described in this notice and the Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; Kletsel Dehe Wintun Nation of the Cortina Rancheria (*previously* listed as Kletsel Dehe Band of Wintun Indians); and the Yocha Dehe Wintun Nation, California.

Requests for Repatriation

Written requests for repatriation of the associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the associated funerary objects described in this notice to a requestor may occur on or after

March 4, 2026. If competing requests for repatriation are received, Caltrans must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the associated funerary objects are considered a single request and not competing requests. Caltrans is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 22, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-02030 Filed 1-30-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6905; NPS-WASO-NAGPRA-
NPS0041935; PPWOCRADN0-
PCU00RP14.R50000]

Notice of Intended Repatriation: Pennsylvania Historical and Museum Commission, State Museum of Pennsylvania, Harrisburg, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), The State Museum of Pennsylvania intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after March 4, 2026.

ADDRESSES: Send additional, written requests for repatriation of the cultural items in this notice to Cherylyn Gilligan, PHMC, The State Museum of Pennsylvania, 400 North Street, Floor 2, Harrisburg, PA 17120, email phmcnagpra@pa.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of The State Museum of Pennsylvania, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The

National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 10 lots of cultural items have been requested for repatriation. Museum records do not indicate the use of hazardous substances on any of these cultural items.

From 1969–1972, one lot of unassociated funerary objects were removed from Minisink Island (28Sx28) in Sussex County, NJ by Society for Pennsylvania Archaeology, Lenape Chapter 12. The cultural items are personal adornments, pipes, faunal, pottery, and groundstone. These items have been housed at The State Museum of Pennsylvania since 2013 under accession 2014.50.

From 1969–1972, one lot of unassociated funerary objects were removed from Minisink Island (28Sx28) in Sussex County, NJ by Society for Pennsylvania Archaeology, Lenape Chapter 12. The unassociated funerary objects are chipped stone, groundstone, pottery, unmodified natural rock, pigment, charcoal, and pipes. These items have been housed at The State Museum of Pennsylvania since 2004 under accession 2004.64.

From 1967–1968, one lot of unassociated funerary objects were removed from the Bell-Browning Post/Bell-Philhower site (28Sx48) in Sussex County, NJ by Society for Pennsylvania Archaeology, Lenape Chapter 12. The cultural items are faunal remains, chipped stone, and pottery. These items have been housed at The State Museum of Pennsylvania since 2004 under accession 2004.64.

From 1967–1968, one lot of unassociated funerary objects were removed from the Bell-Browning Post/Bell-Philhower site (28Sx48) in Sussex County, NJ by Society for Pennsylvania Archaeology, Lenape Chapter 12. The unassociated funerary objects are chipped stone, groundstone, pottery, faunal remains, botanical remains, unmodified natural rock, ochre, and charcoal. These items have been housed at The State Museum of Pennsylvania since 2013 under accession 2014.50.

From 1967–1968, one lot of unassociated funerary objects were removed from the Herring site (28Sx428) in Sussex County, NJ by The Society for Pennsylvania Archaeology, Lenape Chapter 12. The cultural items are faunal remains, chipped stone, pottery, natural stones, ochre, and charcoal. These items have been housed at The State Museum of Pennsylvania since 2013 under accession 2014.50.

In the 1960s or 1970s one lot of unassociated funerary objects were

removed from the Santos 2 site (36Pi2) in Pike County, PA by Society for Pennsylvania Archaeology, Lenape Chapter 12. The cultural items are chipped, stone, pipes, and groundstone. These items have been housed at The State Museum of Pennsylvania since 2004 under accession 2004.64.

In the 1960s or 1970s one lot of unassociated funerary objects were removed from the Santos 2 site (36Pi2) in Pike County, PA and possibly other sites in Sussex County, NJ by Society for Pennsylvania Archaeology, Lenape Chapter 12. The unassociated funerary objects are pottery, groundstone, pipes, modified faunal material, chipped stone, historic trade items, pigment, and personal adornments. These items have been housed at The State Museum of Pennsylvania since 2019 under accession 2024.32.

In 2010, one lot of unassociated funerary objects were removed from the Santos 2 site (36Pi2) in Pike County, PA by archaeological consultant Gray & Pape, Inc. The unassociated funerary objects are chipped stone, pottery, organic remains, groundstone, and charcoal. These items have been housed at The State Museum of Pennsylvania since 2013 under catalog 36PI0002/22–105.

In 1960 one lot of unassociated funerary objects were removed from the Manna site (36Pi4) in Pike County, PA by Society for Pennsylvania Archaeology, Lenape Chapter 12. The cultural items are pipes, pottery, and groundstone. These items have been housed at The State Museum of Pennsylvania since 2004 under accession 2004.64.

In c. 1931 one lot of unassociated funerary objects were removed from various locations in Pike County, PA by Max Schrabisch. The cultural items are faunal remains, pottery, chipped stone, groundstone. These items have been housed at The State Museum of Pennsylvania since 1931 under accessions 60.22 and 08.5. An unknown number of items may be missing from this collection and PHMC staff continue to look for them.

Determinations

The State Museum of Pennsylvania has determined that:

- The 10 lots of unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or

Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.

- There is a connection between the cultural items described in this notice and the Delaware Nation, Oklahoma; Delaware Tribe of Indians; and the Stockbridge Munsee Community, Wisconsin.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after March 4, 2026. If competing requests for repatriation are received, The State Museum of Pennsylvania must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The State Museum of Pennsylvania is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: January 22, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-02020 Filed 1-30-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6900; NPS-WASO-NAGPRA-NPS0041920; PPWOCRADN0-PCU00RP14.R50000]

Notice of Intended Repatriation: San Bernardino County Museum, Redlands, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), San Bernardino County Museum intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after March 4, 2026.

ADDRESSES: Send additional, written requests for repatriation of the cultural items in this notice to Gabrielle Carpentier, San Bernardino County Museum, 2024 Orange Tree Lane, Redlands, CA 92374, email gabrielle.carpentier@sbcm.sbcounty.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of San Bernardino County Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 18 cultural items have been requested for repatriation. The 18 objects of cultural patrimony are baskets. These baskets were donated by Gerald Smith (A5), Anna Oakey (A12), Sam Canady (A295), Marian Nelson (A1136), and Calvin Hoechiln (A1475).

Determinations

San Bernardino County Museum has determined that:

- The 18 objects of cultural patrimony described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.

- There is a connection between the cultural items described in this notice and the Big Sandy Rancheria of Western Mono Indians of California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized

representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after March 4, 2026. If competing requests for repatriation are received, San Bernardino County Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. San Bernardino County Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: January 22, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-02027 Filed 1-30-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6907; NPS-WASO-NAGPRA-NPS0041937; PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: New York State Museum, Albany, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the New York State Museum (NYSM) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after March 4, 2026.

ADDRESSES: Send written requests for repatriation of the human remains in this notice to Lisa Anderson, New York State Museum, 3049 Cultural Education

Center, Albany, NY 12230, email lisa.anderson@nysed.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the New York State Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, one individual have been identified. No associated funerary objects are present. At an unknown date prior to 1990, NYSM received human remains believed to be from a locality in Saratoga County, NY. No information is available on the donor or date of acquisition. No information is available regarding the use of hazardous substances.

Human remains representing, at least, four individuals have been identified. No associated funerary objects are present. In 1996 and 2000, human remains were transferred to NYSM from the estate of Mr. William Winne of Niskayuna, NY. No information is available on how Mr. Winne obtained the human remains but archaeological collections in his possession also included cultural items from the Lewandowski site in Saratoga County, NY. No information is available regarding the use of hazardous substances.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains described in this notice.

Determinations

The New York State Museum has determined that:

- The human remains described in this notice represent the physical remains of five individuals of Native American ancestry.
- There is a connection between the human remains described in this notice and the Stockbridge Munsee Community, Wisconsin.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under

ADDRESSES. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains described in this notice to a requestor may occur on or after March 4, 2026. If competing requests for repatriation are received, the New York State Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The New York State Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 22, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-02022 Filed 1-30-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6899; NPS-WASO-NAGPRA-NPS0041919; PPWOCRADNO-PCU00RP14.R50000]

Notice of Intended Repatriation: City of Pomona, Pomona, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the City of Pomona intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after March 4, 2026.

ADDRESSES: Send additional, written requests for repatriation of the cultural items in this notice to Anita D. Scott, City of Pomona, 505 S Garey Avenue, Pomona, CA 91766, email Anita.Scott@pomonaca.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the City of Pomona and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of nine lots of cultural items have been requested for repatriation. The nine lots of unassociated funerary objects include three lots of bone, one lot of lithics, two lots of ceramics, two lots of shells, and one lot of glass beads. In 1968, construction workers uncovered a burial site in Ganesha Park, Pomona, CA. The Los Angeles County coroner determined the remains to be Native American. Following this inadvertent discovery, two professors, Thomas Blackburn of Cal Poly Pomona and John S. Belmont of Pitzer College, Claremont, excavated the burial site. During the excavation, the unassociated funerary objects were collected and taken to Cal Poly Pomona where they remain.

Determinations

The City of Pomona has determined that:

- The nine lots of unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.

- There is a connection between the cultural items described in this notice and the Yuhaaviatam of San Manuel Nation (*previously* listed as San Manuel Band of Mission Indians, California).

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for

repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after March 4, 2026. If competing requests for repatriation are received, the City of Pomona must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The City of Pomona is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: January 22, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-02026 Filed 1-30-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6898; NPS-WASO-NAGPRA-NPS0041918; PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: Field Museum, Chicago, IL

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Field Museum has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after March 4, 2026.

ADDRESSES: Send written requests for repatriation of the human remains in this notice to June Carpenter, NAGPRA Director, Field Museum, 1400 S Lake Shore Drive, Chicago, IL 60605, email jcarpenter@fieldmuseum.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative

responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Field Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing at least one individual have been identified. No associated funerary objects are present. The individual was removed from the Aleutian Islands, Alaska, by a sealer from Victoria and acquired by Franz Boas sometime around the year 1888, and accessioned by the Field Museum on October 1st, 1894. There is no known presence of any potentially hazardous substances.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains described in this notice.

Determinations

The Field Museum has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a connection between the human remains described in this notice and the Native Village of Akutan; Native Village of Atka; and the Qawalangin Tribe of Unalaska.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under

ADDRESSES. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains described in this notice to a requestor may occur on or after March 4, 2026. If competing requests for repatriation are received, the Field Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human

remains are considered a single request and not competing requests. The Field Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 22, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-02025 Filed 1-30-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6906; NPS-WASO-NAGPRA-NPS0041936; PPWOCRADN0-PCU00RP14.R50000]

Notice of Intended Repatriation: Pennsylvania Historical and Museum Commission, State Museum of Pennsylvania, Harrisburg, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), The State Museum of Pennsylvania intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after March 4, 2026.

ADDRESSES: Send additional, written requests for repatriation of the cultural items in this notice to Cherilyn Gilligan, PHMC, State Historic Preservation Office, 400 North Street, Floor 2, Harrisburg, PA 17120, email phmcnagpra@pa.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of The State Museum of Pennsylvania, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 11 lots of cultural items have been requested for repatriation. Museum records do not indicate the use of hazardous substances on any of these cultural items.

In the late 19th or early 20th century one lot of unassociated funerary object were removed from various locations in Berks County, PA by Henry K. Deisher. The unassociated funerary objects are personal adornments, pipes, groundstone, chipped stone, and a metal tool. These items have been housed at The State Museum of Pennsylvania since 1917 under accession 60.26.

In 1951 one lot of unassociated funerary objects were removed from Pemberton Family Cemetery (36Bu179) in Bucks County, PA by State Museum of Pennsylvania. The unassociated funerary objects are a gunflint and metal trade items. These items have been housed at The State Museum of Pennsylvania since 1951 under accession 84.24.

In the mid-20th century one unassociated funerary object was removed from an unknown location in Bucks, Chester, or Lancaster County, PA by Society for Pennsylvania Archaeology, Lenape Chapter 12. The unassociated funerary object is a pipe. These items have been housed at The State Museum of Pennsylvania since 2004 under non-site number 36PA0000/210 and accession 2004.64.

In the late 19th or early 20th century one lot of unassociated funerary objects were removed from the Lehigh Gap site in Carbon County, PA by Henry K. Deisher. The unassociated funerary objects are personal adornments. These items have been housed at The State Museum of Pennsylvania since 1917 under accession 60.26. An unknown number of items may be missing from this collection and PHMC staff continue to look for them.

In 1931, one lot of unassociated funerary objects were removed from Shawnee on Delaware in Monroe County, PA by Max Schrabisch. The unassociated funerary objects are pottery. These items have been housed at The State Museum of Pennsylvania since 1931 under accession 60.22. 1 object was identified as missing from this collection in 2005 and it remains missing. PHMC staff continue to look for this object. In addition to the requesting Nations, this item has a connection to Absentee Shawnee Tribe of Indians of Oklahoma; Eastern Shawnee Tribe of Oklahoma; and Shawnee Tribe.

From 1961–1965, one lot of unassociated funerary objects were removed from Michaels site (36Mr7) in

Monroe County, PA by Society for Pennsylvania Archaeology, Forks of the Delaware Chapter 14. The unassociated funerary objects are personal adornments, a pipe, groundstone, chipped stone, and pottery. These items have been housed at The State Museum of Pennsylvania since 2013 under accession 2014.53. In addition to the requesting Nations, these items have a connection to Absentee Shawnee Tribe of Indians of Oklahoma; Eastern Shawnee Tribe of Oklahoma; and Shawnee Tribe.

In 1931 one unassociated funerary object was removed from a cave in Monroe County, PA by M.P. Brong. The unassociated funerary object is pottery. This item has been housed at The State Museum of Pennsylvania since c. 1931 under accession 2025.68.

In the late 19th or early 20th century one lot of unassociated funerary objects were removed from various locations in Northampton County, PA by Henry K. Deisher. The unassociated funerary objects are chipped stone, metal items, and a leather pouch. These items have been housed at The State Museum of Pennsylvania since 1917 under accession 60.26. An unknown number of items may be missing from this collection and PHMC staff continue to look for them.

From 1959–1967 one lot of unassociated funerary objects were removed from Sampson's Field No. 1 site (36Nm34) in Northampton County, PA by Society for Pennsylvania Archaeology, Forks of the Delaware Chapter 14. The unassociated funerary objects are personal adornments. These items have been housed at The State Museum of Pennsylvania since 2013 under accession 2014.53.

In c. 1931 one lot of unassociated funerary objects were removed from various locations in Wayne County, PA by Max Schrabisch. The unassociated funerary objects are pipes, pottery, faunal remains, groundstone, and chipped stone. These items have been housed at The State Museum of Pennsylvania since 1931 under accession 60.22. An unknown number of items may be missing from this collection and PHMC staff continue to look for them.

In the 19th century one lot of unassociated funerary objects were removed from the Wyoming Valley region of Pennsylvania, likely in Luzerne County, by Steuben Jenkins. The unassociated funerary objects are pipes, pottery, personal adornments, groundstone, modified faunal remains, and chipped stone. These items have been housed at The State Museum of Pennsylvania since 1923 under

accession 72.115. An unknown number of items may be missing from this collection and PHMC staff continue to look for them. In addition to the requesting Nations, these items have a connection to Absentee-Shawnee Tribe of Indians of Oklahoma; Cayuga Nation; Eastern Shawnee Tribe of Oklahoma; Oneida Indian Nation; Oneida Nation; Onondaga Nation; Saint Regis Mohawk Tribe; Seneca Nation of Indians; Seneca-Cayuga Nation; Shawnee Tribe; Tonawanda Band of Seneca; and the Tuscarora Nation.

Determinations

The State Museum of Pennsylvania has determined that:

- The 11 lots unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.

- There is a connection between the cultural items described in this notice and the Delaware Nation, Oklahoma; Delaware Tribe of Indians; and the Stockbridge Munsee Community, Wisconsin.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after March 4, 2026. If competing requests for repatriation are received, The State Museum of Pennsylvania must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The State

Museum of Pennsylvania is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: January 22, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-02021 Filed 1-30-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM-2025-0384]

Cook Inlet Outer Continental Shelf Oil and Gas One Big Beautiful Bill Act Lease Sale 1

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Final notice of sale.

SUMMARY: On Wednesday, March 4, 2026, the Bureau of Ocean Energy Management (BOEM) will open and publicly announce bids received for blocks offered in the Cook Inlet Outer Continental Shelf (OCS) Oil and Gas One Big Beautiful Bill Act (OBBBA) Lease Sale 1 (Lease Sale BBC1), in accordance with the Outer Continental Shelf Lands Act (OCSLA), as amended, and its implementing regulations. The Final Notice of Sale (NOS) package for Lease Sale BBC1 contains information essential to potential bidders, including Information to Lessees and Lease Stipulations. Section 50102 of the OBBBA mandates that the Secretary of the Interior conduct the sale within a specific time period and directs the Secretary to offer the same lease form, lease terms, minimum acreage size, economic conditions, and stipulations as contained in the final notice of sale entitled "Cook Inlet Planning Area Outer Continental Shelf Oil and Gas Lease Sale 244" (82 FR 23291, May 22, 2017) for this sale.

DATES: BOEM will hold Lease Sale BBC1 at 10:00 a.m. on Wednesday, March 4, 2026. All times referred to in this document are Alaska time, unless otherwise specified.

Bid submission deadline: BOEM must receive all sealed bids before the bid submission deadline of 10:00 a.m. on Tuesday, March 3, 2026, which is the day before the lease sale. For more information on bid submission, see Section VII of this document, "Bidding Instructions."

ADDRESSES: Interested parties may download the Final NOS package from BOEM's website at <http://www.boem.gov/ak-bbc1/>. Copies of the Final NOS and sale maps can be obtained by contacting the BOEM Alaska Regional Office: Bureau of Ocean Energy Management, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503-5823, or by phone at: (907) 334-5200 or (800) 764-2627.

FOR FURTHER INFORMATION CONTACT: Joel Immaraj, Alaska Regional Supervisor, Office of Leasing and Plans, at AlaskaLeaseSales@boem.gov or (907) 334-5200.

SUPPLEMENTARY INFORMATION:

Authority: This sale will be held pursuant to the requirements of the OBBBA. This notice of sale is published pursuant to 43 U.S.C. 1331 *et seq.* (Outer Continental Shelf Lands Act, as amended) and 30 CFR 556.308.

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I. Lease Sale Area

In accordance with the acreage requirements set forth in the OBBBA, BOEM will offer for bid in Lease Sale BBC1 all available unleased acreage in the approximately 442,537 hectares (ha) or 1.09 million acres (ac) Cook Inlet OCS area as identified on the map entitled, "Cook Inlet Planning Area, Lease Sale BBC1, March 4, 2026, Final Notice of Sale." The final list of blocks available for bid is posted on BOEM's website at <http://www.boem.gov/ak-bbc1/>.

BOEM's Official Protraction Diagrams (OPDs) and Supplemental Official OCS Block Diagrams are available online at <https://www.boem.gov/alaska-cadastral-data>. All blocks are shown on the following OPDs:

- Iliamna (OPD NO05-01)
- Seldovia (OPD NO05-02)
- Kenai (OPD NP05-08)

II. Statutes and Regulations

Each lease is issued pursuant to the OBBBA and OCSLA, 43 U.S.C. 1331 *et seq.*, as amended, and is subject to OCSLA, its implementing regulations promulgated pursuant thereto in 30 CFR part 556, and other applicable statutes and regulations in existence upon the

effective date of the lease, as well as those applicable statutes enacted and regulations promulgated thereafter, except to the extent that the after-enacted statutes and regulations explicitly conflict with an express provision of the lease. Each lease is subject to amendments to statutes and regulations, including but not limited to OCSLA, that do not explicitly conflict with an express provision of the lease. The lessee expressly bears the risk that such new or amended statutes and regulations (*i.e.*, those that do not explicitly conflict with an express provision of the lease) may increase or decrease the lessee's obligations under the lease. BOEM reserves the right to reject any and all bids received, regardless of the amount offered (see 30 CFR 556.516).

Section 50102(a)(1) of the OBBBA requires the Secretary to conduct a minimum of 6 offshore lease sales in the Cook Inlet Region through 2032, notwithstanding the 2024-2029 Outer Continental Shelf Oil and Gas Leasing Program (or any successor leasing program that does not satisfy the requirements of the OBBBA). This lease sale constitutes the first lease sale required by OBBBA in the Cook Inlet. The statute sets a specific timing requirement, directing the Secretary to hold not fewer than 1 lease sale in that aforementioned area in each of the calendar years 2026 through 2028, and in each of the calendar years 2030 through 2032. The statute further requires specific Terms and Stipulations that must be used for these sales, stating that the Secretary must "offer the same lease form, lease terms, economic conditions, and stipulations as contained in the final notice of sale of the Bureau of Ocean Energy Management entitled for the 'Cook Inlet Planning Area Outer Continental Shelf Oil and Gas Lease Sale 244' (82 FR 23291 (May 22, 2017))."

The OBBBA was signed into law on July 4, 2025, and contains statutory requirements to conduct a lease sale in the Cook Inlet with specific parameters and timing requirements. All Cook Inlet oil and gas lease sales mandated by the OBBBA must offer the same lease form, lease terms, economic conditions, and lease stipulations as identified in the Lease Sale 244 Final NOS (82 FR 23291), which was published on May 22, 2017. Additionally, the OBBBA requires the Secretary of the Interior to not offer fewer than 1 million acres, or all available unleased acres if less than 1 million acres are available.

III. Lease Terms and Economic Conditions

BOEM will offer leases that include certain terms and conditions to ensure compliance with the requirements of the OBBBA.

OCS Lease Form

Pursuant to Section 50102 (b)(2)(A) of the OBBBA, BOEM will use Form BOEM-2005 (February 2017) to convey leases resulting from this sale. This lease form can be viewed on BOEM's website at <http://www.boem.gov/BOEM-2005>. The lease form will be amended to include specific terms, conditions, and stipulations applicable to the individual lease. The final terms, conditions, and stipulations applicable to this sale are below.

Primary Term

Pursuant to Section 50102 (b)(2)(A) of the OBBBA, the primary term will be 10 years.

Minimum Bonus Bid Amounts

Pursuant to Section 50102 (b)(2)(A) of the OBBBA, the minimum bonus bid is \$25 per hectare or fraction thereof for all blocks. BOEM will not accept a bonus bid unless it provides for a cash bonus in the amount equal to, or exceeding, the specified minimum bonus bid of \$25 per hectare or fraction thereof for all blocks.

Rental Rates

Pursuant to Section 50102 (b)(2)(A) of the OBBBA, the annual rental rate for all blocks is \$13 per hectare or fraction thereof, until the start of year eight of the primary term or a discovery of oil and gas, whichever occurs first; then the annual rate is \$20 per hectare or fraction thereof.

Royalty Rate

Pursuant to Section 50102 (b)(2)(A) of the OBBBA, the royalty rate is 12.5 percent.

Minimum Royalty Rate

Pursuant to Section 50102 (b)(2)(A) of the OBBBA, the minimum royalty rate is \$20 per hectare or fraction thereof per year.

Royalty Relief

Pursuant to Section 50102 (b)(2)(A) of the OBBBA, no royalty relief will be offered in this sale.

IV. Lease Stipulations

Pursuant to Section 50102 (b)(2)(A) of the OBBBA, BOEM must apply the same lease stipulations that were provided in the Lease Sale 244 Final NOS. One or more of the stipulations below may be

applied to leases issued in this sale. The applicable blocks for each stipulation are identified on the map entitled, "Cook Inlet Planning Area, Lease Sale BBC1, March 4, 2026, Final Notice of Sale, Stipulation Blocks," which is included in the Final NOS package. The full text of the following stipulations is contained in the "Lease Stipulations" section of the Final NOS package. BOEM has posted the final list of blocks available for bid and the applicable stipulations that apply to those blocks on its website at <https://www.boem.gov/ak-bbc1/> under the Final NOS tab.

1. Protection of Fisheries
2. Protection of Biological Resources
3. Orientation Program
4. Transportation of Hydrocarbons
5. Protection of Beluga Whale Critical Habitat
6. Protection of Beluga Whale Nearshore Feeding Areas
7. Protection of Beluga Whales
8. Protection of Northern Sea Otter Critical Habitat
9. Protection of Gillnet Fishery

V. Information to Lessees

The Information to Lessees (ITLs) provide detailed information on certain issues pertaining to specific oil and gas lease sales. The full text of the ITLs for this sale is contained in the "Information to Lessees" section of the Final NOS package and covers the following topics.

1. Seismic Surveys: Environmental and Regulatory Review and Coordination Requirements
2. Archaeological and Geological Hazards Reports and Surveys
3. Discharge Restrictions and Prohibitions
4. Trash and Debris Awareness and Elimination
5. Navigation Safety
6. Notice of Arrival on the Outer Continental Shelf
7. Bidder/Lessee Notice of Obligations Related to Criminal/Civil Charges and Offenses, Suspension, or Debarment; Disqualification Due to a Conviction under the Clean Air Act or the Clean Water Act
8. Oil Spill Response Preparedness
9. Bureau of Safety and Environmental Enforcement (BSEE) Inspection and Enforcement of Certain U.S. Coast Guard (USCG) Regulations
10. Air Quality Permit/Plan Approvals

VI. Maps

The maps pertaining to Lease Sale BBC1 can be viewed on BOEM's website at <http://www.boem.gov/ak-bbc1>. The following maps also are included in the Final NOS package:

Sale Area Map

The sale area is shown on the map entitled, "Cook Inlet Planning Area, Lease Sale BBC1, March 4, 2026, Final Notice of Sale."

Stipulations Map

The lease stipulations and the blocks to which they apply are shown on the map entitled, "Cook Inlet Planning Area, Lease Sale BBC1, March 4, 2026, Final Notice of Sale, Stipulation Blocks."

VII. Bidding Instructions

Bids may be submitted BY MAIL ONLY through any parcel delivery service (e.g., FedEx, UPS, USPS, DHL) at the address below in the "Mailed Bids" section. Bidders should be aware that BOEM has eliminated in-person bidding for Lease Sale BBC1. Instructions on how to submit a bid, secure payment of the advance bonus bid deposit (if applicable), and the information to be included with the bid are as follows:

Bid Form

For each block bid upon, a separate sealed bid must be submitted in a sealed envelope (as described below) and include the following items:

- Total amount of the bid in whole dollars only;
- Sale number;
- Sale date;
- Each bidder's exact name;
- Each bidder's proportionate interest, stated as a percentage, using a maximum of five decimal places (e.g., 33.33333 percent);
- Typed name and title, and signature of each bidder's authorized officer. Electronic signatures are acceptable. The typed name, title, and signature must agree exactly with the name and title on file in the BOEM Alaska Regional Office, Leasing Section;
- Each bidder's BOEM qualification number;
- OPD name and number;
- Block number; and
- Statement acknowledging that the bidder(s) understands that this bid legally binds the bidder(s) to comply with all applicable regulations, including the requirement to post a deposit in the amount of one-fifth of the bonus bid amount for any tract bid upon.

The information required for each bid is specified in the document "Bid Form" that is available in the Final NOS package, which can be found at <https://www.boem.gov/ak-bbc1>. A blank bid form is provided in the Final NOS package for convenience and can be copied and completed with the necessary information described above.

Bid Envelope

Each bid must be submitted in a separate sealed envelope labeled as follows:

- “Sealed Bid for Lease Sale BBC1, not to be opened until 10:00 a.m. Wednesday, March 4, 2026”;
 - OPD name and number;
 - Block number for block bid upon;
 - The exact name and qualification number of the submitting bidder only.
- The Final NOS package includes a sample bid envelope for reference.

Mailed Bids

Please address the envelope containing the sealed bid envelope(s) as follows:

Attention: Regional Supervisor, Office of Leasing and Plans, BOEM Alaska Regional Office, 3801 Centerpoint Dr, Ste. 500, Anchorage, AK 99503–5823. Contains Sealed Bids for Lease Sale BBC1.

Please deliver to Joel Immaraj, 5th Floor, Immediately.

Please Note: Bidders are advised to inform the BOEM Alaska Leasing Section by email at AlaskaLeaseSales@boem.gov immediately after placing bid(s) in the mail. This provides advance notice to BOEM regarding pending bids before the bid submission deadline. In the email, please state the tracking number of the bid package, the number of bids being submitted, and the email address of the person who should receive the bid receipt for signature. If BOEM receives bids later than the bid submission deadline, the BOEM Alaska Regional Director (RD) will return those bids unopened to bidders. Please see “Section XI, Delay of Sale,” regarding BOEM’s discretion to extend the bid submission deadline in the case of an unexpected event (e.g., flooding) and how bidders can obtain more information on such extensions.

Advance Bonus Bid Deposit Guarantee

Bidders who are not currently an OCS oil and gas lease record title holder or designated operator, or those who have ever defaulted on a one-fifth bonus bid deposit, must guarantee (secure) the payment of the one-fifth bonus bid deposit, by Electronic Funds Transfer (EFT) or otherwise, prior to bid submission using one of the following four methods:

- Provide a third-party guarantee;
- Amend a development stage area-wide bond via bond rider;
- Provide a letter of credit; or
- Provide a lump sum payment in advance via EFT.

Please provide, at the time of bid submittal, a confirmation or tracking

number for the payment, the name of the company submitting the payment as it appears on the payment, and the date the payment was submitted to the Office of Natural Resources Revenue (ONRR) so that BOEM can confirm the payment. Bidders should submit payments to their financial institution at least 5 business days before bid submittal to ensure that the Office of Foreign Assets Control and the U.S. Department of the Treasury (U.S. Treasury) have time to screen and process payments and that payments are posted to ONRR before the bidder places the bid. ONRR cannot confirm payment until the monies have been moved into settlement status by the U.S. Treasury. Bids will not be accepted if BOEM cannot confirm payment with ONRR.

If providing a third-party guarantee, amending a development stage area-wide bond via bond rider, or providing a letter of credit to secure your one-fifth bonus bid deposit, bidders are urged to file these documents with BOEM well in advance of submitting the bid. This allows processing time for BOEM and ensures that bidders have time to take any necessary curative actions prior to bid submission. For more information on EFT procedures, see Section X, “The Lease Sale.”

Geophysical Data and Information Statement (GDIS)

The GDIS is composed of three parts:

1. A “Statement” page that includes the company representatives’ information and separate lists of the blocks bid on that used proprietary data and those blocks bid upon that did not use proprietary data;
2. A “Table” listing the required data about each survey used (see below); and
3. A “Maps” part, which contain the live trace maps and associated geophysical data for each survey identified in the GDIS page and table.

Every bidder submitting a bid on a block in this sale or participating as a joint bidder in such a bid must submit at the time of bid submission all three parts of the GDIS. A bidder must submit the GDIS *even if a joint bidder or bidders on a specific block also have submitted a GDIS.*

Each bidder, including joint bidders, must submit the GDIS in a separate and sealed envelope and must identify all data; if data is public or proprietary; whether data has been reprocessed (and, if so, when), the data type (multichannel seismic, gravity, magnetic, etc.), the migration algorithm (Amplitude Versus Offset (AVO) Stacks, Kirchhoff Migration, Pre-Stack Depth Migration (PSDM), etc.) all velocity volumes; all available acquisition, processing, or reprocessing

reports; and any other information used as part of the decision to bid or participate in a bid on the block. All seismic data must be submitted in 32-bit format SEG–Y with Navigation information in the SEG–Y Trace Headers. If Trace Header Navigation information is unavailable, the detached navigation in UKOOA P1/90 should be included. Any additional information required for loading should be included with data submission including a text file listing SEG–Y header information with byte positions.

Each bidder, including joint bidders, must also include a live trace map and shapefile for each survey identified in the GDIS illustrating the actual areal extent of the geophysical data in the survey (see the “Example of Preferred Format” that will be included in the Final NOS package for additional information). The shapefile must include the live trace map of the survey itself, submitted in NAD83 UTM Zone 5N (indicate if transformed from an alternate datum).

The GDIS statement must include the name, phone number, and full address for a contact person and an alternate, who are both knowledgeable about the geophysical information and data listed and who are available for 30 days after the sale date. The GDIS statement must also include a list of all blocks bid upon, including those blocks where no proprietary or reprocessed geophysical data and/or proprietary information was used, as a basis for the bidder’s decision to bid or to participate as a joint bidder in the bid. *All bidders must submit the GDIS statement even if no proprietary geophysical data or information was used in its bid preparation for the block.*

An example of the preferred format of the table is included in the Final NOS package, and a blank digital version of the preferred table can be accessed on the BOEM website at <http://www.boem.gov/ak-bbc1>. The GDIS table should have columns that clearly state the following:

- The sale number;
- The bidder company’s name;
- The joint bidder’s company’s name (if applicable);
- The block area and block number bid upon;
- The owner of the original data set;
- The industry’s original name of the survey;
- The BOEM permit number for the survey;
- The data type (e.g., multichannel seismic, gravity, magnetic, etc.);
- The migration algorithm (e.g., Kirchhoff migration, wave equation migration, reverse migration, reverse time migration) of the data;

- The survey coverage (2–D line miles or 3–D mi²);
- The computer storage size, to the nearest gigabyte, of each seismic dataset and velocity volume submitted;
- Who processed and/or reprocessed the data;
- Date the final processing or reprocessing was completed (month and year);
- If the data was previously sent to BOEM, list the sale number or purpose (e.g. WCD) and date of the sale for which it was used;
- If AVO/AVA analysis was conducted, provide a summary of the AVO/AVA processes, methodology, and parameters used.

BOEM will use the computer storage size information to estimate the reproduction costs for each data set, if applicable. BOEM will determine the availability of reimbursement of production costs consistent with 30 CFR 552.3(e)(1) and 30 CFR 550.196.

BOEM reserves the right to inquire about alternate data sets, to perform quality checks, and to compare the listed and alternative data sets to determine which data set most closely meets the needs of the fair market value determination process. See the “Example of Preferred Format” that is included in the Final NOS package.

Pursuant to 30 CFR 551.12 and 556.501, as a condition of the lease sale, the BOEM Alaska RD requests that all bidders and joint bidders submit the proprietary data identified on their GDIS within 30 days after the lease sale (unless they are notified after the lease sale that BOEM has withdrawn the request). This request only pertains to proprietary data that is not commercially available. Commercially available data is not required to be submitted to BOEM, and reimbursement will not be provided if such data is submitted by bidder. The BOEM Alaska OCS RD will notify bidders and joint bidders of any withdrawal of the request, for all or some of the proprietary data identified on the GDIS, within 15 days of the lease sale. No reimbursement will be provided for unsolicited data sent to BOEM. The data must be submitted to BOEM at the following address:

Bureau of Ocean Energy Management, Regional Supervisor, Office of Resource Evaluation, 3801 Centerpoint Drive, Ste. 500, Anchorage, AK 99508–5823.

BOEM recommends that bidders mark the submission’s external envelope as “Deliver Immediately to Office of Resource Evaluation—Regional Supervisor.” BOEM also recommends that bidders submit the GDIS data in an internal envelope, or otherwise marked,

with the following designation: “Geophysical Data Submitted Pursuant to Oil and Gas Lease Sale BBC1”, Company Name, Company Qualification Number, and “Proprietary Data.”

In the event a person supplies any type of data to BOEM, to qualify for reimbursement, that person must:

1. Be registered with the System for Award Management (SAM), formerly known as the Central Contractor Registration (CCR). CCR usernames will not work in SAM. A new SAM user account is needed to register or update an entity’s records. The website for registering is www.SAM.gov.

2. Be enrolled in the U.S. Treasury’s Invoice Processing Platform (IPP) for electronic invoicing; to enroll go to <https://www.ipp.gov/>. Access then will be granted to use the IPP for submitting requests for payment. When submitting a request for payment, the assigned Purchase Order Number must be included.

3. Have a current Online Representations and Certifications Application at www.SAM.gov.

Please Note: The GDIS Statement, Table, Maps and other information should be provided digitally in the following formats:

- GDIS Statement and other reports—PDF files
- GDIS Information Table—Excel spreadsheet
- Maps—PDF files
- Live trace outline of each survey’s areal extent—PDF and ESRI compatible shapefile or MapPackage (.mpk) in NAD83 UTM Zone 5N CRS
- Navigation Files if Trace Header information is not in the SEG–Y—UKOOA P1/90
- Seismic data, including stacks, gathers, and velocity—SEG–Y
- Other data types as appropriate; column delimited ASCII text with headers may be deemed appropriate
- Acquisition, Processing, and Reprocessing Reports—PDF files

Bidder should submit the digital files on an USB external drive (formatted for Windows). If bidders have any questions, please contact Kelly Jemison, Supervisor, Resource and Economic Analysis Section at (907) 334–5200 or email akocs.ggpermits@boem.gov.

Bidders should refer to the “Acceptance, Rejection, or Return of Bids” heading under Section X, “The Lease Sale,” regarding a bidder’s failure to comply with the requirements of the Final NOS, including any failure to submit the information required in the Final NOS package.

Telephone Numbers/Addresses of Bidders

BOEM requests that bidders provide the bidders’ telephone numbers and addresses in the suggested format before or at the time of bid submission. The suggested format is included in the Final NOS package. The form must not be enclosed inside the sealed bid envelope.

Additional Documentation

BOEM may require bidders to submit other documents in accordance with 30 CFR 556.107, 556.401, 556.501, and 556.513.

VIII. Bidding Rules and Restrictions

Restricted Joint Bidders

On November 4, 2025, BOEM published the most recent List of Restricted Joint Bidders in the **Federal Register** (90 FR 49242). Potential bidders are advised to refer to the **Federal Register** before bidding for the most current list at the time of the lease sale. Please refer to the joint bidding provisions at 30 CFR 556.511–556.515.

Authorized Signatures

All signatories executing documents on behalf of the bidder(s) must execute the same in conformance with the BOEM qualification records. Bidders are advised that BOEM considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including the regulation requiring payment of one-fifth of the bonus bid on all high bids. A statement to this effect is included on each bid form (see the document “Bid Form” that is included in the Final NOS package).

Unlawful Combination or Intimidation

BOEM warns bidders against violation of 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders.

Bid Withdrawal

Bids may be withdrawn only by written request delivered to BOEM before the bid submission deadline via any parcel delivery service. Withdrawals will not be accepted in person or via email. The withdrawal request must be on company letterhead and must contain the bidder’s name, its BOEM qualification number, the OPD name and number, and the block number(s) of the bid(s) to be withdrawn. The withdrawal request must be executed by one or more of the representatives named in the BOEM qualification records. The name and title of the authorized signatory must be

typed under the signature block on the withdrawal request. The BOEM Alaska RD, or the RD's designee, will indicate approval by signing and dating the withdrawal request.

Bid Rounding

Minimum bonus bid calculations, including rounding, for all blocks are shown in the document "List of Blocks Available for Leasing" that is included in the Final NOS package. The bonus bid amount must be stated in whole dollars. If the acreage of a block contains a decimal figure, then before calculating the minimum bonus bid, BOEM will round up to the next whole hectare. The appropriate minimum rate per hectare will be applied to the whole (rounded up) acreage. The bonus bid amount must be greater than or equal to the minimum bonus bid, as calculated and stated in the Final NOS package.

IX. Forms

The Final NOS package includes instructions, samples, and/or the preferred format for the items listed below. BOEM strongly encourages bidders to use the recommended formats. If bidders use another format, they are responsible for including all the information specified for each item in the Final NOS package.

1. Bid Form
2. Sample Completed Bid
3. Sample Bid Envelope
4. Sample Bid Mailing Envelope
5. Telephone Numbers/Addresses of Bidders Form
6. GDIS Form
7. GDIS Envelope Form

X. The Lease Sale

Bid Opening and Reading

Sealed bids received in response to the Final NOS will be opened at the place, date, and hour specified under the **DATES** and **ADDRESSES** sections of the Final NOS. The venue will not be open to the public. Instead, the bid opening will be available for the public to view on BOEM's website at www.boem.gov via live streaming. The opening of the bids is for the sole purpose of publicly announcing and recording the bids received; no bids will be accepted or rejected at that time.

Bonus Bid Deposit for Apparent High Bids

Each bidder submitting an apparent high bid must submit a bonus bid deposit to ONRR equal to one-fifth of the bonus bid amount for each such bid. A copy of the notification of the high bidder's one-fifth bonus bid amount can be obtained on the BOEM website at

<http://www.boem.gov/ak-bbc1> under the heading "Notification of EFT 1/5 Bonus Liability" after 1:00 p.m. local time on the day of the sale. All payments must be electronically deposited into an interest-bearing account in the U.S. Treasury by 4:00 p.m. Eastern Time the day following the bid reading (no exceptions). Account information is provided in the "Instructions for Making Electronic Funds Transfer Bonus Payments" found on the BOEM website identified above.

Bidders must submit payment to their financial institution as soon as possible on the day of bid reading and no later than 7:00 p.m. Eastern Time on the day of bid reading. This will help ensure that deposits have time to process through the U.S. Treasury and post to ONRR. ONRR cannot confirm payment until the monies have been moved into settlement status by the U.S. Treasury.

BOEM requires bidders to use EFT procedures for payment of one-fifth bonus bid deposits for this sale, following the detailed instructions contained on the ONRR Payment Information web page at <https://www.onrr.gov/paying>. Acceptance of a deposit does not constitute, and will not be construed as, acceptance of any bid on behalf of the United States.

Withdrawal of Blocks

The United States reserves the right to withdraw any block from this lease sale before issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids

The United States reserves the right to reject any and all bids, regardless of the amount offered. Furthermore, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless:

1. The bidder has complied with all applicable regulations and requirements of the Final NOS, including those set forth in the documents contained in the Final NOS package;
2. The bid is the highest valid bid; and
3. The amount of the bid has been determined to be adequate by the authorized officer.

Any bid submitted that does not conform to the requirements of the Final NOS, OCSLA, or other applicable statute or regulation will be rejected and returned to the bidder. The United States Department of Justice and the Federal Trade Commission will review the results of the lease sale for any antitrust issues prior to the acceptance of bids and issuance of leases.

Bid Adequacy Review Procedures

To ensure that the U.S. Government receives fair market value for the conveyance of leases from this sale, BOEM will evaluate high bids in accordance with the bid adequacy procedures that are effective on the date of the sale. This is the first lease sale in the Cook Inlet to use the revised bid adequacy procedures that BOEM finalized in 2024. The bid adequacy procedures are available on BOEM's website at <https://www.boem.gov/oil-gas-energy/leasing/bid-adequacy-procedures>.

Lease Award

BOEM requires each bidder that is awarded a lease to complete the following:

1. Execute all copies of the lease (Form BOEM-2005 [February 2017], as amended);
2. Pay by EFT the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 1218.155 and 556.520(a); and
3. Satisfy the bonding requirements of 30 CFR part 556, subpart I, as amended.

ONRR requests that bidders use only one transaction for payment of the balance of the bonus bid amount and the first year's rent. Once ONRR receives such payment, the bidder awarded the lease may not request a refund of the balance of the bonus bid amount or first year's rental payment.

XI. Delay of Sale

The BOEM Alaska RD has the discretion to change any date, time, and/or location specified in the Final NOS if the RD deems that an emergent event could interfere with a fair and orderly lease sale. Such events could include, but are not limited to, natural disasters (e.g., earthquakes or floods), wars, riots, acts of terrorism, fires, strikes, civil disorder, or other events of a similar nature. In case of such events, bidders should call (907) 334-5200 or access the BOEM website at <http://www.boem.gov>, for information regarding any changes.

Matthew N. Giacona,

Acting Director, Bureau of Ocean Energy Management.

[FR Doc. 2026-02094 Filed 1-30-26; 8:45 am]

BILLING CODE 4340-98-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1070A (Fourth Review)]

Crepe Paper From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930, as amended, to determine whether revocation of the antidumping duty order on crepe paper from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted February 2, 2026. To be assured of consideration, the deadline for responses is March 4, 2026. Comments on the adequacy of responses may be filed with the Commission by April 13, 2026.

FOR FURTHER INFORMATION CONTACT: Nitin Joshi (202–708–1669), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On January 25, 2005, the Department of Commerce (“Commerce”) issued an antidumping duty order on imports of certain crepe paper products from China (70 FR 3509). Following first five-year review by Commerce and the Commission, effective May 13, 2010 (75 FR 26919), second five-year review, effective September 22, 2015 (80 FR 57149), and third five-year review, effective March 5, 2021 (86 FR 12908), Commerce issued a continuation of the antidumping duty order on imports of crepe paper from China. The Commission is now conducting a fourth review pursuant to section 751(c) of the Act, as amended

(19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full or expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination and its expedited first, second, and third five-year review determinations, the Commission defined the *Domestic Like Product* as crepe paper, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first, second, and third five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers (whether integrated or converters) of crepe paper.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as

provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information

submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is 5:15 p.m. on March 4, 2026. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is 5:15 p.m. on April 13, 2026. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the

OMB number is 3117 0016/USITC No. 26–5–672, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information to be Provided in Response to This Notice of Institution: As used below, the term "firm" includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at https://usitc.gov/reports/response_noi_worksheet, where one can download and complete the "NOI worksheet" Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2019.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2025, except as noted (report quantity data in square meters and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in

place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2025 (report quantity data in square meters and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2025 (report quantity data in square meters and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2019, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: January 27, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026–02046 Filed 1–30–26; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1059 (Fourth Review)]

Hand Trucks and Certain Parts Thereof From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930, as amended, to determine whether revocation of the antidumping duty order on hand trucks and certain parts thereof from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted February 2, 2026. To be assured of consideration, the deadline for responses is March 4, 2026. Comments on the adequacy of responses may be filed with the Commission by April 13, 2026.

FOR FURTHER INFORMATION CONTACT: Juan Carlos Peña Flores (202–205–3169), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On December 2, 2004, the Department of Commerce (“Commerce”) issued an antidumping duty order on imports of hand trucks and certain parts thereof from China (69 FR 70122). Commerce issued a continuation of the antidumping duty order on imports of hand trucks and

certain parts thereof from China following Commerce's and the Commission's first five-year review, effective April 28, 2010 (75 FR 22369), second five-year review, effective August 19, 2015 (80 FR 50266), and third five-year review, effective March 1, 2021 (86 FR 11926). The Commission is now conducting a fourth review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full or expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) *The Subject Country* in this review is China.

(3) *The Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination and its expedited first, second, and third five-year review determinations, the Commission found a single Domestic Like Product comprised of finished hand trucks and certain hand truck parts corresponding to Commerce's scope.

(4) *The Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first, second, and third five-year review determinations, the Commission found a single *Domestic Industry* consisting of all U.S. producers of the *Domestic Like Product* which, as stated above, consists of all finished hand trucks and hand truck parts corresponding to Commerce's scope.

(5) *An Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in

importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A

separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is 5:15 p.m. on March 4, 2026. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is 5:15 p.m. on April 13, 2026. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the OMB number is 3117 0016/USITC No. 26–5–669, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information to be Provided in Response to This Notice of Institution: As used below, the term "firm" includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at https://usitc.gov/reports/response_noi_worksheet, where one can download and complete the "NOI worksheet" Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group,

a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2019.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2025, except as noted (report quantity data in units and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2025 (report quantity data in units and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject*

Merchandise in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2025 (report quantity data in units and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2019, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above

definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: January 27, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026–02050 Filed 1–30–26; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–785–786 and 731–TA–1773–1774 (Preliminary)]

Fatty Acids From Indonesia and Malaysia; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–785–786 and 731–TA–1773–1774 (Preliminary) pursuant to the Tariff Act of 1930 to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of fatty acids from Indonesia and Malaysia, provided for in subheadings 2915.70.01, 2915.90.10, 2916.15.10, 2916.15.51, 3823.11.00, 3823.12.00, 3823.19.20, and 3823.19.40 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Governments of Indonesia and Malaysia. Unless the Department of Commerce (“Commerce”) extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by March 16, 2026. The Commission's views must be transmitted to Commerce within five business days thereafter, or by March 23, 2026.

DATES: January 28, 2026.

FOR FURTHER INFORMATION CONTACT:

Jordan Harriman (202–205–2610), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to petitions filed on January 28, 2026, by Vantage Specialty Chemicals, Inc., Deerfield, Illinois.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the

investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Office of Investigations will hold a staff conference in connection with the preliminary phase of these investigations beginning at 9:30 a.m. on Wednesday, February 18, 2026. Requests to appear at the conference should be emailed to preliminaryconferences@usitc.gov (DO NOT FILE ON EDIS) on or before noon on Friday, February 13, 2026. Please provide an email address for each conference participant in the email. Information on conference procedures, format, and participation, including guidance for requests to appear as a witness via videoconference, will be available on the Commission's Public Calendar (Calendar (USITC) | United States International Trade Commission). A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before 5:15 p.m. on February 23, 2026, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties shall file written testimony and supplementary material in connection with their presentation at the conference no later than 4:00 p.m. on February 17, 2026. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be

served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: January 28, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026-01950 Filed 1-30-26; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-638 and 731-TA-1473 (Review)]

Corrosion Inhibitors From China; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 ("the Act"), as amended, to determine whether revocation of the antidumping and countervailing duty orders on corrosion inhibitors from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are

requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted February 2, 2026. To be assured of consideration, the deadline for responses is March 4, 2026. Comments on the adequacy of responses may be filed with the Commission by April 13, 2026.

FOR FURTHER INFORMATION CONTACT: Alec Resch (202-708-1448), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On March 19, 2021, the Department of Commerce ("Commerce") issued antidumping and countervailing duty orders on imports of corrosion inhibitors from China (86 FR 14869). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determination in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of these five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the

absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations, the Commission defined a single *Domestic Like Product*, coextensive with the scope of Commerce's investigations.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all domestic producers of the *Domestic Like Product*.

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is March 19, 2021.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval

to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is on or before 5:15 p.m. on March 4, 2026. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited

or full reviews. The deadline for filing such comments is on or before 5:15 p.m. on April 13, 2026. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the OMB number is 3117 0016/USITC No. 26–5–670, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b))

in making its determination in these reviews.

Information to be Provided in Response to this Notice of Institution: As used below, the term “firm” includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC’s website at https://usitc.gov/reports/response_noi_worksheet, where one can download and complete the “NOI worksheet” Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the

United States or other countries since the *Order Date*.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm’s operations on that product during calendar year 2025, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm’s(s’) production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm’s(s’) operations on that product during

calendar year 2025 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping and/or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm’s(s’) imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm’s(s’) operations on that product during calendar year 2025 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping and/or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm’s(s’) production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm’s(s’) exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm’s(s’) exports.

(12) Identify significant changes, if any, in the supply and demand

conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: January 27, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026-02045 Filed 1-30-26; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1472 (Review)]

Difluoromethane (R-32) From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 ("the Act"), as amended, to determine whether revocation of the antidumping duty order on difluoromethane (R-32) from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested

parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted February 2, 2026. To be assured of consideration, the deadline for responses is March 4, 2026. Comments on the adequacy of responses may be filed with the Commission by April 13, 2026.

FOR FURTHER INFORMATION CONTACT:

Alexis Yim (202-708-1446), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On March 11, 2021, the Department of Commerce ("Commerce") issued an antidumping duty order on imports of difluoromethane (R-32) from China (86 FR 13886). The Commission is conducting a review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full or expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the

absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, the Commission defined a single *Domestic Like Product* consisting of difluoromethane (R-32), coextensive with Commerce's scope of investigation.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as all domestic producers of difluoromethane (R-32).

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is March 11, 2021.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval

to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is on or before 5:15 p.m. on March 4, 2026. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an

expedited or full review. The deadline for filing such comments is on or before 5:15 p.m. on April 13, 2026. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the OMB number is 3117 0016/USITC No. 26–5–671, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b))

in making its determination in the review.

Information to be Provided in Response to This Notice of Institution: As used below, the term "firm" includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at https://usitc.gov/reports/response_noi_worksheet, where one can download and complete the "NOI worksheet" Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the

United States or other countries since the *Order Date*.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2025, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during

calendar year 2025 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2025 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the

market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: January 27, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026–02052 Filed 1–30–26; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–776–779 (Fifth Review)]

Certain Preserved Mushrooms From Chile, China, India, and Indonesia; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930, as amended, to determine whether revocation of the antidumping duty orders on certain preserved mushrooms from Chile, China, India, and Indonesia would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties

are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted February 2, 2026. To be assured of consideration, the deadline for responses is March 4, 2026. Comments on the adequacy of responses may be filed with the Commission by April 13, 2026.

FOR FURTHER INFORMATION CONTACT:

Peter Stebbins (202–205–2039), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On December 2, 1998, the Department of Commerce ("Commerce") issued an antidumping duty order on imports of certain preserved mushrooms from Chile (63 FR 66529) and on February 19, 1999, Commerce issued antidumping duty orders on imports of certain preserved mushrooms from China, India, and Indonesia (64 FR 8308–8312). Commerce subsequently revoked in part the order on imports from Indonesia (68 FR 39521, July 2, 2003).

Commerce issued a continuation of the antidumping duty orders on imports of certain preserved mushrooms from Chile, China, India, and Indonesia following Commerce's and the Commission's first five-year reviews, effective November 17, 2004 (69 FR 67308), second five-year reviews, effective April 28, 2010 (75 FR 22369), third five-year reviews, effective September 2, 2015 (80 FR 53104), and fourth five-year reviews, effective March 12, 2021 (86 FR 14076). The Commission is now conducting fifth reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts

A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are Chile, China, India, and Indonesia.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations, its full first five-year review determinations, and its expedited second, third, and fourth five-year review determinations, the Commission found one *Domestic Like Product* consisting of certain preserved mushrooms corresponding to the scope of Commerce's investigations.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, its full first five-year review determinations, and its expedited second, third, and fourth five-year review determinations, the Commission defined the Domestic Industry to consist of all domestic producers of certain preserved mushrooms. Certain Commissioners defined the Domestic Industry differently in the original investigations.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21

days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008).

Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this

proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is 5:15 p.m. on March 4, 2026. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is 5:15 p.m. on April 13, 2026. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the OMB number is 3117 0016/USITC No. 26–5–667, expiration date June 30,

2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term "firm" includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at https://usitc.gov/reports/response_noi_worksheet, where one can download and complete the "NOI worksheet" Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose

members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2019.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2025, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2025 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2025 (report quantity data in pounds and

value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2019, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: January 27, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026-02047 Filed 1-30-26; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-637 and 731-TA-1471 (Review)]

Large Vertical Shaft Engines From China; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 ("the Act"), as amended, to determine whether revocation of the countervailing and antidumping duty orders on large vertical shaft engines from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted February 2, 2026. To be assured of consideration, the deadline for responses is March 4, 2026. Comments on the adequacy of responses may be filed with the Commission by April 13, 2026.

FOR FURTHER INFORMATION CONTACT:

Rachel Devenney (202-205-3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On March 4, 2021, the Department of Commerce ("Commerce") issued a countervailing duty order (86

FR 12619) and an antidumping duty order (86 FR 12623, as amended by 86 FR 13694, March 10, 2021) on imports of large vertical shaft engines from China. The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations, the Commission found a single *Domestic Like Product* corresponding to Commerce's scope of investigation.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* to include all domestic producers of large vertical shaft engines.

(5) The *Order Date* is the date that the countervailing and antidumping duty orders under review became effective. In these reviews, the *Order Date* is March 4, 2021.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including

industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person

submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is on or before 5:15 p.m. on March 4, 2026. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is on or before 5:15 p.m. on April 13, 2026. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://>

edis.usitc.gov). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (“OMB”) number is not displayed; the OMB number is 3117 0016/USITC No. 26–5–668, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission’s rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to be Provided In Response to this Notice of Institution: As used below, the term “firm” includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC’s website at https://usitc.gov/reports/response_noi_worksheet, where one can download and complete the “NOI worksheet” Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose

members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing and antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date*.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm’s operations on that product during calendar year 2025, except as noted (report quantity data in units and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm’s(s’) production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm’s(s’) operations on that product during calendar year 2025 (report quantity data in units and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm’s(s’) imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm’s(s’) operations on that

product during calendar year 2025 (report quantity data in units and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions,

please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: January 27, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026-02044 Filed 1-30-26; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-780-782 and 731-TA-1767-1769 (Preliminary)]

Van-Type Trailers and Subassemblies From Canada, China, and Mexico; Revised Schedule for the Subject Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: January 26, 2026.

FOR FURTHER INFORMATION CONTACT: Peter Stebbins (202-205-2039), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the U.S. International Trade Commission ("Commission") should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: Effective November 20, 2025, the Commission established a schedule for the conduct of the subject proceeding (90 FR 53388, November 25, 2025). As a result of the closure of the agency on December 24 and 26, 2025, the Commission revised its schedule (90 FR 61410, December 31, 2025). Subsequently, the Department of Commerce ("Commerce") extended the deadline for its initiation determination to January 20, 2026 (91 FR 249, January 5, 2026). On January 26, 2026, Commerce provided notice in the **Federal Register** of its initiation of antidumping and countervailing duty investigations with respect to van-type

trailers and subassemblies from Canada, China, and Mexico (91 FR 3104, January 26, 2026 and 91 FR 3124, January 26, 2026). The Commission, therefore, is revising its schedule, consistent with Commerce's initiations.

The Commission will issue its preliminary determinations on February 11, 2026, and file its views on February 19, 2026.

For further information concerning this proceeding, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: January 28, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026-01952 Filed 1-30-26; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-1435-1436 and 1438-1440 (Review)]

Acetone From Belgium, Singapore, South Africa, South Korea, and Spain; Determinations

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that revocation of the antidumping duty orders on acetone from Belgium, Singapore, South Africa, South Korea, and Spain would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²

Background

The Commission instituted these reviews on November 1, 2024 (89 FR 87399) and determined on February 4, 2025 that it would conduct full reviews (90 FR 9553, February 13, 2025). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the

¹ The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

² Commissioner David S. Johanson not participating.

Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on May 27, 2025 (90 FR 22323).³ The public hearing in connection with these reviews, originally scheduled for October 7, 2025, was cancelled.⁴

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on January 28, 2026. The views of the Commission are contained in USITC Publication 5694 (January 2026), entitled *Acetone from Belgium, Singapore, South Africa, South Korea, and Spain: Investigation Nos. 731-TA-1435-1436 and 1438-1440 (Review)*.

By order of the Commission.

Issued: January 28, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026-01951 Filed 1-30-26; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1483]

Certain Medical Imaging Devices; Notice of 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 29, 2025, under section 337 of the Tariff Act of 1930, as amended, on behalf of MolecuLight Inc. of Canada and MolecuLight Corp. of Pittsburgh, Pennsylvania. Supplements to the complaint were filed on January 12, 14, and 20, 2026. The complaint, as supplemented, 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 medical imaging devices by reason of the infringement of certain claims of U.S. Patent No. 10,438,356 (“the ‘356 patent”). The complaint, as supplemented, 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 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 (2025).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 28, 2026, *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 20–25, 27, 28, 30, and 31 of the ‘356 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 “medical imaging devices for the identification, diagnosis, and treatment of wounds”;

(3) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall

take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(4) 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 complainants are:

MolecuLight Inc., 425 University Avenue, Suite 700, Toronto, ON, M5G 1T6, Canada

MolecuLight Corp., 2403 Sidney Street, Suite 286, Pittsburgh, PA 15203

(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:

Kent Imaging Inc., 1210 8 St. SW, Calgary, AB T2R 1A9, Canada

Adiuvio Diagnostics Pvt. Ltd., Unit 18 and 19, Golden Jubilee Biopark, 4th Main Road, 2nd Cross Street, SIPCOT IT Park, Siruseri, Chennai 603103, India

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) 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), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission 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

³ Due to the lapse in appropriations and ensuing cessation of Commission operations, the Commission tolled its schedule for this proceeding. The schedule was revised in a subsequent notice published in the **Federal Register** on November 21, 2025 (90 FR 52695).

⁴ 90 FR 52695 (November 21, 2025).

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 28, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026–01968 Filed 1–30–26; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1411]

Certain Photodynamic Therapy Systems, Components Thereof, and Pharmaceutical Products Used in Combination With the Same; Notice of a Commission Determination To Review in Part a Final Initial Determination Finding a Violation of Section 337; Request for Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to review in part a final initial determination (“FID”) of the presiding administrative law judge (“ALJ”), finding a violation of section 337 of the Tariff Act of 1930, as amended. The Commission requests written submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: B. Rashmi Borah, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2518. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 1, 2024, based on a complaint filed by Sun Pharmaceutical Industries, Inc. (“Complainant”) of Princeton, New Jersey. 89 FR 62790 (Aug. 1, 2024). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain photodynamic therapy systems, components thereof, and pharmaceutical products used in combination with the same by reason of infringement of certain claims of the U.S. Patent Nos. 11,446,512 (“the ‘512 patent”) and 11,697,028 (collectively, “the Asserted Patents”). *Id.* The complaint further alleges that a domestic industry exists or is in the process of being established. *Id.* The notice of investigation names four respondents: (1) Biofrontera Inc. of Woburn, Massachusetts; (2) Biofrontera Pharma GmbH of Leverkusen, Germany; (3) Biofrontera Bioscience GmbH of Leverkusen, Germany; and (4) Biofrontera AG of Leverkusen, Germany (collectively, “Respondents”). *Id.* The Office of Unfair Import Investigations is not a party to this investigation. *Id.*

On November 20, 2024, the Commission amended the complaint and notice of investigation to add infringement allegations as to claims 17 and 18 of the ‘512 patent. Order No. 8 (Oct. 22, 2024), *unreviewed by Comm’n* Notice (Nov. 20, 2024).

On June 25, 2025, the ALJ issued Order No. 23 granting, pursuant to Commission Rule 210.18 (19 CFR 210.18), Complainant’s motion for summary determination that it has satisfied the economic prong of the domestic industry requirement.

On July 25, 2025, the Commission determined to review Order No. 23. Comm’n Notice at 2 (July 25, 2025).

On September 30, 2025, the ALJ issued the FID, finding a violation of section 337. The FID finds that: (1) claims 1, 3, 5, 8, 17–18, and 20 of the ‘512 patent and claims 1, 2, 4, 16, 17, and 19–21 of the ‘028 patent, are directly infringed; (2) claims 8, 17, and 18 of the ‘512 patent are indirectly infringed via inducement; (3) none of the claims asserted for infringement and/or domestic industry are invalid under 35 U.S.C. 103 and/or 112, ¶ 1; and (4) Complainant has satisfied the technical prong of the domestic industry requirement for both Asserted Patents by practicing claims 1, 2, 4, 5, 8, 19, and 20 of the ‘512 patent and claims 1, 3, 4, 5, 7, 9, 16–18, and 21 of the ‘028 patent.

The FID also includes the ALJ’s recommended determination (“RD”) on remedy, the public interest, and bonding, should the Commission find a violation of section 337. Specifically, the RD recommends entry of a limited exclusion order against Respondents’ infringing products, entry of a cease and desist orders against Respondents, and a bond of zero percent for any importations of infringing products during the period of Presidential review.

On November 17, 2025, Complainant filed a petition for review seeking review of the following findings: (1) that the preamble of each asserted claim is limiting and (2) the RD’s recommendation to set a bond of zero percent for any importations of infringing products during the period of Presidential review. On the same day, Respondents filed a petition for review seeking review of the following findings: (1) that the claim terms “nested hinges” and “higher intensity proximate” are not indefinite; (2) that the asserted claims are not invalid under 35 U.S.C. 103 for obviousness, or under § 112 ¶ 1 for lack of written description; (3) that certain claims are either directly or indirectly infringed; and (4) that certain declarations from *inter partes* review proceedings are admissible. On November 24, 2025, Complainant and Respondents filed their respective petition responses.

Having reviewed the record of the investigation, including the FID, and the parties’ submissions, the Commission has determined to review the FID in part. Specifically, the Commission has determined to review: (1) the construction of the claim term “nested hinges” and (2) whether the asserted claims of the Asserted Patents are invalid under 35 U.S.C. 103 for obviousness. The Commission has determined not to review the remainder of the FID. Order No. 23 remains under Commission review. Comm’n Notice at 2 (July 25, 2025). The Commission will consider the reviewed issues identified above as well as any issues concerning Order No. 23 and the RD in connection with the final disposition of this Investigation.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia*, (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the

form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and cease and desist orders would have on: (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

In its initial submission, Complainant is also requested to identify the remedy sought and Complainant is requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the dates that the Asserted Patents expire, to provide the HTSUS

subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. All initial written submissions, from the parties and/or third parties/interested government agencies, and proposed remedial orders from the parties must be filed no later than close of business on February 11, 2026. All reply submissions must be filed no later than the close of business on February 18, 2026. Opening submissions from the parties are limited to 25 pages. Reply submissions from the parties are limited to 15 pages. All submission from third parties and/or interested government agencies are limited to 10 pages. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above pursuant to 19 CFR 210.4(f). Submissions should refer to the investigation number (Inv. No. 337-TA-1411) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records

of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on January 28, 2026.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: January 28, 2026.

Lisa Barton,
Secretary to the Commission.

[FR Doc. 2026-01954 Filed 1-30-26; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1421]

Certain Rechargeable Batteries and Components Thereof; Notice of a Commission Determination To Issue a Limited Exclusion Order; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission ("Commission") has determined to issue a limited exclusion order ("LEO") barring entry of certain rechargeable batteries and components thereof by or on behalf of respondent Shenzhen Yichen S-Power Tech Co. LTD ("Yichen") of Shenzhen, China previously found to be in default. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Paul Lall, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2043. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the

Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On October 21, 2024, the Commission instituted the investigation based on a complaint filed by complainants LithiumHub, LLC of Norris, SC, Lithiumhub Technologies, LLC of Marshall, TX, and Martin Koebler of Norris, SC (collectively, "Lithiumhub"). 89 FR 84194-95 (Oct. 21, 2024). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("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 rechargeable batteries and components thereof by reason of the infringement of certain claims of U.S. Patent Nos. 9,412,994 and 9,954,207 (the "Asserted Patents"). The Commission's notice of investigation ("NOI") named the following respondents: Yichen; Clean Republic SODO LLC ("Dakota") of Seattle, WA; Shenzhen Fbtech Electronics LTD ("Fbtech Electronics") of Shenzhen, China; Shenzhen LiTime Technology Co., LTD ("LiTime Technology") of Shenzhen, China; MillerTech Energy Solutions LLC ("MillerTech Energy") of Middlefield, OH; Relion Battery (Shenzhen) Technology Co. ("Relion") of Shenzhen, China; Renogy New Energy Co., Ltd. ("Renogy") of Suzhou City, China; RNG International Inc. ("RNG") of Ontario, CA; Navico Group Americas, LLC ("Navico") of Menomonee Falls, WI; Dragonfly Energy Corp. and Dragonfly Energy Holdings Corp. (collectively, "Dragonfly"), both of Reno, NV; Bass Pro Outdoor World LLC of Springfield, MO; and Cabela's LLC of Springfield, MO. *Id.* The Office of Unfair Import Investigations ("OUII") was also named as a party in this investigation. *Id.*

On February 3, 2025, the Commission found Yichen to be in default. *See* Order No. 11 (Jan. 8, 2025), *unreviewed by* Comm'n Notice (Feb. 3, 2025).

On May 29, 2025, Lithiumhub filed a "Declaration Seeking Immediate Relief" against defaulting respondent Yichen, pursuant to Commission Rule 210.16(c)(1) (19 CFR 210.16(c)(1)). The declaration requests entry of a limited exclusion order ("LEO") and a cease and desist order ("CDO") against Yichen.

The Commission terminated the remaining respondents based on settlement agreements. *See* Order No. 19 (March 21, 2025), *unreviewed by* Comm'n Notice (April 21, 2025) (Dragonfly); Order No. 25 (April 29, 2025), *unreviewed by* Comm'n Notice (May 20, 2025) (Navico); Order Nos. 30 and 31 (June 2, 2025), *unreviewed by* Comm'n Notice (June 20, 2025) (Relion, Renogy, and RNG); Order Nos. 34-37, *unreviewed by* Comm'n Notice (Aug. 4, 2025) (Dakota, MillerTech Energy, Fbtech Electronics and LiTime Technology); Order No. 38 (July 22, 2025), *unreviewed by* Comm'n Notice, 90 FR 40396-98 (Aug. 19, 2025) (Bass Pro).

In its notice determining not to review Order No. 38 (the "Remedy Notice") terminating the last remaining respondents, the Commission asked parties to the investigation, interested government agencies, and any other interested parties to file written submissions on the issues of remedy, the public interest, and bonding with respect to defaulting respondent Yichen. 90 FR at 40397-98. On August 27, 2025, Lithiumhub filed a written submission, requesting the Commission to issue an LEO and a CDO against Yichen. On September 4, 2025, OUII filed a reply to Lithiumhub's submission, supporting entry of an LEO but opposing entry of a CDO. The Commission received no other written submissions in response to the Remedy Notice.

When the conditions in section 337(g)(1)(A)-(E) (19 U.S.C. 1337(g)(1)(A)-(E)) have been satisfied, section 337(g)(1) and Commission Rule 210.16(c) (19 CFR 210.16(c)) direct the Commission, upon request, to issue an LEO or a CDO or both against a respondent found in default, based on the allegations regarding a violation of section 337 in the Complaint, which are presumed to be true, unless after consideration of the public interest factors in section 337(g)(1), it finds that such relief should not issue.

Having examined the record of this investigation, including the Complainants' submission in response to the Remedy Notice, the Commission has determined, pursuant to section 337(g)(1) (19 U.S.C. 1337(g)(1)), that the appropriate remedy in this investigation is an LEO prohibiting the unlicensed entry of certain rechargeable batteries and components thereof by reason of the infringement of certain claims of the Asserted Patents. The Commission has determined that the public interest factors enumerated in subsection 337(g)(1) do not preclude the issuance of the requested LEO. The Commission has determined not to issue the

requested CDO against Yichen because of the lack of evidence or allegations that Yichen maintains commercially significant inventories and/or engages in significant commercial operations in the United States.¹

The Commission has further determined to set a bond pursuant to section 337(j) (19 U.S.C. 1337(j)) of one hundred percent (100%) of the entered value of the infringing articles imported during the period of Presidential review that are subject to the LEO.

The investigation is terminated.

The Commission's vote for this determination took place on January 29, 2026.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: January 29, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026-02075 Filed 1-30-26; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

¹ Chair Karpel concurs with the issuance of an LEO barring the unlicensed entry of certain rechargeable batteries and components thereof by reason of the infringement of certain claims of the Asserted Patents. In addition, she would have issued a cease and desist order directed to Yichen regardless of domestic business operations or inventories, pursuant to section 337(g)(1). As noted above, in this investigation, the conditions in section 337(g)(1)(A)-(E) (19 U.S.C. 1337(g)(1)(A)-(E)) have been satisfied. Specifically, Yichen was served with the complaint and notice of investigation. Upon Yichen's failure to respond to the complaint and notice of investigation, the presiding ALJ ordered respondent Yichen to show cause as to why it should not be found in default. Order No. 9 (Dec. 19, 2024). Yichen failed to respond to the order to show cause and was found in default. *See* Order No. 11 (Jan. 8, 2025), *unreviewed by* Comm'n Notice (Feb. 3, 2025). Thus, the conditions of section 337(g)(1)(A)-(D) are satisfied. Finally, Complainants explicitly requested both an LEO and a CDO directed to Yichen, thereby meeting the requirement of section 337(g)(1)(E). Accordingly, section 337(g)(1) and Commission Rule 210.16(c) (19 CFR 210.16(c)) direct the Commission, upon complainants' request, to issue both the LEO and CDO against Yichen. Chair Karpel further finds that the public interest does not preclude the issuance of a CDO directed to Yichen.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Magnetoresistive Random Access Memory (MRAM) Devices, Products Containing the Same and Components Thereof, DN 3880*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Avalanche Technology, Inc. on January 28, 2026. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain magnetoresistive random access memory (MRAM) devices, products containing the same and components thereof. The complaint names as a respondent: Everspin Technologies, Inc. of Chandler, AZ. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondent, other interested parties, members of the public, and interested government agencies are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief

specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number ("Docket No. 3880") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing

Procedures.¹) Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at EDIS3Help@usitc.gov.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,² solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.³

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: January 29, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026–02051 Filed 1–30–26; 8:45 am]

BILLING CODE 7020–02–P

¹ Handbook for Electronic Filing Procedures: https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.

² All contract personnel will sign appropriate nondisclosure agreements.

³ Electronic Document Information System (EDIS): <https://edis.usitc.gov>

DEPARTMENT OF JUSTICE**Drug Enforcement Administration****[Docket No. DEA-1653]****Importer of Controlled Substances
Application: Mylan Inc.****AGENCY:** Drug Enforcement
Administration, Justice.**ACTION:** Notice of application.

SUMMARY: Mylan Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before March 4, 2026. Such persons may also file a written request for a hearing on the application on or before March 4, 2026.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on December 19, 2025, Mylan Inc., 3711 Collins Ferry Road, Morgantown, West Virginia 26505-2362, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Amphetamine	1100	II
Methylphenidate	1724	II
Oxycodone	9143	II
Hydromorphone	9150	II
Methadone	9250	II
Morphine	9300	II
Fentanyl	9801	II

The company plans to import the listed controlled substances as bulk active pharmaceutical ingredients for internal testing purposes only and finished dosage forms for analytical testing and distribution for clinical trials to support foreign market participation. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Thomas Prevoznik,*Deputy Assistant Administrator.*

[FR Doc. 2026-01947 Filed 1-30-26; 8:45 am]

BILLING CODE P**DEPARTMENT OF JUSTICE****Drug Enforcement Administration****[Docket No. DEA-1649]****Bulk Manufacturer of Controlled
Substances Application: Promega
Corporation****AGENCY:** Drug Enforcement
Administration, Justice.**ACTION:** Notice of application.

SUMMARY: Promega Corporation has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before April 3, 2026. Such persons may also file a written request for a hearing on the application on or before April 3, 2026.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment

field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on January 7, 2026, Promega Corporation, 3075 Sub Zero Parkway, Fitchburg, Wisconsin 53719, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Psilocybin	7437	I
Psilocyn	7438	I

The company plans to bulk manufacture the listed controlled substances as Active Pharmaceutical Ingredients for sale to its customers. No other activities for these drug codes are authorized for this registration.

Thomas Prevoznik,*Deputy Assistant Administrator.*

[FR Doc. 2026-01940 Filed 1-30-26; 8:45 am]

BILLING CODE P**DEPARTMENT OF JUSTICE****Drug Enforcement Administration****[Docket No. DEA-1651]****Importer of Controlled Substances
Application: Sharp Clinical Services,
LLC****AGENCY:** Drug Enforcement
Administration, Justice.**ACTION:** Notice of application.

SUMMARY: Sharp Clinical Services, LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before March 4, 2026. Such persons may also file a written request for a hearing on the application on or before March 4, 2026.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on January 9, 2026, Sharp Clinical Services, LLC, 2400 Baglyos Circle, Bethlehem, Pennsylvania 18020–8024, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid.	2010	I
3,4-Methylenedioxy-methamphetamine.	7405	I
5-Methoxy-N-N-dimethyltryptamine.	7431	I
Psilocybin	7437	I

The company plans to import the listed controlled substances for distribution and clinical trials. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-

approved finished dosage forms for commercial sale.

Thomas Prevoznik,

Deputy Assistant Administrator.

[FR Doc. 2026–01944 Filed 1–30–26; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1652]

Importer of Controlled Substances Application: Medi-Physics Inc. DBA GE Healthcare

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Medi-Physics Inc. DBA GE Healthcare has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before March 4, 2026. Such persons may also file a written request for a hearing on the application on or before March 4, 2026.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator,

8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on December 17, 2025, Medi-Physics Inc. DBA GE Healthcare, 3350 North Ridge Avenue, Arlington Heights, Illinois 60004–1412, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Cocaine	9041	II

The company plans to import derivatives of the listed controlled substance to be used for the manufacture of a diagnostic product and reference standards. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Thomas Prevoznik,

Deputy Assistant Administrator.

[FR Doc. 2026–01946 Filed 1–30–26; 8:45 am]

BILLING CODE P

OFFICE OF THE FEDERAL REGISTER

Publication Procedures for Federal Register Documents During a Funding Hiatus

AGENCY: Office of the Federal Register.

ACTION: Notice of special procedures.

SUMMARY: During an appropriations lapse, the Office of the Federal Register (OFR) publishes documents that meet an exception under the Antideficiency Act (ADA). It is the responsibility of the agency submitting a document for publication during an appropriations lapse to provide an exception letter with the document that includes a justification and a certification that the document is authorized under an exception to the Antideficiency Act.

FOR FURTHER INFORMATION CONTACT: Liza Davis, Esq., Director of Legal Affairs and Policy, Office of the Federal Register, National Archives and Records Administration, (202) 741–6030 or Fedreg.legal@nara.gov.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the

Antideficiency Act (ADA), Public Law 97–258, as amended (31 U.S.C. 1341, 1342), and Office of Legal Counsel (OLC) Opinions *Government Operations in the Event of a Lapse in Appropriations* (19 Op. O.L.C. 301, August 16, 1995), and *Effect of Appropriations for Other Agencies and Branches on the Authority to Continue Department of Justice Functions During the Lapse in the Department's Appropriations* (19 Op. O.L.C. 337, December 13, 1995), the OFR announces special procedures for agencies transmitting documents for publication in the **Federal Register** during a lapse in appropriations.

During an appropriations lapse, the OFR remains open to accept and process documents authorized to be published in the **Federal Register** in the absence of continuing appropriations. An agency wishing to transmit a document to the OFR during an appropriations lapse must attach an exception letter to the document which provides a justification and certifies that publication in the **Federal Register** is necessary. The OFR will only publish documents submitted during an appropriations lapse that meet an exception to the ADA, with sufficient justification that the document meets the ADA exception as provided by the publishing agency. This may include documents that directly relate to the performance of governmental functions necessary to address imminent threats to the safety of human life or protection of property (the ADA emergency exception) or that meet another exception to the ADA, as well as documents related to funded programs if delaying publication until the end of the appropriations lapse would prevent or significantly damage the execution of funded functions at the agency. It is the responsibility of the agency submitting a document for publication to include an exception letter that provides justification and certifies that the document is authorized under the ADA; the OFR does not provide this justification for the submitting agency. This certification provides OFR with documentation that publication in the **Federal Register** is a function or service excepted under the ADA.

Executive branch agencies and offices should use the template for the exception letter available on the OFR website at www.archives.gov/federal-register/agencies/shutdown-faqs. Legislative and judicial branch offices may use the template letter as a guide.

Special handling requests should be included in the exception letter. Do not submit two separate letters.

Documents received and scheduled for publication before the appropriations lapse began are not required to meet an ADA exception.

For final rule documents that contain incorporation by reference (IBR), agencies must submit a separate request for IBR approval as per normal procedure, and must include sufficient justification that the rule document meets an exception to the ADA when submitting the IBR request. The OFR will not review an IBR request that does not include a sufficient justification. Requests without a sufficient justification will be held until the appropriations lapse is ended.

The OFR may suspend the regular publication schedule during an appropriations lapse to permit a limited number of excepted personnel to process excepted documents. Agency officials will be informed as to the schedule for filing and publishing individual documents.

The OFR has posted frequently asked questions and the excepted letter template on the following website: www.archives.gov/federal-register/agencies/shutdown-faqs.

Authority: 44 U.S.C. 1502; 1 CFR 2.4 and 5.1.

Liza Davis,

Director of Legal Affairs and Policy, Office of the Federal Register.

[FR Doc. 2026–02066 Filed 1–30–26; 8:45 am]

BILLING CODE 0099–10–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–26–0034; NARA–2026–006]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on regulations.gov for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: We must receive responses on the schedules listed in this notice by March 19, 2026.

ADDRESSES: To view a records schedule in this notice, or submit a comment on one, use the following address: <https://www.regulations.gov/docket/NARA-26-0034/document>.

This is a direct link to the schedules posted in the docket for this notice on regulations.gov. You may submit comments by the following method:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. On the website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice, in which we have posted the records schedules open for comment. Each schedule has a ‘comment’ button so you can comment on that specific schedule. For more information on regulations.gov and on submitting comments, see their FAQs at <https://www.regulations.gov/faq>.

If you are unable to comment via regulations.gov, you may email us at request.schedule@nara.gov for instructions on submitting your comment. You must cite the control number of the schedule you wish to comment on. You can find the control number for each schedule in parentheses at the end of each schedule’s entry in the list at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Richard Green, Records Management Operations, by email at richard.green@nara.gov or at 301–395–7825. For information about records schedules, contact Records Management Operations by email at request.schedule@nara.gov or by phone at 301–395–7825.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the regulations.gov docket for this notice as “other” documents. Each records schedule contains a full description of the records

at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we may or may not make changes to the proposed records schedule. The schedule is then sent for final approval by the Archivist of the United States. After the schedule is approved, we will post on *regulations.gov* a “Consolidated Reply” summarizing the comments, responding to them, and noting any changes we made to the proposed schedule. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at <https://www.archives.gov/records-mgmt/rcs>, after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA’s approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified

period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records’ administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government’s activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist’s consideration process.

Schedules Pending

1. Department of Justice, Newspaper Preservation Act Records (DAA–0060–2024–0001).

2. Department of Veterans Affairs, Veterans Health Administration, Office of Academic Affiliation (OAA) (DAA–0015–2024–0007).

3. Department of Veterans Affairs, Veterans Health Administration, The Suicide Data Repository (SDR) (DAA–0015–2022–0002).

4. Centers for Disease Control and Prevention, Web Content Management System (DAA–0442–2025–0001).

5. Commodity Futures Trading Commission, Official Communications, Actions, Decisions, and Guidance (DAA–0180–2024–0001).

6. Defense Counterintelligence and Security Agency, Countermeasure Database (CMDB) (DAA–0446–2026–0001).

7. United States Capitol Police, Budget Estimates, Justifications, Submission and Memorial Funds Records (DAA–0603–2024–0004).

8. United States Coast Guard, Cyber Protection Team (CPT) Analysis Data (DAA–0026–2022–0001).

William P. Fischer,

Acting Chief Records Officer for the U.S. Government.

[FR Doc. 2026–02081 Filed 1–30–26; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Renewal of Agency Information Collections for Comments Request: Proposed Collections

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comments.

SUMMARY: The National Credit Union Administration (NCUA) will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice.

DATES: Written comments should be received on or before April 3, 2026 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dacia Rogers, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314, Suite 6070; Fax No. (703) 519–8161; or email at *PRAComments@NCUA.gov*.

FOR FURTHER INFORMATION CONTACT:

Copies of the submission may be obtained by contacting Dacia Rogers at (703) 518–6547.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0024.

Title: Mergers of Federally-Insured Credit Unions; Voluntary Termination or Conversion of Insured Status, 12 CFR 708b.

Type of Review: Revision of a currently approved collection.

Abstract: The Federal Credit Union Act requires written approval of the NCUA Board before one or more federally-insured credit unions merge or before a federally-insured credit union converts to nonfederal (private) share insurance or terminates federal share insurance and authorizes the NCUA Board to prescribe rules regarding mergers of federally-insured credit unions and changes in insured status. Part 708b of NCUA’s rules sets forth the procedural and disclosure requirements for mergers of federally-insured credit unions, conversions from federal share insurance to nonfederal insurance, and federal share insurance terminations.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 5,352.

OMB Number: 3133–0163.

Title: Privacy of Consumer Financial Information, Regulation P, 12 CFR part 1016.

Type of Review: Extension of a previously approved collection.

Abstract: Regulation P (12 CFR part 1016) requires credit unions to disclose its privacy policies to customers as well as offer customers a reasonable opportunity to opt out-in whole or in part-of those policies to further restrict the release of their personal financial information to nonaffiliated third parties. Credit unions are required to provide an initial privacy notice to customers that is clear and conspicuous, an annual notice of the privacy policies and practices of the institution, a revised notice to customers if triggered by specific changes to the existing policy, and a notice of the right of the customer to opt out of the institution's information sharing practices. Consumers who choose to exercise their opt-out right document this choice by returning an opt-out form or other permissible method. This information collection is needed to evidence compliance with title V of the Gramm-Leach-Bliley Act.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 433,620.

OMB Number: 3133-0181.

Title: Registration of Mortgage Loan Originators.

Type of Review: Extension of a previously approved collection.

Abstract: The S.A.F.E. Act (12 U.S.C. 5101-5116) requires an employee of an institution regulated by a Federal banking agency who engages in the business of a residential mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry and obtain a unique identifier. Under CFPB regulations at 12 CFR part 1007, agency-regulated institutions must require their employees who act as residential mortgage loan originators to comply with the requirements to register and obtain a unique identifier and adopt and follow written policies and procedures.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 86,423.

OMB Number: 3133-0187.

Title: Reverse Mortgage Products—Guidance for Managing Risks.

Type of Review: Extension of a previously approved collection.

Abstract: The guidance will assist institutions in managing the compliance and risks associated with reverse mortgages. It will ensure that their risk management and consumer protection practices adequately address the compliance and risks raised by reverse mortgage lending.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 160.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, 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 the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By the National Credit Union Administration Board.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2026-01933 Filed 1-30-26; 8:45 am]

BILLING CODE 7535-01-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Requests: 2027–2029 IMLS Grant Application Forms

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Notice, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of

collection requirements on respondents can be properly assessed. The purpose of this Notice is to solicit comments concerning the three-year approval of the forms necessary to submit an application to any IMLS grant program. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before April 04, 2026.

ADDRESSES: Send comments to Sandra Narva, Acting Director of Grants Management, Office of Grants Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024-2135. Ms. Narva can be reached by telephone: 202-653-4634 or by email at snarva@imls.gov. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Sandra Narva, Acting Director of Grants Management, Office of Grants Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024-2135. Ms. Narva can be reached by telephone at 202-653-4634, or by email at snarva@imls.gov.

SUPPLEMENTARY INFORMATION: IMLS is particularly interested in public comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submissions of responses.

I. Background

IMLS is the primary source of federal support for the Nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy

development. To learn more, visit www.imls.gov.

II. Current Actions

The purpose of this collection is to facilitate the administration of the IMLS application and review processes for its discretionary grants and cooperative agreements. IMLS uses standardized application forms for eligible libraries, museums, and other organizations to apply for its funding. The forms submitted for public review in this Notice are the IMLS Budget Form, IMLS Museum Program Information Form, IMLS Library-Discretionary Program Information Form, IMLS Native American and Native Hawaiian Library Services Program Information Form, and IMLS Supplementary Information Form, each of which is included in one or more of the *Grants.gov* packages associated with IMLS grant programs.

This action is to review the content, forms, and instructions for the next three years.

Agency: Institute of Museum and Library Services.

Title: 2027–2029 IMLS Grant Application Forms.

OMB Control Number: 3137–0092.

Agency Number: 3137.

Respondents/Affected Public: Library and museum grant applicants.

Total Estimated Number of Annual Respondents: 2,800 IMLS Program Information Forms and 2,800 IMLS Budget Forms.

Frequency of Response: Once per request.

Estimated Average Burden per Response: 30 minutes per response for the IMLS Program Information Forms and three hours per response for the IMLS Budget Form.

Total Estimated Number of Annual Burden Hours: 9,800.

Total Annual Cost Burden: \$328,551.

Total Annual Federal Costs: \$85,015.

Public Comments Invited: Comments submitted in response to this Notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: January 28, 2026.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2026–01990 Filed 1–30–26; 8:45 am]

BILLING CODE 7036–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2026–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of February 2, 9, 16, and 23, and March 2 and 9, 2026. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: <https://www.nrc.gov/public-involve/public-meetings/schedule.html>.

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please contact the Reasonable Accommodations Resource by email at ReasonableAccommodations.Resource@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at Betty.Thweatt@nrc.gov or Samantha.Miklaszewski@nrc.gov.

MATTERS TO BE CONSIDERED:

Week of February 2, 2026

There are no meetings scheduled for the week of February 2, 2026.

Week of February 9, 2026—Tentative

There are no meetings scheduled for the week of February 9, 2026.

Week of February 16, 2026—Tentative

There are no meetings scheduled for the week of February 16, 2026.

Week of February 23, 2026—Tentative

There are no meetings scheduled for the week of February 23, 2026.

Week of March 2, 2026—Tentative

There are no meetings scheduled for the week of March 2, 2026.

Week of March 9, 2026—Tentative

There are no meetings scheduled for the week of March 9, 2026.

CONTACT PERSON FOR MORE INFORMATION:

For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at Wesley.Held@nrc.gov.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: January 28, 2026.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2026–01966 Filed 1–29–26; 11:15 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–104722; File No. SR–NASDAQ–2026–005]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule General 8 Section 1 Related to Co-Location Services

January 28, 2026.

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 January 15, 2026, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to restructure the Exchange's connectivity fee schedule under Rule General 8, Section 1 relating to co-location services and establish fees for certain co-location services, as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rulefilings>, and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's current data center in Carteret, New Jersey, consists of the original data center ("NY11"), an expansion area ("NY11-4"), and a future expansion area ("NY11-5"). The purpose of this proposed rule change is to restructure the Exchange's connectivity fee schedule under Rule General 8, Section 1 to eliminate cabinet density-based distinctions and associated fees, other than installation fees,³ and establish a power delivery-based pricing model. Specifically, the Exchange proposes to (i) eliminate all density-based cabinet offerings under Section 1(a) of Rule General 8 including their respective fees other than installation fees; and (ii) establish power delivery-based, recurring monthly fees for cabinet power circuits under Rule General 8, Section 1(c), as described below.

Current Cabinet Offerings

Currently, co-location customers have the option of obtaining cabinets of various power densities at varying installation and ongoing monthly fees.⁴ Co-location customers may obtain a Half Cabinet,⁵ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts ("kW"),⁶ a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW,⁷ a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW,⁸ a High Density Cabinet with power density

greater than 7 kW and less than 10 kW,⁹ a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW,¹⁰ and an Ultra High Density Cabinet with power density greater than 10 kW and less than or equal to 15 kW.¹¹

Proposed Power Delivered Model

The Exchange is now proposing (i) to eliminate all such size- and density range-based cabinet offerings under Rule General 8, Section 1(a), including their respective ongoing monthly fees, and (ii) replace them with two cabinet offerings, consisting of a single cabinet as well as a half cabinet option, with their respective cabinet installation fees unchanged from current cabinet installation fees under Rule General 8, Section 1(a).¹² Unlike today, however,

⁹ The High Density Cabinet is offered in NY11 for an installation fee of \$3,850 and an ongoing monthly fee of \$4,950 and in NY11-4 for an installation fee of \$5,940 and an ongoing monthly fee of \$4,950. See Rule General 8, Section 1(a).

¹⁰ The Super High Density Cabinet is offered in NY11 for an installation fee of \$4,950 and an ongoing monthly fee of \$8,800 and in NY11-4 for an installation fee of \$5,940 and an ongoing monthly fee of \$8,800. See Rule General 8, Section 1(a).

¹¹ The Ultra High Density Cabinet is offered in NY11-4 for an installation fee of \$5,940 and an ongoing monthly fee of \$7,230. The Ultra High Density Cabinet is not available in NY11. See Rule General 8, Section 1(a).

¹² See proposed Rule General 8, Section 1(a). To effect this change, the Exchange proposes the following changes to Rule General 8, Section 1(a). The Exchange proposes to delete all cabinet with power offerings under Rule General 8, Section 1(a) including their associated installation and ongoing monthly fees, other than the Half Cabinet offering itself (but not its associated ongoing monthly fee which the Exchange is proposing to delete), and replace those offerings with two options: a Cabinet and the currently-offered Half Cabinet, as discussed above. The Exchange then proposes to move, unchanged from their current respective amounts, installation fees for cabinet options in NY11 and NY11-4 by inserting such fees (\$3,850 and \$5,490, respectively) into the columns titled "NY11 Installation Fee" and "NY11-4 Installation Fee" under Rule General 8, Section 1(a). The Exchange proposes to (1) enter, under the column titled "Ongoing Monthly Fee" under Rule General 8, Section 1(a) for both the Half Cabinet and Cabinet options the following: "N/A," and (2) delete, from the "Ongoing Monthly Fee" for the Half Cabinet option under Rule General 8, Section 1(a) the amount "\$2,200." The Exchange further proposes a non-substantive change to move the symbol "+" from its various current locations within the table at Rule General 8, Section 1(a) to the caption for the column titled "NY11-4 Installation Fee" (and adjacent to the word "Fee") so as to denote, unchanged from the symbol's significance, as stated in its accompanying footnote, that cabinets under the column designated with that symbol include a larger cabinet (32" W x 48" D x 91" H). Finally, the Exchange proposes to delete from Rule General 8, Section 1(a), all accompanying notes, other than those designated with the following symbols: single asterisk ("*") (noting that such cabinets are not available to new users) as well as the symbol "+" as discussed above. The Exchange is also proposing a non-substantive change to move, with a non-substantive clarifying change, the accompanying

note to Rule General 8, Section 1(a) (providing that cabinet power cap is based on the available power at 80% of the breaker capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit)) to Rule General 8, Section 1(c). The Exchange proposes a clarifying change to that footnote to clarify that it is the circuit cap, rather than the cabinet power cap, that is based on the available power at 80% of the breaker capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit). The Exchange notes this longstanding rule does not affect pricing, however, as fees are based on 100% of the circuit capacity. The proposed change is clarifying in nature and non-substantive because in all cases power caps are associated with power circuits rather than cabinet density, such that the proposed changes would render the note more accurate and easier to understand. As a conforming change, the Exchange proposes to designate that note with a double asterisk (**) and add the double asterisk to the caption to Rule General 8, Section 1(c) (Cabinet Power) to facilitate references to that note. The Exchange believes this proposed change would facilitate the understanding of and application of the Exchange's rules because associated cabinet density options are being eliminated under this proposal, and Section 1(c) of Rule General 8 addresses cabinet power, to which this note is more closely related.

¹³ Kilovolt-Amperes (kVA) is a unit of *apparent power* used to describe the capacity of electrical circuits and equipment. In alternating current (AC) systems, power consists of two components: real power (kW) and reactive power (kVAR). Real power, or kW, is the actual usable power that performs work, such as running servers or cooling systems, whereas reactive power, or kVAR, is the power that sustains the magnetic and electric fields in equipment but does not perform useful work. Because AC systems often have both real and reactive components, kVA measures the total apparent power, which is the combination of real and reactive power—the full load the circuit must carry. The relationship between kilowatts and kVA depends on the power factor (PF) which reflects how efficiently electrical power is converted into useful work: kW = kVA x PF. In the context of data center operations, electrical power is commonly expressed in two units: kilowatts (kW) and kilovolt-amperes (kVA). While these terms measure different aspects of electrical power—kW representing real power consumed by equipment and kVA representing apparent power supplied—they are closely correlated in environments where the power factor approaches unity. Modern data centers typically operate at or near a power factor of 1.0, resulting in minimal variance between kW and kVA. Accordingly, these measures, kW and kVA, are often treated as interchangeable for practical purposes.

¹⁴ As discussed above, the Exchange proposes to retain the Half Cabinet offering under Rule General 8, Section 1(a) as well as its related footnote (as designated with a single asterisk) clarifying that such Half Cabinets are not available to new subscribers. See proposed Rule General 8, Section 1(a).

³ See Rule General 8, Section 1(a).

⁴ See Rule General 8, Section 1(a).

⁵ Half cabinets are not available to new subscribers. The Half Cabinet is currently offered for an ongoing monthly fee of \$2,000. See Rule General 8, Section 1(a).

⁶ The Low Density Cabinet is offered for an installation fee of \$3,850 and an ongoing monthly fee of \$2,200. See Rule General 8, Section 1(a).

⁷ The Medium Density Cabinet is offered for an installation fee of \$3,850 for NY11 and \$5,940 for NY11-4 and an ongoing monthly fee of \$2,750 equally applicable to both NY11 and NY11-4. See Rule General 8, Section 1(a).

⁸ The Medium High Density Cabinet is offered in NY11 for an installation fee of \$3,850 and an ongoing monthly fee of \$3,850 and in NY11-4 for an installation fee of \$5,940 and an ongoing monthly fee of \$3,850. See Rule General 8, Section 1(a).

Specifically, the Exchange would establish a power-supplied-based, uniform ongoing monthly fee of \$550.00 per kVA¹⁵ to be applied to each power circuit offering under Rule General 8, Section 1(c), thus resulting in a fixed

ongoing monthly fee for each of the various power circuit options under that section, as shown in Table 1¹⁶ below.¹⁷ Table 2, in turn, provides the basis for the fixed monthly fee calculations.¹⁸ As in the case of cabinet installation fees

under Rule General 8, Section 1(a), all cabinet power circuit installation fee amounts under Rule General 8, Section (c) would remain unchanged.¹⁹

TABLE 1²⁰

Description	NY11 Installation fee	NY11–4 Installation fee	NY11 Ongoing monthly fee (\$550 per kVA)	NY11–4 Ongoing monthly fee (\$550 per kVA)
2x20 amp 110 volt	\$2,200	N/A	[0] \$1,320.00	N/A
2x30 amp 110 volt	2,200	N/A	[0] \$1,980.00	N/A
2x20 amp 208 volt	2,200	N/A	[0] \$2,288.00	N/A
2x30 amp 208 volt	2,200	N/A	[0] \$3,432.00	N/A
2x60 amp 208 volt	3,300	N/A	[0] \$6,864.00	N/A
Phase 3 2x 20 amp 208 volt	3,300	N/A	[0] \$3,962.82	N/A
Phase 3 2x 30 amp 208 volt	3,300	N/A	[0] \$5,944.22	N/A
Phase 3 2x 40 amp 208 volt	3,300	N/A	[0] \$7,925.63	N/A
Phase 3 2x 50 amp 208 volt	3,300	N/A	[0] \$9,907.04	N/A
Phase 3 2x 60 amp 208 volt	3,300	N/A	[0] \$11,888.45	N/A
2x30 amp 48 volt DC	3,300	N/A	[0] \$792.00	N/A
Phase 1 20 amp 240 volt *	[3,600]	\$3,600	[0] N/A	\$2,640.00
Phase 1 32 amp 240 volt *	[3,600]	\$3,600	[0] N/A	\$4,224.00
Phase 1 40 amp 240 volt *	[3,600]	\$3,600	[0] N/A	\$5,280.00
Phase 3 20 amp 415 volt *	[4,560]	\$4,560	[0] N/A	\$7,906.58
Phase 3 32 amp 415 volt *	[4,560]	\$4,560	[0] N/A	\$12,650.53

¹⁵ As discussed below, the proposed amount of \$550 per kVA is within the current effective rate of \$482–\$763/kW and operates as a mid-band per kVA price (applied equally to all cabinet power circuit options offered by the Exchange under Rule General 8, Section 1(c)) to keep applicable fees balanced across user profiles.

¹⁶ In Tables 1–3 and throughout this proposal, the Exchange uses the terms “110 V” and “120 V.” In North America, residential and light-commercial electrical systems are nominally standardized at 120 volts, but the terms “110V,” “115V,” and “120V” are often used interchangeably. This is because they all refer to the same electrical system, not meaningfully different ones. Historically, early electrical grids in the U.S. operated closer to 110–115 volts. As infrastructure improved and electrical demand increased, utilities gradually raised the nominal voltage to 120 volts to improve efficiency and performance. Rather than replacing all existing equipment, standards were set so devices could operate safely across a voltage tolerance range, typically about ±5% to ±10%. A subsequent clean-up filing will update the Exchange’s rulebook to uniformly list the 20 amp 110 volt and the 30 amp 110 volt circuits to 120 volt throughout its rulebook, consistent with current standards.

¹⁷ In Table 1 (as in Exhibit 5), additions are italicized, and deletions are bracketed. To effect these changes, the Exchange proposes to amend Rule General 8, Section 1(c) as follows. The Exchange proposes to (1) insert, in the column

titled “Installation Fee” the acronym “NY11,” and move, unchanged from current amounts, fees designated with the symbol single asterisk (“*”) to a new column titled “NY11–4 Installation Fee”; (2) insert, in the column titled “Ongoing Monthly Fee” the acronym “NY11” and the parenthetical “(\$550 per kVA),” and then delete, from that current column titled “Ongoing Monthly Fee” all fees currently depicted thereunder (in each instance such fee being \$0), and insert, in their place, each of the proposed ongoing monthly fees in Table 1 for the respective power circuit options under Rule General 8, Section 1(c), other than those depicted with a single asterisk, which are designated for NY11–4; and (3) insert a new column titled “NY11–4 Ongoing Monthly Fee (\$550 per kVA)” and insert thereunder all proposed ongoing monthly fees shown in Table 1 for power circuit options designated with a single asterisk indicating, unchanged from today, that such cabinets are available in NY11–4 only. The Exchange proposes to enter “N/A” as applicable throughout Rule General 8, Section 1(c) to indicate that certain fees are not applicable, as appropriate. See proposed Rule General 8, Section 1(c).

¹⁸ The figure (“2X”) as used in Tables 1–3 and throughout this proposal designates the Exchange’s provision of both a primary and secondary circuit. The Exchange does not include the secondary circuit in the calculation of the proposed fees.

¹⁹ See proposed Rule General 8, Section 1(c). As discussed above, the Exchange is also proposing a

non-substantive change to move, with one clarifying change from its current form, the accompanying note to Rule General 8, Section 1(a) (providing that cabinet power cap is based on the available power at 80% of the breakered capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit)) to the notes in Rule General 8, Section 1(c). The Exchange proposes a clarifying change to that footnote to clarify that it is the circuit cap, rather than the cabinet power cap, that is based on the available power at 80% of the breakered capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit)). The proposed change is clarifying in nature and non-substantive because in all cases power caps are associated with power circuits rather than cabinet density, such that the proposed changes would render the note more accurate and easier to understand. See proposed Rule General 8, Section 1(c). The 80% capacity rule is a safety and reliability standard applied in data centers to ensure that electrical circuits are not operated at their full breakered capacity. Instead, the usable power is capped at 80% of the circuit’s rated capacity. This practice is based on the National Electrical Code (NEC) guidelines for continuous loads, which require derating to prevent overheating and allow for operational headroom. This rule does not affect pricing, however, as fees are based on 100% of the circuit capacity.

TABLE 2²¹

Description	kVA per Cir	Proposed monthly fee
2x20 amp 120 volt	2.4	\$1,320.00
2x30 amp 120 volt	3.6	1,980.00
2x20 amp 208 volt	4.16	2,288.00
2x30 amp 208 volt	6.24	3,432.00
2x60 amp 208 volt	12.48	6,864.00
Phase 3 2x 20 amp 208 volt	7.21	3,962.82
Phase 3 2x 30 amp 208 volt	10.81	5,944.22
Phase 3 2x 40 amp 208 volt	14.41	7,925.63
Phase 3 2x 50 amp 208 volt	18.01	9,907.04
Phase 3 2x 60 amp 208 volt	21.62	11,888.45
2x30 amp 48 volt DC	1.44	792.00
Phase 1 20 amp 240 volt *	4.8	2,640.00
Phase 1 32 amp 240 volt *	7.68	4,224.00
Phase 1 40 amp 240 volt *	9.6	5,280.00
Phase 3 20 amp 415 volt *	14.38	7,906.58
Phase 3 32 amp 415 volt *	23.0	12,650.53

Transitioning to the Power Delivered Model

As discussed above, the Exchange currently offers several cabinet options

²⁰ The ongoing monthly fees depicted in Tables 1 and 2 are derived by multiplying the circuit's apparent power (kVA) by \$550 per kVA. The kilovolt-ampere (kVA) rating for each circuit was calculated using standard electrical formulas based on circuit type as follows. Single-phase circuits: "kVA"=(("Volts" × "Amps")/1000. This converts the product of voltage and current into kilovolt-amperes. Three-phase circuits (balanced load): "kVA"=(√3×("Volts" × "Amps")/1000=(1.732×("Volts" × "Amps")/1000. The factor √3 accounts for the three-phase power configuration. These formulas were applied to each circuit type in the table to determine its kVA capacity, which was then multiplied by the proposed rate of \$550 per kVA to calculate the new monthly fee. For readability, table values reflect rounded kVA figures (e.g., a three-phase 30-amp, 208-volt circuit is displayed as 10.81 kVA) and fees rounded to the nearest cent. In internal calculations, the Exchange compute fees using full-precision kVA (e.g., ~10.794 kVA before display rounding), which can yield penny-level variances relative to fees computed

the fees for which are based on varying power density ranges. As the Exchange transitions to the proposed power-

from rounded kVA values. These minor differences arise solely from the sequence of rounding (rounding kVA before vs. after fee computation) and do not affect the uniform application of the \$550/kVA rate or the comparability of fees across circuit options. The Exchange notes that the initial filing (SR-NASDAQ-2025-110) contained minor errors in calculation of the proposed ongoing monthly fees under proposed Rule General 8, Section 1(c). The Exchange has addressed those errors and will bill customers for the correct amounts accordingly.

²¹ In Table 2 and throughout this proposal, the kilovolt-ampere (kVA) rating for each circuit was calculated using standard electrical formulas based on circuit type as follows. Single-phase circuits: "kVA"=(("Volts" × "Amps")/1000. This converts the product of voltage and current into kilovolt-amperes. Three-phase circuits (balanced load): "kVA"=(√3×("Volts" × "Amps")/1000=(1.732×("Volts" × "Amps")/1000. The factor √3 accounts for the three-phase power configuration. These formulas were applied to each circuit type in the table to determine its kVA capacity, which was then multiplied by the proposed rate of \$550 per kVA to calculate the new monthly fee.

delivered model, customers would transition to that model by structuring their power circuit selections under proposed Rule General 8, Section 1(c) to support the workload capacity supported under the cabinets held under current Rule General 8, Section 1(a). For example,²² a customer using a Super High Density Cabinet offering a power density range greater than 10 kW²³ and less than or equal to 17.3 kW²⁴ in NY11 with a flat monthly fee of \$8,800 would have several options for structuring its power circuit options under proposed Rule General 8, Section 1(c). The customer could select, for

²² The examples that follow are for illustrative purposes only, as customers are free to select the power circuit options that best suit their business needs.

²³ For simplicity, assume power factor ≈ 1 (common in data centers), so: 10kW ≈ 10kV.

²⁴ For simplicity, assume power factor ≈ 1 (common in data centers), so: 17.3 kW ≈ 17.3 kV.

example, the Phase 3, 2 x 50 amp, 208V circuit (18.01 kVA), which approximates the high end of the current cabinet's power density range of 17.3 kW for a monthly fee of \$9,907.04. Alternatively, the customer could select the Phase 3, 2 x 30 amp, 208 volt circuit (10.81 kVA) to align itself with the lower end of the current cabinet density range—currently at the same flat fee of \$8,800 per month and as proposed \$5,944.22 per month—and reduce its monthly costs by \$2,855.78. Similarly, customers using a Ultra High Density Cabinet with a cabinet density greater than 10 kW and less than or equal to 15 kW (at a current monthly fee of \$7,230.) could select the Phase 3 20 amp 415 volt circuit (14.38 kVA) at a recurring monthly fee of \$7,906.58. A customer with a High Density Cabinet offering a density greater than 7 kW and less than or equal to 10 kW at \$4,950 per month could select a Phase 3, 2 x 30 amp 208 volt circuit (10.81 kVA) at \$5,944.22 per month; alternatively, the customer could select the Phase 3, 2 x 20 amp 208

vol (7.21 kVA) circuit at the lower end of its current density for \$3,962.82 per month. Customers with a Medium High Density Cabinet offering densities greater than 5 kW and less than or equal to 7 kW currently at \$3,850 per month could select a 2x 30 amp, 208 volt circuit (6.24 kVA) at \$3,432 per month or the 2x 20 amp 208 volt circuit (4.16 kVA) at \$2,288 per month. Customers with a Medium Density Cabinet offering densities greater than 2.88 kW and less than or equal to 5 kW at a current monthly fee of \$2,750 could select a 2 x 20 amp 208 volt circuit (4.16 kVA) at \$2,288 per month or a 2 x 30 amp 110/120 volt (3.6 kVA) circuit at \$1,980 per month. Finally, customers with a Low Density Cabinet offering densities less than or equal to 2.88 kW at an ongoing monthly fee of \$2,200 could select a 2 x 20 amp 110/120 volt circuit (2.4 kVA) at \$1,320 per month.

Table 3 below shows power circuit options under proposed Rule General 8, Section 1(c) that could be selected²⁵ to align with the high and lower end of the

current cabinet density ranges under Rule General 8, Section 1(a), including associated changes in fees. While the table depicts a single power circuit at the approximate ends of the current cabinet density ranges for illustrative purposes, the Exchange notes that under the proposed power delivered model, clients are free to select multiple circuits per cabinet to achieve their desired power preferences. Under the current cabinet density-based model, clients are limited to the maximum power density allowed for their selected cabinet type. For example, a client using a Phase 3, 60-amp, 208-volt circuit (21.62 kVA) in combination with a Super High Density Cabinet would pay full fees for that power circuit but would only be authorized to draw up to 17.3 kW of power. Under the proposed billing model, subject to the 80% rule discussed above, clients may use the full power provided by their chosen circuits without being constrained by rigid cabinet density ranges in place today.

TABLE 3²⁶

Cabinet type (density range)	Circuit type	kVA	Current fee	New fee	Δ %
Low Density (<2.88 kW)	20A 120V	2.4	\$2,200	\$1,320	-40
	30A 120V	3.6	2,200	1,980	-10
Medium Density (>2.88–≤5 kW)	30A 120V	3.6	2,750	1,980	-28
	20A 240V	4.8	2,750	2,640	-4
Medium-High Density (>5–≤7 kW)	30A 208V	6.24	3,850	3,432	-10.86
	30A 120V, 30A 120V	7.2	3,850	3,960	2.86
High Density (>7–<10 kW)	30A 208V	6.24	4,950	3,432	-30.67
	40A 240V	9.6	4,950	5,280	6.67
Ultra High Density (>10–≤15 kW)	20A 415V (Phase 3)	14.38	7,230	7,906.58	9.36
	(Same circuit used for upper end) ...	.....	.....	.....	.....
Super High Density (>15–≤17.3 kW)	60A 208V (Phase 3)	21.62	8,800	11,891	35.13
	32A 415V (Phase 3)	23.0	8,800	12,650.53	43.76

The Exchange believes that pricing the offered services on a per kVA basis, as proposed, will allow the Exchange the operational flexibility to offer clients the maximum available power from the power circuits selected. Specifically, because the proposed fee structure eliminates cabinet density-based distinctions, including their associated fixed ongoing monthly fees, and replaces those distinctions with a single per-kVA-based monthly fee of \$550 per kVA delivered that is uniformly applied to the capacity of the customer's power circuit selection under Rule General 8, Section (c), customers in the lower

density cabinet ranges are likely to experience a decrease in overall fees while customers in the higher cabinet density ranges are likely to see increases.

Overall, the proposal introduces a transparent and equitable delivery-based pricing model that equitably allocates fees and removes complexity, consistent with requirements under the Act.

The Exchange believes that the proposed changes are better aligned with current industry practices, which base billing on power supplied rather than cabinet footprint. Under the

current cabinet density model, customers select from cabinet options designed to accommodate a range of power densities, up to approximately 17 kW. This approach often resulted in misalignment between costs and actual usage because pricing was tied to cabinet size and density tiers rather than the actual power delivered. For example, under the cabinet-density pricing model, customers operating at the lower end of a given cabinet's power-density range were assessed the same fixed ongoing monthly fee as customers operating at the higher end of that range, because pricing was tied to

²⁵ The examples depicted in Table 3 are for illustrative purposes only, as customers are free to select the power circuit options that best suit their business needs.

²⁶ In Table 3, the kilovolt-ampere (kVA) rating for each circuit was calculated using standard electrical formulas based on circuit type as follows. Single-

phase circuits: "kVA" = ("Volts" x "Amps") / 1000. This converts the product of voltage and current into kilovolt-amperes. Three-phase circuits (balanced load): "kVA" = (√3 x "Volts" x "Amps") / 1000 = (1.732 x "Volts" x "Amps") / 1000. The factor √3 accounts for the three-phase power configuration. These formulas were applied to each circuit type in

the table to determine its kVA capacity, which was then multiplied by the proposed rate of \$550 per kVA to calculate the new monthly fee. The examples depicted in this table are for illustrative purposes only, as customers are free to select the power circuit options that best suit their business needs.

the cabinet's density tier rather than the deployed power circuit.

By contrast, the proposed per-kVA pricing model directly reflects the actual power delivered to the customer's circuits, ensuring that charges correspond to the infrastructure resources delivered. This power delivery-based approach inherently simplifies cost planning. In short, billing on a per-kVA basis promotes transparency and flexibility, aligning fees with real power demand and enabling the Exchange to accommodate evolving customer requirements with greater transparency and efficiency.

Increases associated with the proposal will better enable the Exchange to continue to maintain and improve its market infrastructure technology and services. The Exchange notes that the proposed fee of \$550 per kVA is comparable to fees charged by at least one other national securities exchange for a similar product. Specifically, the New York Stock Exchange ("NYSE") offers a tiered, per kW monthly fee for cabinets ranging from \$900 to \$1,200 per kW based on the total kW allocated to all of a user's dedicated cabinets.²⁷ Under the NYSE schedule, for example, a customer requesting 10kW at NYSE would pay a monthly fee of \$10,500 per month (10kW x \$1,050 per kW per month), whereas a customer requesting ~10kW under the proposed model at Nasdaq could install a Phase 3 30 amp, 208 volt circuit for 10.81 kVA²⁸ for a total charge of \$5,944.22 per month (10.8 kVA x \$550 per kVA per month).²⁹

²⁷ NYSE's per kW Monthly Fee is a factor of the total number of kilowatts allocated to all of a User's dedicated cabinets and varies based on the total kilowatts allocated to a User. See New York Stock Exchange LLC Connectivity Fee Schedule, available at https://www.nyse.com/publicdocs/nyse/Wireless_Connectivity_Fees_and_Charges.pdf. Most modern data centers typically operate at or near a power factor of 1.0, resulting in minimal variance between kW and kVA such that the two measures are, for comparison purposes and given this assumed PF factor, interchangeable.

²⁸ To convert 30 amps at 208 volts to kVA, we use the formula: kVA = Volts x Amps/1000. For single phase: kVA = 208 x 30 = 6.24 kVA/1000. For three-phase (assuming a balanced load): kVA = 1.732 x 208 x 30 = 10.81 kVA/1000. 1.732 is derived from $\sqrt{3}$. As discussed above, modern data centers typically operate at or near a power factor of 1.0, resulting in minimal variance between kW and kVA. Accordingly, these measures are often treated as interchangeable for practical purposes. NYSE uses a tiered monthly fee per kW, ranging from \$900 to \$1,200 per kW depending on the total allocated power across a user's cabinets. Using PF = 1.0, that translates to \$900–\$1,200 per kVA.

²⁹ NYSE charges a tiered monthly fee per kW, ranging from \$900 to \$1,200 per kW, depending on the total kilowatts allocated across all cabinets. For example, a customer requesting 10 kW at NYSE would pay approximately \$10,500 per month (10 kW x \$1,050 per kW). Nasdaq proposes a flat monthly fee of \$550 per kVA for the full theoretical capacity of the circuit. For example, a Phase 3, 30-

The Exchange believes that its proposed pricing model is more transparent and equitable because it directly ties fees to the actual power delivered and the infrastructure required to support that capacity (power and cooling). This eliminates distortions inherent in tiered pricing, where customers with similar power needs may pay significantly different amounts based on density classifications. By linking charges to delivered power, the proposal enhances transparency and predictability. Costs scale with actual power delivered, and customers can avoid sudden price jumps when moving between tiers. Under the proposed structure, every kVA is priced the same, making it easier for customers to forecast expenses, compare across providers, and understand the relationship between costs and their selected power delivery preferences.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,³¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to restructure its cabinet and cabinet power connectivity schedule to provide for a delivery-based model that eliminates cabinet density-based distinctions, along with their associated monthly fees, and establishes in its place a uniform ongoing monthly fee of \$550 per kVA fee as applied to each offered cabinet power circuit options is reasonable. First, the Exchange's proposal to establish a \$550 per kVA fee to be applied to the various power circuit options offered by the Exchange is reasonable because the proposed amount of \$550 per kVA is within the current effective rate of \$482–\$763/kW and operates as a mid-band per kVA price (applied equally to all cabinet power circuit options offered by the Exchange under Rule General 8, Section 1(c)) to keep applicable fees balanced across user profiles. As discussed above, the Exchange is proposing to keep all cabinet and cabinet power installation fee amounts under Rule General 8,

amp, 208-volt circuit provides approximately 10.81 kVA (1.732 x 208 x 30 ÷ 1000) for a monthly fee of \$5,944.22 (\$550 x 10.81).

³⁰ 15 U.S.C. 78f(b).

³¹ 15 U.S.C. 78f(b)(4) and (5).

Sections 1(a) and (c) unchanged. Second, and as discussed above, the proposed per kVA fee of \$550 per kVA is reasonable as compared to per kVA fees for comparable products offered by NYSE. By linking charges to delivered power, the proposal enhances transparency and predictability as customers avoid price jumps when moving between tiers because costs scale with power delivered. By comparison, NYSE's model assesses \$900–\$1,200 per kW per month based on a user's aggregate dedicated-cabinet footprint, introducing higher per kVA prices, tier transitions, and variability that Nasdaq's uniform \$550/kVA model avoids.

The Exchange's proposal to replace cabinet-density based pricing with a per-kVA power delivery model equitably allocates fees based on the primary cost driver of co-location services—electrical power capacity and associated cooling—rather than cabinet density range-based footprint. Under the current model, two customers occupying the same cabinet density could incur identical fees despite materially different power demands, resulting in misalignment between fees and the customer's power usage. By charging according to committed and delivered kVA, the Exchange ensures that fees are reasonable and proportionate to the allocated infrastructure resources consistent with Section 6(b)(4).

As discussed above, the fee increases resulting from the proposed changes would support the Exchange's ongoing investments in market infrastructure and co-location services, ensuring competitiveness with peer exchanges. Customer demand for more robust and higher power cabinet options has grown significantly over time. In response, the Exchange has continued to invest in its data center operations to meet these evolving needs, consistent with applicable regulatory requirements. These investments include modernizing equipment and expanding the Exchange's co-location facilities to provide customers with additional space and power capacity, thereby providing customers with additional options for addressing their business needs. It is reasonable and consistent with the Act for the Exchange to recoup its investments, at least in part, by adjusting its fees.

The proposal is also not designed to permit unfair discrimination under Section 6(b)(5). The per-kVA pricing structure applies uniformly to all co-location users based on objective, market infrastructure technology-neutral criteria (power capacity requested and

delivered), without regard to customer identity, membership status, or business model. Differences in fees reflect only differences in service requested and installed, which is a permissible and non-discriminatory basis for differentiation under the Act. The Exchange further believes that the proposed fee changes are not unfairly discriminatory because the proposed cabinet and cabinet power circuit options are available to and assessed uniformly across all market participants.

The Exchange believes that the proposed conforming and other non-substantive changes, including those to Rule General 8, Section 1, are appropriate because they align related parts of the Exchange's rulebook with the proposed changes or otherwise clarify and facilitate the application of the Exchange's rules.

Accordingly, the Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) and 6(b)(5) of the Act because it provides for the equitable allocation of reasonable fees and is not designed to permit unfair discrimination.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether to connect to the Exchange based on the value received compared to the cost of doing so.

Nothing in the proposal burdens intra-market competition because the proposed cabinet, half cabinet, and cabinet power options are available to any customer under the same fees as any other customer, and any customer that wishes to order cabinets and cabinet power options can do so on a non-discriminatory basis.

Co-location services are optional and offered in a highly competitive environment among multiple exchanges and third-party data center providers. Market participants that do not wish to pay for co-location services under the revised pricing model may continue to access the Exchange through alternative connectivity methods or utilize competing venues.

The proposed shift from cabinet-based pricing to a per-kVA power delivery

model is designed to align fees with the actual resource delivered and infrastructure investments, rather than fixed cabinet density ranges. This change does not restrict access or favor any category of participant; all eligible users are subject to the same fees and terms based on objective criteria (committed and delivered power capacity). Accordingly, the proposal does not create any undue burden on intermarket competition, as participants can choose among multiple exchanges and service providers, nor does it impose an undue burden on intramarket competition, as all co-location customers are treated uniformly under the proposed fee structure, as described above.

To the extent the proposal may affect competition, the Exchange believes that the impact is positive because the revised pricing structure promotes cost transparency and fairness, thereby enabling customers to more easily plan for and compare infrastructure expenses, as well as tailor their connectivity selections to suit their specific business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.³²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2026-005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NASDAQ-2026-005. 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 filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2026-005 and should be submitted on or before February 23, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-01993 Filed 1-30-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104721; File No. SR-CBOE-2026-008]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Rule 8.23

January 28, 2026.

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 January 20, 2026, Cboe Exchange, Inc. ("Exchange" or "Cboe Options") filed with the Securities and Exchange Commission ("Commission") the

³³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³² 15 U.S.C. 78s(b)(3)(A)(ii).

proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to codify that certain disruptive order and quote entry and trading activity is prohibited by Exchange Rules as being inconsistent with just and equitable principles of trade. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Commission's website (<https://www.sec.gov/rules/sro.shtml>), the Exchange's website (https://www.cboe.com/us/options/regulation/rule_filings/bzx/), and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt Rule 8.23, which would codify that disruptive order and quote entry and trading activity are prohibited by the Exchange's Rules and the Securities Exchange Act of 1934, as amended (the "Act"), and the rules and regulations thereunder. As a national securities exchange registered pursuant to Section 6 of the Act, the Exchange is required to be organized and to have the capacity to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder, and the Exchange's Rules.³ Further, the Exchange's Rules are required to be "designed to prevent fraudulent and manipulative acts and practices, to

promote just and equitable principles of trade . . . and, in general, to protect investors and the public interest."⁴ In fulfilling these requirements, the Exchange has developed a comprehensive regulatory program that includes automated surveillance of trading activity. When the Exchange identifies or becomes aware of disruptive and potentially manipulative or improper order or quote entry or trading activity, the Exchange investigates the activity and may determine to commence a disciplinary action against the Trading Permit Holder(s) involved pursuant to Chapter XIII of the Rules.

Various Rules currently prohibit disruptive order and quote entry and trading activity, including:

- Rule 8.1, which prohibits TPHs from engaging in acts or practices inconsistent with just and equitable principles of trades;
- Rule 8.2, which prohibits TPHs from engaging in conduct in violation of the Act, the rules and regulations thereunder, and Exchange Rules;
- Rule 8.6, which prohibits TPHs from engaging in market manipulation, including effecting or inducing the purchase, sale, or exercise of any security for the purpose of creating or inducing a false, misleading, or artificial appearance of activity in such security or in the underlying security, or for the purpose of unduly or improperly influencing the market price of such security or of the underlying security or for the purpose of making a price that does not reflect the true state of the market in such security or in the underlying security;
- Rule 8.10, which prohibits TPHs from misusing material, nonpublic information;
- 5.32 and 5.85, which include provisions regarding the priority of order and quote bids and offers of all TPHs; and
- 5.9, which imposes order exposure requirements on TPHs.

Further Section 9(a)(1) of the Act provides in relevant part that it shall be unlawful for any member of a national securities exchange, for the purpose of creating a false or misleading appearance of active trading in any security other than a government security, or a false or misleading appearance with respect to the market for any such security, (A) to effect any transaction in such security which involves no change in the beneficial ownership thereof, or (B) to enter an order or orders for the purchase of such security with the knowledge that an

order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties, or (C) to enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.⁵ Finally, among other things, the activity could also result in a violation of Rule 10b-5 under the Act (which prohibits any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security).⁶

Ultimately, TPHs (on their own behalf or on behalf of customers) should be submitting all orders and quotes at any time for the purpose of executing bona fide transactions or in good faith for legitimate purposes. The Exchange has identified various activities that may comprise disruptive order and quote entry or trading activity in violation of its Rules. As order or quote entry or trading activity not done for the purpose of executing bona fide transactions or is done for illegitimate purposes, and thus prohibited by the Act or Exchange Rules (as set forth above), can take many forms, the Exchange has issued guidance through Regulatory Circulars to identify examples of when such behavior is disruptive and thus prohibited by the Act or Exchange Rules (as set forth above).⁷ While it is the case that various Rules and the Act currently prohibit disruptive order and quote entry and trading activity, and other manipulative trading activity, the Exchange proposes to define more specifically and to codify in its Rules

³ 15 U.S.C. 78i(a)(1).

⁶ 17 CFR 240.10b-5.

⁷ See, e.g., Cboe Regulatory Circular 22-014 (September 26, 2022), available at RC22-014 Prearranged Trading and Signaling of Imminent Orders ([cboe.com](https://www.cboe.com)); and Cboe Regulatory Circular 22-008 (March 18, 2022), available at RC22-008 Quote and Order Messaging—Prohibited Activity ([cboe.com](https://www.cboe.com)). Other exchanges have similarly issued notices to their members to specify certain behavior that is deemed to be considered violations of those exchanges' rules that (like Exchange Rule 8.1) prohibit acts or practices inconsistent with just and equitable principles of trading. See, e.g., MIAx Options Exchange Regulatory Circular 2022-09, MIAx Pearl Options Exchange Regulatory Circular 2022-09, MIAx Emerald Options Exchange Regulatory Circular 2022-09, available at MIAx_Options_RC_2022_09.pdf ([miaxglobal.com](https://www.miaxglobal.com)); and BOX Exchange Regulatory Circular RC-2022-004 (March 10, 2022), available at RC-2022-04-Invalid-and-Incomplete-Message-Transmissions.pdf ([boxoptions.com](https://www.boxoptions.com)).

³ 15 U.S.C. 73f(b)(1).

⁴ 15 U.S.C. 78f(b)(5).

what constitutes prohibited activity.⁸ The Exchange believes it would be beneficial to describe and specify in the Rules what constitutes prohibited order and quote entry and trading activity to provide TPHs with additional context for situations in which the Exchange may take disciplinary action against them for certain activity as being for illegitimate and non-bona fide purposes. The Exchange believes this may help TPHs avoid engaging in such activities or allowing their clients to engage in such activities, which may thus reduce manipulative and disruptive activity on the Exchange.

Specifically, proposed Rule 8.23(a) states that TPHs, on their own behalf or on behalf of customers, must submit all orders and quotes at any time for the purpose of executing bona fide transactions or in good faith for legitimate purposes. Non-bona fide or nonlegitimate purposes include, but are not limited to:

(1) entering an order or quote with the intent, at the time of entry, to cancel the order or quote before execution or to modify the order or quote to avoid execution;

(2) entering or causing to be entered an actionable or nonactionable message(s) with intent to mislead other market participants;

(3) entering into a transaction or series of transactions, coupled with an agreement, arrangement, or understanding, directly or indirectly to reverse such transaction(s), which is not done for a legitimate economic purpose or is done without subjecting the transaction to market risk;

(4) entering orders or quotes to signal the arrival of an order or otherwise to coordinate order flow with another market participant;

(5) entering or using IOC orders or quotes for purposes other than to remove resting interest in the Book or the excessive use of IOC orders or quotes;

(6) entering or causing to be entered an actionable or nonactionable message(s) with intent to overload or delay the systems of the Exchange or other market participants, including dividing an order or quote into multiple messages;

(7) intentionally or recklessly submitting or causing to be submitted an actionable or nonactionable message(s) that has the potential to disrupt the systems of the Exchange or other market participants;

(8) entering or causing to be entered an actionable or nonactionable message(s) with intent to disrupt, or with reckless disregard for the adverse impact on, the orderly conduct of trading or the fair execution of transactions;

(9) engaging in a pattern and practice of submitting nonactionable messages for the purpose of seeking to reduce latency;

(10) submitting intentionally incomplete, corrupted, or malformed data; and

(11) engaging in a pattern and practice of preventing any message from reaching an Exchange gateway application and being successfully processed.

The activity identified in proposed Rule 8.23(a) as illegitimate or for non-bona fide purposes is currently prohibited by Exchange Rules.⁹ The Exchange believes proposed Rule 8.23(a) will provide TPHs with clear descriptions of examples of disruptive order and quoting entry and trading activity, which will help them avoid engaging in such activities or allowing their clients to engage in such activities. Proposed Rule 8.23(a) is not meant to define all permutations of prohibited disruptive quote and order entry and trading activity; however, the Exchange believes it is important to provide TPHs with specific details regarding prohibited behavior and that these examples are consistent with activity the Exchange has previously identified as being disruptive and violations of its Rules.¹⁰

Proposed Rule 8.23(b) describes various factors the Exchange may consider when assessing whether conduct constitutes disruptive or manipulative activity and thus violates proposed Rule 8.23, which factors include, but are not limited to:

(1) whether the market participant's intent was to induce others to trade when they otherwise would not;

(2) whether the market participant's intent was to affect a price rather than to change the market participant's position;

(3) whether the market participant's intent was to create misleading market conditions;

(4) the size, number, frequency, and duration of exposure of the market participant's actionable or nonactionable messages, as applicable;

(5) the market participant's current and historical order and quote entry and trading activity on the Exchange and in related markets;

(6) the impact on other market participants, including others' orders and quotes, and market prices;

(7) the impact on Exchange systems including the certification environment;

(8) whether a market participant enters or cancels orders or quotes during the Queuing Period or Opening Rotation (each as described in Rule 5.31(a)), or complex orders or quotes prior to or during the Complex Order Book ("COB") Opening Process (as described in Rule 5.33(c)), for the purpose of either manipulating the expected opening price or attempting to identify the order depth in the Book or COB, as applicable, at different price levels;

(9) general market conditions; and

(10) industry standards and best practices, including those related to automated trading systems.

The Exchange believes these factors are consistent with the prohibited activity described in proposed paragraph (a) that, when considered in context, supports whether there was requisite intent for the market participant's conduct, for example, to induce another market participant to engage in market activity. For example, the volume and frequency of a specific activity and the resulting impact on Exchange systems can support a finding of intent to impact latency. However, high market volatility may cause market participants to modify their behavior for legitimate purposes.¹¹

Proposed Rule 8.23(c) provides that, absent other factors or circumstances, the following activities do not constitute a violation of Rule 8.23:

(1) modification or cancellation of an order or quote initially entered with the intent to execute a bona fide transaction in response to market changes;

(2) unintentional or accidental submission of an order or quote;

(3) making a two-sided market with unequal quantities;

(4) submission of orders or quotes during the Queuing Period or Opening Rotation (each as described in Rule 5.31(a)), or complex orders or quotes prior to or during the COB Opening Process (as described in Rule 5.33(c)), for the purpose of executing bona fide transactions upon the opening of the market;

(5) entering orders or quotes at various price levels throughout the Book or COB, as applicable, to gain priority position and subsequently canceling those orders or quotes in response to market changes; and

(6) submitting orders, quotes, and messages in test products for legitimate testing purposes.

Just as the Exchange believes it is beneficial to identify as many types of specific activity that are prohibited by the Rules, the Exchange believes it is equally beneficial to identify for TPHs as many types of activity that do not on their face (absent other factors or circumstances) constitute illegitimate or non bona fide quoting or trading activity. The Exchange views the activities described in proposed paragraph (c) as ones that are for legitimate purposes. For example, there are many circumstances in which it is a bona fide activity to modify or cancel

⁹ See, e.g., Rules 8.1 and 8.6.

¹⁰ See, e.g., Cboe Regulatory Circular 22-014 (September 26, 2022), available at RC22-014 Prearranged Trading and Signaling of Imminent Orders ([cboe.com](https://www.cboe.com)); and Cboe Regulatory Circular 22-008 (March 18, 2022), available at RC22-008 Quote and Order Messaging—Prohibited Activity ([cboe.com](https://www.cboe.com)).

⁸ The Exchange notes this list is not exhaustive, as activity not specified may still be deemed disruptive and thus prohibited by the Act or Exchange Rules, including those set forth above.

¹¹ This does not mean that all activity during periods of high market volatility is legitimate; rather, the Exchange, when reviewing a market participant's activity, will consider whether volatility may have caused the market participant to engage in such activity to address those market conditions rather than to engage in disruptive activity.

an order, including to respond to changes in the market or increased volatility. Additionally, while the Exchange believes market participants take steps to minimize erroneous submission of orders, the Exchange understands such errors (including those caused by system disruptions) occur and do not believe bona fide erroneous activity rises to the level of illegitimate actors. Further, the Exchange provides a testing environment in the System so TPHs, for example, can verify a connection to the System before entering into the production (*i.e.*, live) environment. The Exchange notes the activities listed in proposed paragraph (c), combined with other facts and circumstances, may rise to the level of prohibited activity under proposed paragraph (a); however, on their face, the activities listed in proposed paragraph (c) are not prohibited by the proposed rule. The Exchange believes this may eliminate potential confusion regarding whether certain activity is permissible under Exchange Rules.

Finally, the Exchange proposes to adopt the following interpretations and policies to proposed Rule 8.23 to provide TPHs with additional information to assist them when determining whether certain activity is disruptive and thus prohibited by Rule 8.23. Specifically:

.01 Execution (full or partial) of an order or quote does not automatically cause the order or quote to be considered compliant with the Rule but rather is one factor the Exchange may consider.

.02 For purposes of this Rule, actionable messages are messages that can be accepted by the Exchange or another party or lead to the execution of a trade or cancellation of an order or quote, including order messages and bulk messages. Nonactionable messages are those messages submitted to the Exchange that relate to a nonactionable event, including, but are not limited to: (a) heartbeat messages transmitted to the System; (b) the entry of orders, quotes, or other messages in test products other than solely for legitimate testing purposes; and (c) messages that are incomplete, partial, corrupt, or otherwise unable to be processed by the Exchange.

.03 The Exchange evaluates whether a market participant intended to disrupt the orderly conduct of trading or the fair execution of transactions or demonstrated a reckless disregard for the orderly conduct of trading or the fair execution of transactions only in the context of the specific instrument, market conditions, and other circumstances present at the time in question. Some factors the Exchange may consider when determining whether there was orderly conduct or the fair execution of transactions include, but are not limited to: (a) a rational relationship between consecutive prices; (b) a strong correlation between price changes

and the volume of trades; (c) levels of volatility that do not dramatically reduce liquidity; (d) accurate relationships between the price of a derivative and the underlying financial instrument; (e) reasonable spreads between contracts for near months and for remote months; and (f) the impact to other market participants' ability to trade, engage in price discovery or manage risk. Volatility alone is not presumptively interpreted as disorderly or disruptive, as market volatility can be consistent with markets performing their price discovery function.

.04 Proof of intent is not limited to instances in which a market participant admits the market participant's state of mind. If conduct more likely than not was intended to produce a prohibited disruptive consequence or was reckless, intent may be found. Claims of ignorance, or lack of knowledge, are not acceptable defenses to intentional or reckless conduct. The Exchange generally will find requisite intent if the purpose of the market participant's conduct was, for example, to induce another market participant to engage in market activity.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹² Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable, principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes the proposed rule change is consistent with the Section 6(b)(5)¹⁴ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Further, the Exchange believes the proposed rule change is consistent with Section 6(b)(1) of the Act,¹⁵ which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act. The Exchange's Rules are required to be "designed to prevent fraudulent and manipulative acts and practices, to

promote just and equitable principles of trade . . . and, in general, to protect investors and the public interest."¹⁶

In particular, 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, as it provides TPHs with additional guidance regarding what conduct constitutes specified prohibited fraudulent and manipulative acts and practices and activity that is inconsistent with just and equitable principles of trade. As noted above, various Rules and the Act currently prohibit disruptive order and quote entry and trading activity, manipulative trading activity, and conduct that is inconsistent with just and equitable principles of trade. While it is not possible to identify all behavior that is disruptive or manipulative, the Exchange believes it is beneficial to specify as much behavior as practicable that is disruptive or manipulative. The Exchange believes the proposed rule change provides TPHs with additional context for situations in which the Exchange may take disciplinary action against them for certain activity as being disruptive, and thus manipulative or unjust. The Exchange believes there is no legitimate purpose for the prohibited activities set forth in proposed paragraph (a), as they generally intend to manipulate market prices, evade exposure and on-Exchange competition, or disrupt the Exchange System. Such activity is disruptive to the market and other investors and may result in market manipulation to the detriment of the market and investors, which activity the Exchange Act requires our rules to be designed to prevent.¹⁷

The Exchange's determination whether certain activity is disruptive or manipulative is generally based on facts and circumstances. Therefore, the Exchange believes setting forth not only what constitutes prohibited activity but also factors the Exchange considers when determining whether activity is prohibited will ultimately benefit investors by providing them with further clarity regarding activity that is and is not permissible. The Exchange believes this may help TPHs avoid engaging in such activities or allowing their clients to engage in such activities, which may thus reduce manipulative and disruptive activity on the Exchange and ultimately protect investors and the public interest. Similarly, the Exchange believes including examples of activity that (in the absence of other facts and circumstances) is not prohibited under

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ *Id.*

¹⁵ 15 U.S.C. 78f(b)(1).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78f(b)(5).

proposed Rule 8.23 will similarly provide further clarity to investors regarding what activity they may and may not engage in on the Exchange.

The Exchange also believes the proposed rule change is consistent with Section 9(a)(1) of the Act, which provides in relevant part that it shall be unlawful for any member of a national securities exchange, for the purpose of creating a false or misleading appearance of active trading in any security other than a government security, or a false or misleading appearance with respect to the market for any such security, (A) to effect any transaction in such security which involves no change in the beneficial ownership thereof, or (B) to enter an order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties, or (C) to enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.¹⁸ Finally, among other things, the activity could also result in a violation of Rule 10b–5 under the Act (which prohibits any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security).¹⁹ The Exchange believes the proposed prohibited activity and factors the Exchange may consider when determining whether certain conduct constitutes such prohibited activity is consistent with these requirements under the Act. For example, identifying activity set forth in proposed subparagraphs (a)(3) and (4) (as well as the factor listed in proposed subparagraph (b)(6)) may support an Exchange finding that a market participant's entry of an order to purchase an option with the knowledge that another order selling that option will be entered by or for the same or different parties, as prohibited by Section 9(a)(1) under the Act. Additionally, the existence of activities as set forth in proposed subparagraphs (a)(2), (7), and (8) (coupled with factors listed in proposed subparagraphs (b)(1) through (3)) may support an Exchange finding that a market participant's

activity was intended to deceive other market participants, as prohibited by Rule 10b–5 under the Act.

If the Exchange believes a TPH has violated proposed Rule 8.23, such alleged violation will be pursued in accordance with the Exchange's disciplinary process as set forth in Chapter XIII of the Rules (as required by Section 6(b)(1) of the Act, which requires the Exchange to be organized and have the capacity to enforce compliance by the Exchange's TPHs and persons associated with its TPHs with the Act, the rules and regulations thereunder, and the rules of the Exchange, and Section 6(b)(7) of the Act, which requires that the rules of an exchange "provide a fair procedure for the disciplining of members and persons associated with persons... and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof").²⁰

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will apply in the same manner to all TPHs. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the prohibition of disruptive quoting and order entry and trading activity will benefit the market as whole. As noted above, the Exchange and other exchanges have issued guidance that specifies certain behavior that is deemed to be considered violations of those exchanges' rules that (like Exchange Rule 8.1) prohibit acts or practices inconsistent with just and equitable principles of trading.²¹

²⁰ 15 U.S.C. 78f(b)(1) and (7).

²¹ See, e.g., Cboe Regulatory Circular 22–014 (September 26, 2022), available at RC22–014 Prearranged Trading and Signaling of Imminent Orders ([cboe.com](https://www.cboe.com)); and Cboe Regulatory Circular 22–008 (March 18, 2022), available at RC22–008 Quote and Order Messaging—Prohibited Activity ([cboe.com](https://www.cboe.com)); see also, e.g., MIAx Options Exchange Regulatory Circular 2022–09, MIAx Pearl Options Exchange Regulatory Circular 2022–09, MIAx Emerald Options Exchange Regulatory Circular 2022–09, available at MIAx Options RC 2022_09.pdf (mioxglobal.com); and BOX Exchange Regulatory Circular RC-2022-004 (March 10, 2022),

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)²² of the Act and Rule 19b–4(f)(6)²³ thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act²⁴ and Rule 19b–4(f)(6) thereunder.²⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

available at RC–2022–04-Invalid-and-Incomplete-Message-Transmissions.pdf ([boxoptions.com](https://www.cboe.com)).

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b–4(f)(6).

²⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁵ 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁶ 15 U.S.C. 78s(b)(2)(B).

¹⁸ 15 U.S.C. 78i(a)(1).

¹⁹ 17 CFR 240.10b–5.

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-2026-008 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-2026-008. 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 filing 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-2026-008 and should be submitted on or before February 23, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-01992 Filed 1-30-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104705; File No. SR-CboeEDGX-2025-035]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Exchange Rule 11.21 To Allow a Retail Member Organization To Enter a Retail Order Onto the Exchange in a Principal Capacity

January 28, 2026.

I. Introduction

On May 21, 2025, Cboe EDGX Exchange, Inc. ("Exchange") filed with the Securities and Exchange

Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to (i) amend Exchange Rule 11.21(a)(2) to allow a Retail Member Organization ("RMO") to enter a Retail Order onto the Exchange in a principal capacity, provided certain conditions are satisfied.³ On July 25, 2025, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On September 4, 2025, the Exchange submitted Amendment No. 1 to the proposed rule change, which amended and superseded the proposed rule change in its entirety.⁶ On September 5, 2025, the Commission published notice of Amendment No. 1 and instituted proceedings under Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁸ On December 3, 2025, the Commission designated February 5, 2026 as the date by which the Commission shall either approve or disapprove the proposed rule change.⁹ The Commission has not received any comments on the proposal. As discussed further below, this order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange proposes to (i) amend Exchange Rule 11.21(a)(2) to allow an RMO to enter a Retail Order onto the Exchange in a principal capacity,

provided the requirements of proposed Exchange Rule 11.21(g) are satisfied; (ii) codify in proposed new Exchange Rule 11.21(g) additional requirements an RMO must comply with in order to enter Retail Orders as principal; and (iii) amend Exchange Rule 11.21(b)(6) to require that RMOs have in place policies and procedures reasonably designed to ensure compliance with proposed Exchange Rule 11.21(g), as well as to ensure that the RMO can, upon request by the Exchange, produce documentation evidencing compliance with the requirements of Exchange Rule 11.21(g).

A. Modifications to Exchange Rule 11.21(a)(2) In Order To Permit RMOs To Enter Retail Orders in a Principal Capacity

Currently, RMOs are only able to submit Retail Orders to the Exchange in an agency or riskless principal capacity.¹⁰ Specifically, a Retail Order is defined as: "an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology."¹¹ The Exchange states it has received feedback from certain RMOs that the ability to handle Retail Orders in a principal capacity will enable them to provide their retail customers with post-execution price improvement that is in addition to any price improvement received on the Exchange.¹² The Exchange states that "RMOs may choose to execute in this manner to satisfy certain execution quality and price improvement benchmarks RMOs have applied to their underlying retail order(s), as well as to simply provide

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 103182 (June 4, 2025), 90 FR 24476 (June 10, 2025). A "Retail Member Organization" or "RMO" is a Member (or a division thereof) that has been approved by the Exchange under Rule 11.21 to submit Retail Orders. See Exchange Rule 11.21(a)(1). "Member" is defined in Exchange Rule 1.5(n). As described herein, "Retail Order" is defined in Exchange Rule 11.21(a)(2).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 103546 (July 25, 2025), 90 FR 35954 (July 30, 2025) (designating September 8, 2025 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change).

⁶ The full text of Amendment No. 1 is available on the Commission's website at <https://www.sec.gov/comments/sr-cboeedx-2025-035/sr-cboeedx2025035-648447-1943494.pdf>.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See Securities Exchange Act Release No. 103878 (Sept. 5, 2025), 90 FR 43668 (Sept. 10, 2025) ("Notice and OIP").

⁹ See Securities Exchange Act Release No. 104302 (Dec. 3, 2025), 90 FR 56806 (Dec. 8, 2025).

¹⁰ See Exchange Rule 11.21(a)(2). The Exchange states that it offers (i) retail-only pricing incentives for low cost remove fees and premium rebates, (ii) discounts for RMOs on port fees and market data and (iii) retail tiers that give growing retail firms additional rebates. See Notice and OIP at 43670; Cboe U.S. Equities Fee Schedules, EDGX Equities, <https://www.cboe.com/us/equities/membership/fee-schedule/edx/>. The Exchange also states that it offers RMOs the ability to participate in the Exchange's "Retail Priority program," pursuant to which the displayed portion of an individual customer's Retail Priority Order will post at the front of the order queue for same-priced orders submitted on EDGX. *Id.* Pursuant to Exchange Rule 11.9, Interpretations and Policies .01 a "Retail Priority Order" is a Retail Order that is entered on behalf of a person that does not place more than 390 equity orders per day on average during a calendar month for its own beneficial account(s).

¹¹ See Exchange Rule 11.21(a)(2).

¹² See Notice and OIP at 43669.

²⁷ 17 CFR 200.30-3(a)(12).

additional price improvement as a service to their retail customer(s) or retail broker customers.”¹³ The Exchange further states that providing this *additional* price improvement is not possible under the current definition of Retail Order because such principal orders fail to meet the definition of riskless principal because the price ultimately allocated to the retail customer by the RMO would be different from (*i.e.*, always be better priced than) the price the principal order received on the Exchange.¹⁴

The Exchange proposes to amend Exchange Rule 11.21(a)(2) to provide that an RMO may now also enter a Retail Order as a “principal order”, provided the requirements in proposed Exchange Rule 11.21(g), as discussed below, are met.

B. Additional Requirements for Retail Orders Entered as Principal Orders

The Exchange proposes to introduce Exchange Rule 11.21(g) to ensure that principal orders entered as Retail Orders are done so only on behalf of bona fide retail customers. Specifically: (i) the RMO must be in receipt of and actively managing, at the time of order entry onto the Exchange, a Retail Order it seeks to execute on behalf of a retail customer; (ii) the Retail Order entered by an RMO as principal must solely be for the purpose of providing post-execution price improvement¹⁵ to the retail customer(s) in addition to any price improvement received on the Exchange; (iii) the size of the principal order must not be greater than that of the underlying order(s) entered on behalf of the retail customer(s); and (iv) the total number of shares executed in a principal capacity must be fully allocated to the underlying retail customer(s) in a consistent manner and within 60-seconds of execution. The Exchange states that these requirements are similar to the requirements of

FINRA Rule 5320.03 (Riskless Principal Exception).¹⁶

The Exchange also states that monitoring for compliance with these requirements will occur post-trade, as part of the Exchange’s existing surveillance functions, noting the Exchange’s Regulatory and Surveillance departments already possess the capability to review Retail Orders to ensure that those entered in a principal or riskless principal transaction were indeed entered and executed by the RMO on behalf of a retail customer.¹⁷ The Exchange expects that the Regulatory and Surveillance functions would monitor for Retail Orders that were entered principally, but not ultimately executed as riskless principal, and further inquire with the RMO that the requirements of new Exchange Rule 11.21(g) were satisfied. Further, the Exchange states that in 2024, 25.5% of all Retail Orders entered across each of Cboe’s four equities exchanges were entered as principal, compared to only 6.4% entered as riskless principal and therefore, as a practical matter, the Exchange is accustomed to conducting surveillance of Retail Orders entered as principal, and the proposed amendment should not pose any additional issues.¹⁸

C. Amendments to Exchange Rule 11.21(b)(6) Requiring Policies and Procedures for, and Documentation of, Retail Orders Entered in a Principal Capacity

The Exchange proposes to amend Exchange Rule 11.21(b)(6) to require that RMOs choosing to enter Retail Orders in a principal capacity must have in place policies and procedures reasonably designed to ensure compliance with the requirements of new Exchange Rule 11.21(g), and to ensure the RMO is able to, upon request, provide the Exchange with documentation evidencing compliance with such requirements. If an RMO does not itself conduct a retail business, but chooses to execute in a principal capacity Retail Orders it manages on behalf of another broker-dealer, the RMO’s supervisory procedures must be reasonably designed to ensure that the orders it receives from such other broker-dealer that are designated as Retail Orders meet the definition of a Retail Order. To this end, the RMO must: (i) obtain an annual written representation, in a form acceptable to

the Exchange, from each other broker-dealer that sends the RMO orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of Exchange Rule 11.21; and (ii) monitor whether Retail Order flow routed on behalf of such other broker-dealers meets the applicable requirements.

Additionally, the Exchange states that the proposed rule change does not present any new or material risks that the Exchange has not already mitigated through its RMO application process for orders entered onto the Exchange as Retail Orders on behalf of retail customers.¹⁹ The Exchange further states that its regulatory and surveillance functions provide appropriate oversight by monitoring for continued compliance with the terms of the RMO requirements, including that an RMO will only designate orders as Retail Orders if all requirements of a Retail Order are met.²⁰ If an RMO fails to abide by the Retail Order requirements, the Exchange in its sole discretion may disqualify a Member from its status as an RMO.²¹ The Exchange also states that as Members of the Exchange, RMOs must be registered brokers or dealers and therefore are subject to various FINRA and Exchange business conduct rules, and that RMOs are obligated to ensure that only orders that comply with Exchange rules are routed to the Exchange and designated as Retail Orders.²²

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²³ In particular, the Commission finds that the proposed rule change is consistent with Sections 6(b)(5).²⁴ Section 6(b)(5) of the Act 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

¹³ See *id.* at 43670.

¹⁴ *Id.* at 43669–70. A “riskless principal” transaction is a transaction in which a member, after having received an order to buy (sell) a security, purchases (sells) the security as principal and satisfies the original order by selling (buying) as principal at the *same* (emphasis added) price (the offsetting “riskless” leg). See FINRA Rule 5320.03—“Riskless Principal Exception”, <https://www.finra.org/rules-guidance/rulebooks/finra-rules/5320>.

¹⁵ Should an RMO enter a Retail Order principally but elect not to provide post-execution price improvement the Exchange states that it would expect that the RMO would allocate that execution back to their retail customer(s) in a riskless principal capacity, in which case such transaction must comply with existing Exchange Rule 11.21(a)(2) and FINRA Rule 5320.03. See Notice and OIP at 43671, n.17.

¹⁶ See Notice and OIP at 43671. FINRA Rule 5320.03 provides an exception for FINRA members from FINRA’s general prohibition on a member trading ahead of its own customers.

¹⁷ See Notice and OIP at 43671.

¹⁸ *Id.*

¹⁹ *Id.* at 43672.

²⁰ See *id.*

²¹ See Exchange Rule 11.21(c)(1).

²² See Notice and OIP at 43673 (citing as examples FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade), Exchange Rule 2.2 (Obligation of Members and the Exchange), and Exchange Rule 3.1 (Business Conduct of Members)).

²³ 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁴ 15 U.S.C. 78f(b)(5).

perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.²⁵

The Commission has previously recognized that market participants and some exchanges distinguish between individual retail investors, whose orders are considered desirable by liquidity providers because such retail investors are presumed on average to be less informed about short-term price movements, and professional traders, whose orders are presumed on average to be more informed about short-term price movements.²⁶ The Commission has also recognized that, because of this distinction, some liquidity providers may be more inclined to offer price improvement to retail orders.²⁷ And the Commission has previously stated that proposals involving segmentation of order flow on a national securities exchange—even if such order flow is retail or offers price improvement to retail orders—must be carefully evaluated.²⁸

The proposed rule change is novel in that it expands the definition of Retail Order to allow RMOs to submit Retail Orders to the Exchange in a principal capacity without requiring an offsetting riskless transaction.²⁹ In order to enter such orders, however, the RMO's sole purpose must be to provide post-execution price improvement to the retail customer in addition to any price improvement received on the Exchange.³⁰ The Exchange states that principal orders entered in this manner are for the benefit of the underlying retail customer, and are consistent with the definition of Retail Order and the purposes of its Retail Priority program. Further, the Exchange states that more retail flow may be directed to the Exchange and have the opportunity to execute on a regulated, transparent

market if RMOs are provided with this additional order capacity.³¹

In addition to the post-execution price improvement requirement described above, the RMO must be in receipt of and actively managing, at the time of order entry onto the Exchange, the Retail Order or Orders it seeks to execute on behalf of a retail customer or customers,³² the size of the principal order must not be greater than that of the underlying order(s) entered on behalf of the retail customer(s),³³ and the total number of shares executed in a principal capacity must be fully allocated to the underlying retail customer(s) in a consistent manner and within 60 seconds of execution.³⁴ These conditions are analogous to conditions imposed by FINRA with respect to riskless principal transactions, including, in relevant part, that the offsetting principal transaction occur within 60 seconds of execution.³⁵

The proposed expansion of the definition of Retail Order, in combination with the requirements imposed by new Exchange Rule 11.21(g), is reasonably designed to attract retail order flow to a registered national securities exchange, while offering the opportunity for retail investors to benefit from additional, post-execution price improvement that RMOs may be willing to offer.

Further, the proposal includes safeguards with respect to regulatory and surveillance functions. The proposed changes to Exchange Rule 11.21(b)(6) require that RMOs choosing to enter Retail Orders in a principal capacity maintain policies and procedures reasonably designed to ensure compliance with the requirements of new Exchange Rule 11.21(g).³⁶ In addition, an RMO must, upon request, be able to provide the Exchange with documentation evidencing compliance. The Exchange represents that monitoring for compliance with these requirements will occur post trade, as part of the Exchange's existing surveillance functions.³⁷ The Exchange further represents that it is accustomed to conducting surveillance of Retail Orders entered as principal such that the proposed amendment should not pose any additional issues, and its Regulatory and Surveillance departments already possess the capability to review Retail

Orders to ensure that those entered in a principal or riskless principal transaction were indeed entered and executed by the RMO on behalf of a retail customer.³⁸

The proposal to expand the definition of Retail Order to include orders entered on a principal basis, subject to the compliance requirements and monitoring discussed herein, is reasonably designed to ensure that RMOs submit only bona fide retail order flow as Retail Orders and thereby should promote just and equitable principals of trade and protect investors and the public interest.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act³⁹ that the proposed rule change (SR-CboeEDGX-2025-035), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁰

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-01974 Filed 1-30-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104731; File No. SR-PEARL-2025-50]

Self-Regulatory Organizations; MIAx PEARL, LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Allow Post-Only Orders in Sub-Dollar Securities

January 28, 2026.

On December 10, 2025, MIAx PEARL, LLC ("MIAx Pearl") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend subparagraph (c)(2) of MIAx Pearl Rule 2614, Orders and Order Instructions, to allow the Post Only order instruction to be applied to orders in securities priced below \$1.00 on its equity trading platform. The proposed rule change was published for comment

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ See, e.g., Securities Exchange Act Release No. 73702 (Nov. 28, 2014), 79 FR 72049, 72051 (Dec. 4, 2014) (SR-BX-2014-048) (approving the BX Retail Price Improvement Program on a pilot basis).

²⁷ *Id.*

²⁸ See Securities Exchange Act Release No. 86619 (Aug. 9, 2019) 84 FR 41769, 41771 (Aug. 15, 2019) (SR-IEX-2019-05) (approving the IEX Retail Price Improvement Program).

²⁹ See *supra* note 14 regarding riskless principal transactions.

³⁰ See proposed Exchange Rule 11.21(g)(ii). The Exchange states that RMOs may choose to execute in this manner to satisfy certain execution quality and price improvement benchmarks or to provide additional price improvement as a service to retail customers or retail broker customers. See Notice and OIP at 43670.

³¹ See Notice and OIP at 43673.

³² See proposed Exchange Rule 11.21(g)(i).

³³ See proposed Exchange Rule 11.21(g)(iii).

³⁴ See proposed Exchange Rule 11.21(g)(iv).

³⁵ See *supra* note 16.

³⁶ See proposed Exchange Rule 11.21(g).

³⁷ See Notice and OIP at 43671.

³⁸ *Id.*

³⁹ 15 U.S.C. 78s(b)(2).

⁴⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

in the **Federal Register** on December 29, 2025.³

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is February 12, 2026. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁵ designates March 29, 2026, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-PEARL-2025-50).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-02002 Filed 1-30-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104709; File No. SR-EMERALD-2026-01]

Self-Regulatory Organizations; MIAx Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a New Methodology for Assessment and Collection of the Options Regulatory Fee (ORF)

January 28, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 20, 2026, MIAx Emerald, LLC (“MIAx Emerald” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the MIAx Emerald Options Exchange Fee Schedule (the “Fee Schedule”) relating to the Options Regulatory Fee (“ORF”) to adopt a new methodology for assessment and collection of ORF for transactions that occur on the Exchange (“On-Exchange ORF”).

The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxglobal.com/markets/us-options/miax-options/rule-filings> and at the Exchange’s principal office.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its current methodology for assessment and collection of a regulatory fee to assess On-Exchange ORF only for options transactions that occur on the Exchange that would clear in the “customer”³

range at The Options Clearing Corporation (“OCC”). The Exchange would no longer assess a regulatory fee for options transactions that occur on other exchanges. This proposal only proposes to amend the method of assessment and collection of the fee. A future rule filing would be filed to set the applicable On-Exchange ORF rate in advance of assessing and collecting it under the proposed method. The following provides more detail regarding the proposal.

Background

The ORF is designed to cover a material portion of the costs to the Exchange of the supervision and regulation of Members’⁴ customer options business, including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange’s other regulatory fees and fines, will cover a material portion, but not all, of the Exchange’s regulatory costs.

Collection of ORF

The Exchange assesses the per-contract ORF to each Member for all options transactions cleared or ultimately cleared by the Member, which are cleared by the OCC in the “customer” range,⁵ regardless of the exchange on which the transaction occurs. The ORF is collected by OCC on behalf of the Exchange from either: (1) a Member that was the ultimate clearing firm⁶ for the transaction; or (2) a non-Member that was the ultimate clearing firm where a Member was the executing clearing firm⁷ for the transaction. The

⁴ The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

⁵ Exchange participants must record the appropriate account origin code on all orders at the time of entry in order. The Exchange represents that it has surveillances in place to verify that Members mark orders with the correct account origin code.

⁶ The Exchange takes into account any Clearing Member Trade Assignment (“CMTA”) transfers when determining the ultimate clearing firm for a transaction. CMTA is a form of “give up” whereby the position will be assigned to a specific clearing firm at the OCC.

⁷ Throughout this filing, “executing clearing firm” means the clearing firm through which the entering broker indicated that the transaction would be cleared at the time it entered the original order which executed, and that clearing firm could be a designated “give up”, if applicable. The executing clearing firm may be the ultimate clearing firm if no CMTA transfer occurs. If a CMTA transfer occurs, however, the ultimate clearing firm would be the clearing firm that the position was transferred to for clearing via CMTA.

³ See Securities Exchange Act Release No. 104462 (Dec. 19, 2025), 90 FR 60807. The Commission has received no comment letters on the proposed rule change.

⁴ 15 U.S.C. 78s(b)(2).

⁵ 15 U.S.C. 78s(b)(2).

⁶ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Currently, the ORF is assessed by the Exchange and collected via OCC on behalf of the Exchange from either: (1) a Member that was the ultimate clearing firm for the transaction; or (2) a non-Member that was the ultimate clearing firm where a Member was the executing clearing firm for the transaction. The Exchange uses reports from the OCC to determine the identity of the executing clearing firm and ultimate clearing firm.

Exchange uses reports from OCC to determine the identity of the executing clearing firm and ultimate clearing firm.

To illustrate how the ORF is assessed and collected, the Exchange provides the following set of examples. If the transaction is executed on the Exchange and the ORF is assessed, if there is no change to the clearing account of the original transaction, then the ORF is collected from the Member that is the executing clearing firm for the transaction. (The Exchange notes that, for purposes of the Fee Schedule, when there is no change to the clearing account of the original transaction, the executing clearing firm is deemed to be the ultimate clearing firm.) If there is a change to the clearing account of the original transaction (*i.e.*, the executing clearing firm “gives-up” or “CMTAs” the transaction to another clearing firm), then the ORF is collected from the clearing firm that ultimately clears the transaction—the ultimate clearing firm. The ultimate clearing firm may be either a Member or non-Member of the Exchange. If the transaction is executed on an away exchange and the ORF is assessed, then the ORF is collected from the ultimate clearing firm for the transaction. Again, the ultimate clearing firm may be either a Member or non-Member of the Exchange. The Exchange notes, however, that when the transaction is executed on an away exchange, the Exchange does not assess the ORF when neither the executing clearing firm nor the ultimate clearing firm is a Member (even if a Member is “given-up” or “CMTAed” and then such Member subsequently “gives-up” or “CMTAs” the transaction to another non-Member via a CMTA reversal). Finally, the Exchange does not assess the ORF on outbound linkage trades, whether executed at the Exchange or an away exchange. “Linkage trades” are tagged in the Exchange’s system, so the Exchange can readily tell them apart from other trades.

ORF Revenue and Monitoring of ORF

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. In determining whether an expense is considered a regulatory cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset ORF.

The Exchange believes that its broad regulatory responsibilities with respect to a Member’s activities supports

applying the ORF to transactions cleared but not executed by a Member. The Exchange’s regulatory responsibilities are the same regardless of whether a Member enters a transaction or clears a transaction executed on its behalf. The Exchange regularly reviews all such activities, including performing surveillance for position limit violations, manipulation, front-running, contrary exercise advice violations and insider trading.

Revenue generated from ORF, when combined with all of the Exchange’s other regulatory fees and fines, is designed to cover a material portion of the regulatory costs to the Exchange of the supervision and regulation of Members’ customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Regulatory costs include direct regulatory expenses and certain indirect expenses in support of the regulatory function. The direct expenses include in-house and third party service provider costs to support the day-to-day regulatory work such as surveillances, investigations and examinations. The indirect expenses are only those expenses that are in support of the regulatory functions, such areas include Office of the General Counsel, technology, finance, and internal audit.

Proposal

The Exchange appreciates the evolving changes in the market and regulatory environment and has been evaluating its current methodologies and practices for the assessment and collection of ORF while considering industry and the Securities and Exchange Commission (the “Commission”) feedback. As a result of this review, the Exchange proposes to modify its current ORF to continue to assess ORF for options transactions cleared by OCC in the “customer” range, however ORF would be assessed on each side of an options transaction cleared by the OCC in the “customer” range for executions that occur on the Exchange. Specifically, the ORF would continue to be collected by OCC on behalf of the Exchange from Members and non-Members for all “customer” transactions executed on the Exchange. ORF would be assessed and collected on all ultimately cleared “customer” contracts, taking into account adjustments for CMTA that were provided to the Exchange the same day as the trade.⁸

⁸ Adjustments to CMTA that occur at OCC would not be taken into account.

Further, the Exchange would bill ORF according to the clearing instructions provided on the execution. More specifically, the Exchange proposes to assess ORF based on the clearing instruction provided on the execution on trade date and would not take into consideration CMTA changes or transfers that occur at OCC.⁹ As a result of this proposed rule change, if a Member executes a customer transaction on the Exchange and is the Clearing Member¹⁰ on record on the transaction on the Exchange, the ORF will be assessed to that Member. With this proposal, in the case where a Member executes a customer transaction on the Exchange and a different Member is the Clearing Member on record on the transaction on the Exchange, the ORF will be assessed to and collected from the Member who is the Clearing Member on record on the transaction and not the Member who executes the transaction. Additionally, in the case where a Member executes a customer transaction on the Exchange and a non-Member is the Clearing Member on record on the transaction on the Exchange, the ORF will be assessed to the non-Member who is the Clearing Member on record on the transaction and not the Member who executes the transaction. With this proposal, in the case where a Member executes a customer transaction not on the Exchange, the Exchange will not assess an ORF, regardless of how the transaction is cleared. As is the case today, OCC will collect ORF from OCC clearing members on behalf of the Exchange based on the Exchange’s instructions.

With this proposal, the Exchange intends to collect ORF under its current methodology for assessment and collection of ORF until at least June 30, 2026. The Exchange is prepared to implement On-Exchange ORF effective July 1, 2026 if by April 1, 2026 all U.S. options exchanges charging an ORF have filed to modify their current methodologies of assessment of the fee to limit the fee to transactions occurring on their respective exchange.¹¹ However, if all other options exchanges have not filed to adopt a similar methodology by April 1, the Exchange will delay implementation commensurate with the additional time

⁹ Adjustments that were made the same day as the trade on the Exchange will be taken into account.

¹⁰ Clearing Member means a Member that has been admitted to membership in the Clearing Corporation pursuant to the provisions of the rules of the Clearing Corporation. See Exchange Rule 100.

¹¹ The Exchange estimates it will take approximately three months to implement the system changes associated with On-Exchange ORF.

required for other options exchanges to adopt a similar method for collection and assessment of ORF. The Exchange will at that time file a separate rule filing with the amount of the On-Exchange ORF in advance of assessing and collecting the fee under the proposed method. As is the case today, the Exchange will notify Members via Regulatory Circular of the applicable On-Exchange ORF rate at least 30 calendar days prior to the effective date of the change. The Exchange believes a fee to cover a material portion of costs for regulatory programs associated with monitoring activities is reasonable; however, the Exchange would consider alternative approaches for assessment and collection of the fee in order to achieve consistency across the industry.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.

The Exchange will monitor its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs in a given year, the Exchange will adjust the On-Exchange ORF by submitting a fee change filing to the Commission. The Exchange will notify Members of adjustments to the On-Exchange ORF via a Regulatory Circular in advance of any change.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Section 6(b)(4) of the Act¹³ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act¹⁴ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the proposed change to assess and collect an On-Exchange ORF is reasonable,

equitable and not unfairly discriminatory for various reasons. First, On-Exchange ORF is reasonable, equitable and not unfairly discriminatory in that it is charged to all Exchange transactions that clear in the "customer" range at the OCC. Similar to ORF today, the Exchange believes On-Exchange ORF ensures fairness by assessing a specific fee to those Members that require more Exchange regulatory services based on the amount of customer options business they conduct. Over recent years, options trading volume has increased with a growing percentage of the volume applicable to customer transactions. Customers trading on the Exchange (through a Member) benefit from the protections of a robust regulatory program including the maintenance of fair and orderly markets and protections against fraud and other manipulation. The Exchange believes it is equitable and not unfairly discriminatory to assess a regulatory fee to transactions that clear in the "customer" range to cover regulatory costs, but not to transactions clearing in the "firm" or "market maker" range because Clearing Members and Market Makers¹⁵ (who clear in the Firm and Market Maker range), as those market participants are generally subject to other Exchange fees, fines and obligations. For example, Clearing Members and Market Makers are required to pay Exchange application fees, permit fees, and connectivity fees, amongst others. In addition, all fines issued by the Exchange for regulatory infractions are assessed only to Members and would be applied to regulatory revenues. As with today's ORF, the Exchange expects that Clearing Members from whom On-Exchange ORF is collected will pass through the fee to their customers (as the Exchange understands occurs today). In addition, Market Makers in particular are subject to various quoting and other obligations to ensure that they provide stable and liquid markets,

¹⁵ Market Makers refers to "Lead Market Makers," "Primary Lead Market Makers," and "Registered Market Makers" collectively. Lead Market Maker means a Member registered with the Exchange for the purpose of making markets in securities traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of these Rules with respect to Lead Market Makers. Primary Lead Market Maker means a Lead Market Maker appointed by the Exchange to act as the Primary Lead Market Maker for the purpose of making markets in securities traded on the Exchange. Registered Market Maker means a Member registered with the Exchange for the purpose of making markets in securities traded on the Exchange, who is not a Lead Market Maker and is vested with the rights and responsibilities specified in Chapter VI of these Rules with respect to Registered Market Makers. See Exchange Rule 100.

which benefit all market participants including customers. Excluding Market Maker transactions from On-Exchange ORF will allow Market Makers to better manage their costs more effectively thus enabling them to better allocate resources toward technology, risk management, and capacity to ensure continued liquidity provision.

In addition to the overall increase in "customer" range volume generally, regulating customer trading activity is more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. For example, there are costs associated with main office and branch office examinations (e.g., staff and travel expenses), as well as investigations into customer complaints and terminations of registered persons. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., Clearing Member proprietary transactions) of its regulatory program.¹⁶ While the Exchange notes that it has broad regulatory responsibilities with respect to its Member's activities, irrespective of where their transactions take place, the Exchange believes it is reasonable to assess the proposed fee to only those transactions occurring on the Exchange. The proposed change more narrowly tailors the fee to products and transactions with a direct connection to the Exchange. With this proposal, transactions that would clear in the "customer" range occurring on other exchanges would no longer be subject to an ORF assessed by the Exchange.

The Exchange believes it is equitable and not unduly discriminatory to modify the method of collecting the fee such that On-Exchange ORF will not consider CMTAs reported directly to OCC as is done in today's method of ORF. CMTA transfers are considered today under the current collection methodology for ORF as a convenience to industry members in administering a pass through of the fee to their customers. Limiting the On-Exchange ORF to transactions on the Exchange poses a limitation in the use of CMTA for this purpose. The Exchange understands that a CMTA may be added at order entry, via post-trade edit on the

¹⁶ If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to modify On-Exchange ORF or assess a separate regulatory fee on Member proprietary transactions if the Exchange deems it advisable.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ 15 U.S.C. 78f(b)(5).

Exchange, or post-trade at OCC. CMTA transfers that occur at OCC do not necessarily contain reliable information regarding the Exchange on which the original transaction occurred.¹⁷ Without specific information as to where the original transaction occurred, the Exchange would not be able to accurately account for CMTA transfers that occur at OCC.

The Exchange further believes that the proposed change to the method for assessment and collection of the fee is reasonable because it would help ensure that revenue collected from the On-Exchange ORF, in combination with other regulatory fees and fines, would cover a material portion of the Exchange's regulatory costs.

As noted above, the Exchange will also continue to monitor on at least a semiannual basis the amount of revenue collected from the On-Exchange ORF, even as amended, to ensure that it, in combination with its other regulatory fees and fines, would cover a material portion of the Exchange's regulatory costs and not exceed it.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because On-Exchange ORF applies to all customer activity on the Exchange, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. The Exchange notes, however, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the On-Exchange ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. In addition, the Exchange will not implement the On-Exchange ORF until all other options exchanges are prepared to adopt a similar model to avoid overlapping ORFs.

¹⁷ Under the current methodology for assessing ORF, the Exchange on which the transaction occurred is irrelevant.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁸ and paragraph (f) of Rule 19b-4¹⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-EMERALD-2026-01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-EMERALD-2026-01. 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 filing 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

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f).

redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-EMERALD-2026-01 and should be submitted on or before February 23, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-01978 Filed 1-30-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104700; File No. SR-NYSEARCA-2025-24]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Units of the Sprott Physical Copper Trust

January 28, 2026.

On June 10, 2025, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade units of the Sprott Physical Copper Trust under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the **Federal Register** on June 26, 2025.³

On August 5, 2025, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On September 8, 2025, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.⁷ On December 9,

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 103296 (June 23, 2025), 90 FR 27362.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 103634, 90 FR 38528 (Aug. 8, 2025).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 103904, 90 FR 44117 (Sept. 11, 2025).

2025, pursuant to Section 19(b)(2) of the Act,⁸ the Commission designated a longer period for Commission action on the proposed rule change.⁹ On January 26, 2026, the Exchange filed Amendment No. 1 to the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange.¹⁰ The Commission has received one comment on the proposed rule change.¹¹

The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

I. The Exchange's Description of the Proposal, as Modified by Amendment No. 1

The Exchange proposes to list and trade shares of the following under NYSE Arca Rule 8.201-E (Non-Generic): Sprott Physical Copper Trust ("Trust"). This Amendment No. 1 to SR-NYSEARCA-2025-24 replaces SR-NYSEARCA-2025-24 as originally filed and supersedes such filing in its entirety. The proposed rule change is available on the Exchange's website at www.nyse.com and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, as Modified by Amendment No. 1

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, as Modified by Amendment No. 1

1. Purpose

The Exchange proposes to list and trade the units ("Units") of the Trust under NYSE Arca Rule 8.201-E (Non-Generic).¹² Under NYSE Arca Rule 8.201-E(a), the Exchange may propose to list and/or trade pursuant to unlisted trading privileges ("UTP"), "Commodity-Based Trust Shares."¹³ The Commission has previously approved listing on the Exchange of other issues of Commodity-Based Trust Shares, including units of the Sprott Physical Gold Trust,¹⁴ Sprott Physical Silver Trust,¹⁵ and Sprott Physical Gold and Silver Trust.¹⁶ The Commission has also previously approved listing on the Exchange of shares of the JPM XF Physical Copper Trust¹⁷ and the iShares Copper Trust.¹⁸ The Commission has also previously approved listing on the Exchange under NYSE Arca Rules 5.2–

¹² The Trust will file with the Commission a registration statement on Form 40-F to register the Units ("Registration Statement") under Section 12 of the Securities Exchange Act of 1934, as amended, and will file with the Commission as part of such Registration Statement all information material to an investment decision that the Trust, since the beginning of its last full fiscal year: (i) made or was required to make public pursuant to the law of any Canadian jurisdiction, (ii) filed or was required to file with a stock exchange on which its securities are traded and which was made public by such exchange, or (iii) distributed or was required to distribute to its securityholders. The Registration Statement is not yet effective, and shares of the Units will not trade on the Exchange until such time that the Registration Statement is effective.

¹³ The term "Commodity-Based Trust Shares" means a security (a) that is issued by a trust that holds a specified commodity deposited with the trust; (b) that is issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity. See NYSE Arca Rule 8.201-E(c)(1).

¹⁴ See Securities Exchange Act Release No. 61496 (February 4, 2010), 75 FR 6758 (February 10, 2010) (SR-NYSEArca-2009-113) (approving listing on the Exchange of Sprott Physical Gold Trust).

¹⁵ See Securities Exchange Act Release No. 63043 (October 5, 2010), 75 FR 62615 (October 12, 2010) (SR-NYSEArca-2010-84) (approving listing on the Exchange of the Sprott Physical Silver Trust).

¹⁶ See Securities Exchange Act Release No. 34-82448 (January 5, 2018), 83 FR 1428 (November 1, 2018) (SR-NYSEArca-2017-131) (approving listing on the Exchange of the Sprott Physical Gold and Silver Trust).

¹⁷ See Securities Exchange Act Release No. 69256 (March 28, 2013), 78 FR 20164 (April 3, 2013) (SR-NYSEArca-2012-28) (approving listing on the Exchange of the JPM XF Physical Copper Trust).

¹⁸ See Securities Exchange Act Release No. 68973 (February 22, 2013), 78 FR 13726 (February 28, 2013) (SR-NYSEArca-2012-66) (approving listing on the Exchange of the iShares Copper Trust).

E(j)(5) and 8.201-E of other precious metals-based commodity trusts, including: Merk Gold Trust;¹⁹ ETFS Gold Trust;²⁰ ETFS Platinum Trust;²¹ ETFS Palladium Trust;²² APMEX Physical-1 oz. Gold Redeemable Trust;²³ iShares Silver Trust;²⁴ iShares COMEX Gold Trust;²⁵ Long Dollar Gold Trust.²⁶ Prior to their listing on the Exchange, the Commission approved listing of the streetTRACKS Gold Trust on the New York Stock Exchange LLC ("NYSE")²⁷ and listing of iShares COMEX Gold Trust and iShares Silver Trust on the American Stock Exchange LLC ("Amex").²⁸ In addition, the Commission has approved trading of the streetTRACKS Gold Trust and iShares Silver Trust on the Exchange pursuant to UTP.²⁹

¹⁹ See Securities Exchange Act Release No. 71378 (January 23, 2014), 79 FR 4786 (January 29, 2014) (SR-NYSEArca-2013-137) (approving listing on the Exchange of the Merk Gold Trust).

²⁰ See Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR-NYSEArca-2009-40) (approving listing on the Exchange of the ETFS Gold Trust).

²¹ See Securities Exchange Act Release No. 61219 (December 22, 2009), 74 FR 68886 (December 29, 2009) (SR-NYSEArca-2009-95) (approving listing on the Exchange of the ETFS Platinum Trust).

²² See Securities Exchange Act Release No. 61220 (December 22, 2009), 74 FR 68895 (December 29, 2009) (SR-NYSEArca-2009-94) (approving listing on the Exchange of the ETFS Palladium Trust).

²³ See Securities Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817 (May 11, 2012) (SR-NYSEArca-2012-18) (approving listing on the Exchange of the APMEX Physical-1 oz. Gold Redeemable Trust).

²⁴ See Securities Exchange Act Release No. 58956 (November 14, 2008), 73 FR 71074 (November 24, 2008) (SR-NYSEArca-2008-124) (approving listing on the Exchange of the iShares Silver Trust).

²⁵ See Securities Exchange Act Release Nos. 56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR-NYSEArca-2007-76) (approving listing on the Exchange of the streetTRACKS Gold Trust); and 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR-NYSEArca-2007-43) (order approving listing on the Exchange of iShares COMEX Gold Trust).

²⁶ See Securities Exchange Act Release No. 79518 (December 9, 2016), 81 FR 90876 (December 15, 2016) (SR-NYSEArca-2016-84) (order approving listing and trading of shares of the Long Dollar Gold Trust).

²⁷ See Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR-NYSE-2004-22) (order approving listing of streetTRACKS Gold Trust on NYSE).

²⁸ See Securities Exchange Act Release Nos. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR-Amex-2004-38) (order approving listing of iShares COMEX Gold Trust on AMEX); 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR-Amex-2005-72) (approving listing of the iShares Silver Trust on AMEX).

²⁹ See Securities Exchange Act Release Nos. 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (SR-PCX-2005-117) (approving trading on the Exchange pursuant to UTP of the iShares Silver Trust); 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR-PCX-2004-117) (approving trading on the Exchange of the streetTRACKS Gold Trust pursuant to UTP).

⁸ 15 U.S.C. 78s(b)(2).

⁹ See Securities Exchange Act Release No. 104351, 90 FR 57795 (Dec. 12, 2025). The Commission, pursuant to Section 19(b)(2) of the Act, designated February 21, 2026, as the date by which the Commission shall either approve or disapprove the proposed rule change.

¹⁰ Amendment No. 1 to the proposed rule change is available on the Commission's website at: <https://www.sec.gov/comments/sr-nysearca-2025-24/srnysearca202524-697347-2182694.pdf>.

¹¹ Comments on the proposed rule change are available at: <https://www.sec.gov/comments/sr-nysearca-2025-24/srnysearca202524.htm>.

Sprott Asset Management LP is the manager of the Trust (“Manager”).³⁰ WMC Energy B.V. (“WMC” or “Technical Advisor”) serves as technical advisor to the Manager and advises and assists with respect to the holding, buying and selling of physical copper.³¹ RBC Investor Services Trust (“RBC”) is the trustee and valuation agent of the Trust (“Trustee” or “Valuation Agent,” as the case may be)³² and the custodian of the Trust’s assets that it holds, including cash, if any.³³ TSX Trust Company is the transfer agent and registrar of the Trust (“Transfer Agent”).

The Trust is established under the laws of the Province of Ontario and is managed by the Manager. According to

³⁰ The Manager is a limited partnership formed and organized under the laws of the Province of Ontario, Canada, and acts as manager of the Trust pursuant to the Trust Agreement (as defined herein) and the management agreement. The Manager is responsible for the day-to-day activities and administration of the Trust. The Manager manages and directs the business and affairs of the Trust. Additional details regarding the Manager are set forth in the Registration Statement. The Manager has adopted a policy pursuant to which any entity or account that is: (a) managed; or (b) for whom investment decisions are made, directly or indirectly, by a person that is involved in the decision-making process of, or has non-public information about, follow-on offerings of the Trust is prohibited from investing in the Trust, and no such decision-making person is permitted to invest in the Trust for that decision-making person’s benefit, directly or indirectly. The Manager has a fiduciary responsibility under applicable Canadian law to act in the best interest of the Trust.

³¹ WMC is an independent physical commodity merchant and industrial asset development company established to provide physical supply chain solutions to the nuclear and energy transition metals industries, and sources, stores, finances and delivers physical commodities worldwide.

³² RBC is a trust company existing under the laws of Canada. RBC is affiliated with a broker-dealer. RBC has represented to the Exchange that it has put in place and will maintain the appropriate information barriers and controls between itself and the broker-dealer affiliate so that the broker-dealer affiliate will not have access to information concerning the composition and/or changes to the Trust’s holdings that are not available on the Trust’s website, as defined herein. The Trustee holds title to the Trust’s assets on behalf of the unitholders of the Trust (“Unitholders”) and has exclusive authority over the assets and affairs of the Trust, but has delegated the day-to-day activities and administration of the affairs of the Trust to the Manager. The Trustee has a fiduciary responsibility to act in the best interest of the Unitholders. Additional details regarding the Trustee are set forth in the Registration Statement.

³³ According to the Registration Statement, the Trustee is responsible for the safekeeping of all of the assets of the Trust delivered to it and acts as the custodian of such assets. The Trustee is not responsible for the safekeeping of the Trust’s physical Copper, as defined herein. The Manager, with the consent of the Trustee, has the authority to change the custodial arrangement, including, but not limited to, the appointment of a replacement custodian and/or additional custodians. Additional details regarding the Trustee and the custodial arrangements of the Trust are set forth in the Registration Statement.

the Registration Statement, the investment objective of the Trust is to invest and hold substantially all of its assets in physical copper metal in either Grade 1 Cathode³⁴ form or Grade A Cathode³⁵ form, or equivalent copper cathodes, that is fully allocated or stored at a Facility³⁶ (“Copper”),³⁷ and cash. The Trust seeks to provide a secure, convenient and exchange-traded investment alternative for investors interested in holding Copper. The Trust intends to achieve its objective by investing primarily in long-term holdings of unencumbered Copper and will not speculate with regard to short-term changes in Copper prices.

Units of the Trust currently trade on the Toronto Stock Exchange (the “TSX”) under the symbol “COP.U” in U.S. dollars and “COP.UN” in Canadian dollars.

The Exchange represents that the Units satisfy the requirements of NYSE Arca Rule 8.201–E (Non-Generic) and thereby qualify for listing on the Exchange.³⁸

Organization of the Trust

According to the Registration Statement, the Trust was established as of April 12, 2024 under the laws of the Province of Ontario, Canada, and its provisions and features are set out in an amended and restated trust agreement dated as of May 10, 2024 (the “Trust Agreement”). Pursuant to the Exemptive Relief granted to the Trust, the Trust is not subject to certain of the policies and regulations of the Canadian Securities Administrators that apply to other non-redeemable investment funds.³⁹

³⁴ The term “Grade 1 Cathode” means a physical copper metal cathode that, at the time of purchase by the Trust, satisfies the CME (as defined herein) standards for classification as a Grade 1 electrolytic copper cathode.

³⁵ The term “Grade A Cathode” means a physical copper metal cathode that, at the time of purchase by the Trust, satisfies the LME (as defined herein) standards for classification as Grade A copper.

³⁶ According to the Registration Statement, the term “Facility” means a CME (as defined herein) or LME-approved storage or similar facility for copper operated by a Warehouse Provider or such other facility as the Manager may determine in accordance with the Trust Agreement.

³⁷ References to “copper” refers to physical copper metal in any form.

³⁸ With respect to application of Rule 10A–3 (17 CFR 240.10A–3) under the Exchange Act, the Trust relies on the exemption contained in Rule 10A–3(c)(7).

³⁹ The Trust has obtained exemptive relief from the Canadian securities regulatory authorities for relief from certain requirements of National Instrument 81–102—*Investment Funds*, legislation which governs mutual funds and non-redeemable investment funds in each of the provinces and territories of Canada (“Exemptive Relief”), to permit the Trust to, among other things, appoint the Facilities as custodians of the Trust’s Copper.

Operation of the Trust

According to the Registration Statement, the investment objective of the Trust is to invest and hold substantially all of its assets in Copper. The Trust will not hold any assets other than Copper and cash. The Trust does not anticipate making regular cash distributions to Unitholders.

The Trust will not invest in futures, options, warrants, options on futures, swap contracts, or warehouse receipts. The Trust will not hold or trade in commodity futures contracts, “commodity interests,” or any other instruments regulated by the Commodity Exchange Act (“CEA”).⁴⁰

The Trust will issue Units, each of which represents an equal, fractional undivided ownership interest in the net assets of the Trust attributable to the particular class of Units. Except with respect to cash held by the Trust to pay expenses and anticipated redemptions, the Trust expects to own only Copper. The investment objective of the Trust is for the Units to reflect the performance of the spot price of Copper, less the expenses of the Trust’s operations.

The Trust is not actively managed and does not engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the spot price of Copper. The Trust is neither an investment company registered or required to be registered under the Investment Company Act of 1940,⁴¹ nor a commodity pool for purposes of the CEA, and neither the Manager nor the Trustee is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the operation of the Trust.

According to the Registration Statement, the Trust will store its Copper with Warehouse Providers (as defined in the Registration Statement) at Facilities that are reputable and exclusively in warehouses that are approved by the Chicago Mercantile Exchange (“CME”) or the London Metal Exchange (“LME”), which is the main global market standard for physical metal warehousing services that is accepted by market participants and financiers.⁴²

According to the Registration Statement, the Trust will only store Copper with such Facilities at locations in Belgium, Canada, Germany, Italy,

⁴⁰ 17 U.S.C. 1.

⁴¹ 15 U.S.C. 80a–1.

⁴² The Manager, with the consent of the Trustee, has the authority to change the storage arrangements of the Trust. Additional details regarding the Facilities and the storage arrangements of the Trust are set forth in the Registration Statement.

Malaysia, the Netherlands, Singapore, South Korea, Spain, Sweden, the United Arab Emirates and the United States. In addition, the Manager will maintain market standard insurance for the physical Copper stored with Warehouse Providers. Finally, the Facilities to be used by the Trust are owned or contracted by the Warehouse Providers, which are well-regarded multi-national providers of global storage for physical metals.

Overview of the Copper Industry

According to the Registration Statement, copper is a metallic element that occurs naturally in sulfide, carbonate and silicate deposits.⁴³ Copper's physical, chemical and aesthetic properties make it the material of choice in a diverse range of electrical, communication, construction, transportation, industrial machinery and equipment, and general consumer applications. These properties include:

- *Electrical conductivity:* Copper has the highest electrical conductivity of any non-precious metal. Because of its electrical conductivity, copper is often used in electrical wiring and conductors, and has become a key component in clean power generation technologies including solar, wind and batteries.
- *Heat conductivity:* Copper is one of the best performing metals for heat conductivity, leading to its frequent use in heat exchange equipment, radiators, and cooling systems.
- *Corrosion resistance:* Copper is naturally resistant to corrosion, making it suitable for use in marine and other challenging environments, such as underwater vessels, tanks, piping exposed to seawater, propellers, oil platforms and coastal power stations.
- *Malleability and ductility:* Copper can be shaped into various forms without breaking or compromising its performance, leading to its frequent use in the manufacturing of wiring, tubing, and other industrial components.

⁴³ International Copper Study Group—The World Copper Factbook 2023.

- *Strength:* Copper has sufficient strength and durability to withstand mechanical stresses without easily deforming or breaking, making it suitable for certain structural applications.

- *Antimicrobial properties:* Copper has antimicrobial properties which inhibit microorganism growth on its surface, allowing for use in healthcare, food processing and HVAC applications. In addition, when alloyed with other metals, such as zinc (to form brass), aluminum or tin (to form bronzes), or nickel, copper acquires new characteristics for use in specialized applications such as shipbuilding, automobiles and home appliances.

Copper is typically produced into and sold in the form of cathodes for which globally accepted specification standards apply. Market quotations exist for the base price of spot copper on exchanges such as the CME and the LME, which are further supplemented by cathode premia for specific locations and grades of copper. In 2023, global copper usage amounted to approximately 31.2Mt, making the copper market one of the largest base metals markets in the world.⁴⁴

Operation of the Copper Market

According to the Registration Statement, the copper market is one of the largest and most liquid base metal markets globally. For the North American market, CME is the leading spot (for front-month delivery) and futures market venue for copper while the LME is the leading spot and futures market venue for other regions, including Europe and Asia (excluding China). Standards for copper have been established by CME (*i.e.*, Grade 1 Cathode) and LME (*i.e.*, Grade A Cathode) that are based on the chemical composition of the copper as recognized by market participants around the world.

According to the Registration Statement, any Copper purchased by the Trust will be, at the time of purchase, either Grade 1 Cathode or Grade A

Cathode, or equivalent quality of cathodes. In addition, the Manager and Technical Advisor are committed to incorporating Environmental, Social and Governance principles into the sourcing of the Copper purchased for the Trust. This means that the Trust will follow the rules for Responsible Sourcing as set by the LME. For brands that are not approved by the LME, the Trust will only source such Copper if the supplier guarantees to use reasonable commercial efforts to comply with the Ten Principles of the UN Global Compact and the OECD Due Diligence Guidance for Responsible Mineral Supply Chains. All procurement of Copper by the Trust will comply with applicable sanctions laws.

According to the Registration Statement, the copper market is large and mature. The size of the copper market was approximately \$226 billion in 2024,⁴⁵ making it the third largest global metals market behind iron ore and gold. Copper's large market size and wide-ranging applications have historically made its price a barometer of the global economy.

In anticipation of growing copper demand and in recognizing that clean energy technologies require significantly greater copper than traditional energy sources, world governments, including the United States,⁴⁶ Canada,⁴⁷ the European Union⁴⁸ and Australia,⁴⁹ among others, have added copper to their lists of critical and/or strategic materials. Due to copper's distinctive properties, including electrical and thermal conductivity, ductility, malleability, and corrosion resistance, in addition to considerations of cost and availability, there is limited substitution risk for copper in its existing applications.

⁴⁵ USGS Mineral Commodity Summaries, 2025.

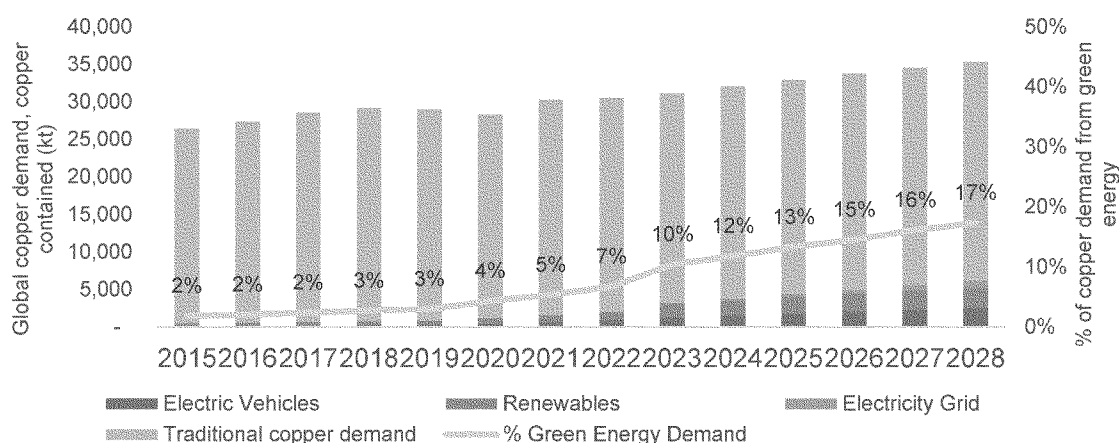
⁴⁶ US Department of Energy, 2023 final critical materials list.

⁴⁷ The Canadian Critical Minerals Strategy 2022.

⁴⁸ European Commission, 2023 list of critical raw materials for the EU.

⁴⁹ Australia's Critical Minerals List and Strategic Materials List 2024.

⁴⁴ CRU—March 2024.



Source: CRU – March 2024

The global energy transition is driving increased demand for commodities, in particular copper. The expansion of copper-intensive infrastructure, such as power grids, electric vehicles and clean energy technologies coincide with an anticipated 165% increase in global electricity consumption by 2050.⁵⁰

Operation of the Spot Price Market for Copper

The CME publishes spot prices for copper on a daily basis for front-month delivery. The LME publishes spot prices for copper on a daily basis for prompt delivery (T+2). These spot prices are then generally subject to either a premium or discount, which is determined by various commercial and logistical factors. As copper is used in many different industrial processes, its location relative to the place of consumption is highly important for determining the premium or discount. Different premium levels are published by price reporters for different locations reflecting the supply and demand dynamics of the specific location. Fundamentally, copper that is stored in a location that is low in supply and high in demand will carry a higher premium than copper that is stored in a location where supply is generally high, and demand is low.

Operation of the Futures Price Market for Copper

The CME and LME publish futures prices for copper across a range of standardized contract maturities. These futures prices take into account, amongst other things, market dynamics regarding future supply and demand conditions, inventory levels, financing

and storage costs, interest rates, and broader macroeconomic factors. Futures contracts are standardized in terms of contract size, delivery specifications, and approved delivery locations, allowing market participants to hedge price risk or obtain price exposure without immediate physical ownership of copper. Prices across different delivery months form a forward curve, which can exhibit contango or backwardation depending on prevailing market conditions. The shape of the forward curve is influenced by exchange warehouse inventories, anticipated mine production and smelter output, demand expectations, and the cost of carry. Tight near-term supply conditions can result in higher prices for nearby contracts, while ample inventories and weaker demand expectations typically support higher prices for deferred contracts. Although most futures positions are closed out prior to delivery, the option of physical settlement anchors futures prices to underlying physical market fundamentals.

Copper Supply and Demand

According to the Registration Statement, in 2023, copper supply and demand returned to relative equilibrium, following a supply deficit in 2022. Due to the supply deficit, copper prices on the LME reached a high of approximately US\$11,000 in the first quarter of 2022, before falling to approximately US\$8,000 in 2023.

The global copper supply currently faces challenges due to declining ore grades of existing copper mines and the long lead time required for new mine development. In addition, the ore bodies of existing copper mines have been declining in quality, which increases production costs and makes mine

expansion challenging. Currently, copper ore grades are typically discovered at 1% purity or less, whereas copper ore grades discovered in the 19th century typically exceeded 5% purity.⁵¹

Copper supply disruptions also negatively impact the global copper supply. A recent example is the closure of the Cobre Panama copper mine in 2023, which accounted for approximately 1.5% of global mined copper production prior to its closure.⁵² In 2023, Chile produced approximately 24% of global mined copper production, the most of any country. Peru and the Democratic Republic of Congo each produced approximately 12% of global mined copper production, followed by China and the United States at approximately 8% and 5%, respectively.

From 2025 to 2026, the copper market is forecasted to be in a slight supply deficit, which deficit is expected to increase in subsequent years due to supply and demand dynamics. From 2027 to 2028, there may be a significant supply deficit driven by lower growth in copper supply.

A key driver of growth in the demand for copper beyond 2028 is expected to be electricity consumption, which is forecasted to increase 165%⁵³ by 2050 due to the greater adoption of clean energy technologies by energy producers and consumers, globally.⁵⁴

Description of Units

According to the Registration Statement, the Trust is authorized to

⁵¹ S&P Global, The Future of Copper.

⁵² *Mining.com*, Cobre Panama: How a \$10 billion copper mine is now sitting idle in the jungle, April 2024.

⁵³ IEA World Energy Outlook 2023 Net Zero Emissions Scenario.

⁵⁴ IEA—World Energy Outlook 2023.

⁵⁰ IEA World Energy Outlook 2023 Net Zero Emissions Scenario.

issue an unlimited number of units in one or more classes and series of a class. Currently, the Trust has issued only one class or series of Units.⁵⁵ All Units of the same class or series of a class will have equal rights and privileges with respect to all matters, including voting, receipt of distributions from the Trust, liquidation and other events in connection with the Trust. Units and fractions thereof are issued only as fully paid and non-assessable. Units will have no preference, conversion, exchange or pre-emptive rights. In addition, subject to limitations and requirements determined from time to time by the Manager, each unit of a particular class or series of a class of the Trust may be redesignated by the Manager as a unit of another class or series of the Trust.

As noted above, each Unit represents an equal, fractional, undivided ownership interest in the net assets of the Trust attributable to the particular class of Units. The Trust may issue additional Units (i) in future offerings if the gross proceeds received by the Trust per Unit are not less than 100% of the most recently calculated NAV; (ii) by way of distribution in Units in connection with an income distribution; or (iii) with the approval of Unitholders by extraordinary resolution.

Redemption of Units

According to the Registration Statement, the Trust does not intend to issue new Units, or redeem existing Units, on a day-to-day basis. Units may be redeemed at the option of a Unitholder on a monthly basis for physical Copper or cash.⁵⁶

Redemption for Physical Copper

Subject to the terms of the Trust Agreement and the Manager's right to suspend redemptions under certain circumstances described in the Registration Statement, Units may be

redeemed at the option of a Unitholder for physical Copper in any calendar month.

According to the Registration Statement, Units redeemed for Copper shall have a redemption value equal to the aggregate value of the Class Net Asset Value per Unit⁵⁷ of the redeemed Units as at the valuation time (as determined by the Manager) on the last Business Day, as defined herein, of the calendar month in which the redemption request is processed (the "Redemption Date"), less redemption and delivery expenses. Redemption requests for Copper must be for amounts that are at least equivalent in value of one Minimum Physical Redemption Lot⁵⁸ or an integral multiple thereof, plus applicable expenses. Any fractional amount of redemption proceeds payable in excess of one Minimum Physical Redemption Lot, or an integral multiple thereof, will be paid in Copper or the equivalent value in cash at a rate equal to 100% of the NAV of the class redeemed Units as at the valuation time (as determined by the Manager) on the applicable Redemption Date that represents such excess amount. A Unitholder redeeming Units for Copper will be responsible for expenses incurred by the Trust in connection with such redemption and applicable transfer and delivery expenses, including the handling, logistical requirements and administration of the notice of redemption, the transfer of the Copper for the Units that are being redeemed and the applicable fees.

A redemption notice to redeem Units for physical Copper must be received by the Transfer Agent no later than 4:00 p.m., Eastern Time, on the 15th day of the calendar month in which the redemption notice will be processed or, if such day is not a day on which banks located in New York, New York or Toronto, Ontario, are open for the transaction of banking business ("Business Day"), then on the immediately following day that is a Business Day. Any redemption notice to redeem Units for physical Copper received after such time will be processed in the next month.

According to the Registration Statement, on or before the fifth Business Day of a calendar month, the Manager will designate the Facility where the transfer of Copper will occur for the nearest following redemption date ("Designated Facility"). Such

designation will be made available by the Trust on a public website, at <https://sprott.com/investment-strategies/physical-commodity-funds/copper/> (the "Trust's website").

A Unitholder redeeming Units for Copper will receive the Copper via an "in warehouse" transfer and delivery from the Trust's holdings of Copper at the Designated Facility to the Unitholder's account at the Designated Facility. Copper received by a Unitholder as a result of a redemption of Units will be transferred pursuant to delivery instructions provided by the Unitholder and will only be delivered to an account established by the Unitholder at the Designated Facility.

Costs associated with the redemption of Units and the transfer of Copper will be borne by the redeeming Unitholder. The redeeming Unitholder will also be responsible for any and all fees charged by the Designated Facility, including any transfer or setup fees. The transfer of physical Copper in connection with a redemption of Units will occur as soon as practicable and, in any event, approximately 15 Business Days after the applicable redemption date, subject to the timelines, policies and procedures at any Designated Facility. Any cash to be received by a redeeming Unitholder in connection with a redemption of Units for physical Copper will be delivered to the Unitholder's brokerage account within 10 Business Days after the calendar month in which the redemption is processed.

Redemption for Cash

Subject to the terms of the Trust Agreement and the Manager's right to suspend redemptions under certain circumstances described in the Registration Statement, Units may be redeemed at the option of a Unitholder for cash on a monthly basis.

According to the Registration Statement, Units redeemed for cash will be entitled to a redemption price equal to 95% of the lesser of (i) the volume-weighted average trading price (in U.S. dollars) of the Units traded on NYSE Arca or, if trading has been suspended on NYSE Arca, the trading price of the Units traded on TSX, for the last five Business Days ending on the applicable Redemption Date; and (ii) the NAV of the class of redeemed Units as of 4:00 p.m. on the applicable Redemption Date, less applicable fees, costs and expenses. Cash redemption proceeds will be transferred to a redeeming Unitholder approximately 15 Business Days following the applicable Redemption Date, subject to the terms of and conditions of the sales of Copper by

⁵⁵ According to the Trust's website, as defined herein, as of March 11, 2025, the total net asset value ("NAV") of the Trust and the NAV per unit of the Trust were US\$99.2 and US\$8.99, respectively, and there were a total of 11,034,857 Units issued and outstanding.

⁵⁶ The Commission has previously approved the listing and trading of Commodity-Based Trust Shares under NYSE Arca Rule 8.201-E that allow redemptions on a monthly basis. See Securities Exchange Act Release Nos. 61496 (February 4, 2010), 75 FR 6758 (February 10, 2010) (SR-NYSEArca-2009-113) (approving listing on the Exchange of Sprott Physical Gold Trust with monthly redemptions); 63043 (October 5, 2010), 75 FR 62615 (October 12, 2010) (SR-NYSEArca-2010-84) (approving listing on the Exchange of the Sprott Physical Silver Trust with monthly redemptions); and 69256 (March 28, 2013), 78 FR 20164 (April 3, 2013) (SR-NYSEArca-2012-28) (approving listing on the Exchange of the JPM XF Physical Copper Trust with monthly redemptions).

⁵⁷ The term "Net Asset Value per Unit" means the Net Asset Value divided by the total number of Units then outstanding.

⁵⁸ The term "Minimum Physical Redemption Lot" means the equivalent of 100 metric tons of Copper.

the Trust to fund the cash redemption amount.

A redemption notice to redeem Units for cash must be received by the Transfer Agent no later than 4:00 p.m., Eastern time, on the 15th day of the calendar month in which the redemption notice will be processed or, if such day is not a Business Day, then on the immediately following day that is a Business Day. Any redemption notice to redeem Units for cash received after such time will be processed in the next month. Additional details regarding redemption of Units for cash are set forth in the Registration Statement.

Termination Events

The Trust does not have a fixed termination date but will be terminated and dissolved in the event of any of the following occurs:

1. there are no outstanding Units;
2. the Trustee resigns or is removed and no successor trustee is appointed by the Manager by the time the resignation or removal becomes effective;
3. the Manager resigns and no successor manager is appointed by the Manager and approved by Unitholders by the time the resignation becomes effective;
4. the Manager is, in the opinion of the Trustee, in material default of its obligations under the Trust Agreement and such default continues for 120 days from the date the Manager receives notice of such default from the Trustee and no successor manager has been appointed by Unitholders;
5. the Manager experiences certain insolvency events; or
6. the assets of the Manager are seized or confiscated by a public or governmental authority.

In addition, the Manager may, in its discretion, at any time terminate and dissolve the Trust, without Unitholder approval, if, in the opinion of the Manager, after consulting with the independent review committee, the NAV has been reduced such that it is no longer economically feasible to continue the Trust and it would be in the best interests of the Unitholders to terminate the Trust, by giving the Trustee and each holder of Units at the time at least 90 days' written notice prior to the effective date of the termination of the Trust. To the extent such termination of the Trust in the discretion of the Manager may involve a matter that would be a "conflict of interest matter" as set forth under applicable Canadian securities legislation, the matter will be referred by the Manager to the Trust's independent review committee for its recommendation. In connection with

the termination of the Trust, the Trust will, to the extent possible, convert its assets to cash and, after paying or making adequate provision for all of the Trust's liabilities, distribute the net assets of the Trust to Unitholders, on a pro rata basis, as soon as practicable after the termination date.

Net Asset Value

The NAV for each class of Units will be calculated by the Valuation Agent, as of 4:00 p.m., Eastern time, on each Business Day. The Trust will report a daily NAV, based on the value of the Copper assets held by the Trust. According to the Registration Statement, the Manager and Technical Advisor initially calculate the fair market value of the Copper held by the Trust separately for each location where the Copper is held. For each location, the fair market value of the Copper is calculated using (1) spot prices from the CME or LME, which are obtained from Bloomberg by the Manager and Technical Advisor, and (2) any applicable premiums to the spot prices based on the location of the Copper, which are obtained from Fastmarkets, a globally recognized price reporter. Price reporters are private business organizations that offer subscription services to which most copper market participants subscribe. The Manager and Technical Advisor sum the fair market value of the Copper at each location to calculate the total fair market value of the Copper held by the Trust.⁵⁹

The NAV as of the valuation time on each Business Day will be the amount obtained by deducting from the aggregate fair market value of the assets of the Trust as of such date an amount equal to the value of the liabilities of the Trust (excluding all liabilities represented by outstanding Units, if any) as of such date. The Valuation Agent calculates the NAV per Unit by dividing the value of the net assets of the class of the Trust represented by the

Units on such day by the total number of Units of that class then outstanding on such day. Registration or transfers of the Units may be made through Clearing and Depository Services, Inc. (and/or Depository Trust Corporation, beginning at the time when Trust's Units have been listed on the Exchange), each of which hold the Units on behalf of its participants (*i.e.*, brokers), which in turn may hold the Units on behalf of their customers.

Prior to commencement of trading in the Units, the Exchange will obtain a representation from the Trust that the NAV per Unit will be calculated daily and will be made available to all market participants at the same time.

Intraday Indicative Value

The Trust's website will provide an intraday indicative value ("IIV") per Unit, as calculated by a third party financial data provider during the Exchange's Core Trading Session (9:30 a.m. to 4:00 p.m., Eastern time). Intercontinental Exchange, Inc. calculates the IIV on behalf of the Trust. The IIV will be calculated by using the prior day's closing NAV per Unit of the Trust as a base and updating that value throughout the trading day to reflect changes in the most recently reported price of spot Copper.⁶⁰ Although the IIV will be disseminated throughout the Core Trading Session, the customary trading and reporting hours for spot Copper are 8 p.m. (previous day) to 2 p.m. Eastern Time. During the gap in time at the end of each trading day during which the Units are traded on the Exchange, but real-time trading prices for spot Copper are not available, the IIV will be calculated based on the last reported mid-point of the bid-ask spread of the spot Copper price in the immediately preceding trading session until the day's settlement price is reported, in which case the day's settlement price will be used.

The IIV will be disseminated on a per Unit basis every 15 seconds during regular NYSE Arca Core Trading Session (as defined herein).

Availability of Information Regarding Copper

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity, such as copper, over the Consolidated Tape. However, the quotation and last sale price for the Units will be disseminated

⁵⁹ According to the Trust, the Trust is a mutual fund under applicable Canadian securities legislation and must calculate its NAV pursuant to Part 14 of National Instrument 81-106—Investment Fund Continuous Disclosure ("NI 81-106"), a rule applicable to Canadian mutual funds and administered by Canadian securities regulatory authorities. Pursuant to Subsection 14.2(1) of NI 81-106, the Trust must subtract the "fair value" of its liabilities from the fair value of its assets when calculating its NAV. Subsection 14.2(1.2) of NI 81-106 defines fair value as (a) the market value based on reported prices and quotations in an active market; or (b) if the market value is not available, or the Manager believes that it is unreliable, a value that is fair and reasonable in all the relevant circumstances, and requires the Manager to establish and maintain appropriate written policies and procedures for determining fair value of the Trust's assets and liabilities and to consistently follow those policies and procedures.

⁶⁰ The IIV on a per Unit basis disseminated during the NYSE Arca Core Trading Session should not be viewed as an actual real time update of the NAV, because the NAV is calculated only once at the end of each trading day based upon the relevant end of day values of the Trust's investments.

over the Consolidated Tape, as is the case for all equity securities traded on the Exchange. In addition, investors may obtain copper price and copper market information through public websites and through professional subscription services.

Investors may obtain almost on a 24-hour basis copper pricing information based on the spot and futures price of copper from various financial information service providers, such as Reuters, Bloomberg, as well as other sources. Reuters and Bloomberg provide at no charge on their websites delayed information regarding the spot price of copper and last sale prices of copper futures, as well as information about news and developments in the copper market. Reuters, Bloomberg and Fastmarkets, a globally recognized price reporter, also offer a professional service to subscribers for a fee that provides information on copper premium data aggregated directly from market participants. Complete real-time data for copper futures and options prices traded on the CME and the LME are available by subscription from Reuters and Bloomberg. In addition, the LME publishes on its website with a one-day delay the LME Official Prices, which includes both spot and futures prices. These prices are the last bid and ask price quoted during the second ring (open outcry) trading session on a given date. The current day's LME Official Prices are available from major market data vendors for a fee. The CME also provides delayed futures and options information on current and past trading sessions and market news free of charge on its website. There are a variety of other public websites providing information on copper, ranging from those specializing in commodities to sites maintained by major newspapers.

Availability of Information

The NAV for the Trust's Units will be disseminated daily to all market participants at the same time. The intraday, closing, and settlement spot and futures prices for copper will be readily available from the websites of the CME and LME, automated quotation systems, published or other public sources, or major market data vendors. The IIV for the units per Unit will be disseminated by one or more major market data vendors on at least a 15 second delayed basis as required by NYSE Arca Rule 8.201-E(e)(2)(v).

Complete real-time data for copper is available by subscription through on-line information services. Quotation and last-sale information regarding the Units will be disseminated through the facilities of the Consolidated Tape

Association. The IIV will be available through on-line information services. The trading prices for spot copper and copper futures will be disseminated by on-line subscription services or by one or more major market data vendors during the NYSE Arca Core Trading Session of 9:30 a.m. to 4:00 p.m. Eastern time.

In addition, the Trust's website will contain the following information, on a per Unit basis, for the Trust: (a) the prior business day's end of day closing NAV; (b) the Official Closing Price⁶¹ or the midpoint of the national best bid and the national best offer ("NBBO") as of the time the NAV is calculated ("Bid-Ask Price"); (c) calculation of the premium or discount of the Official Closing Price or the Bid-Ask Price against the NAV expressed as a percentage of such NAV; (d) the latest prospectus of the Trust and (e) other applicable quantitative information. The Trust will also provide website disclosure of its Copper holdings before 9:30 a.m. E.T. on each trading day.

The Trust's website is publicly available and accessible at no charge. Accordingly, each investor will have access to the current daily holdings of the Trust through the Trust's website. In addition, information regarding market price and trading volume of the Units will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Units will be published daily in the financial section of newspapers.

In addition, the Trust will furnish reports to the Commission on Form 6-K in accordance with Rule 13a-16 under the Exchange Act and will also file with the Commission annual reports on Form 40-F under the Canada/U.S. Multijurisdictional Disclosure System. Information included in such filings (and which will be made available to Unitholders) will include (i) annual information form, (ii) annual financial statements, (iii) annual management report on fund performance ("MRFP"), (iv) quarterly financial statements, (v) quarterly MRFP and (vi) report of independent review committee.

Trading Rules

The Exchange deems the Units to be equity securities, thus rendering trading in the Units subject to the Exchange's

existing rules governing the trading of equity securities. Trading in the Units on the Exchange will occur in accordance with NYSE Arca Rule 7.34-E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Units during all trading sessions. As provided in NYSE Arca Rule 7.6-E, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00, for which the MPV for order entry is \$0.0001.

The Units will conform to the initial and continued listing criteria under NYSE Arca Rule 8.201-E (Non-Generic). The trading of the Units will be subject to NYSE Arca Rule 8.201-E(g), which sets forth certain restrictions on Equity Trading Permit ("ETP") Holders acting as registered Market Makers in Commodity-Based Trust Shares to facilitate surveillance. The Exchange represents that, for initial and continued listing, the Trust will be in compliance with Rule 10A-3⁶² under the Exchange Act, as provided by NYSE Arca Rule 5.3-E. A minimum of 100,000 Units will be outstanding at the commencement of trading on the Exchange.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Units. Trading on the Exchange in the Units may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Units inadvisable. These may include: (1) the extent to which conditions in the underlying copper market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Units will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.⁶³

The Exchange may halt trading during the day in which an interruption occurs to the dissemination of the IIV, as described above. If the interruption to the dissemination of the IIV persists past the trading day in which it occurs, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition,

⁶¹ The term "Official Closing Price" is defined in NYSE Arca Rule 1.1(l) as the reference price to determine the closing price in a security for purposes of Rule 7-E Equities Trading, and the procedures for determining the Official Closing Price are set forth in that rule.

⁶² With respect to the application of Rule 10A-3 (17 CFR 240.10A-3) under the Exchange Act, the Trust relies on the exemption contained in Rule 10A-3(c)(7).

⁶³ See NYSE Arca Rule 7.12-E.

if the Exchange becomes aware that the NAV with respect to the Units is not disseminated to all market participants at the same time, it will halt trading in the Units until such time as the NAV is available to all market participants.

Surveillance

The Exchange represents that trading in the Units will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.⁶⁴ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Units with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"),⁶⁵ and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Units from such markets and other entities. The Exchange also may obtain information regarding spot copper and copper futures trading from markets trading such instruments that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement ("CSSA"). For the North American market, CME is the leading spot (for front-month delivery) and futures market venue for copper while the LME is the leading spot and futures market venue for other regions, including Europe and Asia (excluding China).

The Exchange, the CME and the LME are each a member of the ISG, which provides a global network for the sharing of information and the coordination of regulatory efforts among exchanges trading securities and other products to address potential intermarket manipulation and trading abuses. In effect, the ISG is an information sharing cooperative governed by a written agreement, formed to facilitate certain regulatory responsibilities of its members in connection with market surveillance. A prerequisite to ISG membership is that the member exchange is not subject to local laws or regulations that prevent information sharing. Information is shared upon request and may only be used for regulatory purposes. Accordingly, the CME and the LME are obligated, and have undertaken a commitment, to share information with the Exchange including, but not limited to, with respect to trading in spot copper and copper futures.

Additionally, the Exchange is able to obtain information regarding trading in the Units in connection with ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market. Additionally, under NYSE Arca Rule 8.201–E(g), an ETP Holder acting as a registered Market Maker in the Units is required to provide the Exchange with information relating to its accounts for trading in any underlying commodity, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Rule 11.3–E requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Units to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Units).

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts and that subsidiary or affiliate is a member of another regulatory organization, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through a

surveillance sharing agreement with that regulatory organization.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio holdings or reference assets, (b) limitations on portfolio holdings or reference assets and (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Units on the Exchange.

The Manager has represented to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will monitor for compliance with the continued listing requirements. If the Exchange becomes aware that the Trust or the Units are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Units. Specifically, the Information Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Units (including noting that Units are not individually redeemable); (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Units; (3) how information regarding the IIV and NAV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the premium or discount on the Units may widen as a result of reduced liquidity of copper trading during the Core and Late Trading Sessions; and (6) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Units directly from the Trust will receive a prospectus. ETP Holders purchasing Units from the Trust for

⁶⁴ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

⁶⁵ For the list of current members of ISG, see <https://www.isgportal.org/home.html>.

resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses as will be described in a prospectus. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical copper, that the Commission has no jurisdiction over the trading of copper as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of copper futures contracts and options on copper futures contracts.

The Information Bulletin will also disclose the trading hours of the Units and that the NAV for the Units will be calculated as of 4:00 p.m. Eastern time, each trading day. The Information Bulletin will disclose that information about Units of the Trust will be publicly available on the Trust's website.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Exchange Act.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)⁶⁶ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Units will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.201–E (Non-Generic). The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Units with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Units from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Units from

markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. The Exchange may also obtain information regarding trading in spot copper and copper futures from markets trading such futures that are members of ISG or with which the Exchange has in place a CSSA. For the North American market, CME is the leading spot (for front-month delivery) and futures market venue for copper while the LME is the leading spot and futures market venue for other regions, including Europe and Asia (excluding China).

The Exchange may obtain information regarding trading in the spot copper and copper futures from the CME and the LME, each a member of the ISG. The Exchange represents that pursuant to its membership in ISG, the CME and the LME have undertaken a commitment to share information with the Exchange on an as-needed basis when such surveillance-sharing information is used for regulatory purposes.

The Exchange also represents that the Trust will not invest in futures, options, warrants, options on futures, swap contracts, or warehouse receipts. The Trust will also not hold or trade in commodity futures contracts, “commodity interests,” or any other instruments regulated by the CEA.

Also, pursuant to NYSE Arca Rule 8.201–E(g), the Exchange is able to obtain information regarding trading in the Units and the underlying Copper through ETP Holders acting as registered Market Makers, in connection with such ETP Holders’ proprietary or customer trades through ETP Holders which they effect on any relevant market.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest. Investors may obtain copper price and copper market information through public websites and through professional subscription services.

Complete real-time data for copper futures and options prices traded on the CME and the LME are available by subscription from Reuters and Bloomberg. In addition, the LME publishes on its website with a one-day delay the LME Official Prices, which includes both spot and future prices. These prices are the last bid and ask price quoted during the second ring (open outcry) trading session on a given date. The current day’s LME Official Prices are also available from major market data vendors for a fee. The CME also provides delayed futures and options information on current and past trading sessions and market news free of

charge on its website. There are a variety of other public websites providing information on copper, ranging from those specializing in commodities to sites maintained by major newspapers.

The Trust’s daily NAV will be posted on the Trust’s website as soon as practicable. The Trust’s website will provide an IIV per Unit, as calculated by a third-party financial data provider during the Exchange’s Core Trading Session. The Trust’s website will also provide the Trust’s prospectus. Quotation and last-sale information regarding the Units will be disseminated through the facilities of the Consolidated Tape Association. In addition, if the Exchange becomes aware that the NAV with respect to the Units is not disseminated to all market participants at the same time, it will halt trading in the Units until such time as the NAV is available to all market participants. The NAV per Unit will be calculated daily and made available to all market participants at the same time. One or more major market data vendors will disseminate for the Trust on a daily basis information with respect to the recent NAV per Unit and Units outstanding.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Units and may obtain information regarding trading in the spot copper and copper futures from the CME and the LME pursuant to their membership in ISG. In addition, as noted above, investors will have ready access to information regarding the Trust’s NAV, IIV and spot Copper and copper futures pricing information.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Exchange believes the proposed rule change will enhance competition by accommodating Exchange trading of an exchange-traded product relating to physical copper, which will enhance competition among market participants, to the benefit of investors and the marketplace.

⁶⁶ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶⁷ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,⁶⁸ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest; and with Section 11A(a)(1)(C)(iii) of the Act,⁶⁹ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

A. Exchange Act Section 6(b)(5)

The Commission has previously recognized that surveillance-sharing agreements assist in the detection and deterrence of fraudulent and manipulative activity.⁷⁰ The

Commission also has stated that it considers two markets that are members of the ISG to have a comprehensive surveillance-sharing agreement with one another, even if they do not have a separate bilateral surveillance-sharing agreement.⁷¹

As stated in Amendment No. 1, the Trust will invest and hold substantially all of its assets in Copper⁷² and cash. The Trust will not hold any assets other than Copper and cash and will not invest in futures, options, warrants, options on futures, swap contracts, or warehouse receipts.⁷³ According to the

surveillance information with respect to trades effected on the London Metal Exchange, including client identity information and (b) that, if a different market were utilized for purposes of calculating the value of a designated futures contract, the listing exchange had represented that it would ensure that it entered into a surveillance-sharing agreement with respect to the new relevant market). The Commission has made similar statements about surveillance-sharing agreements with respect to the listing and trading of stock-index, currency, and currency-index warrants. *See, e.g.,* Securities Exchange Act Release No. 36166 (Aug. 29, 1995), 60 FR 46660 (Sept. 7, 1995) (SR-PSE-94-28) (approving a proposal to adopt uniform listing and trading guidelines for stock-index, currency, and currency-index warrants). Specifically, the Commission stated that "a surveillance sharing agreement should provide the parties with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses" and stated that the Commission "generally requires that a surveillance sharing agreement require that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity, and the identity of the ultimate purchasers for securities." *Id.* at 46665 n.35. In addition, the Commission stated that "[t]he ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement." *Id.* at 46665 n.36.

⁷¹ *See* Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products, Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952, 70959 (Dec. 22, 1998) (stating the importance of ISG, which "was formed to coordinate, among other things, effective surveillance and investigative information sharing arrangements in the stock and options markets," and that, if an exchange trades component securities underlying a new derivative securities product and is not a member of the ISG, the exchange seeking to list and trade such new derivative securities product should enter into a comprehensive information sharing agreement with the non-ISG market, and conversely, if an exchange seeks to list and trade a new derivative securities product and is not a member of the ISG, such exchange should enter into a comprehensive information sharing agreement with each market that trades securities underlying the new derivative securities product).

⁷² The Exchange represents that the Trust intends to achieve its objective by investing primarily in long-term holdings of unencumbered Copper and will not speculate with regard to short-term changes in Copper prices. *See* Amendment 1, *supra* note 10.

⁷³ Specifically, the Exchange represents that the Trust will not hold or trade in commodity futures contracts, "commodity interests," or any other instruments regulated by the CEA. *See supra* note 40 and accompanying text.

Exchange, for the North American market, CME is the leading spot (for front-month delivery) and futures market venue for copper, while the LME is the leading spot and futures market venue for other regions, including Europe and Asia (excluding China).⁷⁴ According to the Exchange, NYSE Arca, CME, and LME are each a member of the ISG.⁷⁵ Accordingly, the Exchange states that CME and LME are obligated, and have undertaken a commitment, to share information with the Exchange including, but not limited to, with respect to trading in spot copper and copper futures.⁷⁶

Based on the record before it, the Commission is able to conclude that the Exchange's surveillance sharing agreement by virtue of CME's and LME's ISG membership, with respect to the spot Copper proposed to be held by the Trust, as well as with respect to copper futures, can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices. These agreements through ISG membership should help to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Units of the Trust less readily susceptible to manipulation.⁷⁷ The

⁷⁴ The Exchange represents that CME publishes spot prices for copper on a daily basis for front-month delivery. The LME publishes spot prices for copper on a daily basis for prompt delivery (T+2). *See* Amendment 1, *supra* note 10. In addition, CME and LME publish futures prices for copper across a range of standardized contract maturities. *See id.*

⁷⁵ The Exchange states that ISG "provides a global network for the sharing of information and the coordination of regulatory efforts among exchanges trading securities and other products to address potential intermarket manipulation and trading abuses. In effect, the ISG is an information sharing cooperative governed by a written agreement, formed to facilitate certain regulatory responsibilities of its members in connection with market surveillance. A prerequisite to ISG membership is that the member exchange is not subject to local laws or regulations that prevent information sharing. Information is shared upon request and may only be used for regulatory purposes." *Id.*

⁷⁶ *See id.*

⁷⁷ The Exchange further represents that the Exchange is able to obtain information regarding trading in the Units in connection with ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market. Additionally, under NYSE Arca Rule 8.201-E(g), an ETP Holder acting as a registered Market Maker in the Units is required to provide the Exchange with information relating to its accounts for trading in any underlying commodity, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Rule 11.3-E requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Units to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of any material non-public information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies,

⁶⁷ In approving this proposed rule change, as modified by Amendment No. 1, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

⁶⁸ 15 U.S.C. 78f(b)(5).

⁶⁹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

⁷⁰ *See, e.g.,* Securities Exchange Act Release No. 35518 (Mar. 21, 1995), 60 FR 15804, 15807 (Mar. 27, 1995) (SR-Amex-94-30) (approving the exchange listing and trading of Commodity Linked Notes). In that matter, the Commission stated that the listing exchange had comprehensive surveillance-sharing agreements with all of the exchanges upon which the futures contracts underlying the notes traded and was able to obtain market surveillance information, including customer identity information, for transactions occurring on NYMEX and other futures exchanges. *See id.* at 15807 n.21; *see also* Securities Exchange Act Release No. 36885 (Feb. 26, 1996), 61 FR 8315, 8319 n.17 (Mar. 4, 1996) (SR-Amex-95-50) (approving the exchange listing and trading of Commodity Indexed Securities, and stating: (a) that through the comprehensive surveillance-sharing agreements, the listing exchange was able to obtain market surveillance information, including customer identity information, for transactions occurring on NYMEX and COMEX and that, through the ISG information-sharing agreement, the listing exchange was able to obtain, upon request,

Commission therefore finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,⁷⁸ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest.

B. Exchange Act Section 11A(a)(1)(C)(iii)

The proposed rule change, as modified by Amendment No. 1, sets forth aspects of the Trust, including the availability of copper pricing and market information, transparency of Trust holdings, and types of surveillance procedures, that are consistent with other exchange-traded products that the Commission has approved.⁷⁹ This includes commitments regarding: the availability via the Consolidated Tape Association of quotation and last-sale information for the Units; the availability on the Trust's website of certain information related to the Trust and the Units, including NAV; the dissemination of the IIV by one or more major market data vendors, updated every 15 seconds throughout the Exchange's regular trading hours; the Exchange's surveillance procedures and ability to obtain information regarding trading in the Units of the Trust and trading in the spot copper traded on CME and LME and copper futures traded on both CME and LME; the conditions under which the

underlying indexes, related futures or options on futures, and any related derivative instruments (including the Units). As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts and that subsidiary or affiliate is a member of another regulatory organization, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through a surveillance sharing agreement with that regulatory organization. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. *See id.*

⁷⁸ 15 U.S.C. 78f(b)(5). For avoidance of doubt, a surveillance-sharing agreement is not the only means by which an exchange may demonstrate consistency with Section 6(b)(5) of the Act.

⁷⁹ *See, e.g.*, Securities Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895 (Dec. 29, 2009) (SR-NYSEARCA-2009-94) (Order Granting Approval of Proposed Rule Change Relating To Listing and Trading Shares of the ETFs Palladium Trust); and Securities Exchange Act Release No. 94518 (Mar. 25, 2022), 87 FR 18837 (Mar. 31, 2022) (SR-NYSEARCA-2021-65) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Sprott ESG Gold ETF Under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares)).

Exchange would implement trading halts and suspensions; and the requirements of registered market makers in the Units of the Trust.

A commenter expressed general support for the proposal and encouraged the Commission to monitor the tracking performance versus spot copper prices, and ensure that any deviation from NAV remains minimal.⁸⁰ According to the Exchange, and as discussed above, investors and other market participants will be able to track the performance of the Trust's NAV against spot copper prices.⁸¹ The Exchange also represents that, if the Exchange becomes aware that the NAV with respect to the Units is not disseminated to all market participants at the same time, it will halt trading in the Units until such time as the NAV is available to all market participants.⁸² In addition, the Exchange represents that it deems the Units to be equity securities, thus rendering trading in the Units subject to the Exchange's rules

⁸⁰ *See supra* note 11 and accompanying text.

⁸¹ According to the Exchange, investors may obtain almost on a 24-hour basis, copper pricing information based on the spot price of copper from various financial information service providers, such as Reuters, Bloomberg, as well as other sources. Reuters and Bloomberg provide at no charge on their websites delayed information regarding the spot price of copper and last sale prices of copper futures, as well as information about news and developments in the copper market. Reuters, Bloomberg and Fastmarkets, a globally recognized price reporter, also offer a professional service to subscribers for a fee that provides information on copper prices directly from market participants. Complete real-time data for copper futures and options prices traded on the CME and the LME are available by subscription from Reuters and Bloomberg. In addition, the LME publishes the LME official price information on its website with a one-day delay. The current day's LME official prices are available from major market data vendors for a fee. The CME also provides delayed futures and options information on current and past trading sessions and market news free of charge on its website. There are a variety of other public websites providing information on copper, ranging from those specializing in commodities to sites maintained by major newspapers. *See* Amendment No. 1, *supra* note 10.

⁸² *See id.* The Exchange states that the NAV for the Trust's Units will be disseminated daily to all market participants at the same time, and that prior to commencement of trading in the Units, the Exchange will obtain a representation from the Trust that the NAV per Unit will be calculated daily and will be made available to all market participants at the same time. *See id.* In addition, the Trust's website will contain the following information, on a per Unit basis, for the Trust: (a) the prior business day's end of day closing NAV; (b) the Official Closing Price or the midpoint of the NBBO as of the time the NAV is calculated; (c) calculation of the premium or discount of the Official Closing Price or the Bid-Ask Price against the NAV expressed as a percentage of such NAV; (d) the latest prospectus of the Trust; and (e) other applicable quantitative information. *See id.* The Exchange also states that the IIV for the units per Unit will be disseminated by one or more major market data vendors on at least a 15 second delayed basis as required by NYSE Arca Rule 8.201-E(e)(2)(v). *See id.*

governing the trading of equity securities.⁸³

Further, the applicable listing rule of the Exchange requires that all statements and representations made in its filing regarding, among others, the description of the portfolio holdings or reference assets, limitations on such portfolio holdings or reference assets, and the applicability of the Exchange's listing rules specified in the filing, will constitute continued listing requirements.⁸⁴ Moreover, the proposed rule change states that the Manager has represented to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the applicable continued listing requirements; pursuant to obligations under Section 19(g)(1) of the Exchange Act, the Exchange will monitor for compliance with the continued listing requirements; and if the Exchange becomes aware that the Trust is not in compliance with the applicable listing requirements, that Exchange will commence delisting procedures.⁸⁵

The Commission therefore finds that the proposed rule change, as modified by Amendment No. 1, is reasonably designed to promote fair disclosure of information that may be necessary to price the Units appropriately, to prevent trading when a reasonable degree of transparency cannot be assured, to safeguard material non-public information relating to the Trust's holdings, and to ensure fair and orderly markets for the Units of the Trust.

The Commission has previously approved listing and trading on the Exchange of other issues of Commodity-Based Trust Shares, including units of the Sprott Physical Gold Trust,⁸⁶ Sprott Physical Silver Trust,⁸⁷ and Sprott Physical Gold and Silver Trust,⁸⁸ that are substantially similar in terms of operation and representations to those in the proposed rule change, as modified by Amendment No. 1. With respect to Commodity-Based Trust Shares based on copper, the Commission also previously approved

⁸³ *See id.*

⁸⁴ *See* NYSE Arca Rule 8.201-E, Commentary .04. *See also* Amendment No. 1, *supra* note 10.

⁸⁵ *See* Amendment No. 1, *supra* note 10.

⁸⁶ *See* Securities Exchange Act Release No. 61496 (Feb. 4, 2010), 75 FR 6758 (Feb. 10, 2010) (SR-NYSEArca-2009-113) (approving listing on the Exchange of Sprott Physical Gold Trust).

⁸⁷ *See* Securities Exchange Act Release No. 63043 (Oct. 5, 2010), 75 FR 62615 (Oct. 12, 2010) (SR-NYSEArca-2010-84) (approving listing on the Exchange of the Sprott Physical Silver Trust).

⁸⁸ *See* Securities Exchange Act Release No. 82448 (Jan. 5, 2018), 83 FR 1428 (Jan. 11, 2018) (SR-NYSEArca-2017-131) (approving listing on the Exchange of the Sprott Physical Gold and Silver Trust).

the listing and trading on the Exchange of shares of the JPM XF Physical Copper Trust⁸⁹ and the iShares Copper Trust.⁹⁰

This approval order is based on all the Exchange's representations and descriptions in the proposed rule change, as modified by Amendment No. 1, and comment received, which the Commission has carefully evaluated as discussed above. For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, Section 6(b)(5) and Section 11A(a)(1)(C)(iii) of the Act.⁹¹

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2025-24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSEARCA-2025-24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should

submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2025-24 and should be submitted on or before February 23, 2026.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of Amendment No. 1 in the **Federal Register**. Amendment No. 1 makes certain clarifications with respect to references to spot copper and copper futures pricing and information and makes additional corrections to conform to defined terms that are minor and technical in nature.

The Commission finds that Amendment No. 1 to the proposed rule change raises no novel regulatory issues that have not previously been subject to comment, and is reasonably designed, among other things, to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Commission also finds that Amendment No. 1 to the proposed rule change is consistent with Section 11A(a)(1)(C)(iii) of the Act.⁹² Accordingly, pursuant to Section 19(b)(2) of the Act,⁹³ the Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹⁴ that the proposed rule change (SR-NYSEARCA-2025-24), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹⁵

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-01969 Filed 1-30-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104725; File No. SR-Phlx-2026-03]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule General 8 Section 1 Related To Co-Location Services

January 28, 2026.

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 January 15, 2026, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to restructure the Exchange's connectivity fee schedule under Rule General 8, Section 1 relating to co-location services and establish fees for certain co-location services, as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/phlx/rulefilings>, and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

⁸⁹ See Securities Exchange Act Release No. 69256 (Mar. 28, 2013), 78 FR 20164 (Apr. 3, 2013) (SR-NYSEARCA-2012-28) (approving listing on the Exchange of the JPM XF Physical Copper Trust).

⁹⁰ See Securities Exchange Act Release No. 68973 (Feb. 22, 2013), 78 FR 13726 (Feb. 28, 2013) (SR-NYSEARCA-2012-66) (approving listing on the Exchange of the iShares Copper Trust).

⁹¹ 15 U.S.C. 78f(b)(5); 15 U.S.C. 78k-1(a)(1)(C)(iii).

⁹² See *supra* note 69 and accompanying text.

⁹³ 15 U.S.C. 78s(b)(2).

⁹⁴ *Id.*

⁹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's current data center in Carteret, New Jersey, consists of the original data center ("NY11"), an expansion area ("NY11-4"), and a future expansion area ("NY11-5"). The purpose of this proposed rule change is to restructure the Exchange's connectivity fee schedule under Rule General 8, Section 1 to eliminate cabinet density-based distinctions and associated fees, other than installation fees,³ and establish a power delivery-based pricing model. Specifically, the Exchange proposes to (i) eliminate all density-based cabinet offerings under Section 1(a) of Rule General 8 including their respective fees other than installation fees; and (ii) establish power delivery-based, recurring monthly fees for cabinet power circuits under Rule General 8, Section 1(c), as described below.

Current Cabinet Offerings

Currently, co-location customers have the option of obtaining cabinets of various power densities at varying installation and ongoing monthly fees.⁴ Co-location customers may obtain a Half Cabinet,⁵ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts ("kW"),⁶ a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW,⁷ a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW,⁸ a High Density Cabinet with power density greater than 7 kW and less than 10 kW,⁹ a Super High Density Cabinet with power density greater than 10 kW and

less than or equal to 17.3 kW,¹⁰ and an Ultra High Density Cabinet with power density greater than 10 kW and less than or equal to 15 kW.¹¹

Proposed Power Delivered Model

The Exchange is now proposing (i) to eliminate all such size- and density range-based cabinet offerings under Rule General 8, Section 1(a), including their respective ongoing monthly fees, and (ii) replace them with two cabinet offerings, consisting of a single cabinet as well as a half cabinet option, with their respective cabinet installation fees unchanged from current cabinet installation fees under Rule General 8, Section 1(a).¹² Unlike today, however,

¹⁰ The Super High Density Cabinet is offered in NY11 for an installation fee of \$4,950 and an ongoing monthly fee of \$8,800 and in NY11-4 for an installation fee of \$5,940 and an ongoing monthly fee of \$8,800. See Rule General 8, Section 1(a).

¹¹ The Ultra High Density Cabinet is offered in NY11-4 for an installation fee of \$5,940 and an ongoing monthly fee of \$7,230. The Ultra High Density Cabinet is not available in NY11. See Rule General 8, Section 1(a).

¹² See proposed Rule General 8, Section 1(a). To effect this change, the Exchange proposes the following changes to Rule General 8, Section 1(a). The Exchange proposes to delete all cabinet with power offerings under Rule General 8, Section 1(a) including their associated installation and ongoing monthly fees, other than the Half Cabinet offering itself (but not its associated ongoing monthly fee which the Exchange is proposing to delete), and replace those offerings with two options: a Cabinet and the currently-offered Half Cabinet, as discussed above. The Exchange then proposes to move, unchanged from their current respective amounts, installation fees for cabinet options in NY11 and NY11-4 by inserting such fees (\$3,850 and \$5,490, respectively) into the columns titled "NY11 Installation Fee" and "NY11-4 Installation Fee" under Rule General 8, Section 1(a). The Exchange proposes to (1) enter, under the column titled "Ongoing Monthly Fee" under Rule General 8, Section 1(a) for both the Half Cabinet and Cabinet options the following: "N/A," and (2) delete, from the "Ongoing Monthly Fee" for the Half Cabinet option under Rule General 8, Section 1(a) the amount "\$2,200." The Exchange further proposes a non-substantive change to move the symbol "+" from its various current locations within the table at Rule General 8, Section 1(a) to the caption for the column titled "NY11-4 Installation Fee" (and adjacent to the word "Fee") so as to denote, unchanged from the symbol's significance, as stated in its accompanying footnote, that cabinets under the column designated with that symbol include a larger cabinet (32" W x 48" D x 91" H). Finally, the Exchange proposes to delete from Rule General 8, Section 1(a), all accompanying notes, other than those designated with the following symbols: single asterisk ("*") (noting that such cabinets are not available to new users) as well as the symbol "+" as discussed above. The Exchange is also proposing a non-substantive change to move, with a non-substantive clarifying change, the accompanying note to Rule General 8, Section 1(a) (providing that cabinet power cap is based on the available power at 80% of the breakered capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit)) to Rule General 8, Section 1(c). The Exchange proposes a clarifying change to that footnote to clarify that it is the circuit cap, rather than the cabinet power cap, that is based on the available power at 80% of the

the Exchange is not proposing ongoing monthly fees under Rule General 8, Section 1(a) for cabinets throughout the data center campus, including NY11, and NY11-4. Rather, as discussed above, the Exchange proposes to eliminate ongoing monthly fees for cabinets under Rule General 8, Section 1(a) and introduce, in turn, a uniform, per kilovolt-amperes (kVA)-based,¹³ ongoing fixed monthly fee for all current power circuit offerings under proposed Rule General 8, Section 1(c).¹⁴

Specifically, the Exchange would establish a power-supplied-based, uniform ongoing monthly fee of \$550.00 per kVA¹⁵ to be applied to each power

breakered capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit). The Exchange notes this longstanding rule does not affect pricing, however, as fees are based on 100% of the circuit capacity. The proposed change is clarifying in nature and non-substantive because in all cases power caps are associated with power circuits rather than cabinet density, such that the proposed changes would render the note more accurate and easier to understand. As a conforming change, the Exchange proposes to designate that note with a double asterisk (**) and add the double asterisk to the caption to Rule General 8, Section 1(c) (Cabinet Power) to facilitate references to that note. The Exchange believes this proposed change would facilitate the understanding of and application of the Exchange's rules because associated cabinet density options are being eliminated under this proposal, and Section 1(c) of Rule General 8 addresses cabinet power, to which this note is more closely related.

¹³ Kilovolt-Amperes (kVA) is a unit of *apparent power* used to describe the capacity of electrical circuits and equipment. In alternating current (AC) systems, power consists of two components: real power (kW) and reactive power (kVAR). Real power, or kW, is the actual usable power that performs work, such as running servers or cooling systems, whereas reactive power, or kVAR, is the power that sustains the magnetic and electric fields in equipment but does not perform useful work. Because AC systems often have both real and reactive components, kVA measures the total apparent power, which is the combination of real and reactive power—the full load the circuit must carry. The relationship between kilowatts and kVA depends on the power factor (PF) which reflects how efficiently electrical power is converted into useful work: $kW = kVA \times PF$. In the context of data center operations, electrical power is commonly expressed in two units: kilowatts (kW) and kilovolt-amperes (kVA). While these terms measure different aspects of electrical power—kW representing real power consumed by equipment and kVA representing apparent power supplied—they are closely correlated in environments where the power factor approaches unity. Modern data centers typically operate at or near a power factor of 1.0, resulting in minimal variance between kW and kVA. Accordingly, these measures, kW and kVA, are often treated as interchangeable for practical purposes.

¹⁴ As discussed above, the Exchange proposes to retain the Half Cabinet offering under Rule General 8, Section 1(a) as well as its related footnote (as designated with a single asterisk) clarifying that such Half Cabinets are not available to new subscribers. See proposed Rule General 8, Section 1(a).

¹⁵ As discussed below, the proposed amount of \$550 per kVA is within the current effective rate of

Continued

³ See Rule General 8, Section 1(a).

⁴ See Rule General 8, Section 1(a).

⁵ Half cabinets are not available to new subscribers. The Half Cabinet is currently offered for an ongoing monthly fee of \$2,000. See Rule General 8, Section 1(a).

⁶ The Low Density Cabinet is offered for an installation fee of \$3,850 and an ongoing monthly fee of \$2,200. See Rule General 8, Section 1(a).

⁷ The Medium Density Cabinet is offered for an installation fee of \$3,850 for NY11 and \$5,940 for NY11-4 and an ongoing monthly fee of \$2,750 equally applicable to both NY11 and NY11-4. See Rule General 8, Section 1(a).

⁸ The Medium High Density Cabinet is offered in NY11 for an installation fee of \$3,850 and an ongoing monthly fee of \$3,850 and in NY11-4 for an installation fee of \$5,940 and an ongoing monthly fee of \$3,850. See Rule General 8, Section 1(a).

⁹ The High Density Cabinet is offered in NY11 for an installation fee of \$3,850 and an ongoing monthly fee of \$4,950 and in NY11-4 for an installation fee of \$5,940 and an ongoing monthly fee of \$4,950. See Rule General 8, Section 1(a).

circuit offering under Rule General 8, Section 1(c), thus resulting in a fixed ongoing monthly fee for each of the various power circuit options under that

section, as shown in Table 1¹⁶ below.¹⁷ Table 2, in turn, provides the basis for the fixed monthly fee calculations.¹⁸ As in the case of cabinet installation fees

under Rule General 8, Section 1(a), all cabinet power circuit installation fee amounts under Rule General 8, Section (c) would remain unchanged.¹⁹

TABLE 1²⁰

Description	NY11 Installation fee	NY11-4 Installation fee	NY11 Ongoing monthly fee (\$550 per kVA)	NY11-4 Ongoing monthly fee (\$550 per kVA)
2x20 amp 110 volt	\$2,200	N/A	[\$0]\$1,320.00	N/A
2x30 amp 110 volt	2,200	N/A	[\$0]1,980.00	N/A
2x20 amp 208 volt	2,200	N/A	[\$0]2,288.00	N/A
2x30 amp 208 volt	2,200	N/A	[\$0]3,432.00	N/A
2x60 amp 208 volt	3,300	N/A	[\$0]6,864.00	N/A
Phase 3 2x 20 amp 208 volt	3,300	N/A	[\$0]3,962.82	N/A
Phase 3 2x 30 amp 208 volt	3,300	N/A	[\$0]5,944.22	N/A
Phase 3 2x 40 amp 208 volt	3,300	N/A	[\$0]7,925.63	N/A
Phase 3 2x 50 amp 208 volt	3,300	N/A	[\$0]9,907.04	N/A
Phase 3 2x 60 amp 208 volt	3,300	N/A	[\$0]11,888.45	N/A
2x30 amp 48 volt DC	3,300	N/A	[\$0]792.00	N/A
Phase 1 20 amp 240 volt *	[3,600]	\$3,600	[\$0] N/A	\$2,640.00
Phase 1 32 amp 240 volt *	[3,600]	3,600	[\$0] N/A	4,224.00
Phase 1 40 amp 240 volt *	[3,600]	3,600	[\$0] N/A	5,280.00
Phase 3 20 amp 415 volt *	[4,560]	4,560	[\$0] N/A	7,906.58
Phase 3 32 amp 415 volt *	[4,560]	4,560	[\$0] N/A	12,650.53

\$482–\$763/kW and operates as a mid-band per kVA price (applied equally to all cabinet power circuit options offered by the Exchange under Rule General 8, Section 1(c)) to keep applicable fees balanced across user profiles.

¹⁶ In Tables 1–3 and throughout this proposal, the Exchange uses the terms “110 V” and “120 V.” In North America, residential and light-commercial electrical systems are nominally standardized at 120 volts, but the terms “110V,” “115V,” and “120V” are often used interchangeably. This is because they all refer to the same electrical system, not meaningfully different ones. Historically, early electrical grids in the U.S. operated closer to 110–115 volts. As infrastructure improved and electrical demand increased, utilities gradually raised the nominal voltage to 120 volts to improve efficiency and performance. Rather than replacing all existing equipment, standards were set so devices could operate safely across a voltage tolerance range, typically about ±5% to ±10%. A subsequent clean-up filing will update the Exchange’s rulebook to uniformly list the 20 amp 110 volt and the 30 amp 110 volt circuits to 120 volt throughout its rulebook, consistent with current standards.

¹⁷ In Table 1 (as in Exhibit 5), additions are italicized, and deletions are bracketed. To effect these changes, the Exchange proposes to amend Rule General 8, Section 1(c) as follows. The Exchange proposes to (1) insert, in the column titled “Installation Fee” the acronym “NY11,” and move, unchanged from current amounts, fees designated with the symbol single asterisk (“*”) to a new column titled “NY11-4 Installation Fee”; (2) insert, in the column titled “Ongoing Monthly Fee” the acronym “NY11” and the parenthetical “(\$550 per kVA),” and then delete, from that current column titled “Ongoing Monthly Fee” all fees currently depicted thereunder (in each instance such fee being \$0), and insert, in their place, each of the proposed ongoing monthly fees in Table 1 for the respective power circuit options under Rule General 8, Section 1(c), other than those depicted

with a single asterisk, which are designated for NY11-4; and (3) insert a new column titled “NY11-4 Ongoing Monthly Fee (\$550 per kVA)” and insert thereunder all proposed ongoing monthly fees shown in Table 1 for power circuit options designated with a single asterisk indicating, unchanged from today, that such cabinets are available in NY11-4 only. The Exchange proposes to enter “N/A” as applicable throughout Rule General 8, Section 1(c) to indicate that certain fees are not applicable, as appropriate. See proposed Rule General 8, Section 1(c).

¹⁸ The figure (“2X”) as used in Tables 1–3 and throughout this proposal designates the Exchange’s provision of both a primary and secondary circuit. The Exchange does not include the secondary circuit in the calculation of the proposed fees.

¹⁹ See proposed Rule General 8, Section 1(c). As discussed above, the Exchange is also proposing a non-substantive change to move, with one clarifying change from its current form, the accompanying note to Rule General 8, Section 1(a) (providing that cabinet power cap is based on the available power at 80% of the breakered capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit) to the notes in Rule General 8, Section 1(c). The Exchange proposes a clarifying change to that footnote to clarify that it is the circuit cap, rather than the cabinet power cap, that is based on the available power at 80% of the breakered capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit)). The proposed change is clarifying in nature and non-substantive because in all cases power caps are associated with power circuits rather than cabinet density, such that the proposed changes would render the note more accurate and easier to understand. See proposed Rule General 8, Section 1(c). The 80% capacity rule is a safety and reliability standard applied in data centers to ensure that electrical circuits are not operated at their full breakered capacity. Instead, the usable

power is capped at 80% of the circuit’s rated capacity. This practice is based on the National Electrical Code (NEC) guidelines for continuous loads, which require derating to prevent overheating and allow for operational headroom. This rule does not affect pricing, however, as fees are based on 100% of the circuit capacity.

²⁰ The ongoing monthly fees depicted in Tables 1 and 2 are derived by multiplying the circuit’s apparent power (kVA) by \$550 per kVA. The kilovolt-ampere (kVA) rating for each circuit was calculated using standard electrical formulas based on circuit type as follows. Single-phase circuits: “kVA”=(“Volts” x “Amps”)/1000. This converts the product of voltage and current into kilovolt-amperes. Three-phase circuits (balanced load): “kVA”=($\sqrt{3}$ x“Volts” x “Amps”)/1000=(1.732x“Volts” x “Amps”)/1000. The factor $\sqrt{3}$ accounts for the three-phase power configuration. These formulas were applied to each circuit type in the table to determine its kVA capacity, which was then multiplied by the proposed rate of \$550 per kVA to calculate the new monthly fee. For readability, table values reflect rounded kVA figures (e.g., a three-phase 30-amp, 208-volt circuit is displayed as 10.81 kVA) and fees rounded to the nearest cent. In internal calculations, the Exchange compute fees using full-precision kVA (e.g., ~10.794 kVA before display rounding), which can yield penny-level variances relative to fees computed from rounded kVA values. These minor differences arise solely from the sequence of rounding (rounding kVA before vs. after fee computation) and do not affect the uniform application of the \$550/kVA rate or the comparability of fees across circuit options. The Exchange notes that the initial filing (SR-Phlx-2025-79) contained minor errors in calculation of the proposed ongoing monthly fees under proposed Rule General 8, Section 1(c). The Exchange has addressed those errors and will bill customers for the correct amounts accordingly.

TABLE 2²¹

Description	kVA per Cir	Proposed monthly fee
2x20 amp 120 volt	2.4	\$1,320.00
2x30 amp 120 volt	3.6	1,980.00
2x20 amp 208 volt	4.16	2,288.00
2x30 amp 208 volt	6.24	3,432.00
2x60 amp 208 volt	12.48	6,864.00
Phase 3 2x 20 amp 208 volt	7.21	3,962.82
Phase 3 2x 30 amp 208 volt	10.81	5,944.22
Phase 3 2x 40 amp 208 volt	14.41	7,925.63
Phase 3 2x 50 amp 208 volt	18.01	9,907.04
Phase 3 2x 60 amp 208 volt	21.62	11,888.45
2x30 amp 48 volt DC	1.44	792.00
Phase 1 20 amp 240 volt*	4.8	2,640.00
Phase 1 32 amp 240 volt*	7.68	4,224.00
Phase 1 40 amp 240 volt*	9.6	5,280.00
Phase 3 20 amp 415 volt*	14.38	7,906.58
Phase 3 32 amp 415 volt*	23.0	12,650.53

Transitioning to the Power Delivered Model

As discussed above, the Exchange currently offers several cabinet options the fees for which are based on varying power density ranges. As the Exchange transitions to the proposed power-delivered model, customers would transition to that model by structuring their power circuit selections under proposed Rule General 8, Section 1(c) to support the workload capacity supported under the cabinets held under current Rule General 8, Section 1(a). For example,²² a customer using a Super High Density Cabinet offering a power density range greater than 10 kW²³ and less than or equal to 17.3 kW²⁴ in NY11 with a flat monthly fee of \$8,800 would have several options for structuring its power circuit options under proposed Rule General 8, Section 1(c). The customer could select, for example, the Phase 3, 2 x 50 amp, 208V circuit (18.01 kVA), which approximates the high end of the current cabinet's power density range of 17.3 kW for a monthly fee of \$9,907.04. Alternatively, the customer could select the Phase 3, 2x30 amp, 208 volt circuit (10.81 kVA) to align itself with the lower end of the current cabinet density range—currently at the same flat fee of \$8,800 per month and as proposed \$5,944.22 per month—and reduce its

monthly costs by \$2,855.78. Similarly, customers using a Ultra High Density Cabinet with a cabinet density greater than 10 kW and less than or equal to 15 kW (at a current monthly fee of \$7,230.) could select the Phase 3 20 amp 415 volt circuit (14.38 kVA) at a recurring monthly fee of \$7,906.58. A customer with a High Density Cabinet offering a density greater than 7 kW and less than or equal to 10 kW at \$4,950 per month could select a Phase 3, 2 x 30 amp 208 volt circuit (10.81 kVA) at \$5,944.22 per month; alternatively, the customer could select the Phase 3, 2 x 20 amp 208 vol (7.21 kVA) circuit at the lower end of its current density for \$3,962.82 per month. Customers with a Medium High Density Cabinet offering densities greater than 5 kW and less than or equal to 7 kW currently at \$3,850 per month could select a 2 x 30 amp, 208 volt circuit (6.24 kVA) at \$3,432 per month or the 2 x 20 amp 208 volt circuit (4.16 kVA) at \$2,288 per month. Customers with a Medium Density Cabinet offering densities greater than 2.88 kW and less than or equal to 5 kW at a current monthly fee of \$2,750 could select a 2 x 20 amp 208 volt circuit (4.16 kVA) at \$2,288 per month or a 2 x 30 amp 110/120 volt (3.6 kVA) circuit at \$1,980 per month. Finally, customers with a Low Density Cabinet offering densities less than or equal to 2.88 kW at an ongoing

monthly fee of \$2,200 could select a 2 x 20 amp 110/120 volt circuit (2.4 kVA) at \$1,320 per month.

Table 3 below shows power circuit options under proposed Rule General 8, Section 1(c) that could be selected²⁵ to align with the high and lower end of the current cabinet density ranges under Rule General 8, Section 1(a), including associated changes in fees. While the table depicts a single power circuit at the approximate ends of the current cabinet density ranges for illustrative purposes, the Exchange notes that under the proposed power delivered model, clients are free to select multiple circuits per cabinet to achieve their desired power preferences. Under the current cabinet density-based model, clients are limited to the maximum power density allowed for their selected cabinet type. For example, a client using a Phase 3, 60-amp, 208-volt circuit (21.62 kVA) in combination with a Super High Density Cabinet would pay full fees for that power circuit but would only be authorized to draw up to 17.3 kW of power. Under the proposed billing model, subject to the 80% rule discussed above, clients may use the full power provided by their chosen circuits without being constrained by rigid cabinet density ranges in place today.

²¹ In Table 2 and throughout this proposal, the kilovolt-ampere (kVA) rating for each circuit was calculated using standard electrical formulas based on circuit type as follows. Single-phase circuits: "kVA"=(“Volts” x “Amps”)/1000. This converts the product of voltage and current into kilovolt-amperes. Three-phase circuits (balanced load): “kVA”=($\sqrt{3}$ x“Volts” x“Amps”)/1000=(1.732x“Volts” x“Amps”)/1000. The factor $\sqrt{3}$

accounts for the three-phase power configuration. These formulas were applied to each circuit type in the table to determine its kVA capacity, which was then multiplied by the proposed rate of \$550 per kVA to calculate the new monthly fee.

²² The examples that follow are for illustrative purposes only, as customers are free to select the power circuit options that best suit their business needs.

²³ For simplicity, assume power factor ≈ 1 (common in data centers), so: 10 kW $\approx$ 10 kV.

²⁴ For simplicity, assume power factor ≈ 1 (common in data centers), so: 17.3 kW $\approx$ 17.3 kV.

²⁵ The examples depicted in Table 3 are for illustrative purposes only, as customers are free to select the power circuit options that best suit their business needs.

TABLE 3²⁶

Cabinet type (density range)	Circuit type	kVA	Current fee	New fee	Δ %
Low Density (≤ 2.88 kW)	20A 120V	2.4	\$2,200	\$1,320	-40
	30A 120V	3.6	2,200	1,980	-10
Medium Density ($> 2.88\text{--}\leq 5$ kW)	30A 120V	3.6	2,750	1,980	-28
	20A 240V	4.8	2,750	2,640	-4
Medium-High Density ($> 5\text{--}\leq 7$ kW)	30A 208V	6.24	3,850	3,432	-10.86
	30A 120V, 30A 120V	7.2	3,850	3,960	2.86
High Density ($> 7\text{--}\leq 10$ kW)	30A 208V	6.24	4,950	3,432	-30.67
	40A 240V	9.6	4,950	5,280	6.67
Ultra High Density ($> 10\text{--}\leq 15$ kW)	20A 415V (Phase 3)	14.38	7,230	7,906.58	9.36
	(Same circuit used for upper end) .....	.....	.....	.....	.....
Super High Density ($> 15\text{--}\leq 17.3$ kW)	60A 208V (Phase 3)	21.62	8,800	11,891	35.13
	32A 415V (Phase 3)	23.0	8,800	12,650.53	43.76

The Exchange believes that pricing the offered services on a per kVA basis, as proposed, will allow the Exchange the operational flexibility to offer clients the maximum available power from the power circuits selected. Specifically, because the proposed fee structure eliminates cabinet density-based distinctions, including their associated fixed ongoing monthly fees, and replaces those distinctions with a single per-kVA-based monthly fee of \$550 per kVA delivered that is uniformly applied to the capacity of the customer's power circuit selection under Rule General 8, Section (c), customers in the lower density cabinet ranges are likely to experience a decrease in overall fees while customers in the higher cabinet density ranges are likely to see increases.

Overall, the proposal introduces a transparent and equitable delivery-based pricing model that equitably allocates fees and removes complexity, consistent with requirements under the Act.

The Exchange believes that the proposed changes are better aligned with current industry practices, which base billing on power supplied rather than cabinet footprint. Under the current cabinet density model, customers select from cabinet options designed to accommodate a range of power densities, up to approximately 17

kW. This approach often resulted in misalignment between costs and actual usage because pricing was tied to cabinet size and density tiers rather than the actual power delivered. For example, under the cabinet-density pricing model, customers operating at the lower end of a given cabinet's power-density range were assessed the same fixed ongoing monthly fee as customers operating at the higher end of that range, because pricing was tied to the cabinet's density tier rather than the deployed power circuit.

By contrast, the proposed per-kVA pricing model directly reflects the actual power delivered to the customer's circuits, ensuring that charges correspond to the infrastructure resources delivered. This power delivery-based approach inherently simplifies cost planning. In short, billing on a per-kVA basis promotes transparency and flexibility, aligning fees with real power demand and enabling the Exchange to accommodate evolving customer requirements with greater transparency and efficiency.

Increases associated with the proposal will better enable the Exchange to continue to maintain and improve its market infrastructure technology and services. The Exchange notes that the proposed fee of \$550 per kVA is comparable to fees charged by at least one other national securities exchange for a similar product. Specifically, the New York Stock Exchange ("NYSE") offers a tiered, per kW monthly fee for cabinets ranging from \$900 to \$1,200 per kW based on the total kW allocated to all of a user's dedicated cabinets.²⁷

²⁷ NYSE's per kW Monthly Fee is a factor of the total number of kilowatts allocated to all of a User's dedicated cabinets and varies based on the total kilowatts allocated to a User. See New York Stock Exchange LLC Connectivity Fee Schedule, available at https://www.nyse.com/publicdocs/nyse/Wireless_Connectivity_Fees_and_Charges.pdf. Most modern data centers typically operate at or near a power factor of 1.0, resulting in minimal variance between kW and kVA such that the two measures are, for

Under the NYSE schedule, for example, a customer requesting 10kW at NYSE would pay a monthly fee of \$10,500 per month ($10\text{kW} \times \$1,050$ per kW per month), whereas a customer requesting ~10kW under the proposed model at the Exchange could install a Phase 3 30 amp, 208 volt circuit for 10.81 kVA²⁸ for a total charge of \$5,944.22 per month ($10.8\text{ kVA} \times \$550$ per kVA per month).²⁹

The Exchange believes that its proposed pricing model is more transparent and equitable because it directly ties fees to the actual power delivered and the infrastructure required to support that capacity (power and cooling). This eliminates distortions inherent in tiered pricing, where customers with similar power needs may pay significantly different amounts based on density classifications. By linking charges to delivered power, the proposal enhances transparency and predictability. Costs scale with actual power delivered, and customers can avoid sudden price jumps when moving between tiers. Under the proposed structure, every kVA is priced the same,

comparison purposes and given this assumed PF factor, interchangeable.

²⁸ To convert 30 amps at 208 volts to kVA, we use the formula: $\text{kVA} = \text{Volts} \times \text{Amps} / 1000$. For single phase: $\text{kVA} = 208 \times 30 = 6.24\text{ kVA} / 1000$. For three-phase (assuming a balanced load): $\text{kVA} = 1.732 \times 208 \times 30 = 10.81\text{ kVA} / 1000$. 1.732 is derived from $\sqrt{3}$. As discussed above, modern data centers typically operate at or near a power factor of 1.0, resulting in minimal variance between kW and kVA. Accordingly, these measures are often treated as interchangeable for practical purposes. NYSE uses a tiered monthly fee per kW, ranging from \$900 to \$1,200 per kW depending on the total allocated power across a user's cabinets. Using PF ≈ 1.0 , that translates to \$900–\$1,200 per kVA.

²⁹ NYSE charges a tiered monthly fee per kW, ranging from \$900 to \$1,200 per kW, depending on the total kilowatts allocated across all cabinets. For example, a customer requesting 10 kW at NYSE would pay approximately \$10,500 per month ($10\text{ kW} \times \$1,050$ per kW). The Exchange proposes a flat monthly fee of \$550 per kVA for the full theoretical capacity of the circuit. For example, a Phase 3, 30-amp, 208-volt circuit provides approximately 10.81 kVA ($1.732 \times 208 \times 30 \div 1000$) for a monthly fee of \$5,944.22 ($\$550 \times 10.81$).

²⁶ In Table 3, the kilovolt-ampere (kVA) rating for each circuit was calculated using standard electrical formulas based on circuit type as follows. Single-phase circuits: " $\text{kVA} = (\text{Volts} \times \text{Amps}) / 1000$ ". This converts the product of voltage and current into kilovolt-amperes. Three-phase circuits (balanced load): " $\text{kVA} = (\sqrt{3} \times \text{Volts} \times \text{Amps}) / 1000$ ". The factor $\sqrt{3}$ accounts for the three-phase power configuration. These formulas were applied to each circuit type in the table to determine its kVA capacity, which was then multiplied by the proposed rate of \$550 per kVA to calculate the new monthly fee. The examples depicted in this table are for illustrative purposes only, as customers are free to select the power circuit options that best suit their business needs.

making it easier for customers to forecast expenses, compare across providers, and understand the relationship between costs and their selected power delivery preferences.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,³¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to restructure its cabinet and cabinet power connectivity schedule to provide for a delivery-based model that eliminates cabinet density-based distinctions, along with their associated monthly fees, and establishes in its place a uniform ongoing monthly fee of \$550 per kVA fee as applied to each offered cabinet power circuit options is reasonable. First, the Exchange's proposal to establish a \$550 per kVA fee to be applied to the various power circuit options offered by the Exchange is reasonable because the proposed amount of \$550 per kVA is within the current effective rate of \$482–\$763/kW and operates as a mid-band per kVA price (applied equally to all cabinet power circuit options offered by the Exchange under Rule General 8, Section 1(c)) to keep applicable fees balanced across user profiles. As discussed above, the Exchange is proposing to keep all cabinet and cabinet power installation fee amounts under Rule General 8, Sections 1(a) and (c) unchanged. Second, and as discussed above, the proposed per kVA fee of \$550 per kVA is reasonable as compared to per kVA fees for comparable products offered by NYSE. By linking charges to delivered power, the proposal enhances transparency and predictability as customers avoid price jumps when moving between tiers because costs scale with power delivered. By comparison, NYSE's model assesses \$900–\$1,200 per kW per month based on a user's aggregate dedicated-cabinet footprint, introducing higher per kVA prices, tier transitions, and variability that the Exchange's uniform \$550/kVA model avoids.

The Exchange's proposal to replace cabinet-density based pricing with a per-kVA power delivery model

equitably allocates fees based on the primary cost driver of co-location services—electrical power capacity and associated cooling—rather than cabinet density range-based footprint. Under the current model, two customers occupying the same cabinet density could incur identical fees despite materially different power demands, resulting in misalignment between fees and the customer's power usage. By charging according to committed and delivered kVA, the Exchange ensures that fees are reasonable and proportionate to the allocated infrastructure resources consistent with Section 6(b)(4).

As discussed above, the fee increases resulting from the proposed changes would support the Exchange's ongoing investments in market infrastructure and co-location services, ensuring competitiveness with peer exchanges. Customer demand for more robust and higher power cabinet options has grown significantly over time. In response, the Exchange has continued to invest in its data center operations to meet these evolving needs, consistent with applicable regulatory requirements. These investments include modernizing equipment and expanding the Exchange's co-location facilities to provide customers with additional space and power capacity, thereby providing customers with additional options for addressing their business needs. It is reasonable and consistent with the Act for the Exchange to recoup its investments, at least in part, by adjusting its fees.

The proposal is also not designed to permit unfair discrimination under Section 6(b)(5). The per-kVA pricing structure applies uniformly to all co-location users based on objective, market infrastructure technology-neutral criteria (power capacity requested and delivered), without regard to customer identity, membership status, or business model. Differences in fees reflect only differences in service requested and installed, which is a permissible and non-discriminatory basis for differentiation under the Act. The Exchange further believes that the proposed fee changes are not unfairly discriminatory because the proposed cabinet and cabinet power circuit options are available to and assessed uniformly across all market participants.

The Exchange believes that the proposed conforming and other non-substantive changes, including those to Rule General 8, Section 1, are appropriate because they align related parts of the Exchange's rulebook with the proposed changes or otherwise

clarify and facilitate the application of the Exchange's rules.

Accordingly, the Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) and 6(b)(5) of the Act because it provides for the equitable allocation of reasonable fees and is not designed to permit unfair discrimination.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether to connect to the Exchange based on the value received compared to the cost of doing so.

Nothing in the proposal burdens intra-market competition because the proposed cabinet, half cabinet, and cabinet power options are available to any customer under the same fees as any other customer, and any customer that wishes to order cabinets and cabinet power options can do so on a non-discriminatory basis.

Co-location services are optional and offered in a highly competitive environment among multiple exchanges and third-party data center providers. Market participants that do not wish to pay for co-location services under the revised pricing model may continue to access the Exchange through alternative connectivity methods or utilize competing venues.

The proposed shift from cabinet-based pricing to a per-kVA power delivery model is designed to align fees with the actual resource delivered and infrastructure investments, rather than fixed cabinet density ranges. This change does not restrict access or favor any category of participant; all eligible users are subject to the same fees and terms based on objective criteria (committed and delivered power capacity). Accordingly, the proposal does not create any undue burden on intermarket competition, as participants can choose among multiple exchanges and service providers, nor does it impose an undue burden on intramarket competition, as all co-location customers are treated uniformly under the proposed fee structure, as described above.

³⁰ 15 U.S.C. 78f(b).

³¹ 15 U.S.C. 78f(b)(4) and (5).

To the extent the proposal may affect competition, the Exchange believes that the impact is positive because the revised pricing structure promotes cost transparency and fairness, thereby enabling customers to more easily plan for and compare infrastructure expenses, as well as tailor their connectivity selections to suit their specific business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.³²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx-2026-03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-Phlx-2026-03. 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 filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-Phlx-2026-03 and should be submitted on or before February 23, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-01996 Filed 1-30-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104717; File No. SR-CBOE-2026-009]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Silexx Fee Schedule

January 28, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 22, 2026, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend the Silexx fee schedule to remove all fees and references to the Silexx FLEX platform, remove the data management fee waiver for Cboe Silexx, and update language regarding the first month fee waiver for Cboe Silexx to address mid-month subscription start dates. The text

of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Commission's website (<https://www.sec.gov/rules/sro.shtml>), the Exchange's website (https://www.cboe.com/us/options/regulation/rule_filings/bzx/), and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Silexx fee schedule, effective December 1, 2025. By way of background, the Exchange originally offered the following versions of the Silexx platform: Basic, Pro, Pro Plus Risk and Buy-Side Manager ("Legacy Platforms"). The Legacy Platforms were designed so that a User could enter orders into the platform to send to the executing broker, including Trading Permit Holders (TPHs), of its choice with connectivity to the platform. Users could not directly route orders through any of the Legacy Platforms to an exchange or trading center nor was the platform integrated into or directly connected to Cboe Option's System. In 2019, the Exchange made available a new version of the Silexx platform, Silexx FLEX, which supported the trading of FLEX Options and allowed authorized Users direct access to the Exchange to establish connectivity and submit orders directly to the Exchange.³ In 2020, the Exchange made an additional version of the Silexx platform available, Cboe Silexx, which originally only supported the trading of

³ See Securities Exchange Act Release No. 87028 (September 19, 2019) 84 FR 50529 (September 25, 2019) (SR-CBOE-2019-061). Only Users authorized for direct access and who are approved to trade FLEX Options may trade FLEX Options via Silexx. Only authorized Users and associated persons of Users may establish connectivity to and directly access the Exchange, pursuant to Rule 5.5 and the Exchange's technical specifications.

³² 15 U.S.C. 78s(b)(3)(A)(ii).

³³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

non-FLEX Options and allowed authorized Users direct access to the Exchange to establish connectivity and submit orders directly to the Exchange.⁴ In August of 2025, the Exchange transitioned the Legacy Platforms to the current version of Cboe Silexx,⁵ and no longer offers access to the Legacy Platforms, including Silexx FLEX.⁶ Additionally, the current version of Cboe Silexx, includes the functionality of both the original Cboe Silexx and Silexx FLEX platforms. As such, the risk of duplicative fees no longer exists. Accordingly, the Exchange proposes to remove the data management fee waiver from the Silexx fee schedule.⁷

The Exchange has an established fee structure for the Cboe Silexx platform, based on Login IDs and set forth in the Silexx fee schedule. For the Cboe Silexx platform, there is a monthly fee of \$399 per Login ID for the first 16 Login IDs (*i.e.*, Logins IDs 1–16), a fee of \$299 per each additional Login ID for the next 16 Login IDs (*i.e.*, Login IDs 17–32), and each Login ID thereafter is \$199 per Login ID (*i.e.*, 33+ Login IDs). The Exchange's fee schedule currently displays fees for Silexx FLEX as an independent platform. As Silexx FLEX is no longer offered as a separate platform from Cboe Silexx, the Exchange proposes to remove all references to the Silexx FLEX platform from its fee schedule.

Additionally, the Exchange proposes to remove the current data management fee waiver in place for both Silexx FLEX and Cboe Silexx. The Exchange's fee schedule includes a data management charge of \$20 per month per Login ID. However, the Exchange implemented a fee waiver for the data management charge while transitioning the Legacy Platforms to the Cboe Silexx platform.⁸ The purpose of the waiver was to avoid duplicative fees for Users who had access to both the old Legacy Platforms and the new version of Cboe Silexx.⁹ As

discussed above, the transition of the Legacy Platforms to the current version of Cboe Silexx, which includes the functionality of both the original Cboe Silexx and Silexx FLEX platforms, is complete, and Users only have access to the new version of Cboe Silexx. Thus, the risk of duplicative fees no longer exists. Accordingly, the Exchange proposes to remove the data management fee waiver from the Silexx fee schedule, and, as such, users who may have previously had this fee waived, will now incur this fee.

Finally, the Exchange notes that the Silexx fee schedule currently states that the fee for access to both Silexx FLEX and Cboe Silexx is waived for the first month for any new user firm and that the fee for access to Cboe Silexx is waived for any new individual user. Moreover, the Exchange further notes that the current fee schedule does not address the duration of the fee waiver if a new user firm or individual user begins their first month subscription on a day other than the first of the calendar month.

As noted above, the Exchange no longer offers access to Silexx FLEX as a standalone product because Cboe Silexx now offers the same functionality. As such, the Exchange now proposes to update the Silexx fee schedule to remove any references to Silexx FLEX, including the Silexx FLEX fee waiver, as well as the removal of the data management fee waiver. The Exchange also seeks to amend the fee schedule to clarify that Cboe Silexx will not prorate monthly billing. As such, any fee waiver for the first month of access to Cboe Silexx applies to the calendar month in which the subscription begins and may apply for less than 30 days depending on the start date of the subscription.

As a result, the removal of the monthly fee proration will prevent new Cboe Silexx users who subscribe to the platform mid-month from being assessed a full month's fee, whereas they previously were charged on a prorated basis when subscribing on a day that is not the first business day of the month. Furthermore, while the Exchange is removing the Silexx fee waivers and data management fee waivers, the Exchange notes that such waivers are no longer necessary given that the transition from the Legacy Platforms to the new Cboe Silexx has been completed, eliminating the risk of duplicative billing that existed during the transition period.

2. Statutory Basis

The Exchange believes the proposed fee schedule changes are consistent with the Securities Exchange Act of 1934 (the

“Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁰ Specifically, the Exchange believes the proposed fee schedule changes are consistent with the Section 6(b)(5)¹¹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed fee schedule changes are consistent with the Section 6(b)(5)¹² requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed fee schedule changes are consistent with Section 6(b)(4) of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In particular, the Exchange believes the proposed changes to the Silexx fee schedule are reasonable, equitable, and not unfairly discriminatory because the proposed changes will apply to equally to all Users of Cboe Silexx. The proposed removal of all fees and references to the Silexx FLEX platform seeks to align the fee schedule with the current Cboe Silexx platform, which now includes the functionality of Silexx FLEX. The Exchange believes this proposed change is reasonable, equitable, and not unfairly discriminatory because the change ensures consistent pricing for Silexx services for all Users of FLEX and non-FLEX products, which have now been integrated into a single platform, Cboe Silexx.

Similarly, the removal of the data management fee waiver reinstates a fee originally waived to ensure no duplicative charges were assessed upon Users of both the Legacy Platforms and the Cboe Silexx platform during the wind down of the Legacy Platforms and transition to current version of Cboe Silexx. The Exchange no longer offers access to the Legacy Platforms and

⁴ See Securities Exchange Act Release No. 88741 (April 24, 2020) 85 FR 24045 (April 30, 2020) (SR-CBOE-2020-040). Only authorized Users and associated persons of Users may establish connectivity to and directly access the Exchange, pursuant to Rule 5.5 and the Exchange's technical specifications.

⁵ See Securities Exchange Act Release No. 104004 (September 18, 2025) 90 FR 45835 (September 23, 2025) (SR-CBOE-2025-066).

⁶ See *id.*

⁷ On December 1, 2025, the Exchange submitted SR-CBOE-2025-084. On December 18th, 2025, the Exchange withdrew that filing and submitted SR-CBOE-2025-093. On January 22, 2026, the Exchange withdrew that filing and submitted this filing.

⁸ See Securities Exchange Act Release No. 98722 (October 11, 2023) 85 FR 24045 (October 17, 2023) (SR-CBOE-2023-060).

⁹ See *id.*

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² *Id.*

therefore no risk of duplicative charges remains. Thus, the Exchange believes the removal of the data management fee waiver is reasonable and equitable. Additionally, the Exchange believes the data management fee is reasonable as it accounts for administrative costs that Cboe Silexx incurs, but does not charge Users, to maintain and support all Cboe Silexx offerings. The removal of the data management fee waiver is not unfairly discriminatory because the fee will apply to all Users equally, in that all Users will be subject to the data management fee.

Finally, the proposed change to the Silexx fee schedule to clarify the terms of the fee waiver for use of Cboe Silexx is reasonable and promotes just and equitable principles of trade because the change seeks to clarify the terms of the one-month fee waiver for Cboe Silexx. The proposed change clarifies the terms of the one-month fee waiver of Cboe Silexx by describing that the fee waiver applies only for the calendar month in which the subscription began and therefore may be for less than 30 days because Cboe Silexx does not prorate monthly billing. Additionally, the proposed change is not unfairly discriminatory because it applies equally to all new users of the Cboe Silexx in that no new User will be entitled to a prorated monthly fee or a fee waiver outside of the calendar month in which the subscription to Cboe Silexx began. The Exchange believes that by increasing the consistency and clarity of the Cboe Silexx fee schedule, the proposed changes promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system.

Finally, the Exchange notes that use of the Cboe Silexx is discretionary and not compulsory, as Users can choose to route orders, including to Cboe Options, without the use of the Cboe Silexx. Indeed, Cboe Silexx is not an exclusive means of trading, and if market participants believe that other products, vendors, front-end builds, etc. available in the marketplace are more beneficial or cost effective than Cboe Silexx, they may simply use those products instead, including for routing orders to the Exchange, indirectly or directly. The Exchange makes Cboe Silexx available as a convenience to market participants, who will continue to have the option to use any order entry and management system available in the marketplace to send orders to the Exchange and other exchanges; the platforms are merely alternatives offered by the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed fee schedule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee schedule changes will not impose any burden on intramarket competition that are not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes will apply to similarly situated participants uniformly, as described above.

The Exchange does not believe that the proposed fee schedule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes apply only to Cboe Options. Additionally, Cboe Silexx is similar to types of products that are widely available throughout the industry, at similar prices. Further, the proposed fee schedule changes relate to an optional platform. As discussed, the use of the platform continues to be completely voluntary and market participants will continue to have the flexibility to use any entry and management tool that is proprietary or from third-party vendors, and/or market participants may choose any executing brokers to enter their orders. Cboe Silexx is not an exclusive means of trading, and if market participants believe that other products, vendors, front-end builds, etc. available in the marketplace are more beneficial than Cboe Silexx, they may simply use those products instead, including for routing orders to the Exchange, indirectly or directly. Use of the functionality is completely voluntary.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed fee schedule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and paragraph (f) of Rule 19b-4¹⁴ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2026-009 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CBOE-2026-009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing 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-2026-009 and should be submitted on or before February 23, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-01985 Filed 1-30-26; 8:45 am]

BILLING CODE 8011-01-P

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f).

¹⁵ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104733; File No. SR-PHLX-2026-05]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Electronic FLEX Rules

January 28, 2026.

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 January 27, 2026, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to introduce enhancements to electronic FLEX trading by (i) allowing prices to be expressed as a percentage, (ii) adopting a Delta-Adjusted at Close order instruction, and (iii) adopting rules to permit the legs of a complex FLEX Order to include a combination of FLEX Option series and non-FLEX Option series (“FLEX v. Non-FLEX Order”).

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/phlx/rulefilings>, and at the principal office of the Exchange.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to introduce FLEX enhancements by (i) allowing prices to be expressed as a percentage, (ii) adopting a Delta-Adjusted at Close (“DAC”) order instruction, and (iii) adopting rules to permit the legs of a complex FLEX Order to include a combination of FLEX Option series and non-FLEX Option series (“FLEX v. Non-FLEX Order”). As discussed in detail below, the proposed changes would align the Exchange’s FLEX rules with the FLEX rules of Cboe Exchange, Inc. (“Cboe”), and therefore raise no novel issues for the Commission. Each change will be described below.

FLEX Percentages

The Exchange proposes to allow prices to be expressed as percentage of the closing value of the underlying equity security or index, which would align with the Cboe’s FLEX rules. Prices in FLEX trading are allowed to be expressed as a fixed dollar and decimal amount. For example, Options 3A, Section 3(c)(6) stipulates that the exercise price for a FLEX Option³ may be in increments no smaller than \$0.01. In addition, Options 3A, Section 4(a) stipulates that bids and offers for FLEX Options must be expressed in U.S. dollars and decimals in the applicable minimum increment as set forth in Options 3A, Section 5(a). Options 3A, Section 5(a), in turn, provides that the Exchange determines the minimum increment for bids and offers on FLEX Options on a class-by-class basis, which may not be smaller than \$0.01 for the options leg of a FLEX Option.

The Exchange now proposes to allow prices in FLEX trading to be expressed using a percentage-based methodology that will be materially identical to Cboe. The proposed percentage-based methodology would be an alternative to the fixed dollar and decimal amount that was adopted by the Exchange for FLEX trading. As proposed, the Exchange would allow prices for FLEX trading (e.g., exercise price, bids/offers, and minimum increments) to be expressed as a percentage of the underlying security or index, and limit the percentage increment to be no smaller than 0.01%. Accordingly, the

Exchange proposes to update its FLEX rule provisions throughout Options 3A to reflect this enhancement. The Exchange believes that the proposed enhancement would provide greater flexibility in terms of describing an option contract tailored to the needs of the investor.

Specifically, the exercise price provisions in Options 3A, Section 3(c)(6) would be amended to provide that the exercise price of a FLEX Option may be in increments no smaller than (i) \$0.01, if expressed as a fixed price in terms of dollars and decimals or a specific index value, as applicable, or (ii) 0.01%, if expressed as a percentage of the closing value of the underlying equity security or index, as applicable, on the trade date (the System rounds the actual exercise price to the nearest fixed price minimum increment for bids and offers in the class (as set forth in Options 3A, Section 5(a)).⁴ The proposed changes in Section 3(c)(6) differentiates between the expression of bids and offers of FLEX Options as a fixed price or as a percentage of the closing value of the underlying. As described above, the Exchange is also proposing to add a parenthetical regarding the System rounding the actual exercise price to the nearest fixed price minimum increment for bids and offers in the class (as set forth in Options 3A, Section 5(a)), which would only be applied to exercise prices expressed as a percentage. The dollar value of an exercise price expressed as a percentage would be rounded to the nearest minimum dollar value increment, which dollar value would represent the ultimate, “actual” exercise price. For example, suppose a member organization enters a percentage bid of 0.27 for a FLEX Equity Option, which is the price at which the order for that option ultimately trades, and the underlying security has a closing value of 24.52 on the trade date. Following the close on the trade date, the System calculates the transaction price to be 6.6204 (0.27 x 24.52). Assuming the minimum increment for bids and offers in a FLEX Option class is \$0.01, the System rounds 6.6204 to the nearest penny, which would be a transaction price of \$6.62. The dollar value of the transaction price of a FLEX Option for which the bids and offers were expressed as a percentage (the “final”) determined after the closing value is available would be rounded to the nearest fixed price minimum increment for the class (e.g., the nearest \$0.01, if

³ The term “FLEX Option” means a flexible exchange option. A FLEX Option on an equity security may be referred to as a “FLEX Equity Option,” and a FLEX Option on an index may be referred to as a “FLEX Index Option.” See Options 3A, Section 1(b)(1).

⁴ See Cboe Rule 4.21(b)(6)(A) for materially identical provisions.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

that is the minimum determined for the class).⁵

The Exchange also proposes to amend Options 3A, Section 4(a) (“Units of Trading”) as follows:⁶

(a) Bids and offers for FLEX Options must be expressed in (A) U.S. dollars and decimals, if the exercise price for the FLEX Option series is a fixed price; or (B) a percentage per unit of the underlying security or index, as applicable, if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date, each in the applicable minimum increment as set forth in Section 5(a) below.

(1) If the exercise price of a FLEX Option series is a fixed price, a bid of “0.50” represents a bid of (A) \$50 (0.50 times 100 shares) for a FLEX Equity Option; and (B) \$50 (0.50 times an index multiplier of 100) for a FLEX Index Option with a multiplier of 100.

(2) If the exercise price of a FLEX Option series is a percentage of the closing value of the underlying equity security or index, a bid of “0.50” represents a bid of (A) 50% (0.50 times 100 shares) of the closing value of the underlying equity security on the trade date if a FLEX Equity Option; and (B) 50% (0.50 times an index multiplier of 100) of the closing value of the underlying index on the trade date if a FLEX Index Option with a multiplier of 100.

(3) Following application of the designated percentage to the closing value of the underlying security or index, the System rounds the final transaction prices to the nearest minimum fixed price increment for the class as set forth in Section 5(a) below.

Like Cboe, the Exchange is making clear with the proposed changes in Section 4(a) that bids and offers must be in the same format as the exercise price, as it would be difficult to apply a dollar price for a FLEX Option series with a percentage-based exercise price. Additionally, the proposed changes in Section 4(a) described above add examples describing the expression of bids and offers of FLEX Options as a fixed price or as a percentage of the closing value of the underlying. The proposed changes also specify how the System would round the final

transaction price once the designated percentage value is applied. The changes proposed in Options 3A, Section 4(a) are intended to provide a clear, transparent description of how the Exchange would apply the fixed price and percentage value methodology for FLEX Options, and how the Exchange would round the final transaction prices once the designated percentage is applied.

Further, the Exchange proposes to amend Options 3A, Section 5(a) (“Minimum Trading Increments”) to reflect the alternative percentage methodology as follows:⁷

The Exchange determines the minimum increment for bids and offers on FLEX Options on a class-by-class basis, which may not be smaller than (A) \$0.01, if the exercise price for the FLEX Option series is a fixed price, or (B) 0.01%, if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date. Following application of the designated percentage to the closing value of the underlying security or index, the System rounds the final transaction prices to the nearest fixed price minimum increment for the class as set forth in this Section 5(a), in each case for the options leg of a FLEX Option.

The proposed changes in Options 3A, Section 5(a) are similar to proposed changes described above for Options 3A, Sections 3(c)(6) and 4(a), and delineate between the expression of minimum increments for bids and offers on FLEX Options as a fixed price or as a percentage of the closing value of the underlying. The proposed changes also similarly specify how the System would round the final transaction price once the designated percentage value is applied.

The Exchange also proposes to make corresponding changes to its FLEX auction rules to reflect that the prices of FLEX Orders⁸ and FLEX auction responses submitted into any of the FLEX auctions must be expressed either as a fixed dollar price or a percentage, and that such price must be in the same format (*i.e.*, fixed dollar price or percentage) as the exercise price of the FLEX Option series.

Specifically for electronic FLEX Auctions in Options 3A, Section 11(b), the Exchange proposes in subparagraph (b)(1)(G)(iii) that the minimum price

increment for a FLEX Order must be in the same format (*i.e.*, price or percentage) as the exercise price of the FLEX Option series.⁹ The Exchange proposes to add a similar requirement in subparagraph (b)(2)(D)(vi) with respect to the minimum price increments for FLEX responses by stipulating that the minimum price increment for FLEX responses is the same as the one the Exchange determines for a class pursuant to subparagraph (b)(1)(G) of this Rule, and must be in the same format (*i.e.*, price or percentage) as the exercise price of the FLEX Option series.¹⁰ The System rejects a FLEX response that is not in the applicable minimum increment or format.¹¹ The Exchange also proposes to amend the allocation provisions for electronic FLEX Auctions in subparagraph (b)(3)(A) to provide that for purposes of ranking FLEX responses when determining how to allocate a FLEX Order against those responses, the term “price” refers to (i) the dollar and decimal amount of the response bid or offer or (ii) the percentage value of the response bid or offer, as applicable.¹² The Exchange also proposes to amend Options 3A, Section 12(e)(1)(B)(ii) related to FLEX PIXL to add rule text that states, “Member organizations may elect for the Initiating Order to have less than their guaranteed allocation as described in subparagraph (e)(4) below.”¹³ The Exchange proposes to

⁹ Cboe Rules 5.73(a)(5) (governing minimum price increments for Cboe’s FLEX Automated Improvement Mechanism (“FLEX AIM”)) and 5.74(a)(5) (governing minimum price increments for Cboe’s FLEX Solicited Auction Mechanism (“FLEX SAM”)) similarly require that the minimum price increment be in the same format (*i.e.*, price or percentage) as the exercise price of the FLEX Option series. The Exchange notes that Cboe’s electronic FLEX Auction in Cboe Rule 5.72(c), which is the analogue to this particular electronic FLEX Auction in Options 3A, Section 11(b), is silent on minimum price increments. However, the Exchange will add the minimum price increment requirement described above in the rules for its electronic FLEX Auction for transparency and clarity.

¹⁰ While Cboe’s electronic FLEX Auction response requirements in Cboe Rule 5.72(c)(2)(D) are silent on minimum increments, the auction response requirements for Cboe’s FLEX AIM and FLEX SAM in Cboe Rules 5.73(c)(5)(A) and 5.74(c)(5)(A), respectively, similarly require that the minimum price increment for FLEX AIM and FLEX SAM responses must be in the same format (*i.e.*, price or percentage) as the exercise price of the FLEX Option series. The Exchange believes it will be helpful to add a similar requirement in the rules for the Exchange’s electronic FLEX Auction responses for transparency and clarity.

¹¹ See *id.*

¹² See Cboe Rule 5.72(c)(3)(A) for materially identical language.

¹³ Options 3A, Section 12(e)(4) is related to guaranteed allocation. If the Initiating Member selects a single-price submission, it may elect for the Initiating Order to have less than their guaranteed allocation (50% if there is a response(s)

⁵ With respect to this example and rounding, if the price was \$6.625, the System would round to \$6.63.

⁶ See Cboe Rule 5.3(e)(3) for substantially similar provisions, except the Exchange will not incorporate Cboe’s language relating to FLEX Index Options with an index multiplier of one (*i.e.*, micro FLEX Index Options) because the Exchange does not offer this capability today.

⁷ See Cboe Rule 5.4(c)(4) for materially identical provisions.

⁸ The term “FLEX Order” means an order submitted in a FLEX Option pursuant to Options 3A. See Options 3A, Section 1(b)(2).

add this sentence as a guidepost and reminder that a member organization may elect less than their guaranteed allocation.

The Exchange proposes similar changes for FLEX PIXL auctions in Options 3A, Section 12. Specifically, the Exchange proposes in subparagraph (a)(5)(C) that the price of the Agency Order¹⁴ and the Initiating Order¹⁵ must be in the same format (*i.e.*, price or percentage) as the exercise price of the FLEX Option series.¹⁶ In paragraph (b), the Exchange proposes to provide that the Initiating Order must stop the entire Agency Order at a specified price in the same format (*i.e.*, price or percentage) as the exercise price of the FLEX Option series.¹⁷ In subparagraph (c)(5)(A), the Exchange proposes that the minimum price increment for FLEX PIXL responses shall be the same as the Exchange determines for a class pursuant to subparagraph (a)(5) of this Rule, and must be in the same format (*i.e.*, price or percentage) as the exercise price of the FLEX Option series.¹⁸ The System rejects a FLEX PIXL response that is not in the applicable minimum increment or format.¹⁹ Lastly, in paragraph (e), the Exchange proposes that for purposes of ranking the Initiating Order and FLEX PIXL responses when determining how to allocate the Agency Order against the Initiating Order and those responses, the term “price” refers to (1) the dollar and decimal amount of the order or response bid or offer or (2) the percentage value

of the order or response bid or offer, as applicable.²⁰

Likewise for FLEX SOM auctions in Options 3A, Section 13, the Exchange proposes in subparagraph (a)(5)(C) that the price of the Agency Order²¹ and the Solicited Order²² must be in the same format (*i.e.*, price or percentage) as the exercise price of the FLEX Option series.²³ In paragraph (b), the Exchange proposes that the Solicited Order must stop the entire Agency Order at a specified price in the same format (*i.e.*, price or percentage) as the exercise price of the FLEX Option series.²⁴ In subparagraph (c)(5)(A), the Exchange proposes that the minimum price increment for FLEX SOM responses shall be the same increment as the Exchange determines for a class pursuant to subparagraph (a)(5) of this Rule, and must be in the same format (*i.e.*, price or percentage) as the exercise price of the FLEX Option series.²⁵ The System rejects a FLEX SOM response that is not in the applicable minimum increment or format.²⁶ Lastly, the Exchange proposes in paragraph (e) that for purposes of ranking the Solicited Order and FLEX SOM responses when determining how to allocate the Agency Order against the Solicited Order and those responses, the term “price” refers to (1) the dollar and decimal amount of the order or response bid or offer or (2) the percentage value of the order or response bid or offer, as applicable.²⁷

FLEX DAC

The Exchange proposes to adopt a DAC order instruction that an Exchange member organization (“Member”) may apply to a FLEX Order when entering it into the System²⁸ for execution in a FLEX auction. The proposed DAC order instruction is substantially similar to the

DAC order instruction offered by Cboe.²⁹

In particular, if a DAC order executes during the trading day, upon receipt of the official closing price or value for the underlying from the primary listing exchange or index provider, respectively, the System will adjust the original execution price of a DAC order based on a delta value applied to the change in the underlying reference price between the time of execution and the market close. As proposed, DAC orders will allow Members the opportunity to incorporate into the pricing of their FLEX Options the closing price or the value of the underlying on the transaction date based on how much the price or value changed during the trading day.

Near the market close, the Exchange has observed that significant numbers of market participants interact in the equity markets, which may substantially impact the price or value, as applicable, of the underlying at the market close. For example, shares of exchange-traded funds (“ETFs”) that track indexes, which are increasingly popular, often trade at or near the market close in order to better align with the indexes they track and attempt to align the market prices of ETF shares as close to the net asset value (“NAV”) ³⁰ per share as possible. Further, the Exchange understands that market makers and other liquidity providers seek to balance their books before the market close and contribute to increased price discovery surrounding the market close. The Exchange also believes it is common for other market participants to seek to offset intraday positions and mitigate exposure risks based on their predictions of the closing underlying prices or underlying indexes (which represent the settlement prices of options on those underlyings). The Exchange understands this substantial activity near the market close may create wider spreads and increased price volatility, which may attract further trading activity from those participants seeking arbitrage opportunities and further drive prices.

from one other member organization or 40% if there are responses from two or more member organizations) to trade against the Agency Order. The Initiating Member may select a lesser percentage than their guaranteed allocation. If the Initiating Member elects 0%, then notwithstanding subparagraphs (e)(1) and (2), the System only executes the Initiating Order against any remaining Agency Order contracts at the stop price after the Agency Order is allocated to all FLEX PIXL responses at all prices equal to or better than the stop price. Guaranteed allocation information is not available to other market participants and may not be modified after it is submitted.

¹⁴ Pursuant to Options 3A, Section 12, a Member (the “Initiating Member”) may electronically submit for execution an order (which may be a simple or complex order) it represents as agent (“Agency Order”) against principal interest or a solicited order(s) (except for an order for the account of any FLEX Market Maker with an appointment in the applicable FLEX Option class on the Exchange) (an “Initiating Order”), provided it submits the Agency Order for electronic execution into a FLEX PIXL auction pursuant to this Rule.

¹⁵ See *id.*

¹⁶ See Cboe Rule 5.73(a)(5) for materially identical language.

¹⁷ See Cboe Rule 5.73(b) for materially identical language.

¹⁸ See Cboe Rule 5.73(c)(5)(A) for materially identical language.

¹⁹ See *id.*

²⁰ See Cboe Rule 5.73(e) for materially identical language.

²¹ Pursuant to Options 3A, Section 13, a Member (the “Initiating Member”) may electronically submit for execution an order (which may be a simple or complex order) it represents as agent (“Agency Order”) against a solicited order (“Solicited Order”) if it submits the Agency Order for electronic execution into a FLEX SOM Auction pursuant to this Rule.

²² See *id.*

²³ See Cboe Rule 5.74(a)(5) for materially identical language.

²⁴ See Cboe Rule 5.74(b) for materially identical language.

²⁵ See Cboe Rule 5.74(c)(5)(A) for materially identical language.

²⁶ See *id.*

²⁷ See Cboe Rule 5.74(e) for materially identical language.

²⁸ The term “System” means the electronic system operated by the Exchange that receives and disseminates quotes, executes orders and reports transactions. See Options 1, Section 1(a)(50).

²⁹ See Cboe Rules 5.6(c) (definition of simple DAC order), 5.33(b)(5) (definition of complex DAC order), 5.34(c)(11) (DAC order reasonability check), and 5.70(a)(2) (availability of DAC order instruction). See also Securities Exchange Act Release Nos. 90319 (November 3, 2020), 85 FR 71361 (November 9, 2020) (SR-CBOE-2020-014) (Order approving DAC order instructions for FLEX ETF and index options); and 95707 (September 8, 2022), 87 FR 56477 (September 14, 2022) (SR-CBOE-2022-036) (Order approving DAC order instructions for FLEX equity options).

³⁰ The NAV is an ETF’s total assets minus its total liabilities. ETFs generally must calculate their NAV at least once every business day, and typically do so after market close. See 17 CFR 270.2a-4.

In light of the significant liquidity and price/value movements in equity shares that can occur near the market close, options closing and settlement prices may deviate significantly from options execution prices earlier that trading day.

The proposed DAC order instruction is designed to allow investors to incorporate any upside market moves that may occur following execution of the order up to the market close while limiting downside risk. Additionally, the Exchange has noted that there have been a number of managed funds that recognize benefits to their investors in employing certain strategies that allow for their investors to mitigate risk at the market close while also participating in beneficial market moves at the close. The proposed DAC order would provide such funds with an additional method to attempt to meet their objectives through FLEX options strategies, thereby benefitting their investors. The Exchange understands that, for example, defined-outcome ETF issuers³¹ often times use multi-leg strategy orders when seeding their funds. The goal of these strategies is to price the execution of these orders at the close of the underlying; however, there is operational execution risk in attempting to fill an order late in the day to capture the underlying closing price. As such, a DAC complex order would allow the Member to execute the order prior to the close and have its price adjusted at the close. Because multi-leg strategies themselves have delta offsets, the Member is hedged, meaning that the Member may realize a negative movement versus the initial execution on some legs, which is offset by a positive move in other legs. The Exchange notes that the strategies may or may not define an exact delta offset (“delta neutrality” occurs where the strategy defines an exact delta offset). Given the delta neutral nature of an order with an exact offset, a Member would be indifferent to any movement in the underlying from the time of execution to the close. Whether or not a Member defines an exact delta offset, a Member would anticipate a given amount of market exposure, either partial or none, depending on the strategy and combinations of buy/sell, call/put, and quantity. A DAC complex order allows the order to be executed anytime, eliminating the execution risk, while realizing the objective of pricing based on the exact underlying close for

those strategies that require pricing at the close or a defined amount of market exposure through the close.

As stated, the System will adjust the original execution price of a DAC order based on a delta value applied to the change in the price of the underlying from the time of order execution to the market close. Delta is the measure of the change in the option price as it relates to a change in the price of the underlying security or value of the underlying index, as applicable. The Exchange notes that 1.0000 is the equivalent of a 100 delta. For example, an option with a 50 delta (which is generally represented as 0.50) would result in the option moving \$0.50 per \$1.00 move in the underlying (*i.e.*, the price in the underlying $\times$ delta value = anticipated price move in the option). Delta changes as the price or value of the underlying stock or index changes and as time changes, thus giving a Member an estimation of how an option will behave if the price of the underlying moves in either direction. Call option deltas are positive (ranging from 0 to 1), because as the underlying increases in price so does a call option. Conversely, put option deltas are negative (ranging from -1 to 0), because as the underlying increases in price the put option decreases in price. The Exchange understands that investors use delta as an important hedging and risk management tool in options trading. For example, by trading an option with a lower delta, an investor’s underlying position will be exposed to more downside risk if price or value of the underlying fall. Therefore, the Exchange believes the proposed DAC order instruction will allow a market participant to maintain a full hedge of its position taken upon intraday execution of a DAC order throughout the remainder of the trading day, which ultimately reduces the market participants’ portfolio risk.

The Exchange proposes to make DAC pricing instructions available for simple and complex FLEX Orders pursuant to Options 3A, Sections 6(c) and 7(c), respectively. As proposed, Options 3A, Section 6(c)(1) would provide that a DAC order is an order for which the System delta-adjusts its execution after the market close. Specifically, the delta-adjusted execution price equals the original execution price plus the delta value times the difference between the official closing price or value of the underlying on the transaction date and the reference price or index value of the underlying (“reference price”). Upon order entry for electronic execution, a Member must designate a delta value and may designate a reference price. If

no reference price is designated, the System will include the price or value, as applicable of the underlying at the time of order entry as the reference price.³²

Likewise, the proposed definition in Options 3A, Section 7(c)(1) provides for essentially the same definition, differing only in that it applies to complex FLEX Orders, and upon order entry for electronic execution a Member must designate a delta value per leg.³³

As set forth in proposed Options 3A, Sections 6(c)(2) and 7(c)(2), DAC orders and DAC complex orders may only be submitted for execution in an electronic FLEX Auction pursuant to Options 3A, Section 11(b), a FLEX Price Improvement Mechanism (“FLEX PIXL”) Auction pursuant to Options 3A, Section 12, or a FLEX Solicited Order Mechanism (“FLEX SOM”) Auction pursuant to Options 3A, Section 13.³⁴ As it relates to simple DAC orders only, proposed Options 3A, Section 6(c)(2) would also provide that a DAC order submitted in a single stock equity option may not be submitted until 45 minutes prior to the market close. A DAC order may not be submitted in a single stock equity option on its expiration day.³⁵

As a general rule, attempted manipulation of the price of a security encounters greater difficulty the more volume that is traded, and, generally, single name equity securities tend to be less liquid and experience greater price sensitivity and larger market moves than indexes or ETPs. The Exchange notes that on expiration day in particular, underlying equity securities may experience more price sensitivity than on non-expiration days and may be more susceptible to incentive to manipulate given that the exercise value of overlying options are contingent on the underlying closing price on expiration day. Options holders on expiration day, whether their positions

³² See Cboe Rule 5.6(c)(1) and (2) for materially identical provisions.

³³ See Cboe Rule 5.33(b)(5)(A) and (B) for materially identical provisions.

³⁴ Cboe also delineates the submission of DAC orders and DAC complex orders in their various FLEX auction mechanisms. See Cboe Rules 5.6(c) and 5.33(b)(5) for similar provisions, except the Exchange is not proposing to adopt the provisions in Cboe’s rules related to open outcry as the Exchange does not have a trading floor. The Exchange is also not proposing to adopt Cboe’s language related to designating DAC orders and DAC complex orders as All Sessions or RTH and Curb (*i.e.*, order instructions on when certain orders are eligible to trade during Cboe’s various trading sessions). Unlike Cboe, the Exchange does not offer different trading sessions and therefore does not offer such order instructions.

³⁵ See Cboe Rule 5.6(c) for materially identical provisions.

³¹ The Exchange notes that defined outcome ETF issuers do not buy stocks directly, but instead, use options contracts to deliver the price gain or loss of an index (such as the S&P 500) over the course of a year, up to a preset cap.

were taken via a DAC execution or not, are subject to the risk of price swings in the underlying prior to the final close; however, options holders of positions taken via a DAC execution may potentially be more susceptible to such risk given the price adjustment at close. For example, if a market participant executes a DAC order to buy calls on expiration day and a large price swing follows, in that, the underlying price is pushed significantly higher before the close, the DAC option holder would be forced to pay a much higher premium upon adjustment, and ultimately expiration. Therefore, in order to mitigate the potential risk associated with expiration day price swings, which may potentially expose DAC order users the gamma effect of options as they become more sensitive to underlying price changes as they approach expiration, particularly in options overlying less liquid securities, the proposed rule change restricts trading (regardless of opening or closing) in simple DAC orders in single stock options on expiration day. In addition to this, the proposed rule to require simple DAC orders in single stock options to be submitted no earlier than 45 minutes before the market close will reduce the amount of time during which the underlying price could potentially move; movements which, as stated above, may pose greater risk upon price adjustment at close to holders of DAC options. The Exchange notes that the same potential incentive to “push” the price of the underlying on expiration day in connection with the exercise price of an option is greatly diminished for multi-leg orders given that parties to multi-leg transactions are focused on the spread or ratio between the transaction prices for each of the legs (*i.e.*, the net price of the entire complex trade).

Members will enter into the System all DAC orders as they would any other FLEX Order pursuant to Options 3A, Section 11(a) (governing the order entry of FLEX Orders) and the applicable FLEX auction rules in Options 3A, Sections 11(b), 12, and 13. As such, the Exchange points out that DAC orders (like any FLEX Order) may only be submitted in permissible FLEX Option series that comply with Options 3A, Section 3. As defined above, a Member may designate the reference price of the underlying upon submitting a DAC order. The Exchange proposes that a Member-designated reference price will be subject to a reasonableness check. Specifically, proposed Options 3A, Section 14(d) will provide that if a Member submits a DAC order to the System with a reference price more than

an Exchange-determined amount³⁶ away from the underlying price or value at the time of submission of the DAC order, the System rejects the order.³⁷ Moreover, if a Member chooses to submit a DAC order without a reference price, the System will automatically input the price or value of the underlying at the time of order entry as the reference price.

As set forth in proposed Options 3A, Sections 6(c)(1) and 7(c)(1), for a DAC order submitted into a FLEX electronic auction, a Member will be required to designate a delta value upon order entry (including for each leg of a DAC complex order). As noted above, delta is either between 0 and 1 for calls, and 0 and -1 for puts.³⁸ The Exchange notes that 1.0000 is the equivalent of a 100 delta. Pursuant to the general principles by which deltas function, the delta for a call options leg(s) must be greater than zero and the delta for a put options leg(s) must be less than zero. Additionally, the delta for call (put) legs must be less (greater) than or equal to the delta for the adjacent call (put) leg (*i.e.*, the leg with the next largest strike price) of the same expiration as the strike price increases. This is also consistent with the general manner in which deltas function, and ensures that the deltas on the same leg type within the same expiration trend away from zero as the strike value increases.

Typically, a Member submits a complex order (including a DAC complex order, as proposed) with a net price, and, for a complex FLEX Order, a Member must include a price for each leg upon electronic submission.³⁹ Therefore, upon electronic submission a Member must also designate a delta value per leg along with the leg prices. At market close, the System will then be able to apply the delta value per each of the leg prices to properly calculate the DAC by adjusting the execution price of each leg.

A Member may apply the DAC order instruction (which must be a value

greater than 0) to a FLEX Order submitted into an electronic FLEX Auction pursuant to Options 3A, Section 11(b), FLEX PIXL Auction pursuant to Options 3A, Section 12, or FLEX SOM Auction pursuant to Options 3A, Section 13. A DAC order will be handled and executed in the FLEX auctions in the same manner as any other FLEX Order pursuant to the applicable FLEX auction rules, including pricing, priority, and allocation rules.⁴⁰ The Exchange also notes that DAC orders submitted to the Exchange will have unique message characteristics, indicative that the order is a DAC order. Therefore, contra-side interest will be aware of the specific order type and may then choose whether or not they wish to interact with DAC orders.

Pursuant to Options 3A, Section 11(a), FLEX Orders (including proposed DAC orders) may only be submitted for execution in an electronic FLEX Auction, FLEX PIXL Auction, and FLEX SOM Auction. As such, the Exchange believes it is appropriate for DAC orders to only execute in FLEX auctions. The delta and reference price appended to a DAC order would be based on data regarding the underlying at the time of order entry. As those values change as the price or value of the underlying change, the reference price and delta at the time of submission would achieve the desired delta-adjusted price result only if the DAC order executes almost immediately upon submission. To allow a DAC order to potentially execute after a significant amount of time has passed since entry, underlying price and related delta at the time a DAC order would eventually execute would be different and thus not achieve the Member's desired result. If a DAC order executes in an auction, it will do so within a short time following submission. Indeed, the Exchange's FLEX auctions last for a defined period, the length of which is between three seconds to five minutes as designated by the submitting Member.⁴¹ As such, the Exchange believes that the execution of DAC orders in FLEX auctions is consistent with the intended purpose of a DAC order.

For any DAC order that executes during a trading day, upon receipt of the official closing price for the underlying from the primary listing exchange or index provider, the System will adjust the original execution price based on the delta applied to the absolute change in the underlying between the time of

³⁶ The Exchange will review market activity to determine the Exchange-determined amount and, thereafter, amend that amount from time-to-time. The Exchange will disclose the amount on its web page at: <https://www.nasdaq.com/docs/PHLXSystemSettings>.

³⁷ The System will use the most recent last sale (or disseminated index value) as the reference price. See Cboe Rule 5.34(c)(11) for materially identical provisions.

³⁸ Note the Exchange will permit delta values to be input up to four decimals, as prices for the underlying securities and index values may be expressed in four decimals. However, bids and offers may only be input in accordance with Options 3A, Section 5, which bids and offers the System will use to rank and allocate orders and auction responses.

³⁹ See Options 3A, Section 11(a)(2)(B).

⁴⁰ See Options 3A, Sections 11(b), 12, and 13.

⁴¹ See Options 3A, Sections 11(b)(1)(F), 12(c)(3), and 13(c)(3).

execution and the market close. The Exchange notes that, like the execution price of any option, a delta-adjusted price may never be zero or negative. If this occurs as a result of the DAC calculation, the System will set the delta-adjusted price to the minimum permissible increment.

The delta adjustment formula that will be applied at the close will be as follows:

The delta-adjusted price = the original execution price + (the change in the underlying price $\times$ delta) or $P2 = P1 + (U - R) \times D$,

where:

- P1 = Original execution price
- P2 = Delta-adjusted price calculated at the close
- R = Reference price
- U = Price of the underlying at the market close
- D = Delta

Example 1: A DAC call order is submitted for execution in an electronic FLEX auction and the price of the underlying increases from the time of the execution to the market close.

- P1 = \$1.00
- R = \$100
- U = \$101.00
- D = .4000

Therefore, $P2 = \$1.00 + ((\$101 - \$100) \times .4000) = \$1.40$.

Example 2: A DAC put order in a penny increment is submitted for execution in a FLEX auction and the price of the underlying increases from the time of execution to the market close.

- P1 = \$1.00
- R = \$100
- U = \$103.00
- D = -.4000

Therefore, $P2 = \$1.00 + ((\$103 - \$100) \times -.4000) = -.00$. However, because an execution price, including a delta-adjusted execution price, may not be negative, the System would adjust P2 = \$0.01 (the minimum permissible increment).

Example 3: A DAC complex order has two legs, where leg 1 is buy call and leg 2 is buy put (straddle).

Leg 1

- P1 = \$18.00
- R = \$2875.00
- U = \$2878.00
- D = .5000

Therefore, $P2 = (\$18.00 + ((\$2878 - \$2875) \times .5000)) = \$19.50$

Leg 2

- P1 = \$42.00
- R = \$2875.00
- U = \$2878.00

- D = -.5000

Therefore, $P2 = (\$42.00 + ((\$2878 - \$2875) \times -.5000)) = \$40.50$.

As described above, the Member would be indifferent to the move in the underlying due to the offsetting nature of the two legs. The initial execution price for the DAC complex order (P1) would be $\$18.00 + \$42.00 = \$60.00$, and the adjusted price calculated at the close (P2) for the DAC complex order would be $\$19.50 + \$40.50 = \$60.00$. As a result, the Member in this Example 3 would be able to execute a hedged strategy earlier in the trading day and have it priced exactly in line with the underlying close without incurring any market risk or operational risk of trying to time the execution exactly at the close.

Example 4: A defined outcome ETF uses a simple buffer protect strategy in connection with a seed trade. The Member buys the at the money put and sells the 10% out of the money put while selling the 5% out of the money call.

Leg 1: Buy SPX May 2875 put at \$69.00 with 50 delta.

- P1 = \$69.00
- R = \$2875.00
- U = \$2878.00
- D = -.5000

Therefore, $P2 = (\$69.00 + ((\$2878 - \$2875) \times -.5000)) = \$67.50$.

Leg 2: Sell SPX May 2590 put at \$15.00 with 12 delta.

- P1 = \$15.00
- R = \$2875.00
- U = \$2878.00
- D = -.1200

Therefore, $P2 = (\$15.00 + ((\$2878 - \$2875) \times -.1200)) = \$14.64$.

Leg 3: Sell SPX May 3020 call at \$11.50 with 16 Delta.

- P1 = \$11.50
- R = \$2875.00
- U = \$2878.00
- D = .1600

Therefore, $P2 = (\$11.50 + ((\$2878 - \$2875) \times .1600)) = \$11.98$.

The initial execution price for the order would be $\$69.00 - \$15.00 - \$11.50 = \$42.50$. The adjusted execution price would be $\$67.50 - \$14.64 - \$11.98 = \$40.88$. The strategy would have an overall delta of $-.46 (-.5000 + -.1200 + .16)$. As a result, the fund would be seeded exactly at the closing price with exactly the delta exposure defined by the strategy, without incurring any operational execution risk. The Member would be able to execute a hedged strategy earlier in the trading day and have it priced exactly in line with the underlying close without incurring any unanticipated market risk or operational risk of trying to time the execution exactly at the close.

A Member may only apply the DAC order instruction to a FLEX Order for a FLEX Option series with an exercise price expressed as a fixed price in dollars and decimals. The proposed changes in Options 3A, Sections 6(c) and 7(c) will therefore provide that the Exchange may determine to make DAC orders and DAC complex orders available for FLEX trading, except for FLEX Options with an exercise price that is a percentage of the closing value of the underlying equity security or index value, as applicable on the trade date.⁴² A Member may not apply the DAC order instruction to a FLEX Order for a FLEX Options series with an exercise price formatted as a percentage of the closing value of the underlying on the trade date, as this functionality is not compatible with the DAC order instruction. The System will need a fixed execution price at the time of order execution that will be delta-adjusted (which delta value is based on dollar price movements in the underlying) following the market close. However, a FLEX Order for a series with an exercise price formatted as a percentage of the closing value will execute at a percentage rather than a fixed price, which would not be determined until the market close. Therefore, the execution price of such a FLEX Order will incorporate the closing price or value of the underlying in a different manner, and the System would not have an execution price to adjust.

Similar to Cboe, the reference price and delta value, as well as the execution price, will be provided to all transaction parties on all fill reports at the time of the execution of a DAC order (*i.e.*, an "unadjusted DAC trade"). Unadjusted DAC trade information will also be sent to the Options Clearing Corporation ("OCC") and disseminated to the Options Price Reporting Agency ("OPRA"). Specifically for FLEX DAC orders, like for all FLEX Orders, trade information will be reported via a text message to OPRA.

The Exchange notes that the text message for FLEX DAC orders will contain an indicator that the order was executed as DAC, as well as the delta and the reference price. The Exchange also notes that individual legs of a FLEX DAC complex order will be reported with an identifier that they are part of a complex order just like any complex order legs are reported today. Initial

⁴² This proposed limitation in Options 3A, Sections 6(c) and 7(c) is substantially similar to the limitation currently in Cboe Rule 5.70(a)(2), except the Exchange will not adopt Cboe's limitation on Asian- and Cliquet-settled FLEX Options. The Exchange does not offer those settlement types today.

execution will be reported to OPRA as a FLEX text message and will include a DAC identifier, delta value and reference price. The adjusted DAC price will be reported to OPRA as a price correction similar to any other adjusted trade, and will include a cancel for the initial execution followed by a new trade containing the adjusted price. At Market Close, when the execution price is delta-adjusted, all transaction parties will be sent the adjusted prices. Finally, the delta-adjusted price will also be sent to the OCC and OPRA once the restatement process is complete. The prior unadjusted DAC trade report that was sent to the OCC and disseminated to OPRA will be cancelled and replaced with a trade report reflecting the delta-adjusted execution price.⁴³

The Exchange has analyzed its capacity and believes the Exchange has the necessary systems capacity to handle additional order traffic and the associated restatements that may result from the adoption of DAC orders. The Exchange also has consulted with OPRA and understands that they have the necessary system capacity as well. Further, the Exchange represents it has an adequate surveillance program in place to monitor orders with DAC pricing and that the proposed pricing instruction will not have an adverse impact on surveillance capacity. Also, the Exchange does not believe the proposed order instruction will have any impact on pricing or price discovery at or near the market close. A DAC order will execute intraday in the same manner as any other order, and its price will merely be automatically adjusted following determination of the final closing price or value of the underlying security or index, respectively.

FLEX v. Non-FLEX

FLEX Options are customized equity or index option contracts that allow investors to tailor contract terms for exchange-listed equity and index options. The Exchange may make simple FLEX Orders and complex FLEX Orders pursuant to Options 3A, Section 3, available for FLEX trading. Currently, the legs of a Complex FLEX Order are limited to FLEX Option series only. An investor wishing to trade a complex strategy containing both FLEX Option series and non-FLEX Option series must execute such strategy using two or more separate orders.

At this time, the Exchange proposes to amend its rules to allow for the legs of

a complex FLEX Order to include a combination of FLEX Option series and non-FLEX Option series (“FLEX v. Non-FLEX Order”) identical to Cboe’s rules.⁴⁴ The Exchange notes that, with exception of the rules proposed in this rule filing, FLEX v. Non-FLEX Orders will be subject to the same trading rules and procedures that currently govern the trading of other Complex FLEX Orders on the Exchange. To permit the trading of FLEX v. Non-FLEX Orders, the Exchange proposes to amend its rules as follows.

The Exchange proposes to add FLEX v. Non-FLEX Orders to the types of complex orders available for FLEX trading.⁴⁵ The proposed rule text is substantially similar to Cboe Rule 5.70(b) and (e).⁴⁶

As part of the proposed changes, the Exchange proposes to add a “FLEX Option series” as a defined term in Options 3, Section 3, FLEX Option Listing, at paragraph (b). Further, to enhance comprehension, the Exchange proposes to amend Options 3A, Section 3(b)(2) to add the word “new” before FLEX Options series for clarity.

Next, the Exchange proposes to amend Options 3A, Section 7, Complex Orders. Specifically, the Exchange proposes to amend Options 3A, Section 7(a) to state that the legs of a Complex FLEX Order may be for FLEX Option series only or a combination of FLEX Option series and non-FLEX Option series (“FLEX v. Non-FLEX Order”).⁴⁷ As noted above, FLEX v. Non-FLEX Orders will be considered complex FLEX instruments, which will be subject to the same trading rules and procedures that govern the trading of

other FLEX Orders on the Exchange (unless otherwise noted herein). The Exchange also proposes to amend Options 3A, Section 7(a) to remove the requirements set forth in subparagraphs (1) and (2). Options 3, Section 7(a) provides that each leg(s) of a Complex FLEX Order must be for a FLEX Option series authorized for FLEX trading with the same underlying equity security or index. The Exchange proposes to delete this requirement, as such requirement is already contained within the definition of a Complex Options Strategy in Options 3, Section 14(a)(1), a Stock-Options Strategy in Options 3, Section 14(a)(2) and a Stock-Complex Strategy in Options 3A, Section 14(a)(3). Options 3A, Section 7(a)(2) provides that each leg(s) of a Complex FLEX Order must have the same exercise style. The Exchange proposes to delete this requirement to allow for the trading of the proposed FLEX v. Non-FLEX Orders and will, in general, provide FLEX Traders with more flexibility and opportunities for customization via FLEX trading. Further, deletion of this requirement that each leg of a Complex FLEX Order (whether comprised of all FLEX Option legs or FLEX and non-FLEX Option legs) must have the same exercise style will expand investors’ choices and flexibility, and provide FLEX Traders with a mechanism by which to manage the positions and associated risk in their portfolios more precisely, based on exercise style.⁴⁸ As amended, Options 3A, Section 7(a)(1) and (2) are being deleted and Options 3A, Section 7(a)(3) is being amended to provide that for an Index Option, each leg may have a different settlement type (a.m.-settled or p.m.-settled). Also, Options 3A, Section 7(a)(3) is being renumbered as 7(a)(1).

The Exchange also proposes to add rule text at Options 3A, Section 7(d) that provides that the non-FLEX Option leg(s) of a FLEX v. Non-FLEX Order may not Leg into the simple order book. The Exchange believes that this amendment will provide for more efficient execution and processing of FLEX v. Non-FLEX Orders.

Today, FLEX and Non-FLEX Order are subject to different trading settings and parameters (e.g., allocation, entitlements) pursuant to their respective Rules. Non-FLEX Orders have separate market data inputs, as the System must read market data for each options class in connection with potential executions in non-FLEX options classes. If the System receives a FLEX v. Non-FLEX Order, it would need to trade the Non-FLEX leg against the

⁴⁴ See Securities Exchange Act Release No. 102297 (January 28, 2025), 90 FR 8822 (February 3, 2025) (SR-Cboe-2024-047) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, Regarding the Types of Complex Orders Available for Flexible Exchange Options (“FLEX”) Trading on the Exchange).

⁴⁵ Complex orders, including a Complex Options Order, Stock-Options Order, and Stock-Complex Order are each as defined in Options 3, Section 14(a)).

⁴⁶ The Exchange is not adopting language similar to Cboe 5.70(d) which states that in classes determined by the Exchange, a nonconforming FLEX v. Non-FLEX Order is not eligible for electronic processing, in which case the nonconforming FLEX v. Non-FLEX Order may only be submitted for manual handling and open outcry trading. On Phlx, a nonconforming FLEX v. Non-FLEX Order would be eligible for electronic processing.

⁴⁷ Under the proposed rule change, Complex FLEX Orders could include both listed instruments as well as FLEX instruments (if at least one leg is for a FLEX Option series), with an optional stock leg. Per the definition of complex order, the legs of all complex FLEX Orders (including FLEX v. Non-FLEX options) must have the same underlying security or index. See Options 3A, Section 7(a)(1).

⁴³ The Exchange notes that this restatement process is the same for an order that has been adjusted or nullified and subsequently restated pursuant to the Exchange’s obvious error rules. See Options 3, Section 20.

⁴⁸ This rule text is identical to Cboe Rule 5.70(b).

appropriate leg in the respective order book (FLEX Order Book vs. Non-FLEX Order Book). This is because execution opportunities for FLEX v. Non-FLEX Orders may be prevented. For example, if the Non-FLEX leg(s) of the FLEX v. Non-FLEX Order would execute against interest in the standard order book, there would be no execution opportunities for the FLEX leg(s) of the FLEX v. Non-FLEX Order. As discussed below, the Non-FLEX legs of FLEX v. Non-FLEX Orders will protect Priority Customer orders in the simple order book for the Non-FLEX classes.

The Exchange proposes to amend Options 3A, Section 9, Trading Halts. Identical to Cboe Rule 4.21(a)(4), the Exchange proposes a new subparagraph (b) that states that the Exchange may halt trading in a FLEX Options complex strategy (whether comprised of all FLEX Option legs or FLEX and non-FLEX Option legs) if any leg of the strategy is halted. Further, the System does not accept a Complex FLEX Order for a series while trading in the class is halted. A FLEX Options complex strategy may not execute until all legs are no longer halted.

The Exchange proposes to amend Options 3, Section 11, FLEX Options Trading, to distinguish criteria for a complex order with only FLEX Option legs and to add criteria for FLEX and non-FLEX Option legs of a FLEX v. Non-FLEX Order similar to Cboe Rule 5.70. First, the Exchange proposes to amend Options 3A, Section 11(a)(2) to specify that each *FLEX Option* leg of the FLEX Option complex strategy must include all terms for a FLEX Option series set forth in Options 3A, Section 3

(including that a non-FLEX Option series with identical terms is not listed for trading), subject to the order entry requirements set forth in Options 3A, Section 11.⁴⁹

Additionally, the Exchange proposes changes to distinguish the criteria for a complex order with only FLEX Option leg(s) from that proposed for FLEX v. Non-FLEX Orders, noting that there are no changes to the criteria to those FLEX Orders containing only FLEX Option leg(s) as a result of the proposed rule change other than removing the requirement that all legs must have the same exercise style. The Exchange proposes to amend Options 3A, Section 11(a)(2) to add a new (B) titled “FLEX Options Legs Only.” The Exchange proposes to amend the existing rule text in current Options 3A, Section 11(a)(2)(B) to add “with only FLEX legs” and re-letter this section as Options 3A, Section 11(a)(2)(B)(i).⁵⁰

Next, the Exchange proposes to add a new Options 3A, Section 11(a)(2)(C) to provide the requirements for a complex FLEX Order with only FLEX Option legs submitted into the System for an electronic FLEX Auction pursuant to paragraph (b) below, a FLEX PIXL pursuant to Section 12 below, or a FLEX SOM pursuant to Section 13, which must include a bid or offer price for each FLEX Option leg but no bid or offer price for each non-FLEX Option leg, and a net price. Proposed Options 3A, Section 11(a)(2)(C)(i) would note that to achieve the desired net execution price for a FLEX v. Non-FLEX Order: the execution price of each non-FLEX Option leg may not be worse than the NBBO, worse than the BBO, or equal to

the BBO if there is a Priority Customer order(s) on the simple order book. This requirement along with proposed Options 3A, Section 11(a)(2)(C)(ii) are together required to achieve the desired net execution price for a FLEX v. Non-FLEX Order. Proposed Options 3A, Section 11(a)(2)(C)(ii) notes that the execution price of each FLEX Option leg(s) may be adjusted so that the prices of the FLEX legs combined with the prices of the non-FLEX legs add together to equal the net price.⁵¹

Thus, the non-FLEX Option legs of a FLEX v. Non-FLEX Order would be able to trade at the same price as non-Priority Customer interest at the BBO, which is consistent with complex orders comprised of solely non-FLEX Options.⁵² In addition, no non-FLEX component of a FLEX v. Non-FLEX Order would be able to trade at the same price as resting Priority Customer interest at the BBO.⁵³ If a non-FLEX Option leg of a FLEX v. Non-FLEX Order cannot execute at a price permissible that meets the requirements set forth in proposed Options 3A, Section 11(a)(2)(C)(i) the entire FLEX v. Non-FLEX Order will be cancelled.

The below examples are designed to illustrate the pricing of a FLEX v. Non-FLEX Order. Assume for each example a FLEX Trader wishes to execute a Complex FLEX Order with two legs (one FLEX Option leg and one non-FLEX Option leg).

Example 1

Listed (*i.e.*, non-FLEX) legs are adjusted to their NBBO, FLEX Option leg is adjusted residually to meet net execution price.

Instrument ID	Legs	Symbol	Side	Ratio	Expiration	Strike	Type
CI0001	Leg 1	XYZ	Buy	1	December	10	Call.
	Leg 2	1 XYZ	Sell	1	November	10.01	Call.

Market for Non-FLEX Leg

Away BBO: 2.15×2.35

BBO: 2.20×2.30

NBBO: 2.20×2.30

FLEX Order Auction (“FOA”): Buy 10 CI0001 @1.25

Leg 1 (Non-FLEX Option Leg) Price: N/A

Leg 1 Market: (Exchange Market-Maker)

2.20×2.30 (Exchange Market-Maker)

Leg 2 (FLEX Option Leg) Price: 1.00

Response 1: Sell 5 CI0001 @1.19

Response 2: Sell 5 CI0001 @1.25

FOA trades 5 CI0001 with Response 1 at 1.19. The legs print at 2.20 and 1.01.⁵⁴

FOA trades 5 CI0001 with Response 2 at 1.25. The legs print at 2.25 and 1.00.⁵⁵

Example 2

Listed (*i.e.*, Non-FLEX) legs are adjusted up/down to their NBBO, FLEX Option leg retains specified price, as no

⁴⁹ This rule text is identical to Cboe Rule 5.72(b)(2).

⁵⁰ Cboe Rule 5.72(b)(2)(A) distinguishes electronic FLEX trading from open outcry FLEX trading for FLEX Options Legs. ISE does not have a trading floor so that distinction is not necessary.

⁵¹ This rule text is identical to Cboe Rule 5.72(b)(2)(B).

⁵² See Cboe Rule 5.33(f)(2)(A)(ii).

⁵³ See proposed Options 3A, Section 11(a)(2)(C)(i).

⁵⁴ In this example, the Leg 1 market is 2.2×2.30 ; the System would ensure that the Exchange does not trade through this market. The transaction price is \$1.19 (Response 1). With a Leg 2 price of \$1.00, Leg 1 would have to trade at \$2.19, however, because this would be outside the NBBO, Leg 1 will execute at \$2.20. As a result, Leg 2 would have to be adjusted to as close to the stipulated price of \$1.00 as possible—\$1.01. The final transaction would price Leg 1 at \$2.20 and Leg 2 at \$1.01 for a next price of \$1.19 (Response 1).

⁵⁵ In this example, the net price is \$1.25, and the market for Leg 1 is $\$2.20 \times \$2.30$. The System cannot print Leg 2 at the stipulated price of \$1.00 because it would trade through. The transaction price is \$1.25 (Response 2). With a Leg 2 price of \$1.00, Leg 1 would have to trade at \$2.25. Leg 1 is able to execute at \$2.25 since this is between the NBBO and Leg 2 would be allowed to execute at \$1.00. The final transaction would price Leg 1 at \$2.25 and Leg 2 at \$1.00 for a next price of \$1.25 (Response 2).

further adjustment is needed to meet net price.

Instrument ID	Legs	Symbol	Side	Ratio	Expiration	Strike	Type
CI0001	Leg 1	XYZ	Buy	1	December	10	Call.
	Leg 2	1 XYZ	Sell	1	November	10.01	Call.

Market for Non-FLEX Leg

Away BBO: 2.10×2.35

BBO: 2.15×2.30

NBBO: 2.15×2.30

FOA: Buy 10 CI0001 @1.25.

Leg 1 (Non-FLEX Option Leg) Price: N/A

Leg 1 Market: (Exchange Market-Maker) 2.15×2.30 (Exchange Market-Maker)

Leg 2 (FLEX Option Leg) Price: 1.00

Response 1: Sell 5 CI0001 @1.19

Response 2: Sell 5 CI0001 @1.25

FOA trades 5 CI0001 with Response 1 at 1.19. The legs print at 2.19 and 1.00.⁵⁶

FOA trades 5 CI0001 with Response 2 at 1.25. The legs print at 2.25 and 1.00.⁵⁷

While the System followed the same process in both examples, because the leg market was wider in the second example, the System was able to execute the non-FLEX leg in that example at a price within that market without the need to adjust the entered price of the FLEX leg.

Finally, the Exchange proposes to adopt a new Options 3A, Section 20 titled “Nullification and Adjustment of Options Transactions including Obvious Errors.” Today, obvious errors related to complex orders are described in Supplementary .05 to Options 3, Section 20. The Exchange proposes to provide in this new section that in addition to the language in Supplementary .05 to Options 3, Section 20, the following paragraph will apply as it relates to FLEX Orders.

Specifically, the Exchange proposes to add rule text to this new Options 3A, Section 20 to state that if a non-FLEX Option leg of a FLEX v. Non-FLEX Order qualifies as an Obvious Error under Options 3, Section 20(c)(1) or a

Catastrophic Error under Options 3, Section 20(d)(1), then the non-FLEX Option leg that is an Obvious or Catastrophic Error will be adjusted in accordance with Options 3, Section 20(c)(4)(A) or (d)(3), respectively, regardless of whether one of the parties is a Customer. However, the non-FLEX Option leg of any Customer order subject to proposed paragraph (a) of Options 3A, Section 20 will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer’s net execution price for the non-FLEX Option leg. If any leg of a FLEX v. Non-FLEX Order is nullified, the entire transaction is nullified. This is consistent with the Exchange’s handling of other complex orders, including stock-option orders, and ensures protections in the event of an Obvious or Catastrophic error. The below example is designed to illustrate how a FLEX v. Non-FLEX Order will be processed in the event of an Obvious Error. Assume in the example that a FLEX Trader wishes to execute a Complex FLEX Order with three legs (one FLEX Option leg and two non-FLEX Option leg).

Example 3: Listed Leg 1 Qualifies as Obvious Error

Leg 1: Buy 1 Call 1.00×1.20

Leg 2: Buy 1 Call 2.00×2.25

Leg 3: Buy 1 FLEX Call (*Note: the FLEX leg is not considered in determining obvious error adjustments*)

cNBBO⁵⁸ of listed legs: 3.00×3.45

Assume Leg 1 updates to 1.00×4.00 ;

Listed Leg cNBBO updates to 3.00×6.25

1 millisecond later

Complex Order trades at 5.45

Leg 1 trades @2.25

Leg 2 trades @2.20

FLEX leg trades @1.00. This order, specifically the execution on Leg 1, qualifies as Obvious Error, based on prices prior to Leg 1 market going

wide.⁵⁹ In this example the prior market was $\$1.00 \times \$1.20$ before the market widened and Leg 1 traded at $\$2.25$, therefore this qualifies as Obvious Error.

Obvious error adjustment: Leg 1 is adjusted to trade at 1.60.

Theoretical Price⁶⁰ (“TP”) = 1.10 ⁶¹

theoretical offer⁶² = 1.45

theoretical offer (1.45) + 0.15

adjustment⁶³ = 1.60.

The Exchanges notes that the counterparties to an execution of a FLEX v. Non-FLEX Order trade all of the component legs of the order.

The Exchange believes that its existing surveillance and reporting safeguards in place are adequate to deter and detect possible manipulative behavior which might arise from trading FLEX v. Non-FLEX Orders and will support the protection of investors and the public interest. The Exchange also represents that it has the necessary system capacity to support the new complex FLEX Order type. Finally, the

⁵⁹ See proposed paragraph (a) of Options 3A, Section 20. See also Options 3, Section 20(c)(1). An Obvious Error will be deemed to have occurred when the Exchange receives a properly submitted filing where the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown in a table at Options 3, Section 20(c)(1).

⁶⁰ Upon receipt of a request for review and prior to any review of a transaction execution price, the “Theoretical Price” for the option must be determined. If the applicable option series is traded on at least one other options exchange, then the Theoretical Price of an option series is the last NBB just prior to the trade in question with respect to an erroneous sell transaction or the last NBO just prior to the trade in question with respect to an erroneous buy transaction unless one of the exceptions in subparagraphs (b)(1) through (3) below exists. For purposes of this provision, when a single order received by the Exchange is executed at multiple price levels, the last NBB and last NBO just prior to the trade in question would be the last NBB and last NBO just prior to Exchange’s receipt of the order. See Options 3, Section 20(b).

⁶¹ The Theoretical Price is 1.10 because it is the midpoint between the market (1.00×1.20).

⁶² The theoretical offer shown above represents the offer for purposes of this example.

⁶³ See proposed paragraph (a) of Options 3A, Section 20. See also Options 3, Section 20(c)(4)(A). Where neither party to the transaction is a Customer, the execution price of the transaction will be adjusted by the Official pursuant to the table at Options 3, Section 20(c)(4)(A). Any non-Customer Obvious Error exceeding 50 contracts will be subject to the Size Adjustment Modifier defined in sub-paragraph (a)(4) of Options 3, Section 20. For purposes of this Rule, an Official is an Options Exchange Official as defined in Options 1, Section 1(b)(38).

⁵⁶ In this example, the Leg 1 market is $\$2.15 \times \$2.30$; the System would ensure that the Exchange does not trade through this market. The transaction price is $\$1.19$ (Response 2). With a Leg 2 price of $\$1.00$, Leg 1 would have to trade at $\$2.19$ because this would be inside the NBBO. Leg 1 will execute at $\$2.19$. Therefore, Leg 2 would not have to be adjusted and would execute at $\$1.00$. The final transaction would price Leg 1 at $\$2.19$ and Leg 2 at $\$1.00$.

⁵⁷ In this example, the price is $\$1.25$, and the market for Leg 1 is $\$2.15 \times \$2.30$. The next transaction price is $\$1.25$ (Response 2). With a Leg 2 price of $\$1.00$, Leg 1 would have to trade at $\$2.25$ and because this would be inside the NBBO, Leg 1 will execute at $\$2.25$. Therefore, Leg 2 would not have to be adjusted and would execute at $\$1.00$. The final transaction would price Leg 1 at $\$2.25$ and Leg 2 at $\$1.00$.

⁵⁸ The term “cNBBO” means the best net debit or credit price for a Complex Order Strategy based on the NBBO for the individual options components of a Complex Order Strategy, and, where the underlying security is a component of the Complex Order, the National Best Bid and/or Offer for the underlying security. See Options 3, Section 14(a)(vi).

Exchange does not believe that any market disruptions will be encountered with the introduction of this complex FLEX Order type. The Exchange currently allows for trading of several types of complex orders, including Stock-Option Orders, and has not experienced any market disruptions or issues with capacity. Rather, the Exchange believes the introduction of this complex FLEX Order type may promote more efficient trading, as investors wishing to trade a complex strategy containing both FLEX Option series and non-FLEX Option series would no longer be required to execute such strategy using two or more separate orders.

Other FLEX Changes

The Exchange proposes to amend Options 3A, Section 11(b)(2)(D)(vi) related to FLEX Options Trading to add the following language to the rule, “Complex FLEX responses must be entered in increments provided in Options 3, Section 14(c)(1) at the proposed execution net price or at a price that is at least one cent better for the Agency Order for a Stock-Option Strategy or a Stock-Complex Strategy.” The minimum price increment for FLEX responses must adhere to the allowable price increments for FLEX. A response to a FLEX Auction of a Complex Order must have a net price. The System will reject a FLEX response that is not in the applicable minimum increment. The Exchange believes that this additional language will provide members with additional information as all Complex Orders trade in the increments described in Options 3, Section 14(c)(1) which states that bids and offers for Complex Options Strategies may be expressed in one cent (\$0.01) increments, and the options leg of Complex Options Strategies may be executed in one cent (\$0.01) increments, regardless of the minimum increments otherwise applicable to the individual options legs of the order. Bids and offers for Stock-Option Strategies or Stock-Complex Strategies may be expressed in any decimal price determined by the Exchange, and the stock leg of a Stock-Option Strategy or Stock-Complex Strategy may be executed in any decimal price permitted in the equity market. The options leg of a Stock-Option Strategy or Stock-Complex Strategy may be executed in one cent (\$0.01) increments, regardless of the minimum increments otherwise applicable to the individual options legs of the order. A similar change is also proposed for Options 3A, Section 12(c)(5)(G) that provides, “FLEX PIXL responses in a complex strategy with a

stock component that are through the Stop Price must improve such Stop Price by at least one cent” and at proposed Options 3A, Section 13(c)(5)(G) that provides, “FLEX PIXL responses in a complex strategy with a stock component that are through the Stop Price must improve such Stop Price by at least one cent.” Additionally, the same change is proposed for FLEX SOM at Options 3, Section 13(c)(5)(G).⁶⁴

The Exchange proposes to amend Options 3A, Section 14(b) related to Risk Protections to provide that certain complex order risk protections in Options 3, Section 16 are available to FLEX, such as Options Strategy Protections (only to FLEX Auctions and FLEX responses in Section 11(b) above), Size Limitation, the Price Limit for Complex Orders protections as applicable to the stock component (as described in Options 3, Section 16(a), *(except that DNTT is not available for the stock component)*, the Stock-Tied NBBO protections *(only to FLEX Auctions and FLEX responses in Section 11(b) above)* (as described in Options 3, Section 16(d)), and the Stock-Tied Reg SHO protections (as described in Options 3, Section 16(e)). The Exchange proposes this rule text to make clear that “Do-Not-Trade-Through” or “DNTT” will not apply to the stock component of the order. This additional language provides greater clarity to the risk protections. The Exchange notes that DNTT applies only to options transactions. The stock component of the order is not executed on the Exchange and therefore would not be subject to DNTT.

Implementation

The Exchange proposes to implement the rule changes on or before Q3 2027. The Exchange will issue an Options Trader Alert notifying Members of each implementation date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁶⁶ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market

system, and, in general to protect investors and the public interest.

FLEX Percentages

The Exchange believes that the proposed enhancement to allow prices in FLEX trading to be expressed using a percentage-based methodology would remove impediments to and perfect the mechanism of a free and open market as this change would provide greater flexibility in terms of describing an option contract tailored to the needs of the investor. In addition, the Exchange believes that the related changes to specify how exercise prices and bids/offers will be rounded, and how they will be stated using the proposed percentage-based methodology should provide greater clarity and allow market participants to specify contracts that meet their particular needs. In addition, the proposed changes would align the Exchange’s FLEX rules with the FLEX rules of Cboe as noted throughout the “Purpose—FLEX Percentages” subsection above, and therefore raises no novel issues.

FLEX DAC

The Exchange believes that the proposed DAC order will promote just and equitable principles of trade and will remove impediments to and perfect the mechanism of a free and open market and national market system, as it will allow market participants to incorporate into the pricing of their options the closing price of the underlying on the transaction date based on the amount in which the price or value of the underlying change intraday, thus, allowing investors to incorporate potential market moves that may occur following the execution of an order up to the market close. As described above, the market close is a time in which a significant numbers of participants interact on the equity markets. This activity may contribute to substantially increased liquidity and significant price volatility near the close of the equity markets, which can potentially cause the closing prices of the underlyings and, therefore, the settlement prices of options on those underlyings to greatly deviate from the average option execution prices traded earlier that trading day. The Exchange believes DAC orders will serve to protect investors by allowing them, through use of the underlying reference prices and delta, to fully hedge their options positions taken during the trading day through the market close and potentially benefit from price movements at the close. Also, as managed funds have begun utilizing strategies at the close in order to

⁶⁴ As proposed, Options 3, Section 13(c)(5)(G) would state that FLEX SOM responses in a complex strategy with a stock component that are through the Stop Price must improve such Stop Price by at least one cent.

⁶⁵ 15 U.S.C. 78f(b).

⁶⁶ 15 U.S.C. 78f(b)(5).

mitigate risk at the close and participate in beneficial market moves at the same time, the Exchange believes that DAC orders will offer an additional method by which these funds will be able to meet these objectives through the execution of FLEX options strategies, thereby benefiting investors that hold shares of these funds.

Additionally, the proposed restrictions in Options 3A, Section 6(c)(2) in connection with the submission of simple DAC orders in equity options are designed to prevent fraudulent and manipulative acts and practices and protect investors by mitigating the potential risk associated with expiration day price swings, which may potentially expose DAC order users to the gamma effect of options as they become more sensitive to underlying price changes as such options approach expiration, and reducing the amount of time during which the underlying price could potentially move. As described above, single-name securities may experience greater price sensitivity and may experience larger price swings than compared to indexes and ETFs, and DAC option holders in particular may potentially be subject to a greater risk of paying much higher premiums given the price adjustment at close. The Exchange believes the proposed restrictions will minimize any potential incentive to attempt to manipulate the equities that may underlie a DAC order, particularly those securities that may experience relatively lower volume, and will mitigate potential risk to holders of DAC options in single-name securities.

The Exchange further believes that the adoption of DAC orders on the Exchange will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system because DAC orders will be entered, priced, prioritized, allocated and execute as any other FLEX Order would when submitted into any FLEX auction. Like any FLEX Order, a FLEX DAC order may only be submitted into FLEX Options series eligible for trading pursuant to the FLEX Rules. As such, market participants would not be subject to any new or novel order entry, pricing, allocation, and execution processes in relation to their DAC orders as such orders will be handled pursuant to the Exchange Rules in Options 3A governing the applicable FLEX auction processes, which have been previously approved by the Commission.

The Exchange believes that the general delta value requirements are in line with just and equitable principles of trading and with the protection of

investors because they are consistent with the manner in which a delta is commonly known to function and generally used in options trading. Further, the Exchange believes that proposed Options 3A, Section 14(d) provides a System control in connection with DAC orders that is designed to protect investors. The Exchange believes the proposed reference price reasonability check will mitigate risks associated submitting a DAC order with a reference price unintended by the Member as a likely result of human or operational error. The Exchange also notes that the proposed DAC order reasonability check in Options 3A, Section 14(d) is materially identical to Cboe's DAC order reasonability check in Cboe Rule 5.34(c)(11).

In addition, the Exchange believes that permitting a DAC order to execute only in a FLEX auction will protect investors and serve to remove impediments to and perfect the mechanism of a free and open market and national market system, because it is consistent with the intended purpose of DAC orders. This would ensure that DAC orders that can execute would do so within a short time following submission and therefore in a manner that achieves a Member's desired delta-adjusted price. As described above, the goal of a DAC order is to adjust the execution price based on a delta value applied to the change in the underlying price between the market close and the time of the trade. Therefore, a DAC order must be able to execute as close in time as possible to the time of order submission (*i.e.*, the point in time a Member designates a reference price and delta) so as to allow the reference price and related delta to remain in line with the underlying price information at the time of submission and achieve the User's desired result. As such, a DAC order submitted to a FLEX auction, like any FLEX Order submitted in a FLEX auction, will be executed within a short time following submission. Thus, the Exchange believes that the proposed limitation to FLEX auctions would protect investors by allowing DAC orders to execute in line with Members' expectations and a DAC order's intended purpose.

The Exchange believes that by providing that a User may not apply the DAC order instruction to a FLEX Order for a FLEX Option series with an exercise price formatted as a percentage of the closing value of the underlying on the trade date will remove impediments to and perfect the mechanism of a free and open market and national market system and generally protect investors because these FLEX terms are

inconsistent with the DAC order instruction and would conflict with the manner in which the System calculates the delta-adjusted price upon the market close.

The Exchange notes that it has discussed with the OCC and OPRA its plan to adopt DAC orders and to apply the restatement process described above to FLEX DAC orders. Moreover, the Exchange represents that it has the necessary systems capacity to handle any additional order traffic and the related restatements that may result from the adoption of DAC orders, thereby ensuring the protection of investors. The Exchange also has consulted with OPRA and understands that they have the necessary system capacity as well. The Exchange also believes that its existing surveillances are adequate to monitor trading of DAC orders thereby helping to ensure the maintenance of a fair and orderly market.

Finally, as noted in the purpose section, the proposed DAC changes are substantially similar to Cboe's DAC order instruction. As discussed above, there are minor differences in the Exchange's proposed implementation of DAC orders. Notably, the Exchange will not adopt Cboe's DAC rule provisions related to open outcry trading, designations for different trading sessions, or Asian- and Cliquet-settled FLEX Options, as the Exchange does not offer these capabilities today. The Exchange therefore does not believe that the proposed changes raise any novel issues that have not already been considered by the Commission, notwithstanding these minor differences.

FLEX v. Non-FLEX

Specifically, the Exchange believes the proposed rule change will benefit investors by expanding investors' choices and flexibility with respect to the trading of FLEX Options. The Exchange believes that introducing FLEX v. Non-FLEX Orders will increase order flow to the Exchange, increase the variety of options products available for trading, and provide a valuable tool for investors to manage risk.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market as FLEX v. Non-FLEX Orders would enable market participants to execute a complex strategy including a combination of FLEX Option series and non-FLEX Option series, which would, in turn, provide greater opportunities for market participants to manage risk through the use of a complex FLEX

Order to the benefit of investors and the public interest. The proposed rule change will benefit Members by providing a more efficient mechanism for Members to provide and seek liquidity for customized or complex FLEX strategies which include a non-FLEX Option leg(s).

Further, trading FLEX Options, including FLEX v. Non-FLEX Orders, on an exchange is an alternative to trading customized options in OTC markets and carries with it the advantages of exchange markets such as transparency, parameters and procedures for clearance and settlement, and a centralized counterparty clearing agency. Therefore, the Exchange believes the proposed rule change will promote these same benefits for the market as a whole by providing an additional venue for these FLEX orders, rather than potentially splitting the orders across OTC and exchange markets, will benefit investors by increasing competition for order flow and executions, and thereby potentially result in more competitive pricing related to FLEX Options.

The Exchange believes that the proposed changes to Options 3A, Section 7 to add FLEX v. Non-FLEX Orders to the list of complex orders available for FLEX trading, are consistent with the Act and remove impediments to and perfect the mechanism of a free and open market and a national market system because the changes will allow investors to trade in a more efficient manner, allowing investors to better customize their trading strategies and implement more precise trading strategies which are not available under current rules. Currently, a market participant is unable to trade a FLEX Option and a listed option as part of the same complex strategy; such user must submit an order containing the FLEX Option(s) and an order containing the listed option. This may introduce additional complexities such as price and legging risk, which would be eliminated under the proposed rule change. These complexities may unnecessarily limit market participants' ability to trade in an exchange environment that offers the added benefits of transparency, price discovery, liquidity, and financial stability. These investors may have improved capability under the proposed rule change to execute strategies to meet their specific investment objectives by using a single order with customized

FLEX Option legs with FLEX and Non-FLEX Orders.

The Exchange's proposal to amend Options 3A, Section 12(e)(1)(B)(ii) related to FLEX PIXL to add rule text concerning guaranteed allocation is consistent with the Act as this is case today and this rule text will serve as a guidepost and reminder that a Member may elect less than their guaranteed allocation in non-FLEX Option legs.

Similarly, the Exchange also believes the proposed changes to Options 3A, Section 7(a), to remove the requirement that each leg of a complex FLEX Order must have the same exercise style, will remove impediments to and perfect the mechanism of a free and open market and benefit investors, because it will provide Members with additional flexibility and precision in their investment strategies, by allowing Members to trade complex strategies that would otherwise be required to split into multiple, separate orders.

The Exchange believes the proposed addition of Options 3A, Section 9(b) which address when the Exchange may halt trading in a FLEX Options complex strategy (whether comprised of all FLEX Option legs or FLEX and non-FLEX Option legs), are consistent with the Act and promotes the public interest and the protection of investors by clarifying the Exchange's authority with respect to FLEX Options complex strategies comprised of all FLEX Option legs and providing a consistent and transparent procedure with respect to FLEX Options complex strategies comprised of FLEX and non-FLEX Option legs, that would be applied by the Exchange, similar to trading halt authority under current rules.⁶⁷ Further, the proposed change to add the defined term "FLEX Option series" provides further clarity within the Rules and eliminates potential confusion by providing a definition of "FLEX Option series" to the benefit of investors.

The Exchange believes the proposed changes to Options 3A, Section 11(a)(2), which provide clarity with respect to the criteria required for Complex FLEX Orders with FLEX Option legs only in new (B), helps will help promote a fair and orderly national options market system. As such, the changes proposed under Options 3A, Section 11(a)(2)(C), to separate out the requirements for Complex FLEX Orders with FLEX Option legs only, provide clarity regarding the requirements for Complex FLEX Orders with FLEX Option legs only, as compared to the proposed requirements for Complex FLEX Orders with FLEX and non-FLEX Option legs.

The Exchange believes the proposed pricing requirements for FLEX v. Non-FLEX Orders, set forth in proposed Options 3A, Section 11(a)(2)(C), would remove impediments to and perfect the mechanism of a free and open market, as the proposed trading process for FLEX v. Non-FLEX Orders will provide the ability for investors to achieve the desired net package price for those orders while protecting customers with resting interest in the non-FLEX simple order book. By requiring a FLEX v. Non-FLEX Order submitted into a FLEX Auction to include a bid or offer price for each FLEX Option leg, but no bid or offer for each non-FLEX Option leg, and a net price, the requirements ensure that the non-FLEX Option leg will be subject to the same pricing requirements as they would if not part of a FLEX v. Non-FLEX Order. Specifically, the price of any non-FLEX Option leg that is part of a FLEX v. Non-FLEX Order may not be outside of the BBO or NBBO. The Exchange's proposal will continue to protect Priority Customer interest on the Exchange, as the non-FLEX Option legs of a FLEX v. Non-FLEX Order will always trade at a price better than BBO if there is a Customer on a leg. Further, the price of a FLEX Option leg(s) that is part of a FLEX v. Non-FLEX Order must, following execution of the Non-FLEX Option leg(s), serve to achieve the net execution price (which may not be worse than the desired net price included at order submission), which the Exchange believes will protect investors by ensuring the price of the FLEX Option leg(s) adhere to the agreed upon execution prices and the order's limit price.

The Exchange believes this proposed trading process will ensure that a user who chooses to submit a listed (*i.e.*, Non-FLEX) leg as part of a FLEX v. Non-FLEX Order is subject to the same pricing requirements as they would be if the listed leg was not submitted with FLEX Option legs for execution. Ultimately, FLEX v. Non-FLEX Orders will trade in the same manner as Complex FLEX Orders do today, and execution of the non-FLEX Option legs of these orders will continue to comply with linkage requirements (by not permitting trade-throughs of the NBBO) and protect resting customer interest in the simple order book. Further, the Exchange believes that the proposal to not permit the non-FLEX Option legs of a FLEX v. Non-FLEX Order to leg into the simple order book is consistent with the Act and promotes the public interest and the protection of investors, because it will provide for more efficient execution and processing of FLEX v.

⁶⁷ See, *e.g.*, Options 3A, Section 9.

Non-FLEX Orders, as legging would prevent execution opportunities for these orders (as discussed above).

Finally, the Exchange believes that the proposed rule change is designed to not permit unfair discrimination among market participants as all Members may, but are not required to, trade FLEX v. Non-FLEX Orders.

Other FLEX Changes

The Exchange's proposal to amend Options 3A, Section 11(b)(2)(D)(vi) and Options 3A, Section 12(c)(5)(G) to describe the minimum increments is consistent with the Act because all Complex Orders traded in the increments described in Options 3, Section 14(c)(1) which states that bids and offers for Complex Options Strategies may be expressed in one cent (\$0.01) increments, and the options leg of Complex Options Strategies may be executed in one cent (\$0.01) increments, regardless of the minimum increments otherwise applicable to the individual options legs of the order. Bids and offers for Stock-Option Strategies or Stock-Complex Strategies may be expressed in any decimal price determined by the Exchange, and the stock leg of a Stock-Option Strategy or Stock-Complex Strategy may be executed in any decimal price permitted in the equity market. The options leg of a Stock-Option Strategy or Stock-Complex Strategy may be executed in one cent (\$0.01) increments, regardless of the minimum increments otherwise applicable to the individual options legs of the order.

The Exchange's proposal to amend Options 3A, Section 14(b) to provide that certain complex order risk protections in Options 3, Section 16 are not available for the stock component is consistent with the Act as the risk protections are for the options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed enhancements with respect to FLEX percentages and FLEX DAC will not impose an undue burden on intramarket competition because the use of both the percentage methodology and the DAC order instruction will be optional and available to all Members on the same terms. For example, any Member may determine whether to apply a DAC order instruction to its FLEX Order, and the System will handle FLEX DAC orders submitted by

Members in the same manner pursuant to the proposed rule change.

The proposed percentage methodology will not impose an undue burden on inter-market competition as it is intended to provide greater flexibility in terms of describing an option contract tailored to the needs of the investor. Further, the proposed DAC order instruction will not impose an undue burden on inter-market competition because it is intended to provide market participants with an additional means to manage risks in connection with potential volatility and downside price swings that may occur near the market close, while allowing them to receive potential benefits associated with any market moves near the market close. As noted above, the proposed enhancements to FLEX are substantially similar to Cboe's FLEX rules. As such, the Exchange believes that its proposal may foster competition among options exchanges, as it would provide additional choices for investors and market participants who seek to utilize the proposed percentage methodology or the proposed DAC functionality. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."⁶⁸

The Exchange does not believe that the proposed rule changes for FLEX v. Non-FLEX will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as all Members that are registered as FLEX Traders in accordance with the Exchange's Rules will be able to trade FLEX v. Non-FLEX Orders in the same manner.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the proposal is designed to increase competition for order flow on the Exchange in a manner that is beneficial to investors because it is designed to provide investors seeking to execute both a FLEX Option(s) and a listed

option(s) with a more effective method of executing the trades, which may result in trade efficiencies (*i.e.*, pricing or reporting (*e.g.*, position limits) efficiencies)⁶⁹ and reduced risk (*i.e.*, pricing and legging risk). The Exchange believes the proposed rule change will encourage competition, as it may broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options. The Exchange believes the proposed rule change may increase competition as it may lead to the migration of options currently trading in the OTC market to trading on the Exchange. Also, any migration to the Exchange from the OTC market would result in increased market transparency and thus increased price competition.

The Exchange further notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. All Members may, but are not required to, trade FLEX v. Non-FLEX Orders at the Exchange. The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as other exchanges could adopt this order type if so desired.

Other FLEX Changes

The Exchange's proposal to amend Options 3A, Section 11(b)(2)(D)(vi) and Options 3A, Section 12(c)(5)(G) to describe the minimum increments does not impose an undue burden on competition because all Complex Orders trade in the increments described in Options 3, Section 14(c)(1) on Phlx uniformly.

The Exchange's proposal to amend Options 3A, Section 14(b) to provide that certain complex order risk protections in Options 3, Section 16 are not available for the stock component is does not impose an undue burden on competition as the risk protections are for the options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect

⁶⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

⁶⁹ See, *e.g.*, Options 3A, Section 18.

the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁷⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁷¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx-2026-05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-Phlx-2026-05. 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 filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should

submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-Phlx-2026-05 and should be submitted on or before February 23, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷²

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-02004 Filed 1-30-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104729; File No. SR-CboeBZX-2025-120]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the Canary Staked SEI ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

January 28, 2026.

I. Introduction

On August 26, 2025, Cboe BZX Exchange, Inc. ("BZX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares of the Canary Staked SEI ETF under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on September 11, 2025.³

On September 25, 2025, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On December 4,

2025, the Commission initiated proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.⁷

Section 19(b)(2) of the Act⁸ provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on September 11, 2025.⁹ The 180th day after publication of the proposed rule change is March 10, 2026. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹⁰ designates May 9, 2026, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-CboeBZX-2025-120).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Sherry R. Haywood,
Assistant Secretary.

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date by which the Commission shall approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 104309, 90 FR 57107 (Dec. 9, 2025).

⁸ 15 U.S.C. 78s(b)(2).

⁹ See *supra* note 3 and accompanying text.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(57).

⁷² 17 CFR 200.30-3(a)(12) and (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 103902 (Sept. 8, 2025), 90 FR 44129. The Commission has received no comment letters on the proposed rule change.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 104068, 90 FR 47116 (Sept. 30, 2025). The Commission designated December 10, 2025, as the

⁷⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

⁷¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104728; File No. SR-ISE-2026-02]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule General 8 Section 1 Related to Co-Location Services

January 28, 2026.

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 January 15, 2026, Nasdaq ISE, LLC (“ISE”) or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to restructure the Exchange’s connectivity fee schedule under Rule General 8, Section 1 relating to co-location services and establish fees for certain co-location services, as described further below.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/ise/rulefilings>, and at the principal office of the Exchange.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange’s current data center in Carteret, New Jersey, consists of the original data center (“NY11”), an expansion area (“NY11-4”), and a future expansion area (“NY11-5”). The purpose of this proposed rule change is to restructure the Exchange’s connectivity fee schedule under Rule General 8, Section 1 to eliminate cabinet density-based distinctions and associated fees, other than installation fees,³ and establish a power delivery-based pricing model. Specifically, the Exchange proposes to (i) eliminate all density-based cabinet offerings under Section 1(a) of Rule General 8 including their respective fees other than installation fees; and (ii) establish power delivery-based, recurring monthly fees for cabinet power circuits under Rule General 8, Section 1(c), as described below.

Current Cabinet Offerings

Currently, co-location customers have the option of obtaining cabinets of various power densities at varying installation and ongoing monthly fees.⁴ Co-location customers may obtain a Half Cabinet,⁵ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts (“kW”),⁶ a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW,⁷ a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW,⁸ a High Density Cabinet with power density greater than 7 kW and less than 10 kW,⁹ a Super High Density Cabinet with power density greater than 10 kW and

less than or equal to 17.3 kW,¹⁰ and an Ultra High Density Cabinet with power density greater than 10 kW and less than or equal to 15 kW.¹¹

Proposed Power Delivered Model

The Exchange is now proposing (i) to eliminate all such size- and density range-based cabinet offerings under Rule General 8, Section 1(a), including their respective ongoing monthly fees, and (ii) replace them with two cabinet offerings, consisting of a single cabinet as well as a half cabinet option, with their respective cabinet installation fees unchanged from current cabinet installation fees under Rule General 8, Section 1(a).¹² Unlike today, however,

¹⁰ The Super High Density Cabinet is offered in NY11 for an installation fee of \$4,950 and an ongoing monthly fee of \$8,800 and in NY11-4 for an installation fee of \$5,940 and an ongoing monthly fee of \$8,800. See Rule General 8, Section 1(a).

¹¹ The Ultra High Density Cabinet is offered in NY11-4 for an installation fee of \$5,940 and an ongoing monthly fee of \$7,230. The Ultra High Density Cabinet is not available in NY11. See Rule General 8, Section 1(a).

¹² See proposed Rule General 8, Section 1(a). To effect this change, the Exchange proposes the following changes to Rule General 8, Section 1(a). The Exchange proposes to delete all cabinet with power offerings under Rule General 8, Section 1(a) including their associated installation and ongoing monthly fees, other than the Half Cabinet offering itself (but not its associated ongoing monthly fee which the Exchange is proposing to delete), and replace those offerings with two options: a Cabinet and the currently-offered Half Cabinet, as discussed above. The Exchange then proposes to move, unchanged from their current respective amounts, installation fees for cabinet options in NY11 and NY11-4 by inserting such fees (\$3,850 and \$5,490, respectively) into the columns titled “NY11 Installation Fee” and “NY11-4 Installation Fee” under Rule General 8, Section 1(a). The Exchange proposes to (1) enter, under the column titled “Ongoing Monthly Fee” under Rule General 8, Section 1(a) for both the Half Cabinet and Cabinet options the following: “N/A,” and (2) delete, from the “Ongoing Monthly Fee” for the Half Cabinet option under Rule General 8, Section 1(a) the amount “\$2,200.” The Exchange further proposes a non-substantive change to move the symbol “+” from its various current locations within the table at Rule General 8, Section 1(a) to the caption for the column titled “NY11-4 Installation Fee” (and adjacent to the word “Fee”) so as to denote, unchanged from the symbol’s significance, as stated in its accompanying footnote, that cabinets under the column designated with that symbol include a larger cabinet (32” W x 48” D x 91” H). Finally, the Exchange proposes to delete from Rule General 8, Section 1(a), all accompanying notes, other than those designated with the following symbols: single asterisk (“*”) (noting that such cabinets are not available to new users) as well as the symbol “+” as discussed above. The Exchange is also proposing a non-substantive change to move, with a non-substantive clarifying change, the accompanying note to Rule General 8, Section 1(a) (providing that cabinet power cap is based on the available power at 80% of the breakered capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit)) to Rule General 8, Section 1(c). The Exchange proposes a clarifying change to that footnote to clarify that it is the circuit cap, rather than the cabinet power cap,

Continued

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Rule General 8, Section 1(a).

⁴ See Rule General 8, Section 1(a).

⁵ Half cabinets are not available to new subscribers. The Half Cabinet is currently offered for an ongoing monthly fee of \$2,000. See Rule General 8, Section 1(a).

⁶ The Low Density Cabinet is offered for an installation fee of \$3,850 and an ongoing monthly fee of \$2,200. See Rule General 8, Section 1(a).

⁷ The Medium Density Cabinet is offered for an installation fee of \$3,850 for NY11 and \$5,940 for NY11-4 and an ongoing monthly fee of \$2,750 equally applicable to both NY11 and NY11-4. See Rule General 8, Section 1(a).

⁸ The Medium High Density Cabinet is offered in NY11 for an installation fee of \$3,850 and an ongoing monthly fee of \$3,850 and in NY11-4 for an installation fee of \$5,940 and an ongoing monthly fee of \$3,850. See Rule General 8, Section 1(a).

⁹ The High Density Cabinet is offered in NY11 for an installation fee of \$3,850 and an ongoing monthly fee of \$4,950 and in NY11-4 for an installation fee of \$5,940 and an ongoing monthly fee of \$4,950. See Rule General 8, Section 1(a).

the Exchange is not proposing ongoing monthly fees under Rule General 8, Section 1(a) for cabinets throughout the data center campus, including NY11, and NY11–4. Rather, as discussed above, the Exchange proposes to eliminate ongoing monthly fees for cabinets under Rule General 8, Section 1(a) and introduce, in turn, a uniform, per kilovolt-amperes (kVA) -based,¹³

ongoing fixed monthly fee for all current power circuit offerings under proposed Rule General 8, Section 1(c).¹⁴

Specifically, the Exchange would establish a power-supplied-based, uniform ongoing monthly fee of \$550.00 per kVA¹⁵ to be applied to each power circuit offering under Rule General 8, Section 1(c), thus resulting in a fixed ongoing monthly fee for each of the

various power circuit options under that section, as shown in Table 1¹⁶ below.¹⁷ Table 2, in turn, provides the basis for the fixed monthly fee calculations.¹⁸ As in the case of cabinet installation fees under Rule General 8, Section 1(a), all cabinet power circuit installation fee amounts under Rule General 8, Section 1(c) would remain unchanged.^{19 20 21}

TABLE 1²⁰

Description	NY11 Installation fee	NY11–4 Installation fee	NY11 Ongoing monthly fee (\$550 per kVA)	NY11–4 Ongoing monthly fee (\$550 per kVA)
2x20 amp 110volt	\$2,200	N/A	[0]\$1,320.00	N/A
2x30 amp 110 volt	2,200	N/A	[0]\$1,980.00	N/A
2x20 amp 208 volt	2,200	N/A	[0]\$2,288.00	N/A
2x30 amp 208 volt	2,200	N/A	[0]\$3,432.00	N/A
2x60 amp 208 volt	3,300	N/A	[0]\$6,864.00	N/A
Phase 3 2x 20 amp 208 volt	,300	N/A	[0]\$3,962.82	N/A
Phase 3 2x 30 amp 208 volt	3,300	N/A	[0]\$5,944.22	N/A
Phase 3 2x 40 amp 208 volt	3,300	N/A	[0]\$7,925.63	N/A
Phase 3 2x 50 amp 208 volt	3,300	N/A	[0]\$9,907.04	N/A
Phase 3 2x 60 amp 208 volt	3,300	N/A	[0]\$11,888.45	N/A

that is based on the available power at 80% of the breakered capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit)). The Exchange notes this longstanding rule does not affect pricing, however, as fees are based on 100% of the circuit capacity. The proposed change is clarifying in nature and non-substantive because in all cases power caps are associated with power circuits rather than cabinet density, such that the proposed changes would render the note more accurate and easier to understand. As a conforming change, the Exchange proposes to designate that note with a double asterisk (**) and add the double asterisk to the caption to Rule General 8, Section 1(c) (Cabinet Power) to facilitate references to that note. The Exchange believes this proposed change would facilitate the understanding of and application of the Exchange's rules because associated cabinet density options are being eliminated under this proposal, and Section 1(c) of Rule General 8 addresses cabinet power, to which this note is more closely related.

¹³ Kilovolt-Amperes (kVA) is a unit of *apparent power* used to describe the capacity of electrical circuits and equipment. In alternating current (AC) systems, power consists of two components: real power (kW) and reactive power (kVAR). Real power, or kW, is the actual usable power that performs work, such as running servers or cooling systems, whereas reactive power, or kVAR, is the power that sustains the magnetic and electric fields in equipment but does not perform useful work. Because AC systems often have both real and reactive components, kVA measures the total apparent power, which is the combination of real and reactive power—the full load the circuit must carry. The relationship between kilowatts and kVA depends on the power factor (PF) which reflects how efficiently electrical power is converted into useful work: $kW = kVA \times PF$. In the context of data center operations, electrical power is commonly expressed in two units: kilowatts (kW) and kilovolt-amperes (kVA). While these terms measure different aspects of electrical power—kW representing real power consumed by equipment and kVA representing apparent power supplied—they are closely correlated in environments where the power factor approaches unity. Modern data centers typically operate at or near a power factor of 1.0, resulting in minimal variance between kW and kVA. Accordingly, these measures, kW and kVA, are often treated as interchangeable for practical purposes.

¹⁴ As discussed above, the Exchange proposes to retain the Half Cabinet offering under Rule General 8, Section 1(a) as well as its related footnote (as designated with a single asterisk) clarifying that such Half Cabinets are not available to new subscribers. See proposed Rule General 8, Section 1(a).

¹⁵ As discussed below, the proposed amount of \$550 per kVA is within the current effective rate of \$482-\$763/kW and operates as a mid-band per kVA price (applied equally to all cabinet power circuit options offered by the Exchange under Rule General 8, Section 1(c)) to keep applicable fees balanced across user profiles.

¹⁶ In Tables 1–3 and throughout this proposal, the Exchange uses the terms “110 V” and “120 V.” In North America, residential and light-commercial electrical systems are nominally standardized at 120 volts, but the terms “110V,” “115V,” and “120V” are often used interchangeably. This is because they all refer to the same electrical system, not meaningfully different ones. Historically, early electrical grids in the U.S. operated closer to 110–115 volts. As infrastructure improved and electrical demand increased, utilities gradually raised the nominal voltage to 120 volts to improve efficiency and performance. Rather than replacing all existing equipment, standards were set so devices could operate safely across a voltage tolerance range, typically about $\pm 5\%$ to $\pm 10\%$. A subsequent clean-up filing will update the Exchange's rulebook to uniformly list the 20 amp 110 volt and the 30 amp 110 volt circuits to 120 volt throughout its rulebook, consistent with current standards.

¹⁷ In Table 1 (as in Exhibit 5), additions are italicized, and deletions are bracketed. To effect these changes, the Exchange proposes to amend Rule General 8, Section 1(c) as follows. The Exchange proposes to (1) insert, in the column titled “Installation Fee” the acronym “NY11,” and move, unchanged from current amounts, fees designated with the symbol single asterisk (“*”) to a new column titled “NY11–4 Installation Fee”; (2) insert, in the column titled “Ongoing Monthly Fee” the acronym “NY11” and the parenthetical (“(\$550 per kVA),” and then delete, from that current column titled “Ongoing Monthly Fee” all fees currently depicted thereunder (in each instance such fee being \$0), and insert, in their place, each of the proposed ongoing monthly fees in Table 1 for the respective power circuit options under Rule General 8, Section 1(c), other than those depicted

with a single asterisk, which are designated for NY11–4; and (3) insert a new column titled “NY11–4 Ongoing Monthly Fee (\$550 per kVA)” and insert thereunder all proposed ongoing monthly fees shown in Table 1 for power circuit options designated with a single asterisk indicating, unchanged from today, that such cabinets are available in NY11–4 only. The Exchange proposes to enter “N/A” as applicable throughout Rule General 8, Section 1(c) to indicate that certain fees are not applicable, as appropriate. See proposed Rule General 8, Section 1(c).

¹⁸ The figure (“2X”) as used in Tables 1–3 and throughout this proposal designates the Exchange's provision of both a primary and secondary circuit. The Exchange does not include the secondary circuit in the calculation of the proposed fees.

¹⁹ See proposed Rule General 8, Section 1(c). As discussed above, the Exchange is also proposing a non-substantive change to move, with one clarifying change from its current form, the accompanying note to Rule General 8, Section 1(a) (providing that cabinet power cap is based on the available power at 80% of the breakered capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit) to the notes in Rule General 8, Section 1(c). The Exchange proposes a clarifying change to that footnote to clarify that it is the circuit cap, rather than the cabinet power cap, that is based on the available power at 80% of the breakered capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit)). The proposed change is clarifying in nature and non-substantive because in all cases power caps are associated with power circuits rather than cabinet density, such that the proposed changes would render the note more accurate and easier to understand. See proposed Rule General 8, Section 1(c). The 80% capacity rule is a safety and reliability standard applied in data centers to ensure that electrical circuits are not operated at their full breakered capacity. Instead, the usable power is capped at 80% of the circuit's rated capacity. This practice is based on the National Electrical Code (NEC) guidelines for continuous loads, which require derating to prevent overheating and allow for operational headroom. This rule does not affect pricing, however, as fees are based on 100% of the circuit capacity.

TABLE 1²⁰—Continued

Description	NY11 Installation fee	NY11–4 Installation fee	NY11 Ongoing monthly fee (\$550 per kVA)	NY11–4 Ongoing monthly fee (\$550 per kVA)
2x30 amp 48 volt DC	3,300	N/A	[0] \$792.00	N/A
Phase 1 20 amp 240 volt *	[3,600]	\$3,600	[0] N/A	\$2,640.00
Phase 1 32 amp 240 volt *	[3,600]	3,600	[0] N/A	4,224.00
Phase 1 40 amp 240 volt *	[3,600]	3,600	[0] N/A	5,280.00
Phase 3 20 amp 415 volt *	[4,560]	4,560	[0] N/A	7,906.58
Phase 3 32 amp 415 volt *	[4,560]	4,560	[0] N/A	12,650.53

TABLE 2²¹

Description	kVA per Cir	Proposed monthly fee
2x20 amp 120 volt	2.4	\$1,320.00
2x30 amp 120 volt	3.6	1,980.00
2x20 amp 208 volt	4.16	2,288.00
2x30 amp 208 volt	6.24	3,432.00
2x60 amp 208 volt	12.48	6,864.00
Phase 3 2x 20 amp 208 volt	7.21	3,962.82
Phase 3 2x 30 amp 208 volt	10.81	5,944.22
Phase 3 2x 40 amp 208 volt	14.41	7,925.63
Phase 3 2x 50 amp 208 volt	18.01	9,907.04
Phase 3 2x 60 amp 208 volt	21.62	11,888.45
2x30 amp 48 volt DC	1.44	792.00
Phase 1 20 amp 240 volt *	4.8	2,640.00
Phase 1 32 amp 240 volt *	7.68	4,224.00
Phase 1 40 amp 240 volt *	9.6	5,280.00
Phase 3 20 amp 415 volt *	14.38	7,906.58
Phase 3 32 amp 415 volt *	23.0	12,650.53

Transitioning to the Power Delivered Model

As discussed above, the Exchange currently offers several cabinet options

²⁰ The ongoing monthly fees depicted in Tables 1 and 2 are derived by multiplying the circuit's apparent power (kVA) by \$550 per kVA. The kilovolt-ampere (kVA) rating for each circuit was calculated using standard electrical formulas based on circuit type as follows. Single-phase circuits: "kVA" = ("Volts" x "Amps")/1000. This converts the product of voltage and current into kilovolt-amperes. Three-phase circuits (balanced load): "kVA" = ($\sqrt{3}$ x "Volts" x "Amps")/1000 = (1.732 x "Volts" x "Amps")/1000. The factor $\sqrt{3}$ accounts for the three-phase power configuration. These formulas were applied to each circuit type in the table to determine its kVA capacity, which was then multiplied by the proposed rate of \$550 per kVA to calculate the new monthly fee. For readability, table values reflect rounded kVA figures (e.g., a three-phase 30-amp, 208-volt circuit is displayed as 10.81 kVA) and fees rounded to the nearest cent. In internal calculations, the Exchange computes fees using full-precision kVA (e.g., ~10.794 kVA before display rounding), which can yield penny-level variances relative to fees computed from rounded kVA values. These minor differences arise solely from the sequence of rounding (rounding kVA before vs. after fee computation) and do not affect the uniform application of the \$550/kVA rate or the comparability of fees across circuit options. The Exchange notes that the initial filing (SR-ISE-2025-44) contained minor errors in calculation of the proposed ongoing monthly fees under proposed Rule General 8, Section 1(c). The Exchange has addressed those errors and will bill customers for the correct amounts accordingly.

²¹ In Table 2 and throughout this proposal, the kilovolt-ampere (kVA) rating for each circuit was calculated using standard electrical formulas based

the fees for which are based on varying power density ranges. As the Exchange transitions to the proposed power-delivered model, customers would transition to that model by structuring their power circuit selections under proposed Rule General 8, Section 1(c) to support the workload capacity supported under the cabinets held under current Rule General 8, Section 1(a). For example,²² a customer using a Super High Density Cabinet offering a power density range greater than 10 kW²³ and less than or equal to 17.3 kW²⁴ in NY11 with a flat monthly fee of \$8,800 would have several options for structuring its power circuit options under proposed Rule General 8, Section

on circuit type as follows. Single-phase circuits: "kVA" = ("Volts" x "Amps")/1000. This converts the product of voltage and current into kilovolt-amperes. Three-phase circuits (balanced load): "kVA" = ($\sqrt{3}$ x "Volts" x "Amps")/1000 = (1.732 x "Volts" x "Amps")/1000. The factor $\sqrt{3}$ accounts for the three-phase power configuration. These formulas were applied to each circuit type in the table to determine its kVA capacity, which was then multiplied by the proposed rate of \$550 per kVA to calculate the new monthly fee.

²² The examples that follow are for illustrative purposes only, as customers are free to select the power circuit options that best suit their business needs.

²³ For simplicity, assume power factor $\approx$ 1 (common in data centers), so: 10 kW $\approx$ 10kV.

²⁴ For simplicity, assume power factor $\approx$ 1 (common in data centers), so: 17.3 kW $\approx$ 17.3 kV.

1(c). The customer could select, for example, the Phase 3, 2 x 50 amp, 208V circuit (18.01 kVA), which approximates the high end of the current cabinet's power density range of 17.3 kW for a monthly fee of \$9,907.04. Alternatively, the customer could select the Phase 3, 2 x 30 amp, 208 volt circuit (10.81 kVA) to align itself with the lower end of the current cabinet density range—currently at the same flat fee of \$8,800 per month and as proposed \$5,944.22 per month—and reduce its monthly costs by \$2,855.78. Similarly, customers using an Ultra High Density Cabinet with a cabinet density greater than 10 kW and less than or equal to 15 kW (at a current monthly fee of \$7,230.) could select the Phase 3 20 amp 415 volt circuit (14.38 kVA) at a recurring monthly fee of \$7,906.58. A customer with a High Density Cabinet offering a density greater than 7 kW and less than or equal to 10 kW at \$4,950 per month could select a Phase 3, 2x 30 amp 208 volt circuit (10.81 kVA) at \$5,944.22 per month; alternatively, the customer could select the Phase 3, 2x 20 amp 208 vol (7.21 kVA) circuit at the lower end of its current density for \$3,962.82 per month. Customers with a Medium High Density Cabinet offering densities greater than 5 kW and less than or equal to 7 kW currently at \$3,850 per month

could select a 2 x 30 amp, 208 volt circuit (6.24 kVA) at \$3,432 per month or the 2 x 20 amp 208 volt circuit (4.16 kVA) at \$2,288 per month. Customers with a Medium Density Cabinet offering densities greater than 2.88 kW and less than or equal to 5 kW at a current monthly fee of \$2,750 could select a 2 x 20 amp 208 volt circuit (4.16 kVA) at \$2,288 per month or a 2 x 30 amp 110/120 volt (3.6 kVA) circuit at \$1,980 per month. Finally, customers with a Low Density Cabinet offering densities less than or equal to 2.88 kW at an ongoing monthly fee of \$2,200 could select a 2

x 20 amp 110/120 volt circuit (2.4 kVA) at \$1,320 per month.

Table 3 below shows power circuit options under proposed Rule General 8, Section 1(c) that could be selected²⁵ to align with the high and lower end of the current cabinet density ranges under Rule General 8, Section 1(a), including associated changes in fees. While the table depicts a single power circuit at the approximate ends of the current cabinet density ranges for illustrative purposes, the Exchange notes that under the proposed power delivered model, clients are free to select multiple circuits per cabinet to achieve their desired power preferences. Under the

current cabinet density-based model, clients are limited to the maximum power density allowed for their selected cabinet type. For example, a client using a Phase 3, 60-amp, 208-volt circuit (21.62 kVA) in combination with a Super High Density Cabinet would pay full fees for that power circuit but would only be authorized to draw up to 17.3 kW of power. Under the proposed billing model, subject to the 80% rule discussed above, clients may use the full power provided by their chosen circuits without being constrained by rigid cabinet density ranges in place today.²⁶

TABLE 3²⁶

Cabinet type (density range)	Circuit type	kVA	Current fee	New fee	Δ %
Low Density (≤2.88 kW)	20A 120V	2.4	\$2,200	\$1,320	−40
	30A 120V	3.6	2,200	1,980	−10
Medium Density (>2.88–≤5 kW)	30A 120V	3.6	2,750	1,980	−28
	20A 240V	4.8	2,750	2,640	−4
Medium-High Density (>5–≤7 kW)	30A 208V	6.24	3,850	3,432	−10.86
	30A 120V, 30A 120V	7.2	3,850	3,960	2.86
High Density (>7–<10 kW)	30A 208V	6.24	4,950	3,432	−30.67
	40A 240V	9.6	4,950	5,280	6.67
Ultra High Density (>10–≤15 kW)	20A 415V (Phase 3)	14.38	7,230	7,906.58	9.36
	(Same circuit used for upper end) ...	.....	.....	.....	.....
Super High Density (>15–≤17.3 kW)	60A 208V (Phase 3)	21.62	8,800	11,891	35.13
	32A 415V (Phase 3)	23.0	8,800	12,650.53	43.76

The Exchange believes that pricing the offered services on a per kVA basis, as proposed, will allow the Exchange the operational flexibility to offer clients the maximum available power from the power circuits selected. Specifically, because the proposed fee structure eliminates cabinet density-based distinctions, including their associated fixed ongoing monthly fees, and replaces those distinctions with a single per-kVA-based monthly fee of \$550 per kVA delivered that is uniformly applied to the capacity of the customer's power circuit selection under Rule General 8, Section (c), customers in the lower density cabinet ranges are likely to experience a decrease in overall fees while customers in the higher cabinet density ranges are likely to see increases.

Overall, the proposal introduces a transparent and equitable delivery-based pricing model that equitably allocates fees and removes complexity,

consistent with requirements under the Act.

The Exchange believes that the proposed changes are better aligned with current industry practices, which base billing on power supplied rather than cabinet footprint. Under the current cabinet density model, customers select from cabinet options designed to accommodate a range of power densities, up to approximately 17 kW. This approach often resulted in misalignment between costs and actual usage because pricing was tied to cabinet size and density tiers rather than the actual power delivered. For example, under the cabinet-density pricing model, customers operating at the lower end of a given cabinet's power-density range were assessed the same fixed ongoing monthly fee as customers operating at the higher end of that range, because pricing was tied to the cabinet's density tier rather than the deployed power circuit.

By contrast, the proposed per-kVA pricing model directly reflects the actual power delivered to the customer's circuits, ensuring that charges correspond to the infrastructure resources delivered. This power delivery-based approach inherently simplifies cost planning. In short, billing on a per-kVA basis promotes transparency and flexibility, aligning fees with real power demand and enabling the Exchange to accommodate evolving customer requirements with greater transparency and efficiency.

Increases associated with the proposal will better enable the Exchange to continue to maintain and improve its market infrastructure technology and services. The Exchange notes that the proposed fee of \$550 per kVA is comparable to fees charged by at least one other national securities exchange for a similar product. Specifically, the New York Stock Exchange ("NYSE") offers a tiered, per kW monthly fee for cabinets ranging from \$900 to \$1,200

²⁵ The examples depicted in Table 3 are for illustrative purposes only, as customers are free to select the power circuit options that best suit their business needs.

²⁶ In Table 3, the kilovolt-ampere (kVA) rating for each circuit was calculated using standard electrical formulas based on circuit type as follows. Single-

phase circuits: "kVA" = ("Volts" × "Amps")/1000. This converts the product of voltage and current into kilovolt-amperes. Three-phase circuits (balanced load): "kVA" = (√3 × "Volts" × "Amps")/1000 = (1.732 × "Volts" × "Amps")/1000. The factor √3 accounts for the three-phase power configuration. These formulas were applied to each

circuit type in the table to determine its kVA capacity, which was then multiplied by the proposed rate of \$550 per kVA to calculate the new monthly fee. The examples depicted in this table are for illustrative purposes only, as customers are free to select the power circuit options that best suit their business needs.

per kW based on the total kW allocated to all of a user's dedicated cabinets.²⁷ Under the NYSE schedule, for example, a customer requesting 10kW at NYSE would pay a monthly fee of \$10,500 per month ($10\text{kW} \times \$1,050$ per kW per month), whereas a customer requesting ~10kW under the proposed model at the Exchange could install a Phase 3 30 amp, 208 volt circuit for 10.81 kVA²⁸ for a total charge of \$5,944.22 per month ($10.8\text{ kVA} \times \$550$ per kVA per month).²⁹

The Exchange believes that its proposed pricing model is more transparent and equitable because it directly ties fees to the actual power delivered and the infrastructure required to support that capacity (power and cooling). This eliminates distortions inherent in tiered pricing, where customers with similar power needs may pay significantly different amounts based on density classifications. By linking charges to delivered power, the proposal enhances transparency and predictability. Costs scale with actual power delivered, and customers can avoid sudden price jumps when moving between tiers. Under the proposed structure, every kVA is priced the same, making it easier for customers to forecast expenses, compare across providers, and understand the relationship between costs and their selected power delivery preferences.

²⁷ NYSE's per kW Monthly Fee is a factor of the total number of kilowatts allocated to all of a User's dedicated cabinets and varies based on the total kilowatts allocated to a User. See New York Stock Exchange LLC Connectivity Fee Schedule, available at https://www.nyse.com/publicdocs/nyse/Wireless-Connectivity_Fees_and_Charges.pdf. Most modern data centers typically operate at or near a power factor of 1.0, resulting in minimal variance between kW and kVA such that the two measures are, for comparison purposes and given this assumed PF factor, interchangeable.

²⁸ To convert 30 amps at 208 volts to kVA, we use the formula: $\text{kVA} = \text{Volts} \times \text{Amps} / 1000$. For single phase: $\text{kVA} = 208 \times 30 = 6.24\text{ kVA} / 1000$. For three-phase (assuming a balanced load): $\text{kVA} = 1.732 \times 208 \times 30 = 10.81\text{ kVA} / 1000$. 1.732 is derived from $\sqrt{3}$. As discussed above, modern data centers typically operate at or near a power factor of 1.0, resulting in minimal variance between kW and kVA. Accordingly, these measures are often treated as interchangeable for practical purposes. NYSE uses a tiered monthly fee per kW, ranging from \$900 to \$1,200 per kW depending on the total allocated power across a user's cabinets. Using PF = 1.0, that translates to \$900–\$1,200 per kVA.

²⁹ NYSE charges a tiered monthly fee per kW, ranging from \$900 to \$1,200 per kW, depending on the total kilowatts allocated across all cabinets. For example, a customer requesting 10 kW at NYSE would pay approximately \$10,500 per month ($10\text{ kW} \times \$1,050$ per kW). The Exchange proposes a flat monthly fee of \$550 per kVA for the full theoretical capacity of the circuit. For example, a Phase 3, 30-amp, 208-volt circuit provides approximately 10.81 kVA ($1.732 \times 208 \times 30 + 1000$) for a monthly fee of \$5,944.22 ($\$550 \times 10.81$).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,³¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to restructure its cabinet and cabinet power connectivity schedule to provide for a delivery-based model that eliminates cabinet density-based distinctions, along with their associated monthly fees, and establishes in its place a uniform ongoing monthly fee of \$550 per kVA fee as applied to each offered cabinet power circuit options is reasonable. First, the Exchange's proposal to establish a \$550 per kVA fee to be applied to the various power circuit options offered by the Exchange is reasonable because the proposed amount of \$550 per kVA is within the current effective rate of \$482–\$763/kW and operates as a mid-band per kVA price (applied equally to all cabinet power circuit options offered by the Exchange under Rule General 8, Section 1(c)) to keep applicable fees balanced across user profiles. As discussed above, the Exchange is proposing to keep all cabinet and cabinet power installation fee amounts under Rule General 8, Sections 1(a) and (c) unchanged. Second, and as discussed above, the proposed per kVA fee of \$550 per kVA is reasonable as compared to per kVA fees for comparable products offered by NYSE. By linking charges to delivered power, the proposal enhances transparency and predictability as customers avoid price jumps when moving between tiers because costs scale with power delivered. By comparison, NYSE's model assesses \$900–\$1,200 per kW per month based on a user's aggregate dedicated-cabinet footprint, introducing higher per kVA prices, tier transitions, and variability that the Exchange's uniform \$550/kVA model avoids.

The Exchange's proposal to replace cabinet-density based pricing with a per-kVA power delivery model equitably allocates fees based on the primary cost driver of co-location services—electrical power capacity and associated cooling—rather than cabinet density range-based footprint. Under the

current model, two customers occupying the same cabinet density could incur identical fees despite materially different power demands, resulting in misalignment between fees and the customer's power usage. By charging according to committed and delivered kVA, the Exchange ensures that fees are reasonable and proportionate to the allocated infrastructure resources consistent with Section 6(b)(4).

As discussed above, the fee increases resulting from the proposed changes would support the Exchange's ongoing investments in market infrastructure and co-location services, ensuring competitiveness with peer exchanges. Customer demand for more robust and higher power cabinet options has grown significantly over time. In response, the Exchange has continued to invest in its data center operations to meet these evolving needs, consistent with applicable regulatory requirements. These investments include modernizing equipment and expanding the Exchange's co-location facilities to provide customers with additional space and power capacity, thereby providing customers with additional options for addressing their business needs. It is reasonable and consistent with the Act for the Exchange to recoup its investments, at least in part, by adjusting its fees.

The proposal is also not designed to permit unfair discrimination under Section 6(b)(5). The per-kVA pricing structure applies uniformly to all co-location users based on objective, market infrastructure technology-neutral criteria (power capacity requested and delivered), without regard to customer identity, membership status, or business model. Differences in fees reflect only differences in service requested and installed, which is a permissible and non-discriminatory basis for differentiation under the Act. The Exchange further believes that the proposed fee changes are not unfairly discriminatory because the proposed cabinet and cabinet power circuit options are available to and assessed uniformly across all market participants.

The Exchange believes that the proposed conforming and other non-substantive changes, including those to Rule General 8, Section 1, are appropriate because they align related parts of the Exchange's rulebook with the proposed changes or otherwise clarify and facilitate the application of the Exchange's rules.

Accordingly, the Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) and 6(b)(5) of the Act because it provides for

³⁰ 15 U.S.C. 78f(b).

³¹ 15 U.S.C. 78f(b)(4) and (5).

the equitable allocation of reasonable fees and is not designed to permit unfair discrimination.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether to connect to the Exchange based on the value received compared to the cost of doing so.

Nothing in the proposal burdens intra-market competition because the proposed cabinet, half cabinet, and cabinet power options are available to any customer under the same fees as any other customer, and any customer that wishes to order cabinets and cabinet power options can do so on a non-discriminatory basis.

Co-location services are optional and offered in a highly competitive environment among multiple exchanges and third-party data center providers. Market participants that do not wish to pay for co-location services under the revised pricing model may continue to access the Exchange through alternative connectivity methods or utilize competing venues.

The proposed shift from cabinet-based pricing to a per-kVA power delivery model is designed to align fees with the actual resource delivered and infrastructure investments, rather than fixed cabinet density ranges. This change does not restrict access or favor any category of participant; all eligible users are subject to the same fees and terms based on objective criteria (committed and delivered power capacity). Accordingly, the proposal does not create any undue burden on intermarket competition, as participants can choose among multiple exchanges and service providers, nor does it impose an undue burden on intramarket competition, as all co-location customers are treated uniformly under the proposed fee structure, as described above.

To the extent the proposal may affect competition, the Exchange believes that the impact is positive because the revised pricing structure promotes cost transparency and fairness, thereby enabling customers to more easily plan for and compare infrastructure

expenses, as well as tailor their connectivity selections to suit their specific business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.³²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-ISE-2026-02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-ISE-2026-02. 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 filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should

submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-ISE-2026-02 and should be submitted on or before February 23, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-01999 Filed 1-30-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104704; File No. SR-NYSEAMER-2025-72]

Self-Regulatory Organizations; NYSE American LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Section 1003 of the NYSE American Company Guide

January 28, 2026.

On December 3, 2025, NYSE American LLC ("NYSE American" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Section 1003 of the NYSE American Company Guide. The proposed rule change was published for comment in the **Federal Register** on December 17, 2025.³ On January 22, 2026, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superceded the original proposed rule change in its entirety.⁴

Section 19(b)(2) of the Act⁵ provides that within 45 days of the publication of notice of the filing of a proposed rule

³³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 104386 (Dec. 12, 2025), 90 FR 58648. The Commission has received no comment letters on the proposed rule change.

⁴ In Amendment No. 1, the Exchange: (1) clarified the Exchange's authority to suspend trading in or delist a security; (2) modified Section 1009 regarding an issuer's entitlement to a compliance period; and (3) made other technical and non-substantive changes. The full text of Amendment No. 1 can be found on the Commission's website at <https://www.sec.gov/comments/sr-nyseamer-2025-72/srnyseamer202572-696287-2176995.pdf>.

⁵ 15 U.S.C. 78s(b)(2).

³² 15 U.S.C. 78s(b)(3)(A)(ii).

change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is January 31, 2026. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change, as modified by Amendment No. 1, so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁶ designates March 17, 2026, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change, as modified by Amendment No. 1 (File No. SR-NYSEAmer-2025-72).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-01973 Filed 1-30-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104723; File Nos. SR-NYSE-2025-47; SR-NYSETEX-2025-38]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE Texas, Inc.; Order Granting Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To Adopt Generic Listing Standards for Commodity-Based Trust Shares (Rule 8.201 (Generic))

January 28, 2026.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² each of the New York Stock Exchange LLC (“NYSE”) and the NYSE Texas, Inc. (“NYSE Texas”, and together with

NYSE, the “Exchanges”) filed with the Securities and Exchange Commission (“Commission”) proposed rule changes (referred to herein as each a “Proposal” and together as the “Proposals”) to adopt new Rule 8.201 (Generic). Each Proposal was subject to notice and comment.³

As described in more detail in the Proposals’ respective amended filings, each Proposal seeks to adopt new Rule 8.201 (Generic) to permit the generic listing and trading of Commodity-Based Trust Shares that meet the requirements of such rule. This order approves the Proposals, as modified by Amendments No. 1.

II. Discussion and Commission Findings

After careful review, the Commission finds that the Proposals are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴ In particular, the Commission finds that the Proposals, as modified by Amendments No. 1, are consistent with Section 6(b)(5) of the Act,⁵ which requires, among other things, that the Exchange’s rules be designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest.

The Commission notes that the Proposals, as modified by Amendments No. 1, are substantively identical to the proposals that the Commission recently approved.⁶ Accordingly, for the reasons discussed in the CBTS Generics Order,

³ See Securities Exchange Act Release Nos. 104491 (Dec. 22, 2025), 90 FR 61209; 104490 (Dec. 22, 2025), 90 FR 61175 (together, “Original Proposals”). On January 20, 2026, the Exchanges amended the Original Proposals to correct technical errors in the Original Proposals. Specifically, the Exchanges removed the reference to “less expenses and other liabilities” in the description of the term “Commodity-Based Trust Shares,” which is not reflected in the definition of the same and made other technical changes. See Amendment No. 1 to Proposed Rule Change to Adopt New Rule 8.201 (Generics) (SR-NYSE-2025-47) available at: <https://www.sec.gov/comments/sr-nyse-2025-47/srnyse202547-694587-2170734.pdf>; Amendment No. 1 to Proposed Rule Change to Adopt New Rule 8.201 (Generics) (NYSETEX-2025-38) available at: <https://www.sec.gov/comments/sr-nysetex-2025-38/srnysetex202538-694607-2170774.pdf> (together, the “Amendments No. 1”). Because the changes in Amendments No. 1 to the Proposals do not materially alter the substance of the Proposals and are technical in nature, Amendments No. 1 are not subject to notice and comment. The Commission did not receive any comments on the Proposals.

⁴ In approving the Proposals, as modified by Amendments No. 1, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

⁶ See Securities Exchange Act Release No. 103995 (Sept. 17, 2025), 90 FR 45414 (Sept. 22, 2025) (“CBTS Generics Order”).

the Commission finds that the Proposals, as modified by Amendments No. 1, are consistent with Section 6(b)(5) of the Act⁷ and the rule and regulations thereunder applicable to a national securities exchange.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the Proposals (SR-NYSE-2025-47 and SR-NYSETEX-2025-38), as modified by Amendments No. 1, be, and hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-01994 Filed 1-30-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104712; File No. SR-BX-2026-004]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing of Proposed Rule Change To Remove Existing Listing Rules and Establish New Listing Standards

January 28, 2026.

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 January 16, 2026, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to a proposal to remove existing listing rules and establish new, higher listing standards based on the rules applicable to the Nasdaq Global Market.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/bx/rulefilings>, and at the principal office of the Exchange.

⁷ 15 U.S.C. 78f(b)(5).

⁸ *Id.*

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq Texas was recently established by converting Nasdaq BX, Inc. to a limited liability corporation that is operated and governed by Texas state laws and renaming it Nasdaq Texas, LLC.³ In connection with this conversion, Nasdaq Texas proposes to remove the current listing standards and implement new listing rules that establish higher requirements than the current listing rules. Specifically, the Exchange is proposing to amend General 1, Section 1 and General 3, Section 1, to remove the provisions in Equity 3 (BX Venture Market Listing Rules) and certain provisions within Equity 3A (Other Listing Rules and Rules Regarding Unlisted Trading Privileges) and to amend Rule 4120(b) (Regulatory Halts).

The Exchange discontinued its listing marketplace and delisted all securities previously listed on the Exchange.⁴ From 2009 until 2011, the Exchange operated as a trading venue only, allowing market participants to trade securities listed on other national securities exchanges pursuant to unlisted trading privileges. In 2011, the

Exchange adopted listing requirements again intended to attract companies being delisted from other national securities exchanges for failure to meet listing standards (including price or other market value measures), as well as smaller companies contemplating an initial exchange listing (the "BX Venture Exchange"). These listing standards include minimal quantitative listing requirements and the qualitative requirements are, in many respects, similar to the requirements for The Nasdaq Stock Market LLC ("Nasdaq") and other national securities exchanges.⁵ Because the Exchange aimed to attract smaller, less liquid companies, the listing program currently includes enhanced requirements that, among other things, allows the Exchange to deny a company from listing if any executive officer or director was involved in any event that occurred during the prior five years that is required to be disclosed under Item 401(f)(2)–(8) of Regulation S–K.⁶ The enhanced requirements also require a listed company's website to refer to its security as being listed on the BX Venture Market unless otherwise required by applicable rules or regulations.⁷ The BX Venture Exchange was never launched and never listed any companies.

In connection with the transition to Nasdaq Texas, the Exchange intends to restart a listing program and wishes to increase its existing quantitative standards to help attract and maintain listings on Nasdaq Texas, while eliminating the enhanced standards. The Exchange does not believe the enhanced standards will continue to be necessary because the Exchange will no longer be focused on attracting smaller, less liquid companies to list on the Exchange and the proposed standards will bring the listing rules in line with listing standards on other exchanges. Identifying companies that meet these higher listing standards will benefit investors. As explained below, the proposed listing standards are substantially similar to the current rules for the Nasdaq Global Market.⁸ Initially,

the Exchange intends only to dually list securities that are also listed on another national securities exchange. However, the Exchange expects to subsequently modify its rules to allow it to also serve as a primary listing venue.

General Overview

A security will be considered for listing on Nasdaq Texas only if such security is registered pursuant to Section 12(b) of the Act⁹ or such security is subject to an exemption.¹⁰ The Exchange proposes to create a new section in the rulebook, proposed Rule Series 5000, consisting of Rules 5000–5999 which pertain to rules related to the qualification, listing and delisting of companies on Nasdaq Texas. The proposed Rule 5000 Series (consisting of Rules 5001–5005) provides a summary of the various sections of the listing rules, Nasdaq Texas' additional authority relevant to listed companies and explains that Nasdaq Texas and the Financial Industry Regulatory Authority, Inc. are parties to a regulatory contract. The proposed series also includes definitions of terms used throughout the listing rules. The proposed Rule 5100 Series (consisting of Rules 5100–5199) discusses Nasdaq Texas' general regulatory authority. The proposed Rule 5200 Series (consisting of Rules 5200–5299) sets forth the procedures and prerequisites for listing on Nasdaq Texas, as well as the disclosure obligations of listed companies. As discussed in footnote 8, the Exchange is not proposing to incorporate the Nasdaq 5300 or 5500 Series and will reserve these sections instead. The proposed Rule 5400 Series (consisting of Rules 5400–5499) contains the specific quantitative listing requirements for a company to qualify to list on Nasdaq Texas. The corporate governance requirements applicable to all listed companies are contained in the Rule 5600 Series (consisting of Rules 5600–5699). The Rule 5700 Series (consisting of Rules 5700–5799) is reserved for future listing rules related to special listing requirements for securities other than common or preferred stock and warrants, such as Exchange Traded Products.¹¹ The consequences of a failure to meet Nasdaq Texas' listing standards will be contained in the proposed Rule 5800

³ On December 24, 2025, Nasdaq BX, Inc. filed a proposal (SR–BX–2025–17P) to convert a Texas limited liability company and change the name of the Exchange to Nasdaq Texas. Although the proposal to convert the Exchange has not become effective as of the date of this filing, the new name of the Exchange will be converted to Nasdaq Texas. Therefore, the Exchange will be referred to as Nasdaq Texas throughout the discussion of this proposal and the accompanying Exhibit 5.

⁴ See Securities Exchange Act Release No. 59265 (January 16, 2009), 74 FR 4790 (January 27, 2009) (order granting approval to SR–BSE–2008–36 relating to the adoption of new criteria permitting the delisting of a security when the Exchange has terminated its listing Program in connection with the discontinuation of trading in all securities listed on its market). The Exchange was previously known as Boston Stock Exchange at the time of the acquisition.

⁵ See Securities Exchange Act Release No. 64437 (May 6, 2011), 76 FR 27710 (May 12, 2011) (order granting accelerated approval to SR–BX–2010–059 relating to the creation of a listing market on the Exchange).

⁶ See Rule Equity 3, Section 5103.

⁷ See Rule Equity 3, Section 5250(b)(4).

⁸ See Nasdaq Rules 5000 through 5900 Series. Unlike Nasdaq, which has three listing tiers, the Exchange will only have a single set of listing requirements and therefore the proposed listing requirements will not incorporate Nasdaq's references to the Series 5300 Nasdaq Global Select Market ("Global Select") or Series 5500 Nasdaq Capital Market ("Capital Market") tiers.

⁹ 15 U.S.C. 78l(b).

¹⁰ 15 U.S.C. 78l(c).

¹¹ Until specific listing rules are adopted, the Exchange will continue to maintain rules allowing it to trade certain other securities including but not limited to, selected equity-linked debt securities, portfolio depository receipts, index fund shares, trust issued receipts and equity index-linked securities in Equity 3A, Section 2.

Series (consisting of Rules 5800–5899). Similar to the Rule 5700 Series, the 5900 Series (consisting of Rules 5900–5999) is reserved for future rules pertaining to company listing fees, which will be filed before the Exchange begins to list companies. While Nasdaq Texas is not proposing rules similar to the 5700 and 5900 Series, or Nasdaq Rule IM–5405–1 at this time, the Exchange proposes to submit proposed rules for these sections in the near future and therefore, is including cross-references to Rule IM–5405–1 relating to Direct Listing and references to the Rule 5700 and 5900 Series within the proposed listing rules.¹²

Except where noted below, the proposed listing standards as reflected in the proposed Rule 5000 Series, are substantially similar to the current rules for the Nasdaq Global Market,¹³ and the Commission has previously found that the initial and continuing listing standards of Nasdaq are consistent with the Act.¹⁴ Throughout the series of proposed rules, all references to Nasdaq in rules that are otherwise copied from the Nasdaq Stock Market are replaced with references to Nasdaq Texas.

Definitions and Discretionary Authority

Proposed Rule 5005 (Definitions) is substantially similar to the Nasdaq Rule 5005 with the exception of any rules solely related to the Global Select or Capital Market. More specifically, the term “Cash flows” is not included in proposed Rule 5005 because the term only is used in the Nasdaq Global Select rules. The definitions for Global Select, Global Market and Capital Market, in addition to the definitions for each of the securities that qualify for the tiers, are not included because the tiers will not exist on Nasdaq Texas. Additionally, the Exchange is proposing a slightly different definition for the term “dually-listed security” than the Nasdaq definition to allow for the possibility of listing on primary listing exchanges other than the New York Stock Exchange.

Similar to Nasdaq, Nasdaq Texas may use its discretionary authority to deny

initial or continued listing to a company, or consider remedial measures, when an individual with a history of regulatory misconduct is associated with a company and the Exchange determines that the regulatory history rises to the level of a public interest concern. Nasdaq Texas may also use its discretionary authority to review a company’s past corporate governance activities or to deny initial listing or suspend or terminate the continued listing of a company if the Company has filed for protection under any provision of the federal bankruptcy laws or comparable foreign laws.¹⁵ The listing of companies formed by a reverse merger and Special Purpose Acquisition Companies are allowed on the Exchange but subject to additional requirements, similar to Nasdaq.¹⁶ Also similar to Nasdaq, Nasdaq Texas may use its authority to deny initial listing to a company based on factors that make the company’s securities susceptible to manipulation.¹⁷

General Procedures and Prerequisites for Initial and Continued Listing

An issuer may register a security pursuant to Section 12(b) by submitting to Nasdaq Texas a listing application that provides certain required information.¹⁸ The Exchange will review the listing application and, if the listing application is approved, will certify to the Commission that it has approved the security for listing and registration.¹⁹ Registration of the security will become effective thirty days after the receipt of such certification by the Commission or within a shorter period of time as the Commission may determine.²⁰ Once registration is effective the security is eligible for listing on Nasdaq Texas.²¹

With respect to the standards relating to the listing of companies, including procedures and prerequisites for initial and continued listing on Nasdaq Texas, obligations of security issuers listed on Nasdaq Texas, as well as rules describing the application and qualification process,²² Nasdaq Texas’ proposed listing rules for securities are substantially similar to those of the

Nasdaq Global Market listing rules. The Exchange does not include references to Global Select and Capital Market tiers in proposed Rule 5210(k)(iii).

The Exchange will not propose certain provisions of the Nasdaq initial and continued listing rules in the Rules 5200 Series that are not applicable. Specifically, the Exchange does not propose adopting rules equivalent to Nasdaq Rules 5222(b)(3), 5222(c)(1)(A) or 5222(c)(3) because these provisions relate to an Equity Investment Tracking Stock listing on specific market tiers, which will not exist on Nasdaq Texas. As explained above, Nasdaq Texas will only have one listing tier therefore, these rules are not necessary. Similarly, the Exchange does not propose to adopt a rule similar to Nasdaq Rule 5225(b) because the Exchange will not have a Capital Market listing tier. Additionally, the Exchange is proposing to establish proposed Rule IM–5220 which is substantially similar to Texas Stock Exchange (“TXSE”) Rule 16.205 (Dually-Listed Securities) Supplementary Material .01 (Impact of Non-Designation of Dually-Listed Securities). TXSE’s rule more closely aligns with proposed Rule IM–5220 because similar to securities listed on TXSE, securities listed on Nasdaq Texas will report quotations and transactions to the consolidated Tape B of the securities information processors. Initially, the Exchange will dually list companies and will transition to a primary listing exchange in the future.²³ Therefore, the Exchange is proposing Rule IM–5220–1 (Dually-Listed Company) to make clear that all companies listing on Nasdaq Texas must be listed on another national securities exchange.

Quantitative Listing Standards

As previously discussed, the Exchange is not proposing to adopt rules similar to Nasdaq’s provisions for quantitative standards that reference companies listing on the Capital Market²⁴ or to adopt rules similar to the Nasdaq Rule 5300 Series, related to listing standards for the Nasdaq Global Select tier, or the Nasdaq Rule 5500 Series, related to listing standards for the Nasdaq Capital Market tier, because Nasdaq Texas is proposing to include

¹² Nasdaq Rule IM–5405–1 relates to determining the price-based requirements for direct listings on the exchange.

¹³ Unlike Nasdaq, which has three listing tiers, the Exchange will only have a single set of listing requirements and therefore the proposed listing requirements will not incorporate Nasdaq’s references to the Global Select Market (“Global Select”), Global Market (“Global Market”) or Capital Market (“Capital Market”) tiers.

¹⁴ See, e.g., Securities Exchange Act Release No. 53128 (Jan. 13, 2006), 71 FR 3550 (Jan. 23, 2006) (File No. 10–131) (approving the application of Nasdaq to become a registered national securities exchange) (“Nasdaq 2006 Approval Order”).

¹⁵ See Nasdaq Rule 5101; see also proposed Nasdaq Texas Rule 5101.

¹⁶ See Nasdaq Rule IM–5101–2; see also proposed Nasdaq Texas Rule 5101–2.

¹⁷ See Nasdaq Rule IM–5101–3; see also proposed Nasdaq Texas Rule 5101–3.

¹⁸ 15 U.S.C. 78l(b); proposed Nasdaq Texas Rule 5210.

¹⁹ See proposed Nasdaq Texas Rule 5210(f); 15 U.S.C. 78l(d).

²⁰ 15 U.S.C. 78l(d).

²¹ See proposed Nasdaq Texas Rule 5210(f); 15 U.S.C. 78l(d).

²² See proposed Nasdaq Texas Rule 5200 Series.

²³ The Exchange will submit a future filing to incorporate the necessary rules to operate as a primary listing exchange.

²⁴ For example, the Exchange is not including language that excludes companies listed pursuant to Nasdaq Rules 5405(b)(3) and (b)(4) from having to comply with quantitative criteria for initial listing on the Capital Market.

only requirements consistent with the Nasdaq Global Market listing tier.

Nasdaq Texas' proposed quantitative listing standards are consistent with the requirements of the Act. Regarding the initial and continued listing requirements and standards for listing Primary Equity Securities, rights, warrants, preferred stock and secondary classes of common stock, Nasdaq Texas' proposed listing rules are substantially similar to those of the Nasdaq Global Market. Rules describing alternative initial and continued listing requirements for SPACs are also substantially similar to those of the Nasdaq Global Market.²⁵ The Exchange also proposes similar initial and continued listing requirements for convertible debt as described in Nasdaq Rule 5515(b) and 5560(b) and similar initial and continued listing requirements for subscription receipts as described in Nasdaq Rule IM-5520 and Rule 5565.²⁶ Although Nasdaq does not list convertible debt on the Nasdaq Global Market, and therefore does not have rules for such listing in the Nasdaq Rule 5400 Series, companies listed on the Global Market may list convertible debt on Nasdaq's Capital Market tier under Rules 5515(b) and 5560(b).

Corporate Governance Requirements

Nasdaq Texas' proposed corporate governance standards in connection with securities to be listed and traded on the Exchange are substantially similar to the current rules of Nasdaq.²⁷ The Commission has previously found that the corporate governance standards for Nasdaq listed issuers are consistent with the Act.²⁸ Nasdaq Texas's corporate governance standards include rules relating to a Company's board of directors, including audit committees and independent director oversight of executive compensation and the director nomination process; recovery of erroneously awarded compensation; code of conduct; shareholder meetings, including proxy solicitation and quorum; review of related party transactions; and shareholder approval, including voting rights. These requirements are designed, in part, to promote independent and objective review and oversight of the accounting and auditing practices of listed issuers and to enhance audit committee independence, authority, and

responsibility by implementing the standards set forth in Rule 10A-3 of the Act.

The Exchange does not intend to initially allow for Direct Listings, or listings allowable pursuant to the Nasdaq Rule 5700 Series so did not include rules for such listings.²⁹ The Exchange will add such rules in one or more subsequent rule filings. Nasdaq Rule 5608(e) pertaining to the 2023 effective date for listed companies to adopt a policy governing the recovery of erroneously awarded compensation and Nasdaq Rule 5636T pertaining to temporary COVID-19 exceptions, are no longer applicable. Therefore, the Exchange is not proposing similar rules.

Non-Compliance With Listing Standards

Securities of a company that does not meet the listing standards set forth in the proposed Rule 5000 Series are subject to delisting from, or denial of initial listing on Nasdaq Texas. Nasdaq Texas' proposed delisting standards are substantially similar to Nasdaq's rules, including the Listing Qualifications Department oversight of and notification process for deficient companies in addition to the Hearings Panel and Listing and Hearing Review Council's delisting determination standards.³⁰ Nasdaq Texas is not proposing rules similar to Nasdaq Rules 5810(c)(3)(A)(i), (c)(3)(A)(ii) or any Nasdaq provisions in the 5800 Series that discuss a company's ability to transfer from one listing tier to another or references Global Select or Capital Market.³¹

Other Proposed Changes

The Exchange is proposing to add the term "Limited Underwriting Member" to the definition section of General 1, Section 1 to mean a broker or dealer admitted to limited underwriting membership in Nasdaq Texas. The Exchange is including this definition to align with proposed Rule 5210(m)(ii). The Exchange also proposes to incorporate the Nasdaq limited underwriting membership rules by amending General 3, Section 1 to remove Nasdaq Rule 1031 from the list of rules that are exempt from being incorporated by reference into the Exchange.

Additionally, the Exchange proposes to remove the current Venture Market listing rules by removing all provisions in Equity 3. The Exchange intends to maintain rules regarding unlisted

trading privileges discussed in Equity 3A and remove certain other rules within Equity 3A that are discussed elsewhere in the proposed listing rules. Specifically, the Exchange proposes to remove and reserve Equity 3A, Section 1 related to operation of listing standards, Equity 3A, Section 2(a) through Section 2(d) related to index warrants, other securities and selected equity-linked debt securities (SEEDS). Additionally, the Exchange proposes to remove language in Equity 3A, Section 4(a) that references Equity A, Section 2(c) because the provision in this section will no longer exist. Finally, the Exchange is proposing to update Equity 3A, Section 2(h) (Securities Linked to the Performance of Indexes and Commodities (Including Currencies)) because the current rules are outdated and some of the provisions are inapplicable. The proposed changes are substantially similar to Nasdaq Rule 5710.

The Exchange is also proposing to amend Rule 4120(b)(1)(A)(iv) to remove the current language, which is no longer applicable, and replace it with language relate to the Exchange declaring a halt to permit the dissemination of material news.³² Specifically, the Exchange shall declare a Regulatory Halt (as defined in Rule 4120(a)(9)) on Nasdaq Texas of a Nasdaq Texas-listed security to permit the dissemination of material news, provided, however, that in the Pre-Market Session (as defined Rule 4120(a)(6)) Nasdaq Texas will halt trading for dissemination of news only at the request of an issuer or pursuant to (b); and (b) the Exchange shall declare a Regulatory Halt in a security listed on Nasdaq Texas when Nasdaq Texas requests from the issuer information relating to: (x) material news; (y) the issuer's ability to meet Nasdaq Texas' listing qualification requirements, as set forth in the Listing Rule 5000 Series; or (z) any other information which is necessary to protect investors and the public interest.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,³³ in general and with Section 6(b)(5) of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing,

²⁵ See Nasdaq Rules 5406 and 5452; *see also* proposed Nasdaq Texas Rules 5406 and 5452.

²⁶ See proposed Nasdaq Texas Rules 5410(b), 5420, 5455(b) and 5465.

²⁷ See Nasdaq Rule 5600 Series; *see also* proposed Nasdaq Texas Rule 5600 Series.

²⁸ See, e.g., Nasdaq 2006 Approval Order *supra* note 14.

²⁹ See Nasdaq Rule IM-5405-1 and Nasdaq 5700 Series.

³⁰ See Nasdaq Rule 5800 Series; *see also* Nasdaq Texas Proposed Rule 5800 Series.

³¹ See Nasdaq Rule 5810(c)(3)(A) Rule IM-5810-2 and Rule 5815(a)(1)(A)(d).

³² Securities Exchange Act Release No. 100613 (July 22, 2024), 89 FR 623242 (Aug. 2, 2024) Nasdaq-2024-042).

³³ 15 U.S.C. 78f.

settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination. Moreover, the proposed corporate governance listing standards for listed issuers are consistent with Section 6(b)(5) of the Act and satisfy the requirements of Section 10A(m) of the Act and Rule 10A–3 thereunder.³⁴

Nasdaq Texas' removal of its current listing rules and its addition of new rules that include more substantive quantitative listing standards will strengthen the Exchange's listing program and advance the goals of Section 6(b)(5) of the Act. The proposed rules implement higher quantitative standards and more robust delisting procedures than the existing rules, which will help prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade and will protect investors and the public interest and will foster competition among exchange markets. The proposed rules, including the prerequisites and requirements for initial and continued listing, quantitative standards, corporate governance requirements and the disqualification process, are substantially similar to the current Nasdaq rules, which have already been approved by the Commission. Nasdaq Texas does not believe there is any material difference between the proposed rules and the current Nasdaq Global Market listing rules. Further, the proposed listing rules are not designed to permit unfair discrimination and will be applicable to any company that desires to list on Nasdaq Texas and satisfies the listing criterion.

Including cross-references of rules that will be proposed in the near future provides a preview of upcoming rules and allows the Exchange's rulebook to remain consistent with Nasdaq's rules which helps to prevent fraudulent and manipulative acts and practices and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system. Additionally, although listing requirements for convertible debt and subscription receipts are discussed in Nasdaq Capital Market rules, specifically, Rule 5515(b), Rule 5520, Rule 5560 and Rule 5565, respectively, the Exchange believes that adding listing requirements for convertible debt

and subscription receipts to its proposed rules promotes just and equitable principles of trade and protects investors and the public interest.

Adding a definition for Limited Underwriting Member helps to clarify proposed Rule 5210(m)(ii) and excluding Nasdaq Rule 1031 from the list of rules that are exempt from being incorporated by reference into the Exchange removes impediments to, and perfects the mechanism of, a free and open market and a national market system by aligning the provisions throughout the Rulebook related to limited underwriting. The Exchange also believes that removing the current Venture Market listing rules found in Equity 3 and also removing and updating certain other rules within Equity 3A that are discussed elsewhere in the proposed listing rules will remove impediments to and perfect the mechanism of a free and open market and a national market system by eliminating rules that will no longer apply to the Exchange or that have become contradictory to the proposal.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq Texas does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rules will apply equally to all companies that desire to list on the Exchange. Companies who are not satisfied with the Exchange's listing standards do not have to dually list and, to the extent they want to have a dual listing, have the option of pursuing a dual listing on another exchange. Further, the proposed rule change will allow companies to dually list on Nasdaq Texas under listing standards that are substantially similar to those of the Nasdaq Global Market. This will enhance the Exchanges ability to compete with other exchanges that currently allow dual listing, without imposing any additional burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period

up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR–BX–2026–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–BX–2026–004. 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 filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to file number SR–BX–2026–004 and should be submitted on or before February 23, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁵

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026–01980 Filed 1–30–26; 8:45 am]

BILLING CODE 8011–01–P

³⁴ 15 U.S.C. 78f(b)(5); 15 U.S.C. 78j–1(m); 17 CFR 240.10A–3.

³⁵ 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–104703; File No. SR–FINRA–2026–003]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt FINRA Rule 7660B (FINRA/NYSE Trade Reporting Facility Fees for Non-Participants)

January 28, 2026.

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 January 28, 2026, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as “establishing or changing a due, fee or other charge” under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b–4(f)(2) thereunder,⁴ which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is proposing to adopt FINRA Rule 7660B (FINRA/NYSE Trade Reporting Facility Fees For Non-Participants) to establish a new fee applicable to FINRA members that do not use the FINRA/NYSE Trade Reporting Facility (“FINRA/NYSE TRF”) for trade reporting but elect to purchase specified services.

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org> and at the principal office of FINRA.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The FINRA/NYSE TRF, which is operated by NYSE Market (DE), Inc. (“NYSE Market (DE)”), is one of four FINRA facilities⁵ that FINRA members can use to report over-the-counter (“OTC”) trades in NMS stocks. While members are required to report all OTC trades in NMS stocks to FINRA, they may choose which FINRA Facility (or Facilities) to use to satisfy their trade reporting obligations.⁶

Under the governing limited liability company agreement,⁷ the FINRA/NYSE TRF has two members: FINRA and NYSE Market (DE). FINRA, the “SRO Member,” has sole regulatory responsibility for the FINRA/NYSE TRF. NYSE Market (DE), the “Business Member,” is primarily responsible for the management of the FINRA/NYSE TRF’s business affairs to the extent those affairs are not inconsistent with the regulatory and oversight functions of FINRA.

The Business Member establishes pricing for use of the FINRA/NYSE TRF, including pricing applicable to FINRA members that use the FINRA/NYSE TRF for reporting purposes (“Participants”). That pricing is then implemented pursuant to FINRA rules that FINRA must file with the Commission and that must be consistent with the Act. Specifically, Participants are charged fees pursuant to Rule 7620B (Trade Reporting Facility Reporting Fees) and

may qualify for transaction credits under Rule 7610B (Securities Transaction Credit).⁸ The relevant FINRA rules are administered by NYSE Market (DE), in its capacity as the Business Member and operator of the FINRA/NYSE TRF on behalf of FINRA,⁹ and the Business Member collects all fees on behalf of the FINRA/NYSE TRF.

Proposed Fee

The Business Member has determined to establish a new fee applicable to FINRA members that are not Participants (“Non-Participant Members”) but that elect to receive read-only access to specified services provided by the FINRA/NYSE TRF.¹⁰ To implement this new fee, FINRA is proposing to adopt new Rule 7660B.¹¹

Pursuant to proposed Rule 7660B (FINRA/NYSE Trade Reporting Fees for Non-Participants), Non-Participant Members would be charged a flat fee of \$1,000 a month for read-only access to all three of the following services: the NYSE TRF Portal, Drop Copy, and the End of Day Journal (referred to herein as the “Services”).¹² Once a Non-Participant Member submits an agreement to receive access to the Services, the Non-Participant Member will be charged the proposed fee of \$1,000 per month until the Non-Participant Member chooses to terminate the agreement. The proposed fee would be charged at the end of the calendar month.

The NYSE TRF Portal is a secure, web-based system for FINRA member firms to manage and report post-execution trade details for exchange-listed securities.¹³ Drop Copy and the End of Day Journal reflect completed trades. Today, access to the Services is included as part of the fees Participants pay for trade reporting to the FINRA/

⁵ The four FINRA facilities are the FINRA/NYSE TRF, two FINRA/Nasdaq Trade Reporting Facilities (together, the “FINRA/Nasdaq TRF”), and the Alternative Display Facility (together, the “FINRA Facilities”).

⁶ Members can use the FINRA/NYSE TRF as a backup system and reserve bandwidth if there is a failure at another FINRA Facility that supports the reporting of OTC trades in NMS stocks. As set forth in Trade Reporting Notice 1/20/16 (OTC Equity Trading and Reporting in the Event of Systems Issues), a firm that routinely reports its OTC trades in NMS stocks to only one FINRA Facility must establish and maintain connectivity and report to a second FINRA Facility, if the firm intends to continue to support OTC trading as an executing broker while its primary facility is experiencing a widespread systems issue.

⁷ See the Second Amended and Restated Limited Liability Company Agreement of FINRA/NYSE Trade Reporting Facility LLC. The limited liability company agreement, which was submitted as part of the rule filing to establish the FINRA/NYSE TRF and was subsequently amended and restated, can be found in the FINRA Manual.

⁸ Pursuant to Rule 7630B (Aggregation of Activity of Affiliated Members), affiliated members can aggregate their activity for purposes of fees and credits that are dependent upon the volume of their activity.

⁹ FINRA’s oversight of this function performed by the Business Member is conducted through a recurring assessment and review of the FINRA/NYSE TRF operations by an outside independent audit firm.

¹⁰ No changes are proposed to the fees applicable to Participants.

¹¹ FINRA is proposing a non-substantive change to “reserve” Rule 7650B to keep the numbering parallel for the different FINRA Trade Reporting Facility rulesets.

¹² See <https://www.nyse.com/markets/nyse/market-info>.

¹³ See Securities Exchange Act Release No. 104330 (December 5, 2025), 90 FR 57246 (December 10, 2025) (SR–FINRA–2025–014) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FINRA Rule 7620B (FINRA/NYSE Trade Reporting Facility Reporting Fees)), at 57248 n.15.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b–4(f)(2).

NYSE TRF, while Non-Participant Members do not have access to the Services. For the avoidance of doubt, as noted above, access to the Services for Non-Participant Members would be read-only. Unlike Participants, Non-Participant Members would not be able to edit the Services or report trades to the FINRA/NYSE TRF. According to the Business Member, although the fee would provide access to all three Services, Non-Participant Members can elect which of the Services they wish to receive.

FINRA rules require that any member that is a party to an OTC trade be identified in trade reports submitted to a FINRA Facility. While Non-Participant Members cannot report trades, they may be identified as contra parties in trade reports submitted to the FINRA/NYSE TRF. As such, the Business Member believes that a Non-Participant Member may be interested in one or more of the Services for purposes of verifying and reconciling their records with reports of transactions submitted to the FINRA/NYSE TRF that identify the Non-Participant Member as a party to the trade. The proposed fee for the Services would only apply to Non-Participant Members, as Participants—whose fees are addressed in Rule 7620B—already have access to the Services. Non-Participant Members will only be able to access the Services to view trades in which they are identified as parties to the trade in trade reports submitted to the FINRA/NYSE TRF. As noted above, Participants currently have access to their own trade data through the Services. The proposed rule change would provide a Non-Participant Member similar (but read-only) access to its own trade data.

It is not possible to predict with certainty how many Non-Participant Members may elect to purchase the Services. According to the Business Member, at least one Non-Participant Member has expressed interest in access to the Services, and the Business Member anticipates that only a few Non-Participant Members may purchase the Services. Purchase of one or more of the Services is voluntary and not required for Non-Participant Members to be identified in trade reports submitted to the FINRA/NYSE TRF.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be February 1, 2026.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b) of the Act,¹⁴ in

general, and Section 15A(b)(5) of the Act,¹⁵ in particular, which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁶ which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change promotes improved data quality and accuracy by facilitating contra-party reviews of trade reports. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(9) of the Act,¹⁷ which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

As a general matter, the proposed fee would be applied uniformly to all Non-Participant Members that elect to purchase the Services, without regard to the size or type of firm. Access to the FINRA/NYSE TRF is offered on fair and non-discriminatory terms. Further, offering Non-Participant Members voluntary, read-only access to the Services would provide an additional tool for such members to verify and reconcile their trade report records.

The Proposed Rule Change is an Equitable Allocation of Reasonable Fees

FINRA believes that the proposed rule change provides for an equitable allocation of reasonable fees for the following reasons. Purchase of one or more of the Services is voluntary and not required for Non-Participant Members to be identified in trade reports submitted to the FINRA/NYSE TRF. FINRA is not proposing changes to the fees applicable to Participants. Participants—whose fees are addressed in Rule 7620B—already have access to the Services.

The Business Member believes that the proposed \$1,000.00 monthly fee is reasonable for receiving the Services. The proposed fee is equal to the lowest fee charged to Participants that submit trade reports to the FINRA/NYSE TRF, *i.e.*, those that submit greater than or equal to one trade report but less than 5,000 trade reports in a given month,

and such Participants have access to the Services.¹⁸

The Proposed Rule Change is Not Unfairly Discriminatory

FINRA believes that the proposed rule change is not unfairly discriminatory for the following reasons. The Business Member believes that the proposed rule change is not unfairly discriminatory because it would have no impact on Participants and only apply to Non-Participant Members that elect to purchase one or more Services. As noted above, purchase of the Services is voluntary.

Every Non-Participant Member that receives access to one or more of the Services would be subject to the monthly fee. The proposed fee would be applied uniformly to all Non-Participant Members that elect to purchase the Services, without regard to firm size or type.

The Business Member believes that the proposed rule change is not unfairly discriminatory because a Non-Participant Member is not required to pay the proposed fee or access one or more of the Services to be identified in trade reports submitted to the FINRA/NYSE TRF.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Business Member does not believe that the proposed rule change would result in a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because a Non-Participant Member would not be required to purchase one or more of the Services to be identified in trade reports submitted to the FINRA/NYSE TRF. Non-Participant Members will purchase the Services if they determine the benefits outweigh the cost.¹⁹

The Business Member does not believe that the proposed fee would place some market participants at a relative disadvantage compared to other market participants, because the proposed fee would be applied in the same manner to all FINRA members that are, or elect to become, Non-Participant Members. The proposed rule change would not be applied differently to different sizes of Non-Participant

¹⁸ See *supra* note 13 at 57248 n.15 and accompanying text.

¹⁹ As noted above, according to the Business Member, at least one Non-Participant Member has expressed interest in access to the Services.

¹⁴ 15 U.S.C. 78o-3(b).

¹⁵ 15 U.S.C. 78o-3(b)(5).

¹⁶ 15 U.S.C. 78o-3(b)(6).

¹⁷ 15 U.S.C. 78o-3(b)(9).

Members. The proposed rule change will have no impact on Participants.

Intermarket Competition. The FINRA/ NYSE TRF operates in a competitive environment. The proposed fee would not impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act on other FINRA Facilities. The FINRA Facilities have different pricing and compete for FINRA members' trade reporting activity. Access to the Services is voluntary and the proposed fee would be charged only to Non-Participant Members. As such, the proposed fee is not likely to impact competition for Participants' trade reporting activity. The pricing structures of the FINRA/ NYSE TRF and other FINRA Facilities are publicly available, allowing FINRA members to make informed decisions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁰ and paragraph (f)(2) of Rule 19b-4 thereunder.²¹ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-FINRA-2026-003 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-FINRA-2026-003. 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 (<http://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2026-003 and should be submitted on or before February 23, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-01972 Filed 1-30-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104716; File No. SR-LCH SA-2025-010]

Self-Regulatory Organizations; LCH SA; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Relating to LCH SA's Default Management Policy, Investment Risk Policy, Liquidity Risk Policy, Settlement, Payment and Custody Risk Policy, Model Governance, Validation and Review Policy and Contract and Market Acceptability Policy

January 28, 2026.

On December 29, 2025, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4² thereunder, Banque Centrale de Compensation, which conducts business under the name LCH SA ("LCH SA"), filed with the Securities and Exchange Commission ("Commission") the

proposed rule change LCH SA-2025-010 to submit for Commission approval the following policies: (i) Default Management Policy; (ii) Investment Risk Policy; (iii) Liquidity Risk Policy; (iv) Settlement, Payment and Custody Risk Policy; (v) Model Governance, Validation and Review Policy; and (vi) Contract and Market Acceptability Policy (the "Proposed Rule Change"). The Proposed Rule Change was published for public comment in the **Federal Register** on January 5, 2026.³ The Commission has not received comments regarding the Proposed Rule Change.

Section 19(b)(2) of the Exchange Act⁴ provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the Notice is February 19, 2026. The Commission is extending this 45-day time period.

In order to provide the Commission with sufficient time to consider the Proposed Rule Change, the Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Exchange Act,⁵ designates April 5, 2026, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR-LCH SA-2025-010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-01984 Filed 1-30-26; 8:45 am]

BILLING CODE 8011-01-P

³ Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change Relating to LCH SA's Default Management Policy, Investment Risk Policy, Liquidity Risk Policy, Settlement, Payment and Custody Risk Policy, Model Governance, Validation and Review Policy and Contract and Market Acceptability Policy, Exchange Act Release No. 34-104529 (Dec. 30, 2025); 91 FR 315 (Jan. 5, 2026) (SR-LCH SA-2025-010) ("Notice").

⁴ 15 U.S.C. 78s(b)(2).

⁵ *Id.*

⁶ 17 CFR 200.30-3(a)(31).

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(2).

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–104726; File No. SR–NYSEARCA–2025–77]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the T. Rowe Price Active Crypto ETF under NYSE Arca Rule 8.201–E (Non-Generic) Commodity-Based Trust Shares

January 28, 2026.

I. Introduction

On November 6, 2025, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder, ² a proposed rule change to list and trade shares (“Shares”) of the T. Rowe Price Active Crypto ETF (“Fund”) under NYSE Arca Rule 8.201–E (Non-Generic) Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on November 28, 2025. ³

On January 7, 2026, pursuant to Section 19(b)(2) of the Act, ⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change. ⁵ This order institutes proceedings under Section 19(b)(2)(B) of the Act ⁶ to determine whether to approve or disapprove the proposed rule change.

II. Summary of the Proposal

As described in more detail in the Notice, ⁷ the Exchange proposes to list and trade the Shares of the Fund under NYSE Arca Rule 8.201–E (Non-Generic), which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

According to the Exchange, the Fund is an actively managed exchange-traded

product (“ETP”) that seeks to outperform the FTSE Crypto US Listed Index (the “Index”) ⁸ over a long term (*i.e.*, typically over a period of a year or longer). ⁹ The Fund will only invest in “Eligible Assets” and cash, cash equivalents, and/or stablecoins. ¹⁰ According to the Exchange, “Eligible Assets” are commodities that the Sponsor has determined meet at least one of the following eligibility criteria: (1) the commodity trades on a market that is an Intermarket Surveillance Group (“ISG”) member, from which the Exchange may obtain information about trading in such commodity, at all such times that the commodity is in the Fund’s portfolio; (2) the commodity underlies a futures contract that has been made available to trade on a designated contract market regulated by the Commodity Futures Trading Commission for at least six months, provided that the Exchange has a comprehensive surveillance sharing agreement in place with such designated contract market, whether directly or through common ISG membership, at all such times that the commodity is in the Fund’s portfolio; (3) at the time the commodity becomes part of the Fund’s portfolio, the economic exposure to such commodity represents at least 40% of the net asset value (“NAV”) of an ETF that lists and trades on a national securities exchange; or (4) the commodity otherwise meets the eligibility criteria for holdings of Commodity-Based Trust Shares pursuant to the generic listing standards for Commodity-Based Trust Shares set

⁸ The Index is comprised of the top ten crypto assets by market capitalization that (1) the index provider has determined meets the eligibility criteria set forth in NYSE Arca Rule 8.201–E(d)(1) (Generic) for a commodity, or commodity that underlies a commodity-based asset held by a trust issuing Commodity-Based Trust Shares pursuant to such rule; or (2) constitute, or are eligible to constitute, the underlying crypto asset for one or more ETPs or exchange-traded funds (“ETFs”) registered with the Commission (“Index Constituents”). The Index Constituents must meet minimum market capitalization and liquidity thresholds, as determined by the index provider, and are weighted by the square root of market capitalization based on circulating supply and price. *See id.* at 54770.

⁹ *See id.* The sponsor of the Fund is T. Rowe Price Sponsor LLC (“Sponsor”). The Fund is a Delaware statutory trust that operates pursuant to a trust agreement between the Sponsor and the trustee for the Fund, CSC Delaware Trust Company. The Fund will have a custodian for its crypto asset holdings and stablecoins. *See id.* at 54769.

¹⁰ According to the Exchange, the Fund may only invest in stablecoins (1) that maintain a fully reserved 1:1 ratio to an underlying asset, like U.S. dollars, back up their redemption obligations by a reserve asset, do not pay interest to the holder nor afford the holder any governance rights, and do not represent any ownership interest in the issuer or (2) as otherwise permissible under federal law. *See id.* at 54769–70 n.7.

forth in NYSE Arca Rule 8.201–E(d)(1) (Generic). ¹¹ Eligible Assets are not required to be identical to the Index Constituents. ¹² Under normal circumstances, the Fund is expected to hold between five and fifteen crypto assets ¹³ that are Eligible Assets, but may hold fewer than five or more than fifteen at any time. ¹⁴ As of the date of the filing, based on its assessment of available data, the Sponsor considers the following to be Eligible Assets (ticker symbols in parentheses): bitcoin (BTC), ether (ETH), SOL (SOL), XRP (XRP), ada (ADA), AVAX (AVAX), litecoin (LTC), DOT (DOT), Dogecoin (DOGE), HBAR (HBAR), Bitcoin Cash (BCH), LINK (LINK), lumen (XLM), and Shiba Inu (SHIB). ¹⁵ The administrator of the Fund will calculate the NAV once each business day, as of the close of trading on the Exchange or 4:00 p.m. E.T., whichever is earlier. ¹⁶ In determining the Fund’s NAV, the administrator values each of the crypto assets and stablecoins held by the Fund based on a reference rate determined by the administrator in its sole discretion. ¹⁷ The Fund will create and redeem Shares with authorized participants in blocks of 10,000 Shares in exchange for cash. ¹⁸

III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEARCA–2025–77 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section

¹¹ *See id.* at 54769–70. The Exchange states that the eligibility criteria for the Eligible Assets are substantially similar to the eligibility criteria set forth in NYSE Arca Rule 8.201–E(d)(1) (Generic). *See id.* at 54777. *See also* Securities Exchange Act Release No. 103995 (Sept. 17, 2025), 90 FR 45414 (Sept. 22, 2025) (SR–NASDAQ–2025–056; SR–CboeBZX–2025–104; SR–NYSEARCA–2025–54) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to Adopt Generic Listing Standards for Commodity-Based Trust Shares).

¹² *See id.* at 54771. In seeking to achieve its investment objective, the Fund will employ an active investment strategy and may invest in the Index Constituents in the same or different proportions as the Index, invest in one or more crypto assets that are not Index Constituents, or determine not to invest in one or more crypto assets that are Index Constituents. *See id.* at 54770.

¹³ *See id.* at 54770. According to the Exchange, the Sponsor interprets the term “crypto asset” to mean an asset that (1) is generated, issued, and/or transferred using a blockchain or similar distributed ledger technology network, including, but not limited to, assets known as “tokens,” “digital assets,” “cryptocurrencies,” “virtual currencies,” and “coins,” and (2) relies on cryptographic protocols. *See id.* at 54769 n. 6.

¹⁴ *See id.* at 54770.

¹⁵ *See id.* at 54771.

¹⁶ *See id.*

¹⁷ *See id.*

¹⁸ *See id.* at 54777.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ *See* Securities Exchange Act Release No. 104243 (Nov. 24, 2025), 90 FR 54769 (“Notice”). The Commission has received no comment letters on the proposed rule change.

⁴ 15 U.S.C. 78s(b)(2).

⁵ *See* Securities Exchange Act Release No. 104554, 91 FR 1229 (Jan. 12, 2026). The Commission designated February 26, 2026, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ *See* Notice, *supra* note 3.

19(b)(2)(B) of the Act¹⁹ to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, 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,²⁰ 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, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices" and "to protect investors and the public interest."²¹

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on whether the proposal to list and trade Shares of the Fund, which would be actively managed and would hold crypto assets and stablecoins, is designed to prevent fraudulent and manipulative acts and practices or raises any new or novel concerns not previously contemplated by the Commission.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the

Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.²²

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by February 23, 2026. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by March 9, 2026.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2025-77 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSEARCA-2025-77. 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 filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2025-77 and should be submitted on or before February 23, 2026. Rebuttal comments should be submitted by March 9, 2026.

²² Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 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).

²³ 17 CFR 200.30-3(a)(57).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104720; File No. SR-IEX-2026-02]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend IEX Rules 2.230 and 2.190 Regarding Retention of Jurisdiction and Voluntary Termination

January 28, 2026.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on January 22, 2026, the Investors Exchange LLC ("IEX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,⁴ and Rule 19b-4 thereunder,⁵ the Exchange is filing with the Commission a proposed rule change to amend IEX Rule 2.230 (Retention of Jurisdiction) and IEX Rule 2.190 (Voluntary Termination of Rights as a Member). This proposed rule change is designed to update the Exchange's retention of disciplinary jurisdiction over a former Member⁶ and persons whose association with a Member has been terminated, and to simplify the manner in which a Member may voluntarily terminate its membership with the Exchange. The Exchange has designated this proposal as "non-controversial" under Section 19(b)(3)(A) of the Act⁷ and provided the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b-4.

⁶ See IEX Rule 1.160(s). The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange."

⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 15 U.S.C. 78s(b)(2)(B).

²⁰ *Id.*

²¹ 15 U.S.C. 78f(b)(5).

Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.⁸

The text of the proposed rule change is available at the Exchange's website at <https://www.iexexchange.io/resources/regulation/rule-filings> and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (i) amend IEX Rule 2.230 to update the Exchange's retention of disciplinary jurisdiction over a former Member, or person whose association with a Member⁹ has been terminated, for conduct that occurred prior to the effective date of termination;¹⁰ and (ii) amend IEX Rule 2.190 to simplify the manner in which a Member may voluntarily terminate its membership with the Exchange. Specifically, as described below, the Exchange proposes to replace rule provisions requiring the Exchange to file, within two years of a termination, a complaint with respect to any violative conduct by a terminated Member or a person associated with a Member that occurred prior to termination, with rule text providing that the Exchange retains jurisdiction following a termination, provided that, within one year of a termination, the Exchange provides written notice that an inquiry has commenced regarding matters that occurred prior to the termination. In addition, the Exchange proposes amending the voluntary termination process by removing the conditions related to completion of investigations and examinations to

avoid unnecessary delay of voluntary termination requests.

As a national securities exchange and self-regulatory organization ("SRO"), IEX is subject to several provisions of the Act with respect to rule enforcement and discipline of Members and persons associated with Members. Section 6(b)(1)¹¹ of the Act requires the Exchange to enforce compliance by its members and persons associated with its members with applicable provisions of the Act, the rules and regulations thereunder and Exchange Rules. Section 6(b)(6)¹² of the Act requires that IEX Rules must provide that its members and persons associated with its members shall be appropriately disciplined for such violations of applicable provisions of the Act, the rules and regulations thereunder and Exchange Rules (*i.e.*, rule violations).¹³ Section 6(b)(7)¹⁴ of the Act provides that IEX Rules must provide a fair procedure for the disciplining of members and persons associated with members for rule violations.

Pursuant to current Rule 2.230, the Exchange retains disciplinary jurisdiction over potential conduct violative of IEX Rules by a former Member or person formerly associated with a Member, that occurred prior to membership or association termination, by filing a complaint¹⁵ within two years of the membership or association termination. Relatedly, under current Rule 2.190, a Member's voluntary termination of membership will not be effective until 30 days after the terminating Member has: (i) provided written notice; (ii) paid in full all indebtedness owed to the Exchange; (iii) there is a final disposition of any investigation or disciplinary action against the Member; and (iv) any examination of the Member has been completed and all exceptions

¹¹ 15 U.S.C. 78f(b)(1).

¹² 15 U.S.C. 78f(b)(6).

¹³ IEX Rule 2.120(a) provides that "the Exchange is required to discipline Members and persons associated with Members for violations of the provisions of IEX Rules, its Operating Agreement, its interpretations and policies and with the provisions of the Act and regulations thereunder."

¹⁴ 15 U.S.C. 78f(b)(7).

¹⁵ IEX Rule 9.212(a) (Complaint Issuance—Requirements, Service, Amendment, Withdrawal, and Docketing) provides that a complaint "shall be in writing and signed by the Department of Enforcement or the Department of Market Regulation . . . [and] specify in reasonable detail the conduct alleged to constitute the violative activity and the rule, regulation, or statutory provision the Respondent is alleged to be violating or to have violated . . . [and] shall be served by the Department of Enforcement or the Department of Market Regulation on each Party pursuant to IEX Rules 9.131 and 9.134, and filed at the time of service with the Office of Hearing Officers pursuant to IEX Rules 9.135, 9.136, and 9.137."

resolved.¹⁶ Accordingly, before the Exchange may effectuate a Member's voluntary termination of membership, it must ensure that all examinations and investigations concerning the terminated Member or associated person are completed, and, to the extent that any complaint results therefrom or otherwise, Rule 2.230 requires that the complaint be filed within two years of the termination date.

The Exchange believes that these requirements are unnecessarily burdensome to both IEX and a terminating Member. Specifically, the requirement that investigations and examinations be completed before a voluntary termination may take effect can result in significant delay in effectuating a membership termination, even though some of the investigations and examinations will not ultimately result in a conclusion that the Member violated applicable IEX Rules.¹⁷

As described more fully below, the proposed rule change provides for IEX's appropriate ongoing disciplinary jurisdiction over former Members and persons formerly associated with Members by requiring that the Exchange give written notice, within one year of the termination date, of the commencement of any inquiry into conduct that occurred before the membership or associational termination. The Exchange believes that the one-year notice requirement to retain jurisdiction over a former Member or associated person is a more reasonable approach rather than the current approach that can delay a termination until an investigation of a regulatory matter has progressed such that filing a complaint with two years is feasible.

In addition, the proposed rule change is designed to simplify the voluntary termination process to avoid unnecessary delay of voluntary termination requests by removing the conditions related to completion of investigations and examinations, while retaining the requirement to provide written notice to the Exchange. In addition, the Exchange proposes expanding the current requirement to pay all debt owed to the Exchange to cover all fees, assessments, charges, fines, or other amounts due to the Exchange, the Commission, or the

¹⁶ IEX Rule 2.190 also authorizes the Board to declare a resignation effective at any earlier time.

¹⁷ The examinations that FINRA conducts on behalf of IEX are typically routine "cycle" examinations that are not prompted by potential violative activity by the firm but may nevertheless take several months to complete. In such circumstances, examinations can delay termination.

⁸ 17 CFR 240.19b-4(f)(6)(iii).

⁹ See IEX Rule 1.160(y)(1). The term "Member" is used in this filing to refer both to Members and persons associated with a Member unless otherwise indicated.

¹⁰ See IEX Rule 2.230.

Securities Investor Protection Corporation (“SIPC”).

The Exchange does not believe the proposed rule change will adversely impact the Exchange’s disciplinary jurisdiction over Members or persons associated with Members. As discussed above, the Exchange believes that a one-year time period to retain jurisdiction is a reasonable time for IEX (and FINRA on its behalf) to determine whether an investigation and/or examination may result in findings of potential rule violations by the former Member. If IEX (or FINRA) were to determine that regulatory action is appropriate, it would have adequate time to complete investigation of the matter. Further, as discussed below, these proposed changes are based on substantially identical rules of BZX, MIAX Pearl Equities, NYSE Arca, MEMX, and Nasdaq, with only non-substantive differences to account for different rule structures.

Retention of Jurisdiction

Currently, Rule 2.230(a) provides that the Exchange retains disciplinary jurisdiction over a Member or a person associated with a Member for matters that commenced prior to the effective membership or associational termination, provided that any such complaint is filed within two years after the effective date of the membership termination or associational termination.¹⁸ Rule 2.230(b) further provides that the Exchange retains jurisdiction over a person whose association with a Member has terminated, or upon such person’s failure, while subject to IEX’s jurisdiction, to provide information requested by IEX pursuant to IEX Rules, provided that any such complaint is filed within two years after the termination of association. In addition, if a termination notice is amended and discloses that any such person may have engaged in actionable conduct, the two

year time period in which to file a complaint will recommence.

The Exchange proposes to amend Rule 2.230(a) to provide that, with respect to Members and persons associated with Members whose membership or association has been terminated, the Exchange shall retain disciplinary jurisdiction over the former Member or associated person with respect to matters that occurred prior to the termination, provided that the Exchange provides written notice of the commencement of an inquiry into such matters within one year of the Exchange’s receipt of the termination notice.

Under the current Rule 2.230(a), the Exchange retains disciplinary jurisdiction over a terminated Member provided that any complaint is filed within two years after the effective date of the termination. In contrast, the proposed amendments to Rule 2.230(a) would not require that a disciplinary matter have progressed to the point of filing a complaint for the Exchange to retain jurisdiction over a terminated Member but instead requires the Exchange to provide notice of the commencement of any inquiry into such matters within a year of termination to retain jurisdiction over a terminated Member.¹⁹

The Exchange believes that a one year period in which to provide notice of the commencement of any inquiry is reasonable because it balances the Exchange’s need for sufficient time to determine whether there are any outstanding potential disciplinary issues to investigate and provides the terminated Member with clarity, within one year of its termination, whether any potential disciplinary matters are outstanding.

The Exchange believes that its retention of disciplinary jurisdiction pursuant to the proposed rule change will appropriately enable the Exchange to continue to enforce compliance by the Exchange’s Members and persons associated with them, with the Act, the rules and regulations thereunder, and the Rules of the Exchange. Because this rule change will allow the Exchange to retain disciplinary jurisdiction over a terminated Member or person associated with a Member without the need to file a complaint as a prerequisite to retaining jurisdiction, the Exchange will be able to more efficiently administer its enforcement obligations with respect to

terminated Members and persons associated with them.

In addition, together with the proposed amendments to Rule 2.190 described below, the Exchange believes the proposed amendments will facilitate a more efficient voluntary termination process, in which a Member may voluntarily terminate its membership and cease being subject to Member obligations notwithstanding any ongoing disciplinary actions or examinations, provided the Member satisfies the conditions of the proposed amended Rule 2.190. In addition, the Exchange believes that, notwithstanding differences in rule structures among the exchanges, the proposed rule text for the retention of jurisdiction rule, Rule 2.230, is substantially identical to the rule text in comparable rules of BZX, MEMX, MIAX Pearl Equities, and Nasdaq with only non-substantive differences to account for different rule structures.²⁰

Specifically, the Exchange is proposing the following change to Rule 2.230. The Exchange proposes replacing the existing Rule 2.230(a) and (b) with a single paragraph stating that any Member or person associated with a Member will continue to be subject to the Exchange’s jurisdiction with respect to matters that occurred prior to the termination, provided that the Exchange provides written notice of the commencement of any inquiry into disciplinary matters within one year of receiving written notice of termination. In addition, the Exchange proposes adding text stating that the Exchange will not be required to provide such notice when a person at any time after a termination becomes a Member or a person associated with a Member again, since by doing so, the Member or associated person expressly consents to the Exchange’s jurisdiction over members to enforce compliance with the Exchange Act, and the Exchange’s Rules.²¹

The Exchange also proposes removing is language in current Rule 2.230(b) stating that the Exchange retains jurisdiction over an associated person who fails to provide information requested by the Exchange pursuant to IEX Rules. This rule text is no longer necessary because Rule 8.210(a) (Provisions of Information and Testimony and Inspection and Copying of Books) provides that an Adjudicator²² of an Exchange disciplinary proceeding or IEX staff may

¹⁸ Investigations and disciplinary actions are conducted in accordance with Chapters 8 and 9 of the IEX Rules. Chapter 8 contains provisions related to investigations and sanctions, that require, among other things, that a Member, person associated with a Member or any other person subject to the Exchange’s jurisdiction, provide information or testimony or permit an inspection and copying of books, records, or accounts to the Exchange upon request. Chapter 9 contains the Code of Procedure and includes proceedings for, among other things, disciplining a Member or person associated with a Member. IEX Rule 8.310 provides for the imposition of sanctions, after compliance with Chapter 9 Rules, on a Member or person associated with a Member for rule violations, as well as for any neglect or refusal to comply with an order, direction, or decision issued under IEX Rules.

¹⁹ As proposed, the notice requirement would not apply to a person who at any time after a termination again subjects himself or herself to the disciplinary jurisdiction of the Exchange by once again becoming a Member or a person associated with a Member.

²⁰ See, e.g., BZX Rule 8.1(b); MEMX Rule 8.1(b); MIAX Pearl Rule 1000(c); Nasdaq Rule 9110(d).

²¹ See IEX Rule 2.120.

²² See IEX Rule 9.120(a).

require an associated person subject to IEX's jurisdiction to provide information or testify with respect to any matter involved in a disciplinary proceeding. Since under the proposed rule change the Exchange will retain jurisdiction over a person whose association was terminated, provided the Exchange gives the requisite notice specified in amended Rule 2.230, it is no longer necessary to include the current Rule 2.230(b) rule text referenced above because Rule 8.210(a) allows the Exchange to obtain information from the person.

Voluntary Membership Termination

Rule 2.190 governs a Member's right to voluntarily terminate its IEX membership. Currently, the rule provides that a Member's voluntary termination of its membership rights shall not take effect until 30 days after certain specified conditions have been satisfied, including: (i) receipt of such written resignation; (ii) all indebtedness due the Exchange shall have been paid in full; (iii) any Exchange investigation or disciplinary action brought against the Member has reached a final disposition; and (iv) any examination of such Member is completed and all exceptions noted have been reasonably resolved. The Rule further provides that the Board may declare a resignation effective at any time.

The Exchange has observed that the current requirements of Rule 2.190—that investigations and examinations be completed, and all exceptions resolved—before a voluntary termination will take effect have resulted in significant delay in effectuating a membership termination pending completion of such matters, some of which have resolved without a finding of any violations. Similarly, the two year time limit in which to file a complaint with respect to any potentially violative conduct may be unduly restrictive for the Exchange (and FINRA on its behalf) in the case of a complex matter. And as a practical matter, if filing a complaint is warranted, all exceptions with respect to the investigation or examination in question will not be resolved which means that termination cannot occur until the exceptions have been addressed through a disciplinary matter.

The Exchange believes that Rule 2.190, as amended, will facilitate a more efficient voluntary termination process, in which a Member may voluntarily terminate its Member status and cease being subject to Member obligations notwithstanding any ongoing disciplinary proceedings or examinations, given that the Exchange,

through amended Rule 2.230 will be able to retain disciplinary jurisdiction over the Member following such voluntary termination if warranted. The proposed amendments will streamline the voluntary termination process by removing conditions that have the potential to unnecessarily prolong unwanted obligations of membership, including, for example, filing annual reports with the Exchange through FINRA²³ and maintaining certain books and records.²⁴ As discussed below, IEX does not believe it is necessary to delay a membership termination until any pending investigations, disciplinary proceedings, or examinations have reached a final disposition or are completed and all exceptions noted have been reasonably resolved because IEX will have one year to retain jurisdiction over a terminated member or associated person. IEX believes this is an adequate time frame to determine whether potentially violative conduct may have occurred prior to termination.

Accordingly, the Exchange proposes to amend Rule 2.190 to remove the conditions set forth in Rule 2.190(iii) (the requirement that any Exchange investigation or disciplinary action brought against the Member has reached a final disposition) and (iv) (the requirement that any examination by the Exchange of such Member is completed and all exceptions noted have been reasonably resolved). As proposed, amended Rule 2.190 would require that a Member's voluntary termination would not be effective until a Member has provided written notice of resignation to the Exchange (current Rule 2.190(i)), completed any outstanding filings required under the Rules, and paid any outstanding fees, assessments, charges, fines, or other amounts due to the Exchange, the Commission, or SIPC. The proposed change would expand current Rule 2.190(ii), which requires all indebtedness due the Exchange be paid in full, to also cover all outstanding fees, assessments, charges, fines, or other amounts due to the Exchange, the Commission or SIPC to ensure that a Member has complied with these important financial obligations before a termination may take effect.

The Exchange also proposes to remove the rule text in Rule 2.190 providing that a voluntary termination will not take effect until 30 days after the Member has satisfied the stated conditions. The Exchange believes this 30 day waiting period is unnecessary because the Exchange will be able to

promptly verify whether the terminating Member has satisfied the criteria to terminate.

In addition, as proposed, amended Rule 2.190 will require, as a condition of voluntary termination, that the Member make any outstanding filings required under the Exchange's Rules. The Exchange believes this amendment is appropriate because, to the extent a Member voluntarily terminating its membership is delinquent in any filings required by IEX Rules or FINRA rules incorporated by reference, this condition will ensure that the Member comes into compliance on required filings before the termination takes effect.²⁵ This provision is substantially identical to the voluntary termination rules at BZX, MIAx Pearl Equities, and NYSE Arca.²⁶

The Exchange proposes to delete current Rule 2.190(ii), which requires the resigning Member to pay in full all indebtedness due to the Exchange. As proposed, amended Rule 2.190 will require a resigning Member to pay any outstanding fees, assessments, charges, fines, or other amounts due to the Exchange, the Commission, or SIPC. The proposed amendment is more expansive than the existing language in Rule 2.190. The Exchange believes the proposed amendment is appropriate because it furthers the protection of investors by ensuring that a resigning Member has complied with these important financial obligations before their termination takes effect. This provision is substantially identical to the voluntary termination rules of BZX, MIAx Pearl Equities, and NYSE Arca.²⁷

The Exchange also proposes to remove the proviso at the end of Rule 2.190 that the Board may declare a Member's resignation effective at any earlier time. In light of the proposed amendments, the Exchange does not expect there will be extended delays in the effectiveness of a membership termination and accordingly there is no compelling reason for the conditions in the proposed rule amendments to be subject to override by the Board. Furthermore, the other exchanges with similar rules do not include such a provision.²⁸ Therefore, the Exchange proposes removing this rule text from the amended rule.

²⁵ See e.g., IEX Rule 4.120 (Regulatory Notification and Business Curtailment), based on FINRA Rule 4120, which requires members to file certain regulatory reports concerning financial and operating conditions.

²⁶ See, e.g., BZX Rule 2.8; MIAx Pearl Equities Rule 206; and NYSE Arca Rule 2.22(b).

²⁷ *Id.*

²⁸ *Id.*

²³ 17 CFR 240.17a-5.

²⁴ See IEX Rule 4.511.

Finally, the Exchange proposes amending the first sentence of Rule 2.190 to remove the terms “only” and “addressed” because they are unnecessarily duplicative and replacing the second sentence with “(a) made any outstanding filings required under the Rules; and (b) paid any outstanding fees, assessments, charges, fines, or other amounts due to the Exchange, the Commission or the Securities Investor Protection Corporation.”

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,²⁹ in general and further the objectives of Section 6(b)(1)³⁰ of the Act in that it is designed to enable the Exchange to carry out the purposes of the Act and to comply with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

As a general matter, IEX believes that the proposed rule change is consistent with the Act because it will make the voluntary termination process more efficient for Members and the Exchange because it will enable the Exchange to retain disciplinary jurisdiction over a terminated Member or person associated with a Member without the need to file a complaint as a prerequisite to retaining such jurisdiction, and thereby enable the Exchange to more efficiently administer its enforcement obligations with respect to terminated Members and persons associated with them. Members will not be forced to incur unwanted membership obligations during the pendency of any ongoing investigation or examination (which in many cases do not identify any violative conduct), and thereby foster cooperation and coordination between the Exchange and its Members and persons associated with them, and will apply uniformly to all Members wishing to voluntarily terminate their membership.

Specifically, the Exchange believes the proposed changes to Rules 2.230 and 2.190 are consistent with Section 6(b)(1)³¹ of the Act because they would allow the Exchange to retain disciplinary jurisdiction over a terminated Member within an appropriate time period following termination, while not unduly prolonging the termination process and subjecting the Member to unwanted membership obligations. The Exchange believes these proposed rule changes will continue to support the Exchange's ability to carry out its regulatory

obligations under the Act in the context of a voluntary termination by a Member, or the termination of a person's association with a Member.

The Exchange believes the proposed change to Rule 2.230 enabling the Exchange to retain disciplinary jurisdiction over terminated Members and persons associated with Members is also consistent with the above-referenced requirements. As discussed in the Purpose section, as proposed, the Exchange will have an appropriate time period in which to retain jurisdiction over terminated Members and persons associated with a Member and thereby address any potentially violative conduct without the need to delay termination until a full investigation is completed.

The Exchange believes the proposed change to Rule 2.190 requiring a Member seeking to terminate to provide the Exchange with written notice, make any outstanding filings and pay any outstanding fees owed to the Exchange, the Commission, or SIPC before a termination will be deemed effective are consistent with the Act's requirements that an exchange's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. As discussed in the Purpose section, IEX believes that this requirement furthers the protection of investors and the public interest by ensuring that a resigning Member has complied with these important financial obligations before their termination takes effect.

The Exchange also believes that the proposed rule change regarding retention of jurisdiction is consistent with Section 6(b)(6)³² of the Act in that it is designed to provide authority to the Exchange to appropriately enable it to discipline former Members and persons associated with its Members for any rule violations that occurred during membership or association with a Member.

Further, the Exchange believes that the proposed rule change is consistent with Section 6(b)(7)³³ of the Act because it would support a fair procedure for the disciplining of Members and persons associated with Members for rule violations. Specifically, as proposed the Exchange will be able to retain jurisdiction over terminated Members and persons associated within a reasonable period of

time for rule violations that may have occurred while the firm was a Member or while an individual was associated with a Member. The Exchange believes that one year is reasonable in that it provides adequate time for FINRA, on the Exchange's behalf, to determine whether an inquiry into a potential disciplinary matter is warranted.³⁴

In addition, the Exchange believes the proposed rule change is just, equitable, and not unfairly discriminatory. Under the proposed changes to Rule 2.190, the obligations imposed on Members wishing to voluntarily terminate—that they make any outstanding filings and pay any outstanding fees owed to the Exchange, the Commission, or SIPC—merely impose existing obligations and are the same regardless of the circumstances surrounding a Member's voluntary termination.

Similarly, the proposed change to Rule 2.230 will enable the Exchange to continue to enforce compliance by the Exchange's Members and persons associated with them whose membership or association has been terminated, with the Act, the rules and regulations thereunder, and the rules of the Exchange. Because this rule change will allow the Exchange to retain disciplinary jurisdiction over a terminated Member or person associated with a Member without the need to file a complaint as a prerequisite to retaining such jurisdiction, the Exchange will be able to more efficiently administer its enforcement obligations with respect to terminated Members and persons associated with them. At the same time, since the Exchange will be required to notify a terminated Member or person associated with Members of the commencement of any inquiry within one year of the termination date, terminated Members and persons associated with a Member will gain clarity sooner regarding any potential disciplinary proceedings they may face concerning conduct that occurred before the termination date. Furthermore, the Exchange's retention of disciplinary jurisdiction over terminated Members and associated persons following termination under the proposed change would apply equally to all Members and associated persons, without regard to the circumstances of the termination or the amount of trading a Member did on the Exchange.

The Exchange notes, as discussed in the Purpose section, that the proposed rule change is substantially identical to

²⁹ 15 U.S.C. 78f.

³⁰ 15 U.S.C. 78f(b)(1).

³¹ 15 U.S.C. 78f(b)(1).

³² 15 U.S.C. 78f(b)(6).

³³ 15 U.S.C. 78f(b)(7).

³⁴ IEX and FINRA are parties to a regulatory services agreement pursuant to which FINRA has agreed to perform certain regulatory functions on behalf of IEX. See IEX Rules 8.100; 9.001.

rules of several other exchanges regarding voluntary terminations and the retention of jurisdiction over terminated Members. Accordingly, the Exchange does not believe that the proposed rule change raises any new or novel issues not already considered by the Commission.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change is not designed to address any competitive issues but rather to provide for a simplified voluntary termination process, and appropriate retention of jurisdiction of former Members and persons associated with a Member.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) ³⁵ of the Act and Rule 19b-4(f)(6) ³⁶ thereunder. Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

The Exchange believes that this proposal qualifies for non-controversial filing because the proposed rule change is designed to update the Exchange's retention of jurisdiction over former Members and persons formerly associated with a Member, provided that the Exchange gives notice of the commencement of any inquiry within one year of the effective termination date, and to simplify the manner in which a Member may voluntarily terminate membership. The proposed rule change will not significantly affect the protection of investors or the public interest because it will continue to provide a fair and appropriate process

for the Exchange to retain jurisdiction over former Members and associated persons and address any potentially violative conduct. The Exchange also believes that this filing is non-controversial because it raises no new or novel issues not already considered by the Commission, as discussed in the Purpose and Statutory Basis sections. Accordingly, the Exchange believes that the proposed rule change is eligible for immediate effectiveness.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) ³⁷ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-IEX-2026-02 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-IEX-2026-02. 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 filing 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-IEX-2026-02 and should be submitted on or before February 23, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-01988 Filed 1-30-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35921; File No. 812-15701]

Talcott Resolution Life Insurance Company, et al.

January 28, 2026.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of application for an order approving the substitution of certain securities pursuant to section 26(c) of the Investment Company Act of 1940 (the "Act") and an order of exemption pursuant to section 17(b) of the Act from section 17(a) of the Act.

APPLICANTS: Talcott Resolution Life Insurance Company ("TL"), Talcott Resolution Life and Annuity Insurance Company (together with TL, the "Talcott Resolution Insurance Companies"); their respective separate accounts, Talcott Resolution Life Insurance Company Separate Account Two, Talcott Resolution Life Insurance Company Separate Account Three, Talcott Resolution Life Insurance Company Separate Account Seven, Talcott Resolution Life and Annuity Insurance Company Separate Account One, Talcott Resolution Life and Annuity Insurance Company Separate Account Three, Talcott Resolution Life and Annuity Insurance Company Separate Account Six, and Talcott Resolution Life and Annuity Insurance Company Separate Account Seven (collectively, the "Separate Accounts," and together with the Talcott Resolution Insurance Companies, the "Section 26 Applicants"); and Legg Mason Partners Variable Equity Trust, Franklin Templeton Variable Insurance Products Trust, Putnam Variable Trust (collectively, the "Trusts"). The Section 26 Applicants and the Trusts (collectively, the "Section 17

³⁵ 15 U.S.C. 78s(b)(3)(A).

³⁶ 17 CFR 240.19b-4(f)(6).

³⁷ 15 U.S.C. 78s(b)(2)(B).

³⁸ 17 CFR 200.30-3(a)(12).

Applicants”), collectively, the Section 17 Applicants together with the Section 26 Applicants, the “Applicants.”

SUMMARY OF APPLICATION: The Section 26 Applicants request an order pursuant to section 26(c) of the Act, approving the substitution of shares issued by certain investment portfolios of registered investment companies (the “Existing Portfolios”) for the shares of certain investment portfolios of registered investment companies (the “Replacement Portfolios”), of the Trusts as investment options for certain variable annuity contracts funded through the Separate Accounts (the “Substitutions”). The Section 17 Applicants request an order pursuant to section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to permit them to engage in certain in-kind transactions in connection with the Substitutions.

FILING DATES: The application was filed on February 14, 2025, and amended on July 25, 2025 and December 18, 2025.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC’s Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. The email should include the file number referenced above. Hearing requests should be received by the Commission by 5:30 p.m., Eastern time, on February 23, 2026, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission’s Secretary at *Secretarys-Office@sec.gov*.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov*. Applicants: Christopher M. Grinnell, Esq., Talcott Resolution Life Insurance Company, 1 American Row, Hartford, CT 06103; and Ronald Coenen Jr., Esq., Eversheds Sutherland (US) LLP, *roncoenen@eversheds-sutherland.us*.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, or Rachel Loko, Senior Special Counsel, at

(202) 551–6825 (Division of Investment Management, Chief Counsel’s Office).

SUPPLEMENTARY INFORMATION: For Applicants’ representations, legal analysis, and conditions, please refer to Applicants’ second amended and restated application, filed December 18, 2025, which may be obtained via the Commission’s website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC’s EDGAR system. The SEC’s EDGAR system may be searched at, <https://www.sec.gov/search-filings>. You may also call the SEC’s Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026–01949 Filed 1–30–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35920; File No. 812–15873]

Northern Lights Fund Trust, et al.

January 28, 2026.

AGENCY: Securities and Exchange Commission (“Commission” or “SEC”).

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from Section 15(a) of the Act, as well as from certain disclosure requirements in Rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6–07(2)(a), (b), and (c) of Regulation S–X (“Disclosure Requirements”).

SUMMARY OF APPLICATION: The requested exemption would permit Applicants to enter into and materially amend subadvisory agreements with certain subadvisors without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the subadvisors.

APPLICANTS: Northern Lights Fund Trust and Ocean Park Asset Management, LLC.

FILING DATES: The application was filed on August 5, 2025, and amended on January 9, 2026 and January 27, 2026.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders

a hearing. Interested persons may request a hearing on any application by emailing the SEC’s Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. The email should include the file number referenced above. Hearing requests should be received by the Commission by 5:30 p.m., Eastern time, on February 23, 2026, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission’s Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov*. Applicants: Kevin Wolf, President, Northern Lights Fund Trust, 225 Pictoria Drive, Suite 450, Cincinnati, Ohio 45246; JoAnn M. Strasser, Esq., Thompson Hine LLP, 41 South High Street, Suite 1700, Columbus, OH 43215

FOR FURTHER INFORMATION CONTACT: Toyin Momoh, Senior Counsel, or Thomas Ahmadifar, Branch Chief, at (202) 551–4974 (Division of Investment Management, Chief Counsel’s Office).

SUPPLEMENTARY INFORMATION: For Applicants’ representations, legal analysis, and conditions, please refer to Applicants’ second amended application dated January 27, 2026, which may be obtained via the Commission’s website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC’s EDGAR system. The SEC’s EDGAR system may be searched at <https://www.sec.gov/search-filings>. You may also call the SEC’s Office of Investor Education and Advocacy at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026–01953 Filed 1–30–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104719; File No. SR-BX-2026-003]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule General 8 Section 1 Related to Co-Location Services

January 28, 2026.

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 January 15, 2026, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to restructure the Exchange’s connectivity fee schedule under Rule General 8, Section 1 relating to co-location services and establish fees for certain co-location services, as described further below.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/bx/rulefilings>, and at the principal office of the Exchange.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange’s current data center in Carteret, New Jersey, consists of the original data center (“NY11”), an expansion area (“NY11-4”), and a future expansion area (“NY11-5”). The purpose of this proposed rule change is to restructure the Exchange’s connectivity fee schedule under Rule General 8, Section 1 to eliminate cabinet density-based distinctions and associated fees, other than installation fees,³ and establish a power delivery-based pricing model. Specifically, the Exchange proposes to (i) eliminate all density-based cabinet offerings under Section 1(a) of Rule General 8 including their respective fees other than installation fees; and (ii) establish power delivery-based, recurring monthly fees for cabinet power circuits under Rule General 8, Section 1(c), as described below.

Current Cabinet Offerings

Currently, co-location customers have the option of obtaining cabinets of various power densities at varying installation and ongoing monthly fees.⁴ Co-location customers may obtain a Half Cabinet,⁵ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts (“kW”),⁶ a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW,⁷ a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW,⁸ a High Density Cabinet with power density greater than 7 kW and less than 10 kW,⁹ a Super High Density Cabinet with power density greater than 10 kW and

less than or equal to 17.3 kW,¹⁰ and an Ultra High Density Cabinet with power density greater than 10 kW and less than or equal to 15 kW.¹¹

Proposed Power Delivered Model

The Exchange is now proposing (i) to eliminate all such size- and density range-based cabinet offerings under Rule General 8, Section 1(a), including their respective ongoing monthly fees, and (ii) replace them with two cabinet offerings, consisting of a single cabinet as well as a half cabinet option, with their respective cabinet installation fees unchanged from current cabinet installation fees under Rule General 8, Section 1(a).¹² Unlike today, however,

¹⁰ The Super High Density Cabinet is offered in NY11 for an installation fee of \$4,950 and an ongoing monthly fee of \$8,800 and in NY11-4 for an installation fee of \$5,940 and an ongoing monthly fee of \$8,800. See Rule General 8, Section 1(a).

¹¹ The Ultra High Density Cabinet is offered in NY11-4 for an installation fee of \$5,940 and an ongoing monthly fee of \$7,230. The Ultra High Density Cabinet is not available in NY11. See Rule General 8, Section 1(a).

¹² See proposed Rule General 8, Section 1(a). To effect this change, the Exchange proposes the following changes to Rule General 8, Section 1(a). The Exchange proposes to delete all cabinet with power offerings under Rule General 8, Section 1(a) including their associated installation and ongoing monthly fees, other than the Half Cabinet offering itself (but not its associated ongoing monthly fee which the Exchange is proposing to delete), and replace those offerings with two options: a Cabinet and the currently-offered Half Cabinet, as discussed above. The Exchange then proposes to move, unchanged from their current respective amounts, installation fees for cabinet options in NY11 and NY11-4 by inserting such fees (\$3,850 and \$5,490, respectively) into the columns titled “NY11 Installation Fee” and “NY11-4 Installation Fee” under Rule General 8, Section 1(a). The Exchange proposes to (1) enter, under the column titled “Ongoing Monthly Fee” under Rule General 8, Section 1(a) for both the Half Cabinet and Cabinet options the following: “N/A,” and (2) delete, from the “Ongoing Monthly Fee” for the Half Cabinet option under Rule General 8, Section 1(a) the amount “\$2,200.” The Exchange further proposes a non-substantive change to move the symbol “+” from its various current locations within the table at Rule General 8, Section 1(a) to the caption for the column titled “NY11-4 Installation Fee” (and adjacent to the word “Fee”) so as to denote, unchanged from the symbol’s significance, as stated in its accompanying footnote, that cabinets under the column designated with that symbol include a larger cabinet (32” W x 48” D x 91” H). Finally, the Exchange proposes to delete from Rule General 8, Section 1(a), all accompanying notes, other than those designated with the following symbols: single asterisk (“*”) (noting that such cabinets are not available to new users) as well as the symbol “+” as discussed above. The Exchange is also proposing a non-substantive change to move, with a non-substantive clarifying change, the accompanying note to Rule General 8, Section 1(a) (providing that cabinet power cap is based on the available power at 80% of the breakered capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit)) to Rule General 8, Section 1(c). The Exchange proposes a clarifying change to that footnote to clarify that it is the circuit cap, rather than the cabinet power cap,

Continued

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Rule General 8, Section 1(a).

⁴ See Rule General 8, Section 1(a).

⁵ Half cabinets are not available to new subscribers. The Half Cabinet is currently offered for an ongoing monthly fee of \$2,000. See Rule General 8, Section 1(a).

⁶ The Low Density Cabinet is offered for an installation fee of \$3,850 and an ongoing monthly fee of \$2,200. See Rule General 8, Section 1(a).

⁷ The Medium Density Cabinet is offered for an installation fee of \$3,850 for NY11 and \$5,940 for NY11-4 and an ongoing monthly fee of \$2,750 equally applicable to both NY11 and NY11-4. See Rule General 8, Section 1(a).

⁸ The Medium High Density Cabinet is offered in NY11 for an installation fee of \$3,850 and an ongoing monthly fee of \$3,850 and in NY11-4 for an installation fee of \$5,940 and an ongoing monthly fee of \$3,850. See Rule General 8, Section 1(a).

⁹ The High Density Cabinet is offered in NY11 for an installation fee of \$3,850 and an ongoing monthly fee of \$4,950 and in NY11-4 for an installation fee of \$5,940 and an ongoing monthly fee of \$4,950. See Rule General 8, Section 1(a).

the Exchange is not proposing ongoing monthly fees under Rule General 8, Section 1(a) for cabinets throughout the data center campus, including NY11, and NY11–4. Rather, as discussed above, the Exchange proposes to eliminate ongoing monthly fees for cabinets under Rule General 8, Section 1(a) and introduce, in turn, a uniform, per kilovolt-amperes (kVA)-based,¹³

ongoing fixed monthly fee for all current power circuit offerings under proposed Rule General 8, Section 1(c).¹⁴ Specifically, the Exchange would establish a power-supplied-based, uniform ongoing monthly fee of \$550.00 per kVA¹⁵ to be applied to each power circuit offering under Rule General 8, Section 1(c), thus resulting in a fixed ongoing monthly fee for each of the

various power circuit options under that section, as shown in Table 1¹⁶ below.¹⁷ Table 2, in turn, provides the basis for the fixed monthly fee calculations.¹⁸ As in the case of cabinet installation fees under Rule General 8, Section 1(a), all cabinet power circuit installation fee amounts under Rule General 8, Section (c) would remain unchanged.¹⁹

TABLE 1²⁰

Description	NY11 Installation fee	NY11–4 Installation fee	NY11 Ongoing monthly fee (\$550 per kVA)	NY11–4 Ongoing monthly fee (\$550 per kVA)
2x20 amp 110volt	\$2,200	N/A	[0]\$1,320.00	N/A
2x30 amp 110 volt	2,200	N/A	[0]\$1,980.00	N/A
2x20 amp 208 volt	2,200	N/A	[0]\$2,288.00	N/A
2x30 amp 208 volt	2,200	N/A	[0]\$3,432.00	N/A
2x60 amp 208 volt	3,300	N/A	[0]\$6,864.00	N/A
Phase 3 2x 20 amp 208 volt	3,300	N/A	[0]\$3,962.82	N/A
Phase 3 2x 30 amp 208 volt	3,300	N/A	[0]\$5,944.22	N/A
Phase 3 2x 40 amp 208 volt	3,300	N/A	[0]\$7,925.63	N/A
Phase 3 2x 50 amp 208 volt	3,300	N/A	[0]\$9,907.04	N/A
Phase 3 2x 60 amp 208 volt	3,300	N/A	[0]\$11,888.45	N/A

that is based on the available power at 80% of the breakered capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit)). The Exchange notes this longstanding rule does not affect pricing, however, as fees are based on 100% of the circuit capacity. The proposed change is clarifying in nature and non-substantive because in all cases power caps are associated with power circuits rather than cabinet density, such that the proposed changes would render the note more accurate and easier to understand. As a conforming change, the Exchange proposes to designate that note with a double asterisk (**) and add the double asterisk to the caption to Rule General 8, Section 1(c) (Cabinet Power) to facilitate references to that note. The Exchange believes this proposed change would facilitate the understanding of and application of the Exchange's rules because associated cabinet density options are being eliminated under this proposal, and Section 1(c) of Rule General 8 addresses cabinet power, to which this note is more closely related.

¹³ Kilovolt-Amperes (kVA) is a unit of *apparent power* used to describe the capacity of electrical circuits and equipment. In alternating current (AC) systems, power consists of two components: real power (kW) and reactive power (kVAR). Real power, or kW, is the actual usable power that performs work, such as running servers or cooling systems, whereas reactive power, or kVAR, is the power that sustains the magnetic and electric fields in equipment but does not perform useful work. Because AC systems often have both real and reactive components, kVA measures the total apparent power, which is the combination of real and reactive power—the full load the circuit must carry. The relationship between kilowatts and kVA depends on the power factor (PF) which reflects how efficiently electrical power is converted into useful work: kW = kVA × PF. In the context of data center operations, electrical power is commonly expressed in two units: kilowatts (kW) and kilovolt-amperes (kVA). While these terms measure different aspects of electrical power—kW representing real power consumed by equipment and kVA representing apparent power supplied—they are closely correlated in environments where the power factor approaches unity. Modern data centers typically operate at or near a power factor of 1.0, resulting in minimal variance between kW and kVA. Accordingly, these measures, kW and kVA, are often treated as interchangeable for practical purposes.

¹⁴ As discussed above, the Exchange proposes to retain the Half Cabinet offering under Rule General 8, Section 1(a) as well as its related footnote (as designated with a single asterisk) clarifying that such Half Cabinets are not available to new subscribers. See proposed Rule General 8, Section 1(a).

¹⁵ As discussed below, the proposed amount of \$550 per kVA is within the current effective rate of \$482–\$763/kW and operates as a mid-band per kVA price (applied equally to all cabinet power circuit options offered by the Exchange under Rule General 8, Section 1(c)) to keep applicable fees balanced across user profiles.

¹⁶ In Tables 1–3 and throughout this proposal, the Exchange uses the terms “110 V” and “120 V.” In North America, residential and light-commercial electrical systems are nominally standardized at 120 volts, but the terms “110V,” “115V,” and “120V” are often used interchangeably. This is because they all refer to the same electrical system, not meaningfully different ones. Historically, early electrical grids in the U.S. operated closer to 110–115 volts. As infrastructure improved and electrical demand increased, utilities gradually raised the nominal voltage to 120 volts to improve efficiency and performance. Rather than replacing all existing equipment, standards were set so devices could operate safely across a voltage tolerance range, typically about ±5% to ±10%. A subsequent clean-up filing will update the Exchange's rulebook to uniformly list the 20 amp 110 volt and the 30 amp 110 volt circuits to 120 volt throughout its rulebook, consistent with current standards.

¹⁷ In Table 1 (as in Exhibit 5), additions are italicized, and deletions are bracketed. To effect these changes, the Exchange proposes to amend Rule General 8, Section 1(c) as follows. The Exchange proposes to (1) insert, in the column titled “Installation Fee” the acronym “NY11,” and move, unchanged from current amounts, fees designated with the symbol single asterisk (“*”) to a new column titled “NY11–4 Installation Fee”; (2) insert, in the column titled “Ongoing Monthly Fee” the acronym “NY11” and the parenthetical (“(\$550 per kVA),” and then delete, from that current column titled “Ongoing Monthly Fee” all fees currently depicted thereunder (in each instance such fee being \$0), and insert, in their place, each of the proposed ongoing monthly fees in Table 1 for the respective power circuit options under Rule General 8, Section 1(c), other than those depicted

with a single asterisk, which are designated for NY11–4; and (3) insert a new column titled “NY11–4 Ongoing Monthly Fee (\$550 per kVA)” and insert thereunder all proposed ongoing monthly fees shown in Table 1 for power circuit options designated with a single asterisk indicating, unchanged from today, that such cabinets are available in NY11–4 only. The Exchange proposes to enter “N/A” as applicable throughout Rule General 8, Section 1(c) to indicate that certain fees are not applicable, as appropriate. See proposed Rule General 8, Section 1(c).

¹⁸ The figure (“2X”) as used in Tables 1–3 and throughout this proposal designates the Exchange's provision of both a primary and secondary circuit. The Exchange does not include the secondary circuit in the calculation of the proposed fees.

¹⁹ See proposed Rule General 8, Section 1(c). As discussed above, the Exchange is also proposing a non-substantive change to move, with one clarifying change from its current form, the accompanying note to Rule General 8, Section 1(a) (providing that cabinet power cap is based on the available power at 80% of the breakered capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit) to the notes in Rule General 8, Section 1(c). The Exchange proposes a clarifying change to that footnote to clarify that it is the circuit cap, rather than the cabinet power cap, that is based on the available power at 80% of the breakered capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit)). The proposed change is clarifying in nature and non-substantive because in all cases power caps are associated with power circuits rather than cabinet density, such that the proposed changes would render the note more accurate and easier to understand. See proposed Rule General 8, Section 1(c). The 80% capacity rule is a safety and reliability standard applied in data centers to ensure that electrical circuits are not operated at their full breakered capacity. Instead, the usable power is capped at 80% of the circuit's rated capacity. This practice is based on the National Electrical Code (NEC) guidelines for continuous loads, which require derating to prevent overheating and allow for operational headroom. This rule does not affect pricing, however, as fees are based on 100% of the circuit capacity.

TABLE 1²⁰—Continued

Description	NY11 Installation fee	NY11–4 Installation fee	NY11 Ongoing monthly fee (\$550 per kVA)	NY11–4 Ongoing monthly fee (\$550 per kVA)
2x30 amp 48 volt DC	3,300	N/A	[0]\$792.00	N/A
Phase 1 20 amp 240 volt *	[3,600]	3,600	[0]N/A	2,640.00
Phase 1 32 amp 240 volt *	[3,600]	3,600	[0]N/A	4,224.00
Phase 1 40 amp 240 volt *	[3,600]	3,600	[0]N/A	5,280.00
Phase 3 20 amp 415 volt *	[4,560]	4,560	[0]N/A	7,906.58
Phase 3 32 amp 415 volt *	[4,560]	4,560	[0]N/A	12,650.53

TABLE 2²¹

Description	kVA per Cir	Proposed monthly fee
2x20 amp 120 volt	2.4	1,320.00
2x30 amp 120 volt	3.6	1,980.00
2x20 amp 208 volt	4.16	2,288.00
2x30 amp 208 volt	6.24	3,432.00
2x60 amp 208 volt	12.48	6,864.00
Phase 3 2x 20 amp 208 volt	7.21	3,962.82
Phase 3 2x 30 amp 208 volt	10.81	5,944.22
Phase 3 2x 40 amp 208 volt	14.41	7,925.63
Phase 3 2x 50 amp 208 volt	18.01	9,907.04
Phase 3 2x 60 amp 208 volt	21.62	11,888.45
2x30 amp 48 volt DC	1.44	792.00
Phase 1 20 amp 240 volt *	4.8	2,640.00
Phase 1 32 amp 240 volt *	7.68	4,224.00
Phase 1 40 amp 240 volt *	9.6	5,280.00
Phase 3 20 amp 415 volt *	14.38	7,906.58
Phase 3 32 amp 415 volt *	23.0	12,650.53

Transitioning to the Power Delivered Model

As discussed above, the Exchange currently offers several cabinet options

²⁰ The ongoing monthly fees depicted in Tables 1 and 2 are derived by multiplying the circuit's apparent power (kVA) by \$550 per kVA. The kilovolt-ampere (kVA) rating for each circuit was calculated using standard electrical formulas based on circuit type as follows. Single-phase circuits: "kVA"=($\sqrt{3}$ x "Volts" x "Amps")/1000. This converts the product of voltage and current into kilovolt-amperes. Three-phase circuits (balanced load): "kVA"=($\sqrt{3}$ x "Volts" x "Amps")/1000=(1.732 x "Volts" x "Amps")/1000. The factor $\sqrt{3}$ accounts for the three-phase power configuration. These formulas were applied to each circuit type in the table to determine its kVA capacity, which was then multiplied by the proposed rate of \$550 per kVA to calculate the new monthly fee. For readability, table values reflect rounded kVA figures (e.g., a three-phase 30-amp, 208-volt circuit is displayed as 10.81 kVA) and fees rounded to the nearest cent. In internal calculations, the Exchange computes fees using full-precision kVA (e.g., ~10.794 kVA before display rounding), which can yield penny-level variances relative to fees computed from rounded kVA values. These minor differences arise solely from the sequence of rounding (rounding kVA before vs. after fee computation) and do not affect the uniform application of the \$550/kVA rate or the comparability of fees across circuit options. The Exchange notes that the initial filing (SR–BX–2025–036) contained minor errors in calculation of the proposed ongoing monthly fees under proposed Rule General 8, Section 1(c). The Exchange has addressed those errors and will bill customers for the correct amounts accordingly.

²¹ In Table 2 and throughout this proposal, the kilovolt-ampere (kVA) rating for each circuit was calculated using standard electrical formulas based

the fees for which are based on varying power density ranges. As the Exchange transitions to the proposed power-delivered model, customers would transition to that model by structuring their power circuit selections under proposed Rule General 8, Section 1(c) to support the workload capacity supported under the cabinets held under current Rule General 8, Section 1(a). For example,²² a customer using a Super High Density Cabinet offering a power density range greater than 10 kW²³ and less than or equal to 17.3 kW²⁴ in NY11 with a flat monthly fee of \$8,800 would have several options for structuring its power circuit options under proposed Rule General 8, Section

on circuit type as follows. Single-phase circuits: "kVA"=($\sqrt{3}$ x "Volts" x "Amps")/1000. This converts the product of voltage and current into kilovolt-amperes. Three-phase circuits (balanced load): "kVA"=($\sqrt{3}$ x "Volts" x "Amps")/1000=(1.732 x "Volts" x "Amps")/1000. The factor $\sqrt{3}$ accounts for the three-phase power configuration. These formulas were applied to each circuit type in the table to determine its kVA capacity, which was then multiplied by the proposed rate of \$550 per kVA to calculate the new monthly fee.

²² The examples that follow are for illustrative purposes only, as customers are free to select the power circuit options that best suit their business needs.

²³ For simplicity, assume power factor ~ 1 (common in data centers), so: 10kW=10kV.

²⁴ For simplicity, assume power factor ~ 1 (common in data centers), so: 17.3kW=17.3kV.

1(c). The customer could select, for example, the Phase 3, 2 x 50 amp, 208V circuit (18.01 kVA), which approximates the high end of the current cabinet's power density range of 17.3 kW for a monthly fee of \$9, 907.04. Alternatively, the customer could select the Phase 3, 2 x 30 amp, 208 volt circuit (10.81 kVA) to align itself with the lower end of the current cabinet density range—currently at the same flat fee of \$8,800 per month and as proposed \$5,944.22 per month—and reduce its monthly costs by \$2,855.78. Similarly, customers using a Ultra High Density Cabinet with a cabinet density greater than 10 kW and less than or equal to 15 kW (at a current monthly fee of \$7,230.) could select the Phase 3 20 amp 415 volt circuit (14.38 kVA) at a recurring monthly fee of \$7,906.58. A customer with a High Density Cabinet offering a density greater than 7 kW and less than or equal to 10 kW at \$4,950 per month could select a Phase 3, 2 x 30 amp 208 volt circuit (10.81 kVA) at \$5,944.22 per month; alternatively, the customer could select the Phase 3, 2 x 20 amp 208 vol (7.21 kVA) circuit at the lower end of its current density for \$3,962.82 per month. Customers with a Medium High Density Cabinet offering densities greater than 5 kW and less than or equal to 7 kW currently at \$3,850 per month

could select a 2 x 30 amp, 208 volt circuit (6.24 kVA) at \$3,432 per month or the 2 x 20 amp 208 volt circuit (4.16 kVA) at \$2,288 per month. Customers with a Medium Density Cabinet offering densities greater than 2.88 kW and less than or equal to 5 kW at a current monthly fee of \$2,750 could select a 2 x 20 amp 208 volt circuit (4.16 kVA) at \$2,288 per month or a 2 x 30 amp 110/120 volt (3.6 kVA) circuit at \$1,980 per month. Finally, customers with a Low Density Cabinet offering densities less than or equal to 2.88 kW at an ongoing monthly fee of \$2,200 could select a 2

x 20 amp 110/120 volt circuit (2.4 kVA) at \$1,320 per month.

Table 3 below shows power circuit options under proposed Rule General 8, Section 1(c) that could be selected²⁵ to align with the high and lower end of the current cabinet density ranges under Rule General 8, Section 1(a), including associated changes in fees. While the table depicts a single power circuit at the approximate ends of the current cabinet density ranges for illustrative purposes, the Exchange notes that under the proposed power delivered model, clients are free to select multiple circuits per cabinet to achieve their desired power preferences. Under the

current cabinet density-based model, clients are limited to the maximum power density allowed for their selected cabinet type. For example, a client using a Phase 3, 60-amp, 208-volt circuit (21.62 kVA) in combination with a Super High Density Cabinet would pay full fees for that power circuit but would only be authorized to draw up to 17.3 kW of power. Under the proposed billing model, subject to the 80% rule discussed above, clients may use the full power provided by their chosen circuits without being constrained by rigid cabinet density ranges in place today.

TABLE 3²⁶

Cabinet type (density range)	Circuit type	kVA	Current fee	New fee	Δ %
Low Density (≤2.88 kW)	20A 120V	2.4	\$2,200	\$1,320	−40
	30A 120V	3.6	2,200	1,980	−10
Medium Density (>2.88–≤5 kW)	30A 120V	3.6	2,750	1,980	−28
	20A 240V	4.8	2,750	2,640	−4
Medium-High Density (>5–≤7 kW)	30A 208V	6.24	3,850	3,432	−10.86
	30A 120V, 30A 120V	7.2	3,850	3,960	2.86
High Density (>7–<10 kW)	30A 208V	6.24	4,950	3,432	−30.67
	40A 240V	9.6	4,950	5,280	6.67
Ultra High Density (>10–≤15 kW)	20A 415V (Phase 3)	14.38	7,230	7,906.58	9.36
	(Same circuit used for upper end)				
Super High Density (>15–≤17.3 kW)	60A 208V (Phase 3)	21.62	8,800	11,891	35.13
	32A 415V (Phase 3)	23.0	8,800	12,650.53	43.76

The Exchange believes that pricing the offered services on a per kVA basis, as proposed, will allow the Exchange the operational flexibility to offer clients the maximum available power from the power circuits selected. Specifically, because the proposed fee structure eliminates cabinet density-based distinctions, including their associated fixed ongoing monthly fees, and replaces those distinctions with a single per-kVA-based monthly fee of \$550 per kVA delivered that is uniformly applied to the capacity of the customer's power circuit selection under Rule General 8, Section (c), customers in the lower density cabinet ranges are likely to experience a decrease in overall fees while customers in the higher cabinet density ranges are likely to see increases.

Overall, the proposal introduces a transparent and equitable delivery-based pricing model that equitably allocates fees and removes complexity,

consistent with requirements under the Act.

The Exchange believes that the proposed changes are better aligned with current industry practices, which base billing on power supplied rather than cabinet footprint. Under the current cabinet density model, customers select from cabinet options designed to accommodate a range of power densities, up to approximately 17 kW. This approach often resulted in misalignment between costs and actual usage because pricing was tied to cabinet size and density tiers rather than the actual power delivered. For example, under the cabinet-density pricing model, customers operating at the lower end of a given cabinet's power-density range were assessed the same fixed ongoing monthly fee as customers operating at the higher end of that range, because pricing was tied to the cabinet's density tier rather than the deployed power circuit.

By contrast, the proposed per-kVA pricing model directly reflects the actual power delivered to the customer's circuits, ensuring that charges correspond to the infrastructure resources delivered. This power delivery-based approach inherently simplifies cost planning. In short, billing on a per-kVA basis promotes transparency and flexibility, aligning fees with real power demand and enabling the Exchange to accommodate evolving customer requirements with greater transparency and efficiency.

Increases associated with the proposal will better enable the Exchange to continue to maintain and improve its market infrastructure technology and services. The Exchange notes that the proposed fee of \$550 per kVA is comparable to fees charged by at least one other national securities exchange for a similar product. Specifically, the New York Stock Exchange ("NYSE") offers a tiered, per kW monthly fee for cabinets ranging from \$900 to \$1,200

²⁵ The examples depicted in Table 3 are for illustrative purposes only, as customers are free to select the power circuit options that best suit their business needs.

²⁶ In Table 3, the kilovolt-ampere (kVA) rating for each circuit was calculated using standard electrical formulas based on circuit type as follows. Single-

phase circuits: "kVA" = ("Volts" × "Amps")/1000. This converts the product of voltage and current into kilovolt-amperes. Three-phase circuits (balanced load): "kVA" = (√3 × "Volts" × "Amps")/1000 ≈ (1.732 "Volts" × "Amps")/1000. The factor √3 accounts for the three-phase power configuration. These formulas were applied to each

circuit type in the table to determine its kVA capacity, which was then multiplied by the proposed rate of \$550 per kVA to calculate the new monthly fee. The examples depicted in this table are for illustrative purposes only, as customers are free to select the power circuit options that best suit their business needs.

per kW based on the total kW allocated to all of a user's dedicated cabinets.²⁷ Under the NYSE schedule, for example, a customer requesting 10kW at NYSE would pay a monthly fee of \$10,500 per month ($10\text{kW} \times \$1,050$ per kW per month), whereas a customer requesting ~10kW under the proposed model at the Exchange could install a Phase 3 30 amp, 208 volt circuit for 10.81 kVA²⁸ for a total charge of \$5,944.22 per month ($10.8\text{ kVA} \times \$550$ per kVA per month).²⁹

The Exchange believes that its proposed pricing model is more transparent and equitable because it directly ties fees to the actual power delivered and the infrastructure required to support that capacity (power and cooling). This eliminates distortions inherent in tiered pricing, where customers with similar power needs may pay significantly different amounts based on density classifications. By linking charges to delivered power, the proposal enhances transparency and predictability. Costs scale with actual power delivered, and customers can avoid sudden price jumps when moving between tiers. Under the proposed structure, every kVA is priced the same, making it easier for customers to forecast expenses, compare across providers, and understand the relationship between costs and their selected power delivery preferences.

²⁷ NYSE's per kW Monthly Fee is a factor of the total number of kilowatts allocated to all of a User's dedicated cabinets and varies based on the total kilowatts allocated to a User. See New York Stock Exchange LLC Connectivity Fee Schedule, available at https://www.nyse.com/publicdocs/nyse/Wireless-Connectivity_Fees_and_Charges.pdf. Most modern data centers typically operate at or near a power factor of 1.0, resulting in minimal variance between kW and kVA such that the two measures are, for comparison purposes and given this assumed PF factor, interchangeable.

²⁸ To convert 30 amps at 208 volts to kVA, we use the formula: $\text{kVA} = \text{Volts} \times \text{Amps} / 1000$. For single phase: $\text{kVA} = 208 \times 30 = 6.24\text{ kVA} / 1000$. For three-phase (assuming a balanced load): $\text{kVA} = 1.732 \times 208 \times 30 = 10.81\text{ kVA} / 1000$. 1.732 is derived from $\sqrt{3}$. As discussed above, modern data centers typically operate at or near a power factor of 1.0, resulting in minimal variance between kW and kVA. Accordingly, these measures are often treated as interchangeable for practical purposes. NYSE uses a tiered monthly fee per kW, ranging from \$900 to \$1,200 per kW depending on the total allocated power across a user's cabinets. Using PF ≈ 1.0 , that translates to \$900–\$1,200 per kVA.

²⁹ NYSE charges a tiered monthly fee per kW, ranging from \$900 to \$1,200 per kW, depending on the total kilowatts allocated across all cabinets. For example, a customer requesting 10 kW at NYSE would pay approximately \$10,500 per month ($10\text{ kW} \times \$1,050$ per kW). The Exchange proposes a flat monthly fee of \$550 per kVA for the full theoretical capacity of the circuit. For example, a Phase 3, 30-amp, 208-volt circuit provides approximately 10.81 kVA ($1.732 \times 208 \times 30 + 1000$) for a monthly fee of \$5,944.22 ($\$550 \times 10.81$).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,³¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to restructure its cabinet and cabinet power connectivity schedule to provide for a delivery-based model that eliminates cabinet density-based distinctions, along with their associated monthly fees, and establishes in its place a uniform ongoing monthly fee of \$550 per kVA fee as applied to each offered cabinet power circuit options is reasonable. First, the Exchange's proposal to establish a \$550 per kVA fee to be applied to the various power circuit options offered by the Exchange is reasonable because the proposed amount of \$550 per kVA is within the current effective rate of \$482–\$763/kW and operates as a mid-band per kVA price (applied equally to all cabinet power circuit options offered by the Exchange under Rule General 8, Section 1(c)) to keep applicable fees balanced across user profiles. As discussed above, the Exchange is proposing to keep all cabinet and cabinet power installation fee amounts under Rule General 8, Sections 1(a) and (c) unchanged. Second, and as discussed above, the proposed per kVA fee of \$550 per kVA is reasonable as compared to per kVA fees for comparable products offered by NYSE. By linking charges to delivered power, the proposal enhances transparency and predictability as customers avoid price jumps when moving between tiers because costs scale with power delivered. By comparison, NYSE's model assesses \$900–\$1,200 per kW per month based on a user's aggregate dedicated-cabinet footprint, introducing higher per kVA prices, tier transitions, and variability that the Exchange's uniform \$550/kVA model avoids.

The Exchange's proposal to replace cabinet-density based pricing with a per-kVA power delivery model equitably allocates fees based on the primary cost driver of co-location services—electrical power capacity and associated cooling—rather than cabinet density range-based footprint. Under the

current model, two customers occupying the same cabinet density could incur identical fees despite materially different power demands, resulting in misalignment between fees and the customer's power usage. By charging according to committed and delivered kVA, the Exchange ensures that fees are reasonable and proportionate to the allocated infrastructure resources consistent with Section 6(b)(4).

As discussed above, the fee increases resulting from the proposed changes would support the Exchange's ongoing investments in market infrastructure and co-location services, ensuring competitiveness with peer exchanges. Customer demand for more robust and higher power cabinet options has grown significantly over time. In response, the Exchange has continued to invest in its data center operations to meet these evolving needs, consistent with applicable regulatory requirements. These investments include modernizing equipment and expanding the Exchange's co-location facilities to provide customers with additional space and power capacity, thereby providing customers with additional options for addressing their business needs. It is reasonable and consistent with the Act for the Exchange to recoup its investments, at least in part, by adjusting its fees.

The proposal is also not designed to permit unfair discrimination under Section 6(b)(5). The per-kVA pricing structure applies uniformly to all co-location users based on objective, market infrastructure technology-neutral criteria (power capacity requested and delivered), without regard to customer identity, membership status, or business model. Differences in fees reflect only differences in service requested and installed, which is a permissible and non-discriminatory basis for differentiation under the Act. The Exchange further believes that the proposed fee changes are not unfairly discriminatory because the proposed cabinet and cabinet power circuit options are available to and assessed uniformly across all market participants.

The Exchange believes that the proposed conforming and other non-substantive changes, including those to Rule General 8, Section 1, are appropriate because they align related parts of the Exchange's rulebook with the proposed changes or otherwise clarify and facilitate the application of the Exchange's rules.

Accordingly, the Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) and 6(b)(5) of the Act because it provides for

³⁰ 15 U.S.C. 78f(b).

³¹ 15 U.S.C. 78f(b)(4) and (5).

the equitable allocation of reasonable fees and is not designed to permit unfair discrimination.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether to connect to the Exchange based on the value received compared to the cost of doing so.

Nothing in the proposal burdens intra-market competition because the proposed cabinet, half cabinet, and cabinet power options are available to any customer under the same fees as any other customer, and any customer that wishes to order cabinets and cabinet power options can do so on a non-discriminatory basis.

Co-location services are optional and offered in a highly competitive environment among multiple exchanges and third-party data center providers. Market participants that do not wish to pay for co-location services under the revised pricing model may continue to access the Exchange through alternative connectivity methods or utilize competing venues.

The proposed shift from cabinet-based pricing to a per-kVA power delivery model is designed to align fees with the actual resource delivered and infrastructure investments, rather than fixed cabinet density ranges. This change does not restrict access or favor any category of participant; all eligible users are subject to the same fees and terms based on objective criteria (committed and delivered power capacity). Accordingly, the proposal does not create any undue burden on intermarket competition, as participants can choose among multiple exchanges and service providers, nor does it impose an undue burden on intramarket competition, as all co-location customers are treated uniformly under the proposed fee structure, as described above.

To the extent the proposal may affect competition, the Exchange believes that the impact is positive because the revised pricing structure promotes cost transparency and fairness, thereby enabling customers to more easily plan for and compare infrastructure

expenses, as well as tailor their connectivity selections to suit their specific business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.³²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-BX-2026-003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-BX-2026-003. 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 filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should

submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-BX-2026-003 and should be submitted on or before February 23, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-01987 Filed 1-30-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104702; File No. SR-ChoeBZX-2025-096]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the BondBloxx Private Credit Trust

January 28, 2026.

On July 25, 2025, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² Cboe BZX Exchange, Inc. ("BZX") filed with the Securities and Exchange Commission ("Commission") a proposed rule change to list and trade shares of the BondBloxx Private Credit Trust under BZX Rule 14.11(f), Trust Issued Receipts. The proposed rule change was published for comment in the **Federal Register** on August 12, 2025.³ On September 22, 2025, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposal, disapprove the proposal, or institute proceedings to determine whether to disapprove the proposal.⁵ On November 6, 2025, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act⁶ to determine

³³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 103654 (Aug. 7, 2025), 90 FR 38849. The Commission has not received any comments regarding this proposed rule change.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 104017, 90 FR 46276 (Sept. 25, 2025).

⁶ 15 U.S.C. 78s(b)(2)(B).

³² 15 U.S.C. 78s(b)(3)(A)(ii).

whether to approve or disapprove the proposed rule change.⁷

Section 19(b)(2) of the Act⁸ provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on August 12, 2025.⁹ February 8, 2026 is 180 days from that date, and April 9, 2026 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹⁰ designates April 9, 2026, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-CboeBZX-2025-096).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-01971 Filed 1-30-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104734; File No. SR-CboeBZX-2026-008]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Applicable to Securities Listed on the Exchange To Add Class ETF Shares to the Category of Generically-Listed ETPs That Are Not Required To Pay an Entry Fee and to Eliminate Prorated Refunds of Annual Fees for ETP Liquidations

January 28, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 26, 2026, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change to amend the fees applicable to securities listed on the Exchange, which are set forth in BZX Rule 14.13, Company Listing Fees, to (i) expand the category of Generically-Listed ETPs to include Class ETF Shares that meet the generic listing requirements under Rule 14.11(n) and do not require an Exchange Rule Filing; and (ii) eliminate prorated refunds for ETP liquidations. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Commission's website (<https://www.sec.gov/rules/sro.shtml>), the Exchange's website (https://www.cboe.com/us/equities/regulation/rule_filings/bzx/), and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the fees applicable to securities listed on the Exchange, which are set forth in BZX Rule 14.13, Company Listing Fees, to (i) expand the category of Generically-Listed Exchange-Traded Products (“ETPs”)³ to include Class ETF Shares that meet the generic listing requirements under Rule 14.11(n) and do not require an Exchange Rule Filing, as defined below; and (ii) eliminate prorated refunds for ETP liquidations. The Exchange proposes to implement the proposed fee change February 1, 2026.

Class ETF Shares

On June 21, 2018, the Exchange amended Rule 14.13 in order to charge an entry fee for exchange-traded products (“ETPs”) that are not “Generically-Listed ETPs.” Now, the Exchange proposes to amend its listing fees to expand the definition of Generically-Listed ETPs to include certain Class ETF Shares that meet the generic listing standards set forth in Exchange Rule 14.11(n) and do not require an exchange rule filing pursuant to Section 19(b) of the Exchange Act (“Exchange Rule Filing”).

On November 24, 2025,⁴ the Commission approved the Exchange's

³ “Generically-Listed ETPs” refers to Index Fund Shares, Portfolio Depositary Receipts, Managed Fund Shares, Linked Securities, Currency Trust Shares, and Exchange-Traded Fund Shares that are listed on the Exchange pursuant to Rule 19b-4(e) under the Exchange Act and for which a proposed rule change pursuant to Section 19(b) of the Exchange Act is not required to be filed with the Commission. See Exchange Rule 14.13(b)(1)(C)(i).

⁴ See Securities Exchange Act No. 104247 (November 24, 2025) 90 FR 54796 (November 28, 2025) (SR-CboeBZX-2025-076) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified

Continued

⁷ See Securities Exchange Act Release No. 104175, 90 FR 51420 (Nov. 17, 2025).

⁸ 15 U.S.C. 78s(b)(2).

⁹ See *supra* note 3.

¹⁰ *Id.*

¹¹ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proposed rule change to establish comprehensive generic listing standards for Class ETF Shares under Rule 14.11(n). This approval formalized the criteria under which Class ETF Shares may be listed pursuant to Rule 19b-4(e) without requiring an individualized Exchange Rule Filing under Section 19(b) of the Exchange Act. With these generic listing standards now in effect, the Exchange proposes to align its fee structure in Rule 14.13 to reflect this regulatory framework by including qualifying Class ETF Shares within the definition of “Generically-Listed ETPs” that are exempt from the \$10,000 entry fee. This fee change recognizes that Class ETF Shares meeting the Commission-approved generic listing standards do not present novel regulatory issues requiring an Exchange Rule Filing and therefore should receive the same streamlined fee treatment as other generically-listed products.

Currently, Exchange Rule 14.13(b)(1)(B)(v)(a) provides that a Company that submits an application to list any ETP shall be required to pay an entry fee to the Exchange as follows:

All ETPs, with the exception of Index Fund Shares, Portfolio Depositary Receipts, Managed Fund Shares, Linked Securities, Currency Trust Shares, Exchange-Traded Fund Shares, and Commodity-Based Trust Shares that are listed on the Exchange pursuant to Rule 19b-4(e) under the Exchange Act and for which an Exchange Rule Filing is not required to be filed with the Commission (collectively, “Generically-Listed ETPs”), shall pay an entry fee of \$10,000 per ETP . . .

As such, Class ETF Shares currently are subject to the \$10,000 entry fee per ETP. The Exchange now proposes to amend Exchange Rule

14.13(b)(1)(B)(v)(a) to expand the category of Generically-Listed ETPs to include Class ETF Shares that meet the generic listing criteria of Rule 14.11(n) and thus do not require an Exchange Rule Filing. As a result, Class ETF Shares that meet the generic listing criteria of Rule 14.11(n) would be exempt from the \$10,000 entry fee.

ETP Liquidation Refunds

Pursuant to Exchange Rule 14.13(b)(2)(G), ETPs that have liquidated and as a result are delisted from the Exchange will be prorated for the portion of the calendar year that such issue was listed on the Exchange, based on trading days listed that calendar year, and refunded. The

Exchange has determined that the prorated refund is not operationally efficient for ETP liquidations. Following liquidation, ETPs cease operations, making it necessary to engage in additional backend processing and coordination with sponsors or other third-party service providers in order to identify refund recipients and complete payment. Accordingly, the Exchange will no longer provide a prorated refund of the annual listing fee for ETP liquidations and proposes to eliminate the above-referenced language in Rule 14.13(b)(2)(G).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁵ Specifically, the Exchange believes the proposed rule change furthers the objectives of Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Class ETF Shares

The Exchange believes that expanding the definition of Generically-Listed ETPs to include Class ETF Shares that meet the generic listing standards under Rule 14.11(n) is reasonable, equitable, and not unfairly discriminatory. The proposed fee treatment aligns with the Commission’s approval of comprehensive generic listing standards for Class ETF Shares on November 24, 2025. By exempting qualifying Class ETF Shares from the \$10,000 entry fee, the Exchange is treating these products consistently with other ETPs that are eligible for listing pursuant to Rule 19b-4(e) and do not require an Exchange Rule Filing. This approach is reasonable because Class ETF Shares that satisfy the generic listing criteria in Rule 14.11(n) do not present novel regulatory issues and therefore do not warrant the additional entry fee that applies to products requiring individualized rule filings.

The proposed fee structure is equitable and not unfairly discriminatory because it applies the same fee treatment to all ETPs based on objective, transparent criteria. Specifically, whether the product meets Commission-approved generic listing standards and can be listed without an Exchange Rule Filing. Class ETF Shares

that meet the Rule 14.11(n) criteria will be treated identically to Index Fund Shares, Portfolio Depositary Receipts, Managed Fund Shares, Exchange-Traded Fund Shares, and other Generically-Listed ETPs that are similarly exempt from the entry fee. Conversely, Class ETF Shares that do not meet the generic listing standards and require an Exchange Rule Filing will continue to be subject to the \$10,000 entry fee, consistent with the treatment of other non-generically-listed products. This uniform application of fees based on regulatory characteristics ensures that similarly situated products are treated alike.

Furthermore, the proposed change promotes competition and innovation by reducing barriers to entry for Class ETF Shares that comply with established generic listing standards, thereby encouraging the listing of products that meet investor demand without imposing unnecessary costs on issuers of products that do not raise unique regulatory concerns.

ETP Liquidation Refunds

The Exchange believes that eliminating prorated refunds for ETP liquidations is reasonable, equitable, and not unfairly discriminatory. The proposed change is reasonable because it reflects the operational realities associated with processing refunds for liquidated ETPs. Following liquidation, ETPs cease operations, which creates administrative challenges in identifying appropriate refund recipients and coordinating payment with sponsors or third-party service providers who may no longer be actively engaged with the Exchange. The elimination of prorated refunds reduces this administrative burden and allows the Exchange to allocate resources more efficiently.

The proposed change is equitable and not unfairly discriminatory because it applies uniformly to all ETPs that liquidate, regardless of issuer, product type, or timing of liquidation. All ETP issuers are subject to the same annual listing fee structure and the same policy regarding refunds upon liquidation. Moreover, the annual listing fee charged by the Exchange is consistent with fees charged by other national securities exchanges for similar services.⁶ The elimination of prorated refunds does not

by Amendment No. 2, To Adopt New Rule 14.11(n) To Permit the Generic Listing and Trading of Class Exchange-Traded Fund Shares).

⁵ 15 U.S.C. 78f(b).

⁶ See Securities Exchange Act No. 104626 (January 12, 2026) 91 FR 2815 (January 22, 2026) (SR-Nasdaq-2026-003) (SR-NASDAQ-2026-003) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Pricing Schedule for Exchange-Traded Products To Add Class ETF Shares, Eliminate Prorated Refunds for Liquidations, and Make Modifications to the Designated Liquidity Provider and Market Quality Supporter Incentive Programs).

alter the amount of the annual fee itself but rather clarifies that the fee is non-refundable in the event of liquidation.

For these reasons, the Exchange believes the proposed rule change satisfies the requirements of Section 6(b)(4) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Class ETF Shares

The proposed expansion of the Generically-Listed ETP category to include Class ETF Shares that meet the generic listing standards under Rule 14.11(n) does not impose a burden on competition. Rather, the proposal promotes competition by reducing listing costs for Class ETF Shares that satisfy Commission-approved generic listing standards, thereby lowering barriers to entry and encouraging product innovation. The fee exemption applies uniformly to all Class ETF Shares that meet the objective criteria set forth in Rule 14.11(n), without regard to issuer identity or any other discriminatory factor. Class ETF Shares that do not meet the generic listing standards will continue to be subject to the \$10,000 entry fee, consistent with the treatment of other non-generically-listed products. This approach ensures competitive equity by treating all products consistently based on their regulatory characteristics.

The proposal does not impose a burden on intermarket competition because other national securities exchanges remain free to establish their own fee structures for listing Class ETF Shares and other ETPs. To the extent the proposed fee change makes the Exchange more attractive to issuers of Class ETF Shares that meet generic listing standards, any competitive advantage results from the Exchange's decision to align its fee structure with the Commission-approved regulatory framework for these products.

ETP Liquidation Refunds

The elimination of prorated refunds for ETP liquidations does not impose a burden on competition. The proposed change applies uniformly to all ETPs that liquidate, regardless of issuer, product type, or any other factor. All issuers are subject to the same annual listing fee and the same non-refundable fee policy upon liquidation. The change reflects operational efficiencies and does not alter the competitive landscape

among issuers or products listed on the Exchange.

The proposal does not impose a burden on intermarket competition because other national securities exchanges maintain their own refund policies for liquidated products, and issuers remain free to choose among exchanges based on their respective fee structures and policies. The Exchange's decision to eliminate prorated refunds is consistent with industry practices and does not create any competitive disadvantage relative to other listing venues.

For these reasons, the Exchange does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and paragraph (f) of Rule 19b-4⁸ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2026-008 on the subject line.

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f).

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CboeBZX-2026-008. 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 filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBZX-2026-008 and should be submitted on or before February 23, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104724; File No. SR-ISE-2026-04]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend FLEX Rules

January 28, 2026.

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 January 27, 2026, Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to introduce enhancements to electronic FLEX trading by (i) allowing prices to be expressed as a percentage, (ii) adopting a Delta-Adjusted at Close order instruction, and (iii) adopting rules to permit the legs of a complex FLEX Order to include a combination of FLEX Option series and non-FLEX Option series ("FLEX v. Non-FLEX Order").

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/ise/rulefilings>, and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to introduce FLEX enhancements by (i) allowing prices to be expressed as a percentage, (ii) adopting a Delta-Adjusted at Close ("DAC") order instruction, and (iii) adopting rules to permit the legs of a complex FLEX Order to include a combination of FLEX Option series and non-FLEX Option series ("FLEX v. Non-FLEX Order"). As discussed in detail below, the proposed changes would align the Exchange's FLEX rules with the FLEX rules of Cboe Exchange, Inc. ("Cboe"), and therefore raise no novel issues for the Commission. Each change will be described below.

FLEX Percentages

The Exchange proposes to allow prices to be expressed as percentage of the closing value of the underlying equity security or index, which would align with the Cboe's FLEX rules. Prices in FLEX trading are allowed to be expressed as a fixed dollar and decimal amount. For example, Options 3A, Section 3(c)(6) stipulates that the

exercise price for a FLEX Option³ may be in increments no smaller than \$0.01. In addition, Options 3A, Section 4(a) stipulates that bids and offers for FLEX Options must be expressed in U.S. dollars and decimals in the applicable minimum increment as set forth in Options 3A, Section 5(a). Options 3A, Section 5(a), in turn, provides that the Exchange determines the minimum increment for bids and offers on FLEX Options on a class-by-class basis, which may not be smaller than \$0.01 for the options leg of a FLEX Option.

The Exchange now proposes to allow prices in FLEX trading to be expressed using a percentage-based methodology that will be materially identical to Cboe. The proposed percentage-based methodology would be an alternative to the fixed dollar and decimal amount that was adopted by the Exchange for FLEX trading. As proposed, the Exchange would allow prices for FLEX trading (e.g., exercise price, bids/offers, and minimum increments) to be expressed as a percentage of the underlying security or index, and limit the percentage increment to be no smaller than 0.01%. Accordingly, the Exchange proposes to update its FLEX rule provisions throughout Options 3A to reflect this enhancement. The Exchange believes that the proposed enhancement would provide greater flexibility in terms of describing an option contract tailored to the needs of the investor.

Specifically, the exercise price provisions in Options 3A, Section 3(c)(6) would be amended to provide that the exercise price of a FLEX Option may be in increments no smaller than (i) \$0.01, if expressed as a fixed price in terms of dollars and decimals or a specific index value, as applicable, or (ii) 0.01%, if expressed as a percentage of the closing value of the underlying equity security or index, as applicable, on the trade date (the System rounds the actual exercise price to the nearest fixed price minimum increment for bids and offers in the class (as set forth in Options 3A, Section 5(a)).⁴ The proposed changes in Section 3(c)(6) differentiates between the expression of bids and offers of FLEX Options as a fixed price or as a percentage of the closing value of the underlying. As described above, the Exchange is also proposing to add a parenthetical

regarding the System rounding the actual exercise price to the nearest fixed price minimum increment for bids and offers in the class (as set forth in Options 3A, Section 5(a)), which would only be applied to exercise prices expressed as a percentage. The dollar value of an exercise price expressed as a percentage would be rounded to the nearest minimum dollar value increment, which dollar value would represent the ultimate, "actual" exercise price. For example, suppose a Member enters a percentage bid of 0.27 for a FLEX Equity Option, which is the price at which the order for that option ultimately trades, and the underlying security has a closing value of 24.52 on the trade date. Following the close on the trade date, the System calculates the transaction price to be 6.6204 (0.27 x 24.52). Assuming the minimum increment for bids and offers in a FLEX Option class is \$0.01, the System rounds 6.6204 to the nearest penny, which would be a transaction price of \$6.62. The dollar value of the transaction price of a FLEX Option for which the bids and offers were expressed as a percentage (the "final") determined after the closing value is available would be rounded to the nearest fixed price minimum increment for the class (e.g., the nearest \$0.01, if that is the minimum determined for the class).⁵

The Exchange also proposes to amend Options 3A, Section 4(a) ("Units of Trading") as follows:⁶

(a) Bids and offers for FLEX Options must be expressed in (A) U.S. dollars and decimals, if the exercise price for the FLEX Option series is a fixed price; or (B) a percentage per unit of the underlying security or index, as applicable, if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date, each in the applicable minimum increment as set forth in Section 5(a) below.

(1) If the exercise price of a FLEX Option series is a fixed price, a bid of "0.50" represents a bid of (A) \$50 (0.50 times 100 shares) for a FLEX Equity Option; and (B) \$50 (0.50 times an index multiplier of 100) for a FLEX Index Option with a multiplier of 100.

(2) If the exercise price of a FLEX Option series is a percentage of the

⁵ With respect to this example and rounding, if the price was \$6.625, the System would round to \$6.63.

⁶ See Cboe Rule 5.3(e)(3) for substantially similar provisions, except the Exchange will not incorporate Cboe's language relating to FLEX Index Options with an index multiplier of one (i.e., micro FLEX Index Options) because the Exchange does not offer this capability today.

³ The term "FLEX Option" means a flexible exchange option. A FLEX Option on an equity security may be referred to as a "FLEX Equity Option," and a FLEX Option on an index may be referred to as a "FLEX Index Option." See Options 3A, Section 1(b)(1).

⁴ See Cboe Rule 4.21(b)(6)(A) for materially identical provisions.

closing value of the underlying equity security or index, a bid of “0.50” represents a bid of (A) 50% (0.50 times 100 shares) of the closing value of the underlying equity security on the trade date if a FLEX Equity Option; and (B) 50% (0.50 times an index multiplier of 100) of the closing value of the underlying index on the trade date if a FLEX Index Option with a multiplier of 100.

(3) Following application of the designated percentage to the closing value of the underlying security or index, the System rounds the final transaction prices to the nearest minimum fixed price increment for the class as set forth in Section 5(a) below.

Like Cboe, the Exchange is making clear with the proposed changes in Section 4(a) that bids and offers must be in the same format as the exercise price, as it would be difficult to apply a dollar price for a FLEX Option series with a percentage-based exercise price. Additionally, the proposed changes in Section 4(a) described above add examples describing the expression of bids and offers of FLEX Options as a fixed price or as a percentage of the closing value of the underlying. The proposed changes also specify how the System would round the final transaction price once the designated percentage value is applied. The changes proposed in Options 3A, Section 4(a) are intended to provide a clear, transparent description of how the Exchange would apply the fixed price and percentage value methodology for FLEX Options, and how the Exchange would round the final transaction prices once the designated percentage is applied.

Further, the Exchange proposes to amend Options 3A, Section 5(a) (“Minimum Trading Increments”) to reflect the alternative percentage methodology as follows:⁷

The Exchange determines the minimum increment for bids and offers on FLEX Options on a class-by-class basis, which may not be smaller than (A) \$0.01, if the exercise price for the FLEX Option series is a fixed price, or (B) 0.01%, if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date. Following application of the designated percentage to the closing value of the underlying security or index, the System rounds the final transaction prices to the nearest fixed price minimum increment for the class as set forth in this Section 5(a), in each

case for the options leg of a FLEX Option.

The proposed changes in Options 3A, Section 5(a) are similar to proposed changes described above for Options 3A, Sections 3(c)(6) and 4(a), and delineate between the expression of minimum increments for bids and offers on FLEX Options as a fixed price or as a percentage of the closing value of the underlying. The proposed changes also similarly specify how the System would round the final transaction price once the designated percentage value is applied.

The Exchange also proposes to make corresponding changes to its FLEX auction rules to reflect that the prices of FLEX Orders⁸ and FLEX auction responses submitted into any of the FLEX auctions must be expressed either as a fixed dollar price or a percentage, and that such price must be in the same format (*i.e.*, fixed dollar price or percentage) as the exercise price of the FLEX Option series.

Specifically for electronic FLEX Auctions in Options 3A, Section 11(b), the Exchange proposes in subparagraph (b)(1)(G)(iii) that the minimum price increment for a FLEX Order must be in the same format (*i.e.*, price or percentage) as the exercise price of the FLEX Option series.⁹ The Exchange proposes to add a similar requirement in subparagraph (b)(2)(D)(vi) with respect to the minimum price increments for FLEX responses by stipulating that the minimum price increment for FLEX responses is the same as the one the Exchange determines for a class pursuant to subparagraph (b)(1)(G) of this Rule, and must be in the same format (*i.e.*, price or percentage) as the exercise price of the FLEX Option series.¹⁰ The System rejects a FLEX

response that is not in the applicable minimum increment or format.¹¹ The Exchange also proposes to amend the allocation provisions for electronic FLEX Auctions in subparagraph (b)(3)(A) to provide that for purposes of ranking FLEX responses when determining how to allocate a FLEX Order against those responses, the term “price” refers to (i) the dollar and decimal amount of the response bid or offer or (ii) the percentage value of the response bid or offer, as applicable.¹² The Exchange also proposes to amend Options 3A, Section 12(e)(1)(B)(ii) related to FLEX PIM to add rule text that states, “Members may elect for the Initiating Order to have less than their guaranteed allocation as described in subparagraph (e)(4) below.”¹³ The Exchange proposes to add this sentence as a guidepost and reminder that a Member may elect less than their guaranteed allocation.

The Exchange proposes similar changes for FLEX PIM auctions in Options 3A, Section 12. Specifically, the Exchange proposes in subparagraph (a)(5)(C) that the price of the Agency Order¹⁴ and the Initiating Order¹⁵ must be in the same format (*i.e.*, price or percentage) as the exercise price of the FLEX Option series.¹⁶ In paragraph (b),

SAM responses must be in the same format (*i.e.*, price or percentage) as the exercise price of the FLEX Option series. The Exchange believes it will be helpful to add a similar requirement in the rules for the Exchange’s electronic FLEX Auction responses for transparency and clarity.

¹¹ See *id.*

¹² See Cboe Rule 5.72(c)(3)(A) for materially identical language.

¹³ Options 3A, Section 12(e)(4) is related to guaranteed allocation. If the Initiating Member selects a single-price submission, it may elect for the Initiating Order to have less than their guaranteed allocation (50% if there is a response(s) from one other Member or 40% if there are responses from two or more Members) to trade against the Agency Order. The Initiating Member may select a lesser percentage than their guaranteed allocation. If the Initiating Member elects 0%, then notwithstanding subparagraphs (e)(1) and (2), the System only executes the Initiating Order against any remaining Agency Order contracts at the stop price after the Agency Order is allocated to all FLEX PIM responses at all prices equal to or better than the stop price. Guaranteed allocation information is not available to other market participants and may not be modified after it is submitted.

¹⁴ Pursuant to current Options 3A, Section 12, a Member (the “Initiating Member”) may electronically submit for execution an order (which may be a simple or complex order) it represents as agent (“Agency Order”) against principal interest or a solicited order(s) (except, if the Agency Order is a simple order, for an order for the account of any FLEX Market Maker with an appointment in the applicable FLEX Option class on the Exchange) (an “Initiating Order”), provided it submits the Agency Order for electronic execution into a FLEX PIM auction pursuant to this Rule.

¹⁵ See *id.*

¹⁶ See Cboe Rule 5.73(a)(5) for materially identical language.

⁸ The term “FLEX Order” means an order submitted in a FLEX Option pursuant to Options 3A. See Options 3A, Section 1(b)(2).

⁹ Cboe Rules 5.73(a)(5) (governing minimum price increments for Cboe’s FLEX Automated Improvement Mechanism (“FLEX AIM”)) and 5.74(a)(5) (governing minimum price increments for Cboe’s FLEX Solicited Auction Mechanism (“FLEX SAM”)) similarly require that the minimum price increment be in the same format (*i.e.*, price or percentage) as the exercise price of the FLEX Option series. The Exchange notes that Cboe’s electronic FLEX Auction in Cboe Rule 5.72(c), which is the analogue to this particular electronic FLEX Auction in Options 3A, Section 11(b), is silent on minimum price increments. However, the Exchange will add the minimum price increment requirement described above in the rules for its electronic FLEX Auction for transparency and clarity.

¹⁰ While Cboe’s electronic FLEX Auction response requirements in Cboe Rule 5.72(c)(2)(D) are silent on minimum increments, the auction response requirements for Cboe’s FLEX AIM and FLEX SAM in Cboe Rules 5.73(c)(5)(A) and 5.74(c)(5)(A), respectively, similarly require that the minimum price increment for FLEX AIM and FLEX

⁷ See Cboe Rule 5.4(c)(4) for materially identical provisions.

the Exchange proposes to provide that the Initiating Order must stop the entire Agency Order at a specified price in the same format (*i.e.*, price or percentage) as the exercise price of the FLEX Option series.¹⁷ In subparagraph (c)(5)(A), the Exchange proposes that the minimum price increment for FLEX PIM responses shall be the same as the Exchange determines for a class pursuant to subparagraph (a)(5) of this Rule, and must be in the same format (*i.e.*, price or percentage) as the exercise price of the FLEX Option series.¹⁸ The System rejects a FLEX PIM response that is not in the applicable minimum increment or format.¹⁹ Lastly, in paragraph (e), the Exchange proposes that for purposes of ranking the Initiating Order and FLEX PIM responses when determining how to allocate the Agency Order against the Initiating Order and those responses, the term “price” refers to (1) the dollar and decimal amount of the order or response bid or offer or (2) the percentage value of the order or response bid or offer, as applicable.²⁰

Likewise for FLEX SOM auctions in Options 3A, Section 13, the Exchange proposes in subparagraph (a)(5)(C) that the price of the Agency Order²¹ and the Solicited Order²² must be in the same format (*i.e.*, price or percentage) as the exercise price of the FLEX Option series.²³ In paragraph (b), the Exchange proposes that the Solicited Order must stop the entire Agency Order at a specified price in the same format (*i.e.*, price or percentage) as the exercise price of the FLEX Option series.²⁴ In subparagraph (c)(5)(A), the Exchange proposes that the minimum price increment for FLEX SOM responses shall be the same increment as the Exchange determines for a class pursuant to subparagraph (a)(5) of this Rule, and must be in the same format (*i.e.*, price or percentage) as the exercise price of the FLEX Option series.²⁵ The

System rejects a FLEX SOM response that is not in the applicable minimum increment or format.²⁶ Lastly, the Exchange proposes in paragraph (e) that for purposes of ranking the Solicited Order and FLEX SOM responses when determining how to allocate the Agency Order against the Solicited Order and those responses, the term “price” refers to (1) the dollar and decimal amount of the order or response bid or offer or (2) the percentage value of the order or response bid or offer, as applicable.²⁷

The Exchange also proposes to remove the phrase “if the Agency Order is a simple order” from the first paragraph of Options 3A, Section 12. The Exchange proposes to remove this phrase because the FLEX PIM rule specifically states that any solicited contra-side orders entered by Members to trade against Agency Orders may not be for the account of an Exchange Market Maker that is assigned to the options class.²⁸

FLEX DAC

The Exchange proposes to adopt a DAC order instruction that an Exchange member (“Member”) may apply to a FLEX Order when entering it into the System²⁹ for execution in a FLEX auction. The proposed DAC order instruction is substantially similar to the DAC order instruction offered by Cboe.³⁰

In particular, if a DAC order executes during the trading day, upon receipt of the official closing price or value for the underlying from the primary listing exchange or index provider, respectively, the System will adjust the original execution price of a DAC order based on a delta value applied to the change in the underlying reference price between the time of execution and the market close. As proposed, DAC orders will allow Members the opportunity to incorporate into the pricing of their FLEX Options the closing price or the

value of the underlying on the transaction date based on how much the price or value changed during the trading day.

Near the market close, the Exchange has observed that significant numbers of market participants interact in the equity markets, which may substantially impact the price or value, as applicable, of the underlying at the market close. For example, shares of exchange-traded funds (“ETFs”) that track indexes, which are increasingly popular, often trade at or near the market close in order to better align with the indexes they track and attempt to align the market prices of ETF shares as close to the net asset value (“NAV”) ³¹ per share as possible. Further, the Exchange understands that market makers and other liquidity providers seek to balance their books before the market close and contribute to increased price discovery surrounding the market close. The Exchange also believes it is common for other market participants to seek to offset intraday positions and mitigate exposure risks based on their predictions of the closing underlying prices or underlying indexes (which represent the settlement prices of options on those underlyings). The Exchange understands this substantial activity near the market close may create wider spreads and increased price volatility, which may attract further trading activity from those participants seeking arbitrage opportunities and further drive prices. In light of the significant liquidity and price/value movements in equity shares that can occur near the market close, options closing and settlement prices may deviate significantly from options execution prices earlier that trading day.

The proposed DAC order instruction is designed to allow investors to incorporate any upside market moves that may occur following execution of the order up to the market close while limiting downside risk. Additionally, the Exchange has noted that there have been a number of managed funds that recognize benefits to their investors in employing certain strategies that allow for their investors to mitigate risk at the market close while also participating in beneficial market moves at the close. The proposed DAC order would provide such funds with an additional method to attempt to meet their objectives through FLEX options strategies, thereby benefitting their investors. The Exchange understands that, for example,

³¹ The NAV is an ETF’s total assets minus its total liabilities. ETFs generally must calculate their NAV at least once every business day, and typically do so after market close. See 17 CFR 270.2a–4.

¹⁷ See Cboe Rule 5.73(b) for materially identical language.

¹⁸ See Cboe Rule 5.73(c)(5)(A) for materially identical language.

¹⁹ See *id.*

²⁰ See Cboe Rule 5.73(e) for materially identical language.

²¹ Pursuant to Options 3A, Section 13, a Member (the “Initiating Member”) may electronically submit for execution an order (which may be a simple or complex order) it represents as agent (“Agency Order”) against a solicited order (“Solicited Order”) if it submits the Agency Order for electronic execution into a FLEX SOM Auction pursuant to this Rule.

²² See *id.*

²³ See Cboe Rule 5.74(a)(5) for materially identical language.

²⁴ See Cboe Rule 5.74(b) for materially identical language.

²⁵ See Cboe Rule 5.74(c)(5)(A) for materially identical language.

²⁶ See *id.*

²⁷ See Cboe Rule 5.74(e) for materially identical language.

²⁸ See ISE Supplementary Material .02 to Options 3A, Section 12.

²⁹ The term “System” means the electronic system operated by the Exchange that receives and disseminates quotes, executes orders and reports transactions. See Options 1, Section 1(a)(50).

³⁰ See Cboe Rules 5.6(c) (definition of simple DAC order), 5.33(b)(5) (definition of complex DAC order), 5.34(c)(11) (DAC order reasonability check), and 5.70(a)(2) (availability of DAC order instruction). See also Securities Exchange Act Release Nos. 90319 (November 3, 2020), 85 FR 71361 (November 9, 2020) (SR–CBOE–2020–014) (Order approving DAC order instructions for FLEX ETF and index options); and 95707 (September 8, 2022), 87 FR 56477 (September 14, 2022) (SR–CBOE–2022–036) (Order approving DAC order instructions for FLEX equity options).

defined-outcome ETF issuers³² often times use multi-leg strategy orders when seeding their funds. The goal of these strategies is to price the execution of these orders at the close of the underlying; however, there is operational execution risk in attempting to fill an order late in the day to capture the underlying closing price. As such, a DAC complex order would allow the Member to execute the order prior to the close and have its price adjusted at the close. Because multi-leg strategies themselves have delta offsets, the Member is hedged, meaning that the Member may realize a negative movement versus the initial execution on some legs, which is offset by a positive move in other legs. The Exchange notes that the strategies may or may not define an exact delta offset (“delta neutrality” occurs where the strategy defines an exact delta offset). Given the delta neutral nature of an order with an exact offset, a Member would be indifferent to any movement in the underlying from the time of execution to the close. Whether or not a Member defines an exact delta offset, a Member would anticipate a given amount of market exposure, either partial or none, depending on the strategy and combinations of buy/sell, call/put, and quantity. A DAC complex order allows the order to be executed anytime, eliminating the execution risk, while realizing the objective of pricing based on the exact underlying close for those strategies that require pricing at the close or a defined amount of market exposure through the close.

As stated, the System will adjust the original execution price of a DAC order based on a delta value applied to the change in the price of the underlying from the time of order execution to the market close. Delta is the measure of the change in the option price as it relates to a change in the price of the underlying security or value of the underlying index, as applicable. The Exchange notes that 1.0000 is the equivalent of a 100 delta. For example, an option with a 50 delta (which is generally represented as 0.50) would result in the option moving \$0.50 per \$1.00 move in the underlying (*i.e.*, the price in the underlying $\times$ delta value = anticipated price move in the option). Delta changes as the price or value of the underlying stock or index changes and as time changes, thus giving a Member an estimation of how an option

will behave if the price of the underlying moves in either direction. Call option deltas are positive (ranging from 0 to 1), because as the underlying increases in price so does a call option. Conversely, put option deltas are negative (ranging from -1 to 0), because as the underlying increases in price the put option decreases in price. The Exchange understands that investors use delta as an important hedging and risk management tool in options trading. For example, by trading an option with a lower delta, an investor’s underlying position will be exposed to more downside risk if price or value of the underlying fall. Therefore, the Exchange believes the proposed DAC order instruction will allow a market participant to maintain a full hedge of its position taken upon intraday execution of a DAC order throughout the remainder of the trading day, which ultimately reduces the market participants’ portfolio risk.

The Exchange proposes to make DAC pricing instructions available for simple and complex FLEX Orders pursuant to Options 3A, Sections 6(c) and 7(c), respectively. As proposed, Options 3A, Section 6(c)(1) would provide that a DAC order is an order for which the System delta-adjusts its execution after the market close. Specifically, the delta-adjusted execution price equals the original execution price plus the delta value times the difference between the official closing price or value of the underlying on the transaction date and the reference price or index value of the underlying (“reference price”). Upon order entry for electronic execution, a Member must designate a delta value and may designate a reference price. If no reference price is designated, the System will include the price or value, as applicable of the underlying at the time of order entry as the reference price.³³

Likewise, the proposed definition in Options 3A, Section 7(c)(1) provides for essentially the same definition, differing only in that it applies to complex FLEX Orders, and upon order entry for electronic execution a Member must designate a delta value per leg.³⁴

As set forth in proposed Options 3A, Sections 6(c)(2) and 7(c)(2), DAC orders and DAC complex orders may only be submitted for execution in an electronic FLEX Auction pursuant to Options 3A, Section 11(b), a FLEX Price Improvement Mechanism (“FLEX PIM”) Auction pursuant to Options 3A,

Section 12, or a FLEX Solicited Order Mechanism (“FLEX SOM”) Auction pursuant to Options 3A, Section 13.³⁵ As it relates to simple DAC orders only, proposed Options 3A, Section 6(c)(2) would also provide that a DAC order submitted in a single stock equity option may not be submitted until 45 minutes prior to the market close. A DAC order may not be submitted in a single stock equity option on its expiration day.³⁶

As a general rule, attempted manipulation of the price of a security encounters greater difficulty the more volume that is traded, and, generally, single name equity securities tend to be less liquid and experience greater price sensitivity and larger market moves than indexes or ETPs. The Exchange notes that on expiration day in particular, underlying equity securities may experience more price sensitivity than on non-expiration days and may be more susceptible to incentive to manipulate given that the exercise value of overlying options are contingent on the underlying closing price on expiration day. Options holders on expiration day, whether their positions were taken via a DAC execution or not, are subject to the risk of price swings in the underlying prior to the final close; however, options holders of positions taken via a DAC execution may potentially be more susceptible to such risk given the price adjustment at close. For example, if a market participant executes a DAC order to buy calls on expiration day and a large price swing follows, in that, the underlying price is pushed significantly higher before the close, the DAC option holder would be forced to pay a much higher premium upon adjustment, and ultimately expiration. Therefore, in order to mitigate the potential risk associated with expiration day price swings, which may potentially expose DAC order users the gamma effect of options as they become more sensitive to underlying price changes as they approach expiration, particularly in options overlying less liquid securities, the

³⁵ Cboe also delineates the submission of DAC orders and DAC complex orders in their various FLEX auction mechanisms. *See* Cboe Rules 5.6(c) and 5.33(b)(5) for similar provisions, except the Exchange is not proposing to adopt the provisions in Cboe’s rules related to open outcry as the Exchange does not have a trading floor. The Exchange is also not proposing to adopt Cboe’s language related to designating DAC orders and DAC complex orders as All Sessions or RTH and Curb (*i.e.*, order instructions on when certain orders are eligible to trade during Cboe’s various trading sessions). Unlike Cboe, the Exchange does not offer different trading sessions and therefore does not offer such order instructions.

³⁶ *See* Cboe Rule 5.6(c) for materially identical provisions.

³² The Exchange notes that defined outcome ETF issuers do not buy stocks directly, but instead, use options contracts to deliver the price gain or loss of an index (such as the S&P 500) over the course of a year, up to a preset cap.

³³ *See* Cboe Rule 5.6(c)(1) and (2) for materially identical provisions.

³⁴ *See* Cboe Rule 5.33(b)(5)(A) and (B) for materially identical provisions.

proposed rule change restricts trading (regardless of opening or closing) in simple DAC orders in single stock options on expiration day. In addition to this, the proposed rule to require simple DAC orders in single stock options to be submitted no earlier than 45 minutes before the market close will reduce the amount of time during which the underlying price could potentially move; movements which, as stated above, may pose greater risk upon price adjustment at close to holders of DAC options. The Exchange notes that the same potential incentive to “push” the price of the underlying on expiration day in connection with the exercise price of an option is greatly diminished for multi-leg orders given that parties to multi-leg transactions are focused on the spread or ratio between the transaction prices for each of the legs (*i.e.*, the net price of the entire complex trade).

Members will enter into the System all DAC orders as they would any other FLEX Order pursuant to Options 3A, Section 11(a) (governing the order entry of FLEX Orders) and the applicable FLEX auction rules in Options 3A, Sections 11(b), 12, and 13. As such, the Exchange points out that DAC orders (like any FLEX Order) may only be submitted in permissible FLEX Option series that comply with Options 3A, Section 3. As defined above, a Member may designate the reference price of the underlying upon submitting a DAC order. The Exchange proposes that a Member-designated reference price will be subject to a reasonability check. Specifically, proposed Options 3A, Section 14(d) will provide that if a Member submits a DAC order to the System with a reference price more than an Exchange-determined amount³⁷ away from the underlying price or value at the time of submission of the DAC order, the System rejects the order.³⁸ Moreover, if a Member chooses to submit a DAC order without a reference price, the System will automatically input the price or value of the underlying at the time of order entry as the reference price.

As set forth in proposed Options 3A, Sections 6(c)(1) and 7(c)(1), for a DAC order submitted into a FLEX electronic auction, a Member will be required to designate a delta value upon order entry

(including for each leg of a DAC complex order). As noted above, delta is either between 0 and 1 for calls, and 0 and -1 for puts.³⁹ The Exchange notes that 1.0000 is the equivalent of a 100 delta. Pursuant to the general principles by which deltas function, the delta for a call options leg(s) must be greater than zero and the delta for a put options leg(s) must be less than zero. Additionally, the delta for call (put) legs must be less (greater) than or equal to the delta for the adjacent call (put) leg (*i.e.*, the leg with the next largest strike price) of the same expiration as the strike price increases. This is also consistent with the general manner in which deltas function, and ensures that the deltas on the same leg type within the same expiration trend away from zero as the strike value increases.

Typically, a Member submits a complex order (including a DAC complex order, as proposed) with a net price, and, for a complex FLEX Order, a Member must include a price for each leg upon electronic submission.⁴⁰ Therefore, upon electronic submission a Member must also designate a delta value per leg along with the leg prices. At market close, the System will then be able to apply the delta value per each of the leg prices to properly calculate the DAC by adjusting the execution price of each leg.

A Member may apply the DAC order instruction (which must be a value greater than 0) to a FLEX Order submitted into an electronic FLEX Auction pursuant to Options 3A, Section 11(b), FLEX PIM Auction pursuant to Options 3A, Section 12, or FLEX SOM Auction pursuant to Options 3A, Section 13. A DAC order will be handled and executed in the FLEX auctions in the same manner as any other FLEX Order pursuant to the applicable FLEX auction rules, including pricing, priority, and allocation rules.⁴¹ The Exchange also notes that DAC orders submitted to the Exchange will have unique message characteristics, indicative that the order is a DAC order. Therefore, contra-side interest will be aware of the specific order type and may then choose whether or not they wish to interact with DAC orders.

Pursuant to Options 3A, Section 11(a), FLEX Orders (including proposed DAC orders) may only be submitted for execution in an electronic FLEX Auction, FLEX PIM Auction, and FLEX SOM Auction. As such, the Exchange believes it is appropriate for DAC orders to only execute in FLEX auctions. The delta and reference price appended to a DAC order would be based on data regarding the underlying at the time of order entry. As those values change as the price or value of the underlying change, the reference price and delta at the time of submission would achieve the desired delta-adjusted price result only if the DAC order executes almost immediately upon submission. To allow a DAC order to potentially execute after a significant amount of time has passed since entry, underlying price and related delta at the time a DAC order would eventually execute would be different and thus not achieve the Member's desired result. If a DAC order executes in an auction, it will do so within a short time following submission. Indeed, the Exchange's FLEX auctions last for a defined period, the length of which is between three seconds to five minutes as designated by the submitting Member.⁴² As such, the Exchange believes that the execution of DAC orders in FLEX auctions is consistent with the intended purpose of a DAC order.

For any DAC order that executes during a trading day, upon receipt of the official closing price for the underlying from the primary listing exchange or index provider, the System will adjust the original execution price based on the delta applied to the absolute change in the underlying between the time of execution and the market close. The Exchange notes that, like the execution price of any option, a delta-adjusted price may never be zero or negative. If this occurs as a result of the DAC calculation, the System will set the delta-adjusted price to the minimum permissible increment.

The delta adjustment formula that will be applied at the close will be as follows:

The delta-adjusted price = the original execution price + (the change in the underlying price $\times$ delta) or $P2 = P1 + (U - R) * D$,

where:

- P1 = Original execution price
- P2 = Delta-adjusted price calculated at the close
- R = Reference price
- U = Price of the underlying at the market close

³⁷ The Exchange will review market activity to determine the Exchange-determined amount and, thereafter, amend that amount from time-to-time. The Exchange will disclose the amount on its web page at: <https://www.nasdaq.com/docs/ISESystemSettings>.

³⁸ The System will use the most recent last sale (or disseminated index value) as the reference price. See Choe Rule 5.34(c)(11) for materially identical provisions.

³⁹ Note the Exchange will permit delta values to be input up to four decimals, as prices for the underlying securities and index values may be expressed in four decimals. However, bids and offers may only be input in accordance with Options 3A, Section 5, which bids and offers the System will use to rank and allocate orders and auction responses.

⁴⁰ See Options 3A, Section 11(a)(2)(B).

⁴¹ See Options 3A, Sections 11(b), 12, and 13.

⁴² See Options 3A, Sections 11(b)(1)(F), 12(c)(3), and 13(c)(3).

- D = Delta

Example 1: A DAC call order is submitted for execution in an electronic FLEX auction and the price of the underlying increases from the time of the execution to the market close.

- P1 = \$1.00
- R = \$100
- U = \$101.00
- D = .4000

Therefore, $P2 = \$1.00 + ((\$101 - \$100) * .4000) = \$1.40$.

Example 2: A DAC put order in a penny increment is submitted for execution in a FLEX auction and the price of the underlying increases from the time of execution to the market close.

- P1 = \$1.00
- R = \$100
- U = \$103.00
- D = -.4000

Therefore, $P2 = \$1.00 + ((\$103 - \$100) * -.4000) = -\$0.20$. However, because an execution price, including a delta-adjusted execution price, may not be negative, the System would adjust $P2 = \$0.01$ (the minimum permissible increment).

Example 3: A DAC complex order has two legs, where leg 1 is buy call and leg 2 is buy put (straddle).

Leg 1

- P1 = \$18.00
- R = \$2875.00
- U = \$2878.00
- D = .5000

Therefore, $P2 = (\$18.00 + ((\$2878 - \$2875) * .5000)) = \$19.50$.

Leg 2

- P1 = \$42.00
- R = \$2875.00
- U = \$2878.00
- D = -.5000

Therefore, $P2 = (\$42.00 + ((\$2878 - \$2875) * -.5000)) = \$40.50$

As described above, the Member would be indifferent to the move in the underlying due to the offsetting nature of the two legs. The initial execution price for the DAC complex order (P1) would be $\$18.00 + \$42.00 = \$60.00$, and the adjusted price calculated at the close (P2) for the DAC complex order would be $\$19.50 + \$40.50 = \$60.00$. As a result, the Member in this Example 3 would be able to execute a hedged strategy earlier in the trading day and have it priced exactly in line with the underlying close without incurring any market risk or operational risk of trying to time the execution exactly at the close.

Example 4: A defined outcome ETF uses a simple buffer protect strategy in connection with a seed trade. The

Member buys the at the money put and sells the 10% out of the money put while selling the 5% out of the money call.

Leg 1: Buy SPX May 2875 put at \$69.00 with 50 delta.

- P1 = \$69.00
- R = \$2875.00
- U = \$2878.00
- D = -.5000

Therefore, $P2 = (\$69.00 + ((\$2878 - \$2875) * -.5000)) = \$67.50$.

Leg 2: Sell SPX May 2590 put at \$15.00 with 12 delta.

- P1 = \$15.00
- R = \$2875.00
- U = \$2878.00
- D = -.1200

Therefore, $P2 = (\$15.00 + ((\$2878 - \$2875) * -.1200)) = \$14.64$.

Leg 3: Sell SPX May 3020 call at \$11.50 with 16 Delta.

- P1 = \$11.50
- R = \$2875.00
- U = \$2878.00
- D = .1600

Therefore, $P2 = (\$11.50 + ((\$2878 - \$2875) * .1600)) = \$11.98$.

The initial execution price for the order would be $\$69.00 - \$15.00 - \$11.50 = \$42.50$. The adjusted execution price would be $\$67.50 - \$14.64 - \$11.98 = \$40.88$. The strategy would have an overall delta of $-.46 (-.5000 + -.1200 + .16)$. As a result, the fund would be seeded exactly at the closing price with exactly the delta exposure defined by the strategy, without incurring any operational execution risk. The Member would be able to execute a hedged strategy earlier in the trading day and have it priced exactly in line with the underlying close without incurring any unanticipated market risk or operational risk of trying to time the execution exactly at the close.

A Member may only apply the DAC order instruction to a FLEX Order for a FLEX Option series with an exercise price expressed as a fixed price in dollars and decimals. The proposed changes in Options 3A, Sections 6(c) and 7(c) will therefore provide that the Exchange may determine to make DAC orders and DAC complex orders available for FLEX trading, except for FLEX Options with an exercise price that is a percentage of the closing value of the underlying equity security or index value, as applicable on the trade date.⁴³ A Member may not apply the

⁴³ This proposed limitation in Options 3A, Sections 6(c) and 7(c) is substantially similar to the limitation currently in Cboe Rule 5.70(a)(2), except the Exchange will not adopt Cboe's limitation on Asian- and Cliquet-settled FLEX Options. The Exchange does not offer those settlement types today.

DAC order instruction to a FLEX Order for a FLEX Options series with an exercise price formatted as a percentage of the closing value of the underlying on the trade date, as this functionality is not compatible with the DAC order instruction. The System will need a fixed execution price at the time of order execution that will be delta-adjusted (which delta value is based on dollar price movements in the underlying) following the market close. However, a FLEX Order for a series with an exercise price formatted as a percentage of the closing value will execute at a percentage rather than a fixed price, which would not be determined until the market close. Therefore, the execution price of such a FLEX Order will incorporate the closing price or value of the underlying in a different manner, and the System would not have an execution price to adjust.

Similar to Cboe, the reference price and delta value, as well as the execution price, will be provided to all transaction parties on all fill reports at the time of the execution of a DAC order (*i.e.*, an "unadjusted DAC trade"). Unadjusted DAC trade information will also be sent to the Options Clearing Corporation ("OCC") and disseminated to the Options Price Reporting Agency ("OPRA"). Specifically for FLEX DAC orders, like for all FLEX Orders, trade information will be reported via a text message to OPRA.

The Exchange notes that the text message for FLEX DAC orders will contain an indicator that the order was executed as DAC, as well as the delta and the reference price. The Exchange also notes that individual legs of a FLEX DAC complex order will be reported with an identifier that they are part of a complex order just like any complex order legs are reported today. Initial execution will be reported to OPRA as a FLEX text message and will include a DAC identifier, delta value and reference price. The adjusted DAC price will be reported to OPRA as a price correction similar to any other adjusted trade, and will include a cancel for the initial execution followed by a new trade containing the adjusted price. At Market Close, when the execution price is delta-adjusted, all transaction parties will be sent the adjusted prices. Finally, the delta-adjusted price will also be sent to the OCC and OPRA once the restatement process is complete. The prior unadjusted DAC trade report that was sent to the OCC and disseminated to OPRA will be cancelled and replaced

with a trade report reflecting the delta-adjusted execution price.⁴⁴

The Exchange has analyzed its capacity and believes the Exchange has the necessary systems capacity to handle additional order traffic and the associated restatements that may result from the adoption of DAC orders. The Exchange also has consulted with OPRA and understands that they have the necessary system capacity as well. Further, the Exchange represents it has an adequate surveillance program in place to monitor orders with DAC pricing and that the proposed pricing instruction will not have an adverse impact on surveillance capacity. Also, the Exchange does not believe the proposed order instruction will have any impact on pricing or price discovery at or near the market close. A DAC order will execute intraday in the same manner as any other order, and its price will merely be automatically adjusted following determination of the final closing price or value of the underlying security or index, respectively.

FLEX v. Non-FLEX

FLEX Options are customized equity or index option contracts that allow investors to tailor contract terms for exchange-listed equity and index options. The Exchange may make simple FLEX Orders and complex FLEX Orders pursuant to Options 3A, Section 3, available for FLEX trading. Currently, the legs of a Complex FLEX Order are limited to FLEX Option series only. An investor wishing to trade a complex strategy containing both FLEX Option series and non-FLEX Option series must execute such strategy using two or more separate orders.

At this time, the Exchange proposes to amend its rules to allow for the legs of a complex FLEX Order to include a combination of FLEX Option series and non-FLEX Option series ("FLEX v. Non-FLEX Order") identical to Cboe's rules.⁴⁵ The Exchange notes that, with exception of the rules proposed in this rule filing, FLEX v. Non-FLEX Orders will be subject to the same trading rules and procedures that currently govern the trading of other Complex FLEX Orders on the Exchange. To permit the

trading of FLEX v. Non-FLEX Orders, the Exchange proposes to amend its rules as follows.

The Exchange proposes to add FLEX v. Non-FLEX Orders to the types of complex orders available for FLEX trading.⁴⁶ The proposed rule text is substantially similar to Cboe Rule 5.70(b) and (e).⁴⁷

As part of the proposed changes, the Exchange proposes to add a "FLEX Option series" as a defined term in Options 3, Section 3, FLEX Option Listing, at paragraph (b). Further, to enhance comprehension, the Exchange proposes to amend Options 3A, Section 3(b)(2) to add the word "new" before FLEX Options series for clarity.

Next, the Exchange proposes to amend Options 3A, Section 7, Complex Orders. Specifically, the Exchange proposes to amend Options 3A, Section 7(a) to state that the legs of a Complex FLEX Order may be for FLEX Option series only or a combination of FLEX Option series and non-FLEX Option series ("FLEX v. Non-FLEX Order").⁴⁸ As noted above, FLEX v. Non-FLEX Orders will be considered complex FLEX instruments, which will be subject to the same trading rules and procedures that govern the trading of other FLEX Orders on the Exchange (unless otherwise noted herein). The Exchange also proposes to amend Options 3A, Section 7(a) to remove the requirements set forth in subparagraphs (1) and (2). Options 3, Section 7(a) provides that each leg(s) of a Complex FLEX Order must be for a FLEX Option series authorized for FLEX trading with the same underlying equity security or index. The Exchange proposes to delete this requirement, as such requirement is already contained within the definition of a Complex Options Strategy in Options 3, Section 14(a)(1), a Stock-Options Strategy in Options 3, Section 14(a)(2) and a Stock-Complex Strategy in Options 3A, Section 14(a)(3). Options

3A, Section 7(a)(2) provides that each leg(s) of a Complex FLEX Order must have the same exercise style. The Exchange proposes to delete this requirement to allow for the trading of the proposed FLEX v. Non-FLEX Orders and will, in general, provide FLEX Traders with more flexibility and opportunities for customization via FLEX trading. Further, deletion of this requirement that each leg of a Complex FLEX Order (whether comprised of all FLEX Option legs or FLEX and non-FLEX Option legs) must have the same exercise style will expand investors' choices and flexibility, and provide FLEX Traders with a mechanism by which to manage the positions and associated risk in their portfolios more precisely, based on exercise style.⁴⁹ As amended, Options 3A, Section 7(a)(1) and (2) are being deleted and Options 3A, Section 7(a)(3) is being amended to provide that for an Index Option, each leg may have a different settlement type (a.m.-settled or p.m.-settled). Also, Options 3A, Section 7(a)(3) is being renumbered as 7(a)(1).

The Exchange also proposes to add rule text at Options 3A, Section 7(d) that provides that the non-FLEX Option leg(s) of a FLEX v. Non-FLEX Order may not Leg into the simple order book. The Exchange believes that this amendment will provide for more efficient execution and processing of FLEX v. Non-FLEX Orders.

Today, FLEX and Non-FLEX Order are subject to different trading settings and parameters (*e.g.*, allocation, entitlements) pursuant to their respective Rules. Non-FLEX Orders have separate market data inputs, as the System must read market data for each options class in connection with potential executions in non-FLEX options classes. If the System receives a FLEX v. Non-FLEX Order, it would need to trade the Non-FLEX leg against the appropriate leg in the respective order book (FLEX Order Book vs. Non-FLEX Order Book). This is because execution opportunities for FLEX v. Non-FLEX Orders may be prevented. For example, if the Non-FLEX leg(s) of the FLEX v. Non-FLEX Order would execute against interest in the standard order book, there would be no execution opportunities for the FLEX leg(s) of the FLEX v. Non-FLEX Order. As discussed below, the Non-FLEX legs of FLEX v. Non-FLEX Orders will protect Priority Customer orders in the simple order book for the Non-FLEX classes.

The Exchange proposes to amend Options 3A, Section 9, Trading Halts. Identical to Cboe Rule 4.21(a)(4), the

⁴⁴ The Exchange notes that this restatement process is the same for an order that has been adjusted or nullified and subsequently restated pursuant to the Exchange's obvious error rules. See Options 3, Section 20.

⁴⁵ See Securities Exchange Act Release No. 102297 (January 28, 2025), 90 FR 8822 (February 3, 2025) (SR-Cboe-2024-047) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, Regarding the Types of Complex Orders Available for Flexible Exchange Options ("FLEX") Trading on the Exchange).

⁴⁶ Complex orders, including a Complex Options Order, Stock-Options Order, and Stock-Complex Order are each as defined in Options 3, Section 14(a).

⁴⁷ The Exchange is not adopting language similar to Cboe 5.70(d) which states that in classes determined by the Exchange, a nonconforming FLEX v. Non-FLEX Order is not eligible for electronic processing, in which case the nonconforming FLEX v. Non-FLEX Order may only be submitted for manual handling and open outcry trading. On ISE, a nonconforming FLEX v. Non-FLEX Order would be eligible for electronic processing.

⁴⁸ Under the proposed rule change, Complex FLEX Orders could include both listed instruments as well as FLEX instruments (if at least one leg is for a FLEX Option series), with an optional stock leg. Per the definition of complex order, the legs of all complex FLEX Orders (including FLEX v. Non-FLEX options) must have the same underlying security or index. See Options 3A, Section 7(a)(1).

⁴⁹ This rule text is identical to Cboe Rule 5.70(b).

Exchange proposes a new subparagraph (b) that states that the Exchange may halt trading in a FLEX Options complex strategy (whether comprised of all FLEX Option legs or FLEX and non-FLEX Option legs) if any leg of the strategy is halted. Further, the System does not accept a Complex FLEX Order for a series while trading in the class is halted. A FLEX Options complex strategy may not execute until all legs are no longer halted.

The Exchange proposes to amend Options 3, Section 11, FLEX Options Trading, to distinguish criteria for a complex order with only FLEX Option legs and to add criteria for FLEX and non-FLEX Option legs of a FLEX v. Non-FLEX Order similar to Cboe Rule 5.70. First, the Exchange proposes to amend Options 3A, Section 11(a)(2) to specify that each *FLEX Option* leg of the FLEX Option complex strategy must include all terms for a FLEX Option series set forth in Options 3A, Section 3 (including that a non-FLEX Option series with identical terms is not listed for trading), subject to the order entry requirements set forth in Options 3A, Section 11.⁵⁰

Additionally, the Exchange proposes changes to distinguish the criteria for a complex order with only FLEX Option leg(s) from that proposed for FLEX v. Non-FLEX Orders, noting that there are no changes to the criteria to those FLEX Orders containing only FLEX Option

leg(s) as a result of the proposed rule change other than removing the requirement that all legs must have the same exercise style. The Exchange proposes to amend Options 3A, Section 11(a)(2) to add a new (B) titled “FLEX Options Legs Only.” The Exchange proposes to amend the existing rule text in current Options 3A, Section 11(a)(2)(B) to add “with only FLEX legs” and re-letter this section as Options 3A, Section 11(a)(2)(B)(i).⁵¹

Next, the Exchange proposes to add a new Options 3A, Section 11(a)(2)(C) to provide the requirements for a complex FLEX Order with only FLEX Option legs submitted into the System for an electronic FLEX Auction pursuant to paragraph (b) below, a FLEX PIM pursuant to Section 12 below, or a FLEX SOM pursuant to Section 13, which must include a bid or offer price for each FLEX Option leg but no bid or offer price for each non-FLEX Option leg, and a net price. Proposed Options 3A, Section 11(a)(2)(C)(i) would note that to achieve the desired net execution price for a FLEX v. Non-FLEX Order: the execution price of each non-FLEX Option leg may not be worse than the NBBO, worse than the BBO, or equal to the BBO if there is a Priority Customer order(s) on the simple order book. This requirement along with proposed Options 3A, Section 11(a)(2)(C)(ii) are together required to achieve the desired net execution price for a FLEX v. Non-

FLEX Order. Proposed Options 3A, Section 11(a)(2)(C)(ii) notes that the execution price of each FLEX Option leg(s) may be adjusted so that the prices of the FLEX legs combined with the prices of the non-FLEX legs add together to equal the net price.⁵²

Thus, the non-FLEX Option legs of a FLEX v. Non-FLEX Order would be able to trade at the same price as non-Priority Customer interest at the BBO, which is consistent with complex orders comprised of solely non-FLEX Options.⁵³ In addition, no non-FLEX component of a FLEX v. Non-FLEX Order would be able to trade at the same price as resting Priority Customer interest at the BBO.⁵⁴ If a non-FLEX Option leg of a FLEX v. Non-FLEX Order cannot execute at a price permissible that meets the requirements set forth in proposed Options 3A, Section 11(a)(2)(C)(i) the entire FLEX v. Non-FLEX Order will be cancelled.

The below examples are designed to illustrate the pricing of a FLEX v. Non-FLEX Order. Assume for each example a FLEX Trader wishes to execute a Complex FLEX Order with two legs (one FLEX Option leg and one non-FLEX Option leg).

Example 1

Listed (*i.e.*, non-FLEX) legs are adjusted to their NBBO, FLEX Option leg is adjusted residually to meet net execution price.

Instrument ID	Legs	Symbol	Side	Ratio	Expiration	Strike	Type
CI0001	Leg 1	XYZ	Buy	1	December	10	Call.
	Leg 2	1 XYZ	Sell		November	10.01	Call.

Market for Non-FLEX Leg

Away BBO: 2.15×2.35

BBO: 2.20×2.30

NBBO: 2.20×2.30

FLEX Order Auction (“FOA”): Buy 10 CI0001 @1.25

Leg 1 (Non-FLEX Option Leg) Price: N/A

Leg 1 Market: (Exchange Market-Maker) 2.20×2.30 (Exchange Market-Maker)

Leg 2 (FLEX Option Leg) Price: 1.00

Response 1: Sell 5 CI0001 @1.19

Response 2: Sell 5 CI0001 @1.25

FOA trades 5 CI0001 with Response 1 at 1.19. The legs print at 2.20 and 1.01.⁵⁵

FOA trades 5 CI0001 with Response 2 at 1.25. The legs print at 2.25 and 1.00.⁵⁶

Example 2

Listed (*i.e.*, Non-FLEX) legs are adjusted up/down to their NBBO, FLEX Option leg retains specified price, as no further adjustment is needed to meet net price.

Instrument ID	Legs	Symbol	Side	Ratio	Expiration	Strike	Type
CI0001	Leg 1	XYZ	Buy	1	December	10	Call.
	Leg 2	1 XYZ	Sell		November	10.01	Call.

⁵⁰ This rule text is identical to Cboe Rule 5.72(b)(2).

⁵¹ Cboe Rule 5.72(b)(2)(A) distinguishes electronic FLEX trading from open outcry FLEX trading for FLEX Options Legs. ISE does not have a trading floor so that distinction is not necessary.

⁵² This rule text is identical to Cboe Rule 5.72(b)(2)(B).

⁵³ See Cboe Rule 5.33(f)(2)(A)(ii).

⁵⁴ See proposed Options 3A, Section 11(a)(2)(C)(i).

⁵⁵ In this example, the Leg 1 market is 2.20×2.30 ; the System would ensure that the Exchange does not trade through this market. The transaction price is \$1.19 (Response 1). With a Leg 2 price of \$1.00, Leg 1 would have to trade at \$2.19, however, because this would be outside the NBBO, Leg 1 will execute at \$2.20. As a result, Leg 2 would have to be adjusted to as close to the stipulated price of \$1.00 as possible—\$1.01. The final transaction would price Leg 1 at \$2.20 and Leg 2 at \$1.01 for a next price of \$1.19 (Response 1).

⁵⁶ In this example, the net price is \$1.25, and the market for Leg 1 is 2.20×2.30 . The System cannot print Leg 2 at the stipulated price of \$1.00 because it would trade through. The transaction price is \$1.25 (Response 2). With a Leg 2 price of \$1.00, Leg 1 would have to trade at \$2.25. Leg 1 is able to execute at \$2.25 since this is between the NBBO and Leg 2 would be allowed to execute at \$1.00. The final transaction would price Leg 1 at \$2.25 and Leg 2 at \$1.00 for a next price of \$1.25 (Response 2).

Market for Non-FLEX Leg

Away BBO: 2.10×2.35

BBO: 2.15×2.30

NBBO: 2.15×2.30

FOA: Buy 10 CI0001 @1.25.

Leg 1 (Non-FLEX Option Leg) Price: N/A

Leg 1 Market: (Exchange Market-Maker)

2.15×2.30 (Exchange Market-Maker)

Leg 2 (FLEX Option Leg) Price: 1.00

Response 1: Sell 5 CI0001 @1.19

Response 2: Sell 5 CI0001 @1.25

FOA trades 5 CI0001 with Response 1 at 1.19. The legs print at 2.19 and 1.00.⁵⁷

FOA trades 5 CI0001 with Response 2 at 1.25. The legs print at 2.25 and 1.00.⁵⁸

While the System followed the same process in both examples, because the leg market was wider in the second example, the System was able to execute the non-FLEX leg in that example at a price within that market without the need to adjust the entered price of the FLEX leg.

Finally, the Exchange proposes to adopt a new Options 3A, Section 20 titled “Nullification and Adjustment of Options Transactions including Obvious Errors.” Today, obvious errors related to complex orders are described in Supplementary .05 to Options 3, Section 20. The Exchange proposes to provide in this new section that in addition to the language in Supplementary .05 to Options 3, Section 20, the following paragraph will apply as it relates to FLEX Orders.

Specifically, the Exchange proposes to add rule text to this new Options 3A, Section 20 to state that if a non-FLEX Option leg of a FLEX v. Non-FLEX Order qualifies as an Obvious Error under Options 3, Section 20(c)(1) or a Catastrophic Error under Options 3, Section 20(d)(1), then the non-FLEX Option leg that is an Obvious or Catastrophic Error will be adjusted in accordance with Options 3, Section 20(c)(4)(A) or (d)(3), respectively, regardless of whether one of the parties is a Customer. However, the non-FLEX Option leg of any Customer order

subject to proposed paragraph (a) of Options 3A, Section 20 will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer’s net execution price for the non-FLEX Option leg. If any leg of a FLEX v. Non-FLEX Order is nullified, the entire transaction is nullified. This is consistent with the Exchange’s handling of other complex orders, including stock-option orders, and ensures protections in the event of an Obvious or Catastrophic error. The below example is designed to illustrate how a FLEX v. Non-FLEX Order will be processed in the event of an Obvious Error. Assume in the example that a FLEX Trader wishes to execute a Complex FLEX Order with three legs (one FLEX Option leg and two non-FLEX Option leg).

Example 3: Listed Leg 1 Qualifies as Obvious Error

Leg 1: Buy 1 Call 1.00×1.20

Leg 2: Buy 1 Call 2.00×2.25

Leg 3: Buy 1 FLEX Call (*Note: the FLEX leg is not considered in determining obvious error adjustments*)

cNBBO⁵⁹ of listed legs: 3.00×3.45

Assume Leg 1 updates to 1.00×4.00 ;

Listed Leg cNBBO updates to 3.00×6.25

1 millisecond later

Complex Order trades at 5.45

Leg 1 trades @2.25

Leg 2 trades @2.20

FLEX leg trades @1.00. This order, specifically the execution on Leg 1, qualifies as Obvious Error, based on prices prior to Leg 1 market going wide.⁶⁰ In this example the prior market was $\$1.00 \times \$1.20$ before the market widened and Leg 1 traded at \$2.25, therefore this qualifies as Obvious Error.

Obvious error adjustment: Leg 1 is adjusted to trade at 1.60.

⁵⁹ The term “cNBBO” means the best net debit or credit price for a Complex Order Strategy based on the NBBO for the individual options components of a Complex Order Strategy, and, where the underlying security is a component of the Complex Order, the National Best Bid and/or Offer for the underlying security. See Options 3, Section 14(a)(vi).

⁶⁰ See proposed paragraph (a) of Options 3A, Section 20. See also Options 3, Section 20(c)(1). An Obvious Error will be deemed to have occurred when the Exchange receives a properly submitted filing where the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown in a table at Options 3, Section 20(c)(1).

Theoretical Price⁶¹ (“TP”) = 1.10 ⁶²

theoretical offer⁶³ = 1.45

theoretical offer (1.45) + 0.15 adjustment⁶⁴ = 1.60.

The Exchanges notes that the counterparties to an execution of a FLEX v. Non-FLEX Order trade all of the component legs of the order.

The Exchange believes that its existing surveillance and reporting safeguards in place are adequate to deter and detect possible manipulative behavior which might arise from trading FLEX v. Non-FLEX Orders and will support the protection of investors and the public interest. The Exchange also represents that it has the necessary system capacity to support the new complex FLEX Order type. Finally, the Exchange does not believe that any market disruptions will be encountered with the introduction of this complex FLEX Order type. The Exchange currently allows for trading of several types of complex orders, including Stock-Option Orders, and has not experienced any market disruptions or issues with capacity. Rather, the Exchange believes the introduction of this complex FLEX Order type may promote more efficient trading, as investors wishing to trade a complex strategy containing both FLEX Option series and non-FLEX Option series would no longer be required to execute such strategy using two or more separate orders.

⁶¹ Upon receipt of a request for review and prior to any review of a transaction execution price, the “Theoretical Price” for the option must be determined. If the applicable option series is traded on at least one other options exchange, then the Theoretical Price of an option series is the last NBB just prior to the trade in question with respect to an erroneous sell transaction or the last NBO just prior to the trade in question with respect to an erroneous buy transaction unless one of the exceptions in subparagraphs (b)(1) through (3) below exists. For purposes of this provision, when a single order received by the Exchange is executed at multiple price levels, the last NBB and last NBO just prior to the trade in question would be the last NBB and last NBO just prior to Exchange’s receipt of the order. See Options 3, Section 20(b).

⁶² The Theoretical Price is 1.10 because it is the midpoint between the market (1.00×1.20).

⁶³ The theoretical offer shown above represents the offer for purposes of this example.

⁶⁴ See proposed paragraph (a) of Options 3A, Section 20. See also Options 3, Section 20(c)(4)(A). Where neither party to the transaction is a Customer, the execution price of the transaction will be adjusted by the Official pursuant to the table at Options 3, Section 20(c)(4)(A). Any non-Customer Obvious Error exceeding 50 contracts will be subject to the Size Adjustment Modifier defined in sub-paragraph (a)(4) of Options 3, Section 20. For purposes of this Rule, an Official is an Officer of the Exchange or such other employee designee of the Exchange that is trained in the application of this Rule.

⁵⁷ In this example, the Leg 1 market is $\$2.15 \times \$2.30$; the System would ensure that the Exchange does not trade through this market. The transaction price is \$1.19 (Response 2). With a Leg 2 price of \$1.00, Leg 1 would have to trade at \$2.19 because this would be inside the NBBO, Leg 1 will execute at \$2.19. Therefore, Leg 2 would not have to be adjusted and would execute at \$1.00. The final transaction would price Leg 1 at \$2.19 and Leg 2 at \$1.00.

⁵⁸ In this example, the price is \$1.25, and the market for Leg 1 is $\$2.15 \times \$2.30$. The next transaction price is \$1.25 (Response 2). With a Leg 2 price of \$1.00, Leg 1 would have to trade at \$2.25 and because this would be inside the NBBO, Leg 1 will execute at \$2.25. Therefore, Leg 2 would not have to be adjusted and would execute at \$1.00. The final transaction would price Leg 1 at \$2.25 and Leg 2 at \$1.00.

Other FLEX Changes

The Exchange proposes to amend Options 3A, Section 3(c)(A)(ii) related to FLEX Options Listings to remove the word “For” and add the words “may be settled” for readability. The proposed amendments are non-substantive.

The Exchange also proposes to add rule text to Options 3A, Section 5(b) identical to Nasdaq Phlx LLC (“Phlx”) which states, “or the stock leg of a FLEX Option, the minimum increments are set forth in Section 11(b)(1)(G), Section 12(a)(5), and Section 13(a)(5) below.” This sentence is intended to provide more context to distinguish the minimum increments for the stock leg of a FLEX Option.

The Exchange proposes to amend Options 3A, Section 11(b)(2)(D)(vi) related to FLEX Options Trading to add the following language to the rule, “Complex FLEX responses must be entered in increments provided in Options 3, Section 14(c)(1) at the proposed execution net price or at a price that is at least one cent better for the Agency Order for a Stock-Option Strategy or a Stock-Complex Strategy.” The minimum price increment for FLEX responses must adhere to the allowable price increments for FLEX. A response to a FLEX Auction of a Complex Order must have a net price. The System will reject a FLEX response that is not in the applicable minimum increment. The Exchange believes that this additional language will provide members with additional information as all Complex Orders trade in the increments described in Options 3, Section 14(c)(1) which states that bids and offers for Complex Options Strategies may be expressed in one cent (\$0.01) increments, and the options leg of Complex Options Strategies may be executed in one cent (\$0.01) increments, regardless of the minimum increments otherwise applicable to the individual options legs of the order. Bids and offers for Stock-Option Strategies or Stock-Complex Strategies may be expressed in any decimal price determined by the Exchange, and the stock leg of a Stock-Option Strategy or Stock-Complex Strategy may be executed in any decimal price permitted in the equity market. The options leg of a Stock-Option Strategy or Stock-Complex Strategy may be executed in one cent (\$0.01) increments, regardless of the minimum increments otherwise applicable to the individual options legs of the order. A similar change is also proposed for Options 3A, Section 12(c)(5)(G) that provides, “FLEX PIM responses in a complex strategy with a stock component that are through the

Stop Price must improve such Stop Price by at least one cent” and at proposed Options 3A, Section 13(c)(5)(G) that provides, “FLEX PIM responses in a complex strategy with a stock component that are through the Stop Price must improve such Stop Price by at least one cent.” Additionally, the same change is proposed for FLEX SOM at Options 3, Section 13(c)(5)(G).⁶⁵

The Exchange proposes to amend Options 3A, Section 14(b) related to Risk Protections to provide that certain complex order risk protections in Options 3, Section 16 are available to FLEX, such as Options Strategy Protections (only to FLEX Auctions and FLEX responses in Section 11(b) above), Size Limitation, the Price Limit for Complex Orders protections as applicable to the stock component (as described in Options 3, Section 16(a), *(except that DNTT is not available for the stock component)*, the Stock-Tied NBBO protections *(only to FLEX Auctions and FLEX responses in Section 11(b) above)* (as described in Options 3, Section 16(d)), and the Stock-Tied Reg SHO protections (as described in Options 3, Section 16(e)). The Exchange proposes this rule text to make clear that “Do-Not-Trade-Through” or “DNTT” will not apply to the stock component of the order. This additional language provides greater clarity to the risk protections. The Exchange notes that DNTT applies only to options transactions. The stock component of the order is not executed on the Exchange and therefore would not be subject to DNTT.

The Exchange proposes to amend Options 3A, Section 18(a)(3) to remove the word “options” as the position is for the index.

The Exchange proposes to amend Options 3A, Section 18(b)(1) related to Position Limits to insert the word “cash-settled” for clarity into the Equity Options section concerning cash-settlement. This amendment is not substantive.

The Exchange proposes to amend Options 3A, Section 18(c)(1) relating to aggregation of FLEX Positions. Currently, pursuant to proposed Section 18(c)(1), commencing at the close of trading two business days prior to the last trading day of the calendar quarter, positions in P.M.-settled FLEX Index Options (*i.e.*, FLEX Index Options having an exercise settlement value determined by the level of the index at the close of trading on the last trading

day before expiration) shall be aggregated with positions in Quarterly Options Series on the same index with the same expiration and shall be subject to the position limits set forth in Options 4A, Section 6, or Section 7 as applicable. The Exchange proposes to amend the rule text to amend the *e.g.*, language to instead provide that the settlement value for FLEX Index Options is derived from closing prices on the expiration date. The Exchange is amending the rule text to reflect the current practice with respect to p.m.-settled Index Options, including FLEX Index Options. ISE Options 4A, Section 12(a)(6) provides that P.M.-settled standard index options have an exercise settlement value that is derived from closing prices on the expiration day.

The Exchange proposes to amend Options 3A, Section 19 with respect to Exercise Limits to make non-substantive technical amendments to change “index” to “indexes” and remove the word options, as the limit is on the underlying.

Implementation

The Exchange proposes to implement the rule changes on or before December 20, 2026. The Exchange will issue an Options Trader Alert notifying Members of each implementation date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁶⁷ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

FLEX Percentages

The Exchange believes that the proposed enhancement to allow prices in FLEX trading to be expressed using a percentage-based methodology would remove impediments to and perfect the mechanism of a free and open market as this change would provide greater flexibility in terms of describing an option contract tailored to the needs of the investor. In addition, the Exchange believes that the related changes to specify how exercise prices and bids/offers will be rounded, and how they will be stated using the proposed percentage-based methodology should provide greater clarity and allow market participants to specify contracts that

⁶⁵ As proposed, Options 3, Section 13(c)(5)(G) would state that FLEX SOM responses in a complex strategy with a stock component that are through the Stop Price must improve such Stop Price by at least one cent.

⁶⁶ 15 U.S.C. 78f(b).

⁶⁷ 15 U.S.C. 78f(b)(5).

meet their particular needs. In addition, the proposed changes would align the Exchange's FLEX rules with the FLEX rules of Cboe as noted throughout the "Purpose—FLEX Percentages" subsection above, and therefore raises no novel issues.

FLEX DAC

The Exchange believes that the proposed DAC order will promote just and equitable principles of trade and will remove impediments to and perfect the mechanism of a free and open market and national market system, as it will allow market participants to incorporate into the pricing of their options the closing price of the underlying on the transaction date based on the amount in which the price or value of the underlying change intraday, thus, allowing investors to incorporate potential market moves that may occur following the execution of an order up to the market close. As described above, the market close is a time in which a significant number of participants interact on the equity markets. This activity may contribute to substantially increased liquidity and significant price volatility near the close of the equity markets, which can potentially cause the closing prices of the underlyings and, therefore, the settlement prices of options on those underlyings to greatly deviate from the average option execution prices traded earlier that trading day. The Exchange believes DAC orders will serve to protect investors by allowing them, through use of the underlying reference prices and delta, to fully hedge their options positions taken during the trading day through the market close and potentially benefit from price movements at the close. Also, as managed funds have begun utilizing strategies at the close in order to mitigate risk at the close and participate in beneficial market moves at the same time, the Exchange believes that DAC orders will offer an additional method by which these funds will be able to meet these objectives through the execution of FLEX options strategies, thereby benefiting investors that hold shares of these funds.

Additionally, the proposed restrictions in Options 3A, Section 6(c)(2) in connection with the submission of simple DAC orders in equity options are designed to prevent fraudulent and manipulative acts and practices and protect investors by mitigating the potential risk associated with expiration day price swings, which may potentially expose DAC order users to the gamma effect of options as they become more sensitive to underlying

price changes as such options approach expiration, and reducing the amount of time during which the underlying price could potentially move. As described above, single-name securities may experience greater price sensitivity and may experience larger price swings than compared to indexes and ETFs, and DAC option holders in particular may potentially be subject to a greater risk of paying much higher premiums given the price adjustment at close. The Exchange believes the proposed restrictions will minimize any potential incentive to attempt to manipulate the equities that may underlie a DAC order, particularly those securities that may experience relatively lower volume, and will mitigate potential risk to holders of DAC options in single-name securities.

The Exchange further believes that the adoption of DAC orders on the Exchange will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system because DAC orders will be entered, priced, prioritized, allocated and execute as any other FLEX Order would when submitted into any FLEX auction. Like any FLEX Order, a FLEX DAC order may only be submitted into FLEX Options series eligible for trading pursuant to the FLEX Rules. As such, market participants would not be subject to any new or novel order entry, pricing, allocation, and execution processes in relation to their DAC orders as such orders will be handled pursuant to the Exchange Rules in Options 3A governing the applicable FLEX auction processes, which have been previously approved by the Commission.

The Exchange believes that the general delta value requirements are in line with just and equitable principles or trading and with the protection of investors because they are consistent with the manner in which a delta is commonly known to function and generally used in options trading. Further, the Exchange believes that proposed Options 3A, Section 14(d) provides a System control in connection with DAC orders that is designed to protect investors. The Exchange believes the proposed reference price reasonability check will mitigate risks associated submitting a DAC order with a reference price unintended by the Member as a likely result of human or operational error. The Exchange also notes that the proposed DAC order reasonability check in Options 3A, Section 14(d) is materially identical to Cboe's DAC order reasonability check in Cboe Rule 5.34(c)(11).

In addition, the Exchange believes that permitting a DAC order to execute only in a FLEX auction will protect investors and serve to remove impediments to and perfect the mechanism of a free and open market and national market system, because it is consistent with the intended purpose of DAC orders. This would ensure that DAC orders that can execute would do so within a short time following submission and therefore in a manner that achieves a Member's desired delta-adjusted price. As described above, the goal of a DAC order is to adjust the execution price based on a delta value applied to the change in the underlying price between the market close and the time of the trade. Therefore, a DAC order must be able to execute as close in time as possible to the time of order submission (*i.e.*, the point in time a Member designates a reference price and delta) so as to allow the reference price and related delta to remain in line with the underlying price information at the time of submission and achieve the User's desired result. As such, a DAC order submitted to a FLEX auction, like any FLEX Order submitted in a FLEX auction, will be executed within a short time following submission. Thus, the Exchange believes that the proposed limitation to FLEX auctions would protect investors by allowing DAC orders to execute in line with Members' expectations and a DAC order's intended purpose.

The Exchange believes that by providing that a User may not apply the DAC order instruction to a FLEX Order for a FLEX Option series with an exercise price formatted as a percentage of the closing value of the underlying on the trade date will remove impediments to and perfect the mechanism of a free and open market and national market system and generally protect investors because these FLEX terms are inconsistent with the DAC order instruction and would conflict with the manner in which the System calculates the delta-adjusted price upon the market close.

The Exchange notes that it has discussed with the OCC and OPRA its plan to adopt DAC orders and to apply the restatement process described above to FLEX DAC orders. Moreover, the Exchange represents that it has the necessary systems capacity to handle any additional order traffic and the related restatements that may result from the adoption of DAC orders, thereby ensuring the protection of investors. The Exchange also has consulted with OPRA and understands that they have the necessary system capacity as well. The Exchange also

believes that its existing surveillances are adequate to monitor trading of DAC orders thereby helping to ensure the maintenance of a fair and orderly market.

Finally, as noted in the purpose section, the proposed DAC changes are substantially similar to Cboe's DAC order instruction. As discussed above, there are minor differences in the Exchange's proposed implementation of DAC orders. Notably, the Exchange will not adopt Cboe's DAC rule provisions related to open outcry trading, designations for different trading sessions, or Asian- and Cliquet-settled FLEX Options, as the Exchange does not offer these capabilities today. The Exchange therefore does not believe that the proposed changes raise any novel issues that have not already been considered by the Commission, notwithstanding these minor differences.

FLEX v. Non-FLEX

Specifically, the Exchange believes the proposed rule change will benefit investors by expanding investors' choices and flexibility with respect to the trading of FLEX Options. The Exchange believes that introducing FLEX v. Non-FLEX Orders will increase order flow to the Exchange, increase the variety of options products available for trading, and provide a valuable tool for investors to manage risk.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market as FLEX v. Non-FLEX Orders would enable market participants to execute a complex strategy including a combination of FLEX Option series and non-FLEX Option series, which would, in turn, provide greater opportunities for market participants to manage risk through the use of a complex FLEX Order to the benefit of investors and the public interest. The proposed rule change will benefit Members by providing a more efficient mechanism for Members to provide and seek liquidity for customized or complex FLEX strategies which include a non-FLEX Option leg(s).

Further, trading FLEX Options, including FLEX v. Non-FLEX Orders, on an exchange is an alternative to trading customized options in OTC markets and carries with it the advantages of exchange markets such as transparency, parameters and procedures for clearance and settlement, and a centralized counterparty clearing agency. Therefore, the Exchange believes the proposed rule change will promote these same benefits for the market as a whole by providing

an additional venue for market participants to seek liquidity for customized, large-sized, or Complex FLEX option orders, including those with a non-FLEX Option leg(s). The Exchange believes that providing an additional venue for these FLEX orders, rather than potentially splitting the orders across OTC and exchange markets, will benefit investors by increasing competition for order flow and executions, and thereby potentially result in more competitive pricing related to FLEX Options.

The Exchange believes that the proposed changes to Options 3A, Section 7 to add FLEX v. Non-FLEX Orders to the list of complex orders available for FLEX trading, are consistent with the Act and remove impediments to and perfect the mechanism of a free and open market and a national market system because the changes will allow investors to trade in a more efficient manner, allowing investors to better customize their trading strategies and implement more precise trading strategies which are not available under current rules. Currently, a market participant is unable to trade a FLEX Option and a listed option as part of the same complex strategy; such user must submit an order containing the FLEX Option(s) and an order containing the listed option. This may introduce additional complexities such as price and legging risk, which would be eliminated under the proposed rule change. These complexities may unnecessarily limit market participants' ability to trade in an exchange environment that offers the added benefits of transparency, price discovery, liquidity, and financial stability. These investors may have improved capability under the proposed rule change to execute strategies to meet their specific investment objectives by using a single order with customized FLEX Option legs with FLEX and Non-FLEX Orders.

The Exchange's proposal to amend Options 3A, Section 12(e)(1)(B)(ii) related to FLEX PIM to add rule text concerning guaranteed allocation is consistent with the Act as this is case today and this rule text will serve as a guidepost and reminder that a Member may elect less than their guaranteed allocation in non-FLEX Option legs.

Similarly, the Exchange also believes the proposed changes to Options 3A, Section 7(a), to remove the requirement that each leg of a complex FLEX Order must have the same exercise style, will remove impediments to and perfect the mechanism of a free and open market and benefit investors, because it will provide Members with additional

flexibility and precision in their investment strategies, by allowing Members to trade complex strategies that would otherwise be required to split into multiple, separate orders.

The Exchange believes the proposed addition of Options 3A, Section 9(b) which address when the Exchange may halt trading in a FLEX Options complex strategy (whether comprised of all FLEX Option legs or FLEX and non-FLEX Option legs), are consistent with the Act and promotes the public interest and the protection of investors by clarifying the Exchange's authority with respect to FLEX Options complex strategies comprised of all FLEX Option legs and providing a consistent and transparent procedure with respect to FLEX Options complex strategies comprised of FLEX and non-FLEX Option legs, that would be applied by the Exchange, similar to trading halt authority under current rules.⁶⁸ Further, the proposed change to add the defined term "FLEX Option series" provides further clarity within the Rules and eliminates potential confusion by providing a definition of "FLEX Option series" to the benefit of investors.

The Exchange believes the proposed changes to Options 3A, Section 11(a)(2), which provide clarity with respect to the criteria required for Complex FLEX Orders with FLEX Option legs only in new (B), helps will help promote a fair and orderly national options market system. As such, the changes proposed under Options 3A, Section 11(a)(2)(C), to separate out the requirements for Complex FLEX Orders with FLEX Option legs only, provide clarity regarding the requirements for Complex FLEX Orders with FLEX Option legs only, as compared to the proposed requirements for Complex FLEX Orders with FLEX and non-FLEX Option legs.

The Exchange believes the proposed pricing requirements for FLEX v. Non-FLEX Orders, set forth in proposed Options 3A, Section 11(a)(2)(C), would remove impediments to and perfect the mechanism of a free and open market, as the proposed trading process for FLEX v. Non-FLEX Orders will provide the ability for investors to achieve the desired net package price for those orders while protecting customers with resting interest in the non-FLEX simple order book. By requiring a FLEX v. Non-FLEX Order submitted into a FLEX Auction to include a bid or offer price for each FLEX Option leg, but no bid or offer for each non-FLEX Option leg, and a net price, the requirements ensure that the non-FLEX Option leg will be subject to the same pricing requirements as they

⁶⁸ See, e.g., Options 3A, Section 9.

would if not part of a FLEX v. Non-FLEX Order. Specifically, the price of any non-FLEX Option leg that is part of a FLEX v. Non-FLEX Order may not be outside of the BBO or NBBO. The Exchange's proposal will continue to protect Priority Customer interest on the Exchange, as the non-FLEX Option legs of a FLEX v. Non-FLEX Order will always trade at a price better than BBO if there is a Customer on a leg. Further, the price of a FLEX Option leg(s) that is part of a FLEX v. Non-FLEX Order must, following execution of the Non-FLEX Option leg(s), serve to achieve the net execution price (which may not be worse than the desired net price included at order submission), which the Exchange believes will protect investors by ensuring the price of the FLEX Option leg(s) adhere to the agreed upon execution prices and the order's limit price.

The Exchange believes this proposed trading process will ensure that a user who chooses to submit a listed (*i.e.*, Non-FLEX) leg as part of a FLEX v. Non-FLEX Order is subject to the same pricing requirements as they would be if the listed leg was not submitted with FLEX Option legs for execution. Ultimately, FLEX v. Non-FLEX Orders will trade in the same manner as Complex FLEX Orders do today, and execution of the non-FLEX Option legs of these orders will continue to comply with linkage requirements (by not permitting trade-throughs of the NBBO) and protect resting customer interest in the simple order book. Further, the Exchange believes that the proposal to not permit the non-FLEX Option legs of a FLEX v. Non-FLEX Order to leg into the simple order book is consistent with the Act and promotes the public interest and the protection of investors, because it will provide for more efficient execution and processing of FLEX v. Non-FLEX Orders, as legging would prevent execution opportunities for these orders (as discussed above).

Finally, the Exchange believes that the proposed rule change is designed to not permit unfair discrimination among market participants as all Members may, but are not required to, trade FLEX v. Non-FLEX Orders.

Other FLEX Changes

The Exchange's proposal to amend Options 3A, Section 3(c)(A)(ii) related to FLEX Options Listings to remove the word "For" and add the words "may be settled" is non-substantive.

The Exchange's proposal to amend Options 3A, Section 11(b)(2)(D)(vi) and Options 3A, Section 12(c)(5)(G) to describe the minimum increments is consistent with the Act because all

Complex Orders trade in the increments described in Options 3, Section 14(c)(1) which states that bids and offers for Complex Options Strategies may be expressed in one cent (\$0.01) increments, and the options leg of Complex Options Strategies may be executed in one cent (\$0.01) increments, regardless of the minimum increments otherwise applicable to the individual options legs of the order. Bids and offers for Stock-Option Strategies or Stock-Complex Strategies may be expressed in any decimal price determined by the Exchange, and the stock leg of a Stock-Option Strategy or Stock-Complex Strategy may be executed in any decimal price permitted in the equity market. The options leg of a Stock-Option Strategy or Stock-Complex Strategy may be executed in one cent (\$0.01) increments, regardless of the minimum increments otherwise applicable to the individual options legs of the order.

The Exchange's proposal to amend Options 3A, Section 14(b) to provide that certain complex order risk protections in Options 3, Section 16 are not available for the stock component is consistent with the Act as the risk protections are for the options.

The Exchange's proposal to amend Options 3A, Section 18(b)(1) related to Position Limits to insert the word "cash-settled" for clarity into the Equity Options section concerning cash-settlement is non-substantive.

The Exchange's proposal to amend Options 3A, Section 19 with respect to Exercise Limits are non-substantive technical amendments.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed enhancements with respect to FLEX percentages and FLEX DAC will not impose an undue burden on intramarket competition because the use of both the percentage methodology and the DAC order instruction will be optional and available to all Members on the same terms. For example, any Member may determine whether to apply a DAC order instruction to its FLEX Order, and the System will handle FLEX DAC orders submitted by Members in the same manner pursuant to the proposed rule change.

The proposed percentage methodology will not impose an undue burden on inter-market competition as it is intended to provide greater flexibility in terms of describing an option contract

tailored to the needs of the investor. Further, the proposed DAC order instruction will not impose an undue burden on inter-market competition because it is intended to provide market participants with an additional means to manage risks in connection with potential volatility and downside price swings that may occur near the market close, while allowing them to receive potential benefits associated with any market moves near the market close. As noted above, the proposed enhancements to FLEX are substantially similar to Cboe's FLEX rules. As such, the Exchange believes that its proposal may foster competition among options exchanges, as it would provide additional choices for investors and market participants who seek to utilize the proposed percentage methodology or the proposed DAC functionality. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."⁶⁹

The Exchange does not believe that the proposed rule changes for FLEX v. Non-FLEX will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as all Members that are registered as FLEX Traders in accordance with the Exchange's Rules will be able to trade FLEX v. Non-FLEX Orders in the same manner.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the proposal is designed to increase competition for order flow on the Exchange in a manner that is beneficial to investors because it is designed to provide investors seeking to execute both a FLEX Option(s) and a listed option(s) with a more effective method of executing the trades, which may result in trade efficiencies (*i.e.*, pricing or reporting (*e.g.*, position limits) efficiencies)⁷⁰ and reduced risk (*i.e.*, pricing and legging risk). The Exchange

⁶⁹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

⁷⁰ See, *e.g.*, Options 3A, Section 18.

believes the proposed rule change will encourage competition, as it may broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options. The Exchange believes the proposed rule change may increase competition as it may lead to the migration of options currently trading in the OTC market to trading on the Exchange. Also, any migration to the Exchange from the OTC market would result in increased market transparency and thus increased price competition.

The Exchange further notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. All Members may, but are not required to, trade FLEX v. Non-FLEX Orders at the Exchange. The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as other exchanges could adopt this order type if so desired.

Other FLEX Changes

The Exchange's proposal to amend Options 3A, Section 11(b)(2)(D)(vi) and Options 3A, Section 12(c)(5)(G) to describe the minimum increments does not impose an undue burden on competition because all Complex Orders trade in the increments described in Options 3, Section 14(c)(1) on ISE uniformly.

The Exchange's proposal to amend Options 3A, Section 14(b) to provide that certain complex order risk protections in Options 3, Section 16 are not available for the stock component is does not impose an undue burden on competition as the risk protections are for the options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section

19(b)(3)(A)(iii) of the Act⁷¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁷²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-ISE-2026-04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-ISE-2026-04. 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 filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to file number SR-ISE-2026-04 and should be

submitted on or before February 23, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷³

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104730; File No. SR-CboeBZX-2025-115]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the Canary Staked INJ ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

January 28, 2026.

I. Introduction

On August 11, 2025, Cboe BZX Exchange, Inc. ("BZX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares of the Canary Staked INJ ETF under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on August 28, 2025.³

On September 25, 2025, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On November 19, 2025, the Commission initiated proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to

⁷³ 17 CFR 200.30-3(a)(12) and (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 103769 (Aug. 25, 2025), 90 FR 42041. The Commission has received no comment letters on the proposed rule change.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 104067, 90 FR 47008 (Sept. 30, 2025). The Commission designated November 26, 2025, as the date by which the Commission shall approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷¹ 15 U.S.C. 78s(b)(3)(A)(iii).

⁷² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

approve or disapprove the proposed rule change.⁷

Section 19(b)(2) of the Act⁸ provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on August 28, 2025.⁹ The 180th day after publication of the proposed rule change is February 24, 2026. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹⁰ designates April 25, 2026, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-CboeBZX-2025-115).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104701; File No. SR-MEMX-2026-03]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposal To Amend the Short Term Option Series Program in Rule 19.5, Interpretation and Policy .05

January 28, 2026.

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 January 28, 2026, MEMX LLC (“MEMX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Short Term Option Series Program in Rule 19.5, Interpretation and Policy .05 to permit the listing of up to two Monday and Wednesday expirations for options on certain individual stocks and Fund Shares. The text of the proposed rule change is provided in Exhibit 5 and is available on the Exchange’s website at <https://info.memxtrading.com/regulation/rules-and-filings/>.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Short Term Option Series Program in Rule 19.5, Interpretation and Policy .05. Specifically, the Exchange proposes to permit the listing of up to two Monday and Wednesday expirations for options on certain individual stocks or exchange-traded funds (“Fund Shares”) (as defined in Rule 19.3(i)) (collectively, “Qualifying Securities”). This is a competitive filing based on a similar proposal submitted by Nasdaq ISE, LLC (“ISE”),³ which was recently approved by the Securities and Exchange Commission (the “Commission”).⁴

Currently, as set forth in Rule 19.5, Interpretation and Policy .05(h), after an option class has been approved for listing and trading on the Exchange as a Short Term Option Series pursuant to Rule 19.5, Interpretation and Policy .05,⁵ the Exchange may open for trading on any Thursday or Friday that is a business day (“Short Term Option Opening Date”) series of options on that class that expire at the close of business on each of the next five Fridays that are business days and are not Fridays in which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire (“Friday Short Term Option Expiration Dates”). The Exchange may have no more than a total of five Short Term Option Expiration Dates (“Short Term Option Weekly Expirations”). Further, if the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date for

³ See Securities Exchange Act Release No. 103434 (July 10, 2025), 90 FR 31716 (July 15, 2025) (SR-ISE-2025-15) (“ISE Amendment No. 1”).

⁴ See Securities Exchange Act Release No. 104624 (January 16, 2026) (SR-ISE-2025-15) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Short Term Option Series Program to List Qualifying Securities) (“ISE Approval”).

⁵ The term “Short Term Option Series” means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Monday, Tuesday, Wednesday, Thursday, or Friday of the next business week, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday, respectively. For a series listed pursuant to this section for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday. See Exchange Rule 16.1.

⁷ See Securities Exchange Act Release No. 104226, 90 FR 53043 (Nov. 24, 2025).

⁸ 15 U.S.C. 78s(b)(2).

⁹ See *supra* note 3 and accompanying text.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Short Term Option Weekly Expirations will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on a Friday, the Short Term Option Expiration Date for Short Term Option Weekly Expirations will be the first business day immediately prior to that Friday.

Additionally, the Exchange may open for trading series of options on the symbols provided in Table 1 of Rule 19.5, Interpretation and Policy .05(h) that expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days beyond the current week and are not business days in which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire (“Short Term Option Daily Expirations”).⁶ For those symbols listed in Table 1, the Exchange may have no more than a total of two Short Term Option Daily Expirations beyond the current week for each of Monday, Tuesday, Wednesday, and Thursday expirations, as applicable, at one time.

The Exchange proposes to expand the Short Term Option Series Program to permit certain Qualifying Securities to list up to two Monday and Wednesday expirations in addition to the Friday weekly expiration. The Exchange proposes to define Qualifying Securities as eligible individual stocks or Fund Shares, which are separate and apart from the symbols listed in Table 1, that have received approval to list additional expiries on specific symbols, that meet the following criteria on a quarterly basis:

(1) an underlying security, as measured on the last day of the prior calendar quarter, must have:

(A) a market capitalization of greater than 700 billion dollars for an individual stock based on the closing price,⁷ or

(B) Assets under Management (“AUM”) greater than 50 billion dollars for a Fund Share based on net asset value (“NAV”);

(2) monthly options volume, as measured by sides traded in the last month preceding the quarter end, of greater than 10 million options;

⁶ As set forth in Table 1 of Rule 19.5, Interpretation and Policy .05(h), the Exchange currently permits expirations in SPY, IWM, QQQ on Mondays, Tuesdays, Wednesdays and Thursdays. Also, the Exchange permits expirations in GLD, SLV and TLT on Mondays and Wednesdays. Finally, the Exchange permits expirations in USO and UNG on Wednesdays.

⁷ The closing price and the opening price shall be that of the primary exchange where the security is listed.

(3) a position limit of at least 250,000 contracts; and

(4) participate in the Penny Interval Program.

Each calendar quarter, the Exchange will apply the above criteria to individual stocks and Fund Shares to determine eligibility for the following quarter as a Qualifying Security. Beginning on the second trading day in the first month of each calendar quarter, the market capitalization of individual stocks shall be calculated based on the closing price established on the primary exchange on the last trading day of the prior calendar quarter and the AUM for Fund Shares shall be calculated based on the NAV established on the primary exchange on the last trading day of the prior calendar quarter. The data establishing the volume thresholds will be established by using data from the last month of the prior calendar quarter from The Options Clearing Corporation. For options listed on the first trading day of a given calendar quarter, the volume shall be calculated using the last month of the quarter prior to that calendar quarter.⁸ The Exchange will make the list of Qualifying Securities available by close of business on the first trading day of the quarter.⁹

Eligible Qualifying Securities would be permitted to list two Short Term Option Expiration Dates beyond the current week for each Monday and Wednesday expiration at one time. For Qualifying Securities, the Exchange would not list an expiry on a day when there will be an Earnings Announcement¹⁰ that takes place after market close. For purposes of this rule proposal, earnings announcements shall include official public quarterly or yearly earnings filed with the Commission (“Earnings Announcement”).¹¹ Not listing an expiry for a Qualifying Security on a day where there is an Earnings Announcement that takes place after market close will avoid permitting an additional expiry on a day where post-close price volatility may be impacted due to the Earnings Announcement.

⁸ OCC data becomes available for the end of a quarter on the first trading day of a new quarter. For example, if the Exchange were to list Qualifying Securities in Q3 of 2025, The Exchange would look at the volume, measured in sides, for the last month of Q2 2025 or June 2025.

⁹ The Exchange will make this information available on its website. This information will be freely accessible to the public.

¹⁰ An Earnings Announcement is an official public statement of a company’s profitability for a specific period, typically a quarter or a year.

¹¹ For purposes of this proposal, pre-announcements or “guidance” shall not be considered an Earnings Announcement.

Qualifying Securities that do not continue to meet the above criteria would no longer be permitted to list Monday and Wednesday expiries beginning on the second day of the following quarter.¹²

The proposed Monday Qualifying Securities expirations will be similar to the current Monday Expirations in SPY, QQQ, and IWM (among other symbols that may list a Monday Expiration) in Short Term Option Daily Expirations set forth in Rule 19.5, Interpretation and Policy .05(h), such that the Exchange may open for trading on any Friday or Monday that is a business day (beyond the current week) series of options on Qualifying Securities to expire on any Monday of the month that is a business day and is not a Monday in which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire, provided that Monday expirations that are listed on a Friday must be listed at least one business week and one business day prior to the expiration (“Monday Qualifying Securities Expirations”).¹³ In the event Qualifying Securities would expire on a Monday and that Monday is the same day that a standard expiration options series, Monthly Options Series, or Quarterly Options Series expires, the Exchange would skip that week’s listing and instead list the following week; the two weeks of Monday Qualifying Securities Expirations would therefore not be consecutive. Today, Monday expirations in SPY, QQQ, and IWM similarly skip the weekly listing in the event the weekly listing would expire on the same day in the same class as a standard expiration options series, Monthly Options Series, or Quarterly Options Series.

The proposed Wednesday Qualifying Securities expirations will be similar to the current Wednesday SPY, QQQ, and IWM (among other symbols that may list a Wednesday Expiration) in Short Term Option Daily Expirations, as set forth in Rule 19.5, Interpretation and Policy .05(h), such that the Exchange may open for trading on any Tuesday or Wednesday that is a business day (beyond the current week) series of options on Qualifying Securities to expire on any Wednesday of the month that is a business day and is not a Wednesday in which standard expiration options series, Monthly Options Series, or Quarterly Options

¹² The Exchange has noted the additional expiries in a proposed Table 2 in Rule 19.5, Interpretation and Policy .05(h) along with the criteria for a Qualifying Security.

¹³ They may also trade on Fridays, as is the case for all options series in the Short Term Option Series Program.

Series expire (“Wednesday Qualifying Securities Expirations”).¹⁴ In the event Qualifying Securities would expire on a Wednesday and that Wednesday is the same day that a standard expiration options series, Monthly Options Series, or Quarterly Options Series expires, the Exchange would skip that week’s listing and instead list the following week; the two weeks of Wednesday Qualifying Securities Expirations would therefore not be consecutive. Today, Wednesday expirations in SPY, QQQ, and IWM similarly skip the weekly listing in the event the weekly listing would expire on the same day in the same class as a standard expiration options series, Monthly Options Series, or Quarterly Options Series.

The interval between strike prices for the proposed Monday and Wednesday Qualifying Securities Expirations will be the same as those currently applicable for SPY, QQQ, and IWM Monday and Wednesday Expirations (among other symbols that may list a Monday or Wednesday Expiration) in the Short Term Option Series Program.¹⁵ Specifically, the Monday and Wednesday Qualifying Securities Expirations will have a strike interval of (i) \$0.50 or greater for strike prices below \$100, and \$1 or greater for strike prices between \$100 and \$150 for all option classes that participate in the Short Term Option Series Program, (ii) \$0.50 for option classes that trade in one dollar increments and are in the Short Term Option Series Program, or (iii) \$2.50 or greater for strike prices above \$150.¹⁶ As is the case with other equity options series listed pursuant to the Short Term Option Series Program, the Monday and Wednesday Qualifying Securities Expirations series will be P.M.-settled.

Pursuant to Rule 19.5, Interpretation and Policy .05(h), with respect to the Short Term Option Series Program, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday, and a Wednesday expiration series shall expire on the first business day immediately prior to that Wednesday, e.g., Tuesday of that week if the Wednesday is not a business day.

Currently, for each option class eligible for participation in the Short Term Option Series Program, the Exchange is limited to opening thirty

(30) series for each expiration date for the specific class.¹⁷ The thirty (30) series restriction does not include series that are open by other securities exchanges under their respective weekly rules; the Exchange may list these additional series that are listed by other options exchanges.¹⁸ With the proposed changes, this thirty (30) series restriction would apply to Monday and Wednesday Qualifying Securities Expirations as well. In addition, the Exchange will be able to list series that are listed by other exchanges, assuming they file similar rules with the Commission to list Monday and Wednesday Qualifying Securities Expirations.

With this proposal, Monday and Wednesday Qualifying Securities Expirations would be treated similar to existing SPY, QQQ, and IWM Monday and Wednesday Expirations. With respect to standard expiration option series, Monday and Wednesday Qualifying Securities Expirations will be permitted to expire in the same week in which standard expiration option series on the same class expire.¹⁹ Not listing Monday and Wednesday Qualifying Securities Expirations for one week every month because there was a standard options series on that same class on the Friday of that week would create investor confusion.

Further, as with SPY, QQQ, and IWM Monday and Wednesday Expirations, the Exchange would not permit Monday and Wednesday Qualifying Securities Expirations to expire on a business day in which standard expiration option series, Monthly Options Series, or Quarterly Options Series expire.²⁰ Therefore, all Monday and Wednesday Qualifying Securities Expirations would expire at the close of business on each of the next two Mondays and Wednesdays, respectively, that are business days and are not business days in which standard expiration option series, Monthly Options Series, or Quarterly Options Series expire. The Exchange believes that it is reasonable to not permit two expirations on the same day in which a standard expiration option series, Monthly Options Series, a Quarterly Options Series would expire because those options would be duplicative of each other.

The Exchange does not believe that any market disruptions will be encountered with the introduction of Monday and Wednesday Qualifying

Securities Expirations. The Exchange currently trades P.M.-settled Short Term Option Series that expire Monday, Tuesday, Wednesday and Thursday on several symbols²¹ and has not experienced any market disruptions nor issues with capacity.²² Today, the Exchange has surveillance programs in place to support and properly monitor trading in Short Term Option Series that expire Monday, Tuesday, Wednesday and Thursday on several symbols.²³ The Exchange believes that it has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Monday and Wednesday Qualifying Securities Expirations.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.²⁴ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁵ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5)²⁶ requirement that the rules of an exchange not be

²¹ See *supra* note 6.

²² In its filing to permit the listing of up to two Monday and Wednesday expirations for options on certain Qualifying Securities, ISE provided charts and analysis demonstrating the percentage of weekly listings in the options industry compared to monthly, quarterly, and Long-Term Options Series for a twelve-month period ending on February 11, 2025. The information includes time averaged data (the number of strikes by maturity date divided from the number of trading days) for all 18 options markets through February 11, 2025. The filing provides further that the Sample Qualifying Securities (selected based on January 2025 data) have an average annualized closing volatility of generally less than 20% and are more volatile than SPY, QQQ and IWM, but given that these are individual stocks it is reasonable to expect that they have idiosyncratic characteristics (increasing their volatility) relative to broad based Exchange-Traded Fund Shares like SPY, QQQ and IWM. ISE sourced this information, which are estimates, from OCC. See ISE Amendment No. 1.

²³ See *supra* note 6.

²⁴ 15 U.S.C. 78f(b).

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ *Id.*

¹⁴ See *id.*

¹⁵ See Rule 19.5, Interpretation and Policy .05(e). The Exchange notes that equity options which have an expiration of more than 21 days from the listing date would also be subject to the intervals as noted within Rule 19.5, Interpretation and Policy .05(f).

¹⁶ See Rule 19.5, Interpretation and Policy .05(e) and (g).

¹⁷ See Rule 19.5, Interpretation and Policy .05(c).

¹⁸ See Rule 19.5, Interpretation and Policy .05(a).

¹⁹ See Rule 19.5, Interpretation and Policy .05(h).

²⁰ See *id.*

designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, similar to Monday expirations in SPY, QQQ, and IWM, the proposal to permit Monday and Wednesday Qualifying Security Expirations, subject to the proposed limitation of two expirations beyond the current week, would protect investors and the public interest by providing the investing public and other market participants more choice and flexibility to closely tailor their investment and hedging decisions in these options and allow for a reduced premium cost of buying portfolio protection, thus allowing them to better manage their risk exposure.

The Exchange believes that the proposed criteria for Qualifying Securities requires individual stocks and Fund Shares to be highly liquid. A market capitalization measured on the last day of the prior calendar quarter based on the closing price of the underlying, of greater than 700 billion dollars for an individual stock, or AUM of 50 billion dollars for a Fund Share, in conjunction with the monthly options volume requirement of greater than 10 million options as measured by sides traded in the last month preceding the quarter end, is very restrictive. This requirement represents substantially less than 1% of individual stocks (only eight (8) individual stocks existed that would have qualified to trade additional expiries as of January 1, 2025) and substantially less than 1% of Fund Shares (only seven (7) Fund Shares existed that would have qualified to trade additional expiries as of January 1, 2025, pursuant to Rule 19.5, Interpretation and Policy .05(h), Table 1, to trade additional expiries) traded. Therefore, an individual stock or Fund Share that meets the aforementioned market capitalization and volume requirements are highly liquid and could be viewed as stable securities.

The Exchange notes that with respect to position limits, Exchange Rule 18.7(d)(5) provides, that “[t]o be eligible for the 250,000 contract limit, either the most recent six (6) month trading volume of the underlying security must have totaled at least 100 million shares or the most recent six-month trading volume of the underlying security must have totaled at least seventy-five (75) million shares and the underlying security must have at least 300,000,000 shares currently outstanding.” The 250,000 contract position limit is the highest position limit by Exchange rules. Options that qualify for the 250,000 position (and exercise) limit are highly liquid securities that have met

the stringent requirements noted in Exchange Rule 18.7(d)(5) to qualify for the highest position limit.

Finally, a Qualifying Security must participate in the Penny Interval Program. In order to qualify for the Penny Interval Program, an options class must be among the 300 most actively traded multiply listed option classes overlying securities priced below \$200.²⁷ The most actively traded options classes are included in the Penny Interval Program based on certain objective criteria (trading volume thresholds and initial price tests).

The number of individual stocks currently meeting all four criteria for a Qualifying Security was eight (8), and the number of Fund Shares currently meeting all four criteria for a Qualifying Security that do not already have Monday and Wednesday expirations was one (1), as of June 27, 2025. Both totals represent less than 0.2% of all securities with options listed. The Exchange believes that since individual stocks are the dominant constituents of the broad-based indexes (e.g., S&P 500 Index and Nasdaq-100 Index), the improvement in price transparency brought about by Monday and Wednesday trading will offer Market Makers and investors better volatility pricing which will inform trading on the related products to these indexes. The Exchange believes that the proposed criteria for Qualifying Securities is consistent with the protection of investors and the general public because the criteria targets the most liquid individual stocks and Fund Shares.

The Exchange would not list an expiry on a Qualifying Security on a day where there will be an Earnings Announcement that takes place after market close to avoid post close price volatility that may arise from the Earnings Announcement and which may impact exercise and/or assignment decisions.

Qualifying Securities that do not continue to meet the above criteria would no longer be permitted to list Monday and Wednesday expiries in the following quarter, although the Qualifying Security would potentially have two weeks of strikes already listed which will persist. These remaining listings could continue to be traded until they expire.

With this proposal, overall, the Exchange would add a small number of Monday and Wednesday Qualifying

Security Expirations by limiting the addition of two Monday expirations and two Wednesday expirations beyond the current week. The addition of Monday and Wednesday Qualifying Security Expirations would remove impediments to and perfect the mechanism of a free and open market by encouraging Market Makers to continue to deploy capital more efficiently and improve displayed market quality.²⁸ The Exchange believes that the proposal will allow Option Members to expand hedging tools and tailor their investment and hedging needs more effectively in Qualifying Securities as these funds are most likely to be utilized by market participants to hedge the underlying asset classes.

Similar to SPY, QQQ, and IWM Monday and Wednesday Expirations, the introduction of Monday and Wednesday Qualifying Security Expirations is consistent with the Act as it will, among other things, expand hedging tools available to market participants and allow for a reduced premium cost of buying portfolio protection. The Exchange believes that Monday and Wednesday Qualifying Security Expirations will allow market participants to purchase options on Qualifying Securities based on their timing as needed and allow them to tailor their investment and hedging needs more effectively, thus allowing them to better manage their risk exposure. Today, the Exchange lists other Monday and Wednesday expirations.²⁹

In particular, the Exchange believes the Short Term Option Series Program has been successful to date and that Monday and Wednesday Qualifying Security Expirations should simply expand the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur throughout the month in the same way that the Short Term Option Series Program has expanded the landscape of hedging.

There are no material differences in the treatment of SPY, QQQ and IWM Monday and Wednesday Expirations compared to the proposed Monday and Wednesday Qualifying Security Expirations. Given the similarities between SPY, QQQ and IWM Monday and Wednesday Expirations and the proposed Monday and Wednesday Qualifying Security Expirations, the Exchange believes that applying the provisions in 19.5, Interpretation and

²⁷ See Exchange Rule 21.5(d). Each December OCC ranks all multiply listed option classes based on National Cleared Volume for the six full calendar month from June 1 through November 30 for determination of the most actively traded option classes.

²⁸ Today, Market-Makers are required to quote a specified time in their assigned options series. See Rule 22.6.

²⁹ See Rule 19.5, Interpretation and Policy .05(h) Table 1.

Policy .05(h) that currently apply to SPY, QQQ and IWM Monday and Wednesday Expirations is justified.

The Exchange believes Monday and Wednesday Qualifying Security Expirations will allow market participants to purchase options on Qualifying Securities based on their timing as needed and allow them to tailor their investment and hedging needs more effectively. Further, the proposal to permit Monday and Wednesday Qualifying Security Expirations for options on Qualifying Securities listed pursuant to the Short Term Option Series Program, subject to the proposed limitation of two nearest expirations, would protect investors and the public interest by providing the investing public and other market participants more flexibility to closely tailor their investment and hedging decisions in the options on Qualifying Securities, thus allowing them to better manage their risk exposure.

In particular, the Exchange believes the Short Term Option Series Program has been successful to date and that Monday and Wednesday Qualifying Security Expirations should simply expand the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur throughout the month in the same way that the Short Term Option Series Program has expanded the landscape of hedging. Similarly, the Exchange believes Monday and Wednesday Qualifying Security Expirations should create greater trading and hedging opportunities and provide customers the flexibility to tailor their investment objectives more effectively.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in the proposed option expirations, in the same way that it monitors trading in the current Short Term Option Series for Monday and Wednesday SPY, QQQ and IWM expirations. The Exchange also represents that it has the necessary system capacity to support the new expirations. Finally, the Exchange does not believe that any market disruptions will be encountered with the introduction of these option expirations. As discussed above, the Exchange believes that its proposal is a modest expansion of weekly expiration dates for Monday and Wednesday Qualifying Security Expirations given that it will be limited to two Monday expirations and two Wednesday expirations beyond the current week.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, but rather will meet customer demand. The Exchange would uniformly apply the Qualifying Security criteria to options in individual stocks and Fund Shares. The Exchange believes that Options Members will continue to be able to expand hedging tools and tailor their investment and hedging needs more effectively in the Qualifying Securities. All market participants will be treated in the same manner under this proposal.

Similar to SPY, QQQ and IWM Monday and Wednesday Expirations, the introduction of Monday and Wednesday Qualifying Security Expirations does not impose an undue burden on competition. The Exchange believes that it will, among other things, expand the hedging tools available to market participants and allow for a reduced premium cost of buying portfolio protection. The Exchange believes that Monday and Wednesday Qualifying Security Expirations will allow market participants to purchase options on Qualifying Securities based on their timing as needed and allow them to tailor their investment and hedging needs more effectively.

Further, not adding an expiry for a Qualifying Security on a day where there will be an Earnings Announcement that takes place after market close does not impose an undue burden on competition as the Exchange would uniformly apply this practice to the listing of all Qualifying Securities.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as nothing prevents other options exchanges from proposing similar rules to list and trade Monday and Wednesday Qualifying Security Expirations. Further, the Commission recently approved a substantially similar rule change of another options exchange.³⁰

³⁰ See ISE Amendment No. 1 and ISE Approval.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act³¹ and Rule 19b-4(f)(6) thereunder.³²

A proposed rule change filed under Rule 19b-4(f)(6)³³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to the Exchange, waiver of the operative delay would allow the Exchange to compete with at least one other exchange that has approval to list and trade the same option series.³⁵ The Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.³⁶

³¹ 15 U.S.C. 78s(b)(3)(A)(iii).

³² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³³ 17 CFR 240.19b-4(f)(6).

³⁴ 17 CFR 240.19b-4(f)(6)(iii).

³⁵ See *supra* note 4.

³⁶ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(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 shall institute proceedings under Section 19(b)(2)(B) ³⁷ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MEMX-2026-03 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-MEMX-2026-03. 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 filing 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-MEMX-2026-03 and should be submitted on or before February 23, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104714; File No. SR-LTSE-2026-02]

Self-Regulatory Organizations: Long-Term Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fee Schedule To Modify the Liquidity Incentive Program

January 28, 2026.

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 22, 2026, Long-Term Stock Exchange, Inc. ("LTSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend its Fee Schedule to modify the Liquidity Incentive Program ("LTSE LIP" or "Program"). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on January 22, 2026.

The text of the proposed rule change is available at the Exchange's website at <https://longtermstockexchange.com/>, and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 1, 2025, the Exchange implemented the LTSE LIP to enhance liquidity and improve market quality in LIP Enhanced Securities³ traded on the Exchange by incentivizing Members to quote at or better than the National Best Bid and Offer ("NBBO") and provide liquidity in both select securities, the LIP Enhanced Securities and more generally in all other securities traded on LTSE, the LIP Standard Securities.^{4 5} On August 11, 2025, the LIP was subsequently amended to reduce the quoting threshold in a LIP Enhanced Security from 60% to 30% of the time at the NBBO of the Regular Market Session,⁶ in order to share in SIP Quote Revenue,⁷ which is distributed

³ LIP Enhanced Securities means a list of securities designated as such, that are used for the purposes of qualifying for the incentives within the LIP. The universe of these securities will be determined by the Exchange and published on the Exchange's website. See Definitions Section of the Fee Schedule.

⁴ LIP Standard Securities means a security not defined as a "LIP Enhanced Security" and traded on LTSE. See Definitions Section of the Fee Schedule.

⁵ LTSE LIP was initially adopted in SR-LTSE-2025-13 on June 30, 2025, which was withdrawn and refiled on July 10, 2025. See Securities Exchange Release No. 34-103517 (July 22, 2025). 90 FR 35325 (July 25, 2025) (SR-LTSE-2025-16). The Program includes three key incentives: (1) a proportional share of 80% of LTSE's SIP Quote Revenue for LIP Enhanced Securities, distributed among qualifying Members based on quoting activity; (2) reduced taker fees for LIP Enhanced Securities, available to all Members without quoting obligations; and (3) for LIP Standard Securities, a choice between a proportional share of 20% of LTSE's SIP Quote Revenue or a credit, contingent on meeting specific quoting thresholds.

⁶ Regular Market Session or Regular Market Hours means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. See Exchange Rule 1.160(kk).

⁷ The Securities Information Processors ("SIPs"), which include the Unlisted Trading Privileges and Consolidated Tape Association, collect fees from subscribers for trade and quote tape data received from trading centers and reporting facilities, such as the Exchange (collectively, "SIP Participants"). After deducting the cost of operating each tape, the profits are allocated among the SIP Participants on a quarterly basis, according to a complex set of calculations that consider estimates of anticipated Market Data Revenue ("MDR"), adjustments to comport to actual MDR from previous quarters and a non-linear aggregation of total trading and quoting activity in Tape A, B and C securities in attributing MDR to each SIP Participant. Based on these

Continued

³⁸ 17 CFR 200.30-3(a)(12) and (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³⁷ 15 U.S.C. 78s(b)(2)(B).

proportionally among eligible Members based on quoting activity.⁸

The Exchange then filed to amend the LTSE LIP for December 1, 2025, with SR-LTSE-2025-24.⁹ The Exchange is now withdrawing SR-LTSE-2025-24 and replacing it with this filing. Among other changes to the LTSE LIP, SR-LTSE-2025-24 allowed the Exchange to update the Minimum Quoted Size ("MQS"), which is used to determine eligibility for Incentive #1 for each LIP Enhanced Security, to more than quarterly, stating that if the Exchange changed the MQS mid-quarter it would issue a notice to Members at least one business day prior to the effective date of such change. However, in a subsequent filing¹⁰ the Exchange made further changes to how frequently the Exchange may adjust the MQS by removing the language concerning updates to the MQS that it added in SR-LTSE-2025-24 and replacing it with language that states that the MQS will be updated monthly. As a result of this subsequent filing that superseded the language regarding how frequently the Exchange may update the MQS, the Exchange is no longer including the change in this replacement filing.

The Exchange is now proposing to file only certain changes to the Fee Schedule included in SR-LTSE-2025-24 to modify the LTSE LIP. The proposed amendments would (i) increase the revenue-sharing percentage for LIP Standard Securities under Incentive 3 from 20% to 50%; (ii) remove transitional language that applied to the initial roll-out of the Program and the third quarter of 2025; (iii) remove the table which calculates the MQS by Share Price, and (iv) make other clarifying edits to the language within LIP section of the Fee Schedule.

Under the current Program, Incentive #3 provides Members quoting in LIP

calculations, the SIPs provide MDR payments to each SIP Participant during the second month of each quarter for trade and quote data from the previous calendar quarter, which are subject to adjustment through subsequent quarterly payments. These payments can be divided into six pools (*i.e.*, trade and quote activity in Tape A, B, and C securities). To determine a monthly SIP Quote Revenue allocation the Exchange uses a corresponding monthly SIP report in conjunction with the quarterly MDR payments to calculate the correct allocation of the MDR payment in each symbol for each month of the quarter.

⁸ See Securities Exchange Release No. 34-103700 (August 13, 2025), 90 FR 40090 (August 18, 2025) (SR-LTSE-2025-18) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Liquidity Incentive Program).

⁹ See Securities Exchange Release 34-104353 (December 9, 2025), 90 FR 57800 (December 12, 2025) (SR-LTSE-2025-24) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Liquidity Incentive Program).

¹⁰ See SR-LTSE-2025-30, which was withdrawn and replaced by SR-LTSE-2026-01.

Standard Securities the option to receive a proportional share of 20% of LTSE SIP Quote Revenue. The Exchange is now proposing to increase that allocation to 50%, an increase designed to improve the competitiveness of the Program and further reward firms that maintain displayed quotes at the NBBO on LTSE, thereby improving consolidated market quality. The proposed increase more closely aligns the economic rewards distributed under the LTSE LIP with the value of displayed liquidity that Members contribute to the Exchange's market data revenue, fostering a fairer and more transparent incentive structure. The Exchange expects that increasing the revenue-sharing percentage will encourage Members to maintain high-quality, stable quotes throughout the trading day, improving displayed liquidity and contributing to the overall integrity of the market. This adjustment is the result of the Exchange's ongoing evaluation of the Program's effectiveness of increasing participation and quote quality.¹¹

By allowing Members to receive increased revenue the Exchange seeks to encourage greater participation in LIP Standard Securities as soon as possible and provide the opportunity to share in an increased percentage of SIP Quote Revenue, which is distributed proportionally among eligible Members based on quoting activity. The Exchange notes that it is not proposing any changes to the SIP Quote Revenue distribution, which will continue to occur at the end of each calendar quarter.

The Exchange also proposes to reduce the MQS applicable to LIP Enhanced Securities to one round lot and remove the language in the fee schedule that establishes MQS levels based on share price. The Exchange established these higher MQS levels, which ranged from 200 to 700 shares, when it launched the program in July 2025 and believed these

higher MQS levels were appropriate to encourage participants to display meaningful size at the NBBO. However, for the first quarter following launch the Exchange temporarily set the MQS to a round lot across all LIP Enhanced Securities and it was not until the higher MQS levels went into place in Q2 2025 that the Exchange realized such thresholds created participation barriers for many potential quoting Members and limited the overall volume of quoting activity on the Exchange. By returning to one round lot MQS, the same level used at the Program's initial launch, the Exchange seeks to lower barriers to entry, attract additional quoting volume, and make LTSE LIP more accessible and practical for Members to implement within their existing market-making and risk systems. The Exchange believes that a lower MQS will promote broader participation, enhance competition among liquidity providers and contribute to tighter spreads and improved market quality.

With these proposed changes the Exchange will now have the ability to modify MQS in the future without having to submit a separate rule filing each time an adjustment is warranted. Specifically, the MQS will be calculated for each LIP Enhanced Security and published monthly on the Exchange's website in the same document that includes each LIP Enhanced Security. Allowing the Exchange to update the MQS monthly without a rule filing will allow the Exchange to respond more nimbly to changes in market conditions, participation trends and liquidity characteristics, while maintaining transparency and predictability for Members.

The Exchange believes that this measured approach, lowering MQS now to foster engagement while establishing the ability to recalibrate in future quarters, strikes the appropriate balance between accessibility and market impact. It supports the Exchange's broader objectives of increasing on-Exchange activity, providing fair and non-discriminatory access to participation in the Program, and maintaining a transparent, competitive, and data-driven incentive framework.

The Exchange also proposes to delete language from the Fee Schedule that is no longer operative. First, the Exchange is deleting language that addressed the MQS at the initial launch of the Program and no longer is applicable. Next, the Exchange is proposing to delete text that applied only to the third quarter of 2025 and has since expired. Those provisions, adopted in SR-LTSE-2025-

¹¹ As this change was initially made mid-quarter, the Exchange added language to the Fee Schedule to specify how Incentive #3 would be calculated for the fourth quarter of 2025 only. This language was then removed in SR-LTSE-2025-30, which revised the Exchange's Fee Schedule as of January 1, 2026, because the language concerning the fourth quarter of 2025 had become obsolete. Specifically, to account for the fact that the proportional share of the SIP Quote Revenue would not apply uniformly across the fourth quarter of 2025 the Exchange proposed that a Member that qualified for Incentive #3 in October and November could share in 20% of the LTSE SIP Quote Revenue for that LIP Standard Security, distributed proportionally across all qualifying member firms within the calendar months. For December, a Member that qualified for Incentive #3 could share in 50% of the LTSE SIP Quote Revenue for that LIP Standard Security, distributed proportionally across all qualifying member firms within the calendar month.

18,¹² temporarily adjusted quoting thresholds and revenue-sharing parameters that are no longer operative. These changes are administrative in nature and are intended to maintain a clear and accurate Fee Schedule by removing obsolete text. The deletion does not alter any current incentives or modify the operation of the LTSE LIP.

The Exchange then proposes to add clarifying language to the Percent Time at NBBO definition within Section B.2 (Liquidity Incentive Program) of the Fee Schedule. Specifically, the Exchange proposes to add the word “displayed” before quote so the sentence now reads: For the avoidance of doubt, only displayed quotes that are at the NBB or NBO during the Regular Market Session count towards the Percent Time at NBBO calculation.¹³ The Exchange notes that this clarifying language does not make a substantive or material change to the calculation.

Finally, while not included in the Fee Schedule, in the initial LIP filing the Exchange detailed that Incentive #3 Members who choose the quarterly credit can apply that credit in the calendar quarter in which they earned it, or the subsequent calendar quarter.¹⁴ The Exchange is proposing to add a bullet to the Notes to LIP section of the Fee Schedule to both amend and clarify this statement and state that the optional \$25 monthly credit expires at the end of the calendar month a year after it is earned, on a rolling basis. For example, a Member who earns an Incentive #3 credit in January 2026 would have until the end of January 2027 to apply the credit to any monthly invoice. In turn, a Member who earns an Incentive #3 credit in December 2025 would have until the end of December 2026 to apply the credit. The Exchange believes this will allow Members to have more flexibility when choosing to apply their Incentive #3 credit which may in turn increase Member participation in the program, benefiting other investors by providing improved trading conditions for all market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the

objectives of Section 6(b)(4) of the Act,¹⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among all of its Members and issuers and other persons using its facilities; Section 6(b)(5) of the Act,¹⁷ which requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Exchange also believes that the proposed rule change is reasonable, fair and equitable, and non-discriminatory.

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange’s transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange believes that increasing the revenue-sharing percentage under Incentive #3 from 20% to 50% is reasonable and equitable because it better reflects the value that displayed quotes contribute to the national market system and provides a stronger economic incentive for Members to supply liquidity on the Exchange. The change is not unfairly discriminatory, as all Members that meet the same quoting criteria are eligible to receive the increased revenue share on identical terms and it will enhance, rather than burden, intermarket competition by encouraging additional displayed liquidity on LTSE.

The Exchange believes that reducing the MQS to one round lot and permitting future adjustments without separate rule filings is reasonable, equitable and not unfairly discriminatory. The change lowers the barriers to entry, aligns quoting requirements with Members’ operational capabilities, and makes participation in the Program more accessible to a wider range of Members, including smaller liquidity providers

that may not maintain large inventory positions in each security.

Providing the Exchange with flexibility to adjust MQS monthly, with advance public notice, allows it to respond promptly to evolving market conditions, participation trends, and liquidity characteristics while maintaining transparency. This adaptive approach supports the maintenance of fair and orderly markets consistent with Section 6(b)(5) of the Act and fosters competition among liquidity providers by ensuring the quoting requirements remain balanced and attainable.

The Exchange believes that deleting text that is no longer applicable and adding clarifying text is consistent with Section 6(b)(5) and 6(b)(1) of the Act because it enhances transparency and clarity in the Fee Schedule. The removal is administrative, eliminates obsolete provisions and ensures that the rule text accurately reflects the Program currently in effect. It does not modify and incentives or alter Member obligations and therefore imposes no burden on competition.

Taken together, these amendments are designed to strengthen the LTSE LIP by improving participation incentives, aligning Program parameters with market realities, and maintaining clear and transparent rule text. The Exchange believes the proposal supports the objectives of Section 6(b)(5) of the Act by fostering fair competition, encouraging displayed liquidity, and promoting a more efficient and transparent market environment for investors.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to enhance market quality on the Exchange by encouraging additional quoting activity on LTSE and promoting more competitive displayed markets. The proposed amendments are designed to make the LTSE LIP more accessible and attractive to a broader range of Members. Lowering the MQS to one round lot reduces barriers to participation and enables more Members, particularly smaller or mid-sized liquidity providers, to qualify for LTSE LIP incentives. Increasing the revenue-sharing percentage for LIP Standard Securities further strengthens the economic incentives to post displayed liquidity, while the flexibility to modify MQS with notice allows the Exchange to maintain requirements that

¹² See note 8.

¹³ The Exchange believes adding the word “displayed” ensures the term is consistent throughout the LTSE Fee Schedule. Further, the Exchange notes that displayed quotes can include orders that rest on the LTSE Order Book and are therefore treated as displayed quotes within the System.

¹⁴ See note 5.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4).

¹⁷ 15 U.S.C. 78f(b)(5).

are appropriately scaled to prevailing market conditions. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in efficient pricing of individual stocks for all types of orders, large and small."¹⁸

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change establishes dues, fees or other charges among its members and, as such, may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁹ and paragraph (f)(2) of Rule 19b-4 thereunder.²⁰ Accordingly, the proposed rule change would take effect upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-LTSE-2026-02 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-LTSE-2026-02. 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 filing will be available for inspection and copying at the principal office of LTSE and on its internet website at <https://longtermstockexchange.com/>. 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-LTSE-2026-02 and should be submitted on or before February 23, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104706; File No. SR-GEMX-2026-03]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule General 8 Section 1 Related to Co-Location Services

January 28, 2026.

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 January 15, 2026, Nasdaq GEMX, LLC ("GEMX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to restructure the Exchange's connectivity fee schedule under Rule General 8, Section 1 relating to co-location services and establish fees for certain co-location services, as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/gemx/rulefilings>, and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's current data center in Carteret, New Jersey, consists of the original data center ("NY11"), an expansion area ("NY11-4"), and a future expansion area ("NY11-5"). The purpose of this proposed rule change is to restructure the Exchange's connectivity fee schedule under Rule General 8, Section 1 to eliminate cabinet density-based distinctions and associated fees, other than installation fees,³ and establish a power delivery-based pricing model. Specifically, the Exchange proposes to (i) eliminate all density-based cabinet offerings under Section 1(a) of Rule General 8 including their respective fees other than installation fees; and (ii) establish power delivery-based, recurring monthly fees for cabinet power circuits under Rule General 8, Section 1(c), as described below.

Current Cabinet Offerings

Currently, co-location customers have the option of obtaining cabinets of various power densities at varying

¹⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 47396 (June 29, 2005).

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁰ 17 CFR 240.19b-4(f)(2).

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Rule General 8, Section 1(a).

installation and ongoing monthly fees.⁴ Co-location customers may obtain a Half Cabinet,⁵ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts (“kW”),⁶ a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW,⁷ a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW,⁸ a High Density Cabinet with power density greater than 7 kW and less than 10 kW,⁹ a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW,¹⁰ and an Ultra High Density Cabinet with power density greater than 10 kW and less than or equal to 15 kW.¹¹

Proposed Power Delivered Model

The Exchange is now proposing (i) to eliminate all such size- and density range-based cabinet offerings under Rule General 8, Section 1(a), including their respective ongoing monthly fees, and (ii) replace them with two cabinet offerings, consisting of a single cabinet as well as a half cabinet option, with their respective cabinet installation fees unchanged from current cabinet installation fees under Rule General 8, Section 1(a).¹² Unlike today, however,

the Exchange is not proposing ongoing monthly fees under Rule General 8, Section 1(a) for cabinets throughout the data center campus, including NY11, and NY11–4. Rather, as discussed above, the Exchange proposes to eliminate ongoing monthly fees for cabinets under Rule General 8, Section 1(a) and introduce, in turn, a uniform, per kilovolt-amperes (kVA) -based,¹³

which the Exchange is proposing to delete), and replace those offerings with two options: a Cabinet and the currently-offered Half Cabinet, as discussed above. The Exchange then proposes to move, unchanged from their current respective amounts, installation fees for cabinet options in NY11 and NY11–4 by inserting such fees (\$3,850 and \$5,490, respectively) into the columns titled “NY11 Installation Fee” and “NY11–4 Installation Fee” under Rule General 8, Section 1(a). The Exchange proposes to (1) enter, under the column titled “Ongoing Monthly Fee” under Rule General 8, Section 1(a) for both the Half Cabinet and Cabinet options the following: “N/A,” and (2) delete, from the “Ongoing Monthly Fee” for the Half Cabinet option under Rule General 8, Section 1(a) the amount “\$2,200.” The Exchange further proposes a non-substantive change to move the symbol “+” from its various current locations within the table at Rule General 8, Section 1(a) to the caption for the column titled “NY11–4 Installation Fee” (and adjacent to the word “Fee”) so as to denote, unchanged from the symbol’s significance, as stated in its accompanying footnote, that cabinets under the column designated with that symbol include a larger cabinet (32” W x 48” D x 91” H). Finally, the Exchange proposes to delete from Rule General 8, Section 1(a), all accompanying notes, other than those designated with the following symbols: single asterisk (“*”) (noting that such cabinets are not available to new users) as well as the symbol “+” as discussed above. The Exchange is also proposing a non-substantive change to move, with a non-substantive clarifying change, the accompanying note to Rule General 8, Section 1(a) (providing that cabinet power cap is based on the available power at 80% of the breaker capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit)) to Rule General 8, Section 1(c). The Exchange proposes a clarifying change to that footnote to clarify that it is the circuit cap, rather than the cabinet power cap, that is based on the available power at 80% of the breaker capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit)). The Exchange notes this longstanding rule does not affect pricing, however, as fees are based on 100% of the circuit capacity. The proposed change is clarifying in nature and non-substantive because in all cases power caps are associated with power circuits rather than cabinet density, such that the proposed changes would render the note more accurate and easier to understand. As a conforming change, the Exchange proposes to designate that note with a double asterisk (“**”) and add the double asterisk to the caption to Rule General 8, Section 1(c) (Cabinet Power) to facilitate references to that note. The Exchange believes this proposed change would facilitate the understanding of and application of the Exchange’s rules because associated cabinet density options are being eliminated under this proposal, and Section 1(c) of Rule General 8 addresses cabinet power, to which this note is more closely related.

¹³ Kilovolt-Amperes (kVA) is a unit of *apparent power* used to describe the capacity of electrical circuits and equipment. In alternating current (AC) systems, power consists of two components: real power (kW) and reactive power (kVAR). Real power, or kW, is the actual usable power that performs work, such as running servers or cooling

ongoing fixed monthly fee for all current power circuit offerings under proposed Rule General 8, Section 1(c).¹⁴

Specifically, the Exchange would establish a power-supplied-based, uniform ongoing monthly fee of \$550.00 per kVA¹⁵ to be applied to each power circuit offering under Rule General 8, Section 1(c), thus resulting in a fixed ongoing monthly fee for each of the various power circuit options under that section, as shown in Table 1¹⁶ below.¹⁷

systems, whereas reactive power, or kVAR, is the power that sustains the magnetic and electric fields in equipment but does not perform useful work. Because AC systems often have both real and reactive components, kVA measures the total apparent power, which is the combination of real and reactive power—the full load the circuit must carry. The relationship between kilowatts and kVA depends on the power factor (PF) which reflects how efficiently electrical power is converted into useful work: kW = kVA x PF. In the context of data center operations, electrical power is commonly expressed in two units: kilowatts (kW) and kilovolt-amperes (kVA). While these terms measure different aspects of electrical power—kW representing real power consumed by equipment and kVA representing apparent power supplied—they are closely correlated in environments where the power factor approaches unity. Modern data centers typically operate at or near a power factor of 1.0, resulting in minimal variance between kW and kVA. Accordingly, these measures, kW and kVA, are often treated as interchangeable for practical purposes.

¹⁴ As discussed above, the Exchange proposes to retain the Half Cabinet offering under Rule General 8, Section 1(a) as well as its related footnote (as designated with a single asterisk) clarifying that such Half Cabinets are not available to new subscribers. See proposed Rule General 8, Section 1(a).

¹⁵ As discussed below, the proposed amount of \$550 per kVA is within the current effective rate of \$482–\$763/kW and operates as a mid-band per kVA price (applied equally to all cabinet power circuit options offered by the Exchange under Rule General 8, Section 1(c)) to keep applicable fees balanced across user profiles.

¹⁶ In Tables 1–3 and throughout this proposal, the Exchange uses the terms “110 V” and “120 V.” In North America, residential and light-commercial electrical systems are nominally standardized at 120 volts, but the terms “110V,” “115V,” and “120V” are often used interchangeably. This is because they all refer to the same electrical system, not meaningfully different ones. Historically, early electrical grids in the U.S. operated closer to 110–115 volts. As infrastructure improved and electrical demand increased, utilities gradually raised the nominal voltage to 120 volts to improve efficiency and performance. Rather than replacing all existing equipment, standards were set so devices could operate safely across a voltage tolerance range, typically about ±5% to ±10%. A subsequent clean-up filing will update the Exchange’s rulebook to uniformly list the 20 amp 110 volt and the 30 amp 110 volt circuits to 120 volt throughout its rulebook, consistent with current standards.

¹⁷ In Table 1 (as in Exhibit 5), additions are italicized, and deletions are bracketed. To effect these changes, the Exchange proposes to amend Rule General 8, Section 1(c) as follows. The Exchange proposes to (1) insert, in the column titled “Installation Fee” the acronym “NY11,” and move, unchanged from current amounts, fees designated with the symbol single asterisk (“*”) to a new column titled “NY11–4 Installation Fee”; (2) insert, in the column titled “Ongoing Monthly Fee”

Continued

⁴ See Rule General 8, Section 1(a).

⁵ Half cabinets are not available to new subscribers. The Half Cabinet is currently offered for an ongoing monthly fee of \$2,000. See Rule General 8, Section 1(a).

⁶ The Low Density Cabinet is offered for an installation fee of \$3,850 and an ongoing monthly fee of \$2,200. See Rule General 8, Section 1(a).

⁷ The Medium Density Cabinet is offered for an installation fee of \$3,850 for NY11 and \$5,940 for NY11–4 and an ongoing monthly fee of \$2,750 equally applicable to both NY11 and NY11–4. See Rule General 8, Section 1(a).

⁸ The Medium High Density Cabinet is offered in NY11 for an installation fee of \$3,850 and an ongoing monthly fee of \$3,850 and in NY11–4 for an installation fee of \$5,940 and an ongoing monthly fee of \$3,850. See Rule General 8, Section 1(a).

⁹ The High Density Cabinet is offered in NY11 for an installation fee of \$3,850 and an ongoing monthly fee of \$4,950 and in NY11–4 for an installation fee of \$5,940 and an ongoing monthly fee of \$4,950. See Rule General 8, Section 1(a).

¹⁰ The Super High Density Cabinet is offered in NY11 for an installation fee of \$4,950 and an ongoing monthly fee of \$8,800 and in NY11–4 for an installation fee of \$5,940 and an ongoing monthly fee of \$8,800. See Rule General 8, Section 1(a).

¹¹ The Ultra High Density Cabinet is offered in NY11–4 for an installation fee of \$5,940 and an ongoing monthly fee of \$7,230. The Ultra High Density Cabinet is not available in NY11. See Rule General 8, Section 1(a).

¹² See proposed Rule General 8, Section 1(a). To effect this change, the Exchange proposes the following changes to Rule General 8, Section 1(a). The Exchange proposes to delete all cabinet with power offerings under Rule General 8, Section 1(a) including their associated installation and ongoing monthly fees, other than the Half Cabinet offering itself (but not its associated ongoing monthly fee

Table 2, in turn, provides the basis for the fixed monthly fee calculations.¹⁸ As in the case of cabinet installation fees

under Rule General 8, Section 1(a), all cabinet power circuit installation fee

amounts under Rule General 8, Section (c) would remain unchanged.¹⁹

TABLE 1²⁰

Description	NY11 Installation fee	NY11–4 Installation fee	NY11 Ongoing monthly fee (\$550 per kVA)	NY11–4 Ongoing monthly fee (\$550 per kVA)
2x20 amp 110volt	\$2,200	N/A	[\$0]\$1,320.00	N/A
2x30 amp 110 volt	2,200	N/A	[\$0]\$1,980.00	N/A
2x20 amp 208 volt	2,200	N/A	[\$0]\$2,288.00	N/A
2x30 amp 208 volt	2,200	N/A	[\$0]\$3,432.00	N/A
2x60 amp 208 volt	3,300	N/A	[\$0]\$6,864.00	N/A
Phase 3 2x 20 amp 208 volt	3,300	N/A	[\$0]\$3,962.82	N/A
Phase 3 2x 30 amp 208 volt	3,300	N/A	[\$0]\$5,944.22	N/A
Phase 3 2x 40 amp 208 volt	3,300	N/A	[\$0]\$7,925.63	N/A
Phase 3 2x 50 amp 208 volt	3,300	N/A	[\$0]\$9,907.04	N/A
Phase 3 2x 60 amp 208 volt	3,300	N/A	[\$0]\$11,888.45	N/A
2x30 amp 48 volt DC	3,300	N/A	[\$0]\$792.00	N/A
Phase 1 20 amp 240 volt *	[3,600]	\$3,600	[\$0] N/A	\$2,640.00
Phase 1 32 amp 240 volt *	[3,600]	3,600	[\$0] N/A	4,224.00
Phase 1 40 amp 240 volt *	[3,600]	3,600	[\$0] N/A	5,280.00
Phase 3 20 amp 415 volt*	[4,560]	4,560	[\$0] N/A	7,906.58
Phase 3 32 amp 415 volt *	[4,560]	4,560	[\$0] N/A	12,650.53

TABLE 2²¹

Description	kVA per Cir	Proposed monthly fee
2x20 amp 120 volt	2.4	\$1,320.00
2x30 amp 120 volt	3.6	1,980.00
2x20 amp 208 volt	4.16	2,288.00
2x30 amp 208 volt	6.24	3,432.00
2x60 amp 208 volt	12.48	6,864.00
Phase 3 2x 20 amp 208 volt	7.21	3,962.82
Phase 3 2x 30 amp 208 volt	10.81	5,944.22
Phase 3 2x 40 amp 208 volt	14.41	7,925.63
Phase 3 2x 50 amp 208 volt	18.01	9,907.04
Phase 3 2x 60 amp 208 volt	21.62	11,888.45
2x30 amp 48 volt DC	1.44	792.00

the acronym “NY11” and the parenthetical “(\$550 per kVA),” and then delete, from that current column titled “Ongoing Monthly Fee” all fees currently depicted thereunder (in each instance such fee being \$0), and insert, in their place, each of the proposed ongoing monthly fees in Table 1 for the respective power circuit options under Rule General 8, Section 1(c), other than those depicted with a single asterisk, which are designated for NY11–4; and (3) insert a new column titled “NY11–4 Ongoing Monthly Fee (\$550 per kVA)” and insert thereunder all proposed ongoing monthly fees shown in Table 1 for power circuit options designated with a single asterisk indicating, unchanged from today, that such cabinets are available in NY11–4 only. The Exchange proposes to enter “N/A” as applicable throughout Rule General 8, Section 1(c) to indicate that certain fees are not applicable, as appropriate. See proposed Rule General 8, Section 1(c).

¹⁸ The figure (“2X”) as used in Tables 1–3 and throughout this proposal designates the Exchange’s provision of both a primary and secondary circuit. The Exchange does not include the secondary circuit in the calculation of the proposed fees.

¹⁹ See proposed Rule General 8, Section 1(c). As discussed above, the Exchange is also proposing a non-substantive change to move, with one clarifying change from its current form, the accompanying note to Rule General 8, Section 1(a) (providing that cabinet power cap is based on the

available power at 80% of the breakeven capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit) to the notes in Rule General 8, Section 1(c). The Exchange proposes a clarifying change to that footnote to clarify that it is the circuit cap, rather than the cabinet power cap, that is based on the available power at 80% of the breakeven capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit)). The proposed change is clarifying in nature and non-substantive because in all cases power caps are associated with power circuits rather than cabinet density, such that the proposed changes would render the note more accurate and easier to understand. See proposed Rule General 8, Section 1(c). The 80% capacity rule is a safety and reliability standard applied in data centers to ensure that electrical circuits are not operated at their full breakeven capacity. Instead, the usable power is capped at 80% of the circuit’s rated capacity. This practice is based on the National Electrical Code (NEC) guidelines for continuous loads, which require derating to prevent overheating and allow for operational headroom. This rule does not affect pricing, however, as fees are based on 100% of the circuit capacity.

²⁰ The ongoing monthly fees depicted in Tables 1 and 2 are derived by multiplying the circuit’s apparent power (kVA) by \$550 per kVA. The kilovolt-ampere (kVA) rating for each circuit was

calculated using standard electrical formulas based on circuit type as follows. Single-phase circuits: “kVA”= (“Volts” x “Amps”)/1000. This converts the product of voltage and current into kilovolt-amperes. Three-phase circuits (balanced load): “kVA”= (√3x “Volts” x “Amps”)/1000= (1.732x “Volts” x “Amps”)/1000. The factor √3 accounts for the three-phase power configuration. These formulas were applied to each circuit type in the table to determine its kVA capacity, which was then multiplied by the proposed rate of \$550 per kVA to calculate the new monthly fee. For readability, table values reflect rounded kVA figures (e.g., a three-phase 30-amp, 208-volt circuit is displayed as 10.81 kVA) and fees rounded to the nearest cent. In internal calculations, the Exchange computes fees using full-precision kVA (e.g., ~10.794 kVA before display rounding), which can yield penny-level variances relative to fees computed from rounded kVA values. These minor differences arise solely from the sequence of rounding (rounding kVA before vs. after fee computation) and do not affect the uniform application of the \$550/kVA rate or the comparability of fees across circuit options. The Exchange notes that the initial filing (SR-GEMX-2025-37) contained minor errors in calculation of the proposed ongoing monthly fees under proposed Rule General 8, Section 1(c). The Exchange has addressed those errors and will bill customers for the correct amounts accordingly.

TABLE 2²¹—Continued

Description	kVA per Cir	Proposed monthly fee
Phase 1 20 amp 240 volt *	4.8	2,640.00
Phase 1 32 amp 240 volt *	7.68	4,224.00
Phase 1 40 amp 240 volt *	9.6	5,280.00
Phase 3 20 amp 415 volt*	14.38	7,906.58
Phase 3 32 amp 415 volt *	23.0	12,650.53

Transitioning to the Power Delivered Model

As discussed above, the Exchange currently offers several cabinet options the fees for which are based on varying power density ranges. As the Exchange transitions to the proposed power-delivered model, customers would transition to that model by structuring their power circuit selections under proposed Rule General 8, Section 1(c) to support the workload capacity supported under the cabinets held under current Rule General 8, Section 1(a). For example,²² a customer using a Super High Density Cabinet offering a power density range greater than 10 kW²³ and less than or equal to 17.3 kW²⁴ in NY11 with a flat monthly fee of \$8,800 would have several options for structuring its power circuit options under proposed Rule General 8, Section 1(c). The customer could select, for example, the Phase 3, 2 × 50 amp, 208V circuit (18.01 kVA), which approximates the high end of the current cabinet's power density range of 17.3 kW for a monthly fee of \$9, 907.04. Alternatively, the customer could select the Phase 3, 2 × 30 amp, 208 volt circuit (10.81 kVA) to align itself with the lower end of the current cabinet density range—currently at the same flat fee of \$8,800 per month and as proposed \$5,944.22 per month—and reduce its

monthly costs by \$2,855.78. Similarly, customers using an Ultra High Density Cabinet with a cabinet density greater than 10 kW and less than or equal to 15 kW (at a current monthly fee of \$7,230.) could select the Phase 3 20 amp 415 volt circuit (14.38 kVA) at a recurring monthly fee of \$7,906.58. A customer with a High Density Cabinet offering a density greater than 7 kW and less than or equal to 10 kW at \$4,950 per month could select a Phase 3, 2 × 30 amp 208 volt circuit (10.81 kVA) at \$5,944.22 per month; alternatively, the customer could select the Phase 3, 2 × 20 amp 208 vol (7.21 kVA) circuit at the lower end of its current density for \$3,962.82 per month. Customers with a Medium High Density Cabinet offering densities greater than 5 kW and less than or equal to 7 kW currently at \$3,850 per month could select a 2 × 30 amp, 208 volt circuit (6.24 kVA) at \$3,432 per month or the 2 × 20 amp 208 volt circuit (4.16 kVA) at \$2,288 per month. Customers with a Medium Density Cabinet offering densities greater than 2.88 kW and less than or equal to 5 kW at a current monthly fee of \$2,750 could select a 2 × 20 amp 208 volt circuit (4.16 kVA) at \$2,288 per month or a 2 × 30 amp 110/120 volt (3.6 kVA) circuit at \$1,980 per month. Finally, customers with a Low Density Cabinet offering densities less than or equal to 2.88 kW at an ongoing

monthly fee of \$2,200 could select a 2 × 20 amp 110/120 volt circuit (2.4 kVA) at \$1,320 per month.

Table 3 below shows power circuit options under proposed Rule General 8, Section 1(c) that could be selected²⁵ to align with the high and lower end of the current cabinet density ranges under Rule General 8, Section 1(a), including associated changes in fees. While the table depicts a single power circuit at the approximate ends of the current cabinet density ranges for illustrative purposes, the Exchange notes that under the proposed power delivered model, clients are free to select multiple circuits per cabinet to achieve their desired power preferences. Under the current cabinet density-based model, clients are limited to the maximum power density allowed for their selected cabinet type. For example, a client using a Phase 3, 60-amp, 208-volt circuit (21.62 kVA) in combination with a Super High Density Cabinet would pay full fees for that power circuit but would only be authorized to draw up to 17.3 kW of power. Under the proposed billing model, subject to the 80% rule discussed above, clients may use the full power provided by their chosen circuits without being constrained by rigid cabinet density ranges in place today.

TABLE 3²⁶

Cabinet type (density range)	Circuit type	kVA	Current fee	New fee	Δ %
Low Density (≤2.88 kW)	20A 120V	2.4	\$2,200	\$1,320	−40
	30A 120V	3.6	2,200	1,980	−10
Medium Density (≤2.88–≤5 kW)	30A 120V	3.6	2,750	1,980	−28
	20A 240V	4.8	2,750	2,640	−4
Medium-High Density (≤5–≤7 kW)	30A 208V	6.24	3,850	3,432	−10.86
	30A 120V, 30A 120V	7.2	3,850	3,960	2.86
High Density (≤7–<10 kW)	30A 208V	6.24	4,950	3,432	−30.67
	40A 240V	9.6	4,950	5,280	6.67
Ultra High Density (≤10–≤15 kW)	20A 415V (Phase 3)	14.38	7,230	7,906.58	9.36

²¹ In Table 2 and throughout this proposal, the kilovolt-ampere (kVA) rating for each circuit was calculated using standard electrical formulas based on circuit type as follows. Single-phase circuits: “kVA” = (“Volts” × “Amps”)/1000. This converts the product of voltage and current into kilovolt-amperes. Three-phase circuits (balanced load): “kVA” = (√3 × “Volts” × “Amps”)/1000 = (1.732 × “Volts” × “Amps”)/1000. The factor √3 accounts for

the three-phase power configuration. These formulas were applied to each circuit type in the table to determine its kVA capacity, which was then multiplied by the proposed rate of \$550 per kVA to calculate the new monthly fee.

²² The examples that follow are for illustrative purposes only, as customers are free to select the power circuit options that best suit their business needs.

²³ For simplicity, assume power factor ≈ 1 (common in data centers), so: 10 kW ≈ 10 kV.

²⁴ For simplicity, assume power factor ≈ 1 (common in data centers), so: 17.3 kW ≈ 17.3 kV.

²⁵ The examples depicted in Table 3 are for illustrative purposes only, as customers are free to select the power circuit options that best suit their business needs.

TABLE 3²⁶—Continued

Cabinet type (density range)	Circuit type	kVA	Current fee	New fee	Δ %
Super High Density (≤15–≤17.3 kW)	(Same circuit used for upper end) ...	—	—	—	—
	60A 208V (Phase 3)	21.62	8,800	11,891	35.13
	32A 415V (Phase 3)	23.0	8,800	12,650.53	43.76

The Exchange believes that pricing the offered services on a per kVA basis, as proposed, will allow the Exchange the operational flexibility to offer clients the maximum available power from the power circuits selected. Specifically, because the proposed fee structure eliminates cabinet density-based distinctions, including their associated fixed ongoing monthly fees, and replaces those distinctions with a single per-kVA-based monthly fee of \$550 per kVA delivered that is uniformly applied to the capacity of the customer's power circuit selection under Rule General 8, Section (c), customers in the lower density cabinet ranges are likely to experience a decrease in overall fees while customers in the higher cabinet density ranges are likely to see increases.

Overall, the proposal introduces a transparent and equitable delivery-based pricing model that equitably allocates fees and removes complexity, consistent with requirements under the Act.

The Exchange believes that the proposed changes are better aligned with current industry practices, which base billing on power supplied rather than cabinet footprint. Under the current cabinet density model, customers select from cabinet options designed to accommodate a range of power densities, up to approximately 17 kW. This approach often resulted in misalignment between costs and actual usage because pricing was tied to cabinet size and density tiers rather than the actual power delivered. For example, under the cabinet-density pricing model, customers operating at the lower end of a given cabinet's

power-density range were assessed the same fixed ongoing monthly fee as customers operating at the higher end of that range, because pricing was tied to the cabinet's density tier rather than the deployed power circuit.

By contrast, the proposed per-kVA pricing model directly reflects the actual power delivered to the customer's circuits, ensuring that charges correspond to the infrastructure resources delivered. This power delivery-based approach inherently simplifies cost planning. In short, billing on a per-kVA basis promotes transparency and flexibility, aligning fees with real power demand and enabling the Exchange to accommodate evolving customer requirements with greater transparency and efficiency.

Increases associated with the proposal will better enable the Exchange to continue to maintain and improve its market infrastructure technology and services. The Exchange notes that the proposed fee of \$550 per kVA is comparable to fees charged by at least one other national securities exchange for a similar product. Specifically, the New York Stock Exchange ("NYSE") offers a tiered, per kW monthly fee for cabinets ranging from \$900 to \$1,200 per kW based on the total kW allocated to all of a user's dedicated cabinets.²⁷ Under the NYSE schedule, for example, a customer requesting 10kW at NYSE would pay a monthly fee of \$10,500 per month (10kW × \$1,050 per kW per month), whereas a customer requesting ~ 10kW under the proposed model at the Exchange could install a Phase 3 30 amp, 208 volt circuit for 10.81 kVA²⁸

²⁷ NYSE's per kW Monthly Fee is a factor of the total number of kilowatts allocated to all of a User's dedicated cabinets and varies based on the total kilowatts allocated to a User. See New York Stock Exchange LLC Connectivity Fee Schedule, available at https://www.nyse.com/publicdocs/nyse/Wireless_Connectivity_Fees_and_Charges.pdf. Most modern data centers typically operate at or near a power factor of 1.0, resulting in minimal variance between kW and kVA such that the two measures are, for comparison purposes and given this assumed PF factor, interchangeable.

²⁸ To convert 30 amps at 208 volts to kVA, we use the formula: kVA = Volts × Amps/1000. For single phase: kVA = 208 × 30 = 6.24 kVA/1000. For three-phase (assuming a balanced load): kVA = 1.732 × 208 × 30 = 10.81 kVA 1000, 1.732 is derived from √3. As discussed above, modern data centers typically operate at or near a power factor of 1.0, resulting in minimal variance between kW and

for a total charge of \$5,944.22 per month (10.8 kVA × \$550 per kVA per month).²⁹

The Exchange believes that its proposed pricing model is more transparent and equitable because it directly ties fees to the actual power delivered and the infrastructure required to support that capacity (power and cooling). This eliminates distortions inherent in tiered pricing, where customers with similar power needs may pay significantly different amounts based on density classifications. By linking charges to delivered power, the proposal enhances transparency and predictability. Costs scale with actual power delivered, and customers can avoid sudden price jumps when moving between tiers. Under the proposed structure, every kVA is priced the same, making it easier for customers to forecast expenses, compare across providers, and understand the relationship between costs and their selected power delivery preferences.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,³¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to restructure its cabinet and cabinet power connectivity schedule to provide for a delivery-based model that

kVA. Accordingly, these measures are often treated as interchangeable for practical purposes. NYSE uses a tiered monthly fee per kW, ranging from \$900 to \$1,200 per kW depending on the total allocated power across a user's cabinets. Using PF = 1.0, that translates to \$900–\$1,200 per kVA.

²⁹ NYSE charges a tiered monthly fee per kW, ranging from \$900 to \$1,200 per kW, depending on the total kilowatts allocated across all cabinets. For example, a customer requesting 10 kW at NYSE would pay approximately \$10,500 per month (10 kW × \$1,050 per kW). The Exchange proposes a flat monthly fee of \$550 per kVA for the full theoretical capacity of the circuit. For example, a Phase 3, 30-amp, 208-volt circuit provides approximately 10.81 kVA (1.732 × 208 × 30 ÷ 1000) for a monthly fee of \$5,944.22 (\$550 × 10.81).

³⁰ 15 U.S.C. 78f(b).

³¹ 15 U.S.C. 78f(b)(4) and (5).

²⁶ In Table 3, the kilovolt-ampere (kVA) rating for each circuit was calculated using standard electrical formulas based on circuit type as follows. Single-phase circuits: "kVA" = ("Volts" × "Amps")/1000. This converts the product of voltage and current into kilovolt-amperes. Three-phase circuits (balanced load): "kVA" = (√3 × "Volts" × "Amps")/1000 = (1.732 × "Volts" × "Amps")/1000. The factor √3 accounts for the three-phase power configuration. These formulas were applied to each circuit type in the table to determine its kVA capacity, which was then multiplied by the proposed rate of \$550 per kVA to calculate the new monthly fee. The examples depicted in this table are for illustrative purposes only, as customers are free to select the power circuit options that best suit their business needs.

eliminates cabinet density-based distinctions, along with their associated monthly fees, and establishes in its place a uniform ongoing monthly fee of \$550 per kVA fee as applied to each offered cabinet power circuit options is reasonable. First, the Exchange's proposal to establish a \$550 per kVA fee to be applied to the various power circuit options offered by the Exchange is reasonable because the proposed amount of \$550 per kVA is within the current effective rate of \$482–\$763/kW and operates as a mid-band per kVA price (applied equally to all cabinet power circuit options offered by the Exchange under Rule General 8, Section 1(c)) to keep applicable fees balanced across user profiles. As discussed above, the Exchange is proposing to keep all cabinet and cabinet power installation fee amounts under Rule General 8, Sections 1(a) and (c) unchanged. Second, and as discussed above, the proposed per kVA fee of \$550 per kVA is reasonable as compared to per kVA fees for comparable products offered by NYSE. By linking charges to delivered power, the proposal enhances transparency and predictability as customers avoid price jumps when moving between tiers because costs scale with power delivered. By comparison, NYSE's model assesses \$900–\$1,200 per kW per month based on a user's aggregate dedicated-cabinet footprint, introducing higher per kVA prices, tier transitions, and variability that the Exchange's uniform \$550/kVA model avoids.

The Exchange's proposal to replace cabinet-density based pricing with a per-kVA power delivery model equitably allocates fees based on the primary cost driver of co-location services—electrical power capacity and associated cooling—rather than cabinet density range-based footprint. Under the current model, two customers occupying the same cabinet density could incur identical fees despite materially different power demands, resulting in misalignment between fees and the customer's power usage. By charging according to committed and delivered kVA, the Exchange ensures that fees are reasonable and proportionate to the allocated infrastructure resources consistent with Section 6(b)(4).

As discussed above, the fee increases resulting from the proposed changes would support the Exchange's ongoing investments in market infrastructure and co-location services, ensuring competitiveness with peer exchanges. Customer demand for more robust and higher power cabinet options has grown significantly over time. In response, the

Exchange has continued to invest in its data center operations to meet these evolving needs, consistent with applicable regulatory requirements. These investments include modernizing equipment and expanding the Exchange's co-location facilities to provide customers with additional space and power capacity, thereby providing customers with additional options for addressing their business needs. It is reasonable and consistent with the Act for the Exchange to recoup its investments, at least in part, by adjusting its fees.

The proposal is also not designed to permit unfair discrimination under Section 6(b)(5). The per-kVA pricing structure applies uniformly to all co-location users based on objective, market infrastructure technology-neutral criteria (power capacity requested and delivered), without regard to customer identity, membership status, or business model. Differences in fees reflect only differences in service requested and installed, which is a permissible and non-discriminatory basis for differentiation under the Act. The Exchange further believes that the proposed fee changes are not unfairly discriminatory because the proposed cabinet and cabinet power circuit options are available to and assessed uniformly across all market participants.

The Exchange believes that the proposed conforming and other non-substantive changes, including those to Rule General 8, Section 1, are appropriate because they align related parts of the Exchange's rulebook with the proposed changes or otherwise clarify and facilitate the application of the Exchange's rules.

Accordingly, the Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) and 6(b)(5) of the Act because it provides for the equitable allocation of reasonable fees and is not designed to permit unfair discrimination.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether to connect to the Exchange based on the

value received compared to the cost of doing so.

Nothing in the proposal burdens intra-market competition because the proposed cabinet, half cabinet, and cabinet power options are available to any customer under the same fees as any other customer, and any customer that wishes to order cabinets and cabinet power options can do so on a non-discriminatory basis.

Co-location services are optional and offered in a highly competitive environment among multiple exchanges and third-party data center providers. Market participants that do not wish to pay for co-location services under the revised pricing model may continue to access the Exchange through alternative connectivity methods or utilize competing venues.

The proposed shift from cabinet-based pricing to a per-kVA power delivery model is designed to align fees with the actual resource delivered and infrastructure investments, rather than fixed cabinet density ranges. This change does not restrict access or favor any category of participant; all eligible users are subject to the same fees and terms based on objective criteria (committed and delivered power capacity). Accordingly, the proposal does not create any undue burden on intermarket competition, as participants can choose among multiple exchanges and service providers, nor does it impose an undue burden on intramarket competition, as all co-location customers are treated uniformly under the proposed fee structure, as described above.

To the extent the proposal may affect competition, the Exchange believes that the impact is positive because the revised pricing structure promotes cost transparency and fairness, thereby enabling customers to more easily plan for and compare infrastructure expenses, as well as tailor their connectivity selections to suit their specific business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.³²

³² 15 U.S.C. 78s(b)(3)(A)(ii).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-GEMX-2026-03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-GEMX-2026-03. 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 filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-GEMX-2026-03 and should be submitted on or before February 23, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-01975 Filed 1-30-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104732; File No. SR-FINRA-2025-017]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of a Longer Time for Commission Action on a Proposed Rule Change To Amend FINRA Rule 4210 (Margin Requirements) To Replace the Day Trading Margin Provisions With Intraday Margin Standards

January 28, 2026

On December 29, 2025, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-FINRA-2025-017 ("Proposed Rule Change") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4² thereunder to amend FINRA Rule 4210 to replace its current day trading margin provisions with modern intraday margin standards. The Proposed Rule Change was published for comment in the **Federal Register** on January 14, 2026.³

Section 19(b)(2)(A)(i) of the Exchange Act⁴ provides that, within 45 days of the publication of notice of the filing of a proposed rule change, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved unless the Commission extends the period within which it must act as provided in Section 19(b)(2)(A)(ii) of the Exchange Act.⁵ Section 19(b)(2)(A)(ii) of the Exchange Act allows the Commission to designate a longer period for review (up to 90 days from the publication of notice of the filing of a proposed rule change) if the Commission finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents.⁶

The 45th day after publication of the Notice of Filing is February 28, 2026. In order to provide the Commission with sufficient time to consider the Proposed Rule Change, the Commission finds that it is appropriate to designate a longer period within which to take action on

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Exchange Act Release No. 104572 (Jan. 9, 2026), 91 FR 1580 (Jan. 14, 2026) (File No. SR-FINRA-2025-017) ("Notice of Filing").

⁴ 15 U.S.C. 78s(b)(2)(A)(i).

⁵ 15 U.S.C. 78s(b)(2)(A)(ii).

⁶ *Id.*

the Proposed Rule Change and therefore is extending this 45-day time period.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Exchange Act,⁷ designates April 14, 2026, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR-FINRA-2025-017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-02003 Filed 1-30-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104713; File No. SR-SAPPHIRE-2026-01]

Self-Regulatory Organizations; MIAx Sapphire, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a New Methodology for Assessment and Collection of the Options Regulatory Fee (ORF)

January 28, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 21, 2026, MIAx Sapphire, LLC ("MIAx Sapphire" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAx Sapphire Options Exchange Fee Schedule (the "Fee Schedule") relating to the Options Regulatory Fee ("ORF") to adopt a new methodology for assessment and collection of ORF for transactions that occur on the Exchange ("On-Exchange ORF"). The text of the proposed rule change is available on the Exchange's website at <https://www.miaxglobal.com/markets/us-options/all-options->

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³³ 17 CFR 200.30-3(a)(12).

exchanges/rule-filings and MIAx Sapphire's principal office.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its current methodology for assessment and collection of a regulatory fee to assess On-Exchange ORF only for options transactions that occur on the Exchange that would clear in the "customer"³ range at The Options Clearing Corporation ("OCC"). The Exchange would no longer assess a regulatory fee for options transactions that occur on other exchanges. This proposal only proposes to amend the method of assessment and collection of the fee. A future rule filing would be filed to set the applicable On-Exchange ORF rate in advance of assessing and collecting it under the proposed method. The following provides more detail regarding the proposal. Pursuant to a separately filed rule change, the current ORF rate of \$0.0013 will sunset as of June 30, 2026.

Background

The ORF is designed to cover a material portion of the costs to the Exchange of the supervision and regulation of Members'⁴ customer options business, including performing

routine surveillances and investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs.

Collection of ORF

The Exchange assesses the per-contract ORF to each Member for all options transactions cleared or ultimately cleared by the Member, which are cleared by the OCC in the "customer" range,⁵ regardless of the exchange on which the transaction occurs. The ORF is collected by OCC on behalf of the Exchange from either: (1) a Member that was the ultimate clearing firm⁶ for the transaction; or (2) a non-Member that was the ultimate clearing firm where a Member was the executing clearing firm⁷ for the transaction. The Exchange uses reports from OCC to determine the identity of the executing clearing firm and ultimate clearing firm.

To illustrate how the ORF is assessed and collected, the Exchange provides the following set of examples. If the transaction is executed on the Exchange and the ORF is assessed, if there is no change to the clearing account of the original transaction, then the ORF is collected from the Member that is the executing clearing firm for the transaction. (The Exchange notes that, for purposes of the Fee Schedule, when there is no change to the clearing account of the original transaction, the executing clearing firm is deemed to be the ultimate clearing firm.) If there is a change to the clearing account of the original transaction (*i.e.*, the executing clearing firm "gives-up" or "CMTAs" the transaction to another clearing firm), then the ORF is collected from the clearing firm that ultimately clears the transaction—the ultimate clearing firm.

⁵ Exchange participants must record the appropriate account origin code on all orders at the time of entry in order. The Exchange represents that it has surveillances in place to verify that Members mark orders with the correct account origin code.

⁶ The Exchange takes into account any Clearing Member Trade Assignment ("CMTA") transfers when determining the ultimate clearing firm for a transaction. CMTA is a form of "give up" whereby the position will be assigned to a specific clearing firm at the OCC.

⁷ Throughout this filing, "executing clearing firm" means the clearing firm through which the entering broker indicated that the transaction would be cleared at the time it entered the original order which executed, and that clearing firm could be a designated "give up", if applicable. The executing clearing firm may be the ultimate clearing firm if no CMTA transfer occurs. If a CMTA transfer occurs, however, the ultimate clearing firm would be the clearing firm that the position was transferred to for clearing via CMTA.

The ultimate clearing firm may be either a Member or non-Member of the Exchange. If the transaction is executed on an away exchange and the ORF is assessed, then the ORF is collected from the ultimate clearing firm for the transaction. Again, the ultimate clearing firm may be either a Member or non-Member of the Exchange. The Exchange notes, however, that when the transaction is executed on an away exchange, the Exchange does not assess the ORF when neither the executing clearing firm nor the ultimate clearing firm is a Member (even if a Member is "given-up" or "CMTAed" and then such Member subsequently "gives-up" or "CMTAs" the transaction to another non-Member via a CMTA reversal). Finally, the Exchange does not assess the ORF on outbound linkage trades, whether executed at the Exchange or an away exchange. "Linkage trades" are tagged in the Exchange's system, so the Exchange can readily tell them apart from other trades.

ORF Revenue and Monitoring of ORF

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. In determining whether an expense is considered a regulatory cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset ORF.

The Exchange believes that its broad regulatory responsibilities with respect to a Member's activities supports applying the ORF to transactions cleared but not executed by a Member. The Exchange's regulatory responsibilities are the same regardless of whether a Member enters a transaction or clears a transaction executed on its behalf. The Exchange regularly reviews all such activities, including performing surveillance for position limit violations, manipulation, front-running, contrary exercise advice violations and insider trading.

Revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, is designed to cover a material portion of the regulatory costs to the Exchange of the supervision and regulation of Members' customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Regulatory costs include direct regulatory expenses and

³ Currently, the ORF is assessed by the Exchange and collected via OCC on behalf of the Exchange from either: (1) a Member that was the ultimate clearing firm for the transaction; or (2) a non-Member that was the ultimate clearing firm where a Member was the executing clearing firm for the transaction. The Exchange uses reports from the OCC to determine the identity of the executing clearing firm and ultimate clearing firm.

⁴ The term "Member" means an individual or organization that is registered with the Exchange pursuant to Chapter II of MIAx Sapphire Rules for purposes of trading on the Exchange as an "Electronic Exchange Member" or "Market Maker." Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

certain indirect expenses in support of the regulatory function. The direct expenses include in-house and third party service provider costs to support the day-to-day regulatory work such as surveillances, investigations and examinations. The indirect expenses are only those expenses that are in support of the regulatory functions, such areas include Office of the General Counsel, technology, finance, and internal audit.

Proposal

The Exchange appreciates the evolving changes in the market and regulatory environment and has been evaluating its current methodologies and practices for the assessment and collection of ORF while considering industry and the Securities and Exchange Commission (the "Commission") feedback. As a result of this review, the Exchange proposes to modify its current ORF to continue to assess ORF for options transactions cleared by OCC in the "customer" range, however ORF would be assessed on each side of an options transaction cleared by the OCC in the "customer" range for executions that occur on the Exchange. Specifically, the ORF would continue to be collected by OCC on behalf of the Exchange from Members and non-Members for all "customer" transactions executed on the Exchange. ORF would be assessed and collected on all ultimately cleared "customer" contracts, taking into account adjustments for CMTA that were provided to the Exchange the same day as the trade.⁸

Further, the Exchange would bill ORF according to the clearing instructions provided on the execution. More specifically, the Exchange proposes to assess ORF based on the clearing instruction provided on the execution on trade date and would not take into consideration CMTA changes or transfers that occur at OCC.⁹ As a result of this proposed rule change, if a Member executes a customer transaction on the Exchange and is the Clearing Member¹⁰ on record on the transaction on the Exchange, the ORF will be assessed to that Member. With this proposal, in the case where a Member executes a customer transaction on the Exchange and a different Member is the Clearing Member on record on the transaction on the Exchange, the ORF

will be assessed to and collected from the Member who is the Clearing Member on record on the transaction and not the Member who executes the transaction. Additionally, in the case where a Member executes a customer transaction on the Exchange and a non-Member is the Clearing Member on record on the transaction on the Exchange, the ORF will be assessed to the non-Member who is the Clearing Member on record on the transaction and not the Member who executes the transaction. With this proposal, in the case where a Member executes a customer transaction not on the Exchange, the Exchange will not assess an ORF, regardless of how the transaction is cleared. As is the case today, OCC will collect ORF from OCC clearing members on behalf of the Exchange based on the Exchange's instructions.

With this proposal, the Exchange intends to collect ORF under its current methodology for assessment and collection of ORF until at least June 30, 2026. The Exchange is prepared to implement On-Exchange ORF effective July 1, 2026 if by April 1, 2026 all U.S. options exchanges charging an ORF have filed to modify their current methodologies of assessment of the fee to limit the fee to transactions occurring on their respective exchange.¹¹ However, if all other options exchanges have not filed to adopt a similar methodology by April 1, the Exchange will delay implementation commensurate with the additional time required for other options exchanges to adopt a similar method for collection and assessment of ORF. The Exchange will at that time file a separate rule filing with the amount of the On-Exchange ORF in advance of assessing and collecting the fee under the proposed method. As is the case today, the Exchange will notify Members via Regulatory Circular of the applicable On-Exchange ORF rate at least 30 calendar days prior to the effective date of the change. The Exchange believes a fee to cover a material portion of costs for regulatory programs associated with monitoring activities is reasonable; however, the Exchange would consider alternative approaches for assessment and collection of the fee in order to achieve consistency across the industry.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory

fees and fines, does not exceed the Exchange's total regulatory costs.

The Exchange will monitor its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs in a given year, the Exchange will adjust the On-Exchange ORF by submitting a fee change filing to the Commission. The Exchange will notify Members of adjustments to the On-Exchange ORF via a Regulatory Circular in advance of any change.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Section 6(b)(4) of the Act¹³ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act¹⁴ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the proposed change to assess and collect an On-Exchange ORF is reasonable, equitable and not unfairly discriminatory for various reasons. First, On-Exchange ORF is reasonable, equitable and not unfairly discriminatory in that it is charged to all Exchange transactions that clear in the "customer" range at the OCC. Similar to ORF today, the Exchange believes On-Exchange ORF ensures fairness by assessing a specific fee to those Members that require more Exchange regulatory services based on the amount of customer options business they conduct. Over recent years, options trading volume has increased with a growing percentage of the volume applicable to customer transactions. Customers trading on the Exchange (through a Member) benefit from the protections of a robust regulatory program including the maintenance of fair and orderly markets and protections against fraud and other manipulation. The Exchange believes it is equitable

⁸ Adjustments to CMTA that occur at OCC would not be taken into account.

⁹ Adjustments that were made the same day as the trade on the Exchange will be taken into account.

¹⁰ Clearing Member means a Member that has been admitted to membership in the Clearing Corporation pursuant to the provisions of the rules of the Clearing Corporation. See Exchange Rule 100.

¹¹ The Exchange estimates it will take approximately three months to implement the system changes associated with On-Exchange ORF.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ 15 U.S.C. 78f(b)(5).

and not unfairly discriminatory to assess a regulatory fee to transactions that clear in the “customer” range to cover regulatory costs, but not to transactions clearing in the “firm” or “market maker” range because Clearing Members and Market Makers¹⁵ (who clear in the Firm and Market Maker range), as those market participants are generally subject to other Exchange fees, fines and obligations. For example, Clearing Members and Market Makers are required to pay Exchange application fees, permit fees, and connectivity fees, amongst others. In addition, all fines issued by the Exchange for regulatory infractions are assessed only to Members and would be applied to regulatory revenues. As with today’s ORF, the Exchange expects that Clearing Members from whom On-Exchange ORF is collected will pass through the fee to their customers (as the Exchange understands occurs today). In addition, Market Makers in particular are subject to various quoting and other obligations to ensure that they provide stable and liquid markets, which benefit all market participants including customers. Excluding Market Maker transactions from On-Exchange ORF will allow Market Makers to better manage their costs more effectively thus enabling them to better allocate resources toward technology, risk management, and capacity to ensure continued liquidity provision.

In addition to the overall increase in “customer” range volume generally, regulating customer trading activity is more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. For example, there are costs associated with main office and branch office examinations (*e.g.*, staff and travel expenses), as well as investigations into customer complaints and terminations of registered persons. As a result, the costs associated with administering the customer component of the Exchange’s overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.*, Clearing Member proprietary transactions) of its regulatory program.¹⁶ While the

Exchange notes that it has broad regulatory responsibilities with respect to its Member’s activities, irrespective of where their transactions take place, the Exchange believes it is reasonable to assess the proposed fee to only those transactions occurring on the Exchange. The proposed change more narrowly tailors the fee to products and transactions with a direct connection to the Exchange. With this proposal, transactions that would clear in the “customer” range occurring on other exchanges would no longer be subject to an ORF assessed by the Exchange.

The Exchange believes it is equitable and not unduly discriminatory to modify the method of collecting the fee such that On-Exchange ORF will not consider CMTAs reported directly to OCC as is done in today’s method of ORF. CMTA transfers are considered today under the current collection methodology for ORF as a convenience to industry members in administering a pass through of the fee to their customers. Limiting the On-Exchange ORF to transactions on the Exchange poses a limitation in the use of CMTA for this purpose. The Exchange understands that a CMTA may be added at order entry, via post-trade edit on the Exchange, or post-trade at OCC. CMTA transfers that occur at OCC do not necessarily contain reliable information regarding the Exchange on which the original transaction occurred.¹⁷ Without specific information as to where the original transaction occurred, the Exchange would not be able to accurately account for CMTA transfers that occur at OCC.

The Exchange further believes that the proposed change to the method for assessment and collection of the fee is reasonable because it would help ensure that revenue collected from the On-Exchange ORF, in combination with other regulatory fees and fines, would cover a material portion of the Exchange’s regulatory costs.

As noted above, the Exchange will also continue to monitor on at least a semiannual basis the amount of revenue collected from the On-Exchange ORF, even as amended, to ensure that it, in combination with its other regulatory fees and fines, would cover a material portion of the Exchange’s regulatory costs and not exceed it

Member proprietary transactions if the Exchange deems it advisable.

¹⁷ Under the current methodology for assessing ORF, the Exchange on which the transaction occurred is irrelevant.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because On-Exchange ORF applies to all customer activity on the Exchange, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. The Exchange notes, however, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the On-Exchange ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. In addition, the Exchange will not implement the On-Exchange ORF until all other options exchanges are prepared to adopt a similar model to avoid overlapping ORFs.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁸ and paragraph (f) of Rule 19b-4¹⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

¹⁵ Market Maker means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of the Exchange Rules. See Exchange Rule 100.

¹⁶ If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to modify On-Exchange ORF or assess a separate regulatory fee on

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-SAPPHIRE-2026-01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-SAPPHIRE-2026-01. 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 filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-SAPPHIRE-2026-01 and should be submitted on or before February 23, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-01981 Filed 1-30-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104707; File No. SR-MIAX-2026-01]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a New Methodology for Assessment and Collection of the Options Regulatory Fee (ORF)

January 28, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 21, 2026, Miami International Securities Exchange, LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Exchange Fee Schedule (the “Fee Schedule”) relating to the Options Regulatory Fee (“ORF”) to adopt a new methodology for assessment and collection of ORF for transactions that occur on the Exchange (“On-Exchange ORF”).

The text of the proposed rule change is available on the Exchange's website at <https://www.miaxglobal.com/markets/us-options/all-options-exchanges/rule-filings> and at MIAX's principal office.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its current methodology for assessment and collection of a regulatory fee to assess On-Exchange ORF only for options transactions that occur on the Exchange that would clear in the “customer”³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Currently, the ORF is assessed by the Exchange and collected via OCC on behalf of the Exchange from either: (1) a Member that was the ultimate clearing firm for the transaction; or (2) a non-Member that was the ultimate clearing firm where a Member was the executing clearing firm for the transaction. The Exchange uses reports from the OCC to determine the identity of the executing clearing firm and ultimate clearing firm.

range at The Options Clearing Corporation (“OCC”). The Exchange would no longer assess a regulatory fee for options transactions that occur on other exchanges. This proposal only proposes to amend the method of assessment and collection of the fee. A future rule filing would be filed to set the applicable On-Exchange ORF rate in advance of assessing and collecting it under the proposed method. The following provides more detail regarding the proposal.

Background

The ORF is designed to cover a material portion of the costs to the Exchange of the supervision and regulation of Members’⁴ customer options business, including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs.

Collection of ORF

The Exchange assesses the per-contract ORF to each Member for all options transactions cleared or ultimately cleared by the Member, which are cleared by the OCC in the “customer” range,⁵ regardless of the exchange on which the transaction occurs. The ORF is collected by OCC on behalf of the Exchange from either: (1) a Member that was the ultimate clearing firm⁶ for the transaction; or (2) a non-Member that was the ultimate clearing firm where a Member was the executing clearing firm⁷ for the transaction. The Exchange uses reports from OCC to

⁴ The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

⁵ Exchange participants must record the appropriate account origin code on all orders at the time of entry in order. The Exchange represents that it has surveillances in place to verify that Members mark orders with the correct account origin code.

⁶ The Exchange takes into account any Clearing Member Trade Assignment (“CMTA”) transfers when determining the ultimate clearing firm for a transaction. CMTA is a form of “give up” whereby the position will be assigned to a specific clearing firm at the OCC.

⁷ Throughout this filing, “executing clearing firm” means the clearing firm through which the entering broker indicated that the transaction would be cleared at the time it entered the original order which executed, and that clearing firm could be a designated “give up”, if applicable. The executing clearing firm may be the ultimate clearing firm if no CMTA transfer occurs. If a CMTA transfer occurs, however, the ultimate clearing firm would be the clearing firm that the position was transferred to for clearing via CMTA.

²⁰ 17 CFR 200.30-3(a)(12).

determine the identity of the executing clearing firm and ultimate clearing firm.

To illustrate how the ORF is assessed and collected, the Exchange provides the following set of examples. If the transaction is executed on the Exchange and the ORF is assessed, if there is no change to the clearing account of the original transaction, then the ORF is collected from the Member that is the executing clearing firm for the transaction. (The Exchange notes that, for purposes of the Fee Schedule, when there is no change to the clearing account of the original transaction, the executing clearing firm is deemed to be the ultimate clearing firm.) If there is a change to the clearing account of the original transaction (*i.e.*, the executing clearing firm “gives-up” or “CMTAs” the transaction to another clearing firm), then the ORF is collected from the clearing firm that ultimately clears the transaction—the ultimate clearing firm. The ultimate clearing firm may be either a Member or non-Member of the Exchange. If the transaction is executed on an away exchange and the ORF is assessed, then the ORF is collected from the ultimate clearing firm for the transaction. Again, the ultimate clearing firm may be either a Member or non-Member of the Exchange. The Exchange notes, however, that when the transaction is executed on an away exchange, the Exchange does not assess the ORF when neither the executing clearing firm nor the ultimate clearing firm is a Member (even if a Member is “given-up” or “CMTAed” and then such Member subsequently “gives-up” or “CMTAs” the transaction to another non-Member via a CMTA reversal). Finally, the Exchange does not assess the ORF on outbound linkage trades, whether executed at the Exchange or an away exchange. “Linkage trades” are tagged in the Exchange’s system, so the Exchange can readily tell them apart from other trades.

ORF Revenue and Monitoring of ORF

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. In determining whether an expense is considered a regulatory cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset ORF.

The Exchange believes that its broad regulatory responsibilities with respect to a Member’s activities supports applying the ORF to transactions

cleared but not executed by a Member. The Exchange’s regulatory responsibilities are the same regardless of whether a Member enters a transaction or clears a transaction executed on its behalf. The Exchange regularly reviews all such activities, including performing surveillance for position limit violations, manipulation, front-running, contrary exercise advice violations and insider trading.

Revenue generated from ORF, when combined with all of the Exchange’s other regulatory fees and fines, is designed to cover a material portion of the regulatory costs to the Exchange of the supervision and regulation of Members’ customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Regulatory costs include direct regulatory expenses and certain indirect expenses in support of the regulatory function. The direct expenses include in-house and third party service provider costs to support the day-to-day regulatory work such as surveillances, investigations and examinations. The indirect expenses are only those expenses that are in support of the regulatory functions, such areas include Office of the General Counsel, technology, finance, and internal audit.

Proposal

The Exchange appreciates the evolving changes in the market and regulatory environment and has been evaluating its current methodologies and practices for the assessment and collection of ORF while considering industry and the Securities and Exchange Commission (the “Commission”) feedback. As a result of this review, the Exchange proposes to modify its current ORF to continue to assess ORF for options transactions cleared by OCC in the “customer” range, however ORF would be assessed on each side of an options transaction cleared by the OCC in the “customer” range for executions that occur on the Exchange. Specifically, the ORF would continue to be collected by OCC on behalf of the Exchange from Members and non-Members for all “customer” transactions executed on the Exchange. ORF would be assessed and collected on all ultimately cleared “customer” contracts, taking into account adjustments for CMTA that were provided to the Exchange the same day as the trade.⁸

⁸ Adjustments to CMTA that occur at OCC would not be taken into account.

Further, the Exchange would bill ORF according to the clearing instructions provided on the execution. More specifically, the Exchange proposes to assess ORF based on the clearing instruction provided on the execution on trade date and would not take into consideration CMTA changes or transfers that occur at OCC.⁹ As a result of this proposed rule change, if a Member executes a customer transaction on the Exchange and is the Clearing Member¹⁰ on record on the transaction on the Exchange, the ORF will be assessed to that Member. With this proposal, in the case where a Member executes a customer transaction on the Exchange and a different Member is the Clearing Member on record on the transaction on the Exchange, the ORF will be assessed to and collected from the Member who is the Clearing Member on record on the transaction and not the Member who executes the transaction. Additionally, in the case where a Member executes a customer transaction on the Exchange and a non-Member is the Clearing Member on record on the transaction on the Exchange, the ORF will be assessed to the non-Member who is the Clearing Member on record on the transaction and not the Member who executes the transaction. With this proposal, in the case where a Member executes a customer transaction not on the Exchange, the Exchange will not assess an ORF, regardless of how the transaction is cleared. As is the case today, OCC will collect ORF from OCC clearing members on behalf of the Exchange based on the Exchange’s instructions.

With this proposal, the Exchange intends to collect ORF under its current methodology for assessment and collection of ORF until at least June 30, 2026. The Exchange is prepared to implement On-Exchange ORF effective July 1, 2026 if by April 1, 2026 all U.S. options exchanges charging an ORF have filed to modify their current methodologies of assessment of the fee to limit the fee to transactions occurring on their respective exchange.¹¹ However, if all other options exchanges have not filed to adopt a similar methodology by April 1, the Exchange will delay implementation commensurate with the additional time

⁹ Adjustments that were made the same day as the trade on the Exchange will be taken into account.

¹⁰ Clearing Member means a Member that has been admitted to membership in the Clearing Corporation pursuant to the provisions of the rules of the Clearing Corporation. See Exchange Rule 100.

¹¹ The Exchange estimates it will take approximately three months to implement the system changes associated with On-Exchange ORF.

required for other options exchanges to adopt a similar method for collection and assessment of ORF. The Exchange will at that time file a separate rule filing with the amount of the On-Exchange ORF in advance of assessing and collecting the fee under the proposed method. As is the case today, the Exchange will notify Members via Regulatory Circular of the applicable On-Exchange ORF rate at least 30 calendar days prior to the effective date of the change. The Exchange believes a fee to cover a material portion of costs for regulatory programs associated with monitoring activities is reasonable; however, the Exchange would consider alternative approaches for assessment and collection of the fee in order to achieve consistency across the industry.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.

The Exchange will monitor its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs in a given year, the Exchange will adjust the On-Exchange ORF by submitting a fee change filing to the Commission. The Exchange will notify Members of adjustments to the On-Exchange ORF via a Regulatory Circular in advance of any change.

Additionally, the Exchange proposes to remove obsolete text regarding an ORF rate that is no longer in effect.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Section 6(b)(4) of the Act¹³ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act¹⁴ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to

permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the proposed change to assess and collect an On-Exchange ORF is reasonable, equitable and not unfairly discriminatory for various reasons. First, On-Exchange ORF is reasonable, equitable and not unfairly discriminatory in that it is charged to all Exchange transactions that clear in the "customer" range at the OCC. Similar to ORF today, the Exchange believes On-Exchange ORF ensures fairness by assessing a specific fee to those Members that require more Exchange regulatory services based on the amount of customer options business they conduct. Over recent years, options trading volume has increased with a growing percentage of the volume applicable to customer transactions. Customers trading on the Exchange (through a Member) benefit from the protections of a robust regulatory program including the maintenance of fair and orderly markets and protections against fraud and other manipulation. The Exchange believes it is equitable and not unfairly discriminatory to assess a regulatory fee to transactions that clear in the "customer" range to cover regulatory costs, but not to transactions clearing in the "firm" or "market maker" range because Clearing Members and Market Makers¹⁵ (who clear in the Firm and Market Maker range), as those market participants are generally subject to other Exchange fees, fines and obligations. For example, Clearing Members and Market Makers are required to pay Exchange application fees, permit fees, and connectivity fees, amongst others. In addition, all fines issued by the Exchange for regulatory infractions are assessed only to Members and would be applied to regulatory revenues. As with today's ORF, the Exchange expects that Clearing Members from whom On-Exchange ORF is collected will pass through the fee to their customers (as

the Exchange understands occurs today). In addition, Market Makers in particular are subject to various quoting and other obligations to ensure that they provide stable and liquid markets, which benefit all market participants including customers. Excluding Market Maker transactions from On-Exchange ORF will allow Market Makers to better manage their costs more effectively thus enabling them to better allocate resources toward technology, risk management, and capacity to ensure continued liquidity provision.

In addition to the overall increase in "customer" range volume generally, regulating customer trading activity is more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. For example, there are costs associated with main office and branch office examinations (*e.g.*, staff and travel expenses), as well as investigations into customer complaints and terminations of registered persons. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.*, Clearing Member proprietary transactions) of its regulatory program.¹⁶ While the Exchange notes that it has broad regulatory responsibilities with respect to its Member's activities, irrespective of where their transactions take place, the Exchange believes it is reasonable to assess the proposed fee to only those transactions occurring on the Exchange. The proposed change more narrowly tailors the fee to products and transactions with a direct connection to the Exchange. With this proposal, transactions that would clear in the "customer" range occurring on other exchanges would no longer be subject to an ORF assessed by the Exchange.

The Exchange believes it is equitable and not unduly discriminatory to modify the method of collecting the fee such that On-Exchange ORF will not consider CMTAs reported directly to OCC as is done in today's method of ORF. CMTA transfers are considered today under the current collection methodology for ORF as a convenience to industry members in administering a pass through of the fee to their customers. Limiting the On-Exchange

¹⁵ Market Makers refers to "Lead Market Makers," "Primary Lead Market Makers," and "Registered Market Makers" collectively. Lead Market Maker means a Member registered with the Exchange for the purpose of making markets in securities traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of these Rules with respect to Lead Market Makers. Primary Lead Market Maker means a Lead Market Maker appointed by the Exchange to act as the Primary Lead Market Maker for the purpose of making markets in securities traded on the Exchange. Registered Market Maker means a Member registered with the Exchange for the purpose of making markets in securities traded on the Exchange, who is not a Lead Market Maker and is vested with the rights and responsibilities specified in Chapter VI of these Rules with respect to Registered Market Makers. See Exchange Rule 100.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁶ If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to modify On-Exchange ORF or assess a separate regulatory fee on Member proprietary transactions if the Exchange deems it advisable.

ORF to transactions on the Exchange poses a limitation in the use of CMTA for this purpose. The Exchange understands that a CMTA may be added at order entry, via post-trade edit on the Exchange, or post-trade at OCC. CMTA transfers that occur at OCC do not necessarily contain reliable information regarding the Exchange on which the original transaction occurred.¹⁷ Without specific information as to where the original transaction occurred, the Exchange would not be able to accurately account for CMTA transfers that occur at OCC.

The Exchange further believes that the proposed change to the method for assessment and collection of the fee is reasonable because it would help ensure that revenue collected from the On-Exchange ORF, in combination with other regulatory fees and fines, would cover a material portion of the Exchange's regulatory costs.

As noted above, the Exchange will also continue to monitor on at least a semiannual basis the amount of revenue collected from the On-Exchange ORF, even as amended, to ensure that it, in combination with its other regulatory fees and fines, would cover a material portion of the Exchange's regulatory costs and not exceed it.

Additionally, the Exchange proposes to remove obsolete text regarding the ORF rate that is no longer in effect. The Exchange believes that the proposal to remove obsolete text regarding the ORF rate that is no longer in effect would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed change would provide greater clarity to market participants regarding the Exchange's Fee Schedule. It is in the public interest for the Exchange's Fee Schedule to be accurate so as to eliminate the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because On-Exchange ORF applies to all customer activity on the Exchange, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue

derived from non-customer activity. The Exchange notes, however, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the On-Exchange ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. In addition, the Exchange will not implement the On-Exchange ORF until all other options exchanges are prepared to adopt a similar model to avoid overlapping ORFs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁸ and paragraph (f) of Rule 19b-4¹⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MIAX-2026-01 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-MIAX-2026-01. 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 filing 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-MIAX-2026-01 and should be submitted on or before February 23, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-01976 Filed 1-30-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104718; File No. 4-880]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing of Proposed Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and Texas Stock Exchange LLC

January 28, 2026.

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 17d-2 thereunder,² notice is hereby given that on January 12, 2026, the Financial Industry Regulatory Authority, Inc. ("FINRA") and Texas Stock Exchange LLC ("TXSE") (together with FINRA, the "Parties") filed with the Securities and Exchange Commission ("Commission" or "SEC") a plan for the allocation of regulatory responsibilities, dated January 12, 2026 ("17d-2 Plan" or the "Plan"). The Commission is publishing

¹⁷ Under the current methodology for assessing ORF, the Exchange on which the transaction occurred is irrelevant.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f).

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d-2.

this notice to solicit comments on the 17d–2 Plan from interested persons.

I. Introduction

Section 19(g)(1) of the Act,³ among other things, requires every self-regulatory organization (“SRO”) registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO’s own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.⁴ Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (“common members”). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁵ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁶ With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.⁷ Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (“DEA”) to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.⁸ When an SRO has been named as a common member’s DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO’s obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1

does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.⁹ Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. Proposed Plan

The proposed 17d–2 Plan is intended to reduce regulatory duplication for firms that are common members of both TXSE and FINRA.¹⁰ Pursuant to the proposed 17d–2 Plan, FINRA would assume certain examination and enforcement responsibilities for common members with respect to certain applicable laws, rules, and regulations.

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the “Texas Stock Exchange Certification of Common Rules,” referred to herein as the “Certification”) that lists every TXSE rule, and select federal securities laws, rules, and regulations, for which FINRA would bear responsibility under the Plan for overseeing and enforcing with respect to TXSE members that are also members of FINRA and the associated persons therewith (“Dual Members”).

Specifically, under the 17d–2 Plan, FINRA would assume examination and enforcement responsibility relating to

compliance by Dual Members with the rules of TXSE that are substantially similar to the applicable rules of FINRA,¹¹ as well as any provisions of the federal securities laws and the rules and regulations thereunder delineated in the Certification (“Common Rules”). In the event that a Dual Member is the subject of an investigation relating to a transaction on TXSE, the plan acknowledges that TXSE may, in its discretion, exercise concurrent jurisdiction and responsibility for such matter.¹²

Under the Plan, TXSE would retain full responsibility for surveillance and enforcement with respect to trading activities or practices involving TXSE’s own marketplace, including, without limitation, registration pursuant to its applicable rules of associated persons (*i.e.*, registration rules that are not Common Rules); its duties as a DEA pursuant to Rule 17d–1 under the Act; and any TXSE rules that are not Common Rules.¹³

The text of the proposed 17d–2 Plan is as follows:

Agreement Between Financial Industry Regulatory Authority, Inc. and Texas Stock Exchange LLC Pursuant to Rule 17d–2 Under the Securities Exchange Act of 1934

This Agreement, by and between the Financial Industry Regulatory Authority, Inc. (“FINRA”) and Texas Stock Exchange LLC (“TXSE”), is made this 12th day of January, 2026 (the “Agreement”), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 17d–2 thereunder, which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA and TXSE may be referred to individually as a “party” and together as the “parties.”

Whereas, the parties desire to reduce duplication in the examination, surveillance and investigation of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

Whereas, the parties desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d–2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the “SEC” or “Commission”) for its approval.

Now, therefore, in consideration of the mutual covenants contained hereinafter, the parties hereby agree as follows:

¹¹ See paragraph 1(b) of the proposed 17d–2 Plan (defining Common Rules). See also paragraph 1(f) of the proposed 17d–2 Plan (defining Regulatory Responsibilities). Paragraph 2 of the Plan provides that annually, or more frequently as required by changes in either TXSE rules or FINRA rules, the parties shall review and update, if necessary, the list of Common Rules.

¹² See paragraph 5 of the proposed 17d–2 Plan.

¹³ See paragraph 2 of the proposed 17d–2 Plan.

³ 15 U.S.C. 78s(g)(1).

⁴ 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

⁵ 15 U.S.C. 78d(q)(1).

⁶ See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

⁷ 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

⁸ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

⁹ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

¹⁰ The proposed 17d–2 Plan refers to these common members as “Dual Members.” See Paragraph 1(c) of the proposed 17d–2 Plan.

1. *Definitions.* Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) “TXSE Rules” or “FINRA Rules” shall mean the rules of TXSE or FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) “Common Rules” shall mean the TXSE Rules that are substantially similar to the applicable FINRA Rules and certain provisions of the Exchange Act and SEC rules set forth on Exhibit 1 in that examination, surveillance or investigation for compliance with such provisions and rules would not require FINRA to develop one or more new examination, surveillance or investigation standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Dual Member’s activity, conduct, or output in relation to such provision or rule; provided, however, Common Rules shall not include the application of the SEC, TXSE or FINRA rules as they pertain to violations of insider trading activities, which is covered by a separate 17d–2 Agreement by and among Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., NYSE Texas, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., MEMX LLC, MIAx PEARL, LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, NYSE Arca Inc., Investors’ Exchange LLC, Long-Term Stock Exchange, Inc., 24X National Exchange LLC, and Green Impact Exchange, LLC effective on September 9, 2025, as may be amended from time to time. Common Rules shall not include any provisions regarding (i) notice, reporting or any other filings made directly to or from TXSE, (ii) incorporation by reference of other TXSE Rules that are not Common Rules, (iii) exercise of discretion in a manner that differs from FINRA’s exercise of discretion including, but not limited to exercise of exemptive authority, by TXSE, (iv) prior written approval of TXSE and (v) payment of fees or fines to TXSE.

(c) “Dual Members” shall mean those TXSE members that are also members of FINRA and the associated persons therewith.

(d) “Effective Date” shall be the date this Agreement is approved by the Commission.

(e) “Enforcement Responsibilities” shall mean the conduct of appropriate proceedings, in accordance with FINRA’s Code of Procedure (the Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of Common Rules have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under FINRA’s Code of Procedure and sanction guidelines.

(f) “Regulatory Responsibilities” shall mean the examination, surveillance and investigation responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the

Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on Exhibit 1 attached hereto.

2. *Regulatory Responsibilities.* FINRA shall assume Regulatory Responsibilities for Dual Members. Attached as Exhibit 1 to this Agreement and made part hereof, TXSE furnished FINRA with a current list of Common Rules and certified to FINRA that such rules that are TXSE Rules are substantially similar to the corresponding FINRA Rules (the “Certification”). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the rules of TXSE or FINRA, TXSE shall submit an updated list of Common Rules to FINRA for review which shall add TXSE Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete TXSE Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be TXSE Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term “Regulatory Responsibilities” does not include, and TXSE shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) the following (collectively, the “Retained Responsibilities”):

(a) surveillance, examination, investigation and enforcement with respect to trading activities or practices involving TXSE’s own marketplace except as otherwise specified in the list of Common Rules in Exhibit 1;

(b) registration pursuant to its applicable rules of associated persons (*i.e.*, registration rules that are not Common Rules);

(c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d–1 under the Exchange Act; and

(d) any TXSE Rules that are not Common Rules, except for TXSE Rules for any TXSE member that operates a facility (as defined in Section 3(a)(2) of the Exchange Act), acts as an outbound router for TXSE and is a member of FINRA (“Router Member”) as provided in paragraph 5.

3. *No Charge.* There shall be no charge to TXSE by FINRA for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide TXSE with ninety (90) days advance written notice in the event FINRA decides to impose any changes to TXSE for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, TXSE shall have the right at the time of imposition of such charge to terminate this Agreement; provided, however, that FINRA’s

Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

4. *Applicability of Certain Laws, Rules, Regulations or Orders.* Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission. To the extent such statute, rule or order is inconsistent with this Agreement, the statute, rule or order shall supersede the provision(s) hereof to the extent necessary for them to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

5. *Notification of Violations.*

(a) In the event that FINRA becomes aware of apparent violations of any TXSE Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify TXSE of those apparent violations for such response as TXSE deems appropriate. With respect to apparent violations of any TXSE Rules by any Router Member, FINRA shall not make referrals to TXSE pursuant to this paragraph 5. Such apparent violations shall be processed by, and enforcement proceedings in respect thereto will be conducted by, FINRA as provided in this Agreement.

(b) In the event that TXSE becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained Responsibilities, TXSE shall notify FINRA of those apparent violations and such matters shall be handled by FINRA consistent with the provisions in this Agreement.

(c) Apparent violations of Common Rules shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on TXSE, TXSE may in its discretion assume concurrent jurisdiction and responsibility.

(d) Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

6. *Continued Assistance.*

(a) FINRA shall make available to TXSE all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder with respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish TXSE any information it obtains about Dual Members which reflects adversely on their financial condition. TXSE shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

(b) The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations. Neither party shall assert regulatory or other privileges as against the other with respect to documents or information that is required to be shared pursuant to this Agreement.

(c) The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

7. Dual Member Applications.

(a) Dual Members subject to this Agreement shall be required to submit, and FINRA shall be responsible for processing and acting upon all applications submitted on behalf of partners, officers, registered personnel and any other person required to be approved by the TXSE Rules and FINRA Rules or associated with Dual Members thereof. Upon request, FINRA shall advise TXSE of any changes of allied members, partners, officers, registered personnel and other persons required to be approved by the TXSE Rules and FINRA Rules.

(b) Dual Members shall be required to send to FINRA all letters, termination notices or other material respecting the individuals listed in paragraph 7(a).

(c) When as a result of processing such submissions FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member or a person associated with a Dual Member ("Associated Person"), FINRA will determine pursuant to Sections 15A(g) and Section 6(c) of the Exchange Act the acceptability or continued acceptability of the Dual Member or the Associated Person to whom such disqualification applies, and whether a notice is required to be filed under Section 19h-1 of the Exchange Act. FINRA shall advise TXSE in writing of such acceptability or continued acceptability, which may include providing TXSE with draft notices or other draft documents regarding the disqualified Dual Member or Associated Person. TXSE shall, within 30 days of receiving such information from FINRA, advise FINRA in writing of its decision regarding whether it concurs with FINRA's determination. TXSE will reimburse FINRA for reasonable expenses incurred in notifying TXSE of FINRA's determination regarding a statutory disqualification under Section 15A(g) and Section 6(c) of the Exchange Act. When as a result of processing such submissions FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member or an Associated Person that does not result in FINRA determining the acceptability or continued acceptability of the Dual Member or the Associated Person or in preparing a notice under Section 19h-1 of the Exchange Act, FINRA shall, if appropriate, promptly update in CRD the statutory disqualification status of the Dual Member or the Associated person. Such update shall include any applicable information pertaining to the reason for the statutory disqualification and, as applicable, any resolution pertaining to the Dual Member's or the Associated Person's statutory disqualification. No additional communication to TXSE about the statutory disqualification shall be required.

(d) Notwithstanding the foregoing, FINRA shall not review the membership application, reports, filings, fingerprint cards, notices, or other writings filed to determine if such documentation submitted by a broker or

dealer, or an associated person therewith or other persons required to register or qualify by examination meets the TXSE requirements for general membership or for specified categories of membership or participation in TXSE. FINRA shall not review applications or other documentation filed to request a change in the rights or status described in this paragraph 7(d), including termination or limitation on activities, of a member or a participant of TXSE, or a person associated with, or requesting association with, a member or participant of TXSE.

8. *Branch Office Information.* FINRA shall also be responsible for processing and, if required, acting upon all requests for the opening, address changes, and terminations of branch offices by Dual Members and any other applications required of Dual Members with respect to the Common Rules as they may be amended from time to time. Upon request, FINRA shall advise TXSE of the opening, address change and termination of branch and main offices of Dual Members and the names of such branch office managers.

9. *Customer Complaints.* TXSE shall forward to FINRA copies of all customer complaints involving Dual Members received by TXSE relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

10. *Advertising.* FINRA shall assume responsibility to review the advertising of Dual Members subject to the Agreement, provided that such material is filed with FINRA in accordance with FINRA's filing procedures and is accompanied with any applicable filing fees set forth in FINRA Rules.

11. *No Restrictions on Regulatory Action.* Notwithstanding anything else herein and to the contrary, except for paragraph 5(a), nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.

12. *Termination.* This Agreement may be terminated by TXSE or FINRA at any time upon the approval of the Commission after one (1) year's written notice to the other party, except as provided in paragraph 3.

13. *Arbitration.* In the event of a dispute between the parties as to the operation of this Agreement, TXSE and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, DC in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Each party acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business and operations of the other party. In the event of a dispute between the parties, the parties shall continue to perform their respective obligations under this Agreement in good faith during the

resolution of such dispute unless and until this Agreement is terminated in accordance with its provisions. Nothing in this paragraph 13 shall interfere with a party's right to terminate this Agreement as set forth herein.

14. *Amendment.* This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

15. *Limitation of Liability.* Neither FINRA nor TXSE nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of FINRA or TXSE and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or TXSE with respect to any of the responsibilities to be performed by them hereunder.

16. *Relief from Responsibility.* Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d-2 thereunder, FINRA and TXSE join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve TXSE of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

17. *Severability.* Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

18. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

[Remainder of page intentionally left blank.]

* * * * *

Exhibit 1

Texas Stock Exchange Certification of Common Rules

TXSE hereby certifies that the requirements contained in the rules listed below for TXSE are identical to, or substantially similar to, the comparable FINRA Rules, Exchange Act provision or Securities Exchange Act Rule (SEA) rule identified ("Common Rules").

Common Rules shall not include any provisions regarding (i) notice, reporting or any other filings made directly to or from TXSE, (ii) incorporation by reference of TXSE

Rules that are not Common Rules, (iii) exercise of discretion in a manner that differs from FINRA's exercise of discretion including, but not limited to exercise of exemptive authority, by TXSE, (iv) prior written approval of TXSE and (v) payment of fees or fines to TXSE.

TXSE Rule	FINRA rule(s), exchange act provision(s) or SEA rule(s)
Rule 2.005(j) Lapse of Registration and Expiration of SIE #	FINRA Rule 1210.08—Registration Requirements—Lapse of Registration and Expiration of SIE.
Rule 2.005.02 Continuing Education Requirements #	FINRA Rule 1240 Continuing Education Requirements.
Rule 2.005.04 Termination of Employment	FINRA By-Laws of the Corporation, Article V, Section 3 Notification by Member to the Corporation and Associated Person of Termination; Amendments to Notification; FINRA Rule 1010(e) Electronic Filing Requirements for Uniform Forms.
Rule 2.006(b) and (g) Application Procedures for Membership or to become an Associated Person of a Member #.	FINRA By-Laws of the Corporation, Article IV, Section 1(c) Application for Membership and Article V, Sec. 2(c); FINRA Rule 1010(c) Electronic Filing Requirements for Uniform Forms.
Rule 3.001 Business Conduct of Members ^	FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade ^.
Rule 3.002 Violations Prohibited ^ #	FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade and FINRA Rule 3110 Supervision ^.
Rule 3.003 Use of Fraudulent Devices ^	FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Devices ^.
Rule 3.005 Communications with the Public	FINRA Rule 2210 Communications with the Public.
Rule 3.006 Fair Dealing with Customers	FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Devices, ^ 1 FINRA Rule 2111 Suitability.
Rule 3.007(a) Recommendations to Customers	FINRA Rule 2111(a) and SM .03 Suitability.
Rule 3.008(a) The Prompt Receipt and Delivery of Securities	FINRA Rule 11860 COD Orders.
Rule 3.008(b) The Prompt Receipt and Delivery of Securities	SEC Regulation SHO.
Rule 3.009 Charges for Services Performed	FINRA Rule 2122 Charges for Services Performed.
Rule 3.010 Use of Information	FINRA Rule 2060 Use of Information Obtained in Fiduciary Capacity.
Rule 3.011 Publication of Transactions and Quotations #	FINRA Rule 5210 Publication of Transactions and Quotations.
Rule 3.012 Offers at Stated Prices	FINRA Rule 5220 Offers at Stated Prices.
Rule 3.013 Payments Involving Publications that Influence the Market Price of a Security.	FINRA Rule 5230 Payments Involving Publications that Influence the Market Price of a Security.
Rule 3.014 Disclosure on Confirmations	FINRA Rule 2232(a) Customer Confirmations and SEC Rule 10b-10 Confirmation of Transactions.
Rule 3.015 Disclosure of Control	FINRA Rule 2262 Disclosure of Control Relationship With Issuer.
Rule 3.016 Discretionary Accounts	FINRA Rule 3260 Discretionary Accounts.
Rule 3.017 Customer's Securities or Funds	FINRA Rule 2150(a) Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts—Improper Use.
Rule 3.018 Prohibition Against Guarantees	FINRA Rule 2150(b) Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts—Prohibition Against Guarantees.
Rule 3.019 Sharing in Accounts; Extent Permissible	FINRA Rule 2150(c)(1) Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts—Sharing in Accounts; Extent Permissible.
Rule 3.020 Influencing or Rewarding Employees of Others	FINRA Rule 3220 Influencing or Rewarding Employees of Others.
Rule 3.021 Customer Disclosures	FINRA Rule 2265 Extended Hours Trading Risk Disclosure.
Rule 3.22 and Interpretations and Policies .01 Telemarketing	FINRA Rule 3230 Telemarketing.
Rule 4.001 Requirements # 2	Section 17 of the Exchange Act and rules thereunder and FINRA Rule 4511(a) and (c) General Requirements.
Rule 4.003 Record of Written Complaints	FINRA Rule 4513 Records of Written Customer Complaints.
Rule 5.001 Written Procedures #	FINRA Rule 3110(b)(1) Supervision-Written Procedures ^.
Rule 5.002 Responsibility of Members	FINRA Rule 3110 (a)(4), (b)(4) and (b)(7) Supervision—Supervisory System/Written Procedures—Review of Correspondence and Internal Communications ^.
Rule 5.003 Records	FINRA Rule 3110 Supervision ^.
Rule 5.004 Review of Activities	FINRA Rule 3110(c) and (d) Supervision—Internal Inspections/Transaction Review and Investigation ^.
Rule 5.006 Anti-Money Laundering Compliance Program #	FINRA Rule 3310 Anti-Money Laundering Compliance Program.
Rule 9.003 Predispute Arbitration Agreements	FINRA Rule 2268 Requirements When Using Predispute Arbitration Agreements for Customer Accounts.
Rule 11.020(a)(3) LULD Plan and Trading Halts on the Exchange	FINRA Rule 6190(a) & (b) Compliance with Regulation NMS Plan to Address Extraordinary Market Volatility.
Rule 11.021 Trading Halts Due to Extraordinary Market Volatility/Market-Wide Circuit Breakers #.	FINRA Rule 6190(a) & (b) Compliance with Regulation NMS Plan to Address Extraordinary Market Volatility.
Rule 11.009(a)(5) Order Execution # ^^	FINRA Rule 6182 Trade Reporting of Short Sales **.
Rule 11.009(f) Locking Quotation or Crossing Quotations in NMS Stocks **.	FINRA Rule 6240 Prohibition from Locking or Crossing Quotations in NMS Stocks **.
Rule 12.001 Market Manipulation	FINRA Rule 6140(a) Other Trading Practices.
Rule 12.002 Fictitious Transactions	FINRA Rule 6140 Other Trading Practices and FINRA Rule 5210 Supplementary Material .02 Self-Trades.
Rule 12.003 Excessive Sales by a Member	FINRA Rule 6140(c) Other Trading Practices.
Rule 12.004 Manipulative Transactions	FINRA Rule 6140 Other Trading Practices.
Rule 12.005 Dissemination of False Information	FINRA Rule 6140(e) Other Trading Practices.

TXSE Rule	FINRA rule(s), exchange act provision(s) or SEA rule(s)
Rule 12.006 Prohibition Against Trading Ahead of Customer Orders **	FINRA Rule 5320 Prohibition Against Trading Ahead of Customer Orders **
Rule 12.009 Trade Shredding	FINRA Rule 5290 Order Entry and Execution Practices.
Rule 12.011 Best Execution **	FINRA Rule 5310 Best Execution and Interpositioning **.
Rule 12.013 Trading Ahead of Research Reports **	FINRA Rule 5280 Trading Ahead of Research Reports **.
Rule 12.014 Front Running of Block Transactions **	FINRA Rule 5270 Front Running of Block Transactions **.
Rule 13.002. Failure to Deliver and Failure to Receive	SEA Rule 203 of Regulation SHO—Borrowing and Delivery Requirements **.
Rule 13.003(a), (b)(i), (d) and Interpretation and Policy .01 Forwarding of Proxy and Other Issuer-Related Materials; Proxy Voting.	FINRA Rule 2251 Processing and Forwarding of Proxy and Other Issuer-Related Materials.

¹ FINRA shall not have Regulatory Responsibilities regarding .01 of TXSE Rule 3.006.

² FINRA shall not have Regulatory Responsibilities regarding requirements to keep records “in conformity with . . . Exchange Rules;” responsibility for such requirement remains with TXSE.

In addition, the following provisions shall be part of this 17d-2 Agreement:

SEA Rules:

- SEA Rule 200 of Regulation SHO—Definition of Short Sales and Marking Requirements **
- SEA Rule 201 of Regulation SHO—Circuit Breaker **
- SEA Rule 203 of Regulation SHO—Borrowing and Delivery Requirements **
- SEA Rule 204 of Regulation SHO—Close-Out Requirement **
- SEA Rule 101 of Regulation M—Activities by Distribution Participants **
- SEA Rule 102 of Regulation M—Activities by Issuers and Selling Security Holders During a Distribution **
- SEA Rule 103 of Regulation M—Nasdaq Passive Market Making **
- SEA Rule 104 of Regulation M—Stabilizing and Other Activities in Connection with an Offering **
- SEA Rule 105 of Regulation M—Short Selling in Connection With a Public Offering **
- SEA Rule 604 of Regulation NMS—Display of Customer Limit Orders **
- SEA Rule 606 of Regulation NMS—Disclosure of Routing Information **
- SEA Rule 610(d) of Regulation NMS—Locking or Crossing Quotations **
- SEA Rule 611 of Regulation NMS—Order Protection Rule **
- SEA Rule 10b-5 Employment of Manipulative and Deceptive Devices ^
- SEA Rule 17a-3/17a-4—Records to Be Made by Certain Exchange Members, Brokers, and Dealers/Records to Be Preserved by Certain Exchange Members, Brokers, and Dealers ^
- SEA Rule 14e-4—Prohibited Transactions in Connection with Partial Tender Offers + +

^ FINRA shall not have any Regulatory Responsibilities for these rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., NYSE Texas, Inc., Cboe EDGA Exchange Inc., Cboe EDGX Exchange Inc., Financial Industry Regulatory Authority, Inc., MEMX, LLC, MIAx PEARL, LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange, LLC, NYSE American LLC, NYSE Arca Inc., Investors' Exchange LLC, Long-Term Stock Exchange, Inc., 24X National Exchange LLC and Green Impact Exchange, LLC as approved by the SEC on September 9, 2025, as may be amended from time to time.

** FINRA shall perform the surveillance responsibilities for the double star rules. These rules may be cited by FINRA in both the context of this Agreement and the Regulatory Services Agreement.

+ + FINRA shall perform the surveillance responsibilities for SEA Rule 14e-4(a)(1)(ii)(D).

III. Date of Effectiveness of the Proposed Plan and Timing for Commission Action

Pursuant to Section 17(d)(1) of the Act¹⁴ and Rule 17d-2 thereunder,¹⁵ after February 23, 2026, the Commission may, by written notice, declare the plan submitted by TXSE and FINRA, File No. 4-880, to be effective if the Commission finds that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of the national market system and a national system for the clearance and settlement of securities transactions and in conformity with the factors set forth in Section 17(d) of the Act.

IV. Solicitation of Comments

In order to assist the Commission in determining whether to approve the proposed 17d-2 Plan and to relieve TXSE of the responsibilities which

would be assigned to FINRA, interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 4-880 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 4-880. 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/other.shtml>). Copies of the plan also will

be available for inspection and copying at the principal offices of TXSE and FINRA. 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 4-880 and should be submitted on or before February 23, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-01986 Filed 1-30-26; 8:45 am]

BILLING CODE 8011-01-P

¹⁴ 15 U.S.C. 78q(d)(1).

¹⁵ 17 CFR 240.17d-2.

¹⁶ 17 CFR 200.30-3(a)(34).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–104708; File No. SR–NYSE–2025–43]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Section 802.01C of the NYSE Listed Company Manual

January 28, 2026.

On December 3, 2025, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder,² a proposed rule change to amend Section 802.01C of the NYSE Listed Company Manual. The proposed rule change was published for comment in the *Federal Register* on December 17, 2025.³ On January 22, 2026, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superceded the original proposed rule change in its entirety.⁴

Section 19(b)(2) of the Act ⁵ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is January 31, 2026. The Commission is extending this 45-day time period.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 104385 (Dec. 12, 2025), 90 FR 58669. The Commission has received no comment letters on the proposed rule change.

⁴ In Amendment No. 1, the Exchange: (1) made changes to consistently use the term “NYSE Listed Company Manual”; (2) made clarifying changes about a company’s eligibility to submit a plan to regain compliance pursuant to Sections 802.01C, 802.02 and 802.03; (3) clarified the Exchange’s authority to suspend trading in or delist a security; and (4) made other technical and non-substantive changes. The full text of Amendment No. 1 can be found on the Commission’s website at <https://www.sec.gov/comments/sr-nyse-2025-47/srnyse202543-696267-2177015.pdf>.

⁵ 15 U.S.C. 78s(b)(2).

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change, as modified by Amendment No. 1, so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁶ designates March 17, 2026, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change, as modified by Amendment No. 1 (File No. SR–NYSE–2025–43).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–01977 Filed 1–30–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–104727; File No. SR–MRX–2026–02]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule General 8 Section 1 Related to Co-Location Services

January 28, 2026.

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 January 15, 2026, Nasdaq MRX, LLC (“MRX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to restructure the Exchange’s connectivity fee schedule under Rule General 8, Section 1 relating to co-location services and establish fees for certain co-location services, as described further below.

The text of the proposed rule change is available on the Exchange’s website at

<https://listingcenter.nasdaq.com/rulebook/mrx/rulefilings>, and at the principal office of the Exchange.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange’s current data center in Carteret, New Jersey, consists of the original data center (“NY11”), an expansion area (“NY11–4”), and a future expansion area (“NY11–5”). The purpose of this proposed rule change is to restructure the Exchange’s connectivity fee schedule under Rule General 8, Section 1 to eliminate cabinet density-based distinctions and associated fees, other than installation fees,³ and establish a power delivery-based pricing model. Specifically, the Exchange proposes to (i) eliminate all density-based cabinet offerings under Section 1(a) of Rule General 8 including their respective fees other than installation fees; and (ii) establish power delivery-based, recurring monthly fees for cabinet power circuits under Rule General 8, Section 1(c), as described below.

Current Cabinet Offerings

Currently, co-location customers have the option of obtaining cabinets of various power densities at varying installation and ongoing monthly fees.⁴ Co-location customers may obtain a Half Cabinet,⁵ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts (“kW”),⁶ a Medium Density Cabinet with power density greater than

³ See Rule General 8, Section 1(a).

⁴ See Rule General 8, Section 1(a).

⁵ Half cabinets are not available to new subscribers. The Half Cabinet is currently offered for an ongoing monthly fee of \$2,000. See Rule General 8, Section 1(a).

⁶ The Low Density Cabinet is offered for an installation fee of \$3,850 and an ongoing monthly fee of \$2,200. See Rule General 8, Section 1(a).

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30–3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

2.88 kW and less than or equal to 5 kW,⁷ a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW,⁸ a High Density Cabinet with power density greater than 7 kW and less than 10 kW,⁹ a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW,¹⁰ and an Ultra High Density Cabinet with power density greater than 10 kW and less than or equal to 15 kW.¹¹

Proposed Power Delivered Model

The Exchange is now proposing (i) to eliminate all such size- and density range-based cabinet offerings under Rule General 8, Section 1(a), including their respective ongoing monthly fees, and (ii) replace them with two cabinet offerings, consisting of a single cabinet as well as a half cabinet option, with their respective cabinet installation fees unchanged from current cabinet installation fees under Rule General 8, Section 1(a).¹² Unlike today, however,

⁷ The Medium Density Cabinet is offered for an installation fee of \$3,850 for NY11 and \$5,940 for NY11–4 and an ongoing monthly fee of \$2,750 equally applicable to both NY11 and NY11–4. *See* Rule General 8, Section 1(a).

⁸ The Medium High Density Cabinet is offered in NY11 for an installation fee of \$3,850 and an ongoing monthly fee of \$3,850 and in NY11–4 for an installation fee of \$5,940 and an ongoing monthly fee of \$3,850. *See* Rule General 8, Section 1(a).

⁹ The High Density Cabinet is offered in NY11 for an installation fee of \$3,850 and an ongoing monthly fee of \$4,950 and in NY11–4 for an installation fee of \$5,940 and an ongoing monthly fee of \$4,950. *See* Rule General 8, Section 1(a).

¹⁰ The Super High Density Cabinet is offered in NY11 for an installation fee of \$4,950 and an ongoing monthly fee of \$8,800 and in NY11–4 for an installation fee of \$5,940 and an ongoing monthly fee of \$8,800. *See* Rule General 8, Section 1(a).

¹¹ The Ultra High Density Cabinet is offered in NY11–4 for an installation fee of \$5,940 and an ongoing monthly fee of \$7,230. The Ultra High Density Cabinet is not available in NY11. *See* Rule General 8, Section 1(a).

¹² *See* proposed Rule General 8, Section 1(a). To effect this change, the Exchange proposes the following changes to Rule General 8, Section 1(a). The Exchange proposes to delete all cabinet with power offerings under Rule General 8, Section 1(a) including their associated installation and ongoing monthly fees, other than the Half Cabinet offering itself (but not its associated ongoing monthly fee which the Exchange is proposing to delete), and replace those offerings with two options: a Cabinet and the currently-offered Half Cabinet, as discussed above. The Exchange then proposes to move, unchanged from their current respective amounts, installation fees for cabinet options in NY11 and NY11–4 by inserting such fees (\$3,850 and \$5,490, respectively) into the columns titled “NY11 Installation Fee” and “NY11–4 Installation Fee” under Rule General 8, Section 1(a). The Exchange proposes to (1) enter, under the column titled “Ongoing Monthly Fee” under Rule General 8, Section 1(a) for both the Half Cabinet and Cabinet options the following: “N/A,” and (2) delete, from the “Ongoing Monthly Fee” for the Half Cabinet option under Rule General 8, Section 1(a) the

the Exchange is not proposing ongoing monthly fees under Rule General 8, Section 1(a) for cabinets throughout the data center campus, including NY11, and NY11–4. Rather, as discussed above, the Exchange proposes to eliminate ongoing monthly fees for cabinets under Rule General 8, Section 1(a) and introduce, in turn, a uniform, per kilovolt-amperes (kVA) -based,¹³

amount “\$2,200.” The Exchange further proposes a non-substantive change to move the symbol “+” from its various current locations within the table at Rule General 8, Section 1(a) to the caption for the column titled “NY11–4 Installation Fee” (and adjacent to the word “Fee”) so as to denote, unchanged from the symbol’s significance, as stated in its accompanying footnote, that cabinets under the column designated with that symbol include a larger cabinet (32” W x 48” D x 91” H). Finally, the Exchange proposes to delete from Rule General 8, Section 1(a), all accompanying notes, other than those designated with the following symbols: single asterisk (“*”) (noting that such cabinets are not available to new users) as well as the symbol “+” as discussed above. The Exchange is also proposing a non-substantive change to move, with a non-substantive clarifying change, the accompanying note to Rule General 8, Section 1(a) (providing that cabinet power cap is based on the available power at 80% of the breaker capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit)) to Rule General 8, Section 1(c). The Exchange proposes a clarifying change to that footnote to clarify that it is the circuit cap, rather than the cabinet power cap, that is based on the available power at 80% of the breaker capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit)). The Exchange notes this longstanding rule does not affect pricing, however, as fees are based on 100% of the circuit capacity. The proposed change is clarifying in nature and non-substantive because in all cases power caps are associated with power circuits rather than cabinet density, such that the proposed changes would render the note more accurate and easier to understand. As a conforming change, the Exchange proposes to designate that note with a double asterisk (“**”) and add the double asterisk to the caption to Rule General 8, Section 1(c) (Cabinet Power) to facilitate references to that note. The Exchange believes this proposed change would facilitate the understanding of and application of the Exchange’s rules because associated cabinet density options are being eliminated under this proposal, and Section 1(c) of Rule General 8 addresses cabinet power, to which this note is more closely related.

¹³ Kilovolt-Amperes (kVA) is a unit of *apparent power* used to describe the capacity of electrical circuits and equipment. In alternating current (AC) systems, power consists of two components: real power (kW) and reactive power (kVAR). Real power, or kW, is the actual usable power that performs work, such as running servers or cooling systems, whereas reactive power, or kVAR, is the power that sustains the magnetic and electric fields in equipment but does not perform useful work. Because AC systems often have both real and reactive components, kVA measures the total apparent power, which is the combination of real and reactive power—the full load the circuit must carry. The relationship between kilowatts and kVA depends on the power factor (PF) which reflects how efficiently electrical power is converted into useful work: $kW = kVA \times PF$. In the context of data center operations, electrical power is commonly expressed in two units: kilowatts (kW) and kilovolt-amperes (kVA). While these terms measure different aspects of electrical power—kW representing real power consumed by equipment and kVA

ongoing fixed monthly fee for all current power circuit offerings under proposed Rule General 8, Section 1(c).¹⁴

Specifically, the Exchange would establish a power-supplied-based, uniform ongoing monthly fee of \$550.00 per kVA¹⁵ to be applied to each power circuit offering under Rule General 8, Section 1(c), thus resulting in a fixed ongoing monthly fee for each of the various power circuit options under that section, as shown in Table 1¹⁶ below.¹⁷

representing apparent power supplied—they are closely correlated in environments where the power factor approaches unity. Modern data centers typically operate at or near a power factor of 1.0, resulting in minimal variance between kW and kVA. Accordingly, these measures, kW and kVA, are often treated as interchangeable for practical purposes.

¹⁴ As discussed above, the Exchange proposes to retain the Half Cabinet offering under Rule General 8, Section 1(a) as well as its related footnote (as designated with a single asterisk) clarifying that such Half Cabinets are not available to new subscribers. *See* proposed Rule General 8, Section 1(a).

¹⁵ As discussed below, the proposed amount of \$550 per kVA is within the current effective rate of \$482–\$763/kW and operates as a mid-band per kVA price (applied equally to all cabinet power circuit options offered by the Exchange under Rule General 8, Section 1(c)) to keep applicable fees balanced across user profiles.

¹⁶ In Tables 1–3 and throughout this proposal, the Exchange uses the terms “110 V” and “120 V.” In North America, residential and light-commercial electrical systems are nominally standardized at 120 volts, but the terms “110V,” “115V,” and “120V” are often used interchangeably. This is because they all refer to the same electrical system, not meaningfully different ones. Historically, early electrical grids in the U.S. operated closer to 110–115 volts. As infrastructure improved and electrical demand increased, utilities gradually raised the nominal voltage to 120 volts to improve efficiency and performance. Rather than replacing all existing equipment, standards were set so devices could operate safely across a voltage tolerance range, typically about $\pm 5\%$ to $\pm 10\%$. A subsequent clean-up filing will update the Exchange’s rulebook to uniformly list the 20 amp 110 volt and the 30 amp 110 volt circuits to 120 volt throughout its rulebook, consistent with current standards.

¹⁷ In Table 1 (as in Exhibit 5), additions are italicized, and deletions are bracketed. To effect these changes, the Exchange proposes to amend Rule General 8, Section 1(c) as follows. The Exchange proposes to (1) insert, in the column titled “Installation Fee” the acronym “NY11,” and move, unchanged from current amounts, fees designated with the symbol single asterisk (“*”) to a new column titled “NY11–4 Installation Fee”; (2) insert, in the column titled “Ongoing Monthly Fee” the acronym “NY11” and the parenthetical “(\$550 per kVA),” and then delete, from that current column titled “Ongoing Monthly Fee” all fees currently depicted thereunder (in each instance such fee being \$0), and insert, in their place, each of the proposed ongoing monthly fees in Table 1 for the respective power circuit options under Rule General 8, Section 1(c), other than those depicted with a single asterisk, which are designated for NY11–4; and (3) insert a new column titled “NY11–4 Ongoing Monthly Fee (\$550 per kVA)” and insert thereunder all proposed ongoing monthly fees shown in Table 1 for power circuit options designated with a single asterisk indicating, unchanged from today, that such cabinets are available in NY11–4 only. The Exchange proposes to enter “N/A” as applicable throughout Rule

Table 2, in turn, provides the basis for the fixed monthly fee calculations.¹⁸ As in the case of cabinet installation fees

under Rule General 8, Section 1(a), all cabinet power circuit installation fee

amounts under Rule General 8, Section (c) would remain unchanged.¹⁹

TABLE 1²⁰

Description	NY11 Installation fee	NY11-4 Installation fee	NY11 Ongoing monthly fee (\$550 per kVA)	NY11-4 Ongoing monthly fee (\$550 per kVA)
2x20 amp 110volt	\$2,200	N/A	[\$0]\$1,320.00	N/A
2x30 amp 110 volt	2,200	N/A	[\$0]\$1,980.00	N/A
2x20 amp 208 volt	2,200	N/A	[\$0]\$2,288.00	N/A
2x30 amp 208 volt	2,200	N/A	[\$0]\$3,432.00	N/A
2x60 amp 208 volt	3,300	N/A	[\$0]\$6,864.00	N/A
Phase 3 2x 20 amp 208 volt	3,300	N/A	[\$0]\$3,962.82	N/A
Phase 3 2x 30 amp 208 volt	3,300	N/A	[\$0]\$5,944.22	N/A
Phase 3 2x 40 amp 208 volt	3,300	N/A	[\$0]\$7,925.63	N/A
Phase 3 2x 50 amp 208 volt	3,300	N/A	[\$0]\$9,907.04	N/A
Phase 3 2x 60 amp 208 volt	3,300	N/A	[\$0]\$11,888.45	N/A
2x30 amp 48 volt DC	3,300	N/A	[\$0]\$792.00	N/A
Phase 1 20 amp 240 volt *	[3,600]	3,600	[\$0] N/A	2,640.00
Phase 1 32 amp 240 volt *	[3,600]	3,600	[\$0] N/A	4,224.00
Phase 1 40 amp 240 volt *	[3,600]	3,600	[\$0] N/A	.....
Phase 3 20 amp 415 volt *	[4,560]	4,560	[\$0] N/A	7,906.58
Phase 3 32 amp 415 volt *	[4,560]	4,560	[\$0] N/A	12,650.53

TABLE 2²¹

Description	kVA per Cir	Proposed monthly fee
2x20 amp 120 volt	2.4	\$1,320.00
2x30 amp 120 volt	3.6	1,980.00
2x20 amp 208 volt	4.16	2,288.00
2x30 amp 208 volt	6.24	3,432.00
2x60 amp 208 volt	12.48	6,864.00
Phase 3 2x 20 amp 208 volt	7.21	3,962.82
Phase 3 2x 30 amp 208 volt	10.81	5,944.22
Phase 3 2x 40 amp 208 volt	14.41	7,925.63
Phase 3 2x 50 amp 208 volt	18.01	9,907.04
Phase 3 2x 60 amp 208 volt	21.62	11,888.45
2x30 amp 48 volt DC	1.44	792.00
Phase 1 20 amp 240 volt *	4.8	2,640.00
Phase 1 32 amp 240 volt *	7.68	4,224.00
Phase 1 40 amp 240 volt *	9.6	5,280.00
Phase 3 20 amp 415 volt *	14.38	7,906.58

General 8, Section 1(c) to indicate that certain fees are not applicable, as appropriate. See proposed Rule General 8, Section 1(c).

¹⁸ The figure ("2X") as used in Tables 1–3 and throughout this proposal designates the Exchange's provision of both a primary and secondary circuit. The Exchange does not include the secondary circuit in the calculation of the proposed fees.

¹⁹ See proposed Rule General 8, Section 1(c). As discussed above, the Exchange is also proposing a non-substantive change to move, with one clarifying change from its current form, the accompanying note to Rule General 8, Section 1(a) (providing that cabinet power cap is based on the available power at 80% of the breakered capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit) to the notes in Rule General 8, Section 1(c). The Exchange proposes a clarifying change to that footnote to clarify that it is the circuit cap, rather than the cabinet power cap, that is based on the available power at 80% of the breakered capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit)). The proposed change is clarifying in nature and non-substantive because in all cases power caps are associated with power circuits rather than cabinet density, such that the proposed changes would render the note more accurate and easier to understand. See proposed Rule General 8,

Section 1(c). The 80% capacity rule is a safety and reliability standard applied in data centers to ensure that electrical circuits are not operated at their full breakered capacity. Instead, the usable power is capped at 80% of the circuit's rated capacity. This practice is based on the National Electrical Code (NEC) guidelines for continuous loads, which require derating to prevent overheating and allow for operational headroom. This rule does not affect pricing, however, as fees are based on 100% of the circuit capacity.

²⁰ The ongoing monthly fees depicted in Tables 1 and 2 are derived by multiplying the circuit's apparent power (kVA) by \$550 per kVA. The kilovolt-ampere (kVA) rating for each circuit was calculated using standard electrical formulas based on circuit type as follows. Single-phase circuits: "kVA"=(("Volts" x "Amps")/1000. This converts the product of voltage and current into kilovolt-amperes. Three-phase circuits (balanced load): "kVA"=($\sqrt{3}$ x "Volts" x "Amps")/1000=(1.732x "Volts"x "Amps")/1000. The factor $\sqrt{3}$ accounts for the three-phase power configuration. These formulas were applied to each circuit type in the table to determine its kVA capacity, which was then multiplied by the proposed rate of \$550 per kVA to calculate the new monthly fee. For readability, table values reflect rounded kVA figures (e.g., a three-phase 30-amp, 208-volt circuit is displayed as 10.81 kVA) and fees rounded to the nearest cent.

In internal calculations, the Exchange compute fees using full-precision kVA (e.g., ~10.794 kVA before display rounding), which can yield penny-level variances relative to fees computed from rounded kVA values. These minor differences arise solely from the sequence of rounding (rounding kVA before vs. after fee computation) and do not affect the uniform application of the \$550/kVA rate or the comparability of fees across circuit options. The Exchange notes that the initial filing (SR-MRX-2025-34) contained minor errors in calculation of the proposed ongoing monthly fees under proposed Rule General 8, Section 1(c). The Exchange has addressed those errors and will bill customers for the correct amounts accordingly.

²¹ In Table 2 and throughout this proposal, the kilovolt-ampere (kVA) rating for each circuit was calculated using standard electrical formulas based on circuit type as follows. Single-phase circuits: "kVA"=(("Volts" x "Amps")/1000. This converts the product of voltage and current into kilovolt-amperes. Three-phase circuits (balanced load): "kVA"=($\sqrt{3}$ x"Volts" x"Amps")/1000=(1.732x"Volts" x"Amps")/1000. The factor $\sqrt{3}$ accounts for the three-phase power configuration. These formulas were applied to each circuit type in the table to determine its kVA capacity, which was then multiplied by the proposed rate of \$550 per kVA to calculate the new monthly fee.

TABLE 2²¹—Continued

Description	kVA per Cir	Proposed monthly fee
Phase 3 32 amp 415 volt *	23.0	12,650.53

Transitioning to the Power Delivered Model

As discussed above, the Exchange currently offers several cabinet options the fees for which are based on varying power density ranges. As the Exchange transitions to the proposed power-delivered model, customers would transition to that model by structuring their power circuit selections under proposed Rule General 8, Section 1(c) to support the workload capacity supported under the cabinets held under current Rule General 8, Section 1(a). For example,²² a customer using a Super High Density Cabinet offering a power density range greater than 10 kW²³ and less than or equal to 17.3 kW²⁴ in NY11 with a flat monthly fee of \$8,800 would have several options for structuring its power circuit options under proposed Rule General 8, Section 1(c). The customer could select, for example, the Phase 3, 2 x 50 amp, 208V circuit (18.01 kVA), which approximates the high end of the current cabinet's power density range of 17.3 kW for a monthly fee of \$9,907.04. Alternatively, the customer could select the Phase 3, 2 x 30 amp, 208 volt circuit (10.81 kVA) to align itself with the lower end of the current cabinet density range—currently at the same flat fee of \$8,800 per month and as proposed \$5,944.22 per month—and reduce its

monthly costs by \$2,855.78. Similarly, customers using a Ultra High Density Cabinet with a cabinet density greater than 10 kW and less than or equal to 15 kW (at a current monthly fee of \$7,230.) could select the Phase 3 20 amp 415 volt circuit (14.38 kVA) at a recurring monthly fee of \$7,906.58. A customer with a High Density Cabinet offering a density greater than 7 kW and less than or equal to 10 kW at \$4,950 per month could select a Phase 3, 2 x 30 amp 208 volt circuit (10.81 kVA) at \$5,944.22 per month; alternatively, the customer could select the Phase 3, 2 x 20 amp 208 vol (7.21 kVA) circuit at the lower end of its current density for \$3,962.82 per month. Customers with a Medium High Density Cabinet offering densities greater than 5 kW and less than or equal to 7 kW currently at \$3,850 per month could select a 2 x 30 amp, 208 volt circuit (6.24 kVA) at \$3,432 per month or the 2 x 20 amp 208 volt circuit (4.16 kVA) at \$2,288 per month. Customers with a Medium Density Cabinet offering densities greater than 2.88 kW and less than or equal to 5 kW at a current monthly fee of \$2,750 could select a 2 x 20 amp 208 volt circuit (4.16 kVA) at \$2,288 per month or a 2 x 30 amp 110/120 volt (3.6 kVA) circuit at \$1,980 per month. Finally, customers with a Low Density Cabinet offering densities less than or equal to 2.88 kW at an ongoing

monthly fee of \$2,200 could select a 2 x 20 amp 110/120 volt circuit (2.4 kVA) at \$1,320 per month.

Table 3 below shows power circuit options under proposed Rule General 8, Section 1(c) that could be selected²⁵ to align with the high and lower end of the current cabinet density ranges under Rule General 8, Section 1(a), including associated changes in fees. While the table depicts a single power circuit at the approximate ends of the current cabinet density ranges for illustrative purposes, the Exchange notes that under the proposed power delivered model, clients are free to select multiple circuits per cabinet to achieve their desired power preferences. Under the current cabinet density-based model, clients are limited to the maximum power density allowed for their selected cabinet type. For example, a client using a Phase 3, 60-amp, 208-volt circuit (21.62 kVA) in combination with a Super High Density Cabinet would pay full fees for that power circuit but would only be authorized to draw up to 17.3 kW of power. Under the proposed billing model, subject to the 80% rule discussed above, clients may use the full power provided by their chosen circuits without being constrained by rigid cabinet density ranges in place today.

TABLE 3²⁶

Cabinet type (density range)	Circuit type	kVA	Current fee	New fee	Δ %
Low Density (≤2.88 kW)	20A 120V	2.4	\$2,200	\$1,320	– 40
30A 120V	3.6	2,200	1,980	– 10	
Medium Density (>2.88–≤5 kW)	30A 120V	3.6	2,750	1,980	– 28
20A 240V	4.8	2,750	2,640	– 4	
Medium-High Density (>5–≤7 kW)	30A 208V	6.24	3,850	3,432	– 10.86
30A 120V, 30A 120V	7.2	3,850	3,960	2.86	
High Density (>7–<10 kW)	30A 208V	6.24	4,950	3,432	– 30.67
40A 240V	9.6	4,950	5,280	6.67	
Ultra High Density (>10–≤15 kW)	20A 415V (Phase 3)	14.38	7,230	7,906.58	9.36
(Same circuit used for upper end) ....	.....	.....	.....	.....	.....
Super High Density (>15–≤17.3 kW)	60A 208V (Phase 3)	21.62	8,800	11,891	35.13
32A 415V (Phase 3)	23.0	8,800	12,650.53	43.76	

²² The examples that follow are for illustrative purposes only, as customers are free to select the power circuit options that best suit their business needs.

²³ For simplicity, assume power factor ≈ 1 (common in data centers), so: 10kW ≈ 10kV.

²⁴ For simplicity, assume power factor ≈ 1 (common in data centers), so: 17.3kW ≈ 17.3kV.

²⁵ The examples depicted in Table 3 are for illustrative purposes only, as customers are free to

select the power circuit options that best suit their business needs.

²⁶ In Table 3, the kilovolt-ampere (kVA) rating for each circuit was calculated using standard electrical formulas based on circuit type as follows. Single-phase circuits: “kVA”=(“Volts” x “Amps”)/1000. This converts the product of voltage and current into kilovolt-amperes. Three-phase circuits (balanced load): “kVA”=(√3 x “Volts” x “Amps”)/1000=(1.732 x “Volts” x “Amps”)/1000. The factor

√3 accounts for the three-phase power configuration. These formulas were applied to each circuit type in the table to determine its kVA capacity, which was then multiplied by the proposed rate of \$550 per kVA to calculate the new monthly fee. The examples depicted in this table are for illustrative purposes only, as customers are free to select the power circuit options that best suit their business needs.

The Exchange believes that pricing the offered services on a per kVA basis, as proposed, will allow the Exchange the operational flexibility to offer clients the maximum available power from the power circuits selected. Specifically, because the proposed fee structure eliminates cabinet density-based distinctions, including their associated fixed ongoing monthly fees, and replaces those distinctions with a single per-kVA-based monthly fee of \$550 per kVA delivered that is uniformly applied to the capacity of the customer's power circuit selection under Rule General 8, Section (c), customers in the lower density cabinet ranges are likely to experience a decrease in overall fees while customers in the higher cabinet density ranges are likely to see increases.

Overall, the proposal introduces a transparent and equitable delivery-based pricing model that equitably allocates fees and removes complexity, consistent with requirements under the Act.

The Exchange believes that the proposed changes are better aligned with current industry practices, which base billing on power supplied rather than cabinet footprint. Under the current cabinet density model, customers select from cabinet options designed to accommodate a range of power densities, up to approximately 17 kW. This approach often resulted in misalignment between costs and actual usage because pricing was tied to cabinet size and density tiers rather than the actual power delivered. For example, under the cabinet-density pricing model, customers operating at the lower end of a given cabinet's power-density range were assessed the same fixed ongoing monthly fee as customers operating at the higher end of that range, because pricing was tied to the cabinet's density tier rather than the deployed power circuit.

By contrast, the proposed per-kVA pricing model directly reflects the actual power delivered to the customer's circuits, ensuring that charges correspond to the infrastructure resources delivered. This power delivery-based approach inherently simplifies cost planning. In short, billing on a per-kVA basis promotes transparency and flexibility, aligning fees with real power demand and enabling the Exchange to accommodate evolving customer requirements with greater transparency and efficiency.

Increases associated with the proposal will better enable the Exchange to continue to maintain and improve its market infrastructure technology and services. The Exchange notes that the

proposed fee of \$550 per kVA is comparable to fees charged by at least one other national securities exchange for a similar product. Specifically, the New York Stock Exchange ("NYSE") offers a tiered, per kW monthly fee for cabinets ranging from \$900 to \$1,200 per kW based on the total kW allocated to all of a user's dedicated cabinets.²⁷ Under the NYSE schedule, for example, a customer requesting 10kW at NYSE would pay a monthly fee of \$10,500 per month (10kW × \$1,050 per kW per month), whereas a customer requesting ~10kW under the proposed model at the Exchange could install a Phase 3 30 amp, 208 volt circuit for 10.81 kVA²⁸ for a total charge of \$5,944.22 per month (10.8 kVA × \$550 per kVA per month).²⁹

The Exchange believes that its proposed pricing model is more transparent and equitable because it directly ties fees to the actual power delivered and the infrastructure required to support that capacity (power and cooling). This eliminates distortions inherent in tiered pricing, where customers with similar power needs may pay significantly different amounts based on density classifications. By linking charges to delivered power, the proposal enhances transparency and predictability. Costs scale with actual power delivered, and customers can avoid sudden price jumps when moving between tiers. Under the proposed structure, every kVA is priced the same, making it easier for customers to

²⁷ NYSE's per kW Monthly Fee is a factor of the total number of kilowatts allocated to all of a User's dedicated cabinets and varies based on the total kilowatts allocated to a User. See New York Stock Exchange LLC Connectivity Fee Schedule, available at https://www.nyse.com/publicdocs/nyse/Wireless_Connectivity_Fees_and_Charges.pdf. Most modern data centers typically operate at or near a power factor of 1.0, resulting in minimal variance between kW and kVA such that the two measures are, for comparison purposes and given this assumed PF factor, interchangeable.

²⁸ To convert 30 amps at 208 volts to kVA, we use the formula: $kVA = Volts \times Amps / 1000$. For single phase: $kVA = 208 \times 30 = 6.24 \text{ kVA} / 1000$. For three-phase (assuming a balanced load): $kVA = 1.732 \times 208 \times 30 = 10.81 \text{ kVA} / 1000$. 1.732 is derived from $\sqrt{3}$. As discussed above, modern data centers typically operate at or near a power factor of 1.0, resulting in minimal variance between kW and kVA. Accordingly, these measures are often treated as interchangeable for practical purposes. NYSE uses a tiered monthly fee per kW, ranging from \$900 to \$1,200 per kW depending on the total allocated power across a user's cabinets. Using PF ≈ 1.0, that translates to \$900–\$1,200 per kVA.

²⁹ NYSE charges a tiered monthly fee per kW, ranging from \$900 to \$1,200 per kW, depending on the total kilowatts allocated across all cabinets. For example, a customer requesting 10 kW at NYSE would pay approximately \$10,500 per month (10 kW × \$1,050 per kW). The Exchange proposes a flat monthly fee of \$550 per kVA for the full theoretical capacity of the circuit. For example, a Phase 3, 30-amp, 208-volt circuit provides approximately 10.81 kVA ($1.732 \times 208 \times 30 \div 1000$) for a monthly fee of \$5,944.22 ($\$550 \times 10.81$).

forecast expenses, compare across providers, and understand the relationship between costs and their selected power delivery preferences.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,³¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to restructure its cabinet and cabinet power connectivity schedule to provide for a delivery-based model that eliminates cabinet density-based distinctions, along with their associated monthly fees, and establishes in its place a uniform ongoing monthly fee of \$550 per kVA fee as applied to each offered cabinet power circuit options is reasonable. First, the Exchange's proposal to establish a \$550 per kVA fee to be applied to the various power circuit options offered by the Exchange is reasonable because the proposed amount of \$550 per kVA is within the current effective rate of \$482–\$763/kW and operates as a mid-band per kVA price (applied equally to all cabinet power circuit options offered by the Exchange under Rule General 8, Section 1(c)) to keep applicable fees balanced across user profiles. As discussed above, the Exchange is proposing to keep all cabinet and cabinet power installation fee amounts under Rule General 8, Sections 1(a) and (c) unchanged. Second, and as discussed above, the proposed per kVA fee of \$550 per kVA is reasonable as compared to per kVA fees for comparable products offered by NYSE. By linking charges to delivered power, the proposal enhances transparency and predictability as customers avoid price jumps when moving between tiers because costs scale with power delivered. By comparison, NYSE's model assesses \$900–\$1,200 per kW per month based on a user's aggregate dedicated-cabinet footprint, introducing higher per kVA prices, tier transitions, and variability that the Exchange's uniform \$550/kVA model avoids.

The Exchange's proposal to replace cabinet-density based pricing with a per-kVA power delivery model equitably allocates fees based on the

³⁰ 15 U.S.C. 78f(b).

³¹ 15 U.S.C. 78f(b)(4) and (5).

primary cost driver of co-location services—electrical power capacity and associated cooling—rather than cabinet density range-based footprint. Under the current model, two customers occupying the same cabinet density could incur identical fees despite materially different power demands, resulting in misalignment between fees and the customer's power usage. By charging according to committed and delivered kVA, the Exchange ensures that fees are reasonable and proportionate to the allocated infrastructure resources consistent with Section 6(b)(4).

As discussed above, the fee increases resulting from the proposed changes would support the Exchange's ongoing investments in market infrastructure and co-location services, ensuring competitiveness with peer exchanges. Customer demand for more robust and higher power cabinet options has grown significantly over time. In response, the Exchange has continued to invest in its data center operations to meet these evolving needs, consistent with applicable regulatory requirements. These investments include modernizing equipment and expanding the Exchange's co-location facilities to provide customers with additional space and power capacity, thereby providing customers with additional options for addressing their business needs. It is reasonable and consistent with the Act for the Exchange to recoup its investments, at least in part, by adjusting its fees.

The proposal is also not designed to permit unfair discrimination under Section 6(b)(5). The per-kVA pricing structure applies uniformly to all co-location users based on objective, market infrastructure technology-neutral criteria (power capacity requested and delivered), without regard to customer identity, membership status, or business model. Differences in fees reflect only differences in service requested and installed, which is a permissible and non-discriminatory basis for differentiation under the Act. The Exchange further believes that the proposed fee changes are not unfairly discriminatory because the proposed cabinet and cabinet power circuit options are available to and assessed uniformly across all market participants.

The Exchange believes that the proposed conforming and other non-substantive changes, including those to Rule General 8, Section 1, are appropriate because they align related parts of the Exchange's rulebook with the proposed changes or otherwise clarify and facilitate the application of the Exchange's rules.

Accordingly, the Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) and 6(b)(5) of the Act because it provides for the equitable allocation of reasonable fees and is not designed to permit unfair discrimination.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether to connect to the Exchange based on the value received compared to the cost of doing so.

Nothing in the proposal burdens intra-market competition because the proposed cabinet, half cabinet, and cabinet power options are available to any customer under the same fees as any other customer, and any customer that wishes to order cabinets and cabinet power options can do so on a non-discriminatory basis.

Co-location services are optional and offered in a highly competitive environment among multiple exchanges and third-party data center providers. Market participants that do not wish to pay for co-location services under the revised pricing model may continue to access the Exchange through alternative connectivity methods or utilize competing venues.

The proposed shift from cabinet-based pricing to a per-kVA power delivery model is designed to align fees with the actual resource delivered and infrastructure investments, rather than fixed cabinet density ranges. This change does not restrict access or favor any category of participant; all eligible users are subject to the same fees and terms based on objective criteria (committed and delivered power capacity). Accordingly, the proposal does not create any undue burden on intermarket competition, as participants can choose among multiple exchanges and service providers, nor does it impose an undue burden on intramarket competition, as all co-location customers are treated uniformly under the proposed fee structure, as described above.

To the extent the proposal may affect competition, the Exchange believes that the impact is positive because the

revised pricing structure promotes cost transparency and fairness, thereby enabling customers to more easily plan for and compare infrastructure expenses, as well as tailor their connectivity selections to suit their specific business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.³²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MRX-2026-02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-MRX-2026-02. 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 filing will

³² 15 U.S.C. 78s(b)(3)(A)(ii).

be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MRX-2026-02 and should be submitted on or before February 23, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104715; File No. SR-ICC-2025-012]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Risk Management Framework, ICC Risk Management Model Description, and ICC End-of-Day Price Discovery Policies and Procedures

January 28, 2026.

I. Introduction

On December 4, 2025, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder,² a proposed rule change to revise the ICC Risk Management Framework, ICC Risk Management Model Description, and ICC End-of-Day Price Discovery Policies and Procedures (the “Proposed Rule Change”). The Proposed Rule Change was published for comment in the **Federal Register** on December 18, 2025.³ The Commission has not received any comments on the Proposed Rule Change. For the reasons discussed below, the Commission is approving the Proposed Rule Change.

II. Description of the Proposed Rule Change

ICC is registered with the Commission as a clearing agency for the purpose of

clearing CDS contracts for its Clearing Participants.⁴ It maintains the ICC Risk Management Framework (“RMF”), which identifies the risks that ICC faces and articulates its risk management approach for each risk type; the ICC Risk Management Model Description (“RMMD”), which describes ICC’s quantitative risk models and the associated methods and techniques that ICC uses to determine its initial margin and guaranty fund requirements;⁵ and the ICC End-of-Day Price Discovery Policies and Procedures (“Pricing Policy”), which sets out ICC’s end-of-day price discovery process. Through its end-of-day price discovery process, ICC determines prices for cleared contracts using submissions made by Clearing Participants.⁶ ICC proposes changes to the RMF and RMMD to adjust the way it calculates its liquidity charge. Further, it proposes changes to the RMF, RMMD, and Pricing Policy to reflect governance changes and to make other minor edits.

A. Liquidity Charge

In the event that a Clearing Participant defaults, ICC may liquidate the Clearing Participant’s portfolio to obtain the resources necessary to satisfy the Clearing Participant’s obligations.⁷ To account for the transaction costs associated with liquidating a defaulting Clearing Participant’s portfolio under stressed market conditions, ICC considers a liquidity charge in its Initial Margin requirement.⁸ In estimating the liquidity charge for CDS index instruments, ICC considers the bid-offer width (“BOW”) values used for ICC’s end-of-day price discovery process.⁹

Each CDS index instrument has three predefined BOWs corresponding to different market conditions, which ICC refers to as Level I, Level II, and Level III.¹⁰ Level III BOWs are the largest and are associated with extreme market conditions.¹¹ Level II BOWs are smaller

than Level III BOWs and are associated with market conditions that experience some measure of volatility.¹² Level I BOWs are the smallest; they are associated with normal market conditions.¹³

ICC currently uses different BOWs to estimate CDS index instrument liquidity charges depending on whether a position is short or long.¹⁴ For short protection positions, ICC uses the BOW for Level III conditions; and for long protection positions, ICC uses the BOW for Level II conditions.¹⁵ By using a larger BOW for short protection positions than for long protection positions, ICC intended to reflect that selling protection may carry more risk and incur higher cost of liquidation than purchasing protection.¹⁶

ICC proposes changes to its RMF and RMMD to use the BOW for Level III conditions to estimate CDS index instrument liquidity charges irrespective of whether a position is short or long. To implement this change in the RMF, ICC proposes changing Section IV.B.2 so that it indicates that ICC’s liquidity charge approach assumes, in general, that short protection and long protection positions are liquidated at the same BOWs rather than different BOWs.¹⁷

In the RMMD, ICC proposes removing symbols for BOW exposure for bought and sold protection positions from the Table of Mathematical Symbols and Notations. ICC also proposes removing equations and related language from Section II.2 of the RMMD distinguishing between the liquidation of short protection positions at Level III conditions and long protection positions at Level II conditions. Specifically, ICC proposes removing language discussing Level II conditions. These symbols and language are no longer necessary and the equations no longer reflect ICC’s approach,¹⁸ because, as explained above, the amended methodology would assume that short and long protection positions are liquidated at the same BOWs (Level III conditions).¹⁹ The proposed changes, including the addition of references to symbols corresponding to Level III Bid/Offer conditions, reflect that. ICC also proposes adding language to the RMMD clarifying that Levels I, II, and III range

⁴ Capitalized terms not otherwise defined herein have the meanings assigned to them in ICC’s Clearing Rules, Risk Management Framework, Risk Management Model Description, or End-of-Day Price Discovery Policies and Procedures, as applicable. The Rules are available at <https://www.ice.com/clear-credit/regulation>.

⁵ For additional information about the RMMD, see Securities Exchange Act Release No. 102969 (May 1, 2025), 90 FR 19362, 19363 (May 7, 2025) (File No. SR-ICC-2025-001).

⁶ For additional information about the Pricing Policy, see Securities Exchange Act Release No. 101489 (Oct. 31, 2024), 89 FR 88094 (Nov. 6, 2024) (File No. SR-ICC-2024-012).

⁷ Ice Clear Credit Clearing Rules, Rule 20-605(a)(ii).

⁸ Notice, 90 FR at 59251.

⁹ *Id.*

¹⁰ *Id.* at 59251-52.

¹¹ *Id.* at 59252.

¹² *Id.* at 59251-52.

¹³ *Id.*

¹⁴ *Id.* at 59252.

¹⁵ *Id.*

¹⁶ *Id.* at 59252 n.6.

¹⁷ *Id.* at 59252.

¹⁸ *Id.*

¹⁹ *Id.*

³³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 104408 (Dec. 15, 2025), 90 FR 59251 (Dec. 18, 2025) (File No. SR-ICC-2025-012) (“Notice”).

from normal to extreme market conditions.²⁰

This proposed approach would make the index liquidity charge methodology more conservative and establish a single approach for both short and long positions.²¹ As noted above, currently ICC uses Level II BOWs for long protection positions, which are smaller than Level III and thus could result in smaller margin requirements than for short positions. Thus, use of Level III BOWs for long protection positions could result in larger margin requirements than currently. ICC's proposed approach would also align ICC's treatment of CDS index and single name instruments in relation to estimating the liquidity charge by using symmetric BOWs for each type of instrument.²²

B. Governance Changes and Other Minor Edits

ICC recently established the ICC Board Risk Committee and ICC Nominating Committee.²³ The ICC Board Risk Committee assists the Board in fulfilling its oversight responsibilities with respect to risk management of ICC. In doing so, it oversees ICC's risk management models, systems, and processes used to identify and manage systemic, market, credit, and liquidity risks at ICC; and oversees matters that could materially affect ICC's risk profile.²⁴ The ICC Nominating Committee is responsible for evaluating the independence and fitness of persons proposed to be designated as Managers of the Board.²⁵

ICC proposes changes to the RMF, RMMD, and Pricing Policy that reflect the new committees.²⁶

Beginning in Section II of the RMF, ICC proposes adding the Board Risk Committee and the Nominating Committee to the list of relevant committees for the purposes of risk governance and to a chart showing ICC's governance structure. The Proposed Rule Change edits the chart showing ICC's Governance Structure in Section II of the RMF to refer to the Risk

Committee as the CDS Risk Committee to distinguish it from the Board Risk Committee.²⁷ ICC would also update Section II.A to reflect that there are nine committees which are integral to ICC's risk management.²⁸ To reflect their responsibilities, ICC proposes adding descriptions of the Board Risk Committee and Nominating Committee to Section II.A.²⁹ Throughout the RMF, ICC proposes changes to specify which items are subject to Board Risk Committee Review.³⁰ These items include, policies and procedures, memoranda regarding Clearing Participant membership applications, whether a Clearing Participant should be suspended, position or concentration limits, margin and guaranty fund levels, performance and composition of collateral, margin methodology changes, and model revisions. In certain instances, including with respect to margin and guaranty fund levels as well as the performance and composition of collateral, ICC proposes that the Board Risk Committee, rather than the Board, receive periodic reporting. This proposed change would align the Board Risk Committee's responsibilities with its mandate to assist the Board in fulfilling its oversight responsibilities.³¹

Similarly, in the Initial Margin Methodology section of the RMMD and Section 3 of the Pricing Policy, ICC proposes adding that each respective document is subject to Board Risk Committee review at least annually. Currently, these documents only indicate that they are subject to review by the Risk Committee and review and approval by the Board of Managers at least annually.

ICC also proposes minor edits to its Pricing Policy. In the Pricing Policy, ICC proposes corrections to numbering of certain tables throughout the document.³²

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act requires the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.³³ 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 ['SRO'] that proposed the rule change."³⁴ 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,³⁵ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.³⁶ Moreover, "unquestioning reliance" on an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.³⁷

After carefully considering the Proposed Rule Change, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act³⁸ and Rules 17ad-22(e)(2)(i) and (v) and (e)(6)(i) thereunder,³⁹ as described in detail below.

A. Consistency With Section 17A(b)(3)(F) of the Act

Under Section 17A(b)(3)(F) of the Act, ICC's rules, among other things, must be "designed to promote the prompt and accurate clearance and settlement of securities transactions and . . . to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible" ⁴⁰ Based on a review of the record, and for the reasons discussed below, the Proposed Rule Change is consistent with Section 17A(b)(3)(F).

As discussed in Section II.A above, ICC proposes changes to how it incorporates BOWs in its estimation of liquidity charges for CDS index instruments. Currently, ICC uses the BOW associated with extreme market conditions (Level III) to estimate the CDS index instrument liquidity charge for short protection positions. For long protection positions, ICC uses the BOW associated with market conditions that experience some measure of volatility

³⁴ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Susquehanna Int'l Group, LLP v. Securities and Exchange Commission*, 866 F.3d 442, 447 (D.C. Cir. 2017).

³⁸ 15 U.S.C. 78q-1(b)(3)(F).

³⁹ 17 CFR 240.17ad-22(e)(2)(i) and (v) and (e)(6)(i).

⁴⁰ 15 U.S.C. 78q-1(b)(3)(F).

²⁰ *Id.*

²¹ *Id.* at 59252 n.6.

²² *Id.* at 59252. Symmetric BOWs apply the same conditions for both long and short protection positions. Alternatively, asymmetric BOWs apply different conditions.

²³ Notice, 90 FR at 59252.

²⁴ For additional information about the Board Risk Committee, see Securities Exchange Act Release No. 103161 (May 30, 2025), 90 FR 23970 (June 5, 2025) (File No. SR-ICC-2025-006).

²⁵ For additional information about the Nominating Committee, see Securities Exchange Act Release No. 101820 (Dec. 5, 2024), 89 FR 99917 (Dec. 11, 2024) (File No. SR-ICC-2024-010).

²⁶ Notice, 90 FR at 59252.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ 15 U.S.C. 78s(b)(2)(C).

(Level II).⁴¹ ICC proposes several changes to use the Level III BOW to estimate the CDS index instrument liquidity charge for both short and long protection positions.

By using symmetric BOWs, ICC makes its treatment of CDS index instruments more conservative.⁴² Level III BOWs are larger than Level II BOWs.⁴³ As such, ICC may collect more margin with the proposed changes than it otherwise would under the current methodology. Collecting additional margin increases the likelihood that ICC would collect sufficient margin collateral to address a Clearing Participant's default. This would in turn help assure the safeguarding of non-defaulting Clearing Participants' collateral by reducing the likelihood that ICC would need to use mutualized collateral to cover losses caused by a defaulting Clearing Participant. Further, it would increase the likelihood that ICC continues to provide services without interruption in the event of a default, thereby helping to promote prompt and accurate clearance and settlement of securities transactions.

Using a symmetric BOW is also consistent with ICC's treatment of CDS single name instruments.⁴⁴ The CDS single name liquidity charge methodology does not use different BOWs for short and long protection positions.⁴⁵ This added consistency simplifies ICC's liquidity charge methodology and ultimately makes it clearer. A clearer liquidity charge methodology enhances ICC's ability to manage risk and aids it in safeguarding securities and funds in its custody or control.

ICC also proposes governance changes and other minor edits to its RMF, RMMD, and Pricing Policy. Several proposed changes update these documents to account for the recently created ICC Board Risk Committee and ICC Nominating Committee.⁴⁶ ICC also proposes corrections to the numbering of certain tables throughout the Pricing Policy.⁴⁷ By making the RMF, RMMD, and Pricing Policy more accurate and up to date, ICC decreases the possibility of delays and miscommunications in carrying out the duties those documents outline. By potentially reducing delays and miscommunications, ICC improves the chances that it is appropriately managing its risk and is prepared for a

Clearing Participant default. Thus, these proposed changes enhance ICC's ability to safeguard securities and funds in its custody or control and promote the prompt and accurate clearance and settlement of securities transactions.

Accordingly, the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.⁴⁸

B. Consistency With Rule 17ad-22(e)(2)(i) and (v)

Under Rule 17ad-22(e)(2)(i) and (v), ICC must, "establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility."⁴⁹ Based on a review of the record, and for the reasons discussed below, the Proposed Rule Change is consistent with Rule 17ad-22(e)(2)(i) and (v).

The proposed changes reflect current ICC governance arrangements in the RMF, RMMD, and Pricing Policy. Specifically, ICC proposes adding references to the recently established Board Risk Committee and Nominating Committee. Such changes ensure that these documents are up to date, clear, and clearly assign and document responsibility and accountability for relevant items to these committees.

Accordingly, the Proposed Rule Change is consistent with the requirements of Rule 17ad-22(e)(2)(i) and (v).⁵⁰

C. Consistency With Rule 17ad-22(e)(6)(i)

Under Rule 17ad-22(e)(6)(i), ICC must, "establish, implement, maintain and enforce written policies and procedures reasonably designed to cover . . . its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market" ⁵¹ Based on a review of the record, and for the reasons discussed below, the Proposed Rule Change is consistent with Rule 17ad-22(e)(6)(i).

As noted above, the liquidity charge is one component of ICC's methodology for determining Initial Margin requirements. ICC's proposed changes would use Level III BOWs for both long and short positions. Using Level III

BOWs for long positions makes the liquidity charge more conservative, as it could result in increased margin requirements for these positions than currently. As such, this change could lead to ICC collecting margin amounts larger than it would under the current approach and producing margin levels more commensurate with the contracts that ICC clears.⁵²

Accordingly, the Proposed Rule Change is consistent with the requirements of Rule 17ad-22(e)(6)(i).⁵³

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, Section 17A(b)(3)(F) of the Act⁵⁴ and Rules 17ad-22(e)(2)(i) and (v) and (e)(6)(i) thereunder.⁵⁵

It is therefore ordered pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR-ICC-2025-012) be, and hereby is, approved.⁵⁶

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁵⁷

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-01983 Filed 1-30-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104711; File No. SR-PEARL-2026-01]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a New Methodology for Assessment and Collection of the Options Regulatory Fee (ORF)

January 28, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,²

⁵² Notice, 90 FR at 59252 n.6.

⁵³ 17 CFR 240.17ad-22(e)(6)(i).

⁵⁴ 15 U.S.C. 78q-1(b)(3)(F).

⁵⁵ 17 CFR 240.17ad-22(e)(2)(i) and (v) and (e)(6)(i).

⁵⁶ In approving the proposed rule change, the Commission considered the proposal's impacts on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁴¹ Notice, 90 FR at 59252.

⁴² *Id.* at 59252 n.6.

⁴³ *Id.* at 59252.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁴⁹ 17 CFR 240.17ad-22(e)(2)(i) and (v).

⁵⁰ *Id.*

⁵¹ 17 CFR 240.17ad-22(e)(6)(i).

notice is hereby given that on January 20, 2026, MIAAX PEARL, LLC (“MIAAX Pearl” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule applicable to the options trading platform of MIAAX Pearl (the “Fee Schedule”) relating to the Options Regulatory Fee (“ORF”) to adopt a new methodology for assessment and collection of ORF for transactions that occur on the Exchange (“On-Exchange ORF”). The text of the proposed rule change is available on the Exchange’s website at <https://www.miaaxglobal.com/markets/us-options/pearl-options/rule-filings> and at MIAAX Pearl’s principal office.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its current methodology for assessment and collection of a regulatory fee to assess On-Exchange ORF only for options transactions that occur on the Exchange that would clear in the “customer”³ range at The Options Clearing Corporation (“OCC”). The Exchange

would no longer assess a regulatory fee for options transactions that occur on other exchanges. This proposal only proposes to amend the method of assessment and collection of the fee. A future rule filing would be filed to set the applicable On-Exchange ORF rate in advance of assessing and collecting it under the proposed method. The following provides more detail regarding the proposal.

Background

The ORF is designed to cover a material portion of the costs to the Exchange of the supervision and regulation of Members’⁴ customer options business, including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange’s other regulatory fees and fines, will cover a material portion, but not all, of the Exchange’s regulatory costs.

Collection of ORF

The Exchange assesses the per-contract ORF to each Member for all options transactions cleared or ultimately cleared by the Member, which are cleared by the OCC in the “customer” range,⁵ regardless of the exchange on which the transaction occurs. The ORF is collected by OCC on behalf of the Exchange from either: (1) a Member that was the ultimate clearing firm⁶ for the transaction; or (2) a non-Member that was the ultimate clearing firm where a Member was the executing clearing firm⁷ for the transaction. The Exchange uses reports from OCC to

⁴ The term “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange Rules for purposes of trading on the Exchange as an “Electronic Exchange Member” or “Market Maker.” Members are deemed “members” under the Exchange Act. See the Definitions section of the Fee Schedule and Exchange Rule 100.

⁵ Exchange participants must record the appropriate account origin code on all orders at the time of entry in order. The Exchange represents that it has surveillances in place to verify that Members mark orders with the correct account origin code.

⁶ The Exchange takes into account any Clearing Member Trade Assignment (“CMTA”) transfers when determining the ultimate clearing firm for a transaction. CMTA is a form of “give up” whereby the position will be assigned to a specific clearing firm at the OCC.

⁷ Throughout this filing, “executing clearing firm” means the clearing firm through which the entering broker indicated that the transaction would be cleared at the time it entered the original order which executed, and that clearing firm could be a designated “give up”, if applicable. The executing clearing firm may be the ultimate clearing firm if no CMTA transfer occurs. If a CMTA transfer occurs, however, the ultimate clearing firm would be the clearing firm that the position was transferred to for clearing via CMTA.

determine the identity of the executing clearing firm and ultimate clearing firm.

To illustrate how the ORF is assessed and collected, the Exchange provides the following set of examples. If the transaction is executed on the Exchange and the ORF is assessed, if there is no change to the clearing account of the original transaction, then the ORF is collected from the Member that is the executing clearing firm for the transaction. (The Exchange notes that, for purposes of the Fee Schedule, when there is no change to the clearing account of the original transaction, the executing clearing firm is deemed to be the ultimate clearing firm.) If there is a change to the clearing account of the original transaction (*i.e.*, the executing clearing firm “gives-up” or “CMTAs” the transaction to another clearing firm), then the ORF is collected from the clearing firm that ultimately clears the transaction—the ultimate clearing firm. The ultimate clearing firm may be either a Member or non-Member of the Exchange. If the transaction is executed on an away exchange and the ORF is assessed, then the ORF is collected from the ultimate clearing firm for the transaction. Again, the ultimate clearing firm may be either a Member or non-Member of the Exchange. The Exchange notes, however, that when the transaction is executed on an away exchange, the Exchange does not assess the ORF when neither the executing clearing firm nor the ultimate clearing firm is a Member (even if a Member is “given-up” or “CMTAed” and then such Member subsequently “gives-up” or “CMTAs” the transaction to another non-Member via a CMTA reversal). Finally, the Exchange does not assess the ORF on outbound linkage trades, whether executed at the Exchange or an away exchange. “Linkage trades” are tagged in the Exchange’s system, so the Exchange can readily tell them apart from other trades.

ORF Revenue and Monitoring of ORF

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. In determining whether an expense is considered a regulatory cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset ORF.

The Exchange believes that its broad regulatory responsibilities with respect to a Member’s activities supports applying the ORF to transactions

³ Currently, the ORF is assessed by the Exchange and collected via OCC on behalf of the Exchange from either: (1) a Member that was the ultimate clearing firm for the transaction; or (2) a non-Member that was the ultimate clearing firm where a Member was the executing clearing firm for the transaction. The Exchange uses reports from the OCC to determine the identity of the executing clearing firm and ultimate clearing firm.

cleared but not executed by a Member. The Exchange's regulatory responsibilities are the same regardless of whether a Member enters a transaction or clears a transaction executed on its behalf. The Exchange regularly reviews all such activities, including performing surveillance for position limit violations, manipulation, front-running, contrary exercise advice violations and insider trading.

Revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, is designed to cover a material portion of the regulatory costs to the Exchange of the supervision and regulation of Members' customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Regulatory costs include direct regulatory expenses and certain indirect expenses in support of the regulatory function. The direct expenses include in-house and third party service provider costs to support the day-to-day regulatory work such as surveillances, investigations and examinations. The indirect expenses are only those expenses that are in support of the regulatory functions, such areas include Office of the General Counsel, technology, finance, and internal audit.

Proposal

The Exchange appreciates the evolving changes in the market and regulatory environment and has been evaluating its current methodologies and practices for the assessment and collection of ORF while considering industry and the Securities and Exchange Commission (the "Commission") feedback. As a result of this review, the Exchange proposes to modify its current ORF to continue to assess ORF for options transactions cleared by OCC in the "customer" range, however ORF would be assessed on each side of an options transaction cleared by the OCC in the "customer" range for executions that occur on the Exchange. Specifically, the ORF would continue to be collected by OCC on behalf of the Exchange from Members and non-Members for all "customer" transactions executed on the Exchange. ORF would be assessed and collected on all ultimately cleared "customer" contracts, taking into account adjustments for CMTA that were provided to the Exchange the same day as the trade.⁸

⁸ Adjustments to CMTA that occur at OCC would not be taken into account.

Further, the Exchange would bill ORF according to the clearing instructions provided on the execution. More specifically, the Exchange proposes to assess ORF based on the clearing instruction provided on the execution on trade date and would not take into consideration CMTA changes or transfers that occur at OCC.⁹ As a result of this proposed rule change, if a Member executes a customer transaction on the Exchange and is the Clearing Member¹⁰ on record on the transaction on the Exchange, the ORF will be assessed to that Member. With this proposal, in the case where a Member executes a customer transaction on the Exchange and a different Member is the Clearing Member on record on the transaction on the Exchange, the ORF will be assessed to and collected from the Member who is the Clearing Member on record on the transaction and not the Member who executes the transaction. Additionally, in the case where a Member executes a customer transaction on the Exchange and a non-Member is the Clearing Member on record on the transaction on the Exchange, the ORF will be assessed to the non-Member who is the Clearing Member on record on the transaction and not the Member who executes the transaction. With this proposal, in the case where a Member executes a customer transaction not on the Exchange, the Exchange will not assess an ORF, regardless of how the transaction is cleared. As is the case today, OCC will collect ORF from OCC clearing members on behalf of the Exchange based on the Exchange's instructions.

With this proposal, the Exchange intends to collect ORF under its current methodology for assessment and collection of ORF until at least June 30, 2026. The Exchange is prepared to implement On-Exchange ORF effective July 1, 2026 if by April 1, 2026 all U.S. options exchanges charging an ORF have filed to modify their current methodologies of assessment of the fee to limit the fee to transactions occurring on their respective exchange.¹¹ However, if all other options exchanges have not filed to adopt a similar methodology by April 1, the Exchange will delay implementation commensurate with the additional time

⁹ Adjustments that were made the same day as the trade on the Exchange will be taken into account.

¹⁰ Clearing Member means a Member that has been admitted to membership in the Clearing Corporation pursuant to the provisions of the rules of the Clearing Corporation. See Exchange Rule 100.

¹¹ The Exchange estimates it will take approximately three months to implement the system changes associated with On-Exchange ORF.

required for other options exchanges to adopt a similar method for collection and assessment of ORF. The Exchange will at that time file a separate rule filing with the amount of the On-Exchange ORF in advance of assessing and collecting the fee under the proposed method. As is the case today, the Exchange will notify Members via Regulatory Circular of the applicable On-Exchange ORF rate at least 30 calendar days prior to the effective date of the change. The Exchange believes a fee to cover a material portion of costs for regulatory programs associated with monitoring activities is reasonable; however, the Exchange would consider alternative approaches for assessment and collection of the fee in order to achieve consistency across the industry.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.

The Exchange will monitor its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs in a given year, the Exchange will adjust the On-Exchange ORF by submitting a fee change filing to the Commission. The Exchange will notify Members of adjustments to the On-Exchange ORF via a Regulatory Circular in advance of any change.

Additionally, the Exchange proposes to remove obsolete text regarding an ORF rate that is no longer in effect.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Section 6(b)(4) of the Act¹³ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act¹⁴ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ 15 U.S.C. 78f(b)(5).

permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the proposed change to assess and collect an On-Exchange ORF is reasonable, equitable and not unfairly discriminatory for various reasons. First, On-Exchange ORF is reasonable, equitable and not unfairly discriminatory in that it is charged to all Exchange transactions that clear in the “customer” range at the OCC. Similar to ORF today, the Exchange believes On-Exchange ORF ensures fairness by assessing a specific fee to those Members that require more Exchange regulatory services based on the amount of customer options business they conduct. Over recent years, options trading volume has increased with a growing percentage of the volume applicable to customer transactions. Customers trading on the Exchange (through a Member) benefit from the protections of a robust regulatory program including the maintenance of fair and orderly markets and protections against fraud and other manipulation. The Exchange believes it is equitable and not unfairly discriminatory to assess a regulatory fee to transactions that clear in the “customer” range to cover regulatory costs, but not to transactions clearing in the “firm” or “market maker” range because Clearing Members and Market Makers¹⁵ (who clear in the Firm and Market Maker range), as those market participants are generally subject to other Exchange fees, fines and obligations. For example, Clearing Members and Market Makers are required to pay Exchange application fees, permit fees, and connectivity fees, amongst others. In addition, all fines issued by the Exchange for regulatory infractions are assessed only to Members and would be applied to regulatory revenues. As with today’s ORF, the Exchange expects that Clearing Members from whom On-Exchange ORF is collected will pass through the fee to their customers (as the Exchange understands occurs today). In addition, Market Makers in particular are subject to various quoting and other obligations to ensure that they provide stable and liquid markets, which benefit all market participants including customers. Excluding Market Maker transactions from On-Exchange ORF will allow Market Makers to better manage their costs more effectively thus enabling them to better allocate

resources toward technology, risk management, and capacity to ensure continued liquidity provision.

In addition to the overall increase in “customer” range volume generally, regulating customer trading activity is more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. For example, there are costs associated with main office and branch office examinations (e.g., staff and travel expenses), as well as investigations into customer complaints and terminations of registered persons. As a result, the costs associated with administering the customer component of the Exchange’s overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., Clearing Member proprietary transactions) of its regulatory program.¹⁶ While the Exchange notes that it has broad regulatory responsibilities with respect to its Member’s activities, irrespective of where their transactions take place, the Exchange believes it is reasonable to assess the proposed fee to only those transactions occurring on the Exchange. The proposed change more narrowly tailors the fee to products and transactions with a direct connection to the Exchange. With this proposal, transactions that would clear in the “customer” range occurring on other exchanges would no longer be subject to an ORF assessed by the Exchange.

The Exchange believes it is equitable and not unduly discriminatory to modify the method of collecting the fee such that On-Exchange ORF will not consider CMTAs reported directly to OCC as is done in today’s method of ORF. CMTA transfers are considered today under the current collection methodology for ORF as a convenience to industry members in administering a pass through of the fee to their customers. Limiting the On-Exchange ORF to transactions on the Exchange poses a limitation in the use of CMTA for this purpose. The Exchange understands that a CMTA may be added at order entry, via post-trade edit on the Exchange, or post-trade at OCC. CMTA transfers that occur at OCC do not necessarily contain reliable information regarding the Exchange on which the

original transaction occurred.¹⁷ Without specific information as to where the original transaction occurred, the Exchange would not be able to accurately account for CMTA transfers that occur at OCC.

The Exchange further believes that the proposed change to the method for assessment and collection of the fee is reasonable because it would help ensure that revenue collected from the On-Exchange ORF, in combination with other regulatory fees and fines, would cover a material portion of the Exchange’s regulatory costs.

As noted above, the Exchange will also continue to monitor on at least a semiannual basis the amount of revenue collected from the On-Exchange ORF, even as amended, to ensure that it, in combination with its other regulatory fees and fines, would cover a material portion of the Exchange’s regulatory costs and not exceed it.

Additionally, the Exchange proposes to remove obsolete text regarding the ORF rate that is no longer in effect. The Exchange believes that the proposal to remove obsolete text regarding the ORF rate that is no longer in effect would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed change would provide greater clarity to market participants regarding the Exchange’s Fee Schedule. It is in the public interest for the Exchange’s Fee Schedule to be accurate so as to eliminate the potential for confusion.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because On-Exchange ORF applies to all customer activity on the Exchange, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. The Exchange notes, however, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act.

¹⁵ Market Maker means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of the Exchange Rules. See Exchange Rule 100.

¹⁶ If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to modify On-Exchange ORF or assess a separate regulatory fee on Member proprietary transactions if the Exchange deems it advisable.

¹⁷ Under the current methodology for assessing ORF, the Exchange on which the transaction occurred is irrelevant.

The Exchange is obligated to ensure that the amount of regulatory revenue collected from the On-Exchange ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. In addition, the Exchange will not implement the On-Exchange ORF until all other options exchanges are prepared to adopt a similar model to avoid overlapping ORFs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁸ and paragraph (f) of Rule 19b-4¹⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-PEARL-2026-01 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-PEARL-2026-01. 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 filing 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-PEARL-2026-01 and should be submitted on or before February 23, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-01979 Filed 1-30-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0737]

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension: Rule 22e-4

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information.

Section 22(e) of the Investment Company Act of 1940 ("Investment Company Act") provides that no registered investment company shall suspend the right of redemption or postpone the date of payment of redemption proceeds for more than seven days after tender of the security absent specified unusual circumstances. The provision was designed to prevent funds and their investment advisers from interfering with the redemption rights of shareholders for improper purposes, such as the preservation of management fees. Although section 22(e) permits funds to postpone the date of payment or satisfaction upon redemption for up to seven days, it does

not permit funds to suspend the right of redemption for any amount of time, absent certain specified circumstances or a Commission order.

Rule 22e-4 under the Act [17 CFR 270.22e-4] requires an open-end fund and an exchange-traded fund that redeems in kind ("In-Kind ETF") to establish a written liquidity risk management program that is reasonably designed to assess and manage the funds or In-Kind ETF's liquidity risk. This program includes policies and procedures that incorporate certain program elements, including: (i) for funds and In-Kind ETFs, the assessment, management, and periodic review of liquidity risk (with such review occurring no less frequently than annually); (ii) for funds, the classification of the liquidity of a fund's portfolio investments, as well as at-least-monthly reviews of the fund's liquidity classifications; (iii) for funds that do not primarily hold assets that are highly liquid investments, the determination of and periodic review of the fund's highly liquid investment minimum and establishment of policies and procedures for responding to a shortfall of the fund's highly liquid investment minimum, which includes reporting to the fund's board of directors; (iv) for funds and In-Kind ETFs, the limitation of the fund's or In-Kind ETF's investment in illiquid investments that are assets to no more than 15% of the fund's or In-Kind ETF's net assets; and (v) for funds and In-Kind ETFs, the establishment of policies and procedures regarding redemptions in kind, to the extent that the fund engages in or reserves the right to engage in redemptions in kind. The rule also requires board approval and oversight of a funds or In-Kind ETF's liquidity risk management program and recordkeeping.

Rule 22e-4 also requires a limited liquidity review, under which an unit investment trust's ("UIT") principal underwriter or depositor determines, on or before the date of the initial deposit of portfolio securities into the UIT, that the portion of the illiquid investments that the UIT holds or will hold at the date of deposit that are assets is consistent with the redeemable nature of the securities it issues and retains a record of such determination for the life of the UIT and for five years thereafter.

The requirements under rule 22e-4 that a fund and In-Kind ETF, as applicable, adopt a written liquidity risk management program, report to the board, maintain a written record of how the highly liquid investment minimum was determined and written policies and procedures for responding to a

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f).

²⁰ 17 CFR 200.30-3(a)(12).

shortfall of the fund's highly liquid investment minimum, which includes reporting to the fund's board of directors (for funds that do not primarily hold highly liquid investments), establish written policies and procedures regarding how the fund will engage in redemptions in kind, and retain certain other records are all collections of information. In addition, the requirement under rule 22e-4 that the principal underwriter or depositor of a UIT assess the liquidity of the UIT on or before the date of the initial deposit of portfolio securities into the UIT and retain a record of such determination for the life of the UIT, and for five years thereafter, is also a collection of information.

The Commission staff estimates that 12,183 funds, 705 newly-registered funds, and 3 UITs are subject to rule 22e-4. The internal annual burden estimate is 16 hours for a fund, 11 for a newly-registered fund, and 8 hours for an UIT. Based on these estimates, the total annual burden hours associated with the rule is estimated to be 202,699 hours. The estimated burden hours associated with rule 22e-4 have increased by 9,458 hours from the current allocation of 193,241 hours. This increase is due to an increase in the estimated number of affected entities, as well as revisions in the manner of calculation. The external cost associated with this collection of information is approximately \$3,200 per fund and \$2,200 per newly-registered fund, and the total annual external cost burden is \$40,536,600.37. The estimated external cost has increased by \$2,907,884 from the current estimate of \$37,628,716. This increase is due to the staff's determination to revise the manner in which it calculates these estimates.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. The collection of information required by rule 22e-4 is necessary to obtain the benefits of the rule. Information regarding a fund's monthly position-level liquidity classification and its highly liquid investment minimum reported on Form N-PORT will be kept confidential. Other information provided to the Commission in connection with staff examinations or investigations is kept confidential subject to the provisions of applicable law. If information collected pursuant to rule 22e-4 is reviewed by the Commission's examination staff, it is accorded the same level of

confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program.

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.

Written comments are invited on: (a) whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by April 3, 2026.

Please direct your written comment to Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Tanya Ruttenberg, 100 F Street NE, Washington, DC 20549 or send an email to: PaperworkReductionAct@sec.gov.

Dated: January 29, 2026.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-02062 Filed 1-30-26; 8:45 am]

BILLING CODE 8011-01-P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA-2026-0002]

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes one new information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information

collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA.

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, Mail Stop 3253 Altmeyer, 6401 Security Blvd., Baltimore, MD 21235, Fax: 833-410-1631, Email address:

OR.Reports.Clearance@ssa.gov.

Or you may submit your comments online through <https://www.reginfo.gov/public/do/PRAMain> by clicking on Currently under Review—Open for Public Comments and choosing to click on one of SSA's published items. Please reference Docket ID Number [SSA-2026-0002] in your submitted response.

SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than March 4, 2026. Individuals can obtain copies of these OMB clearance packages by writing to the OR.Reports.Clearance@ssa.gov.

1. Ticket to Work Program Evaluation—0960-NEW. In compliance with the Ticket to Work Incentives Improvement Act of 1999 (Pub. L. 106-170) Section 101(d)(4)(A), SSA is contracting with Mathematica to conduct an independent evaluation to assess (1) the effects of the program on work outcomes and self-sufficiency, and (2) their cost effectiveness.

Background

The Ticket Act established supports designed to increase the availability of and access to employment services for adults with disabilities receiving Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI), hereafter referred to as Ticketholders.¹ Among the supports created by the Ticket Act were three programs:

- **Ticket to Work (TTW).** The TTW program established an alternative system for providing employment services to disabled SSI recipients and SSDI beneficiaries. Under TTW, Ticketholders can obtain vocational rehabilitation, employment services, or other support services from SSA-approved Employment Networks (ENs) or state vocational rehabilitation (VR) agencies. SSA pays ENs or VR agencies if the Ticketholders they serve work and earn above specified amounts.

¹ Throughout this document, "Ticketholders" broadly refers to working-age disabled SSI and SSDI beneficiaries who are eligible for services created by the Ticket Act.

- *Work Incentives Planning and Assistance (WIPA)*. SSA awards cooperative agreements to community-based organizations to provide expertise and counseling that helps disabled SSI recipients and SSDI beneficiaries understand how their earnings affect their disability benefits, with a goal of helping beneficiaries successfully transition to work.

- *Protection and Advocacy for Beneficiaries of Social Security (PABSS)*. SSA awards grants to Protection & Advocacy (P&A) agencies in states, territories, and tribal communities to provide legal-based advocacy services for SSI and SSDI beneficiaries who want to work. PABSS grantees offer services to help remove barriers to employment, including helping beneficiaries secure TTW and other employment-related services; helping beneficiaries understand issues with their disability benefits; and helping to protect beneficiaries' legal rights to employment, transportation, and housing.

Purpose of the Evaluation

To comply with *Public Law 106–170*, the evaluation will document the extent to which Ticket Act programs are effective, meaning that they achieve their legislative intent: to allow individuals with disabilities to seek the services necessary to obtain and retain employment and reduce their dependency on cash benefit programs. The evaluation findings on these components will support SSA's understanding of:

- (1) Whether the programs achieve their legislative intent;
- (2) The factors contributing to this achievement or lack thereof, and
- (3) Opportunities for improvement of the programs' efficiency and effectiveness.

The evaluation will also document the cost effectiveness of Ticket Act programs as currently structured, identifying opportunities to deliver the same outcomes at lower costs or

improve outcomes with additional investments.

As SSA implemented many changes to the Ticket Act programs since our last comprehensive evaluation in 2013, we are also conducting this evaluation to assess these revisions to the programs, including:

- The increased prevalence of remote service delivery, which makes services more broadly available to Ticketholders, but may reduce the effectiveness of services offered.
- Changes to the number of ENs and VR agencies participating in the program, as well as changes to the types of services they offer. These changes may affect the overall effectiveness of the program.
- Revisions that changed the programs' operations, for instance the implementation of electronic submissions, which may also affect the overall effectiveness of the program.
- Investment in a marketing program to support EN outreach, which may have affected the overall use of the TTW program.

We expect this comprehensive evaluation will provide updated information regarding: (1) the ability of the Ticket Programs to achieve their legislative intent; and (2) the evidence base necessary to determine the need for potential programmatic changes or other proposals to maximize program effectiveness.

The Evaluation Methods

SSA contracted with Mathematica to conduct the evaluation; however, SSA will oversee all data collection activities. The evaluation will utilize the following data collection efforts:

- *Surveys of the Ticket Act service providers* (“*provider surveys*”): Mathematica will field three concurrent surveys, each focusing on a specific type of Ticket Act service provider. The surveys will ask about provider decisions to participate in the program, provider decisions about service provision, and about challenges that

ENs and VR agencies face in effectively serving beneficiaries. Mathematica will invite one person from each EN, VR agency, WIPA project, and P&A agency with a PABSS grant (572 organizations) to respond as a representative on behalf of the organization.² Each organization's representative will complete an interview via a self-administered online survey.

- *Qualitative interviews with Ticketholders* (“*qualitative data collection*”): Mathematica will conduct interviews with Ticketholders to provide a platform for open-ended, guided discussions in which interviewees can share their experiences with the Ticket Act programs, including their ability to find a provider at all; find a provider who could meet their employment service needs; and experiences with services affecting their employment outcomes. We expect these interview findings will help assess the extent to which Ticket Act programs are working effectively and efficiently and what opportunities may be available to improve the achievement of program outcomes. Mathematica will use existing SSA records to select a random sample of Ticketholders and invite them to participate in interviews. These interviews will be voluntary, and Mathematica will administer them over a four-month period.

Mathematica will conduct these surveys and interviews using a mix of online and telephone processes as well as computer-based management tools for streamlining recruitment and scheduling, ensuring clear documentation for each interview or survey and for recording the data.

The Respondents are service providers for the Ticket to Work program, specifically one staff member from each EN, state VR, WIPA project and P&A agency with a PABSS grant (“*Providers*”), as well as Ticketholders.

Type of Request: Request for renewal of an information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours) *	Average theoretical hourly cost **	Total estimated annual opportunity cost ***
Provider surveys						
TTW survey	353	1	38	* 224	** \$40.10	*** \$8,982
WIPA survey	59	1	38	* 37	** 40.10	*** 1,483
PABSS survey	46	1	28	* 21	** 40.10	*** 842
Subtotal—surveys	458	.....	.....	* 282	.....	*** 11,307

² Numbers of provider organizations as of 2024. To the extent that the universe of service providers changes between the time of drafting of this

document and the survey fielding period, we will field the survey to the population of services

providers as of a date as close to the beginning of survey fielding as practicable.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours) *	Average theoretical hourly cost **	Total estimated annual opportunity cost ***
Qualitative interviews						
Ticketholder: TTW users	70	1	51	* 60	** 16.22	*** 973
Ticketholder: TTW non-users	10	1	41	* 7	** 16.22	*** 114
Ticketholder: WIPA users	20	1	51	* 17	** 16.22	*** 276
Subtotal—qualitative interviews	100			84		*** 1,363
Totals						
Surveys	458			* 282		*** 11,307
Qualitative interviews	100			* 84		*** 1,363
Total	558			* 366		*** 12,670

* To show annual burden, we multiplied the number of respondents by the number of responses annually by the average respondent burden per response. We allocated the number of planned responses by year based on the timing of the provider survey and the planned distribution of the qualitative interviews over the two calendar years.

** Opportunity cost estimates for Ticket Act providers assume a wage rate of \$40.10 per hour, the average national wage reported by the Bureau of Labor Statistics for the employment category of “Social and Community Service Managers” (accessed at <https://www.bls.gov/oes/current/oes119151.htm> on October 22, 2024). Opportunity cost estimates for SSA Ticketholders assume a rate of \$16.22 per hour, corresponding to the average wage for employed SSDI and SSI beneficiaries in 2019 (\$12.92, <https://www.ssa.gov/policy/docs/statcomps/nbs/2019/job-characteristics.html>) adjusted for inflation using the U.S. Bureau of Labor Statistics Inflation Calculator (https://www.bls.gov/data/inflation_calculator.htm).

*** This figure does not represent actual costs that SSA will impose on survey respondents or participants in the qualitative interviews. They are theoretical opportunity costs for the time that respondents will spend participating in data collection activities. There is no charge to respondents for participating in data collection activities. We calculated these costs by multiplying the total annual burden in hours by the average theoretical hourly rate. Because the table presents rounded total annual burden hours, this rounding may affect the provisions needed to replicate these estimates. *There is no actual charge to respondents to complete the tasks.*

Mark Steffensen,

General Counsel, Chief of Law and Policy,
Social Security Administration.

[FR Doc. 2026–01932 Filed 1–30–26; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 12934]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Miró and the United States” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition “Miró and the United States” at The Phillips Collection, Washington, District of Columbia, 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/DP, 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.

Stefanie E. Williams,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2026–02011 Filed 1–30–26; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12936]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Creatures of Myth and Imagination: Europe and the Americas” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition “Creatures of Myth and Imagination: Europe and the Americas” at The Metropolitan Museum of 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/DP, 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.

Stefanie E. Williams,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2026–02015 Filed 1–30–26; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12938]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Wolfgang Amadeus Mozart: Treasures From the Mozarteum Foundation of Salzburg” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition “Wolfgang Amadeus Mozart: Treasures from the Mozarteum Foundation of Salzburg” at The Morgan Library & Museum, 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/DP, 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.

Stefanie E. Williams,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2026–02008 Filed 1–30–26; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12935]

Notice of Determinations; Additional Culturally Significant Objects Being Imported for Exhibition—Determinations: “Monet and Venice” Exhibition

SUMMARY: On September 2, 2025, notice was published in the **Federal Register** of determinations pertaining to certain objects to be included in an exhibition entitled “Monet and Venice.” Notice is hereby given of the following determinations: I hereby determine that 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 Fine Arts Museums of San Francisco, de Young Museum, San Francisco, California, 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/DP, 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 September 2, 2025, appears at 90 FR 42499.

Stefanie E. Williams,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2026–02014 Filed 1–30–26; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12914]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Paul Klee: Other Possible Worlds” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition “Paul Klee: Other Possible Worlds” at The Jewish Museum, 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/DP, 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.

Stefanie E. Williams,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2026–02017 Filed 1–30–26; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12913]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Matisse in Venice: The Stations of the Cross” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition “Matisse in Venice: The Stations of the Cross” at the Baltimore Museum of Art, Baltimore, Maryland, 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.

Stefanie E. Williams,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2026–02016 Filed 1–30–26; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12917]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Walter Benjamin and the Edges of Photography” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition “Walter Benjamin and the Edges of Photography” at The Jewish Museum, 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.

Stefanie E. Williams,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2026–02013 Filed 1–30–26; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2025–0780]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Service Availability Prediction Tool (SAPT)

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 November 28, 2025. The collection involves planned routes of flight and aircraft avionics equipment. The information that is collected will be used to predict whether an aircraft flying the proposed route of flight will have sufficient position accuracy and integrity for the following: (1) Navigation, via the Receiver Autonomous Integrity Monitoring (RAIM) SAPT; (2) Surveillance, via the Automatic Dependent Surveillance—Broadcast (ADS-B) SAPT. In addition, the website will allow operators to request authorization to operate in ADS-B-Out rule airspace with aircraft that do not fully meet the ADS-B Out requirements via: (3) ADS-B Deviation Authorization Pre-flight Tool (ADAPT).

DATES: Written comments should be submitted by March 4, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

James Kenney by email at: james.kenny@faa.gov; phone: (703) 624–3695.

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: 2120–0780

Title: Service Availability Prediction Tool (SAPT)

Form Numbers: eXtensible markup language (XML) format, ADS–B SAPT flight information entry form, and ADS–B authorization request at <https://sapt.faa.gov>.

Type of Review: Renewal of an information collection

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 November 28, 2025 (FR Vol. 90, No. 227, page 54839).

Under 14 CFR 91.103, pilots must use all available information in planning their flight. SAPT is a web-based tool to assist aircraft operators in achieving compliance with the requirements of 14 CFR 91.103, 91.225, and 91.227, and/or AC 90–100A Change 2, Paragraph 10a. (5). To ensure that they will meet the performance requirements for the duration of the flight, pilots may use the FAA-provided pre-flight Service Availability Prediction Tool (SAPT) to determine predicted navigation or surveillance availability before a flight. The SAPT has three main components: the Receiver Autonomous Integrity Monitoring (RAIM) SAPT, the ADS–B SAPT, and the ADS–B Deviation Authorization Pre-Flight Tool (ADAPT). The SAPT models the GPS constellation in order to assess the predicted accuracy and integrity of GPS position information used in navigation and surveillance for a few GPS receiver Technical Standard Orders (TSOs).

The RAIM SAPT is intended mainly for pilots, dispatchers, and commercial operators using TSO–C129 equipment to check their predicted navigation horizontal protection level (HPL). It incorporates TSO–C129 GPS RAIM predictions to check the availability of GPS RAIM satisfying the RNAV requirements of AC 90–100A Change 2, Paragraph 10(5)).

The ADS–B SAPT is provided to help operators comply with 14 CFR 91.225 and 91.227 by predicting whether operators will meet regulatory requirements, and to advise holders of FAA Exemption 12555 whether back-up surveillance will be available for any waypoints where installed aircraft avionics are not predicted to meet the

requirements of 14 CFR 91.227(c)(1)(i) and (iii).

Information collected via ADS–B SAPT is comparable to that provided by pilots when they file flight plans, with some additional information about aircraft position source TSO and related capabilities. The ADS–B SAPT prediction is based on the ability of the aircraft's position source (*i.e.*, GPS receiver) to meet performance requirements specified in FAA TSOs C129, C129a, C145c/C146c, and C196, as well as the predicted status of the GPS constellation.

The ADS–B SAPT predicts whether GPS position information will be sufficient throughout the flight to meet the performance requirements of 14 CFR 91.227(c)(1)(i) and (iii). If a waypoint is in rule airspace and the aircraft's position source is not predicted to meet the performance requirements of 14 CFR 91.227, the ADS–B SAPT checks for the availability of back-up surveillance at that waypoint. Operators of aircraft equipped with TSO–C129 (SA-On) GPS receivers must run a pre-flight prediction. The operator may use their own prediction tool.

ADAPT is mandatory for operators desiring to apply for an ATC authorization, per 14 CFR 91.225(g), to fly in ADS–B Out rule airspace using aircraft with avionics that do not meet the ADS–B equipage requirements. ADAPT allows operators to create an air traffic authorization request to operate in ADS–B Out rule airspace when either (1) the aircraft is without ADS–B equipment; (2) that equipment is inoperative; or (3) their avionics are not expected to meet the ADS–B performance requirements as identified in 14 CFR 91.227(c)(1)(i) and (iii). Operators who wish to submit an ADAPT request must complete the ADS–B SAPT analysis using information entered into the flight information entry form before filing the ADAPT request.

Information Collected

Information collected by SAPT is comparable to that provided in FAA flight plans, with some additional information about the position source. The ADS–B SAPT flight information entry form requires the aircraft call-sign but does not collect other personal identification information about the operator. ADAPT does collect personal information to include name, telephone number, email address. The information is necessary to enable the FAA ATC Authorization Authority (AAA) to reply with either an approval, rejection, or pending decision. It also collects additional information about the flight,

including US Civil Aircraft Registry Number or ICAO Address.

Respondents

These prediction tools are primarily intended for pilots and dispatchers; and for anyone who is planning a flight which passes through U.S. sovereign airspace, using an aircraft whose GPS receiver(s) is/are not guaranteed to meet certain performance requirements or whose aircraft is not equipped to meet the requirements of 14 CFR 91.225.

Frequency

As part of the flight planning process, as required by FAA policy. For some users, this could be every flight. For others it will depend on the specific conditions and performance requirements.

Estimated Average Burden per Response

RAIM SAPT and ADS–B SAPT can be automated as part of the dispatch process by operators or flight service providers, thus eliminating manual data-entry.

RAIM SAPT—Insignificant, as all transactions are automated in flight planning systems.

ADS–B SAPT—5 minutes or less for transactions input via the flight plan form.

ADAPT—7 minutes or less (includes up to 2 minutes to check FAA email response).

Estimated Total Annual Burden

Cumulative total burden for 2025:

RAIM SAPT—Insignificant additional burden

ADS–B SAPT—Approximately 1,160 hours (reporting) and 290 hours (record-keeping).

ADAPT—Approximately 344 hours (reporting) and 137 hours (record-keeping).

Jamal Wilson,

SAPT Project Lead, In-Service Performance and Sustainment (AJM-4220) Federal Aviation Administration.

[FR Doc. 2026–02076 Filed 1–30–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2026–0100]

Agency Information Collection Activities: Notice of Request for Reinstatement of a Previously Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for reinstatement of a previously approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for reinstatement of a previously approved information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by April 3, 2026.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0100 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Fax: 1-202-493-2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Garling, (803) 563-1198, Office of Administration, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 7 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Advanced Transportation Technology and Innovation (ATTAIN) Program.

OMB Control: 2125-0666.

Background: The Advanced Transportation Technologies and Innovative Mobility Deployment Program (ATTIMD), established in Section 503(c)(4) of title 23, United States Code (U.S.C.), also known as the Advanced Transportation Technology and Innovation (ATTAIN) Program, directs FHWA to award grants to eligible entities to deploy, install, and operate advanced transportation technologies to improve safety, mobility, efficiency, system performance, intermodal connectivity, and infrastructure return on investment. These grant awards demonstrate how

emerging transportation technologies, data, and their applications can be effectively deployed and integrated with existing systems to provide access to essential services and other destinations. The Assistance Listing Number for this opportunity is 20.200—Highway Research and Development.

Respondents: The estimated sixty-five RTEPF Grant Program recipients are required to submit quarterly reports documenting grant project actions and funding uses.

Frequency: Quarterly.

Estimated Average Burden per

Response: One hour.

Estimated Total Annual Burden

Hours: 260 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.)

Issued on: January 29, 2026.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2026-02093 Filed 1-30-26; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2026-0067]

Agency Information Collection

Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by April 3, 2026.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0067 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Fax: 1-202-493-2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

Hand Delivery or Courier: U.S. Department of Transportation, East Building Ground Floor, Room E63-314, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Carlos McCloud or Jim Garling, Office of Transportation Operations, Federal Highway Administration, Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Congestion Relief Program.

Background: This collection involves applicants to submit a proposal for discretionary grant funding, under the "Congestion Relief Program" established by the Infrastructure Investment and Jobs Act of 2021, November 15, 2021, "Bipartisan Infrastructure Law", or "BIL". The FHWA will receive the information to fulfill the grant application submittal requirements, grant agreement execution, and semi-annual reporting as prescribed in the Notice of Funding Opportunity (NOFO). The collection of information will include grant application forms and narratives, grant agreements, and project management semi-annual reporting. The purpose of the collection is to obtain information relevant to evaluating applications and reporting requirements agreed to by recipients of the Grants. FHWA is requesting emergency approval due to the urgency of making the associated funds available to applicants that meet the eligibility requirements under the law. The continued viability of these funds is critical in supporting the transportation infrastructure needs across the United States.

Respondents: State, Metropolitan Planning Organization (MPO), city, or municipal agencies in an urbanized area

with a population greater than 1,000,000 are the anticipated respondents.

Frequency: The frequency will be a one-time application for Fiscal Year (FY) 2026 for 2025–2026 Program Year (PY) funds, to be followed by project agreement execution, reimbursement of funds, semi-annual reporting, and project closeout.

Estimated Average Burden per Response: 120 estimated burden hours per response.

Estimated Total Annual Burden Hours: The combined estimated total burden hours for the application, grant agreement, and project management stages is 2,280 burden hours (120 estimated average burden per respondent multiplied by 19, the number of applications received during the initial PY 2022–PY 2024 funding round).

FOR FURTHER INFORMATION CONTACT:

Kenneth Petty, Kenneth.Petty@dot.gov, Director, Office of Planning, Environment and Realty, Federal Highway Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Prioritization Process Pilot Program.

Background: The Prioritization Process Pilot Program (PPPP) is a competitive grant program established in Section 11204 of the Infrastructure Investment and Jobs Act of 2021 (Pub. L. 117–58, November 15, 2021). The PPPP provides funding to develop and implement a publicly accessible, transparent prioritization process for the ranking and selection of projects for inclusion in short-range and long-range transportation plans, that upon completion can be evaluated for public benefit. In 2024, FHWA made the award announcement for approximately \$24.7 million for 16 grants.

Respondents: The Notice of Funding Opportunity (NOFO), announcing up to \$25 million of Fiscal Year (FY) 2024, 2025, and 2026 funding will be available for the roughly 182 Metropolitan Planning Organizations (MPOs) that serve a census designated urban area with a population over 200,000, the 50 States, the District of Columbia, and/or Puerto Rico to apply. FHWA anticipates over 30 eligible applicants will apply for PPPP funding.

Frequency: Once.

Estimated Average Burden per Response: 10 hours.

Estimated Total Annual Burden Hours: 300 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: January 29, 2026.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2026–02091 Filed 1–30–26; 8:45 am]

BILLING CODE:P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Nos. FRA–2015–0062, FRA–2022–0098]

Brightline Florida and Florida East Coast Railway's Joint Request To Amend Their Positive Train Control Safety Plans and Positive Train Control Systems

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that on January 21, 2026, Brightline Florida (BLF) and Florida East Coast Railway (FECR) submitted a joint request for amendment (RFA) to their FRA-approved Positive Train Control Safety Plans (PTCSP) to implement a software update, Interoperable Electronic Train Management Systems (I–ETMS) Protect 77.0.4.0, to FECR and BLF's locomotive fleets, corrections to the PTCSP and updates to line segment names. As this joint RFA may involve requests for FRA's approval of proposed material modifications to FRA-certified positive train control (PTC) systems, FRA is publishing this notice and inviting public comment on BLF and FECR's joint RFA to their PTCSPs.

DATES: FRA will consider comments received by February 23, 2026. FRA may consider comments received after that

date to the extent practicable and without delaying implementation of valuable or necessary modifications to PTC systems.

ADDRESSES:

Comments: Comments may be submitted by going to <https://www.regulations.gov> and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket numbers for the host railroads that filed a joint RFA to their PTCSPs are cited above and in the **SUPPLEMENTARY INFORMATION** section of this notice. For convenience, all active PTC dockets are hyperlinked on FRA's website at <https://railroads.dot.gov/research-development/program-areas/train-control/ptc/railroads-ptc-dockets>. All comments received will be posted without change to <https://www.regulations.gov>; this includes any personal information.

FOR FURTHER INFORMATION CONTACT:

Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: Gabe.Neal@dot.gov.

SUPPLEMENTARY INFORMATION: In general, title 49 United States Code (U.S.C.) section 20157(h) requires FRA to certify that a host railroad's PTC system complies with title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTCSP, a host railroad must submit, and obtain FRA's approval of, an RFA to its PTCSP under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal or train control system. Accordingly, this notice informs the public that, on January 21, 2026, BLF and FECR jointly submitted an RFA to their respective PTCSPs seeking FRA's approval to implement I–ETMS Protect 77.0.4.0 software to improve system performance, as well as corrections to the PTCSP and updates to line segment names. Their joint RFA is available in Docket Numbers FRA–2015–0062 and FRA–2022–0098.

Interested parties are invited to comment on BLF and FECR's joint RFA by submitting written comments or data. During FRA's review of these railroads' joint RFA, FRA will consider any

comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to PTC systems. *See* 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny these railroads' joint RFA to their PTCSPs at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to <https://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. *See* <https://www.regulations.gov/privacy-notice> for the privacy notice of regulations.gov. To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.
Carolyn R. Hayward-Williams,
Director, Office of Railroad Systems and Technology.
[FR Doc. 2026-02018 Filed 1-30-26; 8:45 am]
BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Modification to Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.
ACTION: List of applications for modification of special permits.
SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.
DATES: Comments must be received on or before February 17, 2026.
ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in

triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.
FOR FURTHER INFORMATION CONTACT: Donald Burger, Director, Office of Hazardous Materials Safety Special Permits Program, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-6, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.
SUPPLEMENTARY INFORMATION: Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: (1) Motor vehicle, (2) Rail freight, (3) Cargo vessel, (4) Cargo aircraft only, (5) Passenger-carrying aircraft.
Copies of the applications are available for inspection in the Records Center, East Building, PHH-6, 1200 New Jersey Avenue Southeast, Washington DC or at <http://www.regulations.gov>.
This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).
Issued in Washington, DC, on January 29, 2026.
Donald P. Burger,
Director, Special Permits Program.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21074-M	Zhejiang Meenyu Can Industry Co., Ltd.	173.304(a), 173.304(d)	To modify the special permit to authorize three additional inside metal containers. (modes 1, 2, 3).
22025-M	Bhiwadi Cylinders Private Limited.	173.304(d), 178.33d-2	To modify the special permit to increase the water capacity and diameter of the inner receptacles. (modes 1, 3, 4, 5).
22059-M	The Boeing Company	173.219(c)(5)	To modify the special permit to authorize the grantee as a carrier under the terms of the special permit. (mode 1).

[FR Doc. 2026-02084 Filed 1-30-26; 8:45 am]
BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2025-0678 (Notice No. 2025-06)]
Hazardous Materials: Request for Feedback on Hazmat Transportation Risks: Heavy-Duty Electric Vehicles Versus Internal Combustion Engine Motor Carriers
AGENCY: Pipeline and Hazardous Materials Safety Administration

(PHMSA), Department of Transportation (DOT).
ACTION: Notice; request for information.
SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) seeks public input on the safety risks, operational challenges, and regulatory considerations associated with transporting hazardous materials (hazmat) using heavy-duty electric vehicles (EVs) compared to internal combustion engine (ICE) motor carriers (*i.e.*, gas or diesel). PHMSA aims to understand what impact the transition from ICE to EV motor carriers may have

on hazmat packaging integrity, transportation safety, emergency response protocols, regulatory compliance, and overall vehicle risk. PHMSA may use the information gathered to develop a statement of work for further research into the safety of transporting hazardous materials in EVs.

DATES: Interested parties are invited to submit comments on or before May 4, 2026. Comments received after this date will be considered to the extent possible.

ADDRESSES: Submit comments identified by Docket Number PHMSA–2025–0678 by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 1–202–493–2251.

- *Mail:* Docket Management System, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Docket Management System, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and Docket Number [PHMSA–2025–0678] for this notice. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to the Federal Docket Management System (FDMS) and will include any personal information you provide.

Docket: For access to the dockets to read background documents or comments received, go to <http://www.regulations.gov> or DOT's Docket Operations Office (see **ADDRESSES**).

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is treated both customarily and actually as private by its owner. Under the Freedom of Information Act (FOIA, 5 U.S.C. 552), CBI is exempt from public disclosure. It is important that you clearly designate the comments

submitted as CBI if your comments responsive to this document contain commercial or financial information that customarily is treated as private; you actually treat as private; and is relevant or responsive to this notice. Pursuant to 49 Code of Federal Regulations (CFR) § 105.30, you may ask PHMSA to provide confidential treatment to information you give the Agency by taking the following steps: (1) mark each page of the original document submission containing CBI as “Confidential”; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Submissions containing CBI should be sent by mail to Andrew Leyder, Pipeline and Hazardous Materials Safety Administration, 2nd Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, or by email to Andrew.Leyder@dot.gov. Any information PHMSA receives that is not designated specifically as CBI will be placed in the public docket.

FOR FURTHER INFORMATION CONTACT:

Office of Hazardous Materials Safety, Research, Development & Technology, by email at Hazmatresearch@Dot.gov, or by mail at Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Purpose

PHMSA requests feedback on the potential safety risks, operational challenges, and regulatory implications of using heavy-duty electric vehicles (EVs) compared to internal combustion engine (ICE) motor carriers (*i.e.*, gas or diesel) for the transportation of hazardous materials (hazmat). PHMSA is interested particularly in understanding how this change may impact hazmat packaging integrity, transportation safety, emergency response procedures, regulatory compliance, and overall vehicle-related risk.

This is a Request for Information (RFI) only. This RFI is issued solely for information and planning purposes. It does not constitute a Request for Proposal (RFP) nor a promise to issue an RFP or other solicitation in the future. This RFI does not commit the Federal Government to contract for any supply or service. Further, the Federal Government is not seeking proposals and will not accept unsolicited proposals. Respondents are advised that the U.S. Government will not pay for

any information or administrative costs incurred in response to this RFI. All costs associated with responding to this RFI will be solely at the interested party's expense. Not responding to this RFI does not preclude participation in any future RFP, if any is issued.

II. Background

Hazmat transportation historically has depended on gasoline and diesel-powered motor carriers, which operate under established safety regulations, containment protocols, and response procedures. As the use of heavy-duty EV technology becomes more prevalent in the market, new factors—such as battery chemistry, powertrain design differences, charging infrastructure, and vehicle weight distribution—may introduce distinct safety risks compared to ICE motor carriers. Potential factors include:

- **Battery hazards:** Lithium-ion batteries pose unique risks, including thermal runaway, fire propagation, and flammable/toxic gas emissions that differ from the hazards associated with conventional fuel sources.

- **Charging station vulnerabilities:** Transporting hazmat via EVs requires charging infrastructure, which may influence cargo exposure risks, spill ignition potential, and emergency shutdown procedures.

- **Weight distribution and cargo stability:** EV batteries add additional weight that may impact hazmat containment strategies differently than ICE motor carriers, and potentially may influence vehicle stability, packaging requirements, and load distribution.

- **Emergency response adaptations:** Fires, leaks, or mechanical failures in heavy-duty EVs require specialized response measures, which differ from those needed for ICE-powered motor carriers.

PHMSA is seeking input from industry experts, fleet operators, manufacturers, emergency responders, regulatory agencies, and other stakeholders to help identify safety gaps, emerging safety innovations in transportation technology (or next-generation safety solutions), and potential regulatory adaptations related to hazmat transportation across various motor carrier technologies.

III. Request for Feedback

Responses should compare the risks between heavy-duty EVs and ICE motor carriers, with a focus on hazmat packaging and product safety, as well as risks to the vehicles. Submissions should also identify knowledge gaps and recommend areas for future research.

1. Hazmat Packaging and Containment Risks

- What, if any, differences exist in containment failure risks resulting from heat generated by EV batteries compared to fuel-based (ICE) systems?
- How does the weight distribution and the increase in total powertrain weight of EV batteries affect cargo safety compared to ICE motor carriers?
- Are there certain types or classes of hazardous materials (e.g., flammables, corrosives, or explosives) that pose an increased risk when transported by EVs versus ICE motor carriers?
- What additional testing methods or materials research could enhance hazmat packaging performance for use in both EV and ICE transportation applications?
- Is it possible for an EV battery or battery system to produce or emit wireless signals (i.e., radiofrequency signals) that could interfere with cargo or onboard communications (i.e., packaging tracking and monitoring systems), or cause harm to sensitive materials, such as electronic detonators?
- What concerns or risks do you believe might be associated with transporting bulk hazardous materials—such as propane—in cargo tanks on EV chassis compared to traditional ICE trucks, including both permanently attached and portable (non-attached) tanks? Please include perspectives on safety, reliability, and any other challenges this configuration might present.

2. Vehicle-Specific Safety and Performance Risks

- How do hazmat cargo risks differ based on the interaction with heavy-duty EV powertrains versus ICE systems?
- What, if any, potential vulnerabilities exist in vehicle electronics, cooling systems, or containment barriers that are unique to EV hazmat transportation? Please include vulnerabilities in loading and unloading operations.
- Is there a need for additional studies to support engineering standards for cyber and functional safety for hazmat EVs?
- How do the fire risks (such as heat flux, maximum burn temperature, or burn time) associated with thermal runaway in EV batteries differ from an ICE vehicle involved in equivalent incidents? Additionally, how can further research help to refine prevention and mitigation strategies for these risks?
- What studies or data collection efforts could improve the understanding

of long-term vehicle wear due to hazmat exposure (e.g., radioactive material transportation) in EV versus ICE transportation? Is there a need for additional studies to support engineering standards for post-crash requirements (e.g., electric shock protection, battery pack retention, electrolyte leakage, or fire safety) for hazmat EVs?

3. Infrastructure and Charging Considerations

- What risks arise from charging heavy-duty EVs carrying hazardous materials, compared to refueling ICE motor carriers?
- Do the physical locations of charging stations (i.e., spacing between stations and proximity to buildings) or the location of a charging port on the vehicle pose a unique risk for hazmat carriers? How might infrastructure design be improved to enhance safety in these contexts?
- How do emergency shutdown measures at charging stations compare to existing fuel safety protocols for hazmat carriers?
- What types of operational studies or pilot programs could help assess real-world risks of hazmat charging station interactions compared to traditional fueling locations?
- What risks are there for an EV fire in a tunnel? How would the issues change or be added for hazmat carriers?

4. Regulatory Compliance and Standards

- Do existing hazmat transportation regulations effectively address the safety and operational considerations of both heavy-duty EVs and ICE motor carriers, including for purposes of loading and unloading hazardous materials, or are regulatory updates needed to account for the unique challenges posed by EV technology?
- Is emergency response guidance (Emergency Response Guidance/Rescue Sheets ISO-17840, “Road vehicles—Information for first and second responders,”) submitted as part of 49 CFR 561.6 sufficient, and what additional information, if any, should be required for hazmat EVs?
- Should hazmat packaging, containment protocols, or safety certifications be revised or updated to meet EV-specific risks?
- How do battery disposal, maintenance, and lifespan considerations for EV fleets impact hazmat compliance particularly when compared to sustainability and compliance challenges associated with ICE vehicles?

- What research initiatives would be most valuable in guiding the evolution of hazardous materials regulations for EV hazmat transportation?

5. Emergency Response and Incident Mitigation

- How do fire suppression strategies differ between hazmat emergencies involving heavy-duty EV battery fires versus ICE fuel fires?
- Should fire response tactics be modified when a heavy-duty EV is transporting hazardous materials versus a standard consumer EV? Are emergency responders adequately trained to handle electrical system risks, battery failures, and toxic emissions associated with EV-based hazmat transportation? What training currently exists, and what additional training should be developed, to better prepare responders for these unique hazards? Should additional vehicle badging be required to identify EV versus ICE for hazmat?
- Do the risks from a hazmat spill change based on whether the motor carrier is an EV or ICE powered vehicle?
- How will EV battery fires affect hazmat packaging of any type compared to an ICE fire? For instance, would there be a difference in fire temperature, length of the event, damages caused, etc.? Please provide examples of the types of packaging that would have differences in impact.
- How can further research improve emergency responder safety protocols in responding to an incident involving hazardous materials when EVs are involved?

6. Economic and Operational Feasibility

- How do total operating costs for ICE motor carriers versus heavy-duty EVs affect hazmat transportation decisions?
- Are there differences in cargo capacity, range limitations, or route planning between EV and ICE-based hazmat transportation?
- Are there technological barriers preventing widespread adoption of heavy-duty EVs for hazmat shipments compared to ICE motor carriers?
- What long-term economic studies could assess whether transitioning hazmat transportation fleets to heavy-duty EVs is economically feasible?
- What is the economic impact on an area when there is an EV fire versus an ICE fire?

7. Future Research Considerations

- What unknown risks still require research regarding hazmat transportation via EVs versus ICE motor carriers?
- Are there emerging technologies that could improve safety or reduce risk

exposure for hazmat transportation across motor carrier types?

- What gaps exist in current research, and what interagency collaborations could strengthen future studies in EV and ICE vehicles carrying hazmat?
- Which of the identified areas have the highest safety priority based on anticipated impacts?
- What types of battery chemistries and sizes are used currently in standard EVs and heavy duty EVs? Which types are most common? Are some more dangerous than others?

Issued in Washington, DC, on January 28, 2026, under authority delegated in 49 CFR 1.97.

Yolanda Y. Braxton,

Director, Operations System Division, Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2026–01989 Filed 1–30–26; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for New Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before March 4, 2026.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT:

Donald Burger, Director, Office of Hazardous Materials Safety Special Permits Program, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–6, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Each mode of transportation for which a particular special permit is requested is indicated by a number in the “Nature of Application” portion of the table below as follows: (1) Motor vehicle, (2) Rail freight, (3) Cargo vessel, (4) Cargo aircraft only, (5) Passenger-carrying aircraft.

Copies of the applications are available for inspection in the Records Center, East Building, PHH–6, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on January 29, 2026.

Donald P. Burger,

Director, Special Permits Program.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
22177–N	Veolia ES Technical Solutions, LLC.	173.185(f)(1), 173.185(f)(3), 173.185(f)(3)(iii).	To authorize the transportation in commerce of one UN 50D Large Packaging containing damaged lithium ion cells for the purpose of disposal. (mode 1)
22179–N	BAE Systems Space & Mission Systems Inc.	173.24(g), 173.185(a), 173.301(f), 173.302(a), 173.304(a).	To authorize the transportation in commerce of certain non-DOT specifications packagings (spacecraft) containing Division 2.1 and 2.2 compressed gases and lithium ion batteries installed in equipment. (mode 1)
22180–N	Trinseo LLC	172.203(a), 172.302(c), 173.31(d)(1)(ii).	To authorize the transportation in commerce of tank cars in which the manway cover gasket has been subjected to the leak detection method(s) in lieu of a visual inspection. (mode 2)
22181–N	The Research Foundation for The State University of New York.	173.199(a)(1)	To authorize the transportation in commerce of mice infected with Division 6.2 (infectious substance) hazardous materials in alternative packaging. (mode 1)
22183–N	GS Yuasa Lithium Power, Inc	173.185(a)(1)	To authorize the transportation in commerce of prototype and low production lithium batteries aboard cargo-only aircraft. (mode 4)
22184–N	Kalitta Air, LLC	173.27(b)(2)	To authorize the transportation in commerce of UN3538 articles containing non-flammable, non-toxic gas, n.o.s. which are forbidden for air transportation by cargo-only aircraft. (mode 4)
22187–N	The Greenbrier Companies, Inc.	172.203(a), 172.302(c), 179.2(a)(2), 179.3(a), 179.6.	To authorize the use of a Design Certifying Engineer to certify tank car designs, including alterations, conversions, and repairs, in lieu of an approval issued by the Association of American Railroads (AAR). (mode 2)
22188–N	Arkedge Space Inc	173.185(e)	To authorize the transportation in commerce of a lithium ion battery design that is not of a type proven to have passed the testing requirements of section 38.3 of the UN Manual of Tests and Criteria via cargo-only aircraft. (mode 4)
22193–N	Samsung SDI Battery Systems GmbH (agent).	173.185(e)	To authorize the transportation of prototype lithium ion batteries in excess of 35 kgs aboard cargo-only aircraft. (mode 4)

[FR Doc. 2026-02087 Filed 1-30-26; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Extensions of Credit to Insiders and Transactions With Affiliates

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled, “Extensions of Credit to Insiders and Transactions with Affiliates.” The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be received by March 4, 2026.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email:* prainfo@occ.treas.gov.
- *Mail:* Chief Counsel's Office,

Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557-0336, 400 7th Street SW, Suite 3E-218, Washington, DC 20219.

- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E-218, Washington, DC 20219.
- *Fax:* (571) 293-4835.

Instructions: You must include “OCC” as the agency name and “1557-0336” in your comment. In general, the OCC will publish comments on www.reginfo.gov without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or

supporting materials that you consider confidential or inappropriate for public disclosure.

Written comments and recommendations for the proposed information collection should also be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. You can find this information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

- **Viewing Comments Electronically:** Go to www.reginfo.gov. Hover over the “Information Collection Review” tab and click on “Information Collection Review” from the drop-down menu. From the “Currently under Review” drop-down menu, select “Department of the Treasury” and then click “submit.” This information collection can be located by searching OMB control number “1557-0336” or “Extensions of Credit to Insiders and Transactions with Affiliates.” Upon finding the appropriate information collection, click on the related “ICR Reference Number.” On the next screen, select “View Supporting Statement and Other Documents” and then click on the link to any comment listed at the bottom of the screen.

- For assistance in navigating www.reginfo.gov, please contact the Regulatory Information Service Center at (202) 482-7340.

FOR FURTHER INFORMATION CONTACT:

Shaquita Merritt, Clearance Officer, (202) 649-5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC asks the OMB to extend its approval of the collection in this notice.

Title: Extensions of Credit to Insiders and Transactions with Affiliates.

OMB Control No.: 1557-0336.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Description: National banks and Federal savings associations must comply with rules of the Federal Reserve Board (Board) regarding extensions of credit to insiders (Regulation O) and transactions with affiliates (Regulation W), which implement section 22(h) and sections 23A and 23B, respectively, of the Federal Reserve Act (FRA). Twelve CFR part 31.2 requires national banks, Federal savings associations, and their insiders to comply with Regulation O, and 12 CFR 31.3 requires national banks and Federal savings associations to comply with Regulation W. Appendix A to part 31 provides interpretive guidance on the application of Regulation W to deposits between affiliated banks.

Section 31.3(c) implements the statutory standards for authorizing an exemption from section 23A of the FRA or section 11 of the Home Owners' Loan Act (HOLA) in accordance with section 608 of the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Section 608, which became effective on July 21, 2012, amends section 23A of the FRA and section 11 of the HOLA to authorize the OCC to exempt, by order, a transaction of a national bank or Federal savings association, respectively, from the affiliate transaction requirements of section 23A and section 11 of the HOLA if: (1) the OCC and the Board jointly find the exemption to be in the public interest and consistent with the purposes of section 23A or section 11, and (2) within 60 days of receiving notice of such finding, the Federal Deposit Insurance Corporation does not object in writing to the finding. Such objection would be based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.

Section 31.3(d) sets forth procedures that a national bank and Federal savings association must follow to request such exemptions. These procedures are modeled after the Board's procedures in Regulation W. A national bank or Federal savings association may request an exemption from the requirements of section 23A or section 11 of the HOLA, as applicable, and 12 CFR part 223 for a national bank or Federal savings association by submitting a written request to the Deputy Comptroller for Licensing with a copy to the appropriate Federal Reserve Bank. Such a request must:

(1) Describe in detail the transaction or relationship for which the national

bank or Federal savings association seeks exemption;

(2) Explain why the OCC should exemption the transaction or relationship;

(3) Explain how the exemption would be in the public interest and consistent with the purposes of section 23A or section 11 of the HOLA, as applicable; and

(4) Explain why the exemption does not present an unacceptable risk to the Deposit Insurance Fund.

Estimated Burden

Estimated Frequency of Response: On occasion.

Estimated Number of Respondents: 1.

Estimated Hours per Response: 10 hours.

Estimated Total Annual Responses: 1.

Estimated Total Annual Burden: 10 hours.

Comments: On November 25, 2025, the OCC published a 60-day notice for this information collection, (90 FR 53419). No comments were received.

Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Sarah E. Turney,

Assistant Director, Office of the Comptroller of the Currency.

[FR Doc. 2026-02019 Filed 1-30-26; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Internal Revenue Service (IRS) Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following

information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before March 4, 2026 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Copies of the submissions may be obtained from Spencer W. Clark by emailing PRA@treasury.gov, calling (202) 927-5331, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

1. *Title:* U.S. Withholding Tax Return for Certain Dispositions by Foreign Persons, Statement of Withholding on Certain Dispositions by Foreign Persons, Statement of Withholding.

OMB Control Number: 1545-0902.

Type of Request: Extension without change of a currently approved collection.

Description: Internal Revenue Code section 1445 requires transferees to withhold tax on the amount realized from sales or other dispositions by foreign persons of U.S. real property interests. Form 8288 is used to report and transmit the amount withheld to the IRS. Form 8288-A is used by the IRS to validate the withholding, and a copy is returned to the transferor for his or her use in filing a tax return. Information provided in § 1.1446(f)-3(d) by the partnership to the IRS will be used by the partnership to report and pay any tax under section 1446(f)(4) and § 1.1446(f)-3 and will be provided on Form 8288-C.

Forms: 8288, 8288-A, and 8288-C.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 237,500.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 237,500.

Estimated Time per Response: 9 hours, 50 minutes.

Estimated Total Annual Burden Hours: 2,334,750.

2. *Title:* TD 8517: Debt Instruments with Original Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property; TD 9599: Property Traded on an Established Market.

OMB Control Number: 1545-1353.

Type of Request: Extension of a currently approved collection.

Description: These documents contain regulations relating to the tax treatment of debt instruments with original issue discount and the imputation of interest on deferred payments under certain contracts for the sale or exchange of property and determining when property is traded on an established market for purposes of determining the issue price of a debt instrument. The regulations provide guidance to holders and issuers of debt instruments.

Regulation Project Number: TD 8517 and TD 9599.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 545,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 545,000.

Estimated Time per Response: Varies from 21 minutes to 30 minutes.

Estimated Total Annual Burden Hours: 195,500.

3. *Title:* Timely Mailing Treated as Timely Filing.

OMB Control Number: 1545-1899.

Type of Request: Extension of a currently approved collection.

Description: This information collection contains regulations that provide guidance as to the only ways to establish prima facie evidence of delivery of documents that have a filing deadline prescribed by the internal revenue laws, absent direct proof of actual delivery. The regulations are necessary to provide greater certainty regarding this issue and to provide specific guidance. The regulations affect taxpayers who mail Federal tax documents to the Internal Revenue Service or the United States Tax Court. Revenue Procedure 97-19 provides the criteria that will be used by the IRS to determine whether a private delivery service qualifies as a designated Private Delivery Service under section 7502 of the Internal Revenue Code.

Regulation Project Number: TD 9543 and Revenue Procedure 97-19.

Affected Public: Private Sector, and Individuals and Households.

Estimated Number of Respondents: 10,847,661.

Frequency of Response: Annually.

Estimated Time per Response: Varies from 6 minutes to 40 hours.

Estimated Total Annual Burden Hours: 1,085,618.

4. *Title:* Golden Parachute Payments.
OMB Control Number: 1545–1851.

Type of Request: Extension of a currently approved collection.

Description: These regulations deny a deduction for excess parachute payments. A parachute payment is a payment in compensation to a disqualified individual that is contingent on a change in ownership or control of a corporation. Certain payments, including payments from a small corporation, are exempt from the definition of parachute payment if certain requirements are met.

Regulation Project Number: TD 9083.

Affected Public: Businesses or other for-profit institutions.

Estimated Number of Respondents: 800.

Frequency of Response: On Occasion.

Estimated Time per Response: 15 hours.

Estimated Total Annual Burden Hours: 12,000.

(Authority: 44 U.S.C. 3501 *et seq.*)

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2026–02092 Filed 1–30–26; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Health Systems Research (HSR) Scientific Merit Review Board: Federal Register Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. Ch. 10, that a meeting of the HSR Scientific Merit Review Board (Board) will be held March 12, 2026, from 12–1:30 p.m. EST, via WebEx. The meeting will be open to the public from 12–12:15 p.m. EST. The remainder of the meeting, from 12:15–1:30 p.m. EST, will be closed to the public and used for scientific review and discussion, examination of, and reference to the research applications. Discussions will involve staff and consultant critiques of research proposals. Discussions will also cover the scientific merit of each proposal and the qualifications of the personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research proposals. Therefore, portions of the Board meeting will be closed to the public in accordance with 5 U.S.C. 552b(c)(4), (6) and (9)(B).

The objective of the Board is to provide for the fair and equitable selection of the most meritorious research projects for support by VA research funds and to offer advice for research program officials on program priorities and policies. The ultimate objective of the Board is to ensure through recommendations the high quality and mission relevance of VA's HSR Program.

Board members will advise the Acting Director of Health Systems Research, Acting Deputy Chief Research and Development Officer for Investigators, Scientific Review, and Management, and the Acting Chief Research and Development Officer on the scientific and technical merit, mission relevance, and protection of human subjects of the proposals submitted to HSR. The Board does not consider grants, contracts, or other forms of extramural research.

Members of the public may attend the open portion of the meeting from 12–12:15 p.m. EST via WebEx (in listen-only mode, as the time limited agenda does not allow for public comment or presentations). To attend the open portion of the meeting, the public may dial the WebEx phone number (1–833–558–0712) and enter the meeting access code (2829 614 1439).

Written comments from members of the public should be sent to Tiffin Ross-Shepard, Designated Federal Officer, HSR (14RDH), U.S. Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, or to Tiffin.Ross-Shepard@va.gov at least five (5) days before the meeting. The written public comments will be shared with the Board members. The public may not attend the closed portion of the meeting.

Dated: January 28, 2026.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2026–01930 Filed 1–30–26; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0474]

Agency Information Collection Activity: Create Payment Request for the VA Funding Fee Payment System (VA FFPS); a Computer Generated Funding Fee Receipt

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans

Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 3, 2026.

ADDRESSES: Comments must be submitted through www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Program-Specific information: Kendra McCleave, 202–461–9760, Kendra.McCleave@va.gov.

VA PRA information: Dorothy Glasgow, 202–461–1084, VAPRA@va.gov.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Create Payment Request for the VA Funding Fee Payment System (VA FFPS); A Computer Generated Funding Fee Receipt (VA Form 26–8986).

OMB Control Number: 2900–0474.
<https://www.reginfo.gov/public/do/PRAsearch> (Once at this link, you can enter the OMB Control Number to find the historical versions of this Information Collection).

Type of Review: Revision of a currently approved collection.

Abstract: A funding fee must be paid to VA before a loan can be guaranteed and evidence of guaranty issued. The funding fee is payable on all VA-guaranteed loans (*i.e.*, assumptions,

manufactured housing, refinances, and real estate purchase and construction loans). Lenders are required to pay the funding fee in an internet-based application, VA Funding Fee Payment System (FFPS), that permits lenders to pay the funding fee online to obtain a VA loan guaranty. The application calculates the appropriate fee, including any late fees and interest that may be due. Lenders may also choose to pay the funding fee via batch payment processing by uploading an XML file into FFPS. VA notes that although the frequency of the estimated completion time is unchanged since the last revision. However, the annual burden decreased due to a reduction in the total number of respondents, which fell from 800,000 to 465,000 and is directly tied to the decrease in the volume of VA-guaranteed loans.

Affected Public: Individuals and households.

Estimated Annual Burden: 15,500 hours annually.

Estimated Average Burden per Respondent: 2 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 465,000 annually.

Authority: 44 U.S.C. 3501 *et seq.*

Shunda Willis,

*Acting, VA PRA Clearance Officer, (Alt.)
Office of Information Technology/Data
Governance Analytics, Department of
Veterans Affairs.*

[FR Doc. 2026-02039 Filed 1-30-26; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service (RR&D) Scientific Merit Review Board; Federal Register Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. Ch. 10, that a meeting of the RR&D Scientific Merit Review Board (Board) will be held March 4, 2026, from 1-1:30 p.m. EST, via WebEx. The meeting will be open to the public from 1-1:10 p.m. EST. The remainder of the meeting, from 1:10-1:30 p.m. EST, will be closed to the public and used for scientific review and discussion, examination of, and reference to the research applications. Discussions will involve staff and consultant critiques of research proposals. Discussions will also cover the scientific merit of each proposal and the qualifications of the personnel conducting the studies, the disclosure of which would constitute a clearly

unwarranted invasion of personal privacy. Additionally, premature disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research proposals. Therefore, portions of the Board meeting will be closed to the public in accordance with 5 U.S.C. 552b(c)(4), (6) and (9)(B).

The objective of the Board is to provide for the fair and equitable selection of the most meritorious research projects for support by VA research funds and to offer advice for research program officials on program priorities and policies. The ultimate objective of the Board is to ensure that the VA rehabilitation research program promotes functional independence and improves the quality of life for impaired and disabled Veterans.

Board members will advise the Director of Rehabilitation Research, Development and Translation, Acting Deputy Chief Research and Development Officer for Investigators, Scientific Review, and Management, and Acting Chief Research and Development Officer on the scientific and technical merit, mission relevance, and protection of human and animal subjects of the proposals submitted to RR&D. The Board does not consider grants, contracts, or other forms of extramural research.

Members of the public may attend the open portion of the meeting from 1-1:10 p.m. EST via WebEx (in listen-only mode, as the time limited agenda does not allow for public comment or presentations). To attend the open portion of the meeting, the public may dial the WebEx phone number (1-833-558-0712) and enter the meeting access code (2821 163 5522).

Written comments from members of the public should be sent to Kristy Benton-Grover, Designated Federal Officer, RR&D, U.S. Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, or to Kristy.Benton-Grover@va.gov, at least five (5) days before the meeting. The written public comments will be shared with the Board members. The public may not attend the closed portion of the meeting.

Dated: January 28, 2026.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2026-01931 Filed 1-30-26; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0365]

Agency Information Collection Activity: Request for Disinterment

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Comments must be received on or before April 3, 2026.

ADDRESSES: Comments must be submitted through www.regulations.gov

FOR FURTHER INFORMATION CONTACT:

Program-Specific information: Brian Hurley, 202-957-2093, Brian.Hurley1@va.gov.

VA PRA information: Dorothy Glasgow, 202-461-1084, VAPRA@va.gov.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Disinterment.

OMB Control Number: 2900-0365.

<https://www.reginfo.gov/public/do/PRASearch> (Once at this link, you can enter the OMB Control Number to find

the historical versions of this Information Collection).

Type of Review: Revision of a currently approved collection.

Abstract: Claimants complete VA Form 40–4970 to request removal of remains from a national cemetery for interment at another location. Interments made in national cemeteries are permanent and final. All immediate family members of the decedent, including the person who initiated the

interment, (whether or not he/she is a member of the immediate family) must provide a written consent before disinterment is granted. VA will accept an order from a court of local jurisdiction in lieu of VA Form 40–4970.

Affected Public: Individuals or households.

Estimated Annual Burden: 233 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,400.

Authority: 44 U.S.C. 3501 *et seq.*

Lanea Haynes,
*Acting, VA PRA Clearance Officer, (Alt),
Office of Information Technology, Data
Governance Analytics, Department of
Veterans Affairs.*
[FR Doc. 2026–02041 Filed 1–30–26; 8:45 am]
BILLING CODE 8320–01–P



FEDERAL REGISTER

Vol. 91

Monday,

No. 21

February 2, 2026

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 433

Medicaid Program; Preserving Medicaid Funding for Vulnerable
Populations—Closing a Health Care-Related Tax Loophole; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 433

[CMS–2448–F]

RIN 0938–AV58

Medicaid Program; Preserving Medicaid Funding for Vulnerable Populations—Closing a Health Care-Related Tax Loophole

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule addresses a loophole in a regulatory statistical test applied to State proposals for Medicaid tax waivers. The test is designed to ensure, as required by statute, that non-uniform or non-broad-based health care-related taxes, authorized under a waiver, are generally redistributive. The inadvertent loophole currently allows some health care-related taxes, especially taxes on managed care organizations, to be imposed at higher tax rates on Medicaid taxable units than non-Medicaid taxable units, contrary to statutory and regulatory intent for health care-related taxes to be generally redistributive. The final rule closes the loophole by finalizing the policies in the proposed rule to add additional safeguards to ensure that tax waivers that exploit the loophole because they pass the current statistical test, but are not generally redistributive, are not approvable. By adding these safeguards, the final rule is also implementing recently added statutory requirements for a tax to be considered generally redistributive.

DATES: These regulations are effective on April 3, 2026.

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I. Background

A. Overview

Title XIX of the Social Security Act (the Act) authorizes Federal grants to States for Medicaid programs to provide medical assistance to people with limited income and resources. While Medicaid programs are administered by the States, the program is jointly financed by the Federal and State governments. The Federal government pays its share of Medicaid expenditures

to the State on a quarterly basis according to a formula described in sections 1903 and 1905(b) of the Act. The amount of the Federal share of Medicaid expenditures is called Federal financial participation (FFP). The State pays its share of Medicaid expenditures in accordance with section 1902(a)(2) of the Act. As described in more detail in the next section, the State may raise its non-Federal share obligation in various ways, subject to certain requirements, including through health care-related taxes (generally, taxing health care items or services, or providers of such items and services).

The Medicaid Voluntary Contribution and Provider Specific Tax Amendments of 1991 (Pub. L. 102–234, enacted December 12, 1991) amended section 1903 of the Act to specify limitations on the amount of FFP available for medical assistance expenditures in a fiscal year when States receive certain funds donated from providers or certain related entities, and revenues generated by certain health care-related taxes. The Centers for Medicare & Medicaid Services (CMS) issued regulations to implement the statutory provisions concerning provider-related donations and health care-related taxes in an interim final rule (with comment period) published in November 1992 (57 FR 55118, November 24, 1992). CMS issued the final rule in August 1993 (58 FR 43156, August 13, 1993). The Federal statute and implementing regulations were intended to prevent States from shifting a disproportionate amount of the tax burden to entities with a high percentage of Medicaid business, thus shifting the State responsibility for financing of the program to the Federal government. In these financing-shifting scenarios, Medicaid payments to providers would be made up of the Federal share plus non-Federal share raised from the providers themselves, rather than obtained from general revenue or other permissible source of non-Federal share. In part, the statute addresses this concern by requiring that health care-related taxes be broad based (generally, applicable to an entire permissible class of health care items and services, or to providers of the same) and uniform (generally, applied at the same rate to all health care items and services, or providers, in a permissible class). The statute does permit waivers of the broad-based and uniform requirements under certain circumstances, including that the Secretary of Health and Human Services (Secretary) must determine that the net impact of the tax and associated Medicaid expenditures as proposed by

the State would be generally redistributive in nature, which is an issue in these provisions and which we discuss more fully later. However, since that time, we have discovered that, due to an unintended loophole in the statistical test used to determine if a health care-related tax is generally redistributive, as specified in the August 1993 final rule, some States are still able to shift the financial burden of the non-Federal share of Medicaid program expenditures to entities with a high percentage of Medicaid business, and thus ultimately to the Federal government, contrary to the statutory framework.

B. Medicaid Program Financing

Shared responsibility for financing lies at the foundation of the Medicaid program. Sections 1902(a), 1903(a), and 1905(b) of the Act require States to share in the cost of medical assistance and in the cost of administering the State plan. Under this statutory framework, Medicaid expenditures are jointly funded by the Federal and State governments. Section 1903(a)(1) of the Act provides for payments to States of a percentage of medical assistance expenditures authorized under their approved State plan. Generally, FFP is available when a covered Medicaid service is provided to a Medicaid beneficiary, which results in a Federally matchable expenditure that is funded in part through non-Federal funds from the State or a non-State governmental entity.¹ The share of Federal funding for medical assistance expenditures is determined by the Federal medical assistance percentage (FMAP), which is calculated for each State using a formula set forth in section 1905(b) of the Act, or other applicable FFP match rates specified by the statute.

Section 1902(a)(2) of the Act and its implementing regulations in 42 CFR part 433, subpart B requires States to share in the cost of Medicaid expenditures, with financial participation by the State of not less than 40 percent of the non-Federal share of expenditures. These requirements also permit other units of non-State government to contribute to the financing of the non-Federal share of medical assistance expenditures up to the remaining 60 percent of the non-Federal share. As a result, States must participate in operating an efficient and fiscally responsible system for providing health care services to eligible

¹ See the Medicaid and CHIP Payment and Access Commission's (MACPAC) list of "Federal Match Rate Exceptions" for a comprehensive list of higher FMAPs at <https://www.macpac.gov/federal-match-rate-exceptions/>.

beneficiaries. Because States must invest some of their own dollars to pay for the program, they have an incentive to monitor and operate their programs competently to ensure the best value for the dollars that they spend.

There are several manners in which States can finance the non-Federal share of Medicaid expenditures, including: (1) State general funds, typically derived from tax revenue appropriated directly to the Medicaid agency; (2) revenue derived from health care-related taxes when consistent with Federal statutory requirements at section 1903(w) of the Act and implementing regulations at 42 CFR part 433, subpart B; (3) provider-related donations to the State which must be “bona fide” in accordance with section 1903(w) of the Act and implementing regulations at 42 CFR part 433, subpart B; (4) intergovernmental transfers (IGTs) from units of State or local government that contribute funding for the non-Federal share of Medicaid expenditures by transferring their own funds to and for the unrestricted use of the Medicaid agency; and (5) certified public expenditures whereby units of government, including health care providers that are units of government, incur FFP-eligible expenditures under the State’s approved State plan, consistent with section 1903(w)(6) of the Act and § 433.51(b).

C. Health Care-Related Taxes

Section 1903(w) of the Act specifies certain requirements to which permissible health care-related taxes must adhere. Specifically, section 1903(w)(1)(A) of the Act states that the Secretary will reduce a State’s medical assistance expenditures, prior to calculating FFP, by the sum of any revenues from health care-related taxes that do not meet the requirements under section 1903(w) of the Act. This reduction in a State’s claimed expenditures is codified in regulation at § 433.70(b). Because of the way that the statute is constructed, the baseline assumption is that all health care-related taxes are impermissible with limited exceptions for health care-related taxes that satisfy the parameters specified by the statute.

Health care-related taxes may only be imposed permissibly on certain groups of health care items or services known as permissible classes, which are outlined in section 1903(w)(7) of the Act and expanded upon in § 433.56. In general, and as discussed in the introduction to this section, such health care-related taxes must be broad-based or apply to all non-governmental providers within such a class as specified by section 1903(w)(3)(B) of the

Act and § 433.68(c). They generally must also be uniform, such that all providers within a class generally must be taxed at the same rate or dollar amount as specified by section 1903(w)(3)(C) of the Act and § 433.68(d). Additionally, the tax must not have in effect any hold harmless provisions, as specified in section 1903(w)(4) of the Act and implementing regulations in § 433.68(f).

There is no possibility under the statute of waiving the permissible class or the hold harmless requirements. However, a State can request a waiver of the broad-based and/or uniformity requirements. As discussed earlier, section 1903(w)(3)(E) of the Act states that the Secretary shall approve a health care-related tax waiver for the broad-based and/or uniformity requirements if the net impact of the tax and associated expenditures is “generally redistributive” in nature and the amount of the tax is not directly correlated to Medicaid payments for items and services with respect to which the tax is imposed. As previously stated, in the preamble of the August 1993 final rule, CMS interpreted “generally redistributive” to mean “the tendency of a State’s tax and payment program to derive revenues from taxes imposed on non-Medicaid services in a class and to use these revenues as the State’s share of Medicaid payments,” (58 FR 43164). The preamble stated that assuming a State imposes a non-Medicaid tax and uses the funds solely for Medicaid payments, we believe a complete redistribution would exist.

States are not required to use health care-related taxes to finance the non-Federal share of Medicaid payments; in practice, it is frequently done. When this occurs, taxes that are generally redistributive have some entities that benefit financially as a result of the tax and the associated payment(s) funded by the tax, and some entities that lose money because the amount of tax they pay is greater than the amount of tax-funded payments they receive. Under a health care-related tax that is generally redistributive, entities that have more Medicaid business would expect to receive greater Medicaid payments than entities with less Medicaid business. Although the entities with a higher percentage of Medicaid business may also pay the tax, they often receive more total Medicaid payments than they pay in tax and therefore benefit from these arrangements. By contrast, entities that serve a relatively low percentage of Medicaid beneficiaries or no Medicaid beneficiaries often do not receive Medicaid payments in an amount equal to or higher than their cost of paying the

tax. These entities do not benefit financially because they do not receive Medicaid payments that are sufficient to cover their tax payments. These results are inherent in a system of Medicaid payments supported by a health care-related tax that is generally redistributive, as discussed in the preamble to the August 1993 final rule.

Entities that do not benefit from a tax, such as through tax-supported payments, are unlikely to support a State or locality establishing or continuing a health care-related tax because the tax would have a negative financial impact on them. Hold harmless arrangements often either eliminate this negative financial impact or turn it into a positive financial impact for most or all taxpaying entities, likely leading to broader support among the taxpayers for legislation establishing or continuing the tax. Hold harmless arrangements often result in the Federal government as the only net contributor to Medicaid payments that are supported by the tax program, since the non-Federal share is both sourced from and paid back to the taxpaying providers. This circumstance allows States and/or local governments to garner widespread support among taxpayers to successfully enact or continue tax programs that support increased payments to providers.

As stated earlier, tax programs can result in taxpayers receiving relatively lower Medicaid payments (typically because they furnish a lower volume of Medicaid services) than they pay in taxes, experiencing a negative financial impact. States and providers have sought out ways to avoid this result and to ensure greater support among taxpayers for tax programs. For example, groups of providers may collaborate to ensure that no provider is financially harmed for the cost of the tax. We described an example of this type of this arrangement, known as a redistribution arrangement, in a February 17, 2023, Center for Medicaid and CHIP Services Informational Bulletin (CIB) entitled, “Health Care-Related Taxes and Hold Harmless Arrangements Involving the Redistribution of Medicaid Payments.”² In these redistribution arrangements, entities that benefit financially (because their Medicaid payments that are financed by the tax are greater than their tax amount) will redirect a portion of their Medicaid payments to those that are harmed financially, to achieve the

² <https://www.medicaid.gov/federal-policy-guidance/downloads/cib021723.pdf>.

effect of holding providers harmless for the cost of the tax.

States are aware that arrangements which explicitly guarantee to hold taxpayers harmless, whether directly or indirectly, such as through the aforementioned redistribution arrangements, are unallowable. If CMS identifies such an arrangement, it would then reduce the State's total medical assistance expenditures by the amount of revenue collected from the impermissible tax before the calculation of FFP, as mandated by section 1903(w)(1)(a)(iii) of the Act.³ These types of arrangements are problematic as they improperly shift the burden of financing the Medicaid program to the Federal government, and have been identified as such by oversight entities including the Governmental Accountability Office (GAO) and the HHS Office of Inspector General (OIG).^{4,5} In an effort to achieve a similar effect as a hold harmless arrangement, some States have attempted to impose taxes using variable rates or provider exclusions (described in further detail later in this final rule) to increase the tax burden on the Medicaid program, thus mitigating or eliminating the tax burden on entities with relatively lower Medicaid business that may not be able to receive the amount of the tax they paid through increased Medicaid payments funded by the tax. Essentially, health care-related taxes designed to tax Medicaid business more than its fair share make it easier for States to guarantee taxpayers are reimbursed their tax payments through increased Medicaid payments. Due to the current regulations governing health care-related tax waiver determinations, this can occur in certain circumstances despite the regulatory statistical test designed to ensure that non-uniform or non-broad-based health care-related taxes meet the statutory requirement to be generally redistributive.

As previously discussed, a State seeking a broad-based and/or uniformity waiver for a tax must demonstrate the tax is "generally redistributive," which

we have established in this context means the tax program generally generates tax revenues from entities that serve relatively lower percentages of Medicaid beneficiaries and uses the tax revenue as the State's share of Medicaid payments. A tax that does the opposite, by establishing lower tax rates on entities that serve relatively lower percentages of Medicaid beneficiaries or on non-Medicaid items or services (compared to entities that serve relatively higher percentages of Medicaid beneficiaries) is clearly not generally redistributive or consistent with the statutory requirement that a tax program be generally redistributive to qualify for a waiver.⁶

To enforce the requirement that taxes have a net impact that is "generally redistributive" in accordance with section 1903(w)(3)(E)(ii)(I) of the Act, CMS established certain tests when a State is seeking a broad-based and/or uniformity waiver. If a State is seeking a waiver of the broad-based requirement for its health care-related tax, the tax must comply with § 433.68(e)(1) to be considered generally redistributive, which establishes the test known as the P1/P2 test. If the State seeks a waiver of the uniformity requirement, whether or not the tax is broad based, the tax must comply with § 433.68(e)(2) to be generally redistributive, which establishes the test known as the B1/B2 test. These tests, where applicable, are intended to demonstrate that the State's tax program does not impose a higher tax burden on the Medicaid program compared to a broad-based and uniform tax.⁷

The P1/P2 test applies on a per-class basis to a tax that is imposed on all items or services at a uniform rate but is not broad based because it excludes certain providers. The State must divide the proportion of the tax revenue applicable to Medicaid if the tax were broad based (applied to all providers or activities within the class), called P1, by the proportion of the tax revenue applicable to Medicaid under the tax program for which the State seeks a waiver, called P2. The resulting quotient is the P1/P2 figure. Generally, to be granted a waiver of the broad-based

requirement, this figure must be at least 1, with some exceptions noted in §§ 433.68(e)(1)(iii) and (iv). For taxes enacted and in effect prior to August 13, 1993, States may pass the P1/P2 test if they have a value of at least 0.90 and only exclude one or more of the following provider types: providers that furnish no services within the class in the State, providers that do not charge for services within the class, rural hospitals as defined at § 412.62(f)(1)(ii), sole community hospitals as defined at § 412.92(a), physicians practicing in medically underserved areas as defined in section 1302(7) of the Public Health Service Act, financially distressed hospitals under certain circumstances, psychiatric hospitals, and hospitals owned and operated by Health Management Organizations (HMOs). For taxes in effect after that date, the same exceptions would apply, and the passing value is 0.95 rather than 0.90.

The B1/B2 test also applies on a per-class basis to a non-uniform tax (whether or not it is broad based) that applies different rates to different tax rate groups of providers within the permissible class. Under the B1/B2 test, the State calculates and compares the slope (designated as B) of two linear regressions. Univariate linear regression attempts to find the line that best fits a series of points, plotted on a graph using two variables: an independent variable X and a dependent variable Y.⁸ In the B1/B2 test, the independent variable or X-axis, for both regressions, represents "the number of the provider's taxable units funded by the Medicaid program during a 12-month period," also referred to as the "Medicaid Statistic."⁹ The regression measures how much impact for the average provider a one-unit increase in the Medicaid Statistic has on how much that provider is taxed. For example, if the tax were based on provider inpatient days, the number of providers' inpatient Medicaid days during a 12-month period would be its "Medicaid Statistic." Or, if the tax were based on member months, the number of Medicaid member months for a managed care organization (MCO) would be the Medicaid Statistic. The Y variable, or the dependent variable, is the percentage of the tax paid by each provider in the tax program compared to the total tax amount paid by all providers during a 12-month period.

⁸ Linear regression attempts to model the relationship between two variables by fitting a linear equation to observed data. One variable is considered to be an explanatory variable, and the other is considered to be a dependent variable. Linear Regression (yale.edu) <http://www.stat.yale.edu/Courses/1997-98/101/linreg.htm>.

⁹ 42 CFR 433.68(e)(2)(A).

³ As we stated in the 2008 tax rule described below, "We chose to use the term reasonable expectation because we recognized that State laws were rarely overt in requiring that State payments be used to hold taxpayers harmless." <https://www.gao.gov/content/pkg/FR-2008-02-22/pdf/E8-3207.pdf>.

⁴ See, for example, "Medicaid Financing: Long-Standing Concerns about Inappropriate State Arrangements Support Need for Improved Federal Oversight," Governmental Accountability Office (GAO), November 1, 2007; "Medicaid: CMS Needs More Information on States' Financing and Payment Arrangements to Improve Oversight," GAO, December 7, 2020.

⁵ <https://oig.hhs.gov/oas/reports/region3/31300201.pdf>.

⁶ See Congressional Record-House, November 26, 1991, 35855 <https://www.congress.gov/102/crecb/1991/11/26/GPO-CRECB-1991-pt24-1-2.pdf>.

⁷ "The Federal statute and implementing regulations were designed to protect Medicaid providers from being unduly burdened by health care-related tax programs. Health care related tax programs that are compliant with the requirements set forth by the Congress create a significant tax burden for health care providers that do not participate in the Medicaid program or that provide limited services to Medicaid individuals." 73 FR 9685 (February 22, 2008).

Through this test, CMS seeks to ensure that, as Medicaid units increase, the tax paid by the provider does not increase more under the State's waiver proposal (the B2 regression) than it would in a broad-based and uniform tax (the B1 regression).

The first linear regression represents the slope of the line for the tax if it were broad-based and applied uniformly (B1). In other words, a State would submit data regarding all taxable payers in the permissible class for the tax and apply a uniform tax rate. The B1 is the slope of the line for that data. The second linear regression represents the slope of the line for the tax program for which the State is requesting a waiver (B2). To calculate the test value figure, B1 is divided by B2. If the quotient is at least 1, the tax passes the test, as specified in

§ 433.68(e)(2)(ii), with certain limited additional flexibility under § 433.68(e)(2)(iii) and (iv). This B1/B2 test was intended to indicate that when the B1/B2 figure is equal to or greater than one (1), the State's proposed tax is not more heavily imposed on the Medicaid program compared to a tax that is levied on all providers at the same rate.

D. Concerns About the B1/B2 Test

Since the early 1990s, the B1/B2 test has generally worked well to ensure health care-related taxes for which States seek waivers of the uniformity requirement (whether or not the tax is broad based) are generally redistributive. However, over the last decade, CMS became aware that some States are manipulating their health care-related taxes to impose tax

structures that the State intends not to be generally redistributive, but that are still able to pass the B1/B2 test. In these cases, the State does not impose taxes on non-Medicaid services in a class to then use the tax revenue as the State's share of Medicaid payments. Instead, the States derive the vast majority of their tax revenue from Medicaid services, which they then use to fund the non-Federal share of Medicaid payments. In essence, this process results in a simple recycling of Federal funds to unlock additional Federal funds. Generally, health care-related tax programs can accomplish this by taking advantage of linear regression analyses' statistical sensitivity to outliers.¹⁰ See Figure 1.

Figure 1: Effect of an Outlier on the Slope of a Line

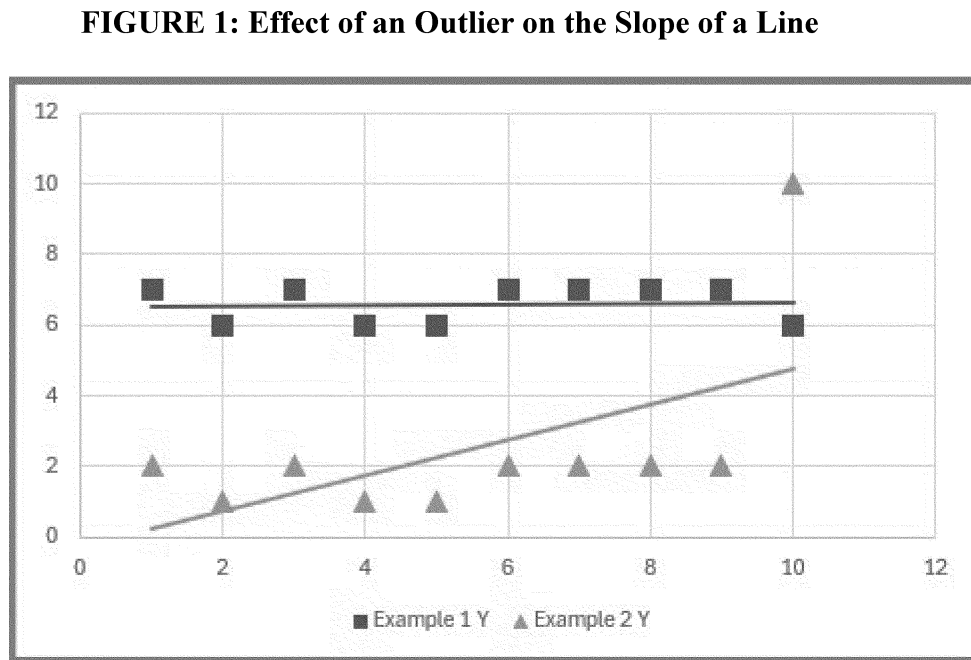


FIGURE 1: Effect of an Outlier on the Slope of a Line

In Figure 1, the two data sets, represented by squares (example 1) and triangles (example 2), have similar data with the exception of the last data point. In example 2, this data point is an outlier. As a result, the line that fits the triangle data set is at a different angle, or slope, from the square data set. We note that this example uses basic data, not a B1/B2 analysis, to show the effect of an outlier on a linear regression.

Using these approaches, this loophole counterintuitively allows a tax program to place a much higher tax burden on Medicaid activities compared to

commercial activities while still passing the B1/B2 test. Health care-related taxes that exploit the loophole effectively permit a State to shift most of the tax burden disproportionately onto the Medicaid program, which is the exact result the B1/B2 test was intended to prevent. The State may then use the tax revenue to fund the non-Federal share of Medicaid payments to the same Medicaid entities subject to the health care-related tax. As a result, the Federal government pays an artificially inflated percentage of Medicaid expenditures on health care services, far beyond the

Federal matching rates that Congress has specified in statute. Therefore, payments to providers consist of Federal funds and funds the providers have contributed themselves through taxes, without the full contribution of non-Federal share the statute requires from the State.

At its core, the B1/B2 test is centered on averages. As noted previously, the regression measures how much impact a one-unit increase in the Medicaid Statistic has on how much a provider is taxed. The rate at which each entity's tax changes with every unit of change to

¹⁰In statistics, an outlier is "an observation that lies an abnormal distance from other values in a random sample from a population." Information

Technology Laboratory National Institute of Standards and Technology (NIST) Engineering and Statistics Handbook 7.1.6 "What Are Outliers in

Data?" <https://www.itl.nist.gov/div898/handbook/tooluids/pff/prc.pdf>.

the entity's Medicaid Statistic is based on the average rate of change for all the entities in the regression analysis. In many cases, taking an average of all the points does not necessarily give a useful picture of the typical participant or the general nature of the population. Averages can be misleading when they include outliers or other irregularities. Similarly, outliers can distort the regression model, masking important deviations within the data.

For instance, imagine that one wanted to assess the relationship between education level and annual salary for a group of employees at a corporation. At this corporation, employees with a high school diploma make between \$40,000 to \$45,000. Employees with a bachelor's degree make between \$65,000 to \$70,000. Employees with a master's degree make between \$80,000 to \$90,000. Employees with a doctoral degree make between \$100,000 to \$115,000. The founder of the company's highest education level is a high school diploma, but they make \$1.6 million per year. If one were to exclude the company founder from the linear regression, the line would have a positive upward slope indicating an increase in salary with each increasing level of education. However, if one were to include the founder, the regression line would be diverted sharply to accommodate the \$1.6 million salary. The founder only represents one data point in the regression analysis, but since this point is drastically different than the rest, it potentially distorts the relationship that the regression analysis is trying to assess. In this example, the average value, while accurate, only represents a mathematical mean in the data that is not necessarily useful for the purpose of assessing the relationship between level of education and salary among the corporation's employees. Likewise, in the case of the B1/B2 linear regressions, outliers can skew our ability to use the data to assess effectively if a tax is generally redistributive.

We have found that States can manipulate B2 by excluding from the tax a few larger providers with much higher Medicaid taxable units than the average provider in the taxable universe. Doing so drastically affects the B-coefficient value for B2. Because the Medicaid taxable units are not evenly distributed among all providers, States can effectively charge higher rates on the remaining Medicaid taxable units that make up most of the tax without running afoul of the B1/B2 test. In other words, excluding a few large providers with high Medicaid utilization from the tax, but including them in the regression

calculation alters the slope of the line of the regression in a way that allows the State to pass the statistical test, while simultaneously imposing outsized burden on the Medicaid program. In these cases, the proportional percentage of the tax imposed on the Medicaid program becomes greater than Medicaid's proportion of the total taxable units.

There are several other mechanisms that States have used to undermine the efficacy of the B1/B2 test. Some States create tax programs with extraordinary differences in tax rates within a provider class based on a taxpayer mix of Medicaid taxable units versus non-Medicaid taxable units. Tax rates imposed on Medicaid-taxable units are often much higher, sometimes more than one hundred times higher, when compared with similar commercial taxable units (for example, Medicaid member months are taxed \$200 per member month compared to \$2 for comparable non-Medicaid member months). The "tiering" structure on some of these tax waivers enable States with these disparate tax rates to pass the B1/B2 test. Consider an MCO tax with tax rates that vary by an MCO's member months. Medicaid member months from zero to 1,000,000 are excluded from the tax. Medicaid member months from 1,000,001 to 2,000,000 are taxed \$300 per member month. Medicaid member months in excess of 2,000,000 are excluded from the tax. Commercial member months from zero to 1,000,000 are excluded from the tax. Commercial member months from 1,000,001 to 2,000,000 are taxed \$3 per member month. Commercial member months in excess of 2,000,000 are excluded from the tax. The "middle tier" of member months, the only one that is taxed at all, has a tax rate of 100 times on Medicaid-member months compared to their commercial counterparts. The State passes the B1/B2 test because certain Medicaid-paid member months in excess of 2,000,000 artificially "pull" the slope of B2 down making it appear as though the State is giving a larger break to Medicaid-member months than it actually is.

Historically, these taxes that targeted Medicaid first began with MCO taxes, one of the permissible classes for health care-related taxes. We note that in all of these arrangements, Federal rules prohibit States from taxing Medicare Advantage (MA) Plans,¹¹ or certain

plans that contract with the Office of Personnel Management to provide health care for Federal employees through the Federal Employee Health Benefits (FEHB) program¹² or plans that contract with the Department of Defense to provide care to military personnel, retirees, and their families under the TRICARE system.¹³ According to § 422.404, States are prohibited from imposing premium taxes, fees, or other charges on payments made by CMS to MA organizations, payments made by MA enrollees to MA plans, or payments made by a third party to an MA plan on a beneficiary's behalf.

Over several years, the Congress and CMS have actively attempted, through Federal statutes and regulations, to prevent States from designing MCO taxes to target Medicaid MCOs or Medicaid activities. Before the Deficit Reduction Act of 2005 (DRA), the statute included a permissible class, under which States could only tax services of Medicaid MCOs, but not other MCOs. In the DRA, the Congress broadened the permissible class to include all MCO services (no longer limited to Medicaid MCO services). Realizing that States would need time to address financial impacts within their State budgets and enact potentially necessary legislative modifications to health care-related tax programs, the DRA provided a grace period to allow States to come into compliance by October 1, 2009. CMS issued a final rule entitled "Medicaid Program; Health Care Related Taxes" (73 FR 9685) that implemented the changes in the DRA. After the DRA and the 2008 final rule, States were no longer permitted to assess health care-related taxes only on Medicaid MCOs. Instead, States must assess health care-related taxes on the services of all MCOs, not just Medicaid MCOs, to qualify as broad based within the amended permissible class, except for those excluded by Federal rules from taxation.

In response to these changes, several States attempted to "mask" health care-related taxes on Medicaid MCOs within broader taxes that included non-health care items and activities. See, for example, the OIG Report, "Pennsylvania's Gross Receipts Tax on Medicaid Managed Care Organizations Appears To Be an Impermissible Health Care-Related Tax," issued on May 28, 2014.¹⁴ Some States did this to continue

on Medicaid and to a lesser extent BHP if applicable.

¹² 5 U.S. Code 8909—Employees Health Benefits Fund.

¹³ 5 U.S.C. 8909(f). 32 CFR 199.17 (a)(7).

¹⁴ Department of Health and Human Services Office of the Inspector General, "Pennsylvania's

¹¹ Under Medicare regulations at § 422.404(a), States are prohibited from taxing Medicare MCOs. Therefore, a State's taxation of MCO services is limited to commercial payers and Medicaid. As a result, taxes that exclude or sharply curtail the tax amount paid by commercial payers fall exclusively

taxing only Medicaid MCOs and thereby maximizing the burden on Medicaid without needing to tax additional MCO lines of business. Section 1903(w)(3)(A) of the Act and § 433.55(b) establish that a tax is considered to be a health care-related tax if at least 85 percent or more of the burden of the tax revenue falls on health care providers. Section 1903(w)(3)(A)(ii) of the Act and regulations in § 433.55(c) further specify that taxes will still be considered health care related even if they do not reach the 85 percent threshold if the treatment of individuals or entities providing or paying for health care items or services is different than the tax treatment provided to other taxpayers. Some States with these taxes in place stated that, since the percentage of the tax imposed on health care items and services fell below the 85 percent threshold and the State did not treat health care items or services differently than other items being taxed, the portion of the tax imposed on Medicaid MCOs was not considered health care related and was not governed by section 1903(w) of the Act. In a 2014 State Health Official Letter (SHO),¹⁵ CMS explained that taxing a subset of health care services or providers at the same rate as a Statewide sales tax, for example, does not result in equal treatment if the tax is applied specifically to a subset of health care services or providers (such as only Medicaid MCOs), since the providers or users of those health care services are being treated differently than others who are not within the specified universe. These taxes were attempting to continue to tax a subset of services within a permissible class when paid for by Medicaid, but not when the same services were not paid for by Medicaid.

Oversight agencies, including the OIG, have noted health care-related taxes as a program integrity concern in Medicaid financing several times. On January 23, 1996, the Director of Health Systems at the GAO wrote a letter to the Ranking Member of the United States House Commerce Committee that outlined some of the ways that States use “creative financing mechanisms,” including health care-related taxes, to finance the non-Federal share of Medicaid expenditures.¹⁶ In 2014 and

2017, the OIG issued reports highlighting concerns about State taxes that target Medicaid MCOs or Medicaid MCO business.¹⁷ Although the 2017 report discussed a different approach that States used to target taxes on Medicaid MCOs, it reflects the same State motivations and implicates the same concerns for Federal fiscal integrity.

As the agency responsible for Federal oversight over the Medicaid program, CMS attempted to address the concerns raised by the OIG, which mirror our own concerns based on recent experience with particular health care-related taxes that target Medicaid with a disproportionately high tax burden. In 2019, we issued a proposed rule with many financial provisions, one of which proposed to address the B1/B2 statistical loophole issue (2019 proposed rule (84 FR 63722)). The 2019 proposed rule was much broader in scope in terms of the number of financial topics than this final rule. In addition, the terminology in this final rule is more precise and technical than the terminology used in the corresponding provisions in the November 2019 proposed rule. While the entirety of the November 2019 proposed rule was subsequently withdrawn in January 2021, we indicated at the time that the withdrawal action did not limit CMS’ prerogative to make new regulatory proposals in the areas addressed by the withdrawn proposed rule, including new proposals that may be substantially identical or similar to those described therein (86 FR 5105).

Since then, as CMS has reviewed State proposals involving these problematic tax structures, we have advised States, and in some instances notified States in writing, regarding our concerns. In some cases, because a State’s health care-related tax waiver proposal satisfied current regulatory requirements to be considered generally redistributive, we approved the proposal as required under the current regulations that include the loophole but gave the State written notice of our

concerns. Specifically, CMS sent States with problematic taxes “companion letters” to their most recent tax waiver approvals outlining why CMS believed that their taxes did not meet the spirit of the law in terms of being “generally redistributive” because of the much higher tax burden they imposed on Medicaid taxable units compared to comparable non-Medicaid taxable units. In addition, we put these States on notice through these letters that CMS was contemplating rulemaking in this area and that those States should prepare for this possibility in their budget planning.

Recently, we noticed an increase in both the number of health care-related taxes that exploit the statistical loophole as well as an increase in the revenue raised by those taxes. Before Federal fiscal year (FFY) 2024, CMS was aware of five States with six taxes that exploited the statistical loophole. The estimated total dollar revenue collected by States related to these taxes at that time was approximately \$20.5 billion annually. In FFY 2025, CMS approved two additional States’ MCO tax waiver proposals that exploit the statistical loophole that total \$3.5 billion in estimated tax revenue for the States. Notably, the State with the largest MCO tax that exploits the statistical loophole submitted an update to its previously approved MCO tax waiver, which increased the tax revenue from approximately \$8.3 billion per year to about \$12.7 billion per year. CMS estimates the total tax collection by States for all taxes that exploit the loophole currently is approximately \$24.0 billion per year. To address this ongoing and increasing exploitation, in May 2025 we issued the proposed rule, “Medicaid Program; Preserving Medicaid Funding for Vulnerable Populations-Closing a Health Care-Related Tax Loophole Proposed Rule” (90 FR 20578, May 15, 2025) hereafter referred to as the “proposed rule.”

Since issuance of the proposed rule, one State has formally submitted a waiver request for a tax on MCO services that would exploit the loophole. This proposed tax is estimated to generate \$1.2 billion in revenues. We are also aware that other State legislatures have been considering similar proposals.

Recent examples illustrate what occurs when the B1/B2 test alone does not ensure that the tax is generally redistributive. In one MCO tax that exploits the loophole (and that was approved by CMS because it passed the B1/B2 test and met other applicable regulatory requirements), Medicaid member months comprise 50 percent of

Gross Receipts Tax on Medicaid Managed Care Organizations Appears to be an Impermissible Health-Care Related Tax” Issued May 2014 (A-03-13-00201). <https://oig.hhs.gov/documents/audit/6720/A-03-13-00201-Complete%20Report.pdf>.

¹⁵ SHO #14-001, “Health Care-Related Taxes,” issued on July 25, 2014, available at <https://www.medicaid.gov/federal-policy-guidance/downloads/sho-14-001.pdf>.

¹⁶ Letter from Dr. William J. Scanlon to Representative John Dingell written on January 23,

1996. GAO/HEHS-96-76R State Medicaid Financing Practices. <https://www.gao.gov/products/hehs-96-76r>.

¹⁷ See Department of Health and Human Services Office of the Inspector General “Pennsylvania’s Gross Receipts Tax on Medicaid Managed Care Organizations Appears to be an Impermissible Health Care-Related Tax” Issued May 2014 (A-03-13-00201). <https://oig.hhs.gov/documents/audit/6720/A-03-13-00201-Complete%20Report.pdf>.

And “Ohio’s and Michigan’s Sales and Use Taxes on Medicaid Managed Care Organization Services Did Not Meet the Broad-Based Requirement But Are Now In Compliance” issued on April 2017 (A-03-16-00200) <https://oig.hhs.gov/documents/audit/6782/A-03-16-00200-Complete%20Report.pdf>.

all member months subject to taxation, but bear more than 99 percent of the tax burden due to the difference in tax rates for Medicaid and non-Medicaid member months. In a different State, Medicaid member months comprise 53 percent of the total member months taxed but bear over 94 percent of the tax burden. Instead of raising revenue by equally taxing non-Medicaid and Medicaid services in a class, these tax programs raise only a *de minimis* amount of revenue from non-Medicaid member months while imposing a much greater tax burden on Medicaid member months. They are examples of States maximizing taxation of Medicaid items and services by design to minimize the impact for entities that serve relatively lower percentages of Medicaid beneficiaries. This has an effect similar to taxing only Medicaid MCOs (as opposed to all MCOs), which is the practice the DRA amendments sought to eradicate, as discussed previously. Allowing States to achieve something at odds with the DRA amendments by exploiting a statistical loophole in the current regulations undermines the cooperative Federalism central to the structure of the Medicaid statute, as GAO has noted.¹⁸ For this reason, we believe that it is necessary to address the statistical loophole to ensure fiscal integrity of the Medicaid program.

When taxes in the Medicaid program are not generally redistributive, it can result in the Federal government as the only net payer for payments funded by those taxes (generally, the non-Federal share is generated by a tax on entities that receive at least their total tax cost back in the form of increased Medicaid payments, with no net contribution of any funds that are not Federal funds). Without any net cost to the entities paying the tax, States and entities in the tax class have an incentive to maximize health care-related tax collections and maximize Medicaid payments possibly without regard to the Medicaid services delivered or programmatic goals or outcomes, such as quality or patient outcomes. This creates a substantial risk to the fiscal integrity and effective operation of the Medicaid program, as reflected in the impacts calculated in section V of the proposed rule and this final rule.

Given recent State proposals and technical assistance requests, national proliferation of taxes that utilize the B1/B2 statistical test loophole presents a substantial and urgent risk to the fiscal

integrity of the Medicaid program. We stated in the proposed rule that, absent the regulatory changes described therein, we were concerned that there will be significant increases in Medicaid expenditures and shifting of State Medicaid costs onto the Federal government, all without commensurate benefit to the Medicaid program or its beneficiaries.

As previously noted, CMS has witnessed the proliferation of MCO taxes that exploit the statistical loophole and, in some instances, drastically increase the revenues raised by existing MCO taxes. As a result, CMS was greatly concerned that such increases will continue and similar tax structures would be developed, further exacerbating the impact on the Federal government. Moreover, CMS learned as part of our review of tax waiver proposals and communication with States that certain States are using the revenue to fill shortfalls that exist in their State budgets as opposed to reinvesting this money in the Medicaid program. Furthermore, this influx of Federal share to State general funds could be used as State-only financing for services not eligible for FFP, such as the provision of non-emergency medical care for non-citizens without satisfactory immigration status. Although States are permitted to use health care-related tax revenue for other general revenue purposes, it nevertheless highlights the importance of ensuring Federal matching dollars are limited to the appropriate Federal share of financing the Medicaid program, or else the Federal Medicaid contribution is effectively financing these other endeavors.

While CMS has found taxes on MCOs to be the predominant class of health care items and services utilizing this loophole, CMS is also aware of other permissible classes vulnerable to this approach. CMS is concerned that absent regulatory action, additional similar tax programs that exploit the loophole may be developed. We believe that this final rule will address concerns of CMS and Federal oversight agencies by curtailing non-Federal share financing arrangements that are counter to the statute and do not serve the best interests of Medicaid beneficiaries, the Federal treasury, Federal taxpayers, nor the long-term health and fiscal stability of the Medicaid program as a whole. Health care-related taxes that use the regulatory B1/B2 loophole create a substantial financial risk to the Medicaid program (see section V of the proposed rule and this final rule). This rule will mitigate this risk, safeguard the fiscal health of Medicaid, and ensure

appropriate use of Federal Medicaid dollars.

E. Working Families Tax Cuts Legislation

During the comment period of the proposed rule, Congress passed what is commonly known as the “One Big Beautiful Bill Act” (Pub. L. 119–21, July 4, 2025) (herein after referred to as the Working Families Tax Cuts (WFTC) legislation). Section 71117 of the WFTC legislation enacted changes to section 1903(w) of the Act to add a new clause detailing when a tax would not be considered generally redistributive, along with accompanying definitions, and the new clause closely mirrors the text of the proposed regulations and definitions from the proposed rule. The revised section 1903(w) of the Act and the proposed regulation had limited organizational differences, and the statute does not include the examples listed in the proposed regulation. Therefore, in borrowing the language of the proposed rule to draft the WFTC legislation, Congress affirmed that CMS’ proposed changes to § 433.68(e) are necessary to better implement the statutory mandate in section 1903(w)(3)(E) of the Act that taxes must be generally distributive for a waiver to be approved. This final rule addresses the concerns CMS described in the proposed rule, and, at the same time, codifies in regulation the new statutory requirements.

CMS acknowledges that the statutory requirement the proposed rule would address (that is, health care-related taxes for which a waiver of the broad-based and/or uniform requirements is approved must be generally redistributive in nature) has been amended by the WFTC legislation since the proposed rule. However, as the changes required by statute are substantively identical to the contents of the proposed rule, we do not believe a further round of notice and comment is necessary to proceed with finalizing the proposal, which implements the new statutory requirements. Under section 553(b)(B) of the Administrative Procedure Act (APA), an exception from the generally applicable notice and comment requirement is available where it would be unnecessary, as is the case here despite the change in underlying statutory authority, since the proposed rule in a potential second cycle of notice and comment would merely re-propose the same revisions to the regulation that CMS proposed initially, as would be required to implement the statute. We further note that a large number of comments were received after the enactment of the

¹⁸ GAO–08–650T “Medicaid Financing Long-standing Concerns about Inappropriate State Arrangements Support Need for Improved Federal Oversight” April 3, 2008.

WFTC legislation and made reference to it.

II. Provisions of the Regulations and Analysis of and Responses to Public Comments

We proposed that if any provision of this rule is determined to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further action, it shall be severable from the remainder of the final rule, and from rules and regulations currently in effect, and not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other, dissimilar circumstances. If any provision is held to be invalid or unenforceable, the remaining provisions which could function independently should take effect and be given the maximum effect permitted by law. In this rule, we finalize several provisions that are intended to and will operate independently of each other, even if each serves the same general purpose or policy goal. Where a provision is necessarily dependent on another, the context generally makes that clear.

We received approximately 257 timely pieces of correspondence, which included comments from individuals, State government agencies, non-profit health care organizations, advocacy groups, and hospital associations.

We thank and appreciate the commenters for their consideration of the proposed requirements for addressing this loophole and ensuring the fiscal integrity of the Medicaid program. In this section, arranged by subject area, we summarize the proposed provisions, the public comments received, and our responses. For a complete and full description of the proposed requirements, see the 2025 proposed rule. We also received several out-of-scope comments that are not addressed in this final rule.

The following is a summary of the public comments we received on the proposed rule and our responses.

Comment: Several commenters raised concerns that the proposed rule is not aligned with the recent statutory changes in the WFTC legislation since the proposed rule was drafted to ensure compliance with the statutory language in place prior to enactment of the WFTC legislation. These commenters urged CMS to revise or withdraw the proposed rule to better reflect the variations included in the WFTC legislation. A few commenters raised that the proposed rule does not align with Congressional intent to allow for this type of provider tax financing and a certain degree of non-uniformity in health care-related

taxes in that it afforded the opportunity to have the broad based and/or uniformity requirements waived. Several other commenters recommended that CMS not finalize the proposed rule and maintain the existing regulatory structure and requirements governing health care-related taxes. Another commenter requested that CMS extend the comment period for the proposed rule to afford commenters time to analyze the impact of the WFTC legislation. A few commenters requested an additional 60 days, while another suggested an extension of 30 days should be considered.

Response: We disagree with the commenters regarding the alignment of the proposed rule with the new provisions of the WFTC legislation. This final rule and the WFTC legislation are aligned in that they both provide more explicit direction regarding the generally redistributive requirement for health care-related taxes. The proposed rule and final rule's regulatory language is consistent and aligns with the language and purpose of section 71117 of the WFTC legislation. In addition, the examples we provide in regulation text that are not included in the statutory language reflect a level of detail more typical for implementing regulations and generally are not expected to be found in statute. Therefore, we do not find it inconsistent that there is additional language in the regulations and, given the alignment of the proposed rule's provisions to the amendments made by section 71117 of the WFTC legislation, we do not believe it is necessary to provide a comment period extension. As always, CMS is available to work with States expeditiously as they make any necessary changes to comply with the statute and this rule.

Comment: Most commenters were opposed to the proposed rule. Commenters expressed general opposition to the rule on the basis that it would impact services and beneficiary access to care by harming supplemental payments or other payment mechanisms funded by taxes that will be impermissible. Specifically, several commenters stated concerns regarding the impact this rule will have on access to care and the quality of care received by Medicaid beneficiaries, particularly children, seniors, and individuals with disabilities. Other commenters stated that with decreased funding available to support Medicaid payments, covered Medicaid services and benefits would be reduced, and States may limit coverage of optional Medicaid eligibility groups. Commenters were concerned about the impact the proposed rule

would have on State budgets and processes, including impacts to non-Medicaid spending and non-health State spending as a result of having to reconfigure State general funds to cover funding gaps. Many commenters stated that the proposed rule likely would require States to undertake significant administrative efforts, including development of new legislation, revising rate methodologies and related State plan amendments, and conducting extensive actuarial modeling.

Numerous commenters expressed concerns that reductions in health care-related tax revenues would lead to lower Medicaid payment for providers. They stated that this impact would be most acute in rural communities, where individuals rely on a limited number of local facilities for both primary and specialty care and that provider participation in Medicaid would be impacted due to the unsustainable financial margins. The commenters specifically mentioned pediatric care at children's hospitals, specialty care for people with developmental disabilities, pregnancy and post-partum care, Federally Qualified Health Center (FQHC) services, and mental health care. Another commenter expressed concern that reductions in health care-related tax revenues may also impact Medicaid Graduate Medical Education investments (which are not a distinct Federally matchable Medicaid expenditure type but with respect to which some States make Medicaid supplemental payments in connection with services furnished) designed to address physician workforce shortages, which some States use health care-related tax revenues to fund.

Numerous commenters stated that the impact of the rule will be realized by all providers, but noting specifically hospitals, nursing facilities and long-term care facilities. The commenters further elaborated that without tax-funded payments to offset uncompensated care costs, such providers will bear increasing costs, further straining their financial sustainability. Further, the financial strain may result in providers closing, resulting in an impact on unemployment and local communities.

Response: We acknowledge the commenters' concerns. The goal of this final rule is not to cause disruption in access to any health care services for Medicaid beneficiaries or to jeopardize the financial stability of health care providers or health systems. The purpose of this final rule is to ensure compliance with section 1903(w) of the Act as discussed in the proposed rule, and, since the amendments made by the

WFTC legislation, to implement new statutory requirements. This final rule promotes the sustainability of the Medicaid program for all States by reducing wasteful and abusive financing practices perpetuated by a subset of States that have been able to use as non-Federal share revenue from health care-related taxes that are not generally redistributive as required by statute. States may still utilize health care-related taxes to support their share of Medicaid program costs, provided that they meet all statutory and regulatory requirements, including being generally redistributive. Nothing about this final rule changes the ability of a State to collect health care-related tax revenue and to use such revenue from permissible taxes as the non-Federal share of Medicaid expenditures, or to make Medicaid payments at existing levels. This change ensures that State Medicaid programs are financed by permissible sources, while preventing impermissible cost shifting to the Federal government by certain States.

Comment: Several commenters urged CMS to monitor access to services to avoid unintended consequences for care delivery, and to develop tools to assess outcomes for Medicaid beneficiaries. Another commenter recommended that CMS consult with interested parties to understand the scope of the proposed rule's impact, particularly with respect to section 1902(a)(30)(A) of the Act.

Response: As with all changes, we intend to monitor the impact of this final rule and provide necessary technical assistance to States for them to meet its requirements, as well as all applicable statutory and regulatory requirements. We have existing requirements for analyzing access through the review of State plan amendments, managed care contract requirements, section 1915 waivers, and section 1115 demonstrations, as applicable. Our goal is to assist States in designing and operating their Medicaid programs in a manner that ensures access to high quality care for Medicaid beneficiaries. Based upon our review of existing State programs and our discussions with several of the impacted States, we have a significant understanding of both provider and State concerns regarding the impact of this final rule. However, this final rule is not designed to reduce funding in the Medicaid program, but rather to ensure Medicaid funds are financed by permissible sources, while preventing inappropriate cost shifting to the Federal government by certain States.

Comment: We received some comments in support of the proposed rule overall. These comments cited

concerns shared by CMS, such as the inequity between States created by those exploiting the loophole, and the harm to the fiscal integrity of the Medicaid program that results from overburdening the Federal government. A commenter stated their concern that States' use of provider taxes inflates a State's Federal funding beyond what is authorized under statute through the FMAP formula. Other commenters supported the proposed rule as necessary to encourage healthy competition across States in development of models to finance their Medicaid programs. The commenters stated that the proposed rule would ensure equal treatment of States as some did not exploit the loophole. A few commenters supported the proposed rule on the basis that it fulfills the original intent of the generally redistributive requirement and promotes and maintains the financial stability of Medicaid programs and Medicaid provider networks. Several commenters stated these changes are necessary to protect Federal tax dollars and American taxpayers by preventing States from shifting their share of Medicaid program expenditures to the Federal government. Another commenter stated that the existing statistical test permits non-uniform taxes on MCOs to seem compliant with the statutory generally redistributive requirement while designed specifically to disproportionately impact Medicaid providers.

Response: We thank commenters for their support of our proposals, which we generally are finalizing as proposed in this rule with minor wording modifications, and adjustment to the transition period. We agree that taxing models that exploit the loophole distort the Federal-State fiscal partnership with respect to Medicaid and improperly shift costs to the Federal government.

Comment: A commenter expressed concern that the proposed rule could undermine "legitimate" tax arrangements. Another similarly expressed concern that the proposed rule would unintentionally impact States that were not previously identified as having problematic tax structures and requested that CMS add language to ensure the rule does not negatively affect those States. A commenter was concerned that, because of slow State legislative processes, ensuring State compliance with the proposed rule will take several years.

Response: We drafted the proposed rule to focus on preventing States from adopting tax structures that are impermissible based on the statute. To the extent a health care-related tax on a permissible class satisfies recently

amended statutory requirements regarding what is considered "generally redistributive" and complies with all other Federal requirements, including that it does not involve a hold harmless arrangement, it is likely to be permissible; we are available to provide technical assistance to States to discuss individual health care-related tax programs to ensure compliance with all applicable Federal requirements. Regardless, all States are responsible for ensuring compliance with all applicable Federal statutes and regulations. Even if the State has not affirmatively identified an impermissible health care-related taxing structure, it still bears the ultimate responsibility of ensuring compliance with all Federal statutory and regulatory requirements governing health care-related taxes, including those newly enacted in the WFTC legislation and implemented in this final rule.

We are confident that all affected States with loophole taxes are aware of CMS' concerns with the tax loophole and our intent to address it through communications with us, this proposed rule, and recent Congressional action, but we expect some States may need to convene special legislative sessions to address this final rule and the WFTC legislation (and may need to regardless of other WFTC legislation provisions). Most States with health care-related taxes that exploit the loophole received formal notice with their most recent waiver approval that we were concerned the tax was not generally redistributive within the meaning of the statute, which we discuss more in section II.D. For those States that were not formally notified, we believe they are aware due to significant press attention on this topic but nevertheless are providing transition periods.

Comment: A commenter stated that the flexibility of current provider tax structures fosters innovation in care delivery and that restricting the availability would stifle innovation, hinder States' ability to develop and sustain effective care models and limit access to care. Another commenter stressed the importance of health care-related taxes to a State's Medicaid program and requested that CMS provide a list of permissible funding sources if the funding sources that States had been using are now deemed impermissible.

Response: There is nothing in this final rule that should result in the stifling of State innovation. Rather, this final rule is intended to strengthen the Medicaid program by enhancing the financial stability of the program by ensuring dollars are available to support

services, as well as help ensure that Medicaid dollars are spent appropriately and for the benefit of Medicaid beneficiaries through the availability of Medicaid services without placing disproportionate burden of financing onto the Federal government. While some States or entities may have realized certain benefits from tax structures that exploit the loophole, those tax structures do not align with the generally redistributive requirement in the statute (before the amendments made by the WFTC legislation, and certainly after).

Health care-related taxes remain a permissible source of funding. Nothing in this rule would affect the ability of States to establish health care-related taxes and use them as the source of non-Federal share, provided they meet all Federal requirements. Therefore, there is not a need to provide a list of permissible funding sources, because they are unchanged by this rule. This rule (and the related amendments made by the WFTC legislation) merely provide that certain tax structures will not satisfy the generally redistributive requirement, without changing the principle that health care-related taxes that require a waiver but that are generally redistributive and meet all other applicable Federal requirements will continue to be permissible.

Comment: Several commenters indicated that the WFTC legislation or the proposed rule will lead to decreased Medicaid benefits and lower payment rates. A few commenters also pointed to Medicaid eligibility changes and work requirements contained in the WFTC legislation and stated that the proposed rule should not be finalized due to the cumulative effect. They also stated CMS should guarantee that primary care payment rates will not fall below current levels due to the proposed rule. A few commenters recommended that CMS provide implementation funding to States for both this final rule as well as the WFTC legislation.

Response: We acknowledge these concerns and as always are available to provide technical assistance to States aiming to avoid service disruption and to develop innovative care delivery models to ensure access to care for Medicaid beneficiaries. We also acknowledge that the cumulative effect of changes established by the WFTC legislation may have varying impacts on States; however, the WFTC legislation codified the requirements we proposed in statute, and thus as such, it would be counter to section 1903(w) of the Act to not finalize the proposed rule. Specific authority for funding to States under the WFTC legislation was not provided or

authorized with respect to the amendments made by section 71117 of the WFTC legislation. However, FFP is available for certain State Medicaid administrative expenditures that meet statutory and regulatory requirements. Finally, we emphasize again that we maintain our commitment to States through our review of State program proposals to ensure that all statutory requirements are met, including access to care requirements.

Comment: Some commenters suggested that CMS postpone finalization to allow CMS time to gather additional information on how States are using provider taxes and to conduct further analysis of the impact of the rule on providers. A commenter was concerned that certain States will not have sufficient time to update their managed care preprints and submit to CMS for approval, and that where managed care State directed payments are supported by health care-related taxes they will no longer be permissible under the provisions of this proposed rule.

Response: Most States with health care-related tax waivers that exploit the loophole have received formal notice regarding the structure of such programs, but in general States have been aware for years that we intended to take action on this topic. We have advised States of our concerns, often in writing, and, as discussed later in this final rule, a transition period has been established. Finally, we note that as of the effective date of this final rule, States will have had nearly a year since the proposed rule, and more than 6 months since the enactment of the WFTC legislation, to consider and make appropriate adjustments to sources of non-Federal share.

Comment: A commenter recommended that CMS require States to report detailed information on how they raise the State share of Medicaid funding. They further stated that linking provider-level data would allow CMS to assess whether provider taxes are, in practice, generally redistributive, and if providers are being held harmless.

Response: We agree about the importance of transparency in how States finance their share of Medicaid program costs. Through our analysis of health care-related taxes, we have identified distortions of health care-related taxes that shift the burden to the Medicaid program. We review health care-related taxes both when a State applies for a waiver, and when a State submits a preprint or SPA regarding a payment funded by a health care-related tax. This final rule allows us to take necessary action for taxes that are not

generally redistributive that we were able to identify through existing oversight but did not have the regulatory authority to disapprove until now due to the statistical loophole in the regulation. We will continue to explore all available avenues to improve transparency, further protect Medicaid program dollars and ensure that Federal taxpayer dollars are being spent appropriately.

Comment: A few commenters indicated that the proposed rule could benefit from clarifications. Some requested that language be added to clarify which tax structures remain compliant, notwithstanding the proposed requirements. One specifically requested that language be added to clarify that tax structures not subject to a waiver are presumed compliant. Another commenter stated that nursing home tiers (that is, taxing nursing facilities with different characteristics such as number of beds, rural or non-State government at different rates) may be used for tax purposes that are not to exploit the loophole and requested that CMS clarify that these tiering structures are not those tiering practices referenced in this rule. These commenters stated that absent these clarifications, the proposed rule could have a negative impact on the use of compliant tax structures to support Medicaid financing, particularly for rural and safety net providers, including nursing homes.

We received other similar comments expressing this same concern about nursing facility taxes. Commenters stated that nursing homes, due to their high proportion of residents for whom Medicaid is the payer, face unique challenges in meeting “generally redistributive” requirements. They stated that longstanding, compliant tiered tax structures could now face undue scrutiny, and that excluding Medicare revenues from the tax base, as currently allowed, should continue. A commenter requested that CMS preserve established and permissible provider assessment practices, emphasizing that these allow States the flexibility to design Medicaid programs that best meet the needs of their populations. Several commenters requested that nursing homes be excluded from the regulation entirely. A commenter requested that we exclude children’s hospitals from the regulation entirely due to the critical services they provide. A commenter requested that all hospitals be exempted from the regulation. A commenter requested that nursing homes be given the same flexibilities as hospitals in the regulation.

Response: Regardless of whether a health care-related tax waiver is necessary, State tax programs must meet all Federal statutory and regulatory requirements. Although the statute and regulations do not require a demonstration that a health care-related tax is generally redistributive in nature when the State is not seeking a waiver of the broad-based and/or uniformity requirements, the absence of a need for a health care-related tax waiver does not presume that the tax meets all other Federal requirements related to permissible class and hold harmless requirements. States must evaluate their individual tax programs and work with CMS to review for allowability. The final rule clearly describes what it means for a health care-related tax to be considered generally redistributive, which test under the final rule and the amendments made by section 71117 of the WFTC legislation now ensures will not result in disproportionate burden on Medicaid.

The WFTC legislation provision that closes the loophole does not specify exemptions from the new generally redistributive requirements based on provider type or tax class, nor did we propose such exemptions. We also want to affirm that, while we will examine all tax rate groups and tiering tax structures on all non-uniform taxes, we are aware that there are many appropriate and permissible tax rate practices that involve the use of tiers and groups. We note that of the many nursing facility taxes, we are only aware of two that appear to utilize the loophole. As such, we disagree that there is a need for special consideration for nursing facilities, since many States have developed permissible health care-related taxes on nursing facility services without exploiting the loophole and inappropriately cost shifting to the Federal government. This final rule does not limit the flexibility of States to develop tax programs that meet Federal program requirements. Nothing in the current rule, this final rule, or the WFTC legislation would prohibit or preclude States from excluding Medicare revenue from taxation. In addition, due to the interests of ensuring consistency of administration, fiscal stewardship over the Medicaid program, and the statute as amended by section 71117 of the WFTC legislation, we decline to adopt the commenters' suggestion of excluding specific providers or permissible classes of services from the requirements of this final rule. We agree with the commenter that every permissible class should be treated and evaluated similarly in the new

regulation, including the services of nursing facilities.

Comment: Several commenters urged CMS to incorporate special considerations and exemptions into the proposed rule, emphasizing the need for targeted flexibility, clear guidance, and recognition of unique provider circumstances to ensure fair and workable provider tax policies. A few commenters recommended that CMS establish a safe harbor for taxes with modest non-uniformity, stating this would respect Congressional intent and established practices that allow reasonable variation in provider taxes. A commenter highlighted how current regulations allow exemptions for certain hospitals (that is, rural hospitals, sole community hospitals, financially distressed hospitals and psychiatric hospitals), but not for nursing homes, and urged CMS to extend similar exemptions to nursing homes facing financial and demographic pressures. A commenter called for CMS to clarify the requirements for when provider taxes will be considered generally redistributive and permissible, to avoid confusion and ensure compliance.

Response: We disagree that special exemptions should be included in this final rule. Providing safe harbors or exemptions for taxes that do not meet statutory and regulatory requirements jeopardizes the fiscal integrity of the Medicaid program. Exemptions such as these do not support using Federal taxpayer dollars appropriately. Finally, we note that the WFTC legislation did not include exceptions, and we are finalizing without exceptions both for the fiscal integrity reasons stated and to implement for alignment with the updated statutory requirements.

Comment: A few commenters requested that specific types of organizations such as governmental and non-profit emergency medical services agencies be exempted from the proposed rule.

Response: We appreciate the commenters' concerns and understand the desire to exempt certain provider types, such as governmental and non-profit emergency medical services agencies, from the provisions of the proposed rule. However, in the interest of consistent fiscal policy, it is not feasible to exempt specific categories of providers from the rule's requirements. Uniform application of the rule ensures that all health care-related taxes are administered fairly and without preferential treatment. In addition, the WFTC legislation does not authorize exceptions for specific provider types. As a Federal agency, we are obligated to

implement regulations to effectuate applicable laws.

Comment: A commenter expressed concern regarding the rule's application to licensure programs. Specifically, the commenter was concerned that the proposed rule could inadvertently make Medicaid certification fees impermissible. This commenter requested that CMS clarify that State licensure and certification program fees are exempt from the requirements of the proposed rule.

Response: We disagree with the commenter's recommendation. A certification fee solely based on Medicaid participation would not be permissible as it would not meet the existing regulatory requirements at § 433.56(a)(19). For a licensing or certification fee to be permissible, it must meet the provisions of § 433.56(a)(19)(i)–(iii). There were no proposed revisions to this language. These types of fees must still be broad based and uniform (or the State must receive a waiver of these requirements), the payer of the fee cannot be held harmless, and the amount of the fee cannot exceed the cost of operating the licensing or certification program.

Comment: A few commenters stated that the proposed rule would eliminate or severely restrict the flexibility Congress intended for States to design non-uniform provider taxes, undermining statutory intent and established practice. A few commenters stressed Congress's expressed intent for flexibility, with a commenter stating that it runs contrary to statutory intent and violates the APA. A commenter emphasized how the vast majority of State provider taxes are not designed to exploit the loophole identified in this proposed rule, stating that this structural overhaul and additional threshold is not necessary.

Response: The proposed rule and our response to public comments received reflect the APA process. We agree that there are health care-related taxes that meet statutory and regulatory requirements, including as amended by section 71117 of the WFTC legislation and under the requirements of this final rule. However, as we discuss throughout this rule, there are some health care-related taxes that take advantage of an inadvertent loophole in a regulatory statistical test which has allowed States to circumvent the statutory requirement for a health care-related tax to be generally redistributive. As Congress stated through the plain language of section 1903(w)(3)(E) of the Act, the Secretary shall approve a health care-related tax waiver for the broad-based and/or uniformity requirements if the

net impact of the tax and associated expenditures is “generally redistributive” in nature and the amount of the tax is not directly correlated to Medicaid payments for items and services with respect to which the tax is imposed. The health care-related taxes taking advantage of the inadvertent loophole circumvent the statutory requirement for health care-related taxes seeking to be approved via a waiver to be generally redistributive. The circumvention of the statutory requirement results in shifting the burden of financing the Medicaid program to Medicaid providers and ultimately to the Federal government. The statutory intent was further reinforced by section 7117 of the WFTC legislation, which requires by statute the very changes we proposed under the preexisting authority of section 1903(w)(3)(E) of the Act.

Comment: Several commenters stated that States’ ability to tax is essential to their sovereignty, and that provider taxes are a legally permissible and essential way to raise revenue to pay for the State share of Medicaid payments. These commenters indicated the proposed rule creates Federalism concerns and infringes on State sovereignty by limiting State taxing authority. Some commenters believed that CMS’ suggestion that the proposed rule did not raise Federalism or preemption concerns was based on the agency’s narrow view of the benefits provider tax programs provide to the Federal government. A few commenters pointed to *Department of Revenue of Ore. v. ACF Industries, Inc.*, 510 U.S. 332, 345 (1994) to support their position that State taxing authority is “central to State sovereignty” and should not be limited beyond the “evident scope” of any Federal law that limits that authority.

Response: We do not disagree that the ability to levy taxes is within a State’s sovereign power. Nothing in the Medicaid statute restricts a State’s ability to impose taxes and collect tax revenue, although the statute does place certain limitations on which tax revenues may be used to draw down Federal Medicaid matching funds. In this regard, we agree that States have the ability and authority to impose health care-related taxes without the Medicaid expenditure reduction in statute at section 1903(w)(1)(a)(2) of the Act and § 433.70(b) as long as they meet the applicable requirements of Federal law. This final rule is not changing that fact. However, Federal statute and regulation, and further reinforced most recently by the WFTC legislation, have established parameters to ensure that Medicaid

providers and the Medicaid program are not unduly harmed by such taxes. This final rule is not limiting States’ ability to utilize health care-related taxes; rather, it provides necessary parameters to ensure the statutory provisions are maintained and met.

Comment: Numerous commenters requested that CMS provide clear guidance and technical assistance to States and providers, in particular to those States that will need to restructure their health care-related taxes. They stated that this is necessary to allow States to phase out impermissible taxing structures with minimal disruption to their Medicaid program. Commenters suggested CMS provide examples and templates of acceptable tax structures, have a centralized team to support tax waiver redesign and modeling, and work with impacted States to identify alternate funding sources.

Response: We have staff assigned to review health care-related taxes, including waiver requests, and provide technical assistance to States on non-Federal share sources. We again assure the commenters that we are available to provide technical assistance. We also remind States that FFP is available for certain State Medicaid administrative costs that meet statutory and regulatory requirements.

Comment: A few commenters disagreed with the language from the background section of the proposed rule regarding the purpose and value of health care-related taxes. These commenters stated that health care-related taxes do in fact support stable funding for the Medicaid program. Some of these commenters discussed specifics about their State’s Medicaid program financing structure, how taxes supplement rather than supplant Medicaid funding, and the healthcare this funding supports. One other commenter noted that even though almost every State imposes some type of health care-related taxes, CMS does not have precise data on how much State funding is derived from provider taxes due to opaque financial reporting. This lack of clear data makes it challenging for CMS to evaluate how much providers are actually paid, net of taxes, and how much of the State’s share is effectively shifted back to the Federal government.

Response: This rule does nothing to stifle the use of permissible health care-related taxes; it merely ends an abusive practice that threatens the fiscal integrity of the Medicaid program at large. It is both the States’ and CMS’ responsibility to ensure that Medicaid dollars are spent appropriately and in compliance with Federal requirements,

including the statutory requirement that taxes for which a waiver is approved be generally redistributive in nature. This final rule addresses health care-related taxes that run counter to statutory requirements intended to ensure the Medicaid program is not unduly burdened. This is necessary to protect Federal taxpayers, and to protect Medicaid providers from bearing the cost of financing the Medicaid program or other programs within a State that utilize the health care-related tax revenues. Although this final rule is not focused specifically on transparency, and therefore comments about additional financial reporting are beyond the scope of the provisions of this final rule, it does mirror the new statutory requirements enacted in the WFTC legislation, and will enable us to provide better oversight and ensure the fiscal integrity of the Medicaid program.

Comment: A few commenters disagreed with CMS referring to the provider tax structure addressed in the proposed rule as a “loophole.” Some commenters stated that health care-related taxes are legal mechanisms structured within strict parameters and approved by the Federal government. These commenters expressed frustration with CMS’ depiction of health care-related taxes when, in the past, CMS had acknowledged health care-related taxes being a critical source of Medicaid program funding. A commenter suggested that CMS put guardrails in place to ensure Medicaid tax revenue is used properly, rather than broadly disallowing certain taxes. Some commenters mentioned State accountability policies that ensure health care-related tax revenue is spent on relevant areas of Medicaid and health care, promoting quality care and a better joint Federal and State partnership in administering the Medicaid program.

Response: The purpose of this final rule is to provide necessary oversight of health care-related tax waivers to align with applicable Federal statutory provisions. This final rule contains necessary guardrails—now required by statute—to ensure that health care-related tax revenue is generated in a permissible manner without circumventing the purpose of the statutory “generally redistributive” requirement to not overly burden Medicaid providers. The previous regulations addressed this same issue through the statistical test that we are maintaining, but unfortunately that test was vulnerable to exploitation by certain States seeking to increase revenue from the Federal government. This vulnerability has allowed a tax

program to place a much higher tax burden on Medicaid activities compared to commercial activities, which allowed a State to effectively shift a disproportionate burden of the tax onto the Medicaid program. As previously stated, this was the very outcome that the statistical test—as well as the statute, even before the amendments made by section 71117 of the WFTC legislation—were intended to prevent States' circumventing the intent of the test in this manner is fairly characterized as a "loophole," which is defined by Merriam's Dictionary as "a means to escape, especially an ambiguity or omission in the text through which the intent of a statute, contract or obligation may be evaded."

Comment: Without referencing specific provisions in the proposed rule, many commenters expressed concern regarding general ambiguity and subjectivity of generally redistributive requirements and proxy language provisions. A commenter stated the language of the provision is vague and creates uncertainty. A few commenters stressed the need for CMS to provide clear, objective, and consistent standards to guide States in demonstrating that a tax is generally redistributive. A commenter recommended that CMS work with Medicaid agencies to develop a new statistical test or other objective measure. A commenter recommended that CMS establish a framework with clear, quantitative benchmarks and reproducible thresholds to guide States in demonstrating that taxes are generally redistributive. A commenter stated that the rule should allow reasonable and clearly defined uses of Medicaid statistics to set non-uniform tax rates, as long as safeguards are in place to prevent unfair tax burdens and gaming.

Response: We disagree with the commenters that the rule is ambiguous, subjective, or unclear. First, § 433.68(e)(3)(i) prohibits States from imposing a higher tax rate on any taxpayer or tax rate group based on a provider's Medicaid taxable units than the tax rate imposed on any taxpayer or tax rate group based on a provider's non-Medicaid taxable units except for excluding Medicare revenue or payments as described at § 433.68(d). Whether one tax rate is higher than another is a straightforward comparison that requires comparing two tax rates to determine which rate is higher. Second, § 433.68(e)(3)(ii) prohibits States from taxing any taxpayer or tax rate group defined by its relatively higher level of Medicaid utilization compared to any other taxpayer or tax rate group defined by its relatively lower level of Medicaid

utilization. The example provided demonstrates how this is also a straightforward comparison: one tax rate group is for facilities with \$200 million or more in Medicaid revenue while the other tax rate group is for facilities with less than \$200 million in Medicaid revenue. These groups, clearly defined based on Medicaid utilization, have vastly disparate tax rates of \$250 and \$20 per bed day, respectively, which is again a straightforward comparison. In addition, the preamble of this rule provides several additional examples to illustrate for commenters how these standards work.

While § 433.68(e)(3)(iii) may appear less straightforward than the first two provisions, it is essentially the same as the first two, just without explicitly naming Medicaid. We believe this provision is crucial to stop efforts to circumvent the first two provisions by not explicitly stating the term "Medicaid" (or the State-specific name for the program). This provision has been narrowly tailored to achieve this result and is now required by statute. Additionally, for all three of these provisions, we encourage States to approach us for technical assistance as early as possible to help them ascertain whether their particular provision could possibly run afoul of any of these provisions.

We discussed in the proposed rule and elsewhere in this final rule why we did not choose to establish a new statistical test: our desire not to be disruptive, the fact that the B1/B2 test generally works well for most health care-related tax waiver requests, and the fact that a new statistical test could mean a new loophole. A State may use Medicaid statistics as part of the development of a non-uniform tax rate, as long as the tax rates are not disparate based on Medicaid utilization, with the higher burden placed on Medicaid business. For example, we discuss later in response to a comment where it may be appropriate to use Medicaid data as an available data source, provided the effect is not impermissible. A State may not use Medicaid statistics to have non-uniform rates that tax Medicaid providers more heavily, as that use would be counter to the letter and intent of the final rule, the longstanding statutory generally redistributive requirement, and the amendments made by section 71117 of the WFTC legislation.

Comment: Several commenters recommended that CMS limit the proposed rule to just MCO taxes, as they account for the majority of the tax burden targeted by the proposed rule. In addition, commenters recommended

that since taxes on hospitals are not as burdensome on average to the Medicaid program as taxes on MCOs, hospital taxes should not be included.

Response: We disagree that it is appropriate to only limit this policy to taxes on MCOs. While it is true that most of the loophole taxes we are aware of are taxes on the services of MCOs, the permissible class defined at § 433.56(a)(8), we have also identified taxes on other permissible classes, including inpatient hospital services and nursing facility services, that pose similar risks to the Medicaid program. One of our guiding principles for addressing the loophole was to close it entirely. To exclude certain permissible classes from this policy would not achieve that goal. We believe it is more appropriate and effective to address the issue comprehensively rather than partially. Limiting the rule to MCO taxes could leave other problematic tax arrangements unaddressed and potentially allow similar issues to spread in non-MCO permissible classes. As a result, we want to prevent future issues by addressing the situation proactively and comprehensively. Additionally, the WFTC legislation does not limit the requirements to MCO taxes only, nor was the longstanding statutory "generally redistributive" requirement limited to MCO taxes before the amendments made by the WFTC legislation. Therefore, we also decline to adopt the commenters' suggestion for consistency with Federal statute as well. However, in recognition that MCO loophole taxes impose a greater burden on the Medicaid program, we have provided, through the authority under the WFTC legislation, a longer transition period for non-MCO taxes that violate the loophole. This is detailed with greater specificity in section II.D.

Comment: A commenter noted that the proliferation of Medicaid managed care plans has made it difficult for physicians to focus on patient care due to differing requirements. This commenter also stated that there needs to be increased oversight on Medicaid managed care.

Response: We agree with the commenter that effective and efficient oversight of Medicaid managed care is a laudable goal. However, the relationship between the proliferation of managed care plans and the ability of physicians to provide adequate patient care is outside the scope of this rule.

Comment: A commenter pointed out that existing regulations at § 433.68(e)(2)(iii)(B) permit States to develop less redistributive taxes if the tax entirely excludes or reduces the tax burden on specified entities. They

suggested that essential hospitals be added as one of the providers listed for this lower threshold.

Response: The proposed rule did not propose any changes or additions to the existing types of providers that can be excluded from a State's tax program and still be deemed as generally redistributive in nature with a lower statistical test threshold. Therefore, this comment is out of scope of the proposed rule. We also did not propose any changes to the language in § 433.68(d). The option for health care-related tax programs to permissibly exclude Medicare revenues is still maintained in regulation. However, it is important to note that any State health care-related tax program must meet all applicable statutory and regulatory requirements.

Upon review of comments, and consistent with the WFTC legislation, we are finalizing the rule as proposed, with a couple minor wording changes and adjustments to the transition period, which are noted in the respective provision sections.

A. General Definitions (§ 433.52)

We proposed adding new definitions at § 433.52. We proposed to add and define "Medicaid taxable unit" to mean "a unit that is being taxed within a health care-related tax that is applicable to the Medicaid program." This includes units that are used as the basis for Medicaid payment, such as Medicaid bed days, Medicaid revenue, costs associated with the Medicaid program such as Medicaid charges, or other units associated with the Medicaid program. Although we had previously established the use of "taxable unit" in preamble of prior rulemaking,¹⁹ we stated our belief in the proposed rule that formalizing a definition in regulation will allow us to better specify the inclusion of factors in our consideration of whether a tax is generally redistributive, which we discuss in section II.B.

We proposed to add and define "non-Medicaid taxable unit" to mean "a unit that is being taxed within a health care-related tax that is not applicable to the Medicaid program." This includes units that are the basis for payment by non-Medicaid payers, such as non-Medicaid bed days, non-Medicaid revenue, costs that are not associated with the Medicaid program, or other units not associated with the Medicaid program.

We proposed to add and define "tax rate group" to mean "a group of entities contained within a permissible class of

a health care-related tax that are taxed at the same rate." Our work on the subsequent provisions of § 433.68(e)(3)(i), (ii), and (iii) led to the development of this term to illustrate this concept succinctly, and we therefore decided it would be beneficial to define it formally in regulations as well. These provisions referred to groups of providers or health care items and services taxed at the same rate. For the sake of clarity and simplicity, we believed it was easiest to use a single term to refer to these types of groupings.

We invited comments on the inclusion of these terms, the definitions we proposed, and if there are any other terms used in the proposed rule that should be included in the regulatory definitions as well.

The following is a summary of the public comments on our proposed definitions, and our responses.

Comment: We received several comments that expressed concern that the proposed definitions were too vague, lacked clarity, or were subjective. Some commenters stated that this was very concerning with the use of the term "could include" in the definitions of Medicaid taxable unit and non-Medicaid taxable unit. They commented that the use of this phrasing would be extremely difficult to implement.

Response: The intent of the definitions was not to be limited by the use of the phrase "could include." The phrasing was merely intended to reflect that the list of examples was not exhaustive. However, since that meaning can be conveyed by simply stating "include," we are amending the regulation to remove the word "could" for clarity. Furthermore, the WFTC legislation section 7117 included these definitions, and did not include the phrasing "could include," so this update creates precise alignment with the current statutory language.

Comment: A few commenters commended CMS for developing clear definitions in § 433.52 and for the examples of permissible tax groupings.

Response: We appreciate the commenters' feedback regarding the clarity of the definitions provided in § 433.52. We agree that clear definitions are essential to support understanding and compliance with the final rule.

Following review of public comments, we are finalizing the definitions as proposed with the modification to remove the word "could" in the definitions of Medicaid taxable unit and Non-Medicaid taxable unit.

B. Permissible Health Care-Related Taxes—Generally Redistributive (§ 433.68(e))

Section 1903(w)(3)(E)(ii)(I) of the Act provides that the Secretary shall approve a State's application for a waiver of the broad-based and/or uniformity requirements for a health care-related tax, if the State demonstrates to the Secretary's satisfaction that the tax meets specified criteria, including that the net impact of the health care-related tax and associated Medicaid expenditures as proposed by the State is generally redistributive in nature.

In section II.C., we discuss new regulatory language in § 433.68(e)(3) we are finalizing to better implement the statutory mandate that a tax be generally redistributive, and the changes made by the WFTC legislation. The new regulatory language necessitates conforming changes to the preceding regulatory language, that is, § 433.68(e)(1) and (2), to reflect the new requirement at § 433.68(e)(3). Accordingly, we proposed to amend § 433.68(e) to provide that a proposed tax must satisfy new paragraph (e)(3), in addition to, as applicable, paragraph (e)(1) or (2) of that section. The addition of paragraph (e)(3) is discussed in section II.C. of this rule.

We further proposed to amend paragraphs (e)(1)(ii) through (iv) and (e)(2)(ii) and (iii) to add that the waiver must satisfy the requirements of paragraph (e)(3) and (f), in addition to existing requirements, for the waiver request to be approvable. Paragraph (f) refers to the current regulatory implementation of limitations on hold harmless arrangements in connection with health care-related taxes, which we did not propose to modify in the proposed rule. The addition of this reference to paragraph (f) in various places in paragraph (e) is intended to enhance clarity, but not to make any substantive change concerning hold harmless limitations. We note that paragraph (e)(1)(iii) references taxes enacted prior to August 13, 1993. Although a new waiver submission for a tax in effect prior to August 13, 1993, would be unlikely, it is still possible, (for example, if a State makes a non-uniform change to its longstanding tax and needs a waiver), and this proposal accounts for that possibility.

We sought comment on our proposed amendments to § 433.68(e), (e)(1)(ii) through (iv), and (e)(2)(ii) through (iv) and on any additional conforming regulatory edits that may be needed to reflect that paragraph (e)(3) is a requirement for a waiver of the broad-

¹⁹ See 57 FR at 55128 ("By the term 'Medicaid Statistic,[""] we mean the number of the provider's taxable units applicable to the Medicaid program.'").

based and/or the uniformity requirement to be approved.

The following is a summary of the public comments on the proposed changes to § 433.68(e), (e)(1)(ii) through (iv), (e)(2)(ii) and (iii), and our responses:

Comment: Some commenters were concerned regarding the varying usage of the phrase “is approvable” and “will be approved” in the changes proposed to § 433.68(e)(1) and (2). They requested that CMS clarify the intent of the differing languages, with one stressing the importance of clear standards for States and providers.

Response: The language referenced by the commenters refers to places where CMS changed existing regulatory language and where we did not. In the regulatory text for both § 433.68(e)(1)(ii) and (e)(2)(ii), we use the phrase “the tax waiver is approvable” where we were replacing text that previously stated CMS “will automatically approve.” Conversely, in § 433.68(e)(1)(iii), (iv), and (e)(2)(iii), the phrase “will be approved” appears where it did in the previous regulations, because here we were not changing that, but instead adding the language “in addition to satisfying the requirement at paragraphs (e)(3) and (f).” We believe that the phrases “is approved” and “will be approved” convey the same meaning as “is approvable” that we are finalizing in this regulation. We are finalizing these changes as proposed.

Comment: A few commenters supported the rule’s efforts to curb “gaming” and exploitation of the loophole in provider tax structures. A few commenters stressed their support for changes to the B1/B2 test to prevent gaming. A few commenters urged CMS to take additional steps such as applying the additional requirements to demonstrate a tax is generally redistributive, which the commenter called a requirement not to unduly burden the Medicaid program, to both the B1/B2 and P1/P2 tests to limit future gaming.

Response: We thank the commenters for their support. With the enactment of the WFTC legislation, we have determined that the final rule’s provisions are sufficient at this time, and it currently is not necessary to propose changes to the application of the B1/B2 and P1/P2 tests. Under this final rule, the requirements we are establishing are not based on an undue burden on Medicaid but rather ensure proper application of the statute. However, we note that the change to paragraph (e)(1)(ii) and (iii) ensure the requirements of paragraph (e)(3) are met when a State is only seeking a broad-

based requirement waiver using the P1/P2 test, as well as when a State is seeking a uniform requirement waiver using the B1/B2 test. This is consistent with the amendments made by section 71117 of the WFTC legislation.

Comment: A commenter supported the proposed changes to § 433.68(e) as necessary clarifying and technical edits to account for the new requirements.

Response: We thank the commenters for their support.

After reviewing the comments, we are finalizing the changes to § 433.68(e)(1)(ii) through (iv) and (e)(2)(ii) and (iii), as proposed.

C. Permissible Health Care-Related Taxes—Additional Requirement To Demonstrate a Tax Is Generally Redistributive (§ 433.68(e)(3))

CMS sought to address health care-related taxes that do not have the effect of being generally redistributive despite being able to pass the P1/P2 or B1/B2 test, as applicable, as previously discussed. In the proposed rule, we explained our belief that, in large part, the B1/B2 test has served its function as a straightforward mathematical implementation of the statutory requirement under section 1903(w)(3)(E)(ii)(I) of the Act that to be granted a waiver a tax must be generally redistributive. Although the linear regression used in the B1/B2 analysis is vulnerable to certain kinds of manipulation by States, as discussed in section I.D. of this final rule, CMS’ experience has shown that the B1/B2 test usually works as intended. In the proposed rule, we aimed to eliminate the possibility these vulnerabilities will be exploited. As a result, we proposed to retain the B1/B2 test based on the long-term reliance of many States on the test and its overall utility in accomplishing its purpose of ensuring that taxes for which waivers are requested are generally redistributive. However, as demonstrated by the problematic taxes discussed earlier that are designed to target Medicaid with increased tax rates compared to other taxpayers, it is necessary to take our analysis a step beyond the mathematical result of the B1/B2 test to ensure we uphold the statutory mandate that a tax for which a waiver is approved be generally redistributive, which we proposed to do through the addition of the requirements in paragraph (e)(3). In addition, as specified in existing statute and by cross reference in regulation at section 1903(w)(1)(A)(iii) of the Act and § 433.70(b), respectively, even if a tax passes the applicable statistical test, it is still considered impermissible if it contains a hold harmless arrangement

prohibited by section 1903(w)(4) of the Act and § 433.68(f). Therefore, we proposed to add cross-references to § 433.68(f) in regulatory language we proposed to update in § 433.68(e)(1)(ii), (1)(iv), (2)(ii), and (2)(iii) regarding the approvability of a tax waiver proposal.

As previously discussed, § 433.68(e) specifies the applicable statistical test for evaluating whether a proposed tax is generally redistributive: if the State is seeking only a waiver of the broad-based requirement, paragraph (e)(1) specifies that a State must meet the test referred to as “P1/P2” described in section I.C. of this rule, while a State seeking a waiver of the uniformity requirement or both the broad-based and uniformity requirements must meet the test specified in paragraph (e)(2), referred to as “B1/B2,” also described in section I.C. of this final rule.

We proposed adding a new paragraph, § 433.68(e)(3), to ensure that a health care-related tax is generally redistributive by preventing taxes that impose higher tax rates on providers that primarily serve Medicaid beneficiaries than on other providers that serve a relatively smaller number of such beneficiaries. Specifically, in paragraph (e)(3), we proposed that the new requirements would apply on a per class basis. We also proposed that regardless of whether a tax meets the standards in paragraphs (e)(1) and (2), the tax would not be “generally redistributive” if it has certain described attributes that are contrary to the tax program being generally redistributive in nature.

The provisions of this final rule specify the attributes of a tax that would violate the generally redistributive requirement in paragraphs § 433.68(e)(3)(i), (ii) and (iii). The applicability of these provisions, and the associated analysis of whether a tax violates the generally redistributive requirement, would differ based on whether the tax or waiver indicates Medicaid explicitly. We discuss each of these in turn. We note that this policy will not interfere with a State’s ability to implement otherwise permissible State and locality taxes (that is, taxes imposed by units of local government such as counties).

The following is a summary of comments received about the additional “generally redistributive” requirement, in general, and our responses.

Comment: A few commenters recommended that CMS adopt a presumption in favor of provider taxes being generally redistributive, with the burden placed on CMS to demonstrate noncompliance only if specific regulatory requirements are not met. A

commenter stated that applying both the B1/B2 and P1/P2 tests would better prevent future gaming of provider tax rules.

Response: The Social Security Act clearly places the obligation on States to operate their Medicaid program in compliance with Federal requirements. The final rule's regulatory provisions describe what is necessary for a health care-related tax to be considered generally redistributive. In developing the proposed rule and considering the enactment of the WFTC legislation with its amendments to section 1903(w) of the Act, we have determined that the final rule's provisions are sufficient at this time and there currently is not a need for changes to the application of the B1/B2 and P1/P2 tests. The effect of requiring all waivers to meet both the B1/B2 and the P1/P2 tests would be to eliminate the statistical loophole. However, it would also be more restrictive than the option of adding requirements in § 433.68(e)(3)(i) through (iii) that we proposed and would affect more States with more taxes. In addition, it would encompass some taxes where there is no evidence that they are out of compliance with Federal requirements. Because of the comparatively greater burden that would be involved in addressing a wider variety of States and taxes, which generally do not merit increased concern, CMS did not believe that this option would be desirable. For this reason, we did not choose it. Rather the requirements finalized in this rule, particularly in section § 433.68(e)(3), provide the tools necessary for us to effectively evaluate health care-related tax waiver proposals and determining whether they are in fact generally redistributive. A health care-related tax cannot be presumed to be generally redistributive if it has not been established that all requirements in statute and regulation are met. This work requires analysis of the State's tax program and proposal. Finally, we note that the suggestion of the commenters would not align with the requirements under the WFTC legislation, which we have endeavored to align with.

Comment: A commenter highlighted an example of a relevant State proposition directing tax revenue generated from MCO-based taxes to fund designated services benefiting all State Medicaid beneficiaries. The commenter suggested that CMS should amend the rule to enable States to impose non-uniform taxes if they use the funds to supplement reimbursements or enhancing services for Medicaid beneficiaries. A few commenters urged CMS to introduce

mechanisms to determine whether the revenue was being used in a supplemental manner rather than just supplanting other State general fund obligations in determining whether to approve a waiver for a particular tax structure.

Response: We appreciate the commenter's recognition of how health care-related taxes, including those on MCOs, can be used to fund Medicaid services. We acknowledge that many States rely on such taxes to support a wide range of Medicaid payments. Nothing in this final rule prohibits States from continuing to impose health care-related taxes on services of MCOs. This rule is not intended to prevent States from making new investments in their Medicaid programs through any permissible means of financing allowed under statute and regulation. However, taxes designed to exploit the loophole are not generally redistributive in nature as required by statute, and they place an undue financial burden on the Medicaid program and the Federal government beyond what is contemplated by statute and regulation. After the finalization of the additional generally redistributive requirement, and with the statutory changes made by section 71117 of the WFTC legislation, States with currently non-compliant MCO taxes may redesign their health care-related taxes to ensure compliance with Federal requirements. Additionally, States have the option to finance these services from sources other than health care-related taxes on services of MCOs.

Comment: A commenter recommended CMS publish clear guidance on the process for evaluating proposed tax waivers. A commenter recommended CMS maintain the B1/B2 test due to the subjectivity of the proposed rule's provisions and the States' longstanding reliance on the test. A commenter stated that these provisions were too broad in scope because they would capture and implicate a wider variety of taxes than is necessary.

Response: The provisions of the proposed rule provide clear standards for tax waivers. If a State taxes a taxpayer or tax rate group more heavily based on its Medicaid taxable units or utilization than its non-Medicaid taxable units or utilization and expressly identifies the taxpayer or tax rate group by reference to "Medicaid" or an equivalent name, that will implicate § 433.68(e)(3)(i) or (ii). If a State does the same thing, but to circumvent the additional generally redistributive requirement under this final rule (and as required by the amendments made by section 71117 of the WFTC legislation)

does not use the word "Medicaid" or an equivalent name, but instead identifies the taxpayer or tax rate group differently to achieve the same result, that would implicate § 433.68(e)(3)(iii). Nothing about the way the B1/B2 currently works will change; for waivers of the uniformity requirement, States will still need to pass the B1/B2 test. To address the statistical loophole, we are supplementing the existing B1/B2 test with a new additional generally redistributive requirement, as proposed and as required under the statutory amendments made by section 71117 of the WFTC legislation. By employing these two methods together (that is, the existing B1/B2 test and the new generally redistributive requirement), the analysis of proposed tax waivers will help ensure that we only approve tax waivers that are generally redistributive because they tend to use non-Medicaid revenue to pay for Medicaid payments, as required by statute. Likewise, we disagree that the new provisions do not provide clear guidance. Section 433.68(e)(3)(i) and (ii) fundamentally rely on straightforward measures of whether one amount is greater or less than another amount. Section 433.68(e)(3)(iii) does involve a consideration of a wider variety of factors that are not strictly speaking statistical or numeric, but that only forms the first step of the proxy analysis, which then concludes with whether the tax has the same effect as described in paragraph (e)(3)(i) and (ii). Despite the wider variety of factors that are under consideration, our analysis at this stage will remain objective since the proxy is only limited to capturing States that are attempting to circumvent the requirements in § 433.68(e)(3)(i) and (ii) through using alternative language and not other situations.

Section 433.68(e)(3)(iii) is necessary to prohibit States from attempting to circumvent the additional "generally redistributive" requirement by not using the word "Medicaid" or an equivalent name. While we have considered relying solely on a new statistical test, we declined to propose doing so at this time because the alternative tests we considered would have caused unnecessary disruption for States with existing approved tax waivers that are functioning appropriately. In addition, we disagree with the commenter that the regulation is too broad in scope. The regulation is narrowly tailored to accomplish its purpose of ensuring that tax programs are generally redistributive, while still retaining State flexibility in designing their tax programs. We have repeatedly

emphasized these policies only affect a small number of known loophole taxes. As a result, we decline to adopt the commenters' suggestions. Finally, we note that the WFTC legislation enacted these provisions, substantially as we proposed, with limited organizational differences between the regulation and statute and without including the examples listed in the proposed regulation. Therefore, apart from the fact that we determined the policies we finalized are the most effective, least disruptive, pathway to close the statistical loophole, we also determined it is appropriate to finalize as proposed to align with the amendments made by the WFTC legislation.

Comment: A few commenters provided specific examples of their State's tax arrangements and sought clarity on whether or not they would be deemed permissible.

Response: As with many new regulations, we understand that States may require technical assistance in interpreting how the regulation applies to their unique circumstances. While the notice and comment rulemaking is not the appropriate venue to discuss the specifics of each State's particular situation, we encourage States to contact us directly if they have any questions or concerns regarding how the regulation might affect them. We also intend to communicate directly with the small number of likely impacted States regarding the status of their tax waiver(s) and the new requirements under this final rule and the amendments made by section 71117 of the WFTC legislation. We are committed to supporting States and providing technical assistance as needed. Furthermore, we recommend States contact us as early as possible if they have questions or are concerned about whether their health care-related taxes may conflict with the new Federal requirements.

Comment: A few commenters suggested edits to the proposed rule in areas of the proposed rule's provisions that commenters indicated were ambiguous or with which the commenters otherwise disagreed. These included removing the examples from the regulatory text, applying the policy only to MCO taxes, and to limit the applicability of § 433.68(e)(3)(i), (ii), and (iii) to States that have received companion letters from CMS informing them that their tax may be problematic. Finally, a commenter suggested that the "legitimate public policy goal" apply to all of § 433.68(e)(3)(i), (ii), and (iii).

Response: We are not making any edits based on these suggestions. We discussed in earlier responses why it

would not be appropriate to limit the scope of this rule to MCO taxes. We also believe the examples in regulatory text demonstrate the agency's commitment to the interpretation of the regulations that we described in preamble to the proposed rule, and we have made it clear these examples are not exhaustive. We are also not limiting the applicability to States that have received companion letters, because then there would still be loophole taxes. We have addressed the issue of whether a State has received a companion letter through the different transition periods, where all States that did not receive a formal companion letter have at least a full State fiscal year to come into compliance under this final rule. We decline to adopt the suggested edit that the legitimate public policy language applies to all the additional requirement regulations, as this is only a consideration for § 433.68(e)(3)(iii), borne out of the fact that Medicaid is not being named explicitly. This difference requires a greater examination of intent, to ensure inadvertent associations are not inappropriately penalized. Finally, as we have stated, we are finalizing all changes to § 433.68(e)(3) as proposed, with one wording change to paragraph (e)(3)(iii) noted in the relevant section for consistency with section 71117 of the WFTC legislation.

Comment: A few commenters in support of the proposed rule pointed to how MCO taxes that exploit the loophole in particular disproportionately impact Medicaid tax burden.

Response: We appreciate the commenters' support and agree that taxes on services of MCOs, as described at § 433.56(a)(8), that also exploit the loophole, present the most egregious examples of this problem. We believe that the provisions of the proposed rule would effectively address these taxes so as to prohibit this issue from recurring.

After consideration of the public comments overall on the establishment of an additional requirement to demonstrate a tax is generally redistributive, and consistent with section 71117 of the WFTC legislation, we are finalizing all changes to § 433.68(e)(3) as proposed, with one wording change to paragraph (e)(3)(iii) noted in the relevant section.

1. Taxes That Refer to Medicaid Explicitly

In § 433.68(e)(3)(i), we proposed that if, within the permissible class, the tax rate imposed on any taxpayer or tax rate group based upon its Medicaid taxable units is higher than the tax rate imposed

on any taxpayer or tax rate group based upon its non-Medicaid taxable units (except as a result of excluding from taxation Medicare or Medicaid revenue or payments as described in paragraph (d) of this section) the tax would not be generally redistributive. We also proposed to specify an example of a tax that would violate this provision, although the example is not the only example of how a tax might be structured to violate this requirement. The example we proposed in regulations text specifies that an MCO tax where Medicaid member months are taxed \$200 per member month whereas the non-Medicaid member months are taxed \$20 per member month would violate this requirement. Medicaid would, in this context, also include descriptions of where a State uses its proper name of its State-specific Medicaid program.

In § 433.68(e)(3)(ii), we proposed that if within a permissible class, the tax rate imposed on any taxpayer or tax rate group explicitly defined by its relatively lower volume or percentage of Medicaid taxable units is lower than the tax rate imposed on any other taxpayer or tax rate group defined by its relatively higher volume or percentage of Medicaid taxable units, it would not be generally redistributive. We also proposed to specify two examples of taxes that would violate this provision, although the examples were not intended to be the only examples of how a tax might be structured to violate this requirement. The first example specifies that a tax on nursing facilities with more than 40 Medicaid-paid bed days of \$200 per bed day while nursing facilities with 40 or fewer Medicaid-paid bed days are taxed \$20 per bed day would violate this requirement. The second example describes a tax on hospitals with less than 5 percent Medicaid utilization at 2 percent of net patient service revenue for inpatient hospital services, while all other hospitals are taxed at 4 percent of net patient service revenue for inpatient hospital services; this tax structure also would violate this requirement.

Health care-related taxes with the attributes described in the examples in § 433.68(e)(3)(i) and (ii) are designed to generate less tax revenue from non-Medicaid sources and more tax revenue from Medicaid sources for the same amount of taxable services or revenue, which is inconsistent with a generally redistributive tax. This is contrary to the Congressional intent and statutory direction that non-broad based and non-uniform taxes that are granted a waiver must be generally redistributive. Based on our analysis, existing State taxes that

use the B1/B2 loophole described previously would all fail the requirement in the proposed § 433.68(e)(3)(i). One of these existing State taxes that uses the loophole would also fail the requirement in § 433.68(e)(3)(ii).

These scenarios illustrate examples of taxes that target Medicaid taxable units with higher tax rates when compared with non-Medicaid taxable units. As a result of this targeting, the tax ensures that taxed entities that serve no, or relatively low percentages, of Medicaid beneficiaries are not financially harmed as a result of the tax. This is important because providers with low Medicaid utilization would be less able to be made whole by additional Medicaid payments. As a result, these providers are not burdened by any, or more than a de minimis, tax liability. Because of this tax structure, the State, its localities, and taxpayers do not appear to shoulder a significantly reduced net non-Federal share. As a result, the Federal government is the only net payer or a substantially higher net payer than contemplated by statute in its specification of the applicable Federal matching percentage. In addition to this being counter to the statutory framework, as described above, the scenarios presented by the rule are illustrative of taxes that present a significant fiscal integrity risk to the Medicaid program without any benefit to the Federal taxpayer. When non-Federal entities do not incur a net non-Federal share cost (or incurring a reduced non-Federal share cost), there is a reduced incentive for States to propose payment methods that are efficient, economic, and consistent with other applicable Federal requirements.

The following is a summary of the public comments on the provisions when a waiver explicitly names Medicaid under § 433.68(e)(3)(i), and our responses:

Comment: A commenter urged CMS to omit the examples included in this section, both because they are non-exhaustive (and according to the commenter, therefore cause uncertainty), and because they overlook situation-specific nuances. The commenter challenged the example that a higher tax rate on nursing facilities with more than 40 Medicaid-paid bed days than the tax rate on nursing facilities with 40 or fewer bed days would be considered not generally redistributive, asserting that a State may use Medicaid-paid bed days as a proxy for total bed days, because Medicaid data is timely and less volatile over time, rather than increase the share of tax burden on Medicaid taxable units.

Response: We are maintaining the examples in the regulation text. The inclusion of these examples allows readers of the regulations to have clear insight into the meaning of the regulations. This also provides examples on which a State can reasonably rely, as these have been codified in regulation. We believe it is clear that these examples are not exhaustive, and maintain that they are valuable reference points for States as they interpret and implement the regulation.

We acknowledge the commenter's point that the examples do not capture the nuances of each specific situation, and we are available to provide technical assistance on different circumstances. With respect to the example in the comment, to provide the data necessary to pass the B1/B2 test initially, States must already be collecting data on Medicaid units as distinct from total taxable units. A State would be unable to calculate the B1/B2 test if the only data they had was Medicaid bed days. As a result, we do not believe that the situation suggested by the comment would be possible, given how States must calculate the B1/B2 test. States often use lagged data from a few years prior in their health care-related tax waiver requests. We expect this practice to continue. Nothing in the final rule would preclude States from continuing to do this. We continue to encourage States to provide the best, most accurate, most recent data they have for health care-related tax waiver submissions to us.

Comment: A commenter stated that the language of this provision was too vague and creates uncertainty. Another commenter requested that CMS provide guidance to States, given that their intentions for the tax and rate may need to be considered.

Response: We respectfully disagree with the commenter's assertion that the language of § 433.68(e)(3)(i) is vague or creates uncertainty. As discussed in response to general comments that indicated the same, § 433.68(e)(3)(i) prohibits States from imposing a tax rate on any taxpayer or tax rate group based on Medicaid taxable units higher than the tax rate on any taxpayer or tax rate group based on a provider's non-Medicaid taxable units (except for excluding Medicare revenue or payments as described at § 433.68(d)). It is readily apparent if one tax rate is larger than another tax rate. Then, to aid States further, we provided multiple examples of potential violations, and we encourage States to seek technical assistance early in the design of their tax programs. We appreciate the

commenter's request for additional guidance and is available to engage with States individually to address any concerns related to § 433.68(e)(3)(i).

The following is a summary of the public comments on proposed § 433.68(e)(3)(ii), and our responses:

Comment: A commenter recommended that CMS allow tiered assessment models that use lower tax rates on small Medicaid providers or high-volume Medicaid providers, when the model supports access and meets Federal requirements.

Response: Nothing in this rule would prohibit States from establishing lower tax rates for small Medicaid providers or high-volume Medicaid providers. In fact, a tax that provides lower tax rates for providers with higher Medicaid taxable units or utilization aligns with the "generally redistributive" concept. The regulation would permit this while not allowing lower tax rates for providers with lower Medicaid taxable units or utilization. Providers defined by comparatively higher Medicaid business cannot be taxed more than providers defined by their comparatively low Medicaid business. We would likely need to examine the details of the commenter's particular situation to make a definitive judgement on permissibility under Federal requirements.

Comment: A commenter cautioned that taxes on nursing homes in many States use tiers, and that some States impose health care-related taxes by referencing providers that serve multiple levels of care as "definitions" for tax rate tiers, though these "definitions" are not codified in State statute or regulation. The concern the commenter has is that these practices will be viewed as impermissible proxies.

Responses: For the purposes of § 433.68(e)(3)(iii), CMS will not decide based on one sole factor, such as how the "definitions" are codified in State statute or regulation. We will initially review how the State describes the tax to CMS, and then also consider surrounding circumstances and information about the tax. When States submit health care-related tax waiver requests to CMS, they must submit a letter describing, among other things, the structure of the tax, and the tax rates. CMS refers to this as the health care-related tax request letter. In its health care-related tax request letter, if the State uses the word "Medicaid" or its State-specific equivalent, § 433.68(e)(3)(i) or (ii) may come into effect. If not, § 433.68(e)(3)(iii) may still apply. CMS would need to look at the example in question in greater detail, as

we will be making these assessments on a case-by-case basis.

Comment: A few commenters claimed that § 433.68(e)(3)(i) and (ii) would make it difficult for States to impose multiple tax rates. One such commenter stated that this could occur because CMS is considering the tax portion only and is not considering payments supported by the tax.

Response: We respectfully disagree with the commenters assertion that § 433.68(e)(3)(i) or (ii) will make it difficult for States to impose multiple tax rates. The additional analysis to determine whether a tax is generally redistributive finalized in this rule will only occur when a State is proposing multiple tax rates and therefore is not a uniform tax. However, these policies do not prohibit non-uniform taxes. These specific provisions only apply if the State uses “Medicaid” in their description of the tax to us and then would only further trigger these provisions if the Medicaid-associated tax rate is higher.

Additionally, we agree with the commenter that the regulation is focused mainly on the structure of a tax program as opposed to the methodology used to make Medicaid payments; however, this is not because we do not consider the associated payments. Section 1903(w)(3)(E)(ii)(I) of the Act specifies that whether a tax is generally redistributive in nature considers the net impact of the tax and associated expenditures; as such, the generally redistributive analysis must necessarily consider the payments that the tax will fund, including whether they are not being used for Medicaid payments. However, our policies have historically focused on the tax structure because we expect and have found that health care-related taxes are generally used to fund Medicaid payments, and we ensure our policies reflect that likelihood.

We further note that no part of assessing the permissibility of taxes exists in a vacuum. Our analyses of provider taxes also consider payments supported by these taxes; for example, the analysis we conduct to determine whether a hold harmless arrangement is in place. As such, although the changes we are finalizing at § 433.68(e) focus mainly on the structure of the tax itself, this is through the knowledge that the tax is likely used for Medicaid payments, and in conjunction with a closer examination of the payments for the hold harmless analysis.

After consideration of the public comments, and consistent with section 71117(a)(1) of the WFTC legislation, which added the proposed language as section 1903(w)(3)(E)(iii)(I) and (II) of

the Act, we are finalizing § 433.68(e)(3)(i) and (ii) as proposed. However, we note that the WFTC legislation reversed the order of the two provisions from what we proposed. We are maintaining the order as proposed, as we view this difference as immaterial and want to prevent any confusion from the proposed rule and the way the information was organized at the greater level of detail contained in rulemaking.

2. Waivers That Do Not Refer to Medicaid Explicitly

In § 433.68(e)(3)(iii), we proposed to prohibit a State from imposing a tax that excludes or imposes a lower tax rate on a taxpayer or tax rate group defined by or based on any characteristic that results in the same effect as described in paragraph (e)(3)(i) or (ii). In other words, there does not need to be an explicit reference to Medicaid in the State’s tax program if the State is using a substitute definition, measure, attribute, or the like as a proxy for Medicaid to accomplish the same effect. By “the same effect,” we mean imposing a higher tax rate on Medicaid taxable units than on non-Medicaid taxable units, even if this is accomplished with less mathematical precision under an approach that does not explicitly reference Medicaid than would be possible under an approach that violates proposed paragraph (e)(3)(i) or (ii).

The proposed rule specified two examples of taxes that would violate this provision but does not provide an exhaustive list of ways a tax might be structured to violate it. The first example involves the use of terminology to establish a tax rate group based on Medicaid without explicitly mentioning “Medicaid” (or the State-specific name of the Medicaid program) to accomplish the same effect as described in paragraph (e)(3)(i) or (ii). This example specifies that a tax on inpatient hospital service discharges that imposes a \$10 rate per discharge associated with beneficiaries covered by a joint Federal and State health care program and a \$5 rate per discharge associated with individuals not covered by a joint Federal and State health care program would violate this requirement, because joint Federal and State health care program describes Medicaid, and a higher tax rate is imposed on Medicaid taxable units. The second example concerns the use of terminology that creates a tax rate group that closely approximates Medicaid, to the same effect as described in paragraph (3)(i) or (ii). This example specifies that a tax on hospitals located in counties with an average income less than 230 percent of the Federal poverty level of \$10 per

inpatient hospital discharge, while hospitals in all other counties are taxed at \$5 per inpatient hospital discharge, would violate this requirement, because the distinction being drawn between tax rate groups is associated with a Medicaid eligibility criterion (income) with a higher tax rate imposed on the tax rate group that is likely to involve more Medicaid taxable units.

The intent of the proposed provision in paragraph (e)(3)(iii) is to address potential efforts by States or local units of government to mask a health care-related tax that falls more heavily on Medicaid taxable units using some other terminology or defining factor to circumvent the requirements in paragraph (e)(3)(i) and (ii) by avoiding explicitly targeting Medicaid taxable units with higher tax rates. For the same reasons described previously regarding taxes that would violate paragraph (e)(3)(i) or (ii), such taxes would not meet the statutory generally redistributive requirement and would have a substantially negative impact on the fiscal integrity of the Medicaid program. Absent this provision, we explained our concern that if we only finalized the requirements in § 433.68(e)(3)(i) and (ii), States might choose to pursue taxes that would otherwise be prohibited under § 433.68(e)(3)(i) and (ii) through the use of a proxy for Medicaid. Following the enactment of the WFTC legislation, we are also finalizing paragraph (e)(3)(iii) for consistency with the new statutory language.

We proposed to codify this regulatory language with this level of detail directly in response to feedback we received to a similar proposal in the November 2019 proposed rule. Although we remain committed to addressing the statistical loophole, as we were in the November 2019 proposed rule, we acknowledge that the level of detail in the November 2019 proposed rule might not have provided enough context to give commenters an accurate picture of our intent. Under the analogous provision of the 2019 proposed rule, we would have determined a tax program not to be generally redistributive if it imposed an “undue burden” on the Medicaid program because the tax “excludes or imposes a lower tax rate on a taxpayer group defined based on any commonality that, considering the totality of the circumstances, CMS reasonably determines to be used as a proxy for the tax rate group having no Medicaid activity or relatively lower Medicaid activity than any other tax rate group.” (84 FR 63778). The 2019 proposed rule may not have presented

a clear idea of how we would apply the requirement to avoid imposing an undue burden on the Medicaid program. In the proposed rule, we added language to § 433.68(e)(3) to provide reassurance to interested parties that these current proposals are intended only to shut down the loophole to better effectuate the statutory directive that health care-related taxes for which the broad-based and/or uniform requirement is waived must be generally redistributive, and not impact permissible State health care-related tax programs unrelated to this goal. For example, in section II.A., we proposed to define “Medicaid taxable unit” to narrow the scope from “Medicaid activity” as used in the November 2019 proposed rule. We also chose, in all of paragraph (e)(3), to propose specific illustrative examples that demonstrate our commitment to a clear, specific, and predictable application of our regulations. We believe that the illustrative examples will provide the public with a better understanding of what these provisions do and how we will apply it in practice when evaluating State tax waiver proposals, compared to the November 2019 proposed rule.

We invited comments on other examples we could provide, whether in the final rule preamble or in regulation text, that could make even clearer how we will implement the proposed policies. We address comments received on the examples we proposed at the end of this section with other comments and responses pertaining to waivers that do not refer to Medicaid explicitly.

Since the scenarios described in § 433.68(e)(3)(iii) would not name Medicaid explicitly, we explained that CMS would need to assess whether Medicaid is nevertheless implicated, and then whether the tax results in the same effect as described in paragraph (3)(i) or (ii). Under this assessment, we would examine the tax and waiver submission, including the characteristics of each tax rate group description, the entities in the tax rate group, and the Medicaid taxable units and non-Medicaid taxable units associated with each tax rate group and entities in each tax rate group. No single factor would result in an automatic determination by CMS that the tax rate groups have been designed to target Medicaid when it is not explicitly named. However, a series of overlapping descriptions or characteristics that appear to point toward Medicaid utilization, without using the word Medicaid, would probably lead to a heightened level of scrutiny. For example, we explained that, if CMS analyzes a Medicaid utilization table in

a tax waiver submission (which lists providers, their tax rates, and their Medicaid utilization) and observes that a certain group of excluded providers described as “Provider Group A” has little to no Medicaid utilization, we would further scrutinize “Provider Group A” to ascertain whether it is a proxy for lack of Medicaid utilization, as discussed further later in this rule.

Accordingly, we proposed that CMS may examine whether the tax or waiver uses terminology that describes Medicaid implicitly without using the term itself, such as the “joint Federal and State health care program,” used in our example in the proposed rule.²⁰ We would also examine if the tax rate group is defined based on criteria that mirror Medicaid eligibility or other defining characteristics, such as a data point that is associated with Medicaid or a Medicaid eligibility criterion like income (such as percentages of low-income individuals in a geographic area), or a particular provider type that is associated with high Medicaid utilization (such as State or other public facilities and university/teaching hospitals).

This analysis would fit into our regular review work and interactions with States. When CMS reviews a tax waiver submission, we assess the waiver for compliance with all applicable statutes and regulations. This assessment is not necessarily limited to the waiver submission itself, or to the materials as first submitted by the State. Upon review, we generally tailor a set of questions for the State to obtain any additional information necessary to adjudicate the waiver request or request revisions necessary for the submission to meet Federal requirements. For example, we might ask for clarification based on something we did not understand, that we want to confirm, or that may be in error. We regularly have additional discussions with the State, which may include technical assistance phone calls, and review of State submission of updated or additional health care-related tax waiver request materials. The process is both collaborative and iterative, to allow States to vary their taxes in ways appropriate for their individual circumstances as supported by statute and regulations, and to allow CMS to arrive at an appropriate approvability decision based on Federal requirements.

We explained that an assessment of whether or not a State is utilizing a proxy in violation of proposed paragraph (e)(3)(iii) would be conducted under this same process. If we analyze

a Medicaid utilization table and observe a disparate set of rates for higher and lower Medicaid utilization tax rate groups despite the tax passing B1/B2, and we cannot readily determine how the tax rate groups have been constructed, we will ask the State for additional information as is part of our standard practice. Consistent with our existing practice, this allows the State to identify for CMS any necessary clarifications or explanations that informed the development of the tax rate groups. The additional information we obtain from the State could allow us to determine that the tax rate groups were not constructed to target taxation to higher Medicaid utilization tax rate groups or away from lower Medicaid utilization tax rate groups, but instead for a legitimate public policy purpose not directed at manipulating relative tax burden.

Section 433.68(e)(3)(iii) is not intended to prevent States from designing tax rate groups to achieve legitimate public policy goals, when these do not prevent the tax from being generally redistributive.²¹ In this context, by “legitimate,” we mean any public policy goal that the State may lawfully pursue, which is the State’s actual purpose and not a spurious or fictive purpose offered to conceal or negate a true purpose of directing higher relative tax burden to the Medicaid program. This type of assessment is already historically reflected in the consideration CMS gives to certain non-uniform taxes under § 433.68(e)(2)(iii)(B), where CMS permits a lower threshold to pass the B1/B2 test for taxes that provide more favorable tax treatment only for specified types of entities, including sole community hospitals as defined in § 412.92. A “sole community hospital” (SCH) generally is a hospital that is the only hospital in its geographic area and therefore serves as the sole source of inpatient hospital services for the vulnerable population in the area. Because these hospitals play vital roles in providing access to care to beneficiaries, they were included in the statutory and regulatory flexibilities built into the statistical test in recognition of their importance to recipient access to services (57 FR 55118 through 55129).

For example, a State establishing a nursing facility tax program, within which a tax rate group for a provider type such as continuing care retirement communities (CCRCs) is subject to a lower tax rate for public policy reasons, would not, in and of itself, violate

²⁰ 90 FR 20587.

²¹ See reference in proposed rule at 93 FR 20588.

paragraph (e)(3)(iii), even if the CCRC tax rate group happens to have lower Medicaid utilization than other tax rate groups in the tax program. In this case, we would consider that the designation of CCRC exists outside of the health care-related tax domain, and, for taxation purposes within the CCRC designation, the tax rate is not differentiated between Medicaid and non-Medicaid taxable units. CCRCs are licensed by the States in which they are located. They are not a classification or designation that the State created for the purposes of establishing health care-related tax provider groups or otherwise to minimize the impact on non-Medicaid providers or taxable units.

As another example, a State might seek to exclude providers located in rural areas from taxation. States often afford special consideration for rural providers as a means of helping preserve beneficiary access to services in rural areas that otherwise might not have a sufficient number of qualified providers to serve the needs of Medicaid beneficiaries. Like sole community hospitals, the existing regulations in § 433.68(e)(2)(iii)(B) currently provide additional flexibility for States in designing non-uniform tax waivers that favor rural hospitals. A tax structure that excluded rural providers without any explicit reference to Medicaid would likely not fall within the proxy provision. Generally, because the provider group would be defined by a pre-existing classification that exists for various public policy purposes apart from taxation (rural location) and because the tax treatment within the classification of rural providers would not vary between Medicaid and non-Medicaid taxable units, there would not appear to be an indication that the State is using the taxpayer rate group to direct tax burden to the Medicaid program or away from providers with relatively lower Medicaid utilization.

When, by chance, a State's effort to design a tax program in support of a public policy purpose like promoting health care access results in a tax rate group that happens to have lower Medicaid utilization ending up with a tax break, some States may balance this with a corresponding break for higher Medicaid utilization providers. Nothing in the proxy provision would prevent States from being able to balance tax rate groups in this way as they have in the past. Other possible examples of tax rate groups that States may wish to give a tax break to for policy reasons not related to directing higher relative tax burden to the Medicaid program include psychiatric hospitals and rural hospitals, among others. These

instances would be permissible under proposed paragraph (e)(3)(iii)(B) because the State has a legitimate public policy reason not related to directing relative tax burden toward the Medicaid program for giving preferential tax treatment to the tax rate group for the type of provider in question.

As noted, the groupings discussed in the previous paragraphs exist for policy reasons outside of the context of taxation, indicating they were not created solely for the purpose of the tax and waiver under review. Conversely, a possible signal that a State is trying to exploit the loophole for a reason that is not tied to legitimate public policy would be the State's use of groupings that do not appear to have a connection to a reasonable policy purpose. This would indicate to CMS that we need to investigate further to determine if the State's proposal would lack a legitimate policy purpose and would impose disproportionate burden on Medicaid. Examples of groupings that could have a legitimate policy purpose include grouping providers within a permissible class by number of bed days for an inpatient hospital services tax and member months for managed care plan services tax. In these instances, the grouping uses health care-associated quantification measures. We note that this would not be the sole factor to determine whether a State has a legitimate public policy interest when establishing tax groupings; groupings like this would simply not raise the same red flags as groupings unrelated to health or tax policy.

An example of a grouping that does not appear to have a connection to a legitimate policy purpose (and that would prompt further inquiry) could include a feature of the physical plant of facility in question. For example, if a State was targeting a specific hospital with very high Medicaid utilization, and that hospital was unique in having two separate exterior entrances to the emergency department, the State might construct inpatient hospital tax rate groups based on the number of exterior entrances to the emergency department. CMS might see this on review of a waiver submission, and it would prompt additional questions to the State as part of our typical practice of assessing waiver submissions to understand the rationale for assigning tax rates in this manner, because it is not evident how incentivizing hospital emergency departments through taxation to have (or not to have) a particular number of separate exterior entrances to the emergency department would advance a legitimate State public policy goal.

As stated, CMS does not intend for § 433.68(e)(3) to target any taxes other than those that utilize the loophole in the B1/B2 test. We explained in the proposed rule that we would apply this proposed provision narrowly, to reach only those situations where, based on considerations not related to a legitimate public policy goal as discussed previously, CMS determines that a State is attempting to mask that it is seeking to apply a higher tax rate based on a taxpayer's or tax rate group's Medicaid taxable units in a manner that, if it had been done explicitly, would violate § 433.68(e)(3)(i) or (ii).

The following is a summary of the public comments on the proxy provisions located at § 433.68(e)(3)(iii), and our responses.

Comment: Many commenters expressed concern regarding a perceived lack of clarity in the proxy criteria for terminology equivalent to Medicaid. Several commenters expressed concern with a lack of standards for how CMS will determine the "same effect as Medicaid" or what the agency will consider as constituting a proxy for Medicaid. Several commenters recommended CMS define explicit standards, outside of illustrative examples, for the proxy classification criteria in the final rule. These commenters sometimes noted that these standards would provide additional clarity on the provision. Several commenters stated that the vague standard for the proxy provisions would make State revenue sources less predictable since they would not know if CMS would consider their descriptions a proxy or not. In addition, a commenter stated that because of the lack of clarity for the proxy provision States may not develop tax programs because their taxes could be disapproved retroactively. A commenter described the proxy as overly complex. Finally, some commenters stated that the ambiguity of the proxy provision will cause CMS to expend additional resources to determine if a tax rate group uses a proxy or not.

Response: We respectfully disagree with the commenters that § 433.68(e)(3)(iii) and its associated preamble language lacks clarity. While we acknowledge that we did not provide a comprehensive list of every possible way that States could design proxy language, which would not be a feasible task, we believe that the overall purpose and intent of the provision is clear. The regulation is intended to prevent States from circumventing the new, additional requirement to demonstrate that a tax is generally redistributive by creating provider

group designations intended to be able to tax the Medicaid program more. This is not a baseless concern. There have been instances in the past where States have appeared to interpret Federal requirements in ways that, while not explicitly stated, may have had the effect of circumventing clear Federal statutes and regulations. For example, the permissible classes upon which States may impose health care-related taxes are listed at section 1903(w)(7) of the Act and § 433.56. States may not impose a health care-related tax upon health care items and services other than those listed in those places without experiencing a penalty spelled out in statute at section 1903(w)(1)(a)(2) of the Act and § 433.70(b). A health care-related tax, as defined by section 1903(w)(3)(a) of the Act and § 433.55, in part, is a tax where at least 85 percent of the burden falls on health care providers, or under which the treatment of individuals or entities providing or paying for health care items or services is different than the tax treatment provided to other individuals or entities. In the past, there have been instances where States have structured broad taxes in ways that included health care items or services (as well as non-health care items and services, and non-health care providers) which, when the health care items and services included in the tax are considered independently, did not meet the criteria for a permissible tax class under Federal requirements. After identifying such arrangements, we issued a letter to all States reminding them of statutory and regulatory requirements, outlining future compliance expectations, and issued a disallowance to one State to enforce compliance that continued non-compliance even after the all-State letter.²² Without the proxy provision we are finalizing at § 433.68(e)(3)(iii), States may likewise attempt to circumvent Federal requirements on health care-related taxes by describing Medicaid without using the word Medicaid for the purpose of evading the additional requirements to demonstrate a tax is generally redistributive. We use the word “defined by” in § 433.68(e)(3)(i) and (ii) to encompass only those situations where the State uses the word Medicaid or its State-branded equivalent (that is, the proper name of the State’s Medicaid program and/or State Medicaid agency). We do not wish

to leave the door open to this kind of manipulation.

Regarding the request to provide “explicit standards” outside of illustrative examples, as noted, such a list would be impossible to create. The proxy provision precludes States from adopting synonyms for Medicaid without using the word Medicaid to evade the additional requirement to demonstrate a tax is generally redistributive. There may be innumerable ways someone could describe something without using the proper name of the thing itself, but achieve the same effect. Any attempt to produce a definitive list would be inherently incomplete. We disagree that States would have uncertainty or confusion about whether a tax violates the proxy provision or not. States that develop a proxy for Medicaid would do so to circumvent the additional requirement to demonstrate a tax is generally redistributive. Because of this, these States would, necessarily, be aware that the proxy provision could apply to their tax rate group. By contrast, if a State begins with a legitimate public policy purpose (as discussed earlier in this preamble) in mind when designing its tax program, we expect that that purpose will be evident on the face of the State’s waiver request or will be elaborated during our collaborative waiver review process, such that the State need not be concerned that its tax program design would be regarded inaccurately as a proxy for targeting disproportionate tax burden to Medicaid. If States have additional questions about how the proxy provision may affect them, we encourage States to request technical assistance from us.

While we appreciate the commenter’s concern for the time and resources that our staff will spend implementing the new proxy provision, the addition of the provision will not substantially increase the workload that we already have when processing waiver requests. We currently engage with States on a wide variety of issues related to their health care-related tax waiver submissions, and as stated, the information we would gather to make our assessment is part of this standard work.

Comment: A few commenters expressed concern that the proposed provision would create confusion for States looking to modify existing or design new provider taxes and would allow the agency to alter what it would consider to be a proxy. A few commenters noted this rule moves away from the reliance on statistical tests to determine broad-based and uniform waiver compliance. Some commenters

expressed specific concern that the rule is directly in contrast to the agency’s original implementation of the B1/B2 and P1/P2 tests. A commenter urged CMS to base proxy determinations solely on data rather than subjectivity. A commenter expressed concern that the proposed rule would prohibit a long-standing Medicaid proxy terminology in the State’s health care-related tax program even though the tax program’s goal is to align Medicaid financing with delivery system needs. Another commenter urged CMS to allow States to demonstrate their compliance with this rule by using a comprehensive review process. A commenter believed the lack of objective standards may lead to an arbitrary application of this rule.

Response: We respectfully disagree with commenters who assert that the proposed provision would create confusion for States looking to modify existing or design new provider taxes. If a taxpayer group is defined using proxy for Medicaid and has the same effect as § 433.68(e)(3)(i) and (ii), avoiding the word “Medicaid” in an attempt to evade the additional requirement to demonstrate a tax is generally redistributive, this would violate § 433.68(e)(3)(iii). Conversely, if it does not use a proxy in this manner (or have the same effect as § 433.68(e)(3)(i) and (ii)), it would not. We concede that the determination of what does and does not constitute a proxy under this provision necessarily lies with the agency. However, we have an obligation, in this and all requirements, to apply standards consistently. Therefore, we have attempted to provide as many examples and as much logic as possible to help States understand the standards we will apply.

We respectfully disagree with commenters that the rule, as a whole, moved away from statistical tests. States are still required to pass the P1/P2 or B1/B2 test as applicable. The regulations finalized in this rule are additive. Section 433.68(e)(3)(i) and (ii) rely on straightforward comparisons.

Section 433.68(e)(3)(iii) is not a statistical test because the novel element that paragraph (e)(3)(iii) introduces beyond the straightforward comparison is an assessment of language. There is no statistical test to determine whether an alternative description is being used to circumvent the additional requirement to demonstrate a tax is generally redistributive. However, although we anticipate many cases will be clear, this does not make the assessment somewhat subjective. As a result, we believe that the proposed approach offers flexibility to States

²² SHO #14-001, “Health Care-Related Taxes,” issued on July 25, 2014, available at <https://www.medicaid.gov/federal-policy-guidance/downloads/sho-14-001.pdf>.

while preserving the fiscal integrity of the Medicaid program.

We do not agree with the commenter that simply because the State has had “Medicaid proxy terminology” in place for a long time, that we should provide for some sort of waiver for this arrangement. First, while we are not currently aware of any States that exploit the loophole using proxy terminology to do so, States have not needed to use proxy terminology as the current regulations permit direct use of Medicaid terminology so long as the waiver passes the statistical test. Next, States will have adequate periods of transition outlined in the transition period of this final rule. In addition to the transition period, we also issued a letter discussing the transition periods after the enactment of the WFTC legislation. These transition periods are described in greater detail in section II.D. We also believe that the commenter may be misunderstanding what constitutes a prohibited proxy methodology under § 433.68(e)(3)(iii). The rule does not prohibit States from adopting lower tax rates for provider groups that happen to have lower Medicaid utilization—provided there is a legitimate public policy reason unrelated to directing tax burden to Medicaid. For example, many States exclude nursing facilities services provided by CCRCs from nursing facility taxes based on non-Medicaid policy considerations. If the commenter wishes to receive a definitive assessment of their State’s particular methodology, we will need to review the specific arrangement in detail.

We agree with the commenter that States and CMS should look at the entire tax program comprehensively when determining if a proxy is present as defined by § 433.68(e)(3)(iii). We believe that our rule as proposed does this. We disagree with the commenter that there is a “lack of standards” or that this will lead to arbitrary applications. While there does not, and cannot, exist a definitive set of elements that need to be present for the proxy provision to apply, we believe that the examples we have provided and the legitimate public policy purpose standard we have laid out in the proposed rule gives States an understanding of the rules that apply under this final rule and the amendments made by section 71117 of the WFTC legislation. Finally, we strive to consistently maintain equal treatment for all States, and we generally take into consideration past precedents in determining future action. We believe this approach provides a sound framework to prevent arbitrary application of Federal legal

requirements while preserving necessary flexibility.

Comment: A few commenters urged CMS not to codify examples in regulation text, in particular examples of impermissible taxes, as it may lead to uncertainty or confusion.

Response: The aim of the examples provided in the proposed rule at § 433.68(e)(3)(iii) was not to provide a list of taxes that would definitively be either permissible or impermissible. In general, we would need to examine the specific tax in question to make a definitive determination. Rather, these examples were intended to be illustrative of the types of taxes that may serve as proxies versus those that may not. We agree with the commenters that providing an exhaustive list of such proxies would not be possible. For this reason, we have declined to do so in this rule.

Comment: A commenter requested that CMS align the proposed rule with the WFTC legislation, specifically by replacing “any characteristic that results in the same effect” with “any description that results in the same effect.” The commenter believed a “characteristic” of a tax design may be distinct from a “description” used within a tax design.

Response: We agree with the commenter’s suggestion to align the regulatory language with the language in the WFTC legislation that uses the term “description” and not “characteristic,” and we are finalizing that change. However, we do not believe that there is a substantive difference between the word “description” as used in the WFTC legislation and the word “characteristic” as used in the proposed rule. In the health care-related tax waiver narrative letters that States submit to us, they must describe to us the characteristics of their various tax rate groups for CMS to make appropriate determinations, so in practice these terms are functionally the same. However, we wish to clarify that the word “description” does not only include the words that the State uses in the letter but can also include any supporting information or documentation that it provides to us during our consideration of the health care-related tax in question. As a result, whether the regulation contains the word “characterization” or the word “description,” the same result is achieved. States may not circumvent the additional requirement to demonstrate a tax is generally redistributive by using alternative language to achieve the same prohibited result as explicitly referencing Medicaid or its State-specific equivalent. To conform with the

language of the statute, we are finalizing the language of § 433.68(e)(3)(iii) with a revision that replaces “characterization” with “description.”

Comment: A commenter expressed concern that CMS identified teaching hospitals for scrutiny as a tax rate group because they are defined based on criteria that mirror Medicaid eligibility or other defining characteristics.

Response: Section 433.68(e)(3)(iii) does not create a blanket prohibition on States establishing separate tax rates for “a particular provider type that is associated with high Medicaid utilization (such as State or other public facilities and university/teaching hospitals.). It also does not suggest that these facilities will be subject to any special scrutiny in and of themselves. The “teaching hospital” example in question would only be potentially problematic if a State places a higher rate on these facilities than on other facilities with relatively lower Medicaid utilization rates. This is because one could conceive how “teaching hospitals” would constitute a legitimate public policy purpose. States may continue to impose relatively lower tax rates on these providers (with relatively higher Medicaid utilization) or tax them at the same rate as other providers. Additionally, we remind commenters that there may not be a singular factor that will be dispositive of the existence of a proxy for Medicaid. Rather, we will analyze all available information, considering the overall design of the tax, provider classifications, and the practical effect of the tax across provider types. The goal is to ensure compliance with statutory and regulatory requirements—not to penalize providers or States for permissible rate structures that accomplish legitimate policy goals. We would likely need to examine the commenter’s State’s specific situation before making definitive determinations on the permissibility or impermissibility of any specific arrangement related to a health care-related tax.

Comment: A commenter expressed support regarding the interpretive leeway afforded to States and CMS’ permission of certain instances of proxy terminology discussed in the proposed rule’s preamble.

Response: We appreciate the commenter’s support. We agree that these provisions afford States and CMS sufficient flexibility to address the application of the provisions to specific situations.

Comment: A commenter indicated there is room for interpretation in the provision and commended CMS for allowing this interpretive space for nursing home provider taxes.

Response: We thank the commenters for their supportive feedback and agree that this standard provides States with some flexibility.

Comment: Many commenters expressed concern regarding the lack of clarity on the criteria used to determine legitimate public policies. Several commenters urged CMS to provide additional information about the process and criteria for defining legitimate public policy. Several commenters recommended CMS allow greater flexibility in defining legitimate public policy due to unintended ramifications the rule may have on legitimate public policies that may not meet CMS' standards. A commenter requested that CMS confirm that the definition of "legitimate" does not prescribe the nature, subject matter, or rationale of a public policy for the purposes of § 433.68(e)(3)(iii). Another commenter recommended that CMS revise the rule to define a tax as generally redistributive if it serves a legitimate public policy goal and suggested the specific factors CMS described for considering this determination should be codified in regulation.

Response: The term "legitimate public policy purpose" does not appear in the regulatory text of § 433.68(e)(3)(iii). Instead, we introduced this concept in the proposed rule preamble to provide helpful guidance to States in assessing when the provision may apply because we have determined that the State is using a proxy methodology to single out Medicaid. As a reminder, § 433.68(e)(3)(iii) only comes into play when two conditions are met. First, the State must create taxpayer groups defined without explicitly referencing "Medicaid" in the description of the taxpayer groups but using a proxy that nevertheless singles out Medicaid. Second, the State must impose a tax on a taxpayer group that has the same effect as § 433.68(e)(3)(i) or (ii). That is, there must be a higher tax rate on a taxpayer group that serves a generally higher level of beneficiaries in the Medicaid program. Acknowledging that inadvertent associations may result from permissible tax structures requires the analysis to determine whether the State is using a proxy methodology to single out Medicaid. This provision was designed to strike the appropriate balance between fiscal oversight and State flexibility. We provided several illustrative examples of proxy descriptions that we believed may fall within the scope of this provision. We stated, "[o]ther possible examples of tax rate groups that States may wish to give a tax break to for policy reasons not

related to directing higher relative tax burden to the Medicaid program include psychiatric hospitals and rural hospitals, among others." (90 FR 20589). We noted that States may want to give breaks to these types of facilities for what we called a "legitimate public policy purpose." We contrasted that with, "grouping that does not appear to have a connection to a legitimate policy purpose."

Our intent is not to restrict States from offering any tax breaks or exclusions to providers with relatively low Medicaid utilization, as long as those decisions are based upon legitimate public policy considerations; where they are, we anticipate that we would not determine that the State is using a proxy in the manner prohibited by § 433.68(e)(3)(iii). However, if a State creates a tax rate group that does not have a legitimate public policy justification and that was created solely for the purpose of designing a health care-related tax that exploits the Medicaid program, we may consider such a grouping a proxy for Medicaid taxable units or utilization.

We do not believe that it would be possible to provide a comprehensive list of "legitimate public policy purposes" as suggested by the commenters. States may have a wide variety of legitimate policy purposes in mind that relate to different State circumstances. These factors could relate to differences in public health priorities, State fiscal administration, or the health insurance marketplaces in respective States. For example, some States may have more tribal health considerations, others may have more rural health concerns, others may have more urban health concerns. We have frequently encountered differences among States regarding how they spend money on their Medicaid programs, which programs they choose to fund, in what amounts, and using what methodologies. We believe that it would be overly prescriptive and not sufficiently respectful of States' prerogatives and the principles of cooperative Federalism to provide States with a list of such principles. Additionally, we generally defer to States when judging the legitimate nature of their public policy purposes unless we have specific reasons to question them. If a State's justification is rational and does not appear to be designed to avoid complying with a Federal requirement, we are likely to accept it. Our goal is to ensure that health care-related taxes for which a waiver is approved are generally redistributive in nature, as required by statute. Within that framework we are

committed to providing States with as much flexibility as possible.

The use of the word "legitimate" is not meant to be a value judgement on the sagacity of a State's choices in its public health and other public policy priorities. We are aware that States have many, often competing priorities within the State when it comes to their Medicaid programs and serving their Medicaid beneficiaries. As the entity that is generally more familiar with the local concerns, the State has invaluable insight in determining its public health and other public policy priorities. As a result, States are free to balance these interests against one another and make decisions that are in the best interests for their populations, provided that they stay within the confines of Federal law and regulations. The term is intended to contrast with a tax rate group created for the purpose of enabling the State to circumvent the requirement to demonstrate a tax is generally redistributive located at § 433.68(e)(3)(i) and (ii).

We do not believe that "legitimate" requires a specified definition in this context separate from its plain language meaning, as we are using it descriptively rather than as a term of art. It is an actual, real, not fictional, group that a State has a public policy or public health reason to treat in a certain way. It is not something contrived or spurious that has been concocted or fabricated for the purpose of evading the requirements to be generally redistributive. We also believe the preamble is the appropriate place for this discussion and decline to adopt the commenter's suggestion to add the legitimate public policy considerations to the regulation. We do not want to be overly restrictive to States by adopting a special definition of what "legitimate" is. If CMS defined the term in regulation, this would constrain States more than necessary. In order to preserve State policy flexibility, we have decided to not include such a definition in the regulatory text.

Comment: When considering if something is a "legitimate public policy" purpose, a commenter suggested that CMS should focus on allowing States to determine that a given provider tax structure supports access, continuity of care, and Medicaid providers in underserved areas. Another commenter suggested that States be allowed to tailor tax rate groups specific to their State.

Response: We agree with the commenter that access to care is a critical consideration for the future of the Medicaid program. In addition, we agree with the commenter that, in certain instances, access to care may be

a “legitimate public policy purpose” that the State uses to define its tax rate groups. For that reason, we gave several examples of providers that are critical in maintaining access to care in the proposed rule, such as sole community hospitals and psychiatric hospitals. In addition to access to care, States may have other purposes such as quality of care and efficiency of care. These are just a few of several legitimate public policy purposes that States could point to in this situation. What matters is not what order the State places for its healthcare or other public policy priorities, but that the purpose itself is legitimate and not contrived for the purpose of evading the requirement to demonstrate a tax waiver is generally redistributive. Finally, we agree with the commenter that States often may tailor tax rate groups in line with legitimate public policy priorities specific to their State, provided they do not violate any Federal requirements. States have considerable leeway in this matter as long as they do not violate Federal statute and regulations.

Comment: A few commenters recommended CMS allow States to demonstrate policies aligning with public policy goals and promoting objectives of the Medicaid program.

Response: We appreciate the commenters’ recommendation, which aligns with our standard review practices. In cases where we have questions or concerns about the tax rate for a specific tax rate group, we would generally follow the approach suggested by the commenters and provide States the opportunity to explain the rationale behind their tax structure. If a State can demonstrate that its policy supports legitimate public policy goals, certainly including Medicaid program goals, and presents a clear and reasonable rationale, we will consider this explanation when making its determination. Additionally, we note again that there may be no one dispositive factor, but a combination of multiple factors taken as a whole that are likely to guide our determination on the applicability of § 433.68(e)(3)(iii) to a specific tax rate group. We encourage States to provide us with detailed and relevant information that supports their position, while avoiding unnecessary or excessive documentation that may not aid in the evaluation.

Comment: Many commenters agreed with preamble language regarding tax structures relevant to skilled nursing facilities, community hospitals, intermediate care facilities, and rural hospitals that may be permissible when designed to advance a legitimate public policy purpose.

Response: We appreciate the commenters’ positive feedback and support. We attempted to provide a list of illustrative examples of legitimate public policy purposes in the proposed rule. We are glad that commenters found the examples helpful. Our goal was to clarify that we do not intend to interfere with a State’s efforts to promote important policy objectives—such as supporting access to care in rural areas or for populations with specialized needs—so long as those efforts are not designed to circumvent Federal requirements. We will continue to consider such legitimate policy goals when evaluating the permissibility of health care-related tax structures.

Comment: Many commenters requested similar consideration for tax structures relevant to a variety of facility and care types, including safety-net hospitals, teaching hospitals, essential hospitals, community health centers, emergency medical services, behavioral health facilities, and children’s hospitals. A commenter suggested that CMS place these provider types in the text of the proposed rule as opposed to the preamble only, which we presume meant placing the provider types in regulation text as opposed to the preamble only.

Response: As we noted in the proposed rule, the examples provided were intended to be illustrative only. They do not represent a comprehensive or exhaustive list of permissible groupings. We remain committed to work directly with States to evaluate their specific tax structures. We encourage States to seek technical assistance early in the process if they are unsure whether their proposed tax structure could be affected by § 433.68(e)(3)(iii). While the rule includes illustrative examples of provider tax rate groupings, these were not intended to represent a definitive list of “permissible tax groupings.” Rather, the examples reflect groupings that we have observed in the past and that, based on prior experience, generally have not raised concerns under the standard described in § 433.68(e)(3)(iii)—specifically, the prohibition on using tax rate group descriptions as a proxy for low or high Medicaid taxable units or utilization to circumvent the additional requirement to demonstrate a tax is generally redistributive. In addition, the main focus of the provision is not to provide examples of groupings that would be permissible, but to provide a list of groupings that would likely be impermissible if used as a proxy for Medicaid utilization. As a result, we decline to include specific types of

“legitimate” provider groupings in the text of the regulation as suggested by the commenter.

Comment: A few commenters recommended CMS leverage their proposed definitions to conduct a 1-year, data-driven analysis of current health care-related tax revenue allocation. The commenters pointed out that there is often a disconnect between the sources of non-Federal share, including health care-related taxes, on the one hand and the programs that the payment actually funds on the other. The commenter stated that further study is needed in this area.

Response: We conduct oversight to trace the flow of funds from health care-related taxes to the actual payment mechanisms that they fund when reviewing State payment proposals. These include asking States to tie their taxes to specific State plan amendments and State-directed payments that are funded by the tax. In addition, we have asked States to provide dollar amounts paid to providers funded by the health care-related tax for which they are requesting a health care-related tax waiver. However, while we support enhanced data collection and payment transparency, the goal of the commenter to tie the sources of funding more directly to the sources of non-Federal share is beyond the scope of the present rule. We remain committed to close collaboration with States and other interested parties to ensure compliance with the regulation and to support transparency in how health care-related taxes are designed and implemented.

As a result of the public comments, and based on section 7117(a)(1) of the WFTC legislation, which added the proposed language of the regulation with limited changes as section 1903(w)(3)(E)(iii)(III) of the Act, we are finalizing § 433.68(e)(iii) as proposed with the minor modification of substituting “description” for “characterization.”

D. Permissible Health Care-Related Taxes—Transition Period (§ 433.68(e)(4))

We made every effort to ensure the impact of the proposed rule would be limited to those health care-related taxes that exploit the statistical loophole. Moreover, we understand that the updated requirements proposed in previous sections of the proposed rule and now finalized in this rule will require those States with such taxes to modify or end them to prevent a reduction in medical assistance expenditures eligible for FFP. Our aim is to close the loophole as soon as possible, while acknowledging State

circumstances. Therefore, we proposed to provide a transition period only for those States with currently approved tax waivers that exploit the loophole that would be out of compliance with § 433.68(e)(3) that have not received the most recent approval within the past 2 years. We had also sought comment on various alternatives (discussed in more detail later in this section), including whether to provide different transition periods based on permissible class, or a transition period that is longer than 1 year for taxes that qualify for a transition period, or no transition period for all tax waivers that exploit the

loophole. We are finalizing alternatives to the proposed transition periods to distinguish MCO taxes that exploit the loophole from other permissible classes and to provide additional time, given the relatively recent release of guidance, discussed in the next paragraph.

On November 14, 2025, CMS released a “Dear Colleague” letter²³ providing guidance to States on the provider tax provisions in the WFTC legislation, including the transition periods for section 71117 the Secretary was permitting, as authorized under the WFTC legislation. This letter stated that tax waivers in the MCO permissible

class would have at least until the end of the State fiscal year that ends in 2026 to comply with the new requirements added by the WFTC legislation. Taxes within all other permissible classes would have until the end of the State’s fiscal year that ends in 2028. We are finalizing policies that in all instances provide as much, and sometimes more, time than the transition parameters in the “Dear Colleague” letter. Table 1 sets forth the compliance dates (that is, the timeframe by which a tax must comply), based on transition periods finalized under this final rule:

TABLE 1: Compliance Dates Based on Transition Periods for WFTC legislation and This Final Rule

Tax Permissible Class	Most Recent Waiver Approval	Compliance Date
MCO	2 years or less	January 1, 2027
MCO	More than 2 years	State Fiscal Year 2028
Non-MCO	Any length of time	State Fiscal Year 2029

Consistent with the other policies finalized in this rule, this will not affect any non-loophole taxes. The transition period length will be the length of time between the effective date of this final rule and when the State’s health care-related tax waiver that no longer conforms to regulatory requirements would have to be modified or discontinued to avoid a reduction in medical assistance expenditures. The compliance date, in turn, represents the time after the transition period, when a State must be in compliance. We proposed to determine eligibility for a transition period based on the most recent approval date of the waiver in which the State utilizes the loophole.

We invited comment on the length of time since a waiver was most recently approved and the time of the transition period applicable to those lengths of time, including whether the transition periods should be shorter or longer, and specifically whether the lengths of the transition periods should be adjusted to account for States that have a 2-year legislative cycle (see related discussion later in this section). We also solicited comments on whether the final rule should instead include transition period lengths for each category of State waivers by permissible class, such as different lengths of time for inpatient hospital taxes versus MCO taxes.

We also invited comments on whether different permissible classes would be more or less burdensome to rectify a tax waiver that utilized the loophole. We did not receive any comments on this request for feedback. While we did not distinguish between MCO and non-MCO taxes in the proposed rule, we did discuss as an alternative policy under consideration whether different transition period lengths should be given for MCO taxes and taxes on other permissible classes (90 FR 20591). Due to how interrelated many of the comments on this section were, we respond to all comments received on the transition periods and proposed alternatives at the end of this section.

First, we specifically proposed that States with health care-related tax waivers that do not meet the requirements of paragraph (e)(3), where the date of the most recent approval of the waiver that violates paragraph (e)(3) occurred 2 years or less before April 3, 2026, would not be eligible for a transition period. Any collections made under that waiver following April 3, 2026 could have been subject to deduction from medical assistance expenditures as described in § 433.70(b). For example, if a State’s most recent approval for a tax loophole waiver was received on December 10, 2024, under our proposal, regardless of permissible class, the State’s waiver

would no longer be valid on April 3, 2026 under this policy, because the effective date is less than 2 years after December 10, 2024.

We did not propose a transition period for waivers with the most recent approval date 2 years or less before the effective date of the final rule for several reasons. States that fall into this category obtained their most recent approval knowing that CMS intended to undertake rulemaking in this area, as was communicated in a companion letter with their approval. We recommended that impacted States carefully consider how to mitigate or avoid possible challenges that could result from rulemaking. Although this circumstance could be administratively burdensome for States to address, an affected State would have risked that burden by requesting the exploitative waiver, and by not taking corrective action sooner, and with no guarantee of any type of transition period. Under the policies finalized in this rule, these taxes will now have a transition period that ends December 31, 2026. In other words, the tax would need to comply with the new requirements by January 1, 2027. Disallowances for taxes that remain noncompliant with the requirements of this final rule may have associated revenues deducted from expenditures eligible for FFP, starting with revenues collected on the first day

²³ Available at https://www.medicaid.gov/medicaid/downloads/provider_taxes_dcl_11142025.pdf.

after the end of the transition period. As noted, for this first transition period, that date will be January 1, 2027. As discussed previously in this final rule, the transition periods finalized in this rule, in all instances, either maintain or add to the transition parameters in the “Dear Colleague” letter. This is also more generous than the proposed rule, which proposed no transition period for these taxes with recently approved waivers.

Second, we proposed that States with health care-related tax waivers that do not meet the requirements of paragraph (e)(3), where the date of the most recent approval of the waiver that violates paragraph (e)(3) occurred more than 2 years before April 3, 2026, must either submit a health care-related tax waiver proposal that complies with paragraph (e)(3) with an effective date no later than the start of the first State fiscal year beginning at least 1 year from April 3, 2026, or otherwise modify the health care-related tax to comply with this rule and all other applicable Federal requirements with an effective date not later than the start of the first State fiscal year beginning at least 1 year from April 3, 2026.

Under this final rule, MCO taxes that exploit the loophole with approvals more than 2 years before the effective date of the final rule will still have until their first State fiscal year beginning at least 1 year from April 3, 2026, as proposed. For example, if a State’s last waiver approval for an MCO tax was more than 2 years prior to April 3, 2026, and the State’s fiscal year begins April 1, 2026, the final day of that State’s transition period is March 31, 2027, and that State would need to submit a compliant health care-related tax waiver, or otherwise address the tax waiver’s noncompliance, with an effective date no later than April 1, 2027. The regulatory language we are finalizing now reflects that this transition period is specific to MCO taxes approved more than 2 years before the effective date of the final rule.

We believe providing at least 1 full State fiscal year for MCO taxes with a most recent approval of more than 2 years before the effective date of the final rule is an appropriate timeframe for several reasons. As discussed in the proposed rule, we considered that past rulemaking that involved transition periods often had longer transition times in consideration of States that might have biennial legislative sessions. Out of all the affected States (that is, States that have currently approved tax waivers that take advantage of the statistical loophole and do not comply with paragraph (e)(3)), all States have

annual legislative sessions, which should give them sufficient time for their respective legislatures to enact any necessary changes. There is one State that has a biennial budget cycle, and this State will receive a transition period of at least a full State fiscal year. Also, we noted that § 433.72(c)(2) specifies that a waiver will be effective for tax programs commencing on or after August 13, 1993, on the first day of the calendar quarter in which the waiver is received by CMS. For instance, in the event of an April 1, 2026, effective date for the final rule, a State with a 1-year transition period and a State fiscal year that begins July 1 would have until September 30, 2027, to submit a waiver package with an effective date of July 1, 2027. In this case, the State has nearly 3 extra months to submit a compliant waiver. Depending on when a State’s fiscal year begins relative to this rule’s effective date, a State eligible for the transition period may have approximately 2 years to remedy a noncompliant tax waiver under our policy.

We are modifying this final rule from the proposed to generally align with (and in some cases, add to) the transition parameters in the “Dear Colleague” letter, consistent with alternative transition policies discussed in the proposed rule. As reflected in Table 1, the last category of taxes affected by this rule, non-MCO taxes, will have until the end of the State fiscal year that ends in calendar year 2028 to bring their taxes into conformity with the new Federal requirements. This maximum allowable time is different than the proposed rule and consistent with what was communicated in the “Dear Colleague” letter. Following the enactment of section 71117 of the WFTC legislation, when deciding whether and in what capacity to grant a transition period under the section 71117(c) authority, we determined it was appropriate to provide additional transition period time for non-MCO tax waivers that exploit the loophole. In our work with States to identify and understand the taxes that exploit the statistical loophole, we have found that the most egregious examples of shifting the burden of financing Medicaid to the Federal government exist in MCO taxes. As just one example, one approved MCO tax waiver that exploits the loophole imposes a rate on Medicaid taxable units that is 117 times higher than comparable commercial business. Conversely, a hospital tax that exploits the loophole taxes Medicaid 3.5 times higher than comparable commercial business. As such, CMS oversight

prioritized quickly identifying MCO taxes that appear to exploit the loophole, and we have expressed concerns to States with such taxes, in most cases before State implementation of the loophole tax. Consistent with CMS’ findings that MCO taxes are the permissible class of tax that most commonly implicates the loophole, we believe that shorter transition period for such taxes is necessary to allow States and CMS to remedy the most egregious MCO-taxes.

We also stated in the proposed rule that States with new tax loophole waiver proposals pending before CMS as of the effective date of this final rule would not be eligible for a transition period. This remains true in the final rule and is consistent with the transition period policy discussed in the “Dear Colleague” letter. Additionally, we note that after the July 4, 2025, enactment date of the WFTC legislation, CMS does not have authority to approve taxes that use the loophole closed by section 71117 of the WFTC legislation, and this final rule. In the time since the proposed rule, we have received another tax waiver request that proposes a tax that exploits the loophole. We noted in the proposed rule that in the event that additional States submit waivers that exploit the loophole, and these waivers were approved prior to the effective date of this final rule, CMS would issue a companion letter with their tax waiver approval letter, and the State would not receive a transition period for its tax. This recently received loophole tax waiver request is still pending. As just noted, due to the passage of the WFTC legislation, CMS is unable to approve the waiver. The waiver is also not eligible for the transition periods that are being implemented via this final rule or that are discussed in the “Dear Colleague” letter.

We previously signaled in the November 2019 proposed rule that this is a policy area we wanted to address. As part of our standard health care-related tax waiver approval letters of the broad-based and/or uniformity requirements, CMS informs States that “any changes to the Federal requirements concerning health care-related taxes may require the State to come into compliance by modifying its tax structure.” Given that CMS has signaled it intended to address the loophole in the November 2019 proposed rule, health-care related tax waiver approval letters, and the proposed rule, we believe that States should be sufficiently aware of our intent to make changes in this area and their responsibility to adjust accordingly.

Furthermore, of the seven States with existing loophole waivers that we have identified as of the date of the proposed rule, four have been issued companion letters with their most recently approved tax waiver letters, and all four waivers have approval dates within 2 years of this final rule's effective date. These companion letters were intended to formally notify these States that we viewed their tax structures as problematic and intended to address the issue through notice and comment rulemaking soon.

There are three States that have not been issued companion letters that we expect to be affected by this final rule. Given CMS' actions described previously in this final rule, we believe that they should still be sufficiently informed through previous actions that signaled our intent to address the loophole issue; moreover, we have communicated with these States directly, as part of our standard practice of offering technical assistance to States. These States also will all be eligible for longer transition periods under the policies finalized in this rule, with none receiving the shortest transition period. Likewise, we are offering technical assistance to all States that we anticipate might be impacted by this rule to ensure all are aware of the requirements and timeframes and will be well positioned to meet them.

Regardless of the length of transition period a State will receive for its waiver, we will consider a tax waiver proposal to be in compliance with the requirements in this rule if (and when) the tax in question is generally redistributive as described in section 1903(w)(3)(E)(ii)(I) of the Act and § 433.68(e). We note that the proposal would also need to meet all other requirements for tax waiver proposals and health care-related taxes in general, which still includes the P1/P2 test and B1/B2 test, where applicable, in addition to the new requirements in paragraph (e)(3). It does not mean CMS will automatically approve a waiver renewal or amendment request. CMS will still closely examine any renewals or amendments associated with taxes that exploit the loophole for any other violations of statutory and regulatory requirements, including hold harmless. CMS routinely provides technical assistance to States prior to the formal submission of a tax waiver proposal and would provide similar assistance to affected States upon request.

Rather than ending health care-related tax waivers that do not meet the requirements of this final rule and section 71117 of the WFTC legislation, States are also permitted to adjust the

taxes in question in such a way as to be compliant with Federal requirements without needing to submit a new tax waiver proposal. Specifically, States are permitted to make the structure of a tax uniform, which would then not require the submission of a new tax waiver (on the basis of uniformity; a tax that is not broad based would still require a waiver). For example, a State may wish to adjust its tax to be imposed on all non-Federal, non-public entities, items, and services within a permissible class and to be applied consistently in amount/rate across all taxable units. The tax would also need to comply with the hold harmless provisions specified at § 433.68(f), but we would consider such a tax to be broad-based and uniform, and it would not require a waiver at all. CMS intends to monitor the individual circumstances of States that would be affected by this rule to ensure that affected taxes have been amended if we do not receive a new tax waiver request for review and approval. As another example, a State could make a uniform change to a tax, while still not making the tax uniform overall, without requesting a new waiver. A uniform change might be a change to a tax that reflects the same percentage tax rate change for every tax rate group of providers. However, we note that based on the scale of the difference in rates in loophole taxes, it may not remedy the loophole issue to change the tax uniformly.

As stated, this rule is not intended to be disruptive to States' health care-related tax programs. We acknowledge that this rule will require some States to make changes, with different applicable timeframes. However, we believe the rule will likely have a minimal impact on the total amount of tax revenue States could collect because a State's ability to collect taxes will remain unchanged. In other words, affected States would have the opportunity to modify their existing taxes to come into compliance with all requirements and maintain the same or similar level of revenue collection, if that is the State's policy choice. Further, it is possible that tax waivers that exploit the loophole that are modified to comply with the proposed rule would result in increased financial benefit to taxpayers that serve relatively high percentages of Medicaid beneficiaries because those taxpayers would no longer bear a disproportionate tax burden in relation to taxpayers that serve relatively lower percentages of Medicaid beneficiaries.

Finally, we proposed that, once the transition period for a tax waiver that qualifies under paragraph (e)(4) has expired, CMS may deduct from a State's

medical assistance expenditures revenues from health care-related taxes that do not meet the requirements of paragraph (e)(3) as specified by section 1903(w)(1)(A)(iii) of the Act and § 433.70(b). Under § 433.70(b), CMS can deduct from a State's medical assistance expenditures, before calculating FFP, revenues from health care-related taxes that do not meet the requirements of § 433.68. However, we assured States that payments made with revenue collected during the transition period in accordance with an approved existing tax waiver that exploits the loophole would not be subject to disallowance on the basis of these new regulatory requirements.

We proposed multiple alternatives to the transition period policies proposed in this section. First, we proposed, alternatively, that waivers that do not comply with proposed § 433.68(e)(3) approved within the past 3 years before the effective date of the final rule would not receive a transition period. As compared to the proposed policy, this 3-year period would include an additional, currently approved tax waiver that exploits the loophole, for a total of five loophole tax waivers that would not receive a transition period, instead of four waivers. We did send a companion letter with the most recent approval for this additional loophole tax waiver, so under this alternative transition period, all States with loophole tax waivers that would not receive a transition period still would have received a companion letter expressly notifying the State of our concerns about its tax structure with the most recent waiver approval. We further proposed, alternatively, to extend this either 2 or 3-year timeframe since the last approval as may be needed in the final rule to capture the four most recently approved loophole tax waivers (if we finalized a 2-year transition period) or five most recently approved such waivers (if we finalized a 3-year transition period), to ensure that these specific waivers (with which most recent approval we sent the State a companion letter) do not receive a transition period. Finally, we considered an alternative to our proposal of no transition period for more recently approved loophole tax waivers and a 1-year transition period for loophole tax waivers with longer-standing most recent approvals. Specifically, we alternatively proposed to offer no transition period for any loophole waiver, regardless of the time since the most recent approval of the waiver. Next, we alternatively proposed that loophole waivers approved in the 2

years (or 3 years) before the effective date of the final rule would receive a 1-year transition period instead of no transition period, and the longer-standing most recent waiver approvals (more than 2 or 3 years before the effective date of the final rule) would receive a 2-year transition period. We discussed previously the transition periods outlined in the “Dear Colleague” letter, as well as the modified transition timeframes provided to States for their waivers to come into compliance with the new Federal requirements under this final rule.

We invited comments on the transition periods, including whether any of the proposed cutoff timeframes and/or transition period lengths should be shorter or longer. We also invited comments on whether any of the policies in the proposed rule would be disruptive to existing State tax waivers that do not exploit the statistical loophole. The following is a summary of the public comments on the proposed transition periods and our responses:

Comment: Almost all those who commented on the transition period section did so to indicate that the transition periods were insufficient. Many of these commenters also disagreed generally with the proposed bifurcation of transition periods. Several commenters stated that the proposed transition periods seem arbitrary and do not provide adequate time for States to transition. A few commenters stated the transition period must minimize harm to providers and Medicaid beneficiaries. Several commenters recommended a transition period that provides States with a reasonable or adequate amount of time to comply with the proposed requirements. Many commenters that requested CMS provide longer transition periods, such as the 3 years authorized in the WFTC legislation, pointed to prior transition periods CMS had afforded to States. A few commenters pointed to the DRA of 2005 and suggested CMS adopt a similar 48-month compliance period. A few commenters stated that CMS had historically incorporated longer transition periods such as a 10-year phase out of pass-through payments from 2016 through 2027. A few commenters stated that CMS had provided 3-year transition periods in last year’s Medicaid managed care final rule regarding State-directed payments. A few commenters stated that when CMS changed its method of calculating upper payment limits in 2001, CMS provided transition periods of 3, 5, and 8 years depending on the length of time a State had its approved amendments in

place. A few commenters suggested varying lengths of time such as a 5-year transition period. A commenter recommended a 10-year transition period and a commenter recommended a 3- or 4-year transition period.

Many of these commenters stated that without longer transition periods, States would be unable to revise their provider tax structures, resulting in reduced provider services and reduced access to care for beneficiaries. Several commenters stated that the financial stability of hospitals and hospital services would be impacted, and a few commenters specified that safety net hospitals would be particularly affected by the proposed rule. Commenters stated that the financial pressure would lead States to implement changes that adversely impact Medicaid beneficiaries and providers, such as restricting Medicaid coverage, and cutting services and programs. Some commenters that expressed concern about how this would affect hospitals and nursing homes stated it would be particularly felt in rural areas.

Response: We understand the concern about the length of time affected States will have to remedy their tax structure to no longer exploit the loophole. However, as we described in the proposed rule, we want to emphasize again here that impact of this rule is on a narrow subset of taxes that collect revenue via a structure that is not generally redistributive. The circumstance with this policy is distinct from other transition periods referenced by commenters, which were implemented as the result of large programmatic changes. In contrast, with this final rule, we are amending the statute to align with the text and intent of section 1903(w)(3)(E)(ii)(I) of the Act rather than implementing a significant change to Medicaid. The tax waivers that exploit the loophole and do not comply with the provisions of this final rule were inconsistent with the statute requiring taxes for which waivers are approved be generally redistributive in nature both before the amendments made by section 71117 of the WFTC legislation, and explicitly so after.

We also note there was nothing preventing a State from undertaking the necessary steps to change its tax. If a State chooses to reduce payments or services in response to this rule, then that State is making that choice knowingly in the face of other options. Nothing about this rule changes the ability of a State to collect revenue; rather, the rule ensures that a State’s tax meets the statutory definition of “generally redistributive” as provided in section 1903(w)(3)(E)(ii)(I) of the Act.

However, as discussed previously in this rule, we are finalizing transition periods that provide States additional time from what was proposed. We note that we do not have statutory authority, under section 71117 of the WFTC legislation, to provide for any transition period over 3 fiscal years in duration, as was suggested by some commenters.

Comment: A few commenters recommended extending the transition period to 3 fiscal years to ensure adequate time is given to phase out non-compliant taxes without jeopardizing the stability of the Medicaid program, continuity of care and affordability of commercial coverage. The commenters stated that when adjusting tax programs to be compliant, States will have to increase tax rates for commercial health plans, which will increase premiums for individual market coverage. One such commenter stated that these increased tax assessments could result in insufficient premium rates that could place financial strain on health insurers and reduced health plan availability. The commenters opined that by allowing 3 years, States will be able to align changes to commercial plan taxation with individual and employer market rate cycles and avoid market disruption. The commenters stated that without sufficient transition, 2026 premium rates could be insufficient and lead to reduced health plan availability, with a commenter noting that insurers and State regulators are now finalizing 2026 premium rates in various markets. A few commenters suggested more generally that a transition period should be adequate to accommodate rate setting cycles and avoid disruptions to consumers in insurance markets in affected States.

Response: We appreciate the important and constructive feedback of the commenters who shared their concerns and experiences with us. We want to emphasize the assurance we provided in the proposed rule that this rule is narrowly tailored to affect only those State taxes that exploit this loophole and thus harm the stability of the Medicaid program. We further want to emphasize that all States impacted by this rule have engaged in this practice knowing it was not aligned with the intent of the Medicaid program and with awareness that we intended to remedy the situation, either due to the issue arising in prior rulemaking, or because we communicated with them directly about this during the most recent waiver approvals.

While we understand that the amendments in this final rule may not be ideal from the perspective of some interested parties, the “generally

redistributive” requirement is written in statute, and taxes that exploit the loophole discussed in the proposed and this final rule fail to meet this requirement. Furthermore, the many States and taxes that do not exploit the loophole serve as evidence that exploiting the loophole is not necessary to run a Medicaid program. As the Federal steward of Medicaid, we must ensure that all health care-related taxes comply with the Medicaid statute. In recognition of the changes that certain States will need to make to their taxes and the potential time required to implement those changes, we are finalizing transition policies that are more generous than those described in the proposed rule. Otherwise, we are finalizing the policies proposed, apart from minor wording changes, in order to protect the fiscal stability of Medicaid.

Comment: We received numerous comments regarding the authority for the Secretary to grant a transition period of up to 3 years in section 71117(c) of the WFTC legislation. Several commenters stated that allowing a transition period for States with waivers approved 2 years or less before the final rule’s effective date was aligned with Congressional intent and specifically stated the WFTC legislation. Several commenters stated that anything other than alignment with the WFTC legislation for State transition periods would cause confusion and distress for hospitals, providers, and beneficiaries. A commenter added that the WFTC legislation did not contemplate the immediate termination of currently approved taxes. Many commenters requested that CMS use its authority under the WFTC legislation to afford all States with a transition period. A few of these commenters stated that aligning the transition period in the proposed rule with the transition period described in the WFTC legislation would provide States with a clear and consistent transition period, ensure complete compliance, and avoid serious budget impacts to those States with more recent waiver approvals.

Response: When the WFTC legislation was enacted on July 4, it was after the proposed rule had been published on May 15. The nearly exact overlap in language between the proposed regulations and the bill text demonstrates the legislative intent for the bill to align with what we had proposed. As such, we want to draw commenter attention to the specific language of section 71117(c) of the WFTC legislation, which states “subject to *any* applicable transition period” (emphasis added). This language is not a requirement to establish a particular

transition period, but merely the authority to do so. Section 71117(c) of the WFTC legislation goes on to state that the transition period is “not to exceed 3 fiscal years,” rather than stating that the transition period must be 3 years. If we were required to provide 3 years, the plain text of section 71117(c) of the WFTC legislation would have reflected this intent. Instead, Congress granted the Secretary discretion to determine an appropriate transition period to be afforded to States.

As previously discussed, on [DATE], we circulated a letter to our State colleagues describing the transition period the Secretary was granting under the authority in the WFTC legislation, of at least through the end of the State’s fiscal year that ends in 2026, and more in some instances. Our intent with the letter was to provide prompt notice to States about the minimum transition period the Secretary would offer under the WFTC legislation, while allowing us to finalize the transition period via the rulemaking process. There still remains the urgent need to make sure tax waivers no longer exploit the loophole. Therefore, we are finalizing that all affected health care-related taxes that exploit the loophole with waivers approved before July 4, 2025, will receive a transition period, and the length of that period will depend on the permissible class taxed and the length of time since the most recent waiver approval for that tax.

Comment: A few commenters stated that more time was needed so that States could obtain detailed technical assistance and guidance from CMS on the interaction between the proposed rule and the WFTC legislation. These commenters pointed out a potential conflict in which the proposed rule allows States to modify their provider taxes, but the moratorium in section 71115 of the WFTC legislation may prevent States from modifying their existing provider taxes. A commenter stated a longer transition period would allow States to obtain more guidance from CMS about what is permissible under the proposed rule.

Response: States with loophole taxes that need to modify their tax will be able to do so without violating section 71115 of the WFTC legislation, provided that the tax meets all Federal statutory and regulatory requirements. Section 71115 of the WFTC legislation generally prevents new or increased provider taxes that would cause tax collection for a permissible class in a State to exceed the new indirect hold harmless threshold, but it does not prevent modifications. Moving forward, States

will be able to adjust their taxes so long as they do not exceed the relevant tax collection limits. Therefore, we do not currently see a need for technical guidance on the interaction between these provisions, as they are not strictly in conflict.

Comment: Many commenters who recommended the need for a longer transition period cited the insufficiency of notice to affected States as a basis for this need. A few commenters stated that the companion letters sent with recent waiver approvals to States were insufficient notice for the proposed rule’s provisions. Some of those commenters went on to say the letter indicated only an intent to develop new regulatory requirements but that those requirements were not specified. Other commenters stated that the companion letters were inconsistent with principles of fair notice and regulatory consistency. In their view, all States are informed at the time of approval that future Federal law changes may require prospective revision. Also, in their opinion, these documents did not provide the minimum necessary information States needed to make informed decisions, such as the possibility that CMS would not honor the already approved waiver timeframe, allow a transition period, or explain what States would have to do to bring the taxes into compliance if Federal legal requirements changed. Furthermore, some of these commenters added that setting these issues aside, those letters were not broadly disseminated to the public, so interested parties were not provided notice or an opportunity to comment.

A few commenters stated that the 2019 proposed rule is also inadequate notice to States that CMS intended to propose this rule due to the eventual withdrawal of the 2019 proposed rule and the amount of time that has passed since its publication. A few commenters stated that States could not have known when and exactly how CMS would update its statistical tests and the related regulatory criteria to assess provider tax waiver requests. A commenter stated that pointing to a proposed rule from years earlier that was not finalized is not adequate or appropriate regulatory guidance.

Some commenters offered suggestions for how to mitigate the issue of notice to States. A commenter recommended waivers already in place, approved with or without companion letters, should remain active through the end of the transition period. A commenter stated that at a minimum, CMS should honor already approved waivers. A commenter also recommended CMS inform States if

they have tax structures out of compliance after the finalization of this rule.

Response: We disagree with the commenters that noted that States have not had sufficient notice as to how we would address the loophole. As described previously in this final rule, we have communicated to States that we have intended to address the loophole, and we are finalizing this policy through notice and comment rulemaking. Between the proposed rule, the comment process, and the subsequent publication and delayed effective date of the final rule, we have met our obligations for notice and comment rulemaking. However, we do acknowledge that there are times we have delayed implementation, and often this is to mitigate administrative burden on States needing to make changes. For example, in the 2024 Ensuring Access to Medicaid Services final rule, we delayed implementation on many provisions, at different times, in recognition of the number of new requirements States would need to address and develop processes to implement in a rule of that scale. That is not the case in this final rule.

This rule finalizes a policy that reflects the conceptual basis that a tax must be generally redistributive. We emphasize again that this rule only affects a few States and their taxes. We also believe that the 2019 proposed rule, although not finalized or identical to this rule, provides a clear signal of our intent and our view that a tax is problematic if it is not generally redistributive within the meaning of the statute, even if it passes the B1/B2 test. It is not new information that we are announcing in this rule that those practices are not aligned with statutory intent, which has been made even plainer by the amendments made by section 71117 of the WFTC legislation.

Apart from issuing the companion letters to the States with the most recent approvals, we also discussed with them prior to the issuance of the approval that the tax exploited the loophole. We further note that, when the shortest transition periods granted in this final rule expires, States will have had almost a year or more than a year since the proposed rule, and nearly 9 months since the passage of the WFTC legislation.

In response to commenter concern, we want to assure that currently approved waivers for loophole taxes will remain in force and effect until the expiration of the applicable transition period. However, we want to further clarify that some tax waivers themselves do not currently have a specified

expiration date that we would otherwise honor. We further note that we cannot honor an approved waiver, despite the fact that the waiver does not by its own terms specify an expiration date, if the waiver becomes inconsistent with Federal law due to subsequent statutory and regulatory changes. We also want to confirm that we intend to affirmatively notify (or more accurately, re-notify) affected States, and work closely with them to ensure timely compliance.

Comment: A few commenters agreed with CMS and stressed that States have had adequate notice and time to prepare for compliance. One such commenter went further to say no States should have a transition period. The commenter also stated that any delay in finalizing the proposed rule would allow further loophole utilization and qualify more States for the transition period than currently estimated. A few commenters expressed general support for having no transition period and immediately implementing the rule. A commenter stated their belief that no transition period would benefit the most vulnerable Medicaid populations.

Response: We appreciate the support of commenters. While we believe it may have been possible and appropriate not to offer a transition period, and proposed this as an alternative, we determined it would be most beneficial for all involved to focus on the most recent and most egregious tax waivers first. Although the passage of WFTC legislation addressed the concern about delays expressed by the commenter, we do note that in the proposed rule we addressed and accounted for no transition period for additional waiver submissions.

Comment: Several commenters appeared to share the same misunderstanding that CMS intended to apply these new policies retroactively. Several stated that it is common practice for tax “collections” to occur months (if not years) after a provider owes the tax. Thus, these commenters stated that the rule would penalize these States for not complying with requirements that were not in place at the time their waivers were approved, and it would effectively apply new regulatory requirements retroactively. A few commenters stated that CMS lacks the statutory authority to impose the proposed requirements retroactively, as section 71117(c) of the WFTC legislation requires CMS to apply them prospectively. In addition, a few commenters stated that the retroactive application they perceived in our proposed rule was not legally permissible under the APA, that it would be arbitrary and capricious under 5 U.S.C. 706(2)(A), and that it would

compromise principles of fair notice, regulatory consistency, and good-faith reliance. In addition, a few commenters stated that while the US Supreme Court upheld a retroactive tax statute in *United States v. Carlton*, 512 U.S. 26 (1994), CMS cannot retroactively apply the proposed requirements as they fail both prongs of the Carlton test. A commenter stated that disallowing FFP for uncollected taxes would invalidate actuarial certifications. A commenter requested that financial penalties only apply to collections for taxes incurred after the effective date of the final rule, not retroactively. The commenter requested that CMS consider language that would limit the application of the penalty to collections of taxes incurred for those periods that occur after the effective date of the final rule.

Response: We want to clarify that the policies described in this rule will not be applied retroactively, nor did we propose that they would. The penalties will be imposed for revenues collected after the date by which a State needed to have its tax in compliance, which would be no earlier than the first day after the State fiscal year that ends in 2026. Even if the collection itself occurs later under the State’s usual tax revenue collection processes, if the collection was made in accordance with a tax that was permissible with respect to the time period for which the revenue is being collected, it would not violate this requirement. Therefore, we would not penalize that collection. For example, if a State collects tax revenue from providers in July 2026, after the effective date of the final rule, and the revenue collected is for taxable activity that occurred during the State’s FY 2025, this would be permissible, as the tax was permissible at that time, before the effective date of this final rule.

We are concerned that several, discrete comments had the same incorrect interpretation that we intended to apply these requirements retroactively. We intend to work closely with affected States to determine if and why they believe a penalty, if applied, is retroactive, to clarify the effect of the final rule, as may be needed. Although we did not propose nor intend to apply these policies retroactively, we do not have full knowledge of all State revenue collection practices, and we welcome any additional information or requests for assistance.

Comment: A number of commenters opposed to the proposed transition periods referenced the specific need for State legislatures to have more time to act. Per these commenters, a truncated transition period fails to recognize the significant operational, regulatory, and

legislative challenges States face in modifying complex tax and financing structures. These commenters added that changing these tax structures requires legislative action and time for the State legislatures to act. However, because the effective date of the rule is tied to the date when CMS finalizes the rule, these States may or may not qualify for a transition period depending on if/how quickly CMS finalizes the rule. Furthermore, they add, even if a State does qualify for the transition period, the effective date could fall in the middle or very close to the end of their fiscal year cycles when their legislatures are not in session. Therefore, some State legislatures may not have time to adjust to avoid the financial shortfall or find adequate alternative funding streams. Some commenters stated that this is particularly concerning for States with limited legislative calendars whose legislatures meet biannually.

Similarly, several commenters stated that the transition periods in the proposed rule would not be sufficient to allow time for States to work with CMS, their respective legislatures, and interested parties to gain support and approval of revised funding mechanisms. Several commenters believed that longer transition periods were needed for States to navigate the complex fiscal and operational challenges involved in revising their provider taxes. A commenter stated that a voter referendum may be needed to require and implement the use of provider taxes. A commenter believed that the variation in State budget cycles underscored the need for an adequate transition period. Other commenters added that State agencies may also need to change their regulations, which will require engagement with interested parties, and time for drafting and commenting.

Response: We note that nearly every State affected by this rule has a legislature with an annual legislative cycle. We have also seen many cases where State legislatures convene special sessions to address urgent and pressing matters. Although we do not believe this situation will require States to convene special sessions, as States have been aware of the issue and could plan for this outcome, we realize that some States may end up in this position by choosing not to bring their loophole taxes into compliance with the new Federal requirements by the end of the applicable transition period under this final rule. We do not believe it is appropriate to continue this drain on the fiscal integrity of the Medicaid program by allowing ongoing cash

windfalls to States so they can address this during a more relaxed schedule. We believe that the transition periods afforded in this final rule should provide sufficient time for States to adjust their health care-related taxes as needed.

Comment: Many of the general comments regarding the transition period section disagreed with treating certain States differently on the basis of how recently their waivers were approved, and stated that there should be transition periods for all affected taxes. Many commenters opined that the proposal to deny a transition period to some States was disproportionately burdensome for the affected States. Several commenters stated that CMS should provide all States with a transition period because treating States differently based on the date of approved waivers would be arbitrary, capricious, and unfair, with one saying it penalized those States unfairly for a policy that was not yet in place. Another commenter stated that it would be equitable for CMS to provide all States the same transition period. A few commenters stated that denying a transition period to some States lacked a rational basis grounded in program design or policy impact. A few commenters stated that States acted in good faith when they received CMS approval for tax waivers and current policy structures allowing their provider tax structures. These commenters believe the relevant States should not be penalized with no transition period.

Response: The States that are receiving the shortest transition periods are not situated the same as those that are receiving more time. The States with shorter transitions have all received companion letters with their most recent approvals, and we engaged directly with these States during the waiver approval process about the loophole issue. These companion letters were intended to document formal notice to these States that we viewed their tax structures as problematic and intended to address the issue through future notice and comment rulemaking. However, as mentioned, before the issuance of the most recent approvals and the accompanying companion letters, we were communicating directly with those States about our concerns. Those States nevertheless made the decision not to modify or withdraw the tax waivers to ensure the ongoing cash windfall from the Federal government. Moreover, the most recent approvals have had the current revenue levels in place the least amount of time, and some are the result of new taxes or massive increases that greatly magnified

the negative impacts of these loophole taxes and fundamentally altered the revenue a State would anticipate receiving. At no point in time have these States operated under the impression that the current funding levels were permissible or protected against imminent CMS action. It is for that reason we did not propose a transition period for the most recent waiver approvals. However, while we still stand by this reasoning, we have amended the transition periods in this final rule by giving a short transition period to those tax waivers that would have received none under the policy described in the proposed rule, to align with the “Dear Colleague” letter, which served to give a measure of certainty regarding the transition periods to States while CMS completed this rulemaking process. We believe that aligning the duration of the transition periods in this final rule with those of the periods described in the “Dear Colleague” letter serves the best interests of the Medicaid program because alignment will help prevent potential confusion.

Comment: Many commenters expressed a need for more time specifically for those States that would not receive a transition. They cited reasons such as the length of time required to unwind or revisit existing tax structures and provider payment policies. These commenters stated that to develop provider tax or financing alternatives, it would take time to engage in interested parties’ negotiations and obtain legislative approval as well as approval from CMS. A few commenters stated that not allowing a transition period would negatively impact non-Medicaid interested parties, too. A commenter stated that affected States may make hasty and suboptimal tax changes to ameliorate the lost funding, and that these changes could lead to higher commercial insurance premiums for individuals and employers. Another commenter stated that due to the reductions in Medicaid reimbursement rates, some providers may offset the financial losses by increasing the payment rates they charge to commercial plans and Medicare.

A few commenters stated that the proposal to deny a transition period to States with waivers approved 2 years or less before the final rule’s effective date was particularly arbitrary considering that States do not know if or when CMS will finalize the rule. In their opinion, this would require States to preemptively dismantle, or redesign approved programs when the final contours of Federal policy are unknown. Some commenters similarly stated that

it is unreasonable for CMS to expect that States should have already redesigned their tax programs to comply with requirements that are not yet defined.

A few commenters stated that not allowing a transition period unjustly puts these States in an extremely precarious financial position, as they would experience sharp budget shortfalls with serious and immediate impacts on their Medicaid programs and State budgets. They added that these States are at a major disadvantage because their waivers would be immediately out of compliance and the corresponding funding subject to deductions until they make the necessary changes.

Response: As we stated in the proposed rule, it has been incumbent upon States to assess the risk of having a waiver deemed prospectively impermissible when determining whether to submit or proceed with a waiver request that exploits the loophole. The companion letters also made clear that we intended to act, but did not indicate there would be any type of transition period, so there was no reason a State should have chosen to maintain its exploitative tax structure on the belief of time to transition. The time to transition has already been occurring. To the extent this change results in a budget shortfall for a State, it will be the result of that State's budget being reliant on an inequitable funding stream from the Federal government, inconsistent with the statutory purpose and design. However, we also note that under the "Dear Colleague" letter and the transition periods adopted into this final rule affected States will have a transition period of a duration that is at least until the end of their respective State fiscal year that ends in calendar year 2026 whereas, under the proposed rule, we proposed that certain States would receive no transition period.

Comment: Many commenters stated that provider taxes are a critical source of funding for States. Additionally, because some affected States use or planned to use funds associated with tax waivers that exploit the loophole to increase payment rates for some providers/services, future provider reimbursement would likely be lowered. They stated this would be detrimental for the affected providers not only due to the loss of future funds, but also because they relied on the current or anticipated rate increases and have already made long-term decisions on staffing, equipment, and service capacity. Per these commenters, taken together, the cascading effect of an

inadequate transition time would lead to State changes that introduce significant uncertainty and operational disruptions into Medicaid programs, and that will hinder access to care for Medicaid beneficiaries. In the case of a 1-year transition period, commenters expressed similar concerns, but also noted that payments are already unsustainably low, and this change would reduce them even further.

Several commenters stated that it was justifiable for States to rely on CMS honoring the waiver approval timeframe, and that States made meaningful budgetary and programmatic decisions accordingly. These commenters stated that these States' reliance on CMS' approval is no less valid simply because their waivers were approved more recently.

Response: We acknowledge that in many cases, the revenue generated from a tax and bolstered by the increased burden on the Federal government's share of Medicaid is used to fund additional payments to providers. However, it is the responsibility of the individual States to come into conformity with new Federal requirements under this final rule and the amendments made by the WFTC legislation, in a manner that is the least disruptive to their individual circumstances. Finally, we note again as discussed in a previous response that some waivers do not have an approval timeframe. They are open-ended approvals, where a new waiver is only required if a State wants to make a non-uniform change to the tax or if necessary to conform the tax to newly applicable Federal legal requirements. Therefore, in these cases there is not a waiver approval timeframe for us to honor. Any promises or assurances as to the timeframes for payment rates would be from States to providers.

Comment: A commenter suggested that if CMS decided to include a longer phase-out period for those States that did not receive separate companion letters, but whose waivers were approved in the last 3 years, that these States should immediately stop using funds for "FFP." This commenter also recommended a 1-year transition period for provider taxes approved more than 3 years ago.

Response: We appreciate the suggestion. As we understand it, the commenter was suggesting the transition period apply only with respect to the requirement to change the tax structure, such as by submitting a new waiver, but the State would not be permitted to use the tax revenue as its

non-Federal share in the interim.

Although we would support the goal to end the burden on the Federal government caused by the tax waiver that exploits the loophole as soon as possible, we believe it would add a layer of administrative complexity and furthermore, we did not propose or otherwise contemplate this approach in the proposed rule. Therefore, we are not adopting this change.

Following review of public comments, we are finalizing the transition periods with modifications described.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a "collection of information," as defined under 5 CFR 1320.3(c) of the PRA's implementing regulations, is submitted to the Office of Management and Budget (OMB) for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

In the proposed rule, we solicited public comment on each of the aforementioned issues for the following sections of the rule that contained collection of information requirements. We did not receive such comments, and therefore, are finalizing the burdens in this rule as proposed, with minor modifications to account for additional waivers.

A. Wage Estimates

To derive average costs, we used data from the US Bureau of Labor Statistics' (BLS') May 2024 National Occupational Employment and Wage Statistics for all salary estimates (<https://www.bls.gov/oes/tables.htm>). In this regard, Table 2 presents BLS' mean hourly wage, our estimated cost of fringe benefits and other indirect costs (calculated at 100 percent of salary), and our adjusted hourly wage.

TABLE 2: National Occupational Employment and Wage Estimates

Occupation Title	Occupation Code	Mean Hourly Wage (\$/hr)	Fringe Benefits and Other Indirect Costs (\$/hr)	Adjusted Hourly Wage (\$/hr)
Health care Support Worker	31-9099	23.44	23.44	46.88

As indicated, we adjusted our employee hourly wage estimates by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and other indirect costs vary significantly from employer to employer, and because methods of estimating these costs vary widely from study to study. Nonetheless, we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

B. Collection of Information Requirements

The following sections of this rule contain collection of information requirements (or “ICRs”) that are or may be subject to OMB review and approval under the authority of the PRA. Our analysis of the requirements and burden follow. For this rule’s full burden implications, please see the Regulatory Impact Analysis under section IV. of this preamble.

1. ICRs Regarding General Definitions (§ 433.52)

We do not anticipate that any of the definition changes (adding and defining “Medicaid taxable unit,” “non-Medicaid taxable unit,” and “tax rate group”) will result in the need for States to amend existing or create new State Plan or policy documents. Consequently, such changes are not subject to the requirements of the PRA.

2. ICRs Regarding Tax Waiver Submissions (§ 433.68)

The following changes will be submitted to OMB for approval under control number 0938–0618 (CMS–R–148).

Under the current regulations, States may submit a waiver to CMS for the broad-based requirements (all providers within a defined class must be taxed) and/or the uniformity requirements (all providers within a defined class must be taxed at the same rate) for any health care-related tax program which does not conform to the broad based or uniformity requirements under § 433.68. For a waiver to be approved and a determination that the hold harmless

provision (for example, guaranteeing to repay taxpayers the cost of the tax) is not violated, States must submit written documentation to CMS which satisfies the quarterly reporting and recordkeeping requirements under § 433.74(a) through (d). Without this information, the amount of FFP payable to a State cannot be correctly determined.

Uniformity Requirements Waiver: A State must demonstrate that its tax plan is generally redistributive by calculating the ratio of the slopes of two linear regressions, generally resulting in a value of 1.0 or higher. Under the changes in this final rule, States will still need to demonstrate this calculation, and the waiver proposal must reflect a tax that is generally redistributive under the requirements in new paragraph § 433.68(e)(3) (entitled, “Additional requirement to demonstrate a tax is generally redistributive”).

This rule addresses an inadvertent regulatory loophole related to the current statistical test to ensure that taxes passing the test are generally redistributive. The loophole essentially allows States to shift the cost of financing the Medicaid program to the Federal government. As indicated in section II of this preamble, this rule finalizes our proposed policy to close the loophole in the statistical test by:

- Prohibiting States from explicitly taxing Medicaid units at higher tax rates than units of other payors.
- Prohibiting State gaming through “proxy” terminology.
- Including a transition period for States with existing loophole taxes.

We anticipated in the proposed rule that the provisions of this final rule may require seven States to submit a total of eight new waiver proposals (within 2 years of the effective date of this final rule) that demonstrate compliance with the updated requirements. This number is based on the number of States that had tax waivers that exploit the loophole as of the publication of the proposed rule and reflects that one State has two waivers.

We have since learned of one additional loophole tax for a total of

nine waivers in the same seven States. Although the submission of a new waiver is not the only way to address the requirements of this final rule, for purposes of scoring the impact of this rule we assume all seven States will go this route, as we believe it is the most likely and we have no reliable way of knowing how each State may choose to proceed. However, we also recognize that some States may choose to restructure their taxes in a manner that does not require them to submit a new waiver request. Existing tax waivers that do not exploit the statistical loophole are not affected and, therefore, have no added requirements and burden.

Consistent with our active (or currently approved) estimates under the aforementioned OMB control number, we continue to estimate that it would take 80 hours at \$46.88/hr for a healthcare support worker to prepare and submit the waiver request. In aggregate, we estimate a one-time burden of 720 hours (9 waivers × 80 hr/waiver) at a cost of \$33,754 (720 hr × \$46.88/hr). When taking into account the Federal administrative match of 50 percent, we estimate a one-time State cost of \$16,877 (\$33,754 × 0.5).

Consistent with our active collection of information request, this final rule does not provide States with a waiver form or template. Instead, instruction for preparing and submitting the waiver is provided in the aforementioned rules and what is codified in §§ 433.68 and 433.72.

Outside of the revised waiver, we do not anticipate that the finalized changes will result in the need for States to amend existing or create new State Plan or policy documents. Consequently, we are not setting out such burden.

Broad-Based Requirements Waiver: Please note that this rule’s finalized policies will also apply to waivers of the requirement for taxes to be broad-based; however, because this rule affects existing waivers that exploit the loophole, we are only *considering* the uniformity requirements waiver in this PRA/COI section.

C. Summary of Burden Estimates

TABLE 3: One-Time Burden Estimates

Regulation Section(s) under Title 42 of the CFR	OMB Control Number (CMS ID Number)	Respondents	Responses (per State)	Total Responses	Time per Response (hr)	Total Time (hr)	Labor Costs (\$/hr)	Total Cost (\$)	State Cost (\$)
Waiver Documentation (§ 433.68)	OMB 0938-0618 (CMS-R-148)	7 States	1 or 2	9	80	720	46.88	33,754	16,877

IV. Regulatory Impact Analysis

A. Statement of Need

The final rule will eliminate an inadvertent loophole in existing health care-related tax waiver regulations and strengthen CMS' ability to enforce section 1903(w)(3)(E) of the Act. These changes are necessary to address taxes that align with existing regulations but do not meet the requirement of the statute due to a statistical loophole that exists in the regulations. These provisions of the final rule are narrowly tailored to address this problem and enable CMS to enforce its new requirements with care to ensure that existing tax waivers that do not exploit the statistical loophole are not affected. All other changes are conforming or technical changes and related to this primary objective of closing the loophole.

As reflected further in this section, the financial impact on the Federal government of the existing problem is large, and the potential for this problem to proliferate further demands swift action.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866, "Regulatory Planning and Review," Executive Order 13132, "Federalism," Executive Order 13563, "Improving Regulation and Regulatory Review," Executive Order 14192, "Unleashing Prosperity Through Deregulation," the Regulatory Flexibility Act (RFA) (Pub. L. 96354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), and the Congressional Review Act (5 U.S.C. 804(2)). Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act, 5 U.S.C. 801 *et seq.*), OMB's Office of Information and Regulatory Affairs has determined that this final rule does meet the criteria set forth in 5 U.S.C. 804(2).

Executive Orders 12866 and 13563 direct agencies to assess all costs and

benefits of available regulatory alternatives and, if regulation is necessary, to select those regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; and distributive impacts;). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, or the President's priorities.

A regulatory impact analysis (RIA) must be prepared for regulatory action as defined by section 3(f)(1) of Executive Order 12866. For the proposed rule, we prepared our estimates using a "no action" baseline, which OMB's Office of Information and Regulatory Affairs determined was significant per section 3(f)(1). For this final rule, and in light of the passage of the WFTC legislation, we are maintaining the same analysis but noting that it is now a "pre-statute" baseline. Accordingly, we have prepared an RIA that to the best of our ability presents the costs, benefits, and transfers of the rulemaking. Therefore, OMB has reviewed these regulations, and the Departments have provided the following assessment of their impact.

Executive Order 14192, titled "Unleashing Prosperity Through Deregulation," was issued on January 31, 2025. For E.O. 14192 accounting purposes, savings to the Federal government that are classified as transfers in regulatory impact analyses do not count as cost savings.

C. Detailed Economic Analysis

To enforce the requirement that taxes have a net impact that is "generally redistributive" in accordance with section 1903(w)(3)(E)(ii)(I) of the Act when a State is seeking a broad-based and/or uniformity waiver, CMS established certain tests such as the P1/P2 and the B1/B2 tests. These tests are described in detail in section I.C. of this rule.

To determine the economic impact of this rule, as we did with the proposed rule, we started with information collected by CMS on provider taxes that we anticipate will be affected by these changes. We identified nine taxes in seven States that will be affected by this final rule. This data is collected via the Form CMS-64²⁴ and through State submissions for waivers, and to a lesser extent, as part of State plan amendments and State-directed payment preprints. The information collected included: the type of provider or health care-related entity taxed (for example, MCOs or hospitals); the expected amount of tax revenue to be collected; the percentage of total tax revenue paid based on association with Medicaid (the Medicaid taxable units); and the percentage that Medicaid constitutes of the total tax base for the relevant permissible class for the tax. In these eight cases, the amount of tax revenue paid based on Medicaid taxable units would be used to fund higher provider payments to account for the taxes paid by the providers to the States.

While we acknowledge that there is uncertainty about how States would respond, our approach does not assume any change in the total tax revenue; we assume that the burden of the tax would shift from disproportionately taxing Medicaid taxable units to a more proportional distribution on all taxable units. We calculated the amount of tax paid under the expected percentage of the tax paid based on Medicaid taxable units and compared it to the amount that would be paid if the burden for Medicaid taxable units was the same as

²⁴ The Form CMS-64 is a collection under OMB 0938-1265 (CMS 10529).

the Medicaid-associated percentage of the total tax base. For example, for MCO taxes, we calculated the current tax burden that is assessed on Medicaid tax units (premiums or member months for Medicaid enrollees) and the overall

amount of tax revenue. Then we calculated the tax burden that is assessed against Medicaid taxable units assuming that the tax was assessed evenly across all units (premiums or member months). For hospital taxes, we

did the same analysis using the taxable units for hospitals (which could be revenue, hospital stays, or days hospitalized). This data is shown in Table 4.

TABLE 4: Summary of Current Medicaid Tax Waiver Data (in billions of 2024 dollars)

Tax Category	Number of State waivers	2024 estimated annual revenue (billions)	Medicaid tax burden as percentage	Medicaid share of taxable units as percentage	Medicaid tax burden (billions)	Medicaid tax burden under proposed rule (billion)
Managed care organization	7	\$18.5	96%	53%	\$17.9	\$9.8
Hospital	1	\$5.1	44%	32%	\$2.2	\$1.6
Nursing facility	1	\$0.34	67%	80%	\$0.27	\$0.23
Total	9	\$24.0	85%	49%	\$20.4	\$11.7

For 2024, we estimated that these taxes accounted for \$24.0 billion in revenue for 7 States. For States with waivers that started in 2025, we included the first year's revenues in 2024 for this analysis. Of this amount, we estimate that \$20.4 billion was assessed against Medicaid taxable units (85 percent) and thus was ultimately paid by the Medicaid program. We also estimated that if the taxes were assessed proportionately on all taxable units, that only \$11.7 billion (49 percent) would have been assessed against Medicaid taxable units.

The following example illustrates how we calculated the impact of the proposed policy change. Assume a State has a provider tax that exploits the loophole and is expected to collect \$1 billion in revenue. Ninety-five percent of the taxes are assessed against Medicaid taxable units, but only 50 percent of the total taxable units are Medicaid taxable units. As a result, the Medicaid program (that is, the State and the Federal government) bears 95 percent of the tax burden, even though Medicaid only accounts for 50 percent of the basis for taxation (such as Medicaid member months or hospital days) for this service in the State. Under existing regulations with the loophole, the Medicaid program would be expected to pay for \$950 million of the tax revenue (via higher payments to

providers) [95 percent * \$1 billion = \$950 million]. Under the proposal, the Medicaid program would be expected to pay for approximately \$500 million for the tax revenue [50 percent * \$1 billion = \$500 million], because \$500 million is 50 percent of the \$1 billion collected in tax revenue, which reflects the share of the tax base attributable to Medicaid usage (or total taxable units). In that case, total expenditures made by the Medicaid program would be anticipated to decrease by \$450 million [\$950 million – \$500 million].

We estimated that the impact on Federal Medicaid expenditures would be the difference in the taxes paid by Medicaid under current law multiplied by the average FFP matching rate. The average Federal share includes higher Federal matching rates for certain services or populations, most notably the 90 percent matching rate for expansion adults in States that expanded Medicaid eligibility under the Affordable Care Act. For example, if the average Federal share in the State for expenditures in the relevant permissible class in the previous example is 70 percent, then the Federal savings would be \$315 million [\$450 million * 70 percent].

To calculate the impact in future years, we made the following assumptions. We assumed no new additional waivers would be approved

beyond the 9 currently in place. We also assumed that the 9 current waivers would be transitioned to new tax waivers under the transition schedule described in section II.D. We projected that the amount of tax revenues would increase at the same rate as Medicaid spending growth in the budget (based on the projections in the Mid-Session Review of the FY 2025 President's Budget). The Federal share of these impacts was estimated using the average Federal share for each State and service category by tax; this would include adjustments to the base Federal matching rates (notably, the 90 percent matching rate for costs for expansion adults). We estimated that the rule would reduce Federal Medicaid spending by \$78.2 billion from 2027 through 2036 (in real 2027 dollars). This estimate accounts for the transition period applicable as described in Section II.D. These estimates have been updated from the proposed rule to account for changes in the transition schedule. Notably, we now project the financial impacts would begin in 2027 as compared to 2026 in the proposed rule. The annual impacts are shown in Table 5. In addition to the Federal savings, we also project a reduction in State Medicaid expenditures of \$46.9 billion over 2027 through 2036. The annual impacts are shown in Table 5.

TABLE 5: Projected Impact Rule on Medicaid Expenditures (in millions of 2027 dollars)

Year	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	Total
Federal	-6,000	-6,600	-7,000	-7,300	-7,700	-8,000	-8,400	-8,700	-9,100	-9,400	-78,200
State	-3,600	-3,900	-4,300	-4,400	-4,600	-4,800	-5,000	-5,200	-5,400	-5,700	-46,900

Because it is possible, and we believe likely, that additional States may implement new taxes that exploit the waiver statistical loophole if current policy is unchanged, and that States may increase the revenues raised by existing taxes, we also developed estimates for an illustrative scenario where additional States submit similar taxes over the next several years. In this scenario, we assumed that 2 States would submit new MCO tax waivers for 2026, and 4 additional States would submit MCO tax waivers each year from 2027 through 2030 (reaching 25 States by 2030). We also assumed that 2 additional States would submit hospital tax waivers each year from 2027 through 2030 (reaching 9 by 2030). We produced estimates for both MCO taxes and hospital taxes based on those for which we have already seen loophole taxes.

However, we note that we believe this loophole could be exploited on any permissible class. Tax revenue and burden on the Medicaid program is projected to increase at the same rate as the underlying service spending in Medicaid based on the mid-session review (MSR) 2025 projections. We assume that the impacts on other States are proportional to the largest MCO and hospital taxes currently approved, in the scenarios described herein. For MCO taxes, we assumed that the Medicaid program would account for 99.8 percent of the tax revenue using the loophole and would account for only 50 percent of the revenue under the proposed policy; we also assumed that the tax revenue attributable to the Medicaid program would be equal to about 23 percent of State Medicaid managed care spending. For hospital taxes, we

assumed that the Medicaid program would account for 44 percent of the tax revenue using the loophole and for only 32 percent under the proposed policy; and we assumed that that the tax revenue attributable to the Medicaid program would be equal to about 19 percent of State Medicaid hospital spending. We did not assume any additional nursing facility taxes. We note again that this scenario reflects not only the current taxes, but the impact if these taxes are allowed to proliferate. Under the illustrative estimate, the Federal government would avoid \$312.7 billion in Medicaid spending over 2027 through 2036 (in real 2027 dollars) and State Medicaid expenditures would be \$170.1 billion lower, as shown in Table 6.

TABLE 6: Projected Impact of Rule on Medicaid Expenditures Under Illustrative Scenario (in millions of 2027 dollars)

Year	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	Total
Federal	-7,300	-19,900	-25,900	-32,600	-34,000	-35,600	-37,000	-38,500	-40,100	-41,800	-312,700
State	-3,800	-10,600	-13,900	-17,600	-18,400	-19,400	-20,200	-21,100	-22,100	-23,000	-170,100

1. Transfers (Additional Discussion)

We note that the amounts described in the previous section do not necessarily represent the total Federal burden that may arise from loophole taxes, and therefore the total savings that will result from closing the loophole. As discussed in the preamble section I.C. in this final rule, States can and sometimes do use the tax revenue generated by shifting the burden to Medicaid (and therefore onto the Federal government) through the loophole to fund additional payments to providers. Those subsequent payments can again be claimed as expenditures and receive Federal match, thus further increasing Federal spending; to the extent States reduce the revenue collected by provider taxes and in turn reduce Medicaid spending, the impacts on Federal and State Medicaid expenditures may be even higher than what we have estimated here.

However, it should be noted that effects on the Federal budget (as well as the costs to States and taxpaying entities) are highly dependent on how States respond to these changes. Broadly, we believe States generally have several ways to address these changes, and they are not mutually exclusive, with varying consequences for magnitude of regulatory effects and for who pays and receives transfers. As we estimated previously, States may decide to maintain the current level of revenue in these tax programs, with less revenue based on Medicaid taxable units and the burden distributed across other payers (which could include Medicare for non-MCO taxes—thus generating some tendency toward overestimation in the Federal budget savings estimates appearing elsewhere in this regulatory analysis—and private health insurers). States may choose to reduce or eliminate these taxes and may make up the revenue elsewhere (for

example, through other taxes, health care-related or not). States may also opt to reduce spending—in Medicaid or in other parts of the State budget—to account for the decrease in tax revenue. We expect that these decisions will depend on several factors beyond our ability to predict, including: the relative impact these policies have on the State Medicaid program and overall State budgets; the response from other health care payers and providers of potentially higher tax burdens; and impacts on other entities, including on providers and beneficiaries in the State. We sought comments on how affected States would respond to these proposed changes.

The following is a summary of the public comments on our regulatory impact analyses:
Comment: A few commenters expressed concern that the proposed rule did not contain a “meaningful” RIA. A few commenters requested that CMS conduct a comprehensive impact

analysis on safety net hospitals before finalizing the rule. A commenter stated the RIA fails to consider key relevant impacts of the proposed rule, including the potential for serious harm to Medicaid funding and delivery, thus falling short of RIA standards. A commenter similarly stated that the RIA was inaccurate due to the uncertainty of the proposed rule's impact on patient access. A commenter recommended that CMS seek feedback from States on the proposed rule's budgetary and programmatic impact.

Response: States have many options for how to respond to the changes made by this rule. A State may maintain payments funded by a loophole tax through other means such as general fund revenue. The State may continue payments in a manner permitted by the tax waiver once brought into compliance with Federal law not to overburden the Medicaid program. We also acknowledge that they may, as the commenter was concerned, stop or decrease certain payments. We described these possible effects in the RIA, but continue to believe that quantifying the possible effects is especially speculative. We took the approach that best reflected the known outcomes and available data while acknowledging the uncertainty in how States will respond to these changes. We also believe it is not possible to quantify the effects on any particular providers or groups of providers, while noting it is possible that States may reduce spending that affects some providers more than others. Seeking feedback from loophole States would not have changed the rulemaking decision, since this rule, even before the passage of WFTC legislation, is addressing an action that was already impermissible.

Comment: Several commenters expressed concern regarding estimates included in the proposed rule's RIA, with a few commenters stating generally that the estimated savings specific to this rule are not accurate. A commenter stated that the estimated \$33.2 billion reduction in Federal Medicaid spending is an underestimate due to CMS' assumption that all States will expand existing taxes to all payers or due to the moratorium on further adoption of similar taxes. A commenter believed the estimated savings are now inaccurate due to WFTC legislation. Similarly, a commenter expressed concern that the rule's RIA is no longer relevant due to WFTC legislation. A commenter specifically recommended that CMS clarify its estimates by distinguishing between waiver-authorized programs in Table 3 of the proposed rule and those that have not been identified as

contributing to redistributive imbalance. Finally, a commenter stated that allowing more States to qualify for transition periods will undermine the savings estimates in the rule's RIA.

Response: We believe that the estimates are accurate. We do not assume new taxes or significant expansions of existing taxes as an explicit part of the baseline, and thus do not assume any cost impacts beyond the current taxes in place. To address the possibility of an increase in the use of these taxes in the future, we did provide the alternative scenario in the RIA in the proposed rule. As noted above, while we acknowledge that States may take steps in response to this change (which could include changing the terms of the taxes to be in compliance with the statute, finding other revenue sources, or reducing Medicaid spending), we do not believe it is possible to quantify those impacts. We have noted and described these possible outcomes in the RIA.

Under OMB Circular A-4, our analysis for instances such as this, where a rule could be regarded as merely codifying a change already made in statute, utilizes a "pre-statute" baseline for our impact assessments. Therefore, we are maintaining our analysis from the proposed rule, although at that time, the baseline was "no action." In other words, the underlying circumstances have changed, but the primary impact analysis we should provide remains the same, just through another route, which is through statute. We also believe that the effects of section 7117 of the WFTC legislation and the proposed rule are effectively the same, and thus the projected impacts are the same as well. However, as the transition periods have been modified and one additional tax has been identified, we have updated the estimates in this analysis accordingly.

As a result of the public comments, we are only updating the discussion of the baseline to reflect the "pre-statute" baseline.

2. Regulatory Review Cost Estimation

If regulations impose administrative costs on private entities, such as the time needed to read and interpret the proposed rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume the following entities will review: State Medicaid Agencies, State governments, MCOs, and health care providers. We assume at least three people at every State Medicaid Agency

(56) will review and two people in every State and territory government (56), for a total of 280 reviewers. We then estimate an additional 20 reviewers in every State Medicaid Agency affected by these policies (7 States, 140 reviewers), as well as 1,124 members across seven State Legislatures, for a total of 1,544 reviewers. It is more difficult to predict how many individuals in how many MCOs and providers will review, so we are therefore doubling the number from the previous estimate, for 3,088 total reviewers. We acknowledge that this assumption may understate or overstate the costs of reviewing this rule. We also recognize that this is a relatively short rule with a single policy focus, and therefore for the purposes of our estimate, we assume that each reviewer reads 100 percent of the rule. We sought comments on this assumption. We did not receive any comments on our regulatory review cost estimates, and therefore we are maintaining our assumptions.

Using the wage information from the BLS 2024 Occupational Employment and Wage Statistics (<https://www.bls.gov/oes/tables.htm>) for medical and health service managers (Code 11-9111), we estimate that the cost of reviewing this rule is \$132.44 per hour, including overhead and fringe benefits. Assuming an average reading speed, we estimate that it would take approximately 2 hours for each person to review the proposed rule. For each person that reviews the rule, the estimated cost is \$264.88 (2 hours × \$132.44). Therefore, we estimate that the total cost of reviewing this regulation is \$0.8 million (\$264.88 × 3,088).

D. Alternatives Considered

We considered replacing the B1/B2 with another statistical test (discussed in more detail below) for all waivers of the uniformity requirements. Updating the statistical test to one that directly reflected Medicaid burden would have several advantages. First, it would have been administratively simple for CMS to implement, where one test would merely be replaced by another during a waiver review. Second, it would have had the clear effect of eliminating the statistical loophole. Third, it would have been a purely statistical test that would not require a separate decision-making process on the part of CMS.

This test would have measured Medicaid's proportion of the total business (numerator) compared to Medicaid's share of the expected total tax revenue (denominator). For example, suppose a tax on nursing facilities existed where there were

390,000 total bed days of which 330,000 bed days were Medicaid-paid bed days. Divide the second number 330,000 by the first number, 390,000 to receive a percentage of approximately 84.6 percent Medicaid bed days. Assume further that the total tax revenue collected was \$11,000,000. Assume that the total tax amount collected based on Medicaid taxable units was \$9,000,000. Divide the second number \$9,000,000 by the first number \$11,000,000, to receive a percentage of approximately 81.81 percent of tax revenue derived from Medicaid taxable units. Divide the first percentage, 84.6 percent, by the second percentage, 81.81 percent, to arrive at the final percentage, 103.41 percent.

We also considered various figures that would have represented a “passing” (that is, approvable) figure under this test, including 90 percent, or 95 percent, which may have allowed more existing taxes that do not exploit the loophole to pass. However, we ultimately decided against proposing this overall new statistical test option for several reasons. First, we believed that this test would have been unnecessarily disruptive to our existing approved health care-related taxes with broad-based or uniformity waivers, many of them longstanding. Several of these waivers that did not exploit the statistical loophole would have failed this test, such as some nursing facility taxes, possibly due to excluding Medicare or other permissible differences in tax structure. We realize that States have become accustomed to the B1/B2 test over a long period of time and wanted to solve the tax loophole issue while being minimally disruptive to their legislative and regulatory activities related to the Medicaid program, including their programs of health care-related taxes that do not exploit the statistical loophole. Finally, we realized that if we set the passing figure too low, several taxes that are exploiting the loophole would be able to continue with their tax programs that are not generally redistributive. We did not want to undertake a change that would not close the loophole completely or that risked opening a new one. In addition, through our experience of testing this new statistical test, we assessed the disruption to existing taxes and State processes that would result from replacing the B1/B2 test, regardless of the specific details of that test. As a result, we did not contemplate alternate statistical methodologies or tests.

In addition to the wholesale replacement of the B1/B2 by this new statistical test for all waivers of the uniformity requirement, we also

considered various limiting conditions to the universe of tax waivers to which it would apply. For example, we considered having this new test apply only to taxes on services of MCOs, since most of the loophole exploiting taxes fall in this permissible class. However, there is at least one tax that we know of on hospitals that has different, higher, tax rates for Medicaid-payable days than non-Medicaid payable days. We wanted a fix that would cover this tax as well, because we believe that the higher rate imposed on Medicaid taxable units is not consistent with the statutory requirement that health care-related taxes for which waivers are approved must be generally redistributive. Additionally, applying this test only to MCOs would have left the Federal government open to future State tax waiver proposals that used the B1/B2 loophole in other permissible classes, including but not limited to inpatient hospital services and outpatient hospital services. In the proposed rule, we aim to be as comprehensive as possible to reduce the necessity of pursuing further rulemaking in this area in the short-term.

We also considered proposing this new statistical test discussed in the prior paragraphs, but proposing to apply it only to taxes that had separate tax rates for Medicaid taxable units compared to non-Medicaid taxable units, or separate tax rates for providers with Medicaid taxable units compared to providers with taxable non-Medicaid units. For example, a tax that had a rate of \$20 per Medicaid-paid bed day compared to \$2 per non-Medicaid paid bed day would fall under this category. To take another example, providers with more than 100 Medicaid bed days are taxed \$20 per bed day compared to providers with less than 100 Medicaid bed days are taxed \$2 per bed day. This would have been similar in scope to our current proposal. First, we would have still needed to adopt some kind of “Medicaid substitute” provision similar to § 433.68(e)(3)(iii) to address situations where the State did not use the word “Medicaid” in their descriptions but achieved the same effect. Second, we believe that this approach would have been somewhat confusing for States to implement. It would have required a longer learning process while we instructed the States how to conduct the test. We wanted to adopt the simplest, most straightforward option. As a result, we decided against adopting this test into regulation to measure whether a tax waiver is “generally redistributive” in any format at the present time.

In addition, we considered not proposing that Medicaid proxies be addressed at all in this regulation. Up until this point, we have not received any proposals that we would consider to be “Medicaid substitutes” in the context of the B1/B2 loophole. However, up until this point, States have had no incentive for taxes that use the B1/B2 loophole not to describe groups using the word “Medicaid.” Under the provisions in this rule, they have that incentive since, absent the “substitute” provision, the new regulation does apply only to States that explicitly target Medicaid. While closing one loophole, we did not wish to open another one with the exact or very similar effect as the first loophole. We believe that leaving the door open to this kind of manipulation would undermine the entire purpose of this rulemaking. We attempted to be as comprehensive as possible to foreclose the necessity of future rulemaking in the near-term if we were able to identify and preemptively prevent any serious deficiencies. This helps to create a stable, level, regulatory framework, reducing the needs for updates and changes. This is beneficial for both CMS and the States. States have a clear expectation of the regulatory framework within which they operate and can plan their budgets and legislative sessions accordingly. And CMS does not need to undertake new rulemaking soon after concluding prior rulemaking on the same subject. As a result, we believed that proposing the “Medicaid substitute” provision was necessary to make sure we were capturing the full universe of problematic practices that result in tax waivers that are not generally redistributive and effectively close the regulatory loophole.

As a result, we believe that the option we chose to propose mandating that Medicaid taxable units not be taxed at a higher rate than the rate imposed on any taxpayer or tax rate group based on non-Medicaid taxable units had several advantages. First, it removes the full universe of current taxes that exploits the statistical loophole. Second, it is narrowly tailored only to those taxes that exploit the statistical loophole. Third, it is not unnecessarily disruptive on States with currently approved tax waivers of the uniformity requirement that do not exploit the statistical loophole. All those factors combined, make it the option that we have proposed.

Finally, we considered alternatives to our approach in the transition period section. Within that section, we have some alternatives on which we invited comment, including no transition

period for any waivers. We are confident that all States engaged in this practice are aware they are exploiting a loophole, and no transition period aligned with our intent to close the loophole as quickly as possible. However, we ultimately decided to initially propose a short transition period for waivers we had not approved most recently and therefore had not communicated with the State about this

specific issue as recently. We also considered longer timeframes for transition periods for all waivers, but we did not want to extend the time that these loopholes are burdening the Medicaid program any longer than necessary. Finally, we considered associating the length of transition periods to how long the tax has been in place. We are finalizing the transition

periods with modifications discussed previously.

E. Accounting Statement and Table

Consistent with OMB Circular A–4 (available at <https://www.reginfo.gov/public/jsp/Utilities/a-4.pdf>), we have prepared an accounting statement in Table 7 showing the classification of the impact associated with the provisions of this final rule.

TABLE 7: Accounting Table

Category	Estimate	Year Dollar	Discount Rate	Period Covered	
Collection of Information Requirements					
Total	\$33,754	2025	N/A	One-time	
State	\$16,877	2025	N/A	One-time	
Regulatory Review Costs					
	\$0.8 million	2025	N/A	One-time	
Transfers					
Annualized Monetized (Federal, \$/year)	\$7,617 million	2027	7 percent	2027-2036	
	\$7,731 million	2027	3 percent	2027-2036	
Annualized Monetized (non-Federal, \$/year)	\$4,569 million		2027	7 percent	2027-2036
	\$4,637 million		2027	3 percent	2027-2036
Quantitative:					
● Estimated reduction in transfers from Federal government to States, ranging from \$6,000 million to \$9,400 million per year over 2027 through 2036, reflecting reduced Medicaid payments associated with certain health care-related taxes. ● Estimated reduction in transfers from State governments to other payers (for example, private insurance sponsors), ranging from \$3,600 million to \$5,700 million per year from 2027 through 2036, reflecting reduced Medicaid payments associated with certain health care-related taxes.					

F. Regulatory Flexibility Act (RFA) and Section 1102(b) of the Social Security Act

Effects on Health Care Providers

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact

on a substantial number of small entities. For purposes of the RFA, we estimate that many of the health care providers subject to health care-related taxes are small entities as that term is used in the RFA (including small businesses, nonprofit organizations, and small governmental jurisdictions). The

great majority of hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business (having revenues of less than \$9.0 million to \$47.0 million in any 1 year).

TABLE 8. SBA SIZE STANDARDS FOR APPLICABLE NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) INDUSTRY CODES

NAICS Code	Entity Type	Description	SBA Size Standard/Entity Threshold (\$ (in millions)	Total Small Business
622	Providers	Hospitals	47	1,494
6211	Providers	Physicians	16	141,446
6212	Providers	Dentists	9	119,497
6213	Providers	Other Health Practitioners	9 - 47	164,784

Source: US Census 2022 SUBS

*Note, the NAICS code for this industry changed in 2022, and now include NAICS 454110, Electronic Shopping and Mail Order Retail and 454390, Other Direct Selling Establishments; however, 2022 revenue data are not available. For this reason, 2017 revenue data will be used in this analysis.

Table 9 shows the small distribution of firms and revenues. According to this table, we can see and understand the disproportionate impacts among small firms and between small and large firms. According to the US 2022 Census

Statistics of US Business, the total revenue for the four industries identified as small businesses, according to the SBA size standard and shown in table 8, amounts to \$450.97 billion and average revenue amounts to

\$1.056 million. Recall, SBA defines a small business as having revenues of less than \$9.0 million to \$47.0 million in any 1 year.

TABLE 9. IMPACTS AMONG SMALL FIRMS AND BETWEEN SMALL AND LARGE FIRMS

Firm Size (by Receipts)	Firm Count	Percent of Small Firms	Total Revenue	Average Revenue
SMALL FIRMS	427,221	100.00%	\$ 450,956,331,000.00	\$ 1,055,557.50
<100,000	54,816	13%	\$ 2,962,471,000.00	\$ 54,043.91
100,000-499,999	173,833	41%	\$ 44,646,417,000.00	\$ 256,835.11
500,000-999,999	99,512	23%	\$ 65,588,722,000.00	\$ 659,103.65
1,000,000-2,499,999	71,438	17%	\$ 118,030,155,000.00	\$ 1,652,204.08
2,500,000-4,999,999	18,392	4%	\$ 76,840,635,000.00	\$ 4,177,937.96
5,000,000-7,499,999	5,226	1%	\$ 37,971,651,000.00	\$ 7,265,911.02
7,500,000-9,999,999	2,526	1%	\$ 25,118,647,000.00	\$ 9,944,040.78
10,000,000-14,999,999	2,324	1%	\$ 30,056,356,000.00	\$ 12,933,027.54
15,000,000-19,999,999	1,244	0%	\$ 21,879,161,000.00	\$ 17,587,750.00
20,000,000-24,999,999	273	0%	\$ 5,135,306,000.00	\$ 18,810,644.69
25,000,000-29,999,999	193	0%	\$ 4,717,106,000.00	\$ 24,440,963.73
30,000,000-34,999,999	180	0%	\$ 4,959,077,000.00	\$ 27,550,427.78
35,000,000-39,999,999	144	0%	\$ 4,216,461,000.00	\$ 29,280,979.17
40,000,000-49,999,999	191	0%	\$ 8,834,166,000.00	\$ 46,252,178.01
LARGE FIRMS				
Receipts > 49 million		NA		

Source: US Census 2022 SUBS

Table 10 combines the small firm's size and revenue data with the cost estimates determined in this final rule to understand the economic impact on small entities. As mentioned previously, the only costs that will be incurred as a result of this rule are the collection of

information costs, at a cost of \$33,754, and when taking into account the Federal administrative match of 50 percent, we estimate a one-time State cost of \$16,877. The cost to review this rule, amounts to \$0.8 million. Therefore, the total cost to implement this rule is

\$850,631. When this cost is distributed amongst the 427,221 entities identified as being small according to the SBA, each of these small entities incurs a cost less than \$2.00.

TABLE 10. ECONOMIC IMPACTS ON SMALL ENTITIES*

Firm Size (by Receipts in millions)	Average Revenue (\$)	Annualized Cost (\$) per Firm	Percent of Small Firms	Revenue Test (Percentage)
SMALL FIRM				
	1,055,557.50	1.99	100%	0.02%
<100,000	54,043.91	1.99	13%	0.37%
100,000-499,999	\$256,835.11	1.99	41%	0.08%
500,000-999,999	\$659,103.65	1.99	23%	0.03%
1,000,000-2,499,999	1,652,204.08	1.99	17%	0.01%
2,500,000-4,999,999	4,177,937.96	1.99	4%	0.00%
5,000,000-7,499,999	7,265,911.02	1.99	1%	0.00%
7,500,000-9,999,999	9,944,040.78	1.99	1%	0.00%
10,000,000-14,999,999	12,933,027.54	1.99	1%	0.00%
15,000,000-19,999,999	17,587,750.00	1.99	0%	0.00%
20,000,000-24,999,999	18,810,644.69	1.99	0%	0.00%
25,000,000-29,999,999	24,440,963.73	1.99	0%	0.00%
30,000,000-34,999,999	27,550,427.78	1.99	0%	0.00%
35,000,000-39,999,999	29,280,979.17	1.99	0%	0.00%
40,000,000-49,999,999	46,252,178.01	1.99	0%	0.00%

Source: US Census 2022 SUSB

*As a result of the costs of \$850,631 (discounted at 7 percent) including regulatory review and collection of information costs, we were able to calculate the revenue impact on small businesses for the four industries discussed.

1. Number of Small Entities

We used the most recent revenue data available from the 2022 Statistics of U.S.

Businesses (SUSB) from the Census Bureau to determine the number of small entities and their revenue.

TABLE 11. NUMBER OF AFFECTED ENTITIES AND THEIR PERCENTAGE OF THE OVERALL INDUSTRIES

Industry	Number of Small Entities	Percentage of Overall Industries
Hospitals	1,494	0.35%
Physicians	141,446	27.97%
Dentists	119,497	33.11%
Other Health	164,784	38.57%

Source: 2022 SUSB Census

Based on the latest available 2022 SUSB data records, we estimate that 427,221 health care provider entities

may be considered small entities either because of their nonprofit status or because of their revenues, as detailed in

Table 11. Approximately 0.35 percent (1,494) of these are hospitals, 27.97 percent (141,446) are physician

practices, 33.11 percent (119,497) are dental practices, and 38.57 percent (164,784) are other health practitioners.

We calculated the percentage of revenue represented by the annualized cost per firm divided by the average revenue times 100, and none exceeded the 3 to 5 percent of revenue threshold, as summarized in Table 10. Therefore, according to the revenue tests, the economic impact was less than one percent. All the costs were evenly distributed among the 427,221 small entities; thus, for the purposes of this RFA, there were no disproportionate impacts among small firms, and between small and large firms.

Individuals and States are not included in the definition of a small entity. As previously stated, this rule will not have a significant impact measured change in revenue of 1 to 3 percent on a substantial number of small businesses or other small entities. We do not anticipate that States will seek to rebalance the revenues to that extent through small entities, as the permissible classes affected by this rule are not small entities. Nearly all the taxes that this policy will end are taxes on MCOs. As its measure of significant economic impact on a substantial number of small entities, HHS uses a change in revenue of more than 1 to 3 percent. We do not believe that this threshold will be reached by the requirements in this rule. Therefore, the Secretary has certified that this rule will not have a significant economic impact on a substantial number of small entities. We sought comments on this assessment.

We did not receive any comments on this section and are finalizing our assessment as proposed.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For the purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. We do not believe this rule will have a significant impact on small rural hospitals. Although as stated previously we cannot predict the ways a State may respond to the cessation of a Federal funding stream, we do not anticipate based on the requirements in this rule those revenues will be sought from small, rural hospitals, as States often seek to insulate these providers from increased costs. Therefore, the Secretary has certified that this rule will not have

a significant impact on the operations of a substantial number of small rural hospitals.

G. Unfunded Mandates Reform Act (UMRA)

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2025, that threshold is approximately \$187 million. The UMRA's analysis requirement is met by the analysis included in section IV. of the proposed rule, conducted per E.O. 12866. This final rule does not mandate any requirements for local or tribal governments, or for the private sector. Costs may shift from the Federal government to States.

H. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Allowing States to continue to exploit a loophole in current regulations undermines the statutory framework, and, as GAO has noted, undermines the cooperative Federalism that lies at the heart of the Medicaid program.²⁵ For this reason, we believe that it is necessary to address the statistical loophole to ensure fiscal integrity of the Medicaid program.

Hence, this rule does not impose substantial direct costs on State or local governments, preempt State law, or otherwise have Federalism implications.

Comment: A commenter disagreed with the Federalism assessment, stating that the proposed rule would limit their State's ability to tax providers and, therefore, would infringe on their sovereignty, which they stated was inconsistent with basic principles of Federalism.

Response: Nothing in this rule changes a State's ability to establish a health care-related tax that is consistent with Federal law. Even before this change was reinforced by the WFTC legislation, the policies finalized in this rule would only affect those taxes that improperly overburdened the Medicaid program in a manner already

inconsistent with the generally redistributive requirement of the Act. We are therefore not making any changes to our assessment of Federalism impacts as a result of comments.

I. Conclusion

The policies in this rule will enable us to ensure FFP is distributed equitably and as intended and contemplated by statute.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Mehmet Oz, MD, Administrator of the Centers for Medicare & Medicaid Services, approved this document on January 13, 2026.

List of Subjects in 42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs—health, Medicaid, Reporting, and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR Chapter IV as set forth below:

PART 433—STATE FISCAL ADMINISTRATION

- 1. The authority citation for part 433 continues to read as follows:

Authority: 42 U.S.C. 1302.

- 2. Amend § 433.52 by adding the definitions of “Medicaid taxable unit”, “Non-Medicaid taxable unit” and “Tax rate group” in alphabetical order to read as follows:

§ 433.52 General definitions.

* * * * *

Medicaid taxable unit means a unit that is being taxed within a health care-related tax that is applicable to the Medicaid program. This includes units that are used as the basis for Medicaid payment, such as Medicaid bed days, Medicaid revenue, costs associated with the Medicaid program such as Medicaid charges, or other units associated with the Medicaid program.

Non-Medicaid taxable unit means a unit that is being taxed within a health care-related tax that is not applicable to the Medicaid program. This includes units that are used as the basis for payment by non-Medicaid payers, such as non-Medicaid bed days, non-Medicaid revenue, costs that are not associated with the Medicaid program, or other units not associated with the Medicaid program.

* * * * *

Tax rate group means a group of entities contained within a permissible

²⁵ GAO-08-650T “Medicaid Financing Long-standing Concerns about Inappropriate State Arrangements Support Need for Improved Federal Oversight” April 3, 2008.

class of a health care-related tax that is taxed at the same rate.

■ 6. Amend § 433.68 by—

■ a. Revising paragraphs (e) introductory text, (e)(1)(ii), (e)(1)(iii) introductory text, (e)(1)(iv) introductory text, (e)(2)(ii) and (e)(2)(iii) introductory text; and

■ b. Adding paragraphs (e)(3) and (4).

The revision and additions read as follows:

§ 433.68 Permissible health care-related taxes.

* * * * *

(e) *Generally redistributive.* A tax will be considered to be generally redistributive if it meets the requirements of this paragraph (e). If the State requests waiver of only the broad-based tax requirement, it must demonstrate compliance with paragraphs (e)(1) and (3) of this section. If the State requests waiver of the uniform tax requirement, whether or not the tax is broad-based, it must demonstrate compliance with paragraphs (e)(2) and (3) of this section.

(1) * * *

(ii) If the State demonstrates to the Secretary's satisfaction that the value of P1/P2 is at least 1 and satisfies the requirements of paragraphs (e)(3) and (f) of this section, the tax waiver is approvable.

(iii) If a tax is enacted and in effect prior to August 13, 1993, and the State demonstrates to the Secretary's satisfaction that the value of P1/P2 is at least 0.90, CMS will review the waiver request. Such a waiver will be approved only if, in addition to satisfying the requirement at paragraphs (e)(3) and (f) of this section, the following two criteria are met:

* * * * *

(iv) If a tax is enacted and in effect after August 13, 1993, and the State demonstrates to the Secretary's satisfaction that the value of P1/P2 is at least 0.95, CMS will review the waiver request. Such a waiver request will be approved only if, in addition to satisfying the requirement at paragraphs (e)(3) and (f) of this section, the following two criteria are met:

* * * * *

(2) * * *

(ii) If the State demonstrates to the Secretary's satisfaction that the value of B1/B2 is at least 1 and satisfies the requirements of paragraphs (e)(3) and (f) of this section, the tax waiver is approvable.

(iii) If the State demonstrates to the Secretary's satisfaction that the value of B1/B2 is at least 0.95, CMS will review the waiver request. Such a waiver will

be approved only if, in addition to satisfying the requirement at paragraphs (e)(3) and (f) of this section, the following two criteria are met:

* * * * *

(3) *Additional requirement to demonstrate a tax is generally redistributive.* This paragraph (e)(3) applies on a per class basis. Regardless of whether a tax meets the standards in paragraphs (e)(1) and (2) of this section, the tax is not generally redistributive if:

(i) Within a permissible class, the tax rate imposed on any taxpayer or tax rate group based upon its Medicaid taxable units is higher than the tax rate imposed on any taxpayer or tax rate group based upon its non-Medicaid taxable units (except as a result of excluding from taxation Medicare revenue or payments as described in paragraph (d) of this section). For example, a tax on MCOs where Medicaid member months are taxed \$200 per member month whereas the non-Medicaid member months are taxed \$20 per member month would violate the requirements of paragraph (e)(3)(i) of this section.

(ii) Within a permissible class, the tax rate imposed on any taxpayer or tax rate group explicitly defined by its relatively lower volume or percentage of Medicaid taxable units is lower than the tax rate imposed on any other taxpayer or tax rate group defined by its relatively higher volume or percentage of Medicaid taxable units. For example, a tax on nursing facilities with more than 40 Medicaid-paid bed days of \$200 per bed day and on nursing facilities with 40 or fewer Medicaid-paid bed days of \$20 per bed day would violate the requirements of paragraph (e)(3)(ii) of this section. As an additional example, a tax on hospitals with less than 5 percent Medicaid utilization at 2 percent of net patient service revenue for inpatient hospital services, and on all other hospitals at 4 percent of net patient service revenue for inpatient hospital services would also violate the requirements of paragraph (e)(3)(ii) of this section.

(iii) The tax excludes or imposes a lower tax rate on a taxpayer or tax rate group defined by or based on any description that results in the same effect as described in paragraph (e)(3)(i) or (ii) of this section. Characteristics that may indicate this type of violation exist include:

(A) Use of terminology to establish a tax rate group based on Medicaid without explicitly mentioning Medicaid to accomplish the same effect as described in paragraphs (e)(3)(i) or (ii) of this section for a tax rate group. For example, a tax on inpatient hospital

service discharges that imposes a \$10 rate per discharge associated with beneficiaries covered by a joint Federal and State health care program and a \$5 rate per discharge associated with individuals not covered by a joint Federal and State health care program would violate this requirement, because joint Federal and State health care program describes Medicaid and a higher tax rate is imposed on Medicaid discharges than on discharges for individuals not covered by a joint Federal and State health care program.

(B) Use of terminology that creates a tax rate group that closely approximates Medicaid, to the same effect as described in paragraphs (e)(3)(i) or (ii) of this section. For example, a tax on hospitals located in counties with an average income less than 230 percent of the Federal poverty level of \$10 per inpatient hospital discharge, while hospitals in all other counties are taxed at \$5 per inpatient hospital discharge, would violate this requirement, because the distinction being drawn between tax rate groups is associated with a Medicaid eligibility criterion with a higher tax rate imposed on the tax rate group that is likely to involve more Medicaid taxable units.

(4) *Transition period.* (i) The following transition periods end as follows:

(A) For States with health care-related tax waivers on the services of managed care organization permissible class that do not meet the requirements of paragraph (e)(3) of this section, where the date of the most recent approval of the waiver that violates paragraph (e)(3) of this section occurred 2 years or less before April 3, 2026, the final day of the transition period is December 31, 2026.

(B) For States with health care-related tax waivers on the services of managed care organization permissible class that do not meet the requirements of paragraph (e)(3) of this section, where the date of the most recent approval of the waiver that violates paragraph (e)(3) of this section occurred more than 2 years before April 3, 2026, the final day of the transition period is the day before the first day of the first State fiscal year beginning at least 1 year from April 3, 2026.

(C) For States with health care-related tax waivers on permissible classes other than the services of managed care organizations class that do not meet the requirements of paragraph (e)(3) of this section, regardless of the date of the most recent approval of the waiver that violates paragraph (e)(3) of this section, the final day of the transition period is the final day of the State fiscal year that

ends in calendar year 2028, but no later than September 30, 2028.

(ii) By the expiration of the transition period applicable under paragraph (e)(4)(i) of this section, States must either:

(A) Submit a health care-related tax waiver proposal that complies with paragraph (e)(3) of this section with an effective date that is no later than the day after the final day of the transition period specified in paragraph (e)(4)(i) of this section; or

(B) Otherwise modify the health care-related tax to comply with this rule and all other applicable Federal requirements with an effective date that is no later than the day after the final day of the transition period specified in paragraph (e)(4)(i) of this section.

(iii) Once the transition period for a tax waiver that qualifies under paragraph (e)(4)(ii) of this section has expired, CMS may deduct from a State's medical assistance expenditures

revenues from health care-related taxes that do not meet the requirements of paragraph (e)(3) of this section as specified by section 1903(w)(1)(A)(iii) of the Act and § 433.70(b).

Robert F. Kennedy, Jr.,

Secretary, Department of Health and Human Services.

[FR Doc. 2026-02040 Filed 1-29-26; 4:15 pm]

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FEDERAL REGISTER

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Monday,

No. 21

February 2, 2026

Part III

The President

Proclamation 11006—National School Choice Week, 2026

Presidential Documents

Title 3—

Proclamation 11006 of January 28, 2026

The President

National School Choice Week, 2026

By the President of the United States of America**A Proclamation**

For 250 glorious years, our Nation has been sustained by a simple yet powerful truth: The American people—not bureaucrats, politicians, or left-wing activists—have the God-given right to secure their own destiny. This National School Choice Week, we reaffirm this sacred principle, and we renew our commitment to empowering every American parent with the freedom to forge their family’s—and our Nation’s—future.

Tragically, for decades, disastrous Federal education policy led to record-low reading and math scores and out-of-control Government spending. America’s Golden Age begins in the classroom. For that reason, I have made it a top priority to expand educational freedom and once again put children and parents first.

My Administration is fighting every day to ensure that universal school choice is recognized as a right for every family. No student should ever be trapped in a failing school, and parents deserve more choices, not fewer. Guided by this vision, we are working to guarantee that every child—regardless of where they live—has access to a world-class education and a chance to achieve the American Dream.

Last July, I proudly signed into law the historic One Big Beautiful Bill, which for the first time in American history, creates a nationwide tax credit program to make education more affordable for families. Any taxpayer can reduce what they owe the Government by contributing to a scholarship-granting organization and American families can use these scholarships to select the education that best fits their needs and values.

The One Big Beautiful Bill also makes education more affordable by giving every American newborn a Trump Account, which makes it easier for families to use 529 accounts for elementary and high school, not just college.

I also signed an Executive Order last year directing the Department of Education to issue guidance on how States can use Federal funding formulas to support their K–12 scholarship programs and directing the Secretary of Education to prioritize school choice programs in the Department’s grant programs. I have also ordered the Secretary of Education to facilitate the closure of the Department of Education, which will ultimately save billions of dollars and allow States to determine their own education policy.

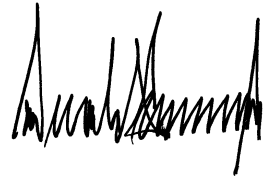
To further defend the American parent, my Administration is bringing the sinister “Diversity, Equity, and Inclusion” agenda to a screeching halt and replacing it with a system based on the fundamental principle of merit. We are proudly eliminating Federal funding for schools that permit discriminatory treatment and anti-American indoctrination. We are bringing common sense back to our classrooms and once again teaching our children to love their country and honor our history.

As my Administration continues to fight for American families, I also commend every State leading the school choice movement by enacting universal K–12 school choice programs in their communities. I look forward to working with other States and leaders in the Congress to provide universal school choice for every American family.

Our glorious American future depends on the next generation's ability to learn, lead, and innovate. I will always be a champion for the right of every parent to be the steward of their children's education, and together, we will never waver in putting our parents first, our children first, and America first.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 25 through January 31, 2026, as National School Choice Week.

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

A handwritten signature in black ink, appearing to be "Donald Trump", with a stylized, jagged flourish at the end.

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