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Presidential Documents

Title 3—

The President

Proclamation 10469 of October 7, 2022

Fire Prevention Week, 2022

By the President of the United States of America

A Proclamation

In 1920, President Woodrow Wilson proclaimed October 9th the first Fire Prevention Day, calling on the public to learn more about the risks of deadly fires and commemorating the thousands who had lost their lives to these tragedies. More than a century later, our Nation observes Fire Prevention Week by renewing our commitment to fire safety and preparedness and taking steps to prevent fires in our homes, schools, workplaces, and the great outdoors. We also honor the bravery and heroism of our firefighters, who gear up time and again and rush into harm's way to protect our communities.

In the past year, our Nation has suffered some of its deadliest fires in recent history. Americans have lost their homes and their businesses. Thousands have tragically lost their lives. Wildfires are becoming more frequent and ferocious, destroying neighborhoods and natural resources and displacing families and communities. Super-charged by the climate crisis—which has exacerbated drought conditions and increased temperatures—these devastating wildfires have wiped out millions of acres of forest and so many homes.

Whenever the First Lady and I visit with families in the aftermath of a fire, we witness their incredible courage and resolve—even though, in many cases, they have just lost everything. We see people step up for one another, neighbors take each other in, and local businesses donate essential goods to those in need. With each visit, we are also reminded of the character of our Nation's firefighters, who put their lives on the line with remarkable selflessness and extraordinary bravery that inspire everyone.

For our firefighters and our communities, we have a responsibility to act now and act fast to mitigate the risk of wildfires. My Administration is investing billions from our Bipartisan Infrastructure Law in forest management, including the management of hazardous fuels in high-risk areas and funding the Community Wildfire Defense Grants, which are intended to help at-risk local communities and Tribes plan and reduce the risk against wildfire, and we are safeguarding mature and old-growth forests on Federal lands, a key component of decreasing fire risk. Through our Inflation Reduction Act, we are taking unprecedented steps to protect forest health, prevent fires, and confront the climate crisis—ushering in a new era of clean energy and reducing greenhouse gas emissions by a billion metric tons.

We are standing by our brave firefighters by substantially increasing wages for Federal wildland firefighters, and have implemented new programs to support their mental and physical health, and established a wildland firefighter job series that will help improve recruitment, retention, and opportunities for professional growth. We invested $350 billion from our American Rescue Plan to help States and cities keep first responders like firefighters on the job during the COVID–19 pandemic. To help States pay for the cost of fighting wildfires and help communities increase resilience, the Federal Emergency Management Agency (FEMA) has also approved dozens of Fire Management Assistance Grants and is providing over one billion

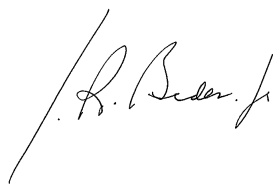
dollars through its Building Resilient Infrastructure and Communities (BRIC) program.

To build on these actions, my Administration is educating the public on fire safety. This week's theme—''Fire won't wait. Plan your escape''—emphasizes how we must all prepare fire escape plans, test smoke and carbon monoxide alarms every month and replace them every 10 years, implement appropriate building codes, and when possible, install residential fire sprinklers. For those who live in areas susceptible to wildfire, regularly clearing brush and other vegetation around your homes is another important way to stay safe.

With every home, school, and business destroyed in a fire, precious memories are lost, livelihoods are jeopardized, and dreams are crushed. This National Fire Prevention Week, let us reflect on the importance of remaining vigilant and learning more about fire safety. Let us acknowledge the remarkable service of our Nation's firefighters and honor the memory of those who have lost their lives protecting others. And let us all work to make these heroes' jobs more manageable, keep our neighbors safer, and reduce the risk of fires across our country.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 9 through October 15, 2022, as Fire Prevention Week. On Sunday, October 9, 2022, in accordance with Public Law 107–51, the flag of the United States will be flown at half-staff at all Federal office buildings in honor of the National Fallen Firefighters Memorial Service. I call on all Americans to participate in this observance with appropriate programs and activities and by renewing their efforts to prevent fires and their tragic consequences.

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



[FR Doc. 2022–22405
Filed 10–12–22; 8:45 am]
Billing code 3395–F3–P

Presidential Documents

Proclamation 10470 of October 7, 2022

National School Lunch Week, 2022

By the President of the United States of America

A Proclamation

During National School Lunch Week, we recommit to supporting the National School Lunch Program that provides tens of millions of children a year access to nutrition, dignity, and a fairer shot at brighter futures, and we celebrate its role supporting American farmers and food producers, building a stronger America for future generations.

School meals remain a vital lifeline, supplying well-balanced, free or low-cost meals to kids across the country since the program began in 1946. Studies show these are often the most nutritious—and sometimes the only—meals in a student's day. They improve student health, making it easier for students to learn, and erode inequity while also advancing our fight against childhood obesity.

My Administration is committed to ending hunger in the United States by 2030, making healthy school meals available to even more kids, and supporting schools that pioneer new ways to improve nutritional quality, whether for breakfast, lunch, or summer and afterschool meals. To that end, this September, I convened the first White House Conference on Hunger, Nutrition, and Health in over 50 years, bringing together anti-hunger, nutrition, and public health advocates; food companies; health care providers; local, State, and Tribal governments; and Federal agencies. We released a national strategy to end hunger and reduce diet-related diseases while easing disparities across underserved communities—starting by expanding free school meals to 9 million more kids by 2032. Providing healthy food is central to children's ability to learn and thrive, and no child's future should be determined by the zip code they were born in or by the food their families can afford.

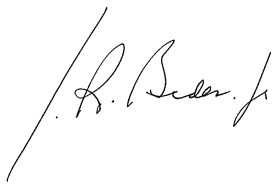
This strategy builds on my Administration's work to provide emergency food and nutrition assistance to those in need through our American Rescue Plan. It builds on our $60 million investment in Farm-to-School initiatives that benefit American farmers, connecting them to local schools which become reliable markets. We also made historic strides in slashing child poverty to its lowest rate on record by expanding the Child Tax Credit and through other actions.

Parents across our country want the same things for their kids: healthy food, clean water, good schools, and opportunities to dream big and access all the possibilities America offers. This week and always, my Administration pledges to do everything in its power to end child hunger and to put the promise of America in every child's reach. We thank the farmers, farm workers, and ranchers, as well as the educators and school nutrition professionals, who have gone above and beyond to keep our kids fed during the COVID–19 pandemic and who work so hard every day to make them strong for the future.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 9 through October 15, 2022, as National School Lunch Week. I call upon all Americans to recognize and commemorate all those who operate the National School

Lunch Program with activities that raise awareness of the steadfast efforts in supporting the health and well-being of our Nation's children.

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



[FR Doc. 2022–22406
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Presidential Documents

Proclamation 10471 of October 7, 2022

Leif Erikson Day, 2022

By the President of the United States of America

A Proclamation

Over 1,000 years ago, Leif Erikson, son of Iceland and grandson of Norway, embarked on a historic journey across the Atlantic, landing on the shores of North America. Widely believed to be the first Europeans to set foot on this continent, he and his crew embodied traits that would come to define a uniquely American spirit—restless and bold, brave and optimistic, and in search of a better future. This same spirit would guide generations of Danes, Finns, Icelanders, Norwegians, and Swedes to immigrate and build new lives in the United States. It would lead countless families to plant roots in the Great Lakes States, the northern Great Plains, and enclaves across the Nation. It remains ingrained in the hearts of roughly 11 million Americans who trace their ancestry to Nordic countries today.

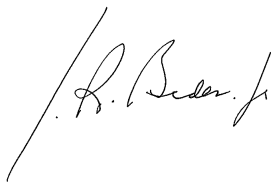
On Leif Erikson Day, we celebrate Nordic-Americans and all the ways they strengthen the fabric of our Nation. They are leaders in business and philanthropy, educators and scholars, artists and inventors, doctors and nurses, first responders, service members, and so much more. In every field and throughout every community, their contributions help bring us closer to making the promise of America real for every American.

On this day, we also reaffirm our strong partnerships with Nordic nations and their people. Our mutual commitments to greater peace, security, and stability serve as the bedrock of our democracies and the friendships between our countries. From supporting Ukraine as it defends its freedom against Russia's invasion to advancing human rights, tackling the climate crisis to addressing food insecurity, and strengthening global health to promoting development, we will always work together to tackle the world's most pressing challenges. I am proud that the United States Senate took swift action to ratify Sweden and Finland's accession protocols to join the North Atlantic Treaty Organization. These great democracies and highly capable partners will further fortify the most powerful defensive alliance in the history of the world and bolster our efforts to defend democracy and freedom everywhere.

To honor Leif Erikson and to celebrate Nordic-American heritage, the Congress, by joint resolution (Public Law 88–566) approved on September 2, 1964, has authorized the President of the United States to proclaim October 9th of each year as ''Leif Erikson Day.''

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 9, 2022, as Leif Erikson Day. I call upon all Americans to celebrate the contributions of Nordic Americans to our Nation with appropriate ceremonies, activities, and programs.

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



[FR Doc. 2022–22407
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Presidential Documents

Proclamation 10472 of October 7, 2022

Columbus Day, 2022

By the President of the United States of America

A Proclamation

In 1492, Christopher Columbus sailed from the Spanish port of Palos de la Frontera on behalf of Queen Isabella I and King Ferdinand II, but his roots trace back to Genoa, Italy. The story of his journey remains a source of pride for many Italian Americans whose families also crossed the Atlantic. His voyage inspired many others to follow and ultimately contributed to the founding of America, which has been a beacon for immigrants across the world.

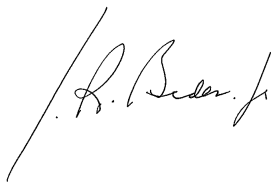
Many of these immigrants were Italian, and for generations, Italian immigrants have harnessed the courage to leave so much behind, driven by their faith in the American dream—to build a new life of hope and possibility in the United States. Today, Italian Americans are leaders in all fields, including government, health, business, innovation, and culture.

Things have not always been easy; prejudice and violence often stalled the promise of equal opportunity. In fact, Columbus Day was created by President Harrison in 1892 in response to the anti-Italian motivated lynching of 11 Italian Americans in New Orleans in 1891. During World War II, Italian Americans were even targeted as enemy aliens. But the hard work, dedication to community, and leadership of Italian Americans in every industry make our country stronger, more prosperous, and more vibrant. The Italian American community is also a cornerstone of our Nation's close and enduring relationship with Italy—a vital NATO Ally and European Union partner. Today, the partnership between Italy and the United States is at the heart of our efforts to tackle the most pressing global challenges of our time, including supporting Ukraine as it defends its freedom and democracy.

In commemoration of Christopher Columbus's historic voyage 530 years ago, the Congress, by joint resolution of April 30, 1934, and modified in 1968 (36 U.S.C. 107), as amended, has requested the President proclaim the second Monday of October of each year as ''Columbus Day.''

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim October 10, 2022, as Columbus Day. I direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of our diverse history and all who have contributed to shaping this Nation.

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



[FR Doc. 2022–22408
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Presidential Documents

Proclamation 10473 of October 7, 2022

Indigenous Peoples' Day, 2022

By the President of the United States of America

A Proclamation

On Indigenous Peoples' Day, we honor the sovereignty, resilience, and immense contributions that Native Americans have made to the world; and we recommit to upholding our solemn trust and treaty responsibilities to Tribal Nations, strengthening our Nation-to-Nation ties.

For centuries, Indigenous Peoples were forcibly removed from ancestral lands, displaced, assimilated, and banned from worshiping or performing many sacred ceremonies. Yet today, they remain some of our greatest environmental stewards. They maintain strong religious beliefs that still feed the soul of our Nation. And they have chosen to serve in the United States Armed Forces at a higher rate than any other group. Native peoples challenge us to confront our past and do better, and their contributions to scholarship, law, the arts, public service, and more continue to guide us forward.

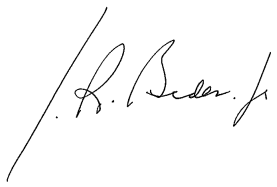
I learned long ago that Tribal Nations do better when they make their own decisions. That is why my Administration has made respect for Tribal sovereignty and meaningful consultation with Tribal Nations the cornerstone of our engagement and why I was proud to restore the White House Council on Native American Affairs. To elevate Indigenous voices across our Government, I appointed Deb Haaland as Secretary of the Interior, the first Native American to serve as a cabinet secretary, along with more than 50 other Native Americans now in significant roles across the executive branch.

My Administration is also directly delivering for Native communities—creating jobs, providing critical services, and restoring and preserving sacred Tribal lands. We have made the biggest investment in Indian Country in history, securing billions for pandemic recovery, infrastructural improvements, and climate change resilience, and we are working together with Tribal Nations to end the scourge of violence against Indigenous women and girls.

These efforts are a matter of dignity, justice, and good faith. But we have more to do to help lift Tribal communities from the shadow of our broken promises, to protect their right to vote, and to help them access other opportunities that their ancestors were long denied. On Indigenous Peoples' Day, we celebrate indigenous history and our new beginning together, honoring Native Americans for shaping the contours of this country since time immemorial.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim October 10, 2022, as Indigenous Peoples' Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of our diverse history and the Indigenous peoples who contribute to shaping this Nation.

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



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Rules and Regulations

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CBP Dec. 22–18]

RIN 1651–AB49

Period of Admission and Extensions of Stay for Representatives of Foreign Information Media Seeking To Enter the United States

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Final rule.

SUMMARY: This rule amends Department of Homeland Security (DHS) regulations to better facilitate the U.S. Government's ability to achieve greater reciprocity between the United States and the People's Republic of China (PRC) relative to the treatment of representatives of foreign information media of the respective countries seeking entry into the other country. For entry into the United States, such foreign nationals would seek to be admitted in I nonimmigrant status as bona fide representatives of foreign information media. Currently, foreign nationals who present a passport issued by the PRC, with the exception of Hong Kong Special Administrative Region (SAR) or Macau SAR passport holders, may be admitted in or otherwise granted I nonimmigrant status until the activities or assignments consistent with the I classification are completed, not to exceed 90 days. This rule amends the DHS regulations to remove the set period of stay of up to 90 days and to allow the Secretary of Homeland Security (Secretary) to determine the maximum period of stay, no longer than one year, for PRC I visa holders, taking into account certain factors. This rule also announces the Secretary has determined the maximum period of stay for which a noncitizen who presents a passport issued by the PRC (other than a Hong Kong SAR passport or a Macau SAR passport) may be admitted in or otherwise granted I nonimmigrant status is one year.

DATES: This rule is effective on October 13, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Minton, Program Manager, Enforcement Programs, Office of Field Operations, U.S. Customs and Border Protection, at 202–344–1581 or *Paul.A.Minton@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Legal Authority

The Secretary of Homeland Security (Secretary) has broad authority to administer and enforce the immigration and naturalization laws of the United States. *See* section 103(a)(1) of the Immigration and Nationality Act of 1952 (Pub. L. 82–414, 66 Stat. 163), as amended (8 U.S.C. 1103(a)(1)) (INA); *see also* 6 U.S.C. 202. The Secretary is authorized to establish such regulations as he or she deems necessary to carry out this authority under the immigration laws. *See* INA 103(a)(3) (8 U.S.C. 1103(a)(3)). Section 214(a)(1) of the INA specifically authorizes the Secretary to prescribe regulations specifying the period of admission, as well as any conditions, for the admission of nonimmigrants to the United States.[1] *See* 8 U.S.C. 1184(a)(1).

The Secretary has authorized the Commissioner of U.S. Customs and Border Protection (CBP) to enforce and administer the immigration laws relating to the inspection and admission of noncitizens[2] seeking admission to the United States, including the authority to make admissibility determinations and set the duration, terms, and conditions of admission. *See* Delegation Order 7010.3, II.B.5 (Revision No. 03.1, Incorporating Change 1) (Nov. 25, 2019). U.S. Citizenship and Immigration Services (USCIS) is authorized to consider applications for a change of nonimmigrant status under section 248 of the INA, 8 U.S.C. 1258, including establishing the authorized period of stay in the new nonimmigrant status. *See* 6 U.S.C. 271(b); 8 CFR part 248. USCIS also is authorized to consider applications for an extension of stay in nonimmigrant status. *See* 6 U.S.C. 271(b); 8 CFR 214.1(c).

Section 101(a)(15)(I) of the INA establishes the I nonimmigrant classification for noncitizens wishing to visit the United States temporarily as representatives of foreign information media. The INA established the I visa category as: ''a new class of nonimmigrants and is designed to facilitate, on a basis of reciprocity, the exchange of information among nations. It is intended that the class is to be limited to aliens who are accredited as members of the press, radio, film or other information media by their employer.'' S. Rep. No. 82–1137 at 21 (1952); H.R. Rep. No. 1365 at 45 (1952).

In order to qualify as a nonimmigrant under the I classification, a noncitizen must be a bona fide representative of foreign press, radio, film or other foreign information media that has its home office in a foreign country, and must seek to enter the United States solely to engage in such employment. *See* INA 101(a)(15)(I) (8 U.S.C. 1101(a)(15)(I)). In addition, the statute expressly requires that such a visa or status be provided ''upon a basis of reciprocity.'' *Id.; see also* INA 214(a)(1) (providing that the admission of nonimmigrants to the United States ''shall be for such time and under such conditions as the [Secretary] may by regulations prescribe'') (8 U.S.C. 1184(a)(1)).

B. Current Admission Process for I Visa Holders

Foreign nationals visiting the United States temporarily as representatives of information media must possess a nonimmigrant I visa for admission. INA 101(a)(15)(I), 212(a)(7)(B)(i)(II) (8 U.S.C. 1101(a)(15)(I), 1182(a)(7)(B)(i)(II)). In order to obtain an I visa, foreign travelers must apply for a visa with the U.S. Department of State and obtain the visa prior to traveling to the United States. *Id.; see also* INA 221–222, 273(a) (8 U.S.C. 1201–1202, 1323(a)); 22 CFR 41.52, 41.101–41.122. An I visa holder seeking entry into the United States must appear at a port of entry and

[1] *See also* sections 402, 1512, and 1517 of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2142, 2187), as amended (6 U.S.C. 202, 552, and 557) (regarding transfer of authority to enforce immigration laws and prescribe regulations necessary to carry out that authority from the Attorney General to the Secretary).

[2] For purposes of this document, CBP uses terms such as ''noncitizen'' or ''nonimmigrant'' in place of the term ''alien.'' However, the INA and Department of Homeland Security (DHS) regulations continue to use the term ''alien,'' as defined by the INA.

establish, to the satisfaction of the CBP officer, that he or she is admissible as an I nonimmigrant. *See* INA 235(a), (b)(2)(A), and 291 (8 U.S.C. 1225(a), (b)(2)(A), and 1361); 8 CFR 212.1, 235.1(f)(1); *see also* INA 221(h) (providing that issuance of a visa does not entitle the visa holder to admission to the United States). The noncitizen must also be otherwise admissible and not subject to other grounds of inadmissibility. *See generally* INA 212(a) (8 U.S.C. 1182(a)).

The CBP officer will inspect the noncitizen, including by reviewing the noncitizen's travel documents, collecting the noncitizen's biometric data (*i.e.,* fingerprints and photograph), interviewing the noncitizen, and collecting any applicable forms or fees. INA 235(a) (8 U.S.C. 1225(a)); 8 CFR 235.1(f) and (h). Unless otherwise exempted, each arriving nonimmigrant who is admitted to the United States will be issued a Form I–94 as evidence of the terms of admission. *See* 8 CFR 1.4 and 235.1(h).[3] The period of time that the noncitizen is authorized to remain in the United States is referred to as the ''period of admission'' or the ''period of stay.''

C. Current Period of Admission and Extensions of Stay for I Visa Holders

Prior to May 2020, the DHS regulation at 8 CFR 214.2(i) specified that an I visa holder, regardless of country of nationality, ''may'' be authorized admission for the duration of his or her employment. DHS and its predecessor, the Immigration and Naturalization Service (INS), had long interpreted the regulation as providing that I visa holders are authorized admission for the duration of status for an indefinite period, rather than for a set period of time. *See generally* Memorandum, INS Office of the General Counsel, Genco Op. No. 94–23, 1994 WL 1753127, at *3 (May 9, 1994) (''[R]epresentatives of information media are not currently restricted by statutory language to any temporary period. The regulations authorize their admission for 'duration of status.' ''). The term ''duration of status'' refers to the period of time in which a noncitizen continues to meet the terms and conditions of his or her admission, including that he or she remains employed with the same employer and uses the same information medium. 8 CFR 214.2(i)(1–1–20 Ed.). The regulation states that the admission requires that the noncitizen maintain the same information medium and employer until ''he or she obtains permission'' to change either. *Id.*

While an interpretation of the regulation requiring admission for an indefinite period of the duration of status is reasonable, it is also reasonable for DHS to interpret the regulation to allow DHS, in its discretion, to admit I visa holders for a set time period. In May 2020, DHS promulgated a final rule amending 8 CFR 214.2(i) to provide that the admission of I visa holders presenting passports issued by the People's Republic of China (PRC), with the exception of Hong Kong Special Administrative Region (SAR) and Macau SAR passport holders, would no longer be for an indefinite period, but would instead be for a period not to exceed 90 days. *See Period of Admission and Extensions of Stay for Representatives of Foreign Information Media Seeking To Enter the United States,* 85 FR 27645, May 11, 2020 (May 2020 rule). That rule also provides that such I visa holders are permitted to seek subsequent extensions of stay, each one limited to no more than 90 days. The rule was promulgated by DHS, because DHS determined that admitting I visa holders from the PRC for an indefinite period was not sufficiently reciprocal to the PRC's treatment of U.S. journalists or in alignment with U.S. foreign policy at that time.

D. Purpose and Summary

Since the promulgation of the May 2020 rule, DHS has determined that it should be more fluid in its approach to I visa holders from the PRC. The preamble of the May 2020 rule detailed how information received from the Department of State, as well as open source information, demonstrated a suppression of independent journalism in the PRC, including an increasing lack of transparency and consistency in the admission periods granted to foreign journalists, including U.S. journalists. According to the Foreign Correspondents' Club of China (FCCC), the PRC has forced out at least 27 reporters since 2013, either through expulsion or by non-renewal of visas, including 18 foreign correspondents from U.S.-based news outlets, such as *The New York Times, The Wall Street Journal,* and *The Washington Post* in 2020.[4]

Further, concurrent with the May 2020 rule, the PRC Government publicly targeted foreign media, describing them as politically hostile and a threat to local stability. U.S. and other foreign journalists reported a series of online threats and uncensored amplification of their personal details on PRC social media platforms. Likewise, beginning in 2020, British and Australian journalists reported credible threats of targeted lawsuits and exit bans, forcing immediate and emergency moves to flee the PRC. In September 2020, the last two Australian reporters working for Australian media in the PRC left the country following an unprecedented diplomatic stand-off with PRC security forces. The PRC security forces had sought to impose a strict exit ban until the reporters answered questions about their ties to Cheng Lei, an Australian reporter working for PRC state media who was detained and held incommunicado since August 2020. Likewise, in March 2021, a BBC journalist fled the PRC amid intense, sustained, and targeted threats from the Chinese authorities. The BBC confirmed the reporter and his team ''faced surveillance, threats of legal action, obstruction and intimidation wherever they tried to film.'' [5]

The 2020 FCCC Report further revealed that foreign journalists are receiving severely shortened visa admission periods and reporting credentials, one for just two and a half months. Moreover, the 2020 FCCC Report stated that foreign journalists applying for visa renewals face numerous challenges, with a record number of at least 12 correspondents receiving visas of six months or less. One out of six correspondents reported being forced to use a series of short visas of between one and three months in duration so that they could live and work in China; the typical duration of PRC-issued credentials is 12 months.

There remains little transparency on visa issuances and press credentials, as both are subject to change without notice and are often shortened or revoked in apparent retribution for journalists' or their colleagues' reporting efforts. In September 2020, the PRC issued new rules that confirmed that any reporter who left the PRC would have his or her visa immediately cancelled. Journalists would therefore be forced to reapply for new visas if they wanted to return.

[3] The term ''issuance'' includes the creation of an electronic record of admission, or arrival/departure by DHS following an inspection performed by an immigration officer. *See* 8 CFR 1.4. In most cases, CBP issues the Form I–94 electronically. The traveler may retrieve it through a CBP website, *https://i94.cbp.dhs.gov,* or via the CBP One™ mobile application.

[4] ''Track, Trace, Expel: Reporting on China Amid a Pandemic: FCCC Report of Media Freedom in 2020,'' *available at https://fccchina.org/wp-content/uploads/2022/01/2020-FCCC-Report.pdf?x69980* (2020 FCCC Report).

[5] *https://www.bbc.com/news/world-asia-china-56586655.*

Conditions for foreign journalists did not improve for most of 2021.[6] In May 2021, the PRC's Ministry of Foreign Affairs confirmed new visa rules for foreign correspondents, permitting all but U.S. reporters working for U.S. outlets to exit and return to China on their existing J visas, the PRC visa category for foreign journalists. U.S. citizens working for American media confirm that PRC Government authorities told them they would not be able to leave the PRC and expect to come back.

However, in November 2021, the PRC committed to a series of discrete actions that signal progress. The PRC committed to issue visas for a group of U.S. reporters, provided they are eligible under all applicable laws and regulations. The PRC also committed to increase visa validity for U.S. journalists to one year and to permit U.S. journalists already in the PRC to freely depart and return, which they had previously been unable to do. The United States also committed to increase visa validity for PRC journalists to one year and provide the same access and freedom of movement for PRC journalists in the United States. Both the PRC and the United States agreed to begin the process of extending duration of stay for each country's respective journalists.

Accordingly, DHS is issuing this rule to continue to address the actions of the PRC Government while seeking to enhance reciprocity in the treatment of U.S. journalists in the PRC. The current DHS regulations limit PRC journalists to initial stays of up to 90 days. DHS seeks to enhance reciprocity in a flexible and fluid manner, so instead of amending the regulations with a new specific set period of stay, DHS is amending the regulations to allow the Secretary to make a determination, considering certain enumerated factors, to set the maximum period of stay for PRC I visa holders, up to one year.

II. Discussion of Regulatory Changes

In order to effect the changes described above, DHS is amending 8 CFR 214.2(i). Paragraph (i)(1)(ii) is revised to remove the set period of stay of 90 days for those noncitizens who present a passport issued by the PRC (other than a Hong Kong SAR passport or a Macau SAR passport) and replace it with a maximum period of stay as determined by the Secretary, not to exceed one year. Additionally, paragraph (i)(1)(ii) is amended to provide that the Secretary may determine the maximum period of stay when the Secretary determines an adjustment is needed, with such maximum period to be no longer than one year. The revisions set forth the framework for that determination. Namely, in determining the maximum period of stay and whether an adjustment is needed, the Secretary will consider factors including, but not limited to: the average authorized period of stay and press credential validity for U.S. journalists in the PRC; the treatment of U.S. journalists in the PRC; any input from the U.S. Department of State; and such other factors as may affect the U.S. interest. Such determination will be published as a notice in the **Federal Register** and will remain in effect until the Secretary publishes a new determination.

Consistent with the change regarding the initial period of stay for I nonimmigrants, this rule replaces the references to a set period of 90 days in the introductory text of paragraph (i)(2) regarding extension of stay and in paragraph (i)(3) addressing change of status with references to the maximum period of stay determined by the Secretary pursuant to paragraph (i)(1)(ii). DHS believes that the factors considered by the Secretary in setting the maximum period of stay for initial grants of I nonimmigrant status are also applicable to extensions, and that it is appropriate for the maximum extension period to match the maximum initial grant period in place at the time the extension request is adjudicated. The period of extensions thus reflects the most recent determination made by the Secretary, taking into account the most recent information available about reciprocity, treatment of U.S. journalists, and other relevant national interests.

In evaluating its approach to PRC I visa holders for this rule, DHS recognized that it should more clearly demonstrate how it is complying with international legal obligations regarding certain PRC I visa holders. These obligations include, but are not limited to, the United Nations Headquarters Agreement (UNHQA) and Organization of American States Headquarters Agreement (OASHQA). Section 11 of the UNHQA requires that the United States not impede transit to or from the United Nations headquarters district for members of certain covered classes, including UN-accredited representatives of the press, or of radio, film or other information agencies (*i.e.,* I visa holders). Section 12 clarifies that such obligations apply irrespective of bilateral relations, and Section 13 states that U.S. laws and regulations regarding the entry and residence of noncitizens shall not be applied in such a manner as to interfere with Section 11 privileges. Section 13(a) states that visas required for those covered under Section 11 be issued without charge and as promptly as possible. Article XV, Section 1 of the OASHQA requires that the United States take appropriate steps to facilitate transit to or from the OAS Headquarters of OAS-accredited representatives of the press or of radio, film, or other information agencies (*i.e.,* I visa holders).

Thus, at the end of paragraph (i)(2)(ii), DHS adds that requests for extensions of stay will be adjudicated consistent with international legal obligations, including the UNHQA and OASHQA. DHS will continue to coordinate with the U.S. Department of State to ensure that USCIS has the discretion to grant extension requests for accredited journalists, consistent with international legal obligations, free of charge. In the event that assessment and vetting efforts identify serious concerns, DHS, prior to taking any action on extension applications for PRC I nonimmigrants covered under such agreements as the UNHQA and OASHQA, will coordinate with the Department of State in a timely manner over appropriate next steps.

Current paragraph (i)(4) provides for the transition from duration of status admission to a fixed admission period for noncitizens with I status who had presented a passport issued by the PRC (that is not a Hong Kong SAR passport or a Macau SAR passport) at the time of admission and who were present in the United States on May 8, 2020, when the May 2020 rule took effect. This provision is no longer necessary, and this rule replaces that provision in paragraph (i)(4) with a provision detailing the applicable maximum period of stay for those noncitizens who have pending applications for extension of stay or change in status when a change in the maximum period of stay occurs. Specifically, revised paragraph (i)(4) sets forth that any change in the maximum period of stay announced by a **Federal Register** notice pursuant to paragraph (i)(1)(ii) applies to applications for an extension of stay or a change of status, filed under paragraphs (i)(2) and (i)(3) respectively, which are pending with USCIS on the effective date of the **Federal Register** notice. In other words, the maximum period of stay that is in effect when an application for an extension of stay or a change of status is adjudicated is the maximum period of stay that will apply to said petition. For example, DHS

[6] ''2021 Locked Down or Kicked Out Covering China: FCCC Report of Media Freedom in 2021,'' *available at https://fccchina.org/wp-content/uploads/2022/01/2021-FCCC-final.pdf?x69980* (2021 FCCC Report).

would publish a **Federal Register** Notice saying that it is changing the maximum period of stay from 1 year to 6 months, and the effective date would be February 28, 2024. In such a case, when an application for extension of stay is filed on February 1, 2024, but that application is still pending on February 28, 2024, the maximum period of stay USCIS can give is 6 months if that extension of stay is approved on February 28, 2024 (or later).

This rule does not contain any substantive changes to the admission or duration of status period of stay provisions currently applicable to I visa holders from any country other than the PRC.

III. Maximum Period of Stay Determined by the Secretary

The PRC has taken positive action with respect to allowing U.S. media access since late 2021. PRC authorities have issued visas for all U.S. reporters for which the Department of State requested such documents in November 2021. These issuances will have a substantial impact on bolstering critical and independent news coverage in the PRC, and arrival of these individuals will represent a 30 percent increase in the total number of U.S. journalists in the country. In another sign of progress, the PRC has expedited the issuance of re-entry visas for U.S. reporters in China so that they may freely depart and return. These actions reflect a renewed effort on the part of the PRC to improve media reciprocity and working conditions for U.S. reporters in China. Although such conditions remain far from fully satisfactory, increasing the period of stay for PRC journalists in the United States from 90 days to a year through this rule will serve to maintain momentum on continuing efforts to improve U.S. media access to the PRC.

Accordingly, pursuant to 8 CFR 214.2(i)(1)(ii) as amended by this final rule, the Secretary of Homeland Security has determined that the maximum period of stay for which a noncitizen who presents a passport issued by the PRC (other than a Hong Kong SAR passport or a Macau SAR passport) may be admitted in or otherwise granted I nonimmigrant status is one year, effective on October 13, 2022.

IV. Statutory and Regulatory Review

A. Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires agencies to publish notice of a proposed rulemaking in the **Federal Register** for a period of public comment and to delay the effective date of the final rule. However, rules that involve a foreign affairs function of the United States are excluded from the rulemaking provisions of the APA. *See* 5 U.S.C. 553(a)(1). For the reasons discussed below, this rule involves a foreign affairs function of the United States. DHS, after consultation with the Department of State, is adopting this rule to respond more flexibly and fluidly to the actions of the PRC Government regarding the duration of admission for media representatives from the PRC, with the exception of Hong Kong SAR or Macau SAR passport holders.

In order to obtain an I visa and be admitted to the United States, a representative of foreign information media must be a national of a country that grants similar privileges to representatives of media from the United States. *See* 8 U.S.C. 1101(a)(15)(I) (providing that I nonimmigrant visas may be issued ''upon a basis of reciprocity''). One such country is the PRC. Among other things, the PRC has committed to begin the process of extending duration of stay for U.S. journalists. Such acts demonstrate that the PRC is willing to grant similar privileges to U.S. media representatives as those granted to members of the Chinese media in the United States. Accordingly, this rule encompasses diplomatic relations with the PRC regarding the authorized terms and conditions of admission of representatives of radio, film or other information media as they perform such functions abroad. The U.S. Court of Appeals for the Second Circuit, in *City of New York* v. *Permanent Mission of India to United Nations,* made clear that regulation of the reciprocal treatment to be afforded to representatives of foreign nations in the United States ''relates directly to, and has clear consequences for, foreign affairs.'' 618 F.3d 172, 201 (2d Cir. 2010). More recently, the United States District Court for the District of Columbia found that ''to be covered by the foreign affairs function exception, a rule must clearly and directly involve activities or actions characteristic to the conduct of international relations.'' *E.B. et al.* v. *U.S. Dep't of State et al.,* Civ. Action No. 19–2856, Mem. Op. at 8 (D.D.C. Feb. 4, 2022), *available at https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2019cv2856-50.* This rule clearly and directly involves the conduct of foreign affairs and the commitments that the United States and another specific nation-state, the PRC, have made or may make to each other regarding foreign media representatives.

Any diplomatic negotiations between the United States and the PRC as to the reciprocal treatment of foreign media representatives will be more effective in ensuring full and fair access for U.S. journalists and less disruptive to long-term relations the sooner this final rule is in place. *See Rajah* v. *Mukasey,* 544 F.3d 427, 438 (2d Cir. 2008) (finding that the notice and comment process can be ''slow and cumbersome,'' which can negatively affect efforts to secure U.S. national interests, thereby justifying application of the foreign affairs exemption). Furthermore, notice and comment procedures prior to the effective date of this rule would disrupt the Executive Branch's foreign policy with respect to the PRC and erode the sovereign authority of the United States to pursue the strategy it deems to be most appropriate as it engages with foreign nations. *See Am. Ass'n of Exps. & Imps.-Textile & Apparel Grp.* v. *United States,* 751 F.2d 1239, 1249 (Fed. Cir. 1985) (noting that the foreign affairs exception covers agency actions ''linked intimately with the Government's overall political agenda concerning relations with another country'').

B. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Rules involving the foreign affairs function of the United States are exempt from the requirements of Executive Orders 12866 and 13563. This final rule advances the President's foreign policy goals, as they affect a specific bilateral relationship and as the rule has an expressed goal of enhancing parity in the relationship of the United States with a specific nation-state. The Office of Information and Regulatory Affairs has confirmed that this rule is not subject to the analytical requirements of Executive Orders 12866 and 13563, due to the foreign affairs exception described above. However, DHS has nevertheless reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in those Executive Orders.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since a notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. *See* 2 U.S.C. 1532(a). This rule will not result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

E. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3507(d)) requires that DHS consider the impact of paperwork and other information collection burdens imposed on the public. This rule does not impose any new requirements subject to the PRA.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens.

Regulatory Amendments

For the reasons stated in the preamble, DHS is amending 8 CFR part 214 as follows:

PART 214—NONIMMIGRANT CLASSES

■ 1. The authority citation for part 214 is revised to read as follows:

Authority: 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305, 1356, 1357, and 1372; section 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

■ 2. Amend § 214.2 by:
■ a. Revising paragraph (i)(1)(ii);
■ b. In paragraph (i)(2) introductory text removing the text ''90 days'' and adding in its place the text ''the maximum period of stay determined by the Secretary pursuant to paragraph (i)(1)(ii) of this section'';
■ c. Adding a sentence at the end of paragraph (i)(2)(ii);
■ d. In paragraph (i)(3), removing the text ''90 days'' and adding in its place the text ''the maximum period of stay determined by the Secretary pursuant to paragraph (i)(1)(ii) of this section''; and
■ e. Revising paragraph (i)(4).

The addition and revisions read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(i) * * *

(1) * * *

(ii) In the case of an alien who presents a passport issued by the People's Republic of China (PRC) (other than a Hong Kong Special Administrative Region passport or a Macau Special Administrative Region passport), until the activities or assignments consistent with the I classification are completed, not to exceed the maximum period of stay as determined by the Secretary. The Secretary of Homeland Security may determine the maximum period of stay when the Secretary determines an adjustment is needed, with such maximum period to be no longer than one year. In determining the maximum period of stay and whether an adjustment is needed, the Secretary will consider factors including, but not limited to, the average authorized period of stay and press credential validity for U.S. journalists in the PRC, the treatment of U.S. journalists in the PRC, any input from the U.S. Department of State, and such other factors as may affect the U.S. interest. Such determination will be published in the **Federal Register** as a notice and will remain in effect until the Secretary of Homeland Security publishes a new determination under this paragraph.

* * * * *

(2) * * *

(ii) * * * Requests for extensions of stay will be adjudicated consistent with international legal obligations, including the United Nations Headquarters Agreement and Organization of American States Headquarters Agreement.

* * * * *

(4) *Applicable maximum period of stay.* Any change in the maximum period of stay announced by a **Federal Register** notice pursuant to paragraph (i)(1)(ii) of this section applies to applications for an extension of stay or a change of status, filed under paragraphs (i)(2) and (3) of this section respectively, that are pending with USCIS on the effective date of the **Federal Register** notice.

* * * * *

Alejandro N. Mayorkas,

Secretary of Homeland Security.

[FR Doc. 2022–21898 Filed 10–12–22; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1249; Project Identifier MCAI–2022–01159–T; Amendment 39–22203; AD 2022–21–04]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS 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 Airbus SAS Model A321–251NX, –252NX, –253NX, –271NX, and –272NX airplanes. This AD was prompted by a report of an un-commanded escape slide release during flight due to a blockage of one of the system venting features. This AD requires modification of affected reservoirs, and limits the installation of affected reservoirs, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective October 28, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 28, 2022.

The FAA must receive comments on this AD by November 28, 2022.

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–2022–1249; 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 EASA material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- For Safran service information identified in this final rule, contact Safran Aerosystems Evacuation, 1747 State Route 34, Wall Township, NJ 07727–3935; telephone 732–681–3527; website *safran-group.com/companies/safran-aerosystems-evacuation.*
- You may view this service information 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–2022–1249.

FOR FURTHER INFORMATION CONTACT: Manuel F. Hernandez, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 562–627–5256; email *Manuel.F.Hernandez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1249; Project Identifier MCAI–2022–01159–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 Manuel F Hernandez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone 562–627–5256; email *Manuel.F.Hernandez@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

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0176, dated August 24, 2022, to correct an unsafe condition for all Airbus SAS Model A321–251NX, –252NX, –253NX, –271NX, and –272NX airplanes. The MCAI states an occurrence has been reported of an un-commanded door 3 escape slide release during flight. An accumulation of gas, leaking from the reservoir regulator valve, initiated the slide enclosure door panel release and liberation of the slide in a non-inflated condition. Further investigation also determined that the most probable root cause of both panel and slide inflatable assembly release in flight is the blockage of one of the system venting features. Results from the preliminary investigation, however, show that the reservoir regulator valve outlet port orifice was unable to function properly with the protective cover installed, resulting in venting malfunction. This condition, if not detected and corrected, could lead to deployment in flight of a non-inflated slide, possibly resulting in reduced control of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1249.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0176 specifies procedures to modify affected reservoirs by removing the orifice protective cover. EASA AD 2022–0176 also limits the installation of affected parts under certain conditions.

Safran Service Bulletin A321 005–25–37, dated August 1, 2022; and Safran Service Bulletin A321 005–25–38, dated August 1, 2022; specify procedures for modifying the reservoir regulator valve outlet port orifice and identifies affected serial numbers. These documents are distinct since they apply to different part/serial numbers.

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

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described 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 EASA AD 2022–0176 described previously, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to

use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2022–0176 is incorporated by reference in this AD. This AD requires compliance with EASA AD 2022–0176 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 2022–0176 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 2022–0176. Service information required by EASA AD 2022–0176 for compliance will be available at *regulations.gov* under Docket No. FAA–2022–1249 after this AD is published.

Interim Action

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

FAA's Justification and Determination of the Effective Date

Section 553(b)(3)(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 a malfunctioning reservoir regulator valve outlet port orifice could result in a venting malfunction, and lead to deployment in flight of a non-inflated slide, possibly resulting in reduced control of the airplane. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

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

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

The FAA estimates that this AD affects 127 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
2 work-hours × $85 per hour = $170	$0	$170	Up to $21,590.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–21–04 Airbus SAS Airplanes: Amendment 39–22203; Docket No. FAA–2022–1249; Project Identifier MCAI–2022–01159–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 28, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A321–251NX, –252NX, –253NX, –271NX, and –272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by a report of an un-commanded door 3 escape slide release during flight due to a blockage of one of the system venting features. The FAA is issuing this AD to address a malfunctioning reservoir regulator valve outlet port orifice, which could result in a venting malfunction and lead to deployment in flight of a non-inflated slide, possibly resulting 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 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 2022–0176, dated August 24, 2022 (EASA AD 2022–0176).

(h) Exceptions to EASA AD 2022–0176

(1) Where EASA AD 2022–0176 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2022–0176 defines an affected part, for this AD, an affected part is defined as a reservoir having a part number as specified in EASA AD 2022–0176 and a serial number identified in Safran Service Bulletin A321 005–25–37, dated August 1, 2022, or Safran Service Bulletin A321 005–25–38, dated August 1, 2022.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information referenced in EASA AD 2022–0176 that contains paragraphs that are labeled as RC, the instructions in RC paragraphs, including subparagraphs under an RC paragraph, must be done to comply with this AD; any paragraphs, including subparagraphs under those paragraphs, that are not identified as RC are recommended. The instructions in paragraphs, including subparagraphs under those paragraphs, not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to instructions identified as RC require approval of an AMOC.

(j) Additional Information

For more information about this AD, contact Manuel F. Hernandez, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 562–627–5256; email *Manuel.F.Hernandez@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0176, dated August 24, 2022.

(ii) Safran Service Bulletin A321 005–25–37, dated August 1, 2022.

(iii) Safran Service Bulletin A321 005–25–38, dated August 1, 2022.

(3) For EASA AD 2022–0176, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(4) For Safran service information, contact Safran Aerosystems Evacuation, 1747 State Route 34, Wall Township, NJ 07727–3935; telephone 732–681–3527; website *safran-group.com/companies/safran-aerosystems-evacuation.*

(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 that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on September 29, 2022.

Christina Underwood,

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

[FR Doc. 2022–22320 Filed 10–11–22; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31449; Amdt. No. 4027]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPS) and associated Takeoff Minimums and Obstacle Departure procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 13, 2022. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 13, 2022.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30. 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC, 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone (405) 954–4164.

SUPPLEMENTARY INFORMATION:

This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the typed of SIAPS, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPs as identified in the amendatory language for Part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flights safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on September 16, 2022.

Thomas J Nichols,

Aviation Safety, Flight Standards Service Manager, Standards Section, Flight Procedures & Airspace Group Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CFR part 97 is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 3 November 2022

Adak Island, AK, PADK, TACAN RWY 23, Orig
Bentonville, AR, KVBT, Takeoff Minimums and Obstacle DP, Amdt 2A
Helena/West Helena, AR, KHEE, Takeoff Minimums and Obstacle DP, Amdt 2
Walnut Ridge, AR, KARG, RNAV (GPS) RWY 4, Orig-C
Phoenix, AZ, KPHX, RNAV (GPS) Y RWY 8, Amdt 2
Columbia, CA, O22, FICHU FOUR, Graphic DP
Hawthorne, CA, KHHR, RNAV (GPS) RWY 7, Orig
Hawthorne, CA, KHHR, RNAV (GPS) RWY 25, Amdt 3
Ukiah, CA, KUKI, LOC RWY 15, Amdt 6
Ukiah, CA, KUKI, RNAV (GPS) RWY 15, Orig
Ukiah, CA, KUKI, RNAV (GPS)-B, Amdt 1
Ukiah, CA, KUKI, Takeoff Minimums and Obstacle DP, Amdt 3
Orlando, FL, KORL, ILS OR LOC RWY 25, Amdt 2
Orlando, FL, KORL, RNAV (GPS) RWY 25, Amdt 4
Atlanta, GA, KRYY, ILS OR LOC RWY 27, Amdt 6
Guam, GU, PGUM, VOR–A, Orig-F, CANCELLED

Guam, GU, PGUM, VOR OR TACAN RWY 6L, Orig-F, CANCELLED
Chicago, IL, KMDW, RNAV (GPS) Z RWY 13C, Amdt 3
Peru, IL, KVYS, RNAV (GPS) RWY18, Amdt 1A
Peru, IL, KVYS, RNAV (GPS) RWY 36, Amdt 1A
Manhattan, KS, KMHK, ILS OR LOC RWY 3, Amdt 7D
Jackman, ME, 59B, RNAV (GPS) RWY 31, Amdt 1
Jackman, ME, 59B, Takeoff Minimums and Obstacle DP, Amdt 1
Charlotte, NC, KCLT, RNAV (RNP) Z RWY 36C, Orig-G
Charlotte, NC, KCLT, Takeoff Minimums and Obstacle DP, Amdt 8
Wadesboro, NC, KAFP, RNAV (GPS) RWY 16, Amdt 1C
Wadesboro, NC, KAFP, Takeoff Minimums and Obstacle DP, Amdt 3
Rochester, NH, KDAW, RNAV (GPS) RWY 33, Amdt 2
Roswell, NM, KROW, ILS Z OR LOC Z RWY 21, Amdt 18C
Reno, NV, KRNO, ILS OR LOC RWY 35L, Amdt 1
Reno, NV, KRNO, RNAV (GPS) X RWY 35L, Amdt 2
Reno, NV, KRNO, RNAV (GPS) Y RWY 35L, Amdt 1
Reno, NV, KRNO, RNAV (RNP) W RWY 35L, Orig
Reno, NV, KRNO, RNAV (RNP) W RWY 35R, Orig
Reno, NV, KRNO, RNAV (RNP) Z RWY 35L, Amdt 1
Reno, NV, KRNO, RNAV (RNP) Z RWY 35R, Amdt 1
Dayton, OH, I73, RNAV (GPS)-A, Orig
Dayton, OH, I73, Takeoff Minimums and Obstacle DP, Orig
Norwalk, OH, 5A1, Takeoff Minimums and Obstacle DP, Amdt 2
Myrtle Beach, SC, KMYR, ILS OR LOC RWY 36, Amdt 5
Myrtle Beach, SC, KMYR, VOR–A, Amdt 2B
Harlingen, TX, KHRL, RNAV (RNP) Z RWY 17R, Orig-B
Harlingen, TX, KHRL, RNAV (RNP) Z RWY 35L, Orig-B

[FR Doc. 2022–22156 Filed 10–12–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31450; Amdt. No. 4028]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 13, 2022. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 13, 2022.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for Part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP

amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on September 16, 2022.

Thomas J Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CFR part 97 is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
3–Nov–22	GA	Milledgeville	Baldwin County Rgnl	2/0173	8/15/22	RNAV (GPS) RWY 28, Amdt 2A.
3–Nov–22	UT	Nephi	Nephi Muni	2/0990	9/8/22	RNAV (GPS) RWY 17, Orig-B.
3–Nov–22	UT	Nephi	Nephi Muni	2/0992	9/8/22	RNAV (GPS) RWY 35, Orig-C.
3–Nov–22	MN	Minneapolis	Anoka County-Blaine (Janes Fld).	2/2222	8/3/22	VOR RWY 9, Amdt 12D.
3–Nov–22	MN	Minneapolis	Anoka County-Blaine (Janes Fld).	2/2223	8/3/22	RNAV (GPS) RWY 9, Amdt 1.
3–Nov–22	MN	Minneapolis	Anoka County-Blaine (Janes Fld).	2/2224	8/3/22	RNAV (GPS) RWY 18, Orig-F.
3–Nov–22	PA	Philadelphia	Philadelphia Intl	2/2363	8/30/22	RNAV (GPS) RWY 17, Amdt 3C.
3–Nov–22	PA	Philadelphia	Philadelphia Intl	2/2364	8/30/22	RNAV (RNP) Z RWY 9R, Orig-D.
3–Nov–22	VA	Norfolk	Norfolk Intl	2/2477	8/18/22	ILS OR LOC RWY 5, Amdt 26E.
3–Nov–22	NE	Harvard	Harvard State	2/2814	9/8/22	Takeoff Minimums and Obstacle DP, Orig.
3–Nov–22	MI	Ludington	Mason County	2/3205	8/25/22	RNAV (GPS) RWY 8, Orig-E.
3–Nov–22	NH	Laconia	Laconia Muni	2/3863	8/3/22	ILS OR LOC RWY 8, Amdt 2.
3–Nov–22	NH	Laconia	Laconia Muni	2/3866	8/3/22	RNAV (GPS) RWY 8, Orig-C.
3–Nov–22	NC	Wadesboro	Anson County/Jeff Cloud Fld	2/3942	8/5/22	ILS OR LOC RWY 34, Orig-C.
3–Nov–22	NC	Wadesboro	Anson County/Jeff Cloud Fld	2/3943	8/5/22	RNAV (GPS) RWY 34, Amdt 2C.
3–Nov–22	TX	Stamford	Arledge Fld	2/4031	9/9/22	RNAV (GPS) RWY 17, Orig-B.
3–Nov–22	PA	Pittsburgh	Allegheny County	2/4945	9/9/22	RNAV (GPS) RWY 28, Amdt 3A.
3–Nov–22	PA	Pittsburgh	Allegheny County	2/4947	9/9/22	ILS OR LOC RWY 28, Amdt 29C.
3–Nov–22	PA	Pittsburgh	Allegheny County	2/4948	9/9/22	ILS OR LOC RWY 10, Amdt 7.
3–Nov–22	PA	Pittsburgh	Allegheny County	2/4949	9/9/22	RNAV (GPS) RWY 10, Amdt 4D.
3–Nov–22	TN	Knoxville	Mc Ghee Tyson	2/5180	6/14/22	RNAV (GPS) RWY 5R, Amdt 2.
3–Nov–22	KS	Ulysses	Ulysses	2/5414	9/1/22	RNAV (GPS) RWY 30, Amdt 1A.
3–Nov–22	ND	Watford City	Watford City Muni	2/6165	8/26/22	RNAV (GPS) RWY 30, Amdt 1.
3–Nov–22	MI	Ludington	Mason County	2/6179	8/25/22	RNAV (GPS) RWY 26, Orig-C.
3–Nov–22	TX	Nacogdoches	Nacogdoches A L Mangham Jr Rgnl.	2/6206	8/30/22	ILS OR LOC RWY 36, Amdt 3F.
3–Nov–22	TX	Nacogdoches	Nacogdoches A L Mangham Jr Rgnl.	2/6207	8/30/22	RNAV (GPS) RWY 18, Orig-B.
3–Nov–22	TX	Nacogdoches	Nacogdoches A L Mangham Jr Rgnl.	2/6208	8/30/22	RNAV (GPS) RWY 36, Orig-C.
3–Nov–22	CO	Grand Junction	Grand Junction Rgnl	2/6383	9/9/22	RNAV (RNP) Z RWY 11, Orig-B.
3–Nov–22	PA	Altoona	Altoona/Blair County	2/6484	8/10/22	RNAV (GPS) Y RWY 3, Amdt 1B.
3–Nov–22	ND	Grafton	Hutson Fld	2/6788	8/26/22	RNAV (GPS) RWY 35, Orig.
3–Nov–22	ND	Grafton	Hutson Fld	2/6790	8/26/22	RNAV (GPS) RWY 17, Orig.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
3–Nov–22	MI	Ray	Ray Community	2/7000	6/23/22	Takeoff Minimums and Obstacle DP, Orig-A.
3–Nov–22	ME	Bethel	Bethel Rgnl	2/7229	6/14/22	RNAV (GPS) Y RWY 32, Orig.
3–Nov–22	OH	Urbana	Grimes Fld	2/7307	8/18/22	Takeoff Minimums and Obstacle DP, Amdt 1.
3–Nov–22	MI	Charlotte	Fitch H Beach	2/7356	8/30/22	RNAV (GPS) RWY 21, Amdt 1A.
3–Nov–22	NJ	Old Bridge	Old Bridge	2/7654	8/30/22	RNAV (GPS) RWY 24, Orig-B.
3–Nov–22	CA	Santa Barbara	Santa Barbara Muni	2/7658	9/2/22	ILS OR LOC RWY 7, Amdt 5C.
3–Nov–22	CA	Santa Barbara	Santa Barbara Muni	2/7659	9/2/22	RNAV (GPS) RWY 7, Orig-C.
3–Nov–22	CA	Santa Barbara	Santa Barbara Muni	2/7660	9/2/22	VOR OR GPS RWY 25, Amdt 6D.
3–Nov–22	IL	Peoria	General Downing—Peoria Intl	2/8235	9/9/22	ILS OR LOC RWY 31, Amdt 7D.
3–Nov–22	IL	Peoria	General Downing—Peoria Intl	2/8237	9/9/22	RNAV (GPS) RWY 31, Amdt 1C.
3–Nov–22	IL	Peoria	General Downing—Peoria Intl	2/8239	9/9/22	RNAV (GPS) RWY 13, Amdt 1B.
3–Nov–22	AZ	Tucson	Ryan Fld	2/8455	7/22/22	RNAV (GPS) RWY 6R, Orig.
3–Nov–22	NC	Sylva	Jackson County	2/8456	7/21/22	Takeoff Minimums and Obstacle DP, Orig.
3–Nov–22	CA	Fallbrook	Fallbrook Community Airpark	2/8487	8/30/22	GPS RWY 18, Orig.
3–Nov–22	MO	St Louis	Spirit Of St Louis	2/8911	8/31/22	ILS OR LOC RWY 26L, Orig-D.

[FR Doc. 2022–22157 Filed 10–12–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 734, 736, 740, 742, 744, 762, 772, and 774

[Docket No. 220930–0204]

RIN 0694–AI94

Procedures for Access to the Public Briefing on Additional Export Controls on Certain Advanced Computing and Semiconductor Manufacturing Items

AGENCY: Bureau of Industry and Security, U.S. Department of Commerce.

ACTION: Procedures for accessing a public briefing on regulatory actions.

SUMMARY: On October 7, 2022, the Bureau of Industry and Security (BIS) placed on public display an interim final rule: ''*Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List Modification.*'' On October 13, 2022, Under Secretary for Industry and Security Alan F. Estevez and Assistant Secretary for Export Administration Thea D. Rozman Kendler will conduct a public briefing on the rule and associated actions. This announcement provides details on the procedures for attending the public briefing.

DATES:

Public briefing: The public briefing call will be held on October 13, 2022. The public briefing call will begin at 9 a.m. Eastern Daylight Time (EDT) local time and conclude at 10 a.m. EDT. The telephone number for attending this event will be posted on the BIS website at *https://bis.doc.gov/index.php/about-bis/newsroom/2082* no later than October 7 at 5 p.m.

Deadline for submitting questions for public briefing: Questions for BIS for the public briefing may be submitted until 3 p.m. EDT on October 11, 2022.

ADDRESSES:

Submitting questions: Questions for BIS for the public briefing may be submitted in writing to *OEXSsubmissions@bis.doc.gov*. Please tag the questions submitted by adding ''Public Briefing on China Actions'' in the subject line.

Recording: Within 7 business days after the public briefing on the rule and associated actions is completed, BIS will add a link to a recording, including captioning, of the public briefing to make the recording physically accessible to people with disabilities.

FOR FURTHER INFORMATION CONTACT: Karen Nies-Vogel, Director, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–3811, Email: *rpd2@bis.doc.gov*. For emails, include ''Public Briefing on China Actions'' in the subject line.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 2022, the Bureau of Industry and Security (BIS) placed on public display an interim final rule: ''*Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List* Modification'' (October 7 rule). That rule amends the Export Administration Regulations (EAR) to implement controls on advanced computing integrated circuits (ICs), computer commodities that contain such ICs, and certain semiconductor manufacturing items. Additionally, the rule expands controls on transactions involving items for supercomputer and semiconductor manufacturing end uses, for example, it expands the scope of foreign-produced items subject to license requirements for twenty-eight existing entities on the Entity List that are located in the Peoples' Republic of China (PRC, China). The rule also informs the public that specific activities of ''U.S. persons'' that 'support' the ''development'' or ''production'' of certain ICs in the PRC require a license.

Advanced computing commodities and supercomputers, in which ICs are an essential component, can be used for purposes detrimental to U.S. national security and foreign policy interests, including for weapons of mass destruction, military modernization, and human rights abuses. Certain semiconductor manufacturing equipment is needed to develop, produce, or use ICs. With the October 7 rule, BIS addresses these concerns by:

(1) Adding certain advanced and less advanced computing chips and computer commodities that contain such chips to the Commerce Control List (CCL);

(2) Adding new license requirements for items destined for supercomputer and semiconductor end use in China;

(3) Expanding the scope of foreign-produced advanced computing items and foreign-produced items for supercomputer end uses subject to the EAR;

(4) Expanding the scope of foreign-produced items subject to license requirements for twenty-eight existing entities on the Entity List that are located in China;

(5) Adding certain semiconductor manufacturing equipment to the CCL;

(6) Adding new license requirements for items destined to a semiconductor fabrication ''facility'' in China that fabricates ICs meeting specified criteria;

(7) Adding new license requirements for items used in the ''development'' or ''production'' of semiconductor manufacturing equipment and related items in China; and

(8) Informing the public that specific activities of ''U.S. persons'' that 'support' the ''development'' or ''production'' of certain ICs in the PRC require a license.

Lastly, to minimize the short term impact on the semiconductor supply chain from this rule, BIS is establishing a Temporary General License to permit specific, limited manufacturing activities in China related to items destined for use outside China and is identifying a model certificate that may be used in compliance programs to assist, along with other measures, in conducting due diligence.

Scope of the Briefing and Process for Submitting Questions

The briefing conducted by Under Secretary Estevez and Assistant Secretary Kendler will address important aspects of the October 7 interim final rule and associated actions. The October 7 interim final rule is open for a sixty-day public comment until the date specified in the **DATES** section of the interim final rule.

Note that no verbal public comments will be accepted during the public briefing, which will be held virtually via audio only. Questions for BIS may be submitted in writing to *OEXSsubmissions@bis.doc.gov* until 3 p.m. EDT on October 11, 2022. Please tag the questions submitted by adding ''Public Briefing on China Actions'' in the subject line. Such questions will be addressed as time and subject matter permit.

Process for Submitting Comments on the Interim Final Rule

Written comments on the rule must be received by BIS no later than the date specified in the **DATES** section of the October 7 interim final rule: *Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List Modification.* See the **ADDRESSES** section of the interim final rule for instructions on submitting written comments.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2022–22037 Filed 10–7–22; 11:15 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 220930–0205]

RIN 0694–AI51

Revisions to the Unverified List; Clarifications to Activities and Criteria That May Lead to Additions to the Entity List

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) by adding 31 persons to the Unverified List (UVL). The 31 persons are added to the UVL on the basis that BIS was unable to verify their *bona fides* because an end-use check could not be completed satisfactorily for reasons outside the U.S. Government's control. All 31 persons are being added under the destination of the People's Republic of China (China). This rule also removes nine persons, all under the destination of China, from the UVL because BIS was able to verify their *bona fides.* With this final rule, BIS also clarifies the activities and criteria that may lead to the addition of an entity to the Entity List, including a sustained lack of cooperation by the host government (*e.g.,* the government of the country in which an end-use check is to be conducted) that effectively prevents BIS from determining compliance with the EAR.

DATES: This rule is effective October 7, 2022.

FOR FURTHER INFORMATION CONTACT: Linda Minsker, Director, Office of Enforcement Analysis, Phone: (202) 482–4255 or by email at *UVLRequest@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The UVL, set forth in supplement no. 6 to part 744 of the EAR (15 CFR parts 730–774), contains the names and addresses of foreign persons who are or have been parties to a transaction, as described in § 748.5 of the EAR, involving the export, reexport, or transfer (in-country) of items subject to the EAR. These foreign persons are added to the UVL because BIS or federal officials acting on BIS's behalf were unable to verify their *bona fides* (*i.e.,* legitimacy and reliability relating to the end use and end user of items subject to the EAR) through the completion of an end-use check. Sometimes these checks, such as a pre-license check (PLC) or a post-shipment verification (PSV), cannot be completed satisfactorily for reasons outside the U.S. Government's control.

There are any number of reasons why these checks cannot be completed to the satisfaction of the U.S. Government. The reasons include, but are not limited to: (1) reasons unrelated to the cooperation of the foreign party subject to the end-use check (for example, BIS sometimes initiates end-use checks but is unable to complete them because the foreign party cannot be found at the address indicated on the associated export documents and BIS cannot contact the party by telephone or email); (2) reasons related to a lack of cooperation by the host government that fails to schedule and facilitate the completion of an end-use check, for example by host government agencies' lack of responses to requests to conduct end-use checks, actions preventing the scheduling of such checks, or refusals to schedule checks in a timely manner; or (3) when, during the end-use check, a recipient of items subject to the EAR is unable to produce the items that are the subject of the end-use check for visual inspection or provide sufficient documentation or other evidence to confirm the disposition of the items. BIS's inability to confirm the *bona fides* of foreign persons subject to end-use checks for the reasons described above raises concerns about the suitability of such persons as participants in future exports, reexports, or transfers (in-country) of items subject to the EAR; this also indicates a risk that such items may be diverted to prohibited end uses and/or end users. Under such circumstances, there may not be sufficient information to add the foreign person at issue to the Entity List under § 744.11 of the EAR. Therefore, BIS may add the foreign person to the UVL.

As provided in § 740.2(a)(17) of the EAR, the use of license exceptions for exports, reexports, and transfers (in-country) involving a party or parties to the transaction who are listed on the UVL is suspended. Additionally, under § 744.15(b) of the EAR, there is a requirement for exporters, re-exporters, and transferors to obtain (and maintain

a record of) a UVL statement from a party or parties to the transaction who are listed on the UVL before proceeding with exports, reexports, and transfers (in-country) to such persons, when the exports, reexports and transfers (in-country) are not subject to a license requirement. Finally, pursuant to § 758.1(b)(8), Electronic Export Information (EEI) must be filed in the Automated Export System (AES) for all exports of tangible items subject to the EAR when a party or parties to the transaction is/are listed on the UVL.

Requests for the removal of a UVL entry must be made in accordance with § 744.15(d) of the EAR. Decisions regarding the removal or modification of UVL entry are made by the Deputy Assistant Secretary for Export Enforcement on the basis of a demonstration by the listed person of their *bona fides.*

Additions to the UVL

This rule adds 31 persons to the UVL by amending supplement no. 6 to part 744 of the EAR to include their names and addresses. BIS is adding these persons pursuant to § 744.15(c) of the EAR. This final rule implements the decision to add the following 31 persons located in China to the UVL:

China

1. Beijing Naura Magnetoelectric Technology Co., Ltd.
2. Beijing PowerMac Company
3. CCIC Southern Electronic Product Testing Co., Ltd.
4. Chang Zhou Jin Tan Teng Yuan Machinery Parts Co., Ltd.
5. Institute of Mineral Resources, Chinese Academy of Geological Sciences
6. Chinese Academy of Science (CAS) Institute of Chemistry
7. Chongqing Optel Telecom
8. Chongqing Xinyuhang Technology Co., Ltd.
9. Dandong Nondestructive Electronics
10. DK Laser Company Ltd.
11. Foshan Huaguo Optical Co., Ltd.
12. GRG Metrology & Test (Chongqing) Co., Ltd.
13. Guangdong Dongling Carbon Tech. Co., Ltd.
14. Guangxi Yuchai Machinery Co., Ltd.
15. Guangzhou GRG Metrology & Test (Beijing) Co., Ltd.
16. Jialin Precision Optics (Shanghai) Co., Ltd.
17. Lishui Zhengyang Electric Power Construction
18. Nanjing Gova Technology Co., Ltd.
19. Ningbo III Lasers Technology Co., Ltd.
20. Qingdao Sci-Tech Innovation Quality Testing Co., Ltd.
21. Shanghai Tech University
22. Suzhou Sen-Chuan Machinery Technology Co., Ltd.
23. Tianjin Optical Valley Technology Co., Ltd.
24. University of Chinese Academy of Sciences
25. University of Shanghai for Science and Technology
26. Vital Advanced Materials Co., Ltd.
27. Wuhan Institute of Biological Products Co., Ltd.
28. Wuhan Juhere Photonic Tech Co., Ltd.
29. Wuxi Hengling Technology Co., Ltd.
30. Xian Zhongsheng Shengyuan Technology Co., Ltd.
31. Yangtze Memory Technologies Co., Ltd.

Removals From the UVL.

This final rule removes nine persons from the UVL after BIS was able to verify their *bona fides.* This rule removes Anhui Institute of Metrology, Chuzhou HKC Optoelectronics Technology Co., Ltd., Hefei Anxin Reed Precision Co. Ltd., Hefei Institutes of Physical Science, Jiutian Intelligent Equipment Co. Ltd., Suzhou Gyz Electronic Technology Co. Ltd., Suzhou Lylap Mould Technology Co Ltd., Wuxi Biologics Co., Ltd., and Wuxi Turbine Blade Co., Ltd. from the UVL, all under the destination of China. BIS is removing these nine persons pursuant to § 744.15(c)(2) of the EAR.

Changes to § 744.11

The inability of BIS to determine compliance with the EAR because of a host government's action or inaction creates a circumstance that may place an entity at significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States. For example, as previously mentioned, BIS frequently conducts end-use checks of foreign parties to verify their *bona fides,* thereby mitigating the risk of diversion of items subject to the EAR. If BIS is unable to conduct timely end-use checks, BIS's ability to prevent diversion and resolve concerns about potentially problematic end uses and users is negatively impacted. The sustained and deliberate prevention of an end-use check by a foreign government is therefore contrary to the national security and foreign policy interests of the United States. Further, the inability of an entity to receive a timely end-use check could lead to the determination that it is at significant risk of involvement in activities contrary to U.S. national security or foreign policy interests, leading to concerns regarding its receipt of items subject to the EAR. To better reflect the nature of the risk presented by such entities, when the risk assessed is the result of the actions of the relevant host government authority rather than the actions of the entities themselves, BIS is revising the heading of § 744.11, as well as the introductory text of § 744.11 and § 744.11(b), by adding language to also refer to entities that are ''at significant risk'' of acting contrary to the foreign policy and national security interests of the United States.

This includes sustained lack of cooperation by the host government to schedule and facilitate the completion of end-use checks. Particularly for entities identified on the UVL pursuant to § 744.15, this lack of cooperation could result in sufficient concern such that the End-User Review Committee (ERC) could make the determination that the addition of the entity to the Entity List will enhance BIS's ability to prevent violations of the EAR. Therefore, BIS also amends the EAR by providing an additional illustrative example to specify that situations in which there is a sustained lack of cooperation by a host government authority that prevents an end-use check from being conducted may constitute a basis for adding a party to the Entity List. This activity is being added to the illustrative list in § 744.11(b) of activities contrary to the national security and foreign policy interests of the United States that may support the addition of entities to the Entity List.

Additions to, removals from, or other modifications to the Entity List will remain consistent with procedures described in supplement no. 5 to part 744 of the EAR. As part of that process, the ERC, which is composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and makes all decisions to remove or modify an entry by unanimous vote.

Additional EAR Changes

This final rule also makes additional changes to the EAR. To better align the multiple lists found in part 744, BIS is changing the **Federal Register** citation column in the UVL to match those of the other lists. Prior to this rule, it read ''**Federal Register** citation and date of publication'' and it will now read ''**Federal Register** citation.'' Please note that, like the other lists in part 744, the UVL's citation column will still include

the date of publication, however, the date remains part of the broader citation itself for the purposes of the list.

Export Control Reform Act of 2018

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

Savings Clause

Shipments (1) that are removed from license exception eligibility or that are now subject to requirements in § 744.15 of the EAR as a result of this regulatory action; (2) that were eligible for export, reexport, or transfer (in-country) without a license before this regulatory action; and (3) that were on dock for loading, on lighter, laden aboard an exporting carrier, or enroute aboard a carrier to a port of export, on October 7, 2022, pursuant to actual orders, may proceed to that UVL listed person under the previous license exception eligibility or without a license and pursuant to the export clearance requirements set forth in part 758 of the EAR that applied prior to this person being listed on the UVL, so long as the items have been exported from the United States, reexported or transferred (in-country) before November 7, 2022. Any such items not actually exported, reexported or transferred (in-country) before midnight on November 7, 2022 are subject to the requirements in § 744.15 of the EAR in accordance with this regulation.

Rulemaking Requirements

Executive Order Requirements

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule is a ''significant regulatory action'' under Executive Order 12866.

This rule does not contain policies with federalism implications as that term is defined under Executive Order 13132.

Paperwork Reduction Act Requirements

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 Office of Management and Budget (OMB) Control Number. This action contains collections of information approved by OMB under the following control numbers:

- OMB Control Number 0694–0088—Simple Network Application Process and Multipurpose Application Form
- OMB Control Number 0694–0122—Miscellaneous Licensing Responsibilities and Enforcement
- OMB Control Number 0694–0134—Entity List and Unverified List Requests
- OMB Control Number 0694–0137—License Exemptions and Exclusions

BIS believes that the overall increases in burdens and costs will be minimal and will fall within the already approved amounts for these existing collections.

Information regarding these collections including all supporting materials can be reviewed at *www.reginfo.gov/public/do/PRAMain.* Find the particular information collection by using the search function and entering the OMB Control Number, 0694–0088, 0694–0122, 0694–0134, or 0694–0137.

Administrative Procedure Act and Regulatory Flexibility Act Requirements

Pursuant to Section 4821 of ECRA, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking and opportunity for public participation.

Further, no other law requires notice of proposed rulemaking or opportunity for public comment for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730 through 774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of November 10, 2021, 86 FR 62891 (November 12, 2021); Notice of September 19, 2022, 87 FR 57569 (September 19, 2022).

■ 2. Section 744.11 is revised to read as follows:

§ 744.11 License requirements that apply to entities acting or at significant risk of acting contrary to the national security or foreign policy interests of the United States.

BIS may impose foreign policy export, re-export, and transfer (in-country) license requirements, limitations on availability of license exceptions, and set license application review policy based on the criteria in this section. Such requirements, limitations and policy are in addition to those set forth elsewhere in the EAR. License requirements, limitations on use of license exceptions, and license application review policies will be imposed under this section by adding an entity to the Entity List (supplement no. 4 to this part) with a reference to this section and by stating on the Entity List the license requirements and license application review policies that apply to that entity, or by informing an exporter, re-exporter, or transferor pursuant to paragraph (c) of this section that a specific entity is subject to a license requirement, limitations on use of license exceptions and license application review policies as specified in a specific notice provided to an exporter, re-exporter, or transferor. BIS may remove an entity from the Entity List if it is no longer engaged in the activities described in paragraph (b) of this section and is unlikely to engage in such activities in the future, or if it is no longer at significant risk of acting contrary to the national security or foreign policy interests of the United States as described therein. BIS may modify the license exception limitations and license application review policies that apply to a particular entity to implement the policies of this section. BIS will implement the provisions of

this section in accordance with the decisions of the End-User Review Committee or, if appropriate in a particular case, in accordance with the decisions of the body to which the End-User Review Committee decision is escalated. The End-User Review Committee will follow the procedures set forth in supplement no. 5 to this part.

(a) *License requirement, availability of license exceptions, and license application review policy.* A license is required, to the extent specified on the Entity List, to export, reexport, or transfer (in-country) any item subject to the EAR when an entity that is listed on the Entity List is a party to the transaction as described in § 748.5(c) through (f) of the EAR unless otherwise authorized or excluded in this section. License exceptions may not be used unless authorized in the Entity List entry for the entity that is party to the transaction. Applications for licenses required by this section will be evaluated as stated in the Entity List entry for the entity that is party to the transaction, in addition to any other applicable review policy stated elsewhere in the EAR.

(1) *Standards related activity.* A license is not required for the release of ''technology'' or ''software'' designated EAR99 or controlled on the CCL for anti-terrorism reasons only, when such a release is for a ''standards-related activity.'' In addition, a license is not required for the release of the following ECCN ''items'' level paragraphs of ''technology'' or ''software'' specifically for the ''development,'' ''production,'' or ''use'' of cryptographic functionality when such a release is for a ''standards-related activity:'' ''software'' that is classified under ECCN 5D002.b or 5D002.c.1 (for equipment specified in ECCN 5A002.a and 5A002.c only); ''technology'' that is classified under ECCN 5E002 (for equipment specified in ECCN 5A002.a, .b and .c); and ''technology'' for software controlled under ECCN 5D002.b or .c.1 (for equipment specified in ECCN 5A002.a and .c only).

(2) *Entity List Foreign-Direct Product (FDP) license requirements, review policy, and license exceptions.* You may not, without a license or license exception, reexport, export from abroad, or transfer (in-country) any foreign-produced item subject to the EAR pursuant to § 734.9(e) of the EAR to any end user described in § 734.9(e)(2) of the EAR. All license exceptions described in part 740 of the EAR are available for foreign-produced items that are subject to this license requirement if all terms and conditions of the applicable license exception are met and the restrictions in § 740.2 do not apply. The sophistication and capabilities of technology in items is a factor in license application review; license applications for foreign-produced items subject to a license requirement by this paragraph (a)(2) that are capable of supporting the ''development'' or ''production'' of telecom systems, equipment and devices below the 5G level (*e.g.,* 4G, 3G) will be reviewed on a case-by-case basis.

(b) *Criteria for revising the Entity List.* Entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entity has been involved, is involved, or poses a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such entities may be added to the Entity List pursuant to this section. An entity may pose a significant risk through certain circumstances that may be outside of its own control. Such circumstances that may place an entity at significant risk include situations involving a sustained lack of cooperation by a host government authority, for example, by preventing an end-use check from being conducted, that effectively prevents BIS from determining compliance with the EAR. This section may not be used to place on the Entity List any party to which exports or reexports require a license pursuant to § 744.8, § 744.12, § 744.13, § 744.14, or § 744.18. This section may not be used to place any U.S. person, as defined in § 772.1 of the EAR, on the Entity List. Paragraphs (b)(1) through (5) of this section provide an illustrative list of activities that could be or represent a significant risk of being contrary to the national security or foreign policy interests of the United States.

(1) Supporting persons engaged in acts of terror.

(2) Actions that could enhance the military capability of, or the ability to support terrorism of governments that have been designated by the Secretary of State as having repeatedly provided support for acts of international terrorism.

(3) Transferring, developing, servicing, repairing or producing conventional weapons in a manner that is contrary to United States national security or foreign policy interests or enabling such transfer, service, repair, development, or production by supplying parts, components, technology, or financing for such activity.

(4) Prevention of the accomplishment of an end use check conducted by or on behalf of BIS or the Directorate of Defense Trade Controls of the Department of State by:

(i) The entity precluding access to; refusing to provide information about; or providing false or misleading information about parties to the transaction or the item to be checked. The conduct in this example includes: expressly refusing to permit a check; providing false or misleading information; or engaging in dilatory or evasive conduct that effectively prevents the check from occurring or makes the check inaccurate or useless. A nexus between the conduct of the party to be listed and the failure to produce a complete, accurate and useful check is required, even though an express refusal by the party to be listed is not required; or

(ii) A sustained lack of cooperation by the host government to schedule and facilitate the completion of an end-use check of entities identified on the Unverified List pursuant to § 744.15, resulting in sufficient concern such that the End-User Review Committee believes that prior review of exports, reexports, or transfers (in-country) involving the entity and the possible imposition of license conditions or license denial enhance BIS's ability to prevent violations of the EAR.

(5) Engaging in conduct that poses a risk of violating the EAR when such conduct raises sufficient concern that the End-User Review Committee believes that prior review of exports, reexports, or transfers (in-country) involving the party and the possible imposition of license conditions or license denial enhances BIS's ability to prevent violations of the EAR.

(c) *Additional prohibition on persons informed by BIS.* BIS may inform persons, either individually by specific notice or through amendment to the EAR, that a license is required for:

(1) A specific export, reexport, or transfer (in-country) because there is an unacceptable risk that the export, reexport, or transfer (in-country) is intended to circumvent the license requirement imposed on an entity listed in supplement no. 4 to this part; or

(2) The export, reexport, or transfer (in-country) of specified items to a certain party because there is an unacceptable risk that the party is acting as an agent, front, or shell company for an entity listed in supplement no. 4 to this part, or is otherwise assisting that listed entity in circumventing the license requirement set forth in that entity's entry in supplement no. 4 to this part; or

(3) The export, reexport, or transfer (in-country) of specified items to a certain party because there is reasonable

cause to believe, based on specific and articulable facts, that the entity has been involved, is involved, or poses a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such entity. Specific notice will be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by written notice within two working days signed by the Deputy Assistant Secretary for Export Administration or the Deputy Assistant Secretary's designee. The specific notice will include the license requirement, limitations on use of license exceptions, and license application review policy with which that exporter, re-exporter, or transferor must comply pursuant to this paragraph (c)(3). The ERC may add such entities to the Entity List in supplement no. 4 to this part.

■ 3. Supplement no. 6 to part 744 is amended by:

■ a. Revising the heading of the final column in the supplement; and

■ b. Under CHINA, PEOPLE'S REPUBLIC OF by:

■ i. Removing the entry ''Anhui Institute of Metrology;''

■ ii. Adding entries, in alphabetical order, for the following entities: ''Beijing Naura Magnetoelectric Technology Co., Ltd.;'' ''Beijing PowerMac Company;'' ''CCIC Southern Electronic Product Testing Co., Ltd.;'' ''Chang Zhou Jin Tan Teng Yuan Machinery Parts Co., Ltd;'' ''Chinese Academy of Geological Sciences, Institute of Mineral Resources;'' ''Chinese Academy of Science (CAS) Institute of Chemistry;'' ''Chongqing Optel Telecom;'' and ''Chongqing Xinyuhang Technology Co., Ltd.;''

■ iii. Removing entry for ''Chuzhou HKC Optoelectronics Technology Co., Ltd.;''

■ iv. Adding entries, in alphabetical order, for the following entities: ''Dandong Nondestructive Electronics;'' ''DK Laser Company Ltd.;'' ''Foshan Huaguo Optical Co., Ltd.;'' ''GRG Metrology & Test (Chongqing) Co., Ltd.;'' ''Guangdong Dongling Carbon Tech. Co., Ltd.;'' ''Guangxi Yuchai Machinery Co., Ltd.;'' and ''Guangzhou GRG Metrology & Test (Beijing) Co., Ltd.;''

■ v. Removing entries for ''Hefei Anxin Reed Precision Co., Ltd.;'' and ''Hefei Institutes of Physical Science;''

■ vi. Adding an entry, in alphabetical order, for the following entity: ''Jialin Precision Optics (Shanghai) Co., Ltd.;''

■ vii. Removing the entry for ''Jiutian Intelligent Equipment Co., Ltd.'';

■ viii. Adding entries, in alphabetical order, for the following entities: ''Lishui Zhengyang Electric Power Construction;'' ''Nanjing Gova Technology Co., Ltd.;'' ''Ningbo III Lasers Technology Co., Ltd.;'' ''Qingdao Sci-Tech Innovation Quality Testing Co., Ltd.;'' and ''Shanghai Tech University;''

■ ix. Removing entries for ''Suzhou Gyz Electronic Technology Co., Ltd.'' and ''Suzhou Lylap Mould Technology Co., Ltd.;''

■ x. Adding entries, in alphabetical order, for the following entities: ''Suzhou Sen-Chuan Machinery Technology Co., Ltd.;'' ''Tianjin Optical Valley Technology Co., Ltd.;'' ''University of Chinese Academy of Sciences, School of Chemical Sciences;'' ''University of Shanghai for Science and Technology;'' ''Vital Advanced Materials Co., Ltd.;'' ''Wuhan Institute of Biological Products Co., Ltd.;'' and ''Wuhan Juhere Photonic Tech Co., Ltd.;''

■ xi. Removing the entry ''Wuxi Biologics Co., Ltd.;''

■ xii. Adding an entry, in alphabetical order, for the following entity: ''Wuxi Hengling Technology Co., Ltd.;''

■ xii. Removing they entry for ''Wuxi Turbine Blade Co., Ltd.;'' *and*

■ xiv. Adding entries, in alphabetical order, for the following entities: ''Xian Zhongsheng Shengyuan Technology Co., Ltd.'' *and* ''Yangtze Memory Technologies Co., Ltd.''

The revision and additions read as follows:

Supplement No. 6 to Part 744—Unverified List

Country	Listed person and address	**Federal Register** citation
*	* * * * * * *	
CHINA, PEOPLE'S REPUBLIC OF		
*	* * * * * * *	
	Beijing Naura Magnetoelectric Technology Co., Ltd., M4 No 1 Jiuxianqiao East Road, Chaoyang District, Beijing 100015, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
	Beijing PowerMac Company, B–1501, Calzhi International Building', 18 Zhongguancun East Road, Haidian District, Beijing, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
*	* * * * * * *	
	CCIC Southern Electronic Product Testing Co., Ltd., Electronic Testing Bldg. No 43 Shahe Rd Xili Jiedao, Nanshan District, Shenzhen, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
*	* * * * * * *	
	Chang Zhou Jin Tan Teng Yuan Machinery Parts Co., Ltd., 116 Huafeng road, Jintan Economic Development Zone, Changzhou China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
*	* * * * * * *	
	Chinese Academy of Geological Sciences, Institute of Mineral Resources, Baiwangzhuang Main Street No 26, Xicheng District, Beijing 100037, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
	Chinese Academy of Science (CAS) Institute of Chemistry, 2 Zhongguancun North 1st Street, Haidian District, Beijing 100190, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022

Country	Listed person and address	**Federal Register** citation
	Chongqing Optel Telecom, No 1 6f Building 7, No 106 West Jinkai Avenue, Yubei District, Chongqing 401121, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
	Chongqing Xinyuhang Technology Co., Ltd., Shanying Workshop, liangjiang Avenue, Longxing Town, Yubei District, Chongqing 401135, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
*	* * * * * * *	
	Dandong Nondestructive Electronics, No 2 Tonghe Street Jinshan Industrial Park, Yuanbao District Dandong, Dandong 118000, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
*	* * * * * * *	
	DK Laser Company Ltd., Zhuodas Jingu Industrial Park #4, Jinlong New District, Xiangyin, Hunan Province, , China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
*	* * * * * * *	
	Foshan Huaguo Optical Co., Ltd., No 3 Changhong East Road, Zhangcha Street, Foshan City 528051, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
*	* * * * * * *	
	GRG Metrology & Test (Chongqing) Co., Ltd., The 3rd floor of building A no 37 Cuitao Road, Chongqing City, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
	Guangdong Dongling Carbon Tech. Co., Ltd., #83 Shatong Road, Shabu County, Dalang Town Dongguan city, Guangdong 523770, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
*	* * * * * * *	
	Guangxi Yuchai Machinery Co., Ltd., 8 Tinqiao West rd., Yulin Guanxi Province 537005, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
	Guangzhou GRG Metrology & Test (Beijing) Co., Ltd., 1st-2nd floor, 5th building, No 8 courtyard, No. 2 Street of Cold Water Economic and Technological Development Zone, Beijing, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
*	* * * * * * *	
	Jialin Precision Optics (Shanghai) Co., Ltd., Western Section Floor 1 No 1 Dongcheng Er lu, Pujiang Town Minhang District, Shanghai 201112, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
*	* * * * * * *	
	Lishui Zhengyang Electric Power Construction, 573 Nanshan Road Nanshan Park Liandu, Industrial Zone Zhejiang, Lishui, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
*	* * * * * * *	
	Nanjing Gova Technology Co., Ltd., No 66 Qixia Avenue, Nanjing Economic and Technological Development Zone, Nanjing, Jiangsu Province, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
*	* * * * * * *	
	Ningbo III Lasers Technology Co., Ltd., Phase II Binjiang Equipment Park, Fenglin Road Beilun District, Ningbo City 315803, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
*	* * * * * * *	
	Qingdao Sci-Tech Innovation Quality Testing Co., Ltd., Huaye Building, Lanbeizhizao Gongchang, No 1 Jinye Road, High-Tech Zone, Qingdao, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
*	* * * * * * *	
	ShanghaiTech University, 393 Middle Huaxia Rd, School of Phy Sci and Tech, Pudong, Shanghai201210, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
*	* * * * * * *	
	Suzhou Sen-Chuan Machinery Technology Co., Ltd., No 3 Yantou Road, Huayang Village, Wangting town, Xiangcheng DistrictSuzhou 215155, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
*	* * * * * * *	
	Tianjin Optical Valley Technology Co., Ltd., 5–1 2–104 Qingda Boya industrial Park Beichen District, Tianjin 30400, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022

Country	Listed person and address	Federal Register citation
*	* * * *	* * *
	University of Chinese Academy of Sciences, School of Chemical Sciences, # 19 (A) Yuquan Road, Shijingshan District, Beijing 100049, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
	University of Shanghai for Science and Technology, 516 Jungong Road, Shanghai 200093, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
	Vital Advanced Materials Co., Ltd., Zone B No 27–9 BAIJIA Industrial Park, High Tech Development Zone, Guangdong Province, Qingyuan 511517, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
*	* * * *	* * *
	Wuhan Institute of Biological Products Co., Ltd., No 1 Golden Industrial Park Road, Zhengdian Street, Jiangxia District, Wuhan City, Hubei Province, 430207, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
	Wuhan Juhere Photonic Tech Co., Ltd., 2/F Building 12, Guanggu New Power, Guanggu 2nd Rd East Lake High-Tech Zone, Wuhan 430200, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
*	* * * *	* * *
	Wuxi Hengling Technology Co., Ltd., Bldg C1 No 999 East Gaolang rd Binhu District, Wuxi City, Jiangsu Province, 214131, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
*	* * * *	* * *
	Xian Zhongsheng Shengyuan Technology Co., Ltd., 9 Gardens at 202 South Second ring Rd, Lianju District, Xian 710000, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
*	* * * *	* * *
	Yangtze Memory Technologies Co., Ltd., No. 88 Weilai 3rd RoadEast Lake High-Tech Development Zone, Wuhan Hubei 43000, China.	87 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 10/13/2022
*	* * * *	* * *

Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

[FR Doc. 2022–21714 Filed 10–7–22; 8:45 am]

BILLING CODE 3510–33–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–11101; 34–95817; 39–2546; IC–34703]

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting amendments to Volume II of the Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR'') Filer Manual (''Filer Manual'') and related rules and forms. The EDGAR system was upgraded on September 19, 2022.

DATES: *Effective date:* October 13, 2022. The incorporation by reference of the Filer Manual is approved by the Director of the **Federal Register** as of October 13, 2022.

FOR FURTHER INFORMATION CONTACT: For questions regarding the amendments to Volume II of the Filer Manual and related rules, please contact Rosemary Filou, Deputy Director and Chief Counsel, or Jane Patterson, Senior Special Counsel, in the EDGAR Business Office at (202) 551–5188. For questions regarding the electronic submission of Form 13F confidential treatment requests and applications for orders under the Investment Adviser's Act of 1940, or Forms N–MFP and N–CEN, please contact Heather Fernandez, Financial Analyst, in the Division of Investment Management at (202) 551–6708. For questions regarding the electronic filing requirement of online Form 144, please contact Christian Windsor, Senior Special Counsel, in the Division of Corporation Finance at (202) 551–3419 and Heather Mackintosh, EDGAR Liaison in the Division of Corporation Finance at (202) 551–8111. For questions concerning taxonomies or schemas, please contact the Office of Structured Disclosure in the Division of Economic and Risk Analysis at (202) 551–5494.

SUPPLEMENTARY INFORMATION: We are adopting an updated Filer Manual, Volume II: ''EDGAR Filing,'' Version 63 (September 2022) and amendments to 17 CFR 232.301 (''Rule 301''). The updated Filer Manual volume is incorporated by reference into the Code of Federal Regulations.

I. Background

The Filer Manual contains information needed for filers to make submissions on EDGAR. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[1] Filers should consult the Filer Manual in conjunction with our rules governing mandated electronic filings when preparing documents for electronic submission.

II. Edgar System Changes and Associated Modifications to Volume II of the Filer Manual

EDGAR was updated in Releases 22.2.1, 22.2.2, and 22.3, and corresponding amendments to Volume II of the Filer Manual are being made to reflect these changes, as described below.[2]

On June 23, 2022, the Commission adopted amendments to rules to require

[1] *See* Rule 301 of Regulation S–T.

[2] Release 22.2.1 was deployed on July 15, 2022, and Release 22.2.2 was deployed on Aug. 15, 2022.

the filing of certain applications, confidential treatment requests and forms from paper to electronic submission.[3] The amended rules also require institutional investment managers to file confidential treatment requests for filings made under section 13(f) of the Securities Exchange Act of 1934 electronically on EDGAR. In order to assist filers to access and file the confidential treatment requests for Form 13F and amendments thereto, EDGAR Release 22.3 introduced new submission types Form 13F Confidential Treatment Request and Amendment to Form 13F Confidential Treatment Request, including a *de novo* request, for filing on EDGAR.

The Commission also adopted amendments to require the electronic submission of applications for orders under the Investment Advisers Act of 1940 on EDGAR under the following submission types, as applicable: 40–APP, 40–APP/A, 40–OIP, 40–OIP/A, 40–6B, and 40–6B/A. The Filer Manual is being updated accordingly.

On June 2, 2022, the Commission adopted rule and form amendments that mandate the electronic filing or submission of documents that are currently permitted as electronic filings or submissions.[4] As part of the rule, the Commission mandated the electronic filing of Form 144 with respect to securities issued by issuers subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act. In accordance with these requirements, the Form 144 was revised as a new fillable form and will be made available on the EDGAR Online Forms website for electronic filing on EDGAR. Filers also may file the new version of Form 144 as a filer-constructed XML filing using related technical specifications and transmit the filing via the EDGAR Online Forms √ Transmit XML Submission link, or via EDGARLink Online √ EDGARLink Online Form Submission √ Transmit as a Live Submission. The Filer Manual will be updated with instructions for the electronic submission of Form 144 accordingly.

On March 29, 2022, the Commission adopted technical amendments to various rules and forms, including amendments to Form N–MFP and Form N–CEN to clarify instructions and correct typographical errors.[5] Conforming text changes were made in EDGAR to the style sheets for Form N–MFP and Form N–CEN and the online application for Form N–CEN.

EDGAR Release 22.3 also made general functional enhancements to EDGAR, for which revisions are being made to the Filer Manual.

Pursuant to EDGAR Release 22.2.2, EDGAR was updated on August 15, 2022, to accept the 2022Q3 supplemental versions of the U.S. Generally Accepted Accounting Principles Financial Reporting and SEC Reporting Taxonomies. Please see *https://www.sec.gov/info/edgar/edgartaxonomies.shtml* for a complete list of supported standard taxonomies. Volume II of the Filer Manual is also being amended to address minor software changes made in EDGAR on July 15, 2022, pursuant to EDGAR Release 22.2.1.

IV. Amendments to Rule 301 of Regulation S–T

Along with the adoption of the updated Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of the current revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

The updated EDGAR Filer Manual is available at *https://www.sec.gov/edgar/filer-information/current-edgar-filer-manual.*

V. Administrative Law Matters

Because the Filer Manual and rule amendments relate solely to agency procedures or practice and do not substantially alter the rights and obligations of non-agency parties, publication for notice and comment is not required under the Administrative Procedure Act (''APA'').[6] It follows that the amendments do not require analysis under requirements of the Regulatory Flexibility Act[7] or a report to Congress under the Small Business Regulatory Enforcement Fairness Act of 1996.[8]

The effective date for the updated Filer Manual and related rule amendments is October 13, 2022. In accordance with the APA,[9] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manual with the related system upgrades.

VI. Statutory Basis

We are adopting the amendments to Regulation S–T under the authority in Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[10] Sections 3, 12, 13, 14, 15, 15B, 23, and 35A of the Securities Exchange Act of 1934,[11] Section 319 of the Trust Indenture Act of 1939,[12] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[13]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

Text of the Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 80b–4, 80b–6a, 80b–10, 80b–11, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets forth the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the EDGAR Filer Manual, Volume I: ''General Information,'' Version 40 (March 2022). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 63 (September 2022). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved

[3] Electronic Submission of Applications for Orders under the Advisers Act and the Investment Company Act, Confidential Treatment Requests for Filings on Form 13F, and Form ADV–NR; Amendments to Form 13F, Release 34–95148 (June 23, 2022) [87 FR 38943 (June 30, 2022)].

[4] Updating EDGAR Filing Requirements and Form 144 Filings, Release 33–11070 (June 2, 2022) [87 FR 35393 (June10, 2022)].

[5] Technical Amendments to Commission Rules and Forms, Release 33–11047 (Mar. 29, 2022) [87 FR 22444 (Apr. 15, 2022)].

[6] 5 U.S.C. 553(b)(A).

[7] 5 U.S.C. 601 through 612.

[8] 5 U.S.C. 804(3)(C).

[9] 5 U.S.C. 553(d)(3).

[10] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[11] 15 U.S.C. 78c, 78*l,* 78m, 78n, 78*o,* 78o-4, 78w, and 78*ll.*

[12] 15 U.S.C. 77sss.

[13] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You must comply with these requirements in order for documents to be timely received and accepted. The EDGAR Filer Manual is available at *https://www.sec.gov/edgar/filer-information/current-edgar-filer-manual.* You can also inspect the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

By the Commission.

Dated: September 19, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–22194 Filed 10–12–22; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9968]

RIN 1545–BQ16

Affordability of Employer Coverage for Family Members of Employees

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 36B of the Internal Revenue Code (Code) that amend the regulations regarding eligibility for the premium tax credit (PTC) to provide that affordability of employer-sponsored minimum essential coverage (employer coverage) for family members of an employee is determined based on the employee's share of the cost of covering the employee and those family members, not the cost of covering only the employee. The final regulations also add a minimum value rule for family members of employees based on the benefits provided to the family members. The final regulations affect taxpayers who enroll, or enroll a family member, in individual health insurance coverage through a Health Insurance Exchange (Exchange) and who may be allowed a PTC for the coverage.

DATES: These final regulations are effective on December 12, 2022.

FOR FURTHER INFORMATION CONTACT: Clara Raymond at (202) 317–4718 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

I. Overview

This document amends the Income Tax Regulations (26 CFR part 1) under section 36B of the Code. On April 7, 2022, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG–114339–21) in the **Federal Register** (87 FR 20354) under section 36B (proposed regulations). A public hearing was held on June 27, 2022. The Treasury Department and the IRS also received written comments on the proposed regulations. After consideration of the testimony heard at the public hearing and the comments received, the proposed regulations are adopted as amended by this Treasury decision (final regulations).

These final regulations provide that, for purposes of determining eligibility for PTC, affordability of employer coverage for individuals eligible to enroll in the coverage because of their relationship to an employee of the employer (related individuals) is determined based on the employee's share of the cost of covering the employee and the related individuals. As further explained in the Summary of Comments and Explanation of Revisions, the affordability rule for related individuals in these final regulations represents the better reading of the relevant statutes and is consistent with Congress's purpose in the Affordable Care Act (ACA) [1] to expand access to affordable health care coverage. The final regulations also include amendments to the rules relating to the determination of whether employer coverage provides a minimum level of benefits, referred to as minimum value; conforming amendments to the current regulations; and clarification of the treatment of premium refunds.

II. Eligibility for Employer Coverage Under Section 36B

Section 36B provides a PTC for applicable taxpayers who meet certain eligibility requirements, including that a member of the taxpayer's family enrolls in a qualified health plan through an Exchange (QHP or Exchange coverage) for one or more ''coverage months.'' Under § 1.36B–1(d) of the Income Tax Regulations, a taxpayer's family consists of the taxpayer, the taxpayer's spouse if filing jointly, and any dependents of the taxpayer.

Section 1.36B–3(d)(1) provides that the PTC for a coverage month is the lesser of: (i) the premiums for the month, reduced by any amounts that were refunded, for one or more QHPs in which a taxpayer or a member of the taxpayer's family enrolls (enrollment premiums); or (ii) the excess of the adjusted monthly premium for the applicable benchmark plan over 1/12 of the product of a taxpayer's household income and the applicable percentage for the taxable year (taxpayer's contribution amount).

Under section 36B(c)(2)(B) and § 1.36B–3(c), a month is a coverage month for an individual only if the individual is not eligible for minimum essential coverage (MEC) for that full calendar month (other than coverage under a health care plan offered in the individual market within a state). Under section 5000A(f)(1)(B) of the Code, the term MEC includes employer coverage. If an individual is eligible for employer coverage for a given month, no PTC is allowed for the individual for that month.

Section 36B(c)(2)(C) generally provides that an individual is not treated as eligible for employer coverage if the coverage offered is unaffordable or does not provide minimum value. However, if the individual enrolls in employer coverage, the individual is eligible for MEC, irrespective of whether the employer coverage is affordable or provides minimum value. *See* section 36B(c)(2)(C)(iii) and § 1.36B–2(c)(3)(vii).

Under the affordability test in section 36B(c)(2)(C)(i)(II), an employee who does not enroll in employer coverage is not treated as eligible for the coverage if ''the employee's required contribution (within the meaning of section 5000A(e)(1)(B)) with respect to the plan exceeds 9.5 percent of the applicable taxpayer's household income.'' [2] The flush language following this provision provides that ''[t]his clause shall also apply to an individual who is eligible to enroll in the plan by reason of a relationship the individual bears to the employee.''

Section 5000A generally requires applicable individuals [3] to make an individual shared responsibility payment [4] with their tax return if they

[1] The term ACA in this preamble means the Patient Protection and Affordable Care Act, Pub. L. 111–148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. 111–152, 124 Stat. 1029 (2010).

[2] This required contribution percentage of 9.5 is indexed annually under section 36B(c)(2)(C)(iv). For simplicity, this preamble refers to 9.5 percent as the required contribution percentage.

[3] Section 5000A(d)(1) defines an applicable individual as any individual other than an individual with a religious conscience exemption, an individual who is not lawfully present or an individual who is incarcerated.

[4] Public Law 115–97 (2017), commonly referred to as the Tax Cuts and Jobs Act, reduced the

Continued

do not maintain minimum essential coverage for themselves and any dependents. Section 5000A(e)(1) establishes exemptions from the individual shared responsibility payment that would otherwise apply for ''individuals who cannot afford coverage,'' which the statute defines in section 5000A(e)(1)(A) to be applicable individuals whose required contribution for coverage exceeds a specified percentage of their household income. Section 5000A(e)(1)(B)(i) provides that, for an employee eligible to purchase employer coverage, the term ''required contribution'' means ''the portion of the annual premium which would be paid by the individual . . . for self-only coverage.'' For related individuals, the definition of ''required contribution'' in section 5000A(e)(1)(B)(i) is modified by a ''special rule'' in section 5000A(e)(1)(C). Section 5000A(e)(1)(C) provides that ''[f]or purposes of [section 5000A(e)(1)](B)(i), if an applicable individual is eligible for minimum essential coverage through an employer by reason of a relationship to an employee, the determination [of affordability] under subparagraph (A) shall be made by reference to [the] required contribution of the employee.'' The regulations under section 5000A interpret section 5000A(e)(1)(C) as modifying the required contribution rule in section 5000A(e)(1)(B)(i) regarding coverage for related individuals to take into account the cost of covering the employee and the related individuals, not just the employee. Specifically, for related individuals, § 1.5000A–3(e)(3)(ii)(B) provides that the required contribution is the amount an employee must pay to cover the employee and the related individuals who are included in the employee's family.[5] Thus, under § 1.5000A–3(e)(3)(ii)(B), employer coverage is affordable for those related individuals if the share of the annual premium the employee must pay to cover the employee and the related individuals is not greater than the required contribution percentage of household income.

In contrast to the affordability rule for related individuals in § 1.5000A–3(e)(3)(ii)(B), the Treasury Department and the IRS issued final regulations in 2013 for purposes of the PTC providing that employer coverage is affordable for the related individuals if the share of the annual premium the employee must pay for self-only coverage is not greater than the required contribution percentage of household income, regardless of how expensive the annual premium for family coverage would be. *See* § 1.36B–2(c)(3)(v)(A)(*2*) (the 2013 regulations or 2013 affordability rule). Thus, under the 2013 affordability rule, the employee's share of the premium for family coverage, as defined in § 1.36B–1(m),[6] was not considered in determining whether employer coverage is affordable for related individuals.

When the 2013 regulations were issued, the Treasury Department and the IRS considered the statutory language of section 36B(c)(2)(C)(i)(II) and its cross-reference to section 5000A(e)(1)(B), as well as the statutory language of section 5000A(e)(1)(B) and the cross-reference in section 5000A(e)(1)(C) to section 5000A(e)(1)(B). In the preamble to those regulations, the Treasury Department and the IRS interpreted the language of section 36B, through the cross-reference to section 5000A(e)(1)(B), to provide that the affordability test for related individuals is based on the cost of self-only coverage. Thus, if the cost of self-only coverage is affordable, no PTC is allowed for the Exchange coverage of related individuals even if family coverage through the employer costs more than 9.5 percent of household income.

As noted above, section 36B(c)(2)(C) generally provides that an individual is not treated as eligible for employer coverage if the coverage offered is unaffordable or does not provide minimum value. An eligible employer-sponsored plan provides minimum value under section 36B(c)(2)(C)(ii) and § 1.36B–6(a)(1) only if the plan's share of the total allowed costs of benefits provided to an employee is at least 60 percent. On November 4, 2014, the IRS released Notice 2014–69, 2014–48 I.R.B. 903, which advised employers of the intent to propose regulations providing that group health plans that fail to provide substantial coverage for inpatient hospitalization or physician services do not provide minimum value. Notice 2014–69 noted that the Department of Health and Human Services (HHS) was concurrently issuing parallel guidance and also provided that, pending issuance of final Treasury regulations, an employee would not be required to treat a non-hospital/non-physician services plan as providing minimum value for purposes of an employee's eligibility for a PTC.

On November 26, 2014, HHS issued proposed regulations providing that an eligible employer-sponsored plan provides minimum value only if, in addition to covering at least 60 percent of the total allowed costs of benefits provided under the plan, the plan benefits include substantial coverage of inpatient hospital services and physician services. *See* 79 FR 70674. On February 27, 2015, HHS finalized this minimum value rule at 45 CFR 156.145(a). *See* 80 FR 10750, 10872. On September 1, 2015, the Treasury Department and the IRS issued proposed regulations under section 36B (REG–143800–14, 80 FR 52678) (2015 proposed regulations) to incorporate the substance of the HHS final regulations regarding the minimum value rule. The 2015 proposed regulations issued by the Treasury Department and the IRS relating to substantial coverage of inpatient hospital services and physician services have not been finalized.

III. E.O. 14009

On January 28, 2021, President Biden issued Executive Order (E.O.) 14009, Strengthening Medicaid and the Affordable Care Act (ACA). Section 3(a) of E.O. 14009 directed the Secretary of the Treasury to review, as soon as practicable, all existing regulations and other agency actions to determine whether the actions are inconsistent with the policy to protect and strengthen the ACA and, as part of this review, to examine policies or practices that may reduce the affordability of coverage or financial assistance for coverage, including for dependents. Consistent with the E.O., the Treasury Department and the IRS reviewed the regulations under section 36B, including § 1.36B–2(c)(3)(v)(A)(*2*).

IV. Proposed Regulations

On April 7, 2022, the Treasury Department and the IRS published proposed regulations proposing to amend § 1.36B–2(c)(3)(v)(A)(*2*) to change the rule regarding the affordability of employer coverage for related individuals. The proposed regulations provided that, for purposes of determining eligibility for PTC, affordability of employer coverage for related individuals in the employee's family would be determined based on the cost of covering the employee and those related individuals—just as affordability is determined in the regulations implementing section 5000A. For this purpose, affordability for related individuals would be based on the portion of the annual premium the employee must pay for coverage of

individual shared responsibility payment amount to zero for months beginning after December 31, 2018.

[5] For purposes of this exemption for unaffordable coverage, an employee or related individual who is otherwise exempt under § 1.5000A–3 is not included in determining the required contribution.

[6] Section 1.36B–1(m) defines family coverage as health insurance that covers more than one individual and provides coverage for the essential health benefits as defined in section 1302(b)(1) of the ACA.

the employee and all other individuals included in the employee's family, within the meaning of § 1.36B–1(d), who are offered the coverage. Although some individuals who are not part of the family might be offered the employer coverage through the employee, the cost of covering individuals not in the family would not be considered in determining whether the related individuals in the employee's family have an offer of affordable employer coverage.

The proposed regulations would not change the affordability rule for employees. As required by statute, employees have an offer of affordable employer coverage if the employee's required contribution for self-only coverage of the employee does not exceed the required contribution percentage of household income.

The proposed regulations also addressed the minimum value rules in section 36B. Under the proposed regulations, a separate minimum value rule would be provided for related individuals that is based on the level of coverage provided to related individuals under an eligible employer-sponsored plan. In addition, the proposed regulations withdrew the 2015 proposed regulations and re-proposed the rule regarding substantial coverage of inpatient hospitalization services and physician services. Thus, under the proposed regulations, an eligible employer-sponsored plan would provide minimum value only if the plan covers at least 60 percent of the total allowed costs of benefits provided to an employee under the plan and the plan benefits include substantial coverage of inpatient hospital services and physician services.

Finally, the proposed regulations would amend § 1.36B–3(d)(1)(i) to clarify that, in computing the PTC for a coverage month, a taxpayer's enrollment premiums for the month are the premiums for the month, reduced by any amounts that were refunded in the same taxable year the taxpayer incurred the premium liability.

Summary of Comments and Explanation of Revisions

I. Overview

The Treasury Department and the IRS received 3,888 comments on the proposed regulations, the overwhelming majority of which were in support of the rules in the proposed regulations, including the affordability test for related individuals that is based on the cost of family coverage offered to the related individuals. Many commenters recounted personal stories of family members being uninsured due to the unaffordability of family coverage offered by an employer and the unavailability of a PTC for Exchange coverage. One married couple even testified to a state legislature that they divorced solely to retain the husband's eligibility for the PTC after his wife got a new job with an offer of family coverage at a cost of $16,000, over half of the husband's annual earnings.[7] Some commenters made the point that an affordability test for related individuals that is based on the cost of the coverage offered to the employee and related individuals is family-friendly because it is more likely to provide all family members with access to affordable coverage. Many commenters agreed with the analysis in the preamble to the proposed regulations that the language of section 36B(c)(2)(C)(i) is best interpreted to require a separate affordability determination for related individuals that is based on the employee's cost to cover the employee and related individuals rather than a single affordability determination for both employees and related individuals that is based on the cost of self-only coverage to employees, and provided persuasive legal support for this position. Commenters also overwhelmingly supported the minimum value rules provided in the proposed regulations and agreed that a failure to provide a separate minimum value rule for related individuals could undermine the separate affordability rule for related individuals.

Other commenters expressed the view that the separate affordability test and minimum value rule for related individuals in the proposed regulations are contrary to the language of section 36B, and that the Treasury Department and the IRS do not have the authority to change those rules. Several of these commenters provided legal analyses in support of their position as well as policy arguments against the proposed affordability test and minimum value rule for related individuals. For reasons explained in sections II and III of this Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS are not persuaded by these arguments.

Some commenters suggested that the Treasury Department and the IRS adopt various changes to the rules in the proposed regulations. Other commenters requested outreach by HHS, the Treasury Department, and the IRS to educate individuals, employers, and other stakeholders about the final regulations once they are issued. Several commenters requested clarification on certain issues related to employers, including information reporting requirements under section 6056 of the Code and the effect of the final regulations on individuals enrolled in non-calendar year plans. These comments are addressed in sections IV, V, and VI of the Summary of Comments and Explanation of Revisions.

Finally, many commenters supported the minimum value rule in the proposed regulations under which an eligible employer-sponsored plan would provide minimum value to an employee only if, in addition to covering at least 60 percent of the total allowed costs of benefits provided to an employee under the plan, the plan's benefits include substantial coverage of inpatient hospitalization services and physician services. In addition, many commenters supported the proposed amendment to § 1.36B–3(d)(1)(i) to clarify that, in computing the PTC for a coverage month, a taxpayer's enrollment premiums for the month are the premiums for the month, reduced by any amounts that were refunded in the same taxable year the taxpayer incurred the premium liability. Because commenters supported these rules and did not request any modifications to them, both the proposed minimum value rule for employees related to inpatient hospitalization services and physician services and the proposed clarification of the premium refund rule are being finalized without change.

II. Comments on Legal Analysis

A. Statutory Analysis of Affordability Rule

Under section 36B(c)(2)(C)(i)(II), an employee who does not enroll in employer coverage is not considered eligible for the coverage if ''the employee's required contribution (within the meaning of section 5000A(e)(1)(B)) with respect to the plan exceeds 9.5 percent of the applicable taxpayer's household income.'' The flush language following this provision provides that ''[t]his clause shall also apply to an individual who is eligible to enroll in the plan by reason of a relationship the individual bears to the employee.''

As discussed in the preamble to the proposed regulations, the flush language in section 36B(c)(2)(C)(i) does not state clearly and expressly how section 36B(c)(2)(C)(i)(II) applies to related individuals or how the cross-reference to section 5000A(e)(1)(B) applies to coverage for related individuals. Section 5000A(e)(1)(B)(i) provides that, for an

[7] *See https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=161949.*

employee eligible to purchase employer coverage, the term ''required contribution'' means ''the portion of the annual premium which would be paid by the individual . . . for self-only coverage.'' For related individuals, the definition of ''required contribution'' in section 5000A(e)(1)(B)(i) is modified by a ''special rule'' in section 5000A(e)(1)(C). Section 5000A(e)(1)(C) provides that ''[f]or purposes of [section 5000A(e)(1)](B)(i), if an applicable individual is eligible for minimum essential coverage through an employer by reason of a relationship to an employee, the determination under [section 5000(e)(1)(A)] shall be made by reference to [the] required contribution of the employee.'' The regulations under section 5000A interpret section 5000A(e)(1)(C) as modifying the required contribution rule in section 5000A(e)(1)(B)(i) for coverage for a related individual to provide that the determination under section 5000A(e)(1)(A) is made by reference to the required contribution of the employee for coverage for the employee and that related individual. Specifically, for related individuals, § 1.5000A–3(e)(3)(ii)(B) provides that the required contribution for related individuals is the amount an employee must pay to cover the employee and all related individuals who are included in the employee's family.[8] This long-standing rule under section 5000A was proposed in February 2013 [9] and did not generate any critical comments. The proposed rule was finalized without change in August 2013 [10] and has never been challenged.

Similar to the regulations implementing section 5000A, the proposed regulations provided an affordability rule for related individuals for section 36B purposes that looks to the cost of coverage for the employee and related individuals and is separate from the affordability rule for employees of the employer offering the coverage. Under the proposed regulations, affordability for related individuals would be based on the portion of the annual premium the employee must pay for coverage of the employee and all other individuals included in the employee's family, within the meaning of § 1.36B–1(d), who are offered the coverage.

Some commenters expressed the view that the affordability rule in the proposed regulations conflicts with the language in section 36B, that the 2013 affordability rule is correct, and that the affordability rule for related individuals in the proposed regulations should be withdrawn. These commenters argued that section 36B unambiguously establishes a single affordability test for both employees and related individuals that is based on the cost of self-only coverage to the employee. As explained later in this section II.A. of the Summary of Comments and Explanation of Revisions, however, the proposed rule's approach represents the better reading of the statute and the better means of implementing it. After careful consideration, the Treasury Department and the IRS are adopting the affordability test as proposed.

The Treasury Department and the IRS are of the view that section 36B(c)(2)(C)(i), including the flush language that follows section 36B(c)(2)(C)(i)(II), is correctly interpreted to provide that the affordability test for a related individual is based on the cost of coverage for the employee and the related individual. The flush language provides as follows: ''[t]his clause shall also apply to a [related individual].'' Thus, taking into account the flush language, section 36B(c)(2)(C)(i) may be read to apply to a related individual as follows:

> [A related individual] shall not be treated as eligible for minimum essential coverage if such coverage (I) consists of an eligible employer-sponsored plan [ ], and (II) the employee's [11] required contribution (within the meaning of section 5000A(e)(1)(B)) with respect to the plan exceeds 9.5 percent of the applicable taxpayer's household income.

This language includes four references to the coverage provided by the employee's employer: ''minimum essential coverage,'' ''such coverage,'' ''eligible employer-sponsored plan,'' and ''the plan.'' Without question, ''such coverage'' refers to the minimum essential coverage offered by the employee's employer to the related individual, as do references to ''employer-sponsored plan'' and ''the plan.'' Unless a related individual is also employed by that employer, the related individual may not enroll in the employer's coverage on a self-only basis. Thus, the minimum essential coverage referred to in section 36B(c)(2)(C)(i), as it applies to related individuals, is the coverage the related individual may enroll in, which is the family coverage offered by the employer. Under this reading, the reference to ''the employee's required contribution . . . with respect to the plan'' is the required contribution for family coverage.

This reading gives full effect to section 36B(c)(2)(C)(i)(II)'s cross reference to section 5000A(e)(1)(B). As noted earlier in this section II.A of the Summary of Comments and Explanation of Revisions, section 36B(c)(2)(C)(i) specifies rules to determine the affordability of coverage under an eligible employer-sponsored plan both for an employee and for related individuals. Taken in isolation, section 5000A(e)(1)(B) would specify a rule for determining the affordability of a required contribution only with respect to coverage for an employee, even though the flush language in section 36B(c)(2)(C)(i) requires a calculation to be performed for related individuals as well. Section 5000A(e)(1)(C) provides a rule for that calculation by specifying a ''special rule'' for purposes of the calculation of the employee's required contribution for coverage that includes the related individual. As explained earlier in this section II.A. of the Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS have long understood section 5000A(e)(1)(C) in this way. See § 1.5000A–3(e)(3)(ii)(B), promulgated in 2013.

As noted in section I of this Summary of Comments and Explanation of Revisions, the vast majority of commenters supported the proposed affordability rule for related individuals, and several of these commenters provided detailed technical analyses in support of this interpretation of the statute. Some of those commenters argued that section 36B unambiguously establishes a separate affordability test for related individuals that is based on the cost of family coverage. For example, one commenter asserted that the proposed affordability rule for related individuals follows the plain language of the statute and that section 5000A(c)(1)(C) states on its face that it must be read into 5000A(c)(1)(B). Another commenter argued that the plain text of the statute indicates that a related individual's eligibility for the PTC is based on the cost of family coverage and that the affordability rule in the 2013 regulations reflected a strained reading of the statute. One commenter supported the proposed affordability rule for related individuals but disagreed that the rule adopts an ''alternative'' reading of the statute. Instead, the commenter opined that the interpretation in the proposed regulations is correct and that the affordability rule in the 2013 regulations

[8] For purposes of this exemption for unaffordable coverage, an employee or related individual who is otherwise exempt under § 1.5000A–3 is not included in determining the required contribution.

[9] REG–148500–12 (78 FR 7314).

[10] TD 9632 (78 FR 53646).

[11] The term ''employee'' would not be replaced with ''related individual'' here because it is the employee who makes contributions (through salary reduction or otherwise) to pay for employer coverage, even if the employer coverage includes family members of the employee.

reflected an erroneous interpretation of the ACA. Finally, one commenter stated that the 2013 regulations implementing section 36B badly misinterpret the statute and that section 36B mandates a family-based affordability test. The commenter noted that if Congress had intended a self-only test, it would have mandated that coverage be deemed affordable for a related family member so long as the employee can afford self-only coverage, rather than obliquely stating that the special rule applies to related family members as well.

For reasons explained in section III of this Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS have concluded that the affordability rule for related individuals in the proposed regulations, as finalized in these regulations, is the better reading of the statute and the better means of implementing the statute. Further, the Treasury Department and the IRS believe that the affordability rule in these final regulations is consistent with the goal of the ACA to provide access to affordable, quality health care for all Americans.[12] Indeed, under the 2013 regulations, some family members of employees could not access any PTC for Exchange coverage even if their only offer of employer coverage was a family plan with exorbitant premiums (about 16% of income, on average),[13] solely because the employee had access to affordable self-only coverage.

As explained earlier in this section II.A of the Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS disagree with commenters who argued that section 36B unambiguously establishes a single affordability test for both employees and related individuals that is based on the cost of self-only coverage to the employee. Some of these commenters argued that, because section 36B(c)(2)(C)(i)(II) does not cross-reference section 5000A(e)(1)(C) in defining the term ''required contribution,'' section 5000A(e)(1)(C) cannot be considered in determining whether a related individual has been offered affordable employer coverage for purposes of section 36B. One of those commenters also argued that, under the negative-implication canon of statutory interpretation,[14] the reference to section 5000A(e)(1)(A) in section 5000A(e)(1)(C) precludes the use of the rule in section 5000A(e)(1)(C) for other purposes, such as providing a rationale for an affordability test in section 36B for related individuals that is separate from the test for employees.

The Treasury Department and the IRS disagree. As noted in the Background section and earlier in this section II.A. of the Summary of Comments and Explanation of Revisions, the definition of ''required contribution'' in section 5000A(e)(1)(B)(i) is modified by a ''special rule'' in section 5000A(e)(1)(C) that is applicable to related individuals. Section 5000A(e)(1)(C) provides that ''[f]or purposes of [section 5000A(e)(1)](B)(i), if an applicable individual is eligible for minimum essential coverage through an employer by reason of a relationship to an employee, the determination under subparagraph (A) shall be made by reference to [the] required contribution of the employee.'' The regulations under section 5000A interpret section 5000A(e)(1)(C) as modifying the required contribution rule in section 5000A(e)(1)(B)(i) regarding coverage for related individuals to take into account the cost of covering the employee and the related individuals, not just the employee. Specifically, § 1.5000A–3(e)(3)(ii)(B) provides that the required contribution for related individuals is the amount an employee must pay to cover the employee and the related individuals who are included in the employee's family.[15] Because section 5000A(e)(1)(C) begins with the language ''[f]or purposes of [section 5000A(e)(1)](B)(i),'' the parenthetical cross reference in section 36B(c)(2)(C)(i)(II) to section 5000A(e)(1)(B)(i) incorporates the special rule in section 5000A(e)(1)(C) and modifies section 5000A(e)(1)(B)(i) when the coverage in question is for related individuals. Accordingly, a specific reference to section 5000A(e)(1)(C) in the flush language of section 36B(c)(2)(C)(i) is not necessary to require the consideration of section 5000A(e)(1)(C) for determining whether coverage offered to related individuals is affordable under section 36B.

In addition, the Treasury Department and the IRS disagree that the negative-implication canon of statutory construction compels the conclusion that the reference to section 5000A(e)(1)(A) in section 5000A(e)(1)(C) precludes the use of the rule in section 5000A(e)(1)(C) for section 36B purposes. As the Supreme Court has emphasized in numerous cases, the force of any negative implication depends on the context, and the negative-implication canon applies only when circumstances support a sensible inference that the term left out must have been meant to be excluded. See, for example, *Chevron U.S.A. Inc.* v. *Echazabal,* 536 U.S. 73, 81 (2002) (''The [negative-implication canon] is fine when it applies, but this case joins some others in showing when it does not.''); *United States* v. *Vonn,* 535 U.S. 55, 65 (2002) (''At best, as we have said before, the [negative-implication canon] is only a guide, whose fallibility can be shown by contrary indications that adopting a particular rule or statute was probably not meant to signal any exclusion of its common relatives''); *United Dominion Industries* v. *United States,* 532 U.S. 822, 836 (2001) (''But here, as always, the soundness of the [negative-implication canon] is a function of timing'').[16] *See also* Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012), stating that the negative-implication canon ''must be applied with great caution since its application depends so much on context.'' Here, the context points in favor of not restricting the use of section 5000A(e)(1)(C) to the determination in 5000A(e)(1)(A). Instead, the context points in favor of reading the reference in section 36B(c)(2)(C)(i) to section 5000A(e)(1)(B) as incorporating the modification of that subparagraph in section 5000A(e)(1)(C). This reading creates a clear and consistent rule for determining the affordability of coverage for related individuals for purposes of both section 36B and section 5000A. And, as explained earlier in this section II.A. of the Summary of Comments and

[12] *See* H.R. Rep. No. 111–443 (2009).

[13] *https://www.healthaffairs.org/doi/10.1377/hlthaff.2015.1491.*

[14] The negative-implication canon of construction—*expressio unius est exclusio alterius*—means the expression of one thing implies the exclusion of the other.

[15] For purposes of this exemption for unaffordable coverage, an employee or related individual who is otherwise exempt under § 1.5000A–3 is not included in determining the required contribution.

[16] Notably, in *U.S. Venture, Inc.* v. *United States,* 2 F.4th 1034 (7th Cir. 2021), the court rejected an argument by a taxpayer that the negative-implication canon of statutory interpretation required an outcome consistent with the taxpayer's interpretation of a provision of the Internal Revenue Code. The question considered by the court was whether a taxpayer's sale of a butane and gasoline mix qualified for the alternative fuel mixture credit in section 6426 of the Code. In discussing whether the sale of the butane and gasoline mix should qualify for the credit, the court rejected the taxpayer's argument that a specific cross reference in section 6426(e) to section 4083(a)(1) for the definition of a term in section 6426(e) forecloses using a third provision, section 4083(a)(2), to further illuminate the definition in section 4083(a)(1). The court ''decline[d]'' the taxpayer's invitation ''to follow a congressionally mandated cross-reference only part of the way. Instead, we must accept and follow the cross-referenced definition in full.'' *U.S. Venture, Inc.,* 2 F.4th at 1042. ''Whether the cross-reference is to the individual sub-paragraphs or to the whole statute does not change the meaning that Congress chose to give ''gasoline'' in § 4083 and, consequently, in § 6426(e).'' *Id.*

Explanation of Revisions, without incorporating section 5000A(e)(1)(C), the statute would point only to a calculation of affordability for the employee's coverage, even though section 36B requires a calculation of affordability for the related individuals as well.

Moreover, had Congress intended section 5000A(e)(1)(C) to apply only to the affordability determination under section 5000A, excluding all other provisions, it could have done so through explicit means, such as using the language ''solely for purposes of the determination under section 5000A(e)(1)(A).'' See, for example, section 4980H(c)(2)(D) and section 4980H(c)(2)(E), also enacted under the ACA and which provide ''solely for purposes of'' limiting language. No such limiting language is included in section 5000A(e)(1)(C). More generally, had Congress intended a self-only affordability test for related individuals, it could have explicitly provided that coverage is affordable for a related individual so long as the employee is offered affordable self-only coverage. Congress did just that in 2016 when it enacted section 36B(c)(4), relating to the affordability of employer coverage under a qualified small employer health reimbursement arrangement (QSEHRA).

Under section 36B(c)(4)(A), a PTC is not allowed for a month for the Exchange coverage of ''an employee (or any spouse or dependent of such employee) if for such month the employee is provided a [QSEHRA] which constitutes affordable coverage.'' A QSEHRA is affordable for a month if the excess of (1) the monthly premium for the second lowest cost silver plan for self-only coverage of the employee offered in the Exchange for the rating area in which the employee resides, over (2) 1/12 of the employee's permitted benefit (as defined in section 9831(d)(3)(C)) under the QSEHRA, does not exceed 1/12 of 9.5 percent of the employee's household income.

In contrast to the language in section 36B(c)(2)(C)(i)(II), section 36B(c)(4)(A) does not reference section 5000A(e)(1)(B) for the QSEHRA affordability determination or provide that ''this clause shall also apply'' to a related individual. Instead, it provides the same affordability rule for both employees and related individuals by stating that affordability for coverage under a QSEHRA for ''an employee (or any spouse or dependent of such employee)'' is based on the cost of self-only coverage of the employee. That is far different from the language in section 36B(c)(2)(C)(i)(II) and, therefore, it is reasonable to conclude that the affordability rule in section 36B(c)(2)(C)(i)(II) for related individuals is not the same as the affordability rule for related individuals in section 36B(c)(4)(A).

Additionally, the structure and context of sections 36B and 5000A suggest that Congress did not intend to preclude the use of section 5000A(e)(1)(C) in determining the affordability of employer coverage for related individuals for purposes of PTC eligibility under section 36B. Foremost, when the coverage in question is for related individuals, section 36B(c)(2)(C)(i)(II) specifically refers to the definition of required contribution in section 5000A(e)(1)(B)(i), and section 5000A in turn specifically incorporates the special rule in section 5000A(e)(1)(C) ''for purposes of'' section 5000A(e)(1)(B)(i). Under this statutory structure, a specific reference to section 5000A(e)(1)(C) in the flush language of section 36B(c)(2)(C)(i) is not necessary to require the consideration of section 5000A(e)(1)(C) in determining affordability for related individuals for section 36B purposes. This consideration of section 5000A(e)(1)(C) is particularly sensible given the flush language in section 36B(c)(2)(C)(i)(II). That is, the flush language evinces Congress's intent to provide an affordability rule for related individuals. Given that there are numerous cross references in section 36B to section 5000A and that section 5000A confronts a similar situation relating to affordability for related individuals that is resolved through section 5000A(e)(1)(C), it is logical to consider section 5000A(e)(1)(C) for purposes of the affordability rule for related individuals under section 36B. Finally, using the rule in section 5000A(e)(1)(C) in determining the affordability of employer coverage for related individuals for section 36B purposes supports the goal of the ACA to provide affordable, quality health care for all Americans. *See* H.R. Rep. No. 111–443 (2009).

B. Consistency Between the Affordability Rules of Sections 36B and 5000A

The preamble to the proposed regulations noted that the proposed affordability rule under section 36B would create greater consistency between the section 36B affordability rules and the rules in section 5000A used to determine whether an individual is exempt from the individual shared responsibility payment under section 5000A because employer coverage is unaffordable. With the finalization of the proposed section 36B affordability rule in these final regulations, both rules provide that affordability for employees is based on the employee's cost for self-only coverage and that affordability for family members is generally based on the amount an employee must pay to cover the employee and the related individuals included in the employee's family. Thus, these final regulations promote consistency between these two affordability rules.

One commenter argued that Congress did not intend the affordability rules of section 36B and section 5000A to be consistent, suggesting that it instead sought to make it easier for a taxpayer to avoid a section 5000A individual shared responsibility payment for a related individual than to qualify for a PTC for such individual. In other words, the commenter seems to be suggesting that Congress's intent was to make it easier to go without health insurance coverage than to qualify for subsidized Exchange coverage. However, the commenter does not point to any evidence of this beyond the assertion that the statutory text compels this result. As explained above, the Treasury Department and the IRS disagree with the commenter's reading of the statutory text. The commenter's argument also ignores Congress's broader goal of expanding access to affordable health insurance coverage through the ACA, which goal is advanced by the affordability rule for related individuals in these final regulations.

C. Legislative History of ACA

One commenter also argued that the legislative history underlying the ACA shows that Congress intended that the rule for affordability of employer coverage for family members be the same as the affordability rule for employees and that both determinations are intended to be based on the cost of self-only coverage to the employee. The argument is that S. 1796, the America's Healthy Future Act of 2009[17] (one of the Senate bills that became the ACA through consolidation with another bill[18] and amendment), as introduced, based the determination of the affordability of employer-sponsored coverage on the employee's required contribution, as defined by (what was in that version of the bill) section 5000A(e)(2), which would have set affordability tests for both self-only and family coverage.

The commenter further argued that, when the bill that became the ACA was introduced on the Senate floor, it altered

[17] 111th Congress (2009).

[18] H.R. 3590, 111th Congress (2009).

the language of S. 1796 to reflect the language currently in the statute, in which the required contribution is described as ''within the meaning of section 5000A(e)(1)(B).'' In the commenter's view, this change demonstrates that the required contribution rule in section 5000A(e)(1)(C) does not apply to the section 36B affordability test for related individuals. The commenter asserted that the proposed regulations fail to consider the changes to S. 1796 because the affordability test under the proposed regulations reflects exactly how the required contribution for related individuals would have been determined had these changes not been made.

The Treasury Department and the IRS disagree that the change in legislative language on the Senate floor described by the commenter indicates that Congress intended that affordability for related individuals must be based on the cost of self-only coverage to the employee. At the same time that the legislative sponsors added the language to section 36B that cross-references section 5000A(e)(1)(B), they also added the introductory phrase to section 5000A(e)(1)(C) clarifying that that subparagraph applies ''for purposes of'' subparagraph (e)(1)(B). The fact that the legislative sponsors made both of these changes at the same time indicates that they understood that section 36B would incorporate both subparagraphs into its affordability rule. Moreover, as noted by a number of commenters supportive of the proposed regulations, had Congress intended an identical affordability rule for employees and related individuals, the flush language in section 36B(c)(2)(C)(i) would not have been necessary. For example, Congress could simply have stated that affordability for an employee (or any spouse or dependent of such employee) is based on the cost of self-only coverage of the employee. Indeed, as explained in section II.A. of this Summary of Comments and Explanation of Revisions, Congress did exactly that when it enacted the affordability rules for QSEHRAs in section 36B(c)(2)(4). That, however, is not the direction that Congress chose to take with its changes to S. 1796. Instead, Congress enacted two rules, one for employees and one for related individuals. Consequently, it is reasonable to conclude that Congress's use of separate rules for employees and related individuals indicates an intent to provide separate tests for an employee, based on the cost of self-only coverage to the employee, and for related individuals, based on the cost of the coverage for the employee and those related individuals.

D. Legislative Proposals To Change Affordability Rule

Several commenters also argued that a change to the affordability rule for related individuals should be accomplished by legislative action, rather than regulatory action. They argued that, despite requests to amend section 36B to provide that affordability of employer coverage for related individuals is based on the employee's cost for family coverage, Congress has not amended section 36B to specifically command this result. In addition, they noted that Congress has included language in various bills to amend the affordability rule, but the proposed legislation has not been enacted. The commenters asserted that this Congressional inaction means that the Treasury Department and the IRS are not empowered to issue regulations to address a matter that Congress acknowledges must be addressed in legislation.

Although the commenters are correct that members of Congress have included language in various bills to address the section 36B affordability rule in section 36B(c)(2)(C)(i), the introduction of proposed legislation is not an acknowledgement by Congress that the section 36B affordability test for related individuals must be addressed in legislation and not by regulation. As the Supreme Court has emphasized, ''failed legislative proposals are a particularly dangerous ground on which to rest an interpretation of a prior statute [internal quotations omitted] . . . Congressional inaction lacks persuasive significance because several equally tenable inferences may be drawn from that inaction, including the inference that the existing legislation already incorporated the offered change.'' *Central Bank of Denver, N.A.* v. *First Interstate Bank of Denver, N.A.,* 511 U.S. 164, 187 (1994) (quoting *Pension Benefit Guaranty Corporation* v. *LTV Corp.,* 496 U.S. 633, 650 (1990)). Here, for instance, it is possible that legislative proposals were introduced not because of insufficient language in the ACA, but because members of Congress believed that the 2013 regulations had incorrectly interpreted the existing language of the ACA. Although Congress may not have enacted legislation specifically and unequivocally mandating the approach taken in these final regulations, the Treasury Department and the IRS have determined that existing section 36B(c)(2)(C)(i) is better interpreted to require separate affordability determinations for employees and for family members, as set forth in § 1.36B–2(c)(3)(v)(A)(2) of these final regulations.

E. Interpretation of Joint Committee on Taxation Report

In a footnote in the preamble to the proposed regulations, the Treasury Department and the IRS observed that in the Joint Committee on Taxation report, *Technical Explanation of the Revenue Provisions of the ''Reconciliation Act of 2010,'' as amended, in combination with the ''Patient Protection and Affordable Care Act,''* (JCX–18–10), March 21, 2010 (JCT report), the staff of the Joint Committee on Taxation (Joint Committee staff) initially explained that ''[u]naffordable is defined as coverage with a premium required to be paid by the employee that is 9.5 percent or more of the employee's household income, based on the type of coverage applicable (*e.g.,* individual or family coverage).'' The Joint Committee staff later revised the quoted language, after the enactment of the ACA, to state that ''[u]naffordable is defined as coverage with a premium required to be paid by the employee that is 9.5 percent or more of the employee's household income, based on self-only coverage.'' *ERRATA for JCX–18–10,* (JCX–27–10), May 4, 2010 (May 2010 Errata).

A few commenters expressed the view that the original JCT report was in error and should not be viewed as evidence that the statutory language in section 36B(c)(2)(C)(i)(II) supports a separate affordability rule based on the cost of family coverage; these commenters noted that the May 2010 Errata corrected the error. The Treasury Department and the IRS acknowledge that the Joint Committee staff characterized the May 2010 Errata as a correction of an error but disagree with the commenters as to the relevance of that observation. The May 2010 Errata was not before Congress at the time that the ACA was enacted in March 2010. In any event, neither the JCT report nor the May 2010 Errata is considered part of the legislative history, and neither is dispositive of any particular statutory interpretation.

F. Relevance of Section 18081

The preamble to the proposed regulations noted that the proposed regulations would promote consistency between the affordability rules in sections 36B and 5000A and the rule in 42 U.S.C. 18081(b)(4)(C) (section 18081(b)(4)(C)). Section 18081(b)(4)(C) relates to information that a QHP enrollee must provide as part of the enrollee's QHP application if the

enrollee wants to be determined eligible for advance payments of the PTC (APTC) or cost-sharing reductions. Under section 18081(b)(4)(C), if an employer offers minimum essential coverage to an individual seeking to enroll in a QHP, and the individual asserts that the offer does not preclude the individual from qualifying for APTC or cost-sharing reductions because it is not affordable, the QHP applicant must provide to the Exchange information on ''the lowest cost option for the enrollee's or [related] individual's enrollment status and the enrollee's or [related] individual's required contribution (within the meaning of section 5000A(e)(1)(B) of title 26) under the employer-sponsored plan.''

Certain commenters opined that they saw no inconsistency between the 2013 affordability rule under section 36B, the affordability rule under section 5000A, and the QHP applicant information rule in section 18081(b)(4)(C). One commenter stated that section 18081(b)(4)(C), by referencing section 5000A(e)(1)(B), merely instructs Exchanges to determine ''the portion of the annual premium which would be paid by the individual . . . for self-only coverage'' under the employer-sponsored plan. Another commenter argued that section 18081(b)(4)(C), by using the term ''or'' and not ''and,'' requires the submission of information on the required contribution solely for the employee who is offered employer coverage, meaning the individual who would pay the required contribution, but that the individual enrolling in the QHP could be the employee or someone related to the employee. This commenter further argued that in either case, the only information required by section 18081(b)(4)(C) is the lowest cost option for self-only coverage and the required contribution for the applicable employee.

The Treasury Department and the IRS agree with the commenter who noted that section 18081(b)(4)(C) requires the submission of information on the required contribution solely for the employee who is offered employer coverage and that the individual enrolling in the QHP could be the employee or someone related to the employee. However, the Treasury Department and the IRS disagree with the conclusion of both commenters that section 18081(b)(4)(C) requires Exchanges to collect information on only the portion of the annual premium that would be paid by the employee for self-only coverage under the employer-sponsored plan.

Section 18081 requires Exchanges to collect information from enrollees who are offered coverage under an employer plan on ''the lowest cost option'' that the employee, whether the enrollee or an individual related to the enrollee, must contribute for the employee's or individual's enrollment status. The language ''lowest cost option for the . . . enrollment status'' indicates that the amount may vary depending on whether the employee's enrollment status would be for self-only or family coverage. Otherwise, section 18081(b)(4)(C) would refer to ''the lowest cost option for the enrollee for self-only coverage.'' Thus, the Treasury Department and the IRS are of the view that the amendment to § 1.36B–2(c)(3)(v)(A)(*2*) in these final regulations and the similar affordability rule in § 1.5000A–3(e)(3)(ii)(B) are consistent with the QHP applicant information rule in section 18081(b)(4)(C).

G. Coordination With Section 4980H

One commenter asserted that the framework of section 4980H supports the view that a separate affordability test under section 36B for related individuals is not warranted. Section 4980H provides that an applicable large employer (ALE) generally must offer coverage to full-time employees and their dependents or potentially be subject to an employer shared responsibility payment. As the commenter noted, although ALEs are required to offer coverage to full-time employees and dependents, only the coverage offered to the full-time employees is required to be affordable. There is no comparable affordability rule for the coverage offered to dependents. In addition, an employer's obligation to make a payment under section 4980H is triggered only when a full-time employee is allowed a PTC.

The commenter stated that the affordability of self-only coverage is the key determinant in whether an employer of a full-time employee must make a section 4980H payment and in whether the full-time employee and his or her dependents are allowed a PTC. The commenter argued that this framework shows Congress's intent that section 36B and section 4980H have just one affordability test based on the cost of self-only coverage to the employee and that providing an affordability test for related individuals based on the cost of family coverage is not consistent with that framework.

The Treasury Department and the IRS disagree. Section 36B and section 4980H apply to different types of taxpayers and have different purposes. Section 36B provides a PTC to taxpayers and their families who meet certain requirements, one of which is that they are not eligible for affordable, minimum value coverage from their employer. The amount of the PTC is determined based on family size and household income, among other factors, in recognition of the fact that affordability of coverage depends on the cost to the family. The PTC is integral to ensuring that individuals and their families can access affordable coverage through an Exchange. In contrast, section 4980H imposes a payment on ALEs if they fail to offer minimum essential coverage to their full-time employees and their dependents, and at least one full-time employee is allowed a PTC. Section 4980H does not require that employer coverage be offered to an employee's spouse, and it does not require that any coverage offered to spouses or dependents be affordable. Further, employers do not owe a payment under section 4980H if a PTC is allowed for an employee's spouse or dependent. The purpose of this provision is to ensure that large employers share responsibility under the ACA for providing affordable health coverage to employees, but this responsibility does not extend to affordable coverage for spouses or dependents. Given these differing purposes, there is nothing in this framework that suggests Congress intended for section 36B and section 4980H to have a single affordability test based on the cost of self-only coverage to the employee.

In addition, the goal of the ACA is to provide affordable, quality health care for all Americans,[19] not just to full-time employees of ALEs, and these final regulations further that goal. In light of that goal, and contrary to the suggestion of the commenter, the lack of any requirement under section 4980H for ALEs to offer affordable coverage to family members of employees indicates that a PTC should be allowed for family members offered unaffordable coverage.

H. Minimum Value Rule

As noted in the Background section of this preamble, an employee generally is not treated as eligible for coverage under an eligible employer-sponsored plan unless the coverage provides minimum value, as defined in section 36B(c)(2)(C)(ii). Under section 36B(c)(2)(C)(ii) and § 1.36B–6(a)(1), an eligible employer-sponsored plan provides minimum value if the plan's share of the total allowed costs of benefits provided to an employee is at least 60 percent, regardless of the total allowed costs of benefits.

The proposed regulations provided a minimum value rule for related

[19] *See* H.R. Rep. No. 111–443 (2009).

individuals that is based on the plan's share of the total allowed cost of benefits provided to the related individuals. Under the proposed regulations, an eligible employer-sponsored plan satisfies the minimum value requirement for related individuals only if the plan's share of the total allowed costs of benefits provided to related individuals is at least 60 percent, similar to the existing rule in § 1.36B–6(a)(1) for employees.

The vast majority of commenters supported the separate minimum value rule for related individuals in the proposed regulations. However, two commenters stated that the minimum value requirement in section 36B applies only to employees and that the Treasury Department and the IRS have no authority to provide a minimum value rule for related individuals. In the view of these commenters, related individuals are eligible for employer coverage if the coverage is affordable, even if the plan's share of the total allowed costs of benefits provided to related individuals is below 60 percent. This approach, however, is contrary to the approach taken in current § 1.36B–2(c)(3)(i)(A), which was promulgated in final regulations in 2012. *See* TD 9590 (77 FR 30377). Section 1.36B–2(c)(3)(i)(A) clarifies that there is a minimum value requirement for both employees and related individuals, stating that ''an employee who may enroll in an eligible employer-sponsored plan . . . that is minimum essential coverage, and an individual who may enroll in the plan because of a relationship to the employee (a related individual), are eligible for minimum essential coverage under the plan for any month only if the plan is affordable and provides minimum value.'' Under this long-standing rule, a related individual who receives an offer of employer coverage that does not provide minimum value is deemed to be ineligible for the coverage, and a PTC may be allowed for the related individual provided that the related individual does not enroll in the coverage. The proposed regulations did not propose to revisit this long-standing rule.

Further, as stated in the preamble to the proposed regulations, without a separate minimum value rule for related individuals based on the costs of benefits provided to related individuals, a PTC would not be allowed for a related individual offered coverage under a plan that was affordable but provided minimum value only to employees and not to related individuals. This outcome would diminish the benefit a related individual would derive from the amendment of the affordability rule for related individuals. That is, the affordability of employer coverage for related individuals would be based on the employee's cost of covering the related individuals, but there would be no assurance that the affordable coverage offered to the related individuals provided a minimum value of benefits to the related individuals.

Moreover, as described by commenters supportive of the minimum value rule for related individuals, it is extremely rare for an employer plan to provide a different level of coverage for family members than the coverage level provided to the employee enrolled in the plan. This is because most employers that offer multiple benefits packages offer family coverage on the condition that the employee and the employee's family must enroll in the same benefits package, which will then have the same minimum value for the entire family. Thus, if an employer plan offered to employees provides minimum value, and that plan is also offered to related individuals, the plan generally will also provide minimum value to the family members. Nevertheless, because the lack of a separate minimum value rule for related individuals would be inconsistent with the goals of the ACA in providing comprehensive health coverage and improving access to quality and affordable health care, the final regulations provide that an eligible employer-sponsored plan provides minimum value for related individuals only if the plan's share of the total allowed costs of benefits provided to related individuals is at least 60 percent and the plan benefits include substantial coverage of inpatient hospital services and physician services.

III. Rationale for Change

At the time that the Treasury Department and the IRS promulgated the 2013 regulations, limited information was available to model the effects of an affordability rule for related individuals based on the cost of family coverage. In the years since the 2013 regulations became effective in 2014, however, the Treasury Department and the IRS have learned more about how the ACA is affecting individuals, families, employers, group health plans, health insurance markets, and other stakeholders. For example, in 2017, the Congressional Budget Office (CBO) determined that 2010 reports by CBO and JCT on the budgetary effects of the ACA dramatically overstated the cost of the PTC.[20] In the 2017 report, the CBO noted that, to a great extent, the differences arose because actual results deviated from the agencies' expectations about how the economy would change and how people and employers would respond to the law, and that, to a lesser extent, the differences were caused by judicial decisions, statutory changes, and administrative actions that followed the ACA's enactment.

Despite the initial uncertainty about the ACA's effects, there has been substantial progress over the past several years toward meeting the goal of the ACA to give all Americans the opportunity to enroll in comprehensive health insurance at an affordable price. For individuals who were previously uninsured, the ACA expanded eligibility for Medicaid and created new Exchanges for eligible individuals to purchase QHPs subsidized by the PTC. Research has shown that these policies increased access to affordable health insurance and helped reduce the share of the population that was uninsured.[21]

Despite this progress, roughly 26 million people still lack health insurance coverage. About 8 percent of the population is still uninsured.[22] Because these people without health coverage face large, unpredictable bills when they seek medical care, many forgo necessary treatments. The key challenge for these families in obtaining coverage is the cost of coverage. According to the National Health Interview Survey, nearly 75 percent of uninsured adults reported the main reason they were uninsured was because the coverage options available to them were not affordable.[23] Additionally, millions of adults reported that in order to save money, they did not get needed medical care or take medication as prescribed.[24]

Premium costs are particularly challenging for families enrolling in employer coverage. Since the 2013 regulations were promulgated, the average annual employee contribution for family coverage has increased by over 30 percent—a growth rate that is nearly double the rate at which the Consumer Price Index increased over the same period.[25] In 2021, the average

[20] *See https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/53094-acaprojections.pdf.*

[21] *https://onlinelibrary.wiley.com/doi/epdf/10.1002/pam.22158.*

[22] *https://aspe.hhs.gov/reports/2022-uninsurance-at-all-time-low.*

[23] *https://www.cdc.gov/nchs/data/databriefs/db382-H.pdf.*

[24] *https://www.cdc.gov/nchs/data/nhis/earlyrelease/earlyrelease202204.pdf.*

[25] *https://www.bls.gov/cpi/data.htm.*

annual employee contribution for a family plan offered by the employer was $5,969. Contributions were even higher for employees at small firms who faced an average cost of $7,710. Roughly 12 percent of workers offered health coverage would have had to pay over $10,000 to cover their entire family.[26] Under the 2013 regulations, these families are not eligible for the PTC if the self-only coverage offer is affordable, even if the cost of family coverage exceeds their annual income. Without access to affordable coverage from either their employer or the Exchange, some low- and middle-income families are unable to obtain coverage and must go uninsured.

For families that can afford employer coverage, the coverage is sometimes of limited value because of high levels of cost-sharing. In 2020, roughly 90 percent of employer plans had a deductible.[27] Among family plans offered by employers with a deductible, the average amount of the deductible was roughly $3,722. After families reach their deductible, they are usually liable for co-insurance or co-payments until they hit their out-of-pocket maximum. For 2020, the average out-of-pocket maximum for a family plan offered by employers was $8,867. There is also clear evidence that high levels of cost-sharing can restrict access to necessary medical care and lead to adverse health outcomes.[28]

Thus, although the ACA has succeeded in providing affordable health care to millions of Americans, some still cannot afford coverage. With increasingly higher premiums and out-of-pocket costs, the cost of family coverage offered by employers has become particularly unaffordable for some employees' family members. The self-only affordability rule for related individuals in the 2013 regulations exacerbates that problem. Although the Treasury Department and the IRS could speculate in 2010–2013 that the self-only affordability rule might adversely affect certain families, the data and subsequent analysis have now borne out those adverse effects.

In addition to the data provided in the studies cited above, numerous health care advocates have written articles over the years describing the adverse effects of the 2013 affordability rule and recommending a rule change.[29] Most recently, the proposed regulations themselves generated over 3,800 comments in support of the proposed rule. As noted earlier in this preamble, many of these commenters recounted personal stories of family members being uninsured due to the unaffordability of family coverage offered by an employer and the unavailability of a PTC for Exchange coverage. Finally, individuals have shared stories in other forums regarding the negative impact of the 2013 affordability rule on their lives. For example, one married couple testified to a state legislature that they divorced solely to retain the husband's eligibility for the PTC after his wife got a new job with an offer of family coverage at a cost of $16,000, over half of the husband's annual earnings.[30]

Consistent with E.O. 14009, issued in January 2021, the Treasury Department and the IRS undertook a review of the affordability rule for family members in the 2013 regulations at § 1.36B–2(c)(3)(v)(A)(*2*). As part of this review, the Treasury Department and the IRS reconsidered the text of the relevant statutes and whether the 2013 affordability rule represents the best reading of that text. As explained above, the Treasury Department and the IRS now believe (in contrast to their view in 2013) that the 2013 affordability rule did not represent the best reading of the statutory text. The Treasury Department and the IRS also considered the evidence described above from the intervening years and evaluated whether the 2013 affordability rule is inconsistent with the overall goal of the ACA in providing comprehensive, affordable health coverage, as well as the goal of improving access to quality and affordable health care.[31] This evaluation was informed by the experience of the intervening years since Exchange coverage and the PTC first became available. The evaluation demonstrated adverse impacts of the 2013 regulations on families and prompted the Treasury Department and the IRS to issue the proposed regulations and solicit public comments.

In addition, the Treasury Department and the IRS now have a clearer idea of the potential cost and the coverage benefits of changing the affordability rule, in part because of the time that has elapsed since the issue was last considered and the experiences of different insurance markets during that time. For example, analysis has shown how adopting the policies in the final rule would increase access to affordable Exchange coverage.[32] Newly insured individuals will receive substantial benefits. Recent academic research suggests that enrollment in Exchange coverage provides financial protection and improves health outcomes.[33] Several commenters on the proposed regulations also cited publicly available studies that estimate the impact of the proposed affordability rule for related individuals on Federal outlays and revenues.

In addition, several commenters cited publicly available studies that estimate how changing the affordability rule for related individuals could affect the number of people with health insurance coverage.[34] One commenter presented estimates based on their own simulation of health insurance coverage decisions. Another commenter cited a study that focused specifically on the state of California.[35] Since the comment period on the proposed regulations ended, analysts have continued to estimate the impact of changing the affordability rule.[36]

The studies cited by commenters found that implementing a policy similar to the affordability rule described in the proposed regulations would increase the number of individuals eligible for financial assistance by between 3 million and 5.1 million. Other studies project that, out of those newly eligible, between 600,000 and 2.3 million individuals would

[26] *https://www.kff.org/health-costs/report/2021-employer-health-benefits-survey/.*

[27] *https://www.meps.ahrq.gov/data_files/publications/cb25/cb25.pdf.*

[28] *https://academic.oup.com/qje/article-abstract/132/3/1261/3769421;*

https://www.nber.org/papers/w28439.

[29] *See, for example,* Trapped by the Firewall: Policy Changes Are Needed to Improve Health Coverage for Low-Income Workers | Center on Budget and Policy Priorities (cbpp.org); *https://www.healthaffairs.org/do/10.1377/forefront.20210520.564880/.*

[30] *See https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=161949.*

[31] *See* H.R. Rep. No. 111–443 (2009).

[32] *https://www.healthaffairs.org/do/10.1377/forefront.20220420.498595/.*

[33] *https://academic.oup.com/qje/article/136/1/1/5911132; https://www.sciencedirect.com/science/article/abs/pii/S0047272718302408.*

[34] *See https://www.kff.org/health-reform/issue-brief/the-aca-family-glitch-and-affordability-of-employer-coverage/; https://www.kff.org/health-reform/issue-brief/many-workers-particularly-at-small-firms-face-high-premiums-to-enroll-in-family-coverage-leaving-many-in-the-family-glitch/; https://www.cbo.gov/system/files/2020-06/Patient_Protection_and_Affordable_Care_Enhancement_Act_0.pdf; https://www.urban.org/research/publication/changing-family-glitch-would-make-health-coverage-more-affordable-many-families; https://www.urban.org/research/publication/marketplace-subsidies-changing-family-glitch-reduces-family-health-spending-increases-government-costs; https://www.rand.org/pubs/research_reports/RR1296.html; https://www.healthaffairs.org/doi/10.1377/hlthaff.2015.1491.*

[35] *https://laborcenter.berkeley.edu/wp-content/uploads/2022/06/Fact-Sheet-Family-Glitch.pdf.*

[36] *https://www.cbo.gov/system/files?file=2022-07/58313-Crapo_letter.pdf.*

choose to enroll in Exchange coverage.[37] Estimates of the number of people who would be newly insured range from 80,000 to 700,000. These studies estimate that this change in eligibility and subsequent enrollment would increase the Federal deficit by between approximately $2.6 billion and $4.5 billion per year on average.

The studies also discussed which types of families would be most likely to benefit from the proposed affordability rule for related individuals. Families with incomes below 250 percent of the Federal poverty level and families with employees who work for small employers were expected to benefit the most. One study found that workers in industries such as service, agriculture, mining, and construction were more likely to be eligible for a PTC.[38] Another study estimated that families switching from employer coverage to Exchange coverage would save an average of about $400 per person in premiums per year.[39] The studies also discussed how certain qualifying individuals would benefit from cost-sharing reductions that are available for certain qualified individuals enrolling in Exchange coverage.

These studies provide a range of estimated impacts on health coverage status and the Federal deficit. Each study relies on different data sources, modeling techniques, behavioral assumptions, and budgetary baselines. Additionally, the policies they simulate are different than the exact set of policies being adopted in the final regulations. The Treasury Department and the IRS also note that there is a substantial amount of uncertainty in estimating the impact of the policy change.[40]

In addition to these studies—those cited by commenters, as well as others reviewed by the Treasury Department and the IRS—the Treasury Department's Office of Tax Analysis has conducted its own analysis as to the effect of the policy change on health insurance coverage decisions and the Federal deficit. The policy change is projected to increase the number of individuals with PTC-subsidized Exchange coverage by about 1 million and increase the Federal deficit by an average of $3.8 billion per year over the next 10 years. The projections from this analysis are within the range of predictions reported in the cited studies. The evaluation focused on direct, predictable effects of the regulation. Although some studies predict the affordability rule may incidentally increase enrollment in Medicaid or CHIP, these effects are indirect and speculative. Taken as whole, the Treasury Department and the IRS conclude that these analyses provide compelling evidence that the new affordability rule for related individuals will increase the affordability and accessibility of health insurance. Although the range of numbers indicate there is uncertainty in the precise number of individuals who will be affected, the studies suggest that the final regulations will succeed in achieving two key policy goals of the ACA: increasing coverage and reducing costs for consumers. These studies, and the Treasury Department's own analysis, lead the Treasury Department and the IRS to believe that the proposed affordability rule, as finalized in these regulations, is consistent with the overall goals of the ACA and is based on sound reasons for a revision to the affordability rule. Further, as explained in section II of this Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS are of the view that section 36B(c)(2)(C)(i) is better interpreted in a manner that requires consideration of the premium cost to the employee to cover not just the employee, but also other members of the employee's family who may enroll in the employer coverage. Thus, the Treasury Department and the IRS adopt in these final regulations the proposed affordability rule for related individuals that is based on the cost of family coverage because they have concluded that such a rule is the better reading of the statute. For the reasons stated in section II of this Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS have also concluded that, to the extent there is ambiguity in the statute, the proposed affordability rule would be the better alternative to resolve that ambiguity and to implement the statute in a way consistent with Congress's purposes in enacting the ACA.

IV. Recommended Amendments to Proposed Rules

A. Cost of Family Coverage

Under the proposed regulations, an eligible employer-sponsored plan would be treated as affordable for related individuals if the portion of the annual premium the employee must pay for family coverage, that is, the employee's required contribution, does not exceed 9.5 percent of household income. For this purpose, § 1.36B–2(c)(3)(v)(A)(*2*) of the proposed regulations provided that an employee's required contribution for family coverage is the portion of the annual premium the employee must pay for coverage of the employee and all other individuals included in the employee's family, as defined in § 1.36B–1(d), who are offered coverage under the eligible employer-sponsored plan. Under § 1.36B–1(d), an employee's family consists of the employee, the employee's spouse filing a joint return with the employee, and the employee's dependents.

A few commenters requested a change to § 1.36B–2(c)(3)(v)(A)(*2*) of the proposed regulations. Under the rule suggested by the commenters, an employee's required contribution for family coverage under § 1.36B–2(c)(3)(v)(A)(*2*) would be the portion of the annual premium the employee must pay for coverage of the employee and all other individuals offered the employer coverage as a result of their relationship to the employee, including non-dependents of the employee who may enroll in the employer coverage (non-family members). As noted by the commenters, many employers offer coverage to employees' children up to age 26 without regard to whether a child is a dependent of the employee.[41] The commenters argued that including the cost to cover all individuals offered the coverage in an employee's required contribution will ensure that all of these individuals, including non-family members, have access to affordable coverage.

The Treasury Department and the IRS do not adopt this comment. Under the final regulations, as in the proposed

[37] Some studies estimated any Exchange enrollment while other studies estimated only subsidized Exchange enrollment.

[38] *https://www.kff.org/health-reform/issue-brief/many-workers-particularly-at-small-firms-face-high-premiums-to-enroll-in-family-coverage-leaving-many-in-the-family-glitch/.*

[39] *https://www.urban.org/sites/default/files/publication/104223/changing-the-family-glitch-would-make-health-coverage-more-affordable-for-many-families_1.pdf.*

[40] None of the studies reviewed by the Treasury Department and the IRS provided a quantitative measure of the level of uncertainty associated with their estimates. For example, the studies did not report sensitivity checks describing how their results would change under different modeling assumptions. Additionally, none of the studies reported standard errors, a statistic that researchers use to quantify sampling error and the significance of any differences.

[41] Under Public Health Service Act section 2714, which is incorporated into the Code through Code section 9815 and into the Employee Retirement Income Security Act (ERISA) through section 715 of ERISA, group health plans and health insurance issuers offering group or individual health insurance coverage that offer dependent coverage for children must make that coverage available to employees' children until they attain age 26. *See* 26 CFR 54.9815–2714, 29 CFR 2590.715–2714, and 45 CFR 147.120.

regulations, the cost of covering individuals who are offered the coverage but are non-family members is not considered in determining whether the employee's family members have an offer of affordable employer coverage. Under § 1.36B–2(c)(4)(i), an individual who may enroll in employer coverage as a result of the individual's relationship to an employee, but who is a non-family member, is treated as eligible for the employer coverage only if he or she is enrolled in the coverage. Consequently, an individual who may enroll in employer coverage, but who is a non-family member, does not need a determination of unaffordable coverage to enroll in a QHP and be eligible for the PTC, if the individual otherwise qualifies. Unlike family members, a non-family member may enroll in a QHP and be eligible for the PTC, if the individual is otherwise eligible, by simply not enrolling in the offered employer coverage. Accordingly, the cost of covering non-family members should not be considered in determining whether other related individuals have an offer of affordable employer coverage.

B. Determine Affordability for Employees Based on the Cost of Family Coverage

Under § 1.36B–2(c)(3)(v)(A)(*1*), an eligible employer-sponsored plan is considered affordable for an employee offered coverage under the plan if the employee's required contribution for self-only coverage does not exceed 9.5 percent of household income. The proposed regulations do not change the affordability rule for employees.

Several commenters requested that the final regulations amend the affordability rule for employees to provide that, if an offer of employer coverage is unaffordable for an employee's family members, the offer would also be considered unaffordable for the employee. The commenters noted that separate affordability rules for employees and family members will sometimes result in a spouse or dependent of an employee having an offer of employer coverage that is unaffordable even though the employee has an affordable offer of self-only coverage. This could cause families to enroll in multiple plans or policies, the employee in the employer plan and the family members in a QHP, which would be burdensome and costly for families who must navigate different provider networks and drug formularies and incur separate deductibles and caps on out-of-pocket spending.

Although the Treasury Department and the IRS understand the concerns raised by the commenters, the affordability rule for employees is specifically provided in section 36B(c)(2)(C)(i) and cannot be changed by regulation. Under section 36B(c)(2)(C)(i), an employee is not eligible for minimum essential coverage under an employer plan if the employee's required contribution (within the meaning of section 5000A(e)(1)(B)) with respect to the plan exceeds 9.5 percent of household income. Section 5000A(e)(1)(B) provides that the term ''required contribution'' means, ''in the case of an individual eligible to purchase minimum essential coverage consisting of coverage through an eligible employer-sponsored plan, the portion of the annual premium which would be paid by the individual (without regard to whether paid through salary reduction or otherwise) for self-only coverage.'' Further, the affordability rule in section 5000A(e)(1)(C) applies only to related individuals and not to employees. Consequently, the final regulations do not amend the affordability rule for employees.

C. Multiple Offers of Coverage

The proposed regulations provided that an individual who has offers of employer coverage from multiple employers has an offer of affordable coverage if at least one of the offers of coverage is affordable. For example, if X has an offer of employer coverage from X's employer and also from the employer of X's spouse, Y, for a year for which X and Y file a joint return, X has an offer of affordable coverage if either X's required contribution for self-only coverage under X's employer's plan does not exceed 9.5 percent of X's and Y's household income, or if Y's required contribution for family coverage under Y's employer's plan does not exceed 9.5 percent of X's and Y's household income. One commenter suggested that the Treasury Department and the IRS reconsider this multiple coverage rule as it may be confusing for individuals with multiple offers of coverage; however, the commenter did not include a recommendation for a specific change to the regulations.

The final regulations do not change the rule provided in the proposed regulations regarding affordability for individuals with multiple offers of coverage. Although the current section 36B regulations do not explicitly address situations involving multiple offers of employer coverage, as noted in the Background section of this preamble, a month is a coverage month for an individual only if the individual is not eligible for MEC, other than individual market coverage, for the month. Therefore, under the current regulations, an individual with multiple employer coverage offers for a month is eligible for MEC for that month if at least one of the offers of coverage is affordable and provides minimum value. The rule in the proposed regulations relating to multiple offers of coverage simply states expressly how the affordability rule in the current regulations applies to an individual with multiple offers of employer coverage.

Furthermore, an individual with multiple offers of employer coverage seeking to enroll in a QHP with APTC would provide information to the applicable Exchange concerning the required contribution for each coverage offer. The Exchange will determine if at least one of the offers is affordable, in which case APTC would not be allowed for the individual's Exchange coverage. This process should minimize any burden or confusion relating to whether an individual with multiple offers of coverage has an affordable offer that would deny the individual APTC and PTC for his or her Exchange coverage. In addition, for taxpayers for whom APTC is not paid for their or their family's QHP coverage, the IRS will update the instructions for Form 8962, *Premium Tax Credit (PTC),* and Publication 974, *Premium Tax Credit (PTC),* to address multiple offers of employer coverage.

D. Comments Requiring Legislative Changes

One commenter suggested that the final regulations include a rule under which an employee and the employee's family members are not considered to have an offer of affordable coverage if the cost of coverage for the entire family is more than 15 percent of household income. One commenter asked that the rule in section 36B(c)(2)(B) be amended and that all individuals offered coverage under an employer plan be permitted to choose between the employer coverage and Exchange coverage with a PTC. Another commenter requested that the Treasury Department and the IRS make permanent the rule in section 36B(c)(1)(E) under which taxpayers with household income above 400 percent of the applicable Federal poverty line may qualify for a PTC for taxable years beginning in 2021 and 2022.[42] One

[42] Section 12001 of Public Law 117–169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), extended through 2025 the rule in section 36B(c)(1)(E) under which taxpayers with household income above 400 percent of the applicable Federal poverty line may qualify for a PTC.

commenter requested that the rules of section 36B be amended so that a PTC for a child may be claimed by the taxpayer who pays for the health insurance coverage of the child, not to the taxpayer claiming the child as a dependent. Finally, one commenter suggested that the final regulations include a rule under which excess APTC repayments would be waived for taxable year 2023 while the Exchanges adjust and reeducate consumers on the affordability calculation for family members.

The Treasury Department and the IRS appreciate these comments but note that these changes would require legislative action and cannot be made by regulation. Thus, the final regulations do not include these recommended rules.

E. ICHRA and QSEHRA Comments

In general, § 1.36B–2(c)(3)(i)(B) provides affordability rules related to employees who are offered a health reimbursement arrangement (HRA) or other account-based group health plan that would be integrated with individual health insurance coverage if the employee enrolls in individual health insurance coverage (an individual coverage health reimbursement arrangement or ICHRA). Those rules provide that an individual who is offered an ICHRA because of a relationship to the employee (a related HRA individual) is eligible for minimum essential coverage under an eligible employer-sponsored plan for any month for which the ICHRA is offered if (1) the ICHRA is affordable, or (2) the employee does not opt out of and waive future reimbursements from the ICHRA, regardless of whether the ICHRA is affordable. Under § 1.36B–2(c)(5), an ICHRA is affordable for a month if the employee's required HRA contribution does not exceed 9.5 percent of the employee's household income for the taxable year, divided by 12. An employee's required HRA contribution is the excess of the monthly premium for the lowest cost silver plan for self-only coverage of the employee offered in the Exchange for the rating area in which the employee resides, over the monthly self-only ICHRA amount (or the monthly maximum amount available to the employee under the ICHRA if the ICHRA provides for reimbursements up to a single dollar amount regardless of whether an employee has self-only or other-than-self-only coverage).

One commenter stated it was unclear whether the affordability rule for related individuals in the proposed regulations applies to ICHRAs. The commenter also suggested that the final regulations include a rule under which family coverage amounts, not self-only coverage amounts, are used to determine whether an ICHRA offer to a related HRA individual is affordable.

The proposed regulations do not address the affordability rules relating to an ICHRA offer, and, consequently, the final regulations also do not address ICHRAs. Therefore, the rules for determining affordability of an ICHRA remain unchanged. However, the Treasury Department and the IRS, in coordination with HHS and the U.S. Department of Labor (DOL), will consider whether future guidance should be issued to change the ICHRA affordability rules for related HRA individuals in the manner suggested by the commenter.

Other commenters suggested that a PTC be allowed for family members in situations in which an employee is offered an affordable HRA, whether an ICHRA or a QSEHRA, and does not opt-out of the HRA. The commenters recommended that, in these situations, the employee and the family members would enroll in an Exchange family plan and the employee would not be allowed a PTC because of the affordable HRA, but the family members would be allowed a PTC.

The rules relating to QSEHRAs are specifically provided by statute in section 36B(c)(4). Because the Treasury Department and the IRS cannot amend those rules by regulation, QSEHRAs are not addressed in these final regulations.

Under the rules for ICHRAs, if the terms of the ICHRA provide that reimbursements are allowed only for the medical expenses of the employee and not for the expenses of related individuals, a PTC may be allowed for the Exchange coverage of the related individuals, irrespective of whether the ICHRA is considered affordable under § 1.36B–2(c)(5), or whether the employee opts out of the ICHRA. However, if the ICHRA offer includes reimbursements of the medical expenses of related HRA individuals, a PTC is generally not allowed for the Exchange coverage of the employee or the related HRA individuals if the ICHRA offer is affordable or if the employee does not opt out of the ICHRA. This is because an ICHRA is an eligible employer-sponsored plan under section 5000A(f)(2) and, therefore, under section 36B(c)(2)(C), if the coverage is affordable and provides minimum value, a PTC is generally not allowed for the Exchange coverage of an individual to whom the ICHRA offer extends or who does not opt out of the ICHRA. Consequently, this rule relating to offers of employer coverage in section 36B(c)(2)(C) cannot be amended by regulation. However, as noted in connection with the prior comment concerning ICHRAs, the Treasury Department and the IRS, in coordination with HHS and DOL, will consider whether future guidance should be issued to provide an ICHRA affordability rule for related individuals that is separate from the affordability rule for employees.

F. Minimum Value

1. Minimum Value Rule for Related Individuals

The proposed regulations provided that an employer plan meets the minimum value requirement for related individuals if the plan's share of the total allowed costs of benefits provided to related individuals is at least 60 percent, similar to the minimum value requirement for employees. One commenter requested that the final regulations include a minimum value safe harbor rule under which an employer plan is considered to provide minimum value to related individuals if the coverage provided to employees under the plan meets minimum value requirements and the same benefits are provided to employees and family members. Other commenters recommended that the final regulations allow for the calculation of minimum value using a standard population that includes both employees and dependents to calculate a single, composite, minimum value for an employee and dependents, and that separate populations not be required for coverage provided to employees and coverage provided to related individuals.

As in the proposed regulations, the final regulations provide a minimum value rule for related individuals that is separate from the minimum value rule for employees, and that requires a plan's share of the total allowed costs of benefits provided to related individuals to be at least 60 percent. This minimum value rule for related individuals is not intended to require the use of a standard population for family members that is separate from the standard population for employees. Rather, the intent of the rule is to ensure that employers continue to provide a plan that has the same benefit design for employees and related individuals, and not to burden employers with having to offer different benefit packages for employees and related individuals. Consequently, the final regulations include a rule providing that an employer plan that provides minimum value to an

employee also provides minimum value to related individuals if the scope of benefits and cost sharing (including deductibles, co-payments, coinsurance, and out-of-pocket maximums) under the plan are the same for employees and family members. If cost sharing varies based on whether related individuals are enrolled and/or the number of related individuals enrolled (that is, the tier of coverage), minimum value for related individuals is based on the tier of coverage that would, if elected, cover the employee and all related individuals (disregarding any differences in deductibles or out-of-pocket maximums that are attributable to a different tier of coverage, such as self plus one versus family coverage.) In addition, the final regulations do not require a departure from the practice of computing minimum value for employees and related individuals based on the provision of benefits to a standard population that includes both employees and related individuals.

2. Require Coverage of All Essential Health Benefits

The proposed regulations provided that, to be considered to provide minimum value, an eligible employer-sponsored plan must include substantial coverage of inpatient hospital services and physician services. One commenter asked that final regulations provide that an employer plan does not meet the minimum value requirements unless it provides coverage of all 10 essential health benefits that, under the ACA, certain plans must cover, not just inpatient hospital services and physician services. This comment requesting an expansion of the minimum value rule is outside the scope of these final regulations. Thus, as in the proposed regulations, the final regulations provide that an eligible employer-sponsored plan does not meet minimum value requirements unless it includes substantial coverage of inpatient hospital services and physician services.

3. Minimum Value Calculator

Under 45 CFR 156.145(a)(1), a minimum value calculator is to be made available by HHS and the IRS that an employer plan may use to determine whether the percentage of total allowed costs under the plan is at least 60 percent. Several commenters requested that the minimum value calculator be updated to reflect more current large group data and to incorporate appropriate model changes that have been made to the actuarial value calculator.[43] Although the commenters' request concerning the minimum value calculator is outside the scope of the final regulations, the Treasury Department and the IRS have shared these comments with HHS to determine the best way to address these comments relating to the calculator.

G. Applicability Date of Final Regulations

The proposed regulations provided that the changes to §§ 1.36B–2, 1.36B–3, and 1.36B–6(a)(2) in the proposed regulations, if finalized, were expected to apply for taxable years beginning after December 31, 2022. Several commenters requested instead that the final regulations apply for taxable years beginning after December 31, 2023. These commenters expressed concern that taxpayers will be faced with a number of health care-related changes in 2022, including the end of the temporary applicable percentages for 2021 and 2022 in section 36B(b)(3)(A)(iii) that increased PTC amounts.[44] Commenters also noted that at the end of the COVID–19 public health emergency, states will no longer be required to comply with a Medicaid continuous enrollment requirement in order to receive a temporary increase in Federal Medicaid matching funds under the Families First Coronavirus Response Act. The commenters stated that these changes, along with the changes in the proposed regulations, will result in much uncertainty for QHP enrollees for the open enrollment period that begins on November 1, 2022, and will lead to substantial confusion for QHP enrollees and likely inaccurate APTC determinations by Exchanges.

Although the commenters' concerns are appreciated, the Treasury Department and the IRS are of the view that those concerns are outweighed by the goal of allowing spouses and dependents, some of whom have been negatively affected by the 2013 affordability rule, to be able to access affordable Exchange coverage beginning in the 2023 plan year. For this reason, many commenters urged the Treasury Department and the IRS to implement the changes to the affordability rule for related individuals in time for QHP open enrollment for the 2023 plan year. Although 2023 QHP enrollment may present some new challenges, as discussed more fully in section IV of this Summary of Comments and Explanation of Revisions, HHS has informed the Treasury Department and the IRS that HHS will engage in thorough implementation efforts, including revising the Exchange application and providing resources and technical assistance education for State Exchanges, Navigators, agents, brokers, and other assisters to help enrollees understand their options for 2023. In addition, the IRS will be making changes to its forms, instructions, publications, and website, in an effort to educate taxpayers about any changes for the 2023 plan year. Therefore, the Treasury Department and the IRS do not adopt the commenters' request that the applicability date of the final regulations be delayed until taxable years beginning after December 31, 2023. Instead, the final regulations apply for taxable years beginning after December 31, 2022.

Another commenter urged that the Treasury Department and the IRS consider the effective date implications of this rule for the State Innovation Waiver program under section 1332 of the ACA (section 1332 waivers). The commenter requested that the Administration consider the implications of the final regulations on states with approved section 1332 waivers and, if necessary, identify a plan to mitigate potential harm to accessing affordable coverage for individuals. For example, the commenter expressed concern that states would need to develop and update actuarial analyses for section 1332 waivers and that there would be an impact on states leveraging Federal pass-through funding under section 1332 waivers, mostly through reinsurance programs, given that the proposed regulations would modify who is eligible for the PTC and APTC. The commenter also was concerned that there may be implications for states exploring other innovative opportunities, such as public health insurance options that enhance affordable options by leveraging section 1332 Federal pass-through funding.

The section 1332 waiver program permits states to apply to waive certain provisions of the ACA, including section 36B of the Code, to undertake their own state-specific reforms to provide residents with access to high quality, affordable health insurance while retaining the basic protections of the ACA. A state applying for a section 1332 waiver must include in its application actuarial and economic analyses that demonstrate that the

[43] Under 45 CFR 156.135, HHS is responsible for developing and updating an actuarial value calculator that issuers may use to determine the actuarial value of a health plan.

[44] Under section 12001 of the IRA, the temporary applicable percentages for 2021 and 2022 in section 36B(b)(3)(A)(iii) were extended through 2025 so taxpayers will not see a change in their PTC amount due to the potential policy change described by commenters.

waiver proposal meets the statutory requirements for section 1332 waivers.[45] [46] If a waiver yields Federal savings on certain forms of Federal financial assistance under the ACA (such as the PTC), those savings are passed through to the state to help implement the state's approved waiver plan. Federal pass-through funding amounts are calculated annually by the Treasury Department and HHS. Pass-through amounts reflect current law and policy at the time of the calculation but can be updated, as necessary, to reflect applicable changes in Federal or state law.[47] The Treasury Department plans to work with HHS to communicate any implications of these final regulations, including any associated requirements for states, to affected stakeholders and to states that have approved section 1332 waivers or that are considering section 1332 waivers. The Treasury Department and the IRS recognize that the final regulations may affect states in different ways but believe that any negative effects related to the effective date are outweighed by the goal, supported by numerous commenters, of allowing more spouses and dependents to be able to access affordable Exchange coverage beginning in 2023. The Treasury Department and the IRS also note that further innovation under section 1332 of the ACA is speculative, and that, in any event, section 1332 waiver policies are outside the scope of these regulations.

V. Comments Regarding Outreach

Several commenters requested that HHS, the Treasury Department, and the IRS provide clear resources aimed at helping various individuals and employers. Many of the commenters who requested that HHS, the Treasury Department, and the IRS provide outreach about the new rules were concerned about families understanding the trade-offs if they are considering ''split coverage,'' meaning that the employee would enroll in employer coverage and the family members would enroll in Exchange coverage. Some commenters noted that split coverage could lead to lower premiums for the family or could lead to uninsured individuals gaining coverage. Those commenters also noted, however, that some families with split coverage will need to contend with different provider networks, deductibles, out-of-pocket limits, open enrollment periods, appeals and grievance procedures, and other parameters unique to their different health plans. Another commenter added that for some families, moving family members from employer coverage to Exchange coverage could mean lower HRA or health savings account contributions from employers. One commenter stated that confusion about split coverage could present particular difficulties for those with limited English proficiency or lower rates of health literacy.

The commenters who raised these concerns all supported the affordability rule for related individuals provided in the proposed regulations, but requested that the Treasury Department and the IRS work with HHS to help ensure that families who choose to enroll in split coverage will benefit from doing so. One commenter stated that families considering whether to enroll in Exchange coverage with a PTC in lieu of enrolling in employer coverage would greatly benefit from resources and guidance that help them make an informed purchasing decision. That commenter urged the Treasury Department and the IRS to work with HHS on how to best communicate that information in an accessible fashion to consumers both generally and as part of the Exchange application. Finally, one commenter noted that numerous studies show there is a correlation between advertising about the ACA and an increase in individuals shopping for, and enrolling in, Exchange coverage. Thus, that commenter suggested that the IRS and HHS should reinvigorate efforts to educate the American public about Exchange open enrollment (Open Enrollment), specifically focusing on this change to the affordability rule for related individuals.

The Treasury Department and the IRS understand that the new affordability rule in these final regulations will present families with additional coverage options they will need to understand, evaluate, and compare to determine the type of coverage that is best for them. The Treasury Department and the IRS have been working with HHS, and will continue to work with HHS, to ensure that the agencies communicate information about the new rules in an accessible fashion to individuals both generally and as part of the Exchange application. Specifically, HHS has informed the Treasury Department and the IRS that HHS will work to revise the Exchange application on *HealthCare.gov* in advance of Open Enrollment for the 2023 plan year to include new information that will assist consumers in filling out their applications. Those revisions will include (1) new questions on the application about employer coverage offers for family members, and (2) revised materials for consumers to gather information from their employer about the coverage being offered. To assist those with limited English proficiency, *HealthCare.gov* offers language services upon request through the Marketplace Call Center, and the *HealthCare.gov* application is available in both English and Spanish.

The Treasury Department and the IRS also understand that HHS will provide resources and technical assistance to State Exchanges that will need to make similar changes on their websites and Exchange application experiences. More generally, HHS is working regularly with State Exchanges to provide technical assistance on implementation of the new rules. HHS continues to track State Exchange planning and take all necessary steps to support efforts by State Exchanges to implement the new rules, with necessary outreach and education efforts, for Open Enrollment for the 2023 plan year.

In addition, the Treasury Department and the IRS understand that HHS will provide training on the new rules to agents, brokers, and other assisters (for example, Navigators) so applicants will better understand their options before enrolling, including the trade-offs if applicants are considering split coverage. This training is particularly important because over half of the applicants who apply for Exchange coverage through *HealthCare.gov* are assisted by an agent, broker, or other assister. HHS also will share available resources with State Exchanges to leverage for use in training customer support personnel in their states.

Finally, HHS has informed the Treasury Department and the IRS that HHS is considering outreach to specific consumers. HHS has data from prior years on applicants who applied through a Federally-facilitated Exchange, were denied APTC at enrollment, and might benefit from the new rules. HHS is evaluating opportunities for direct outreach to these individuals.

The IRS also will need to implement the new rules for the 2023 taxable year. In particular, the IRS will update relevant forms, instructions, and publications prior to the tax filing season for 2023, to include the instructions for Form 8962 and Publication 974. In addition, the IRS will update relevant materials on *IRS.gov* to provide taxpayers with additional information about the new rules.

In addition to the commenters requesting that HHS, the Treasury Department, and the IRS provide

[45] *See* 31 CFR 33.108(f)(4)(i) and (ii); 45 CFR 155.1308(f)(4)(i) and (ii).

[46] Section 1332(b)(1)(A)–(D) of the ACA.

[47] 31 CFR 33.122 and 45 CFR 155.1322.

outreach to individuals, a few commenters provided specific recommendations related to employers. One commenter stated that employers are thinking about ways to educate employees affected by this new change but suggested that resources be made available from HHS, the Treasury Department, and the IRS that could be shared with employees. One commenter suggested that the Treasury Department, in coordination with HHS and the U.S. Department of Labor, issue tri-agency guidance and consumer-friendly resources to help employees navigate challenges that arise from split coverage. One commenter stated that the Treasury Department and the IRS should require employers to provide notification to their employees about the new affordability test, including information about Exchange coverage, the availability of financial assistance, and how an individual may enroll in coverage. The commenter also recommended that the Treasury Department and the IRS invite stakeholder feedback on a draft of a model notice that employers could share with employees. Finally, one commenter stated that the new rules will create new requirements for plan sponsors and administrators to ensure compliance with the rules and recommended that the Treasury Department and the IRS issue a Request for Information to better understand the recordkeeping and compliance needs of stakeholders who will be affected by the final rule.

The Treasury Department and the IRS appreciate that employers are interested in providing information to their employees about the new rules and encourage employers to provide employees with resources published by DOL, HHS, the Treasury Department, and the IRS relating to the new rules. Regarding the suggestion to impose a notification requirement on employers, such a requirement is outside the scope of section 36B and these final regulations. Thus, the Treasury Department and the IRS cannot impose a notification requirement on employers through these final regulations. In addition, the Treasury Department does not intend to issue formal tri-agency guidance with HHS and DOL or publish a model notice. However, the agencies understand the need to provide clear, consumer-friendly resources that can be accessed by individuals in various ways, including through employers who want to provide those resources directly to employees. Therefore, the Treasury Department and the IRS, in coordination with HHS and DOL, will work to ensure that outreach materials about these final regulations can be accessed by individuals or by employers who choose to share the materials with their employees. In addition, the agencies plan to coordinate in conducting open door forums with employers, employer associations, and employee benefits managers to educate them about the new rules.

As noted earlier, one commenter stated that the new rules will create new recordkeeping and compliance requirements for plan sponsors and administrators. However, nothing in the proposed rules specifically imposed any new requirements on plan sponsors or administrators and any such requirements would be outside the scope of section 36B. In addition, as discussed later, the new rules in these final regulations do not create, even indirectly, any new recordkeeping or compliance requirements for plan sponsors or administrators.

VI. Issues for Employers

A. Information Reporting

Multiple commenters pointed out that the proposed regulations did not address whether the regulations would impose new information reporting obligations on employers and other providers of minimum essential coverage under sections 6055 and 6056. Section 6055 requires providers of minimum essential coverage to report coverage information by filing information returns with the IRS and furnishing statements to individuals. Section 6056 requires ALEs to file information returns with the IRS and furnish statements to full-time employees relating to health coverage offered by an ALE to its full-time employees and their dependents. Some commenters noted that the composition of an employee's tax family is not readily ascertainable by an employer, no employer collects the type of information that would allow them to make determinations about the employment status and health coverage of family members, and this data would be costly and burdensome to collect and report.

The Treasury Department and the IRS clarify that nothing in these final regulations affects any information reporting requirements for employers, including the reporting required under sections 6055 and 6056, which is done on Form 1095–B, *Health Coverage,* and Form 1095–C, *Employer-Provided Health Insurance Offer and Coverage,* respectively. Further, these final regulations do not amend the regulations under section 6055 or 6056, and the IRS does not intend to revise Form 1095–B or Form 1095–C to require any additional data elements related to the new rules. Additionally, the safe harbors that an employer may use to determine affordability for purposes of the employer shared responsibility provisions under section 4980H continue to be available for employers.

B. Non-Calendar Year Plans

One commenter expressed concern about how the affordability rule for related individuals would affect family members enrolled in non-calendar year employer plans, especially individuals enrolled in employer coverage through section 125 cafeteria plans (cafeteria plans). The commenter noted that under current rules, spouses and dependents of employees cannot, without a qualifying event, discontinue their employer coverage during a plan year if the employee has elected under the cafeteria plan to cover the spouse or dependent under the employer plan.[48] Thus, under current rules, if as of January 1, 2023, a spouse or dependent enrolled in a non-calendar year employer plan through a cafeteria plan wants to enroll in a QHP as of that date, no PTC would be allowed for the period from January 1, 2023, until the close of the employer plan year in 2023 because the spouse and dependents would have to continue their enrollment in the employer plan. The commenter opined that, because of this issue, the Treasury Department and the IRS should consider making the final regulations effective beginning in 2024 rather than 2023.

Spouses and dependents enrolled in non-calendar year employer plans not associated with cafeteria plans may, subject to the plan rules, disenroll from the employer plan effective on January 1, 2023, and enroll in a QHP with coverage beginning on January 1, 2023. In that situation, a PTC would be allowed for the Exchange coverage of the spouse and dependents if the requirements for a PTC are met, including that the employer plan is not affordable for the spouse and dependents under the rules in § 1.36B–2(c)(3)(v)(A). The rules in § 1.36B–2(c)(3)(v)(B) apply in determining whether the employer plan is affordable for the spouse and dependents for the

[48] Although current cafeteria plan rules generally prohibit employees, spouses, and dependents from discontinuing their employer coverage during a plan year, Notice 2014–55, 2014–41 I.R.B. 672, permits a cafeteria plan to allow an employee to revoke his or her election under the cafeteria plan for coverage under the employer plan if certain conditions are met. The notice does not allow an employee to revoke an election solely for coverage of the employee's spouse or dependents under the employer plan.

period from January 1, 2023, until the end of the plan year.

For employer plans associated with cafeteria plans, the Treasury Department and the IRS agree with the commenter that, as with employees, spouses and dependents should be able to discontinue their employer coverage during a plan year and enroll in a QHP, and that a PTC should be allowed for their Exchange coverage if the other requirements of section 36B are met. Consequently, simultaneous with the issuance of these final regulations, Notice 2022–41 is being issued to allow employees to revoke coverage in an employer plan associated with a cafeteria plan for family members to allow them to enroll in a QHP.[49] The notice is effective for elections that are effective on or after January 1, 2023. Thus, because employees will be permitted under the notice to revoke coverage in an employer plan associated with a cafeteria plan beginning in 2023, the issuance of the notice addresses the commenter's concern about the effective date of the final regulations.

C. Section 4980H Liability

One commenter that supported the proposed regulations noted in a footnote that the proposed regulations would not have a direct effect on an ALE's liability for an employer shared responsibility payment with respect to the employees of that ALE. The Treasury Department and the IRS agree with that comment; the employer shared responsibility payment is triggered by the allowance of a PTC with respect to a full-time employee of the ALE. These final regulations may affect a related individual's eligibility for a PTC, but they do not affect an employee's eligibility for a PTC, and thus these final regulations do not affect the liability of the ALE of the employee.

The commenter also noted that the proposed regulations could have an indirect impact on an ALE's liability for an employer shared responsibility payment. That is, an ALE that does not offer affordable, minimum value coverage to some of its full-time employees could have an increase in its payment under section 4980H for full-time employees who were previously ineligible for a PTC based on an offer of coverage from their spouse's employer. The commenter did not request any change in the proposed regulations, but merely noted this scenario. Certainly, an ALE that has chosen not to offer affordable, minimum value coverage to the requisite number of its full-time employees may have a potential liability for a payment under section 4980H—a risk that the ALE knowingly accepts. Whenever more employees of such an ALE are allowed a PTC, for any reason, the ALE's liability may grow. The Treasury Department and the IRS have considered the interests such an employer might have in retaining the affordability rule in the 2013 regulations, but do not believe that any such ALE would have a meaningful reliance interest in the 2013 affordability rule. Such an ALE is already risking liability under section 4980H due to its failure to offer affordable self-only coverage to its employees, and has avoided or limited that liability solely through the happenstance that one or more of its employees has received an offer of coverage through a family member that the 2013 affordability rule deemed to be affordable. After careful consideration of this potential interest and broader policy considerations, the Treasury Department and the IRS are adopting these final rules to give full effect to the statutory language and to promote the ACA's goal of providing affordable, quality health care for all Americans.

VII. Procedural Requirements for Regulations and Cost of New Rules

A few commenters argued that the proposed affordability rule for related individuals would be too costly, producing an inefficient use of Federal resources. These commenters all cited a report from the CBO estimating the costs of H.R. 1425, introduced during the 116th Congress, which included provisions that would have amended section 36B to provide an affordability rule for related individuals similar to the one in the proposed regulations. *See* section 103 of H.R. 1425. According to the CBO analysis, that provision would have increased Federal deficits by $45 billion over ten years.[50]

The Treasury Department and the IRS acknowledge that multiple analyses have been undertaken since 2013 that analyze the impact of the 2013 interpretation and estimate any impact of changing the policy of the affordability rule. These analyses consider several aspects of the policy change, including the estimated impact on the Federal deficit, the change in individuals' health coverage status, and the estimated increase in PTC. The Treasury Department and the IRS reviewed the CBO analysis of H.R. 1425, more recent CBO analyses, and other studies that were cited by commenters. In addition to the CBO analysis referred to by commenters, CBO has released an updated analysis estimating that the proposed affordability rule for related individuals, if finalized, would increase the deficit by approximately $3.4 billion annually on average.[51] Further, the Treasury Department analysis indicates a potential increase in the Federal deficit by an average of $3.8 billion per year over the next 10 years. These analyses are discussed in section III of this Summary of Comments and Explanation of Revisions. However, the Treasury Department and the IRS disagree that the benefits of the policy change are insufficient to justify the impact on the Federal deficit. As discussed in section III, these studies consistently project an increase in coverage and affordability for a substantial number of individuals. The Treasury Department and the IRS have determined that adding to the Federal deficit to this extent is a worthwhile tradeoff to achieve these policy goals.

Some of those commenters also criticized the Treasury Department and the IRS for not including specific cost estimates in the preamble to the proposed regulations. One commenter argued that the failure to include a cost-benefit analysis in the proposed affordability rule for related individuals violates the Administrative Procedure Act[52] because it deprives the public of an opportunity for meaningful notice and comment and demonstrates the lack of a reasoned explanation for the rule change.

The Treasury Department and the IRS have provided analysis in accord with the 2018 Memorandum of Agreement between the Treasury Department and the Office of Management and Budget (OMB) (2018 MOA),[53] which specifies that the Treasury Department and the IRS will provide qualitative analysis of the potential costs and benefits of tax regulatory actions determined to raise novel legal or policy issues, as described in section 6(a)(3)(B) of E.O. 12866.

Another commenter asserted that the Treasury Department and the IRS did not provide the analyses required by E.O. 12866, E.O. 13563, and the Regulatory Flexibility Act when it

[49] Employees who revoke coverage in an employer plan associated with a cafeteria plan for themselves or for family members will be eligible for a Special Enrollment Period to enroll in a QHP if a family member becomes newly eligible for APTC. *See* 45 CFR 155.420(d)(6)(iii).

[50] *https://www.cbo.gov/system/files/2020-06/Combined%20Tables.pdf.*

[51] *https://www.cbo.gov/system/files?file=2022-07/58313-Crapo_letter.pdf.*

[52] 5 U.S.C. 551–559.

[53] The Department of the Treasury and the Office of Management and Budget, Memorandum of Agreement, Review of Tax Regulations under Executive Order 12866, April 11, 2018, *https://home.treasury.gov/sites/default/files/2018-04/04-11%20Signed%20Treasury%20OIRA%20MOA.pdf.*

issued the proposed regulations. EOs 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits to the American public. The Regulatory Flexibility Act requires the assessment of the numbers of small businesses potentially impacted by the proposed rule. The commenter argued that the analysis contained in the proposed rule lacks quantifiable data and thus is inadequate to satisfy the procedural requirements in E.O. 12866, E.O. 13563, and the Regulatory Flexibility Act.

The commenter first argued that the Treasury Department and the IRS failed to satisfy the requirements of EOs 12866 and 13563 because they did not provide a reasoned explanation of the need for regulatory action or an assessment of the costs and benefits of all alternatives. The commenter stated that studies or surveys should have been conducted to assess a more precise number of persons impacted and that the Treasury Department and the IRS failed to quantify the costs of the proposed rule. The commenter asserted that the Treasury Department and the IRS are required to conduct research and assess the costs of all the regulatory alternatives, including the alternative of no action.

The Treasury Department and the IRS disagree. The preamble to the proposed regulations provided a detailed qualitative analysis of the proposed rule's benefits, costs, and transfers. In addition, the Treasury Department and the IRS requested comments regarding data, other evidence, or models. In response to comments, the Special Analyses section of this preamble includes further explanation of the qualitative analysis used by the Treasury Department and the IRS. This analysis meets the requirements of EOs 12866 and 13563 applicable to tax regulatory actions and was issued after coordination with and review by OMB under the 2018 MOA.

As noted by the commenter, the Regulatory Flexibility Act generally requires the assessment of the numbers of small businesses potentially impacted by a proposed rule. However, section 605 of the Regulatory Flexibility Act provides an exception under which an assessment is not required if the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the exception applies, the agency must publish the certification in the **Federal Register** at the time of publication of the proposed rule, along with a statement providing the factual basis for such certification. The agency also must provide the certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.

In the preamble to the proposed regulations, the Treasury Department and the IRS certified that the proposed regulations would not have a significant economic effect on a substantial number of small entities. The preamble stated that the certification is based on the fact that the majority of the effect of the proposed regulations falls on individual taxpayers, and that entities will experience only small changes. The preamble further noted that the proposed regulations have been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on their impact on small business. Thus, the Treasury Department and the IRS fully complied with the Regulatory Flexibility Act in promulgating the proposed regulations. Further, the Treasury Department and the IRS did not receive any comments from the Small Business Administration regarding the proposed rule's impact on small business. Accordingly, as stated in the Special Analyses section of this preamble, the Treasury Department and the IRS certify that, as with the proposed regulations, these final regulations will not have a significant economic impact on a substantial number of small entities.

VIII. Effect of New Rules on Other Stakeholders

A. Effect of New Rules on Insurance Markets

Several commenters opined that the affordability rule for related individuals provided in the proposed regulations will have an adverse effect on the employer insurance market. In the view of the commenters, one result of changing the affordability rule for related individuals will be that a substantial number of dependents of employees, who are generally younger and healthier than the employees, will shift from employer plans to Exchange coverage. The commenters stated that this shifting of younger, healthier individuals from employer plans to Exchange coverage will result in increased premiums for employer plans. One commenter, however, opined that it is unlikely that the magnitude of the impact on premiums for employer plans would be large. Some commenters pointed out that the shift also will result in decreased premiums for Exchange coverage, but one commenter asserted that the potential impact on the individual market is likely to be minor. Finally, a few commenters expressed concern that the affordability rule for related individuals will cause employers to discontinue or reduce insurance contributions for the coverage of related individuals. One commenter also mentioned this concern but opined that relatively few employers would take this approach.

The Treasury Department and the IRS do not expect the affordability rule will have a meaningful effect on average premiums for employer plans. Overall, the aggregate amount that employers spend on family coverage is expected to decrease by a small amount because some individuals who would otherwise enroll in employer coverage will prefer to enroll in Exchange coverage with a PTC. Commenters are correct that individuals enrolled in Exchange coverage and individuals enrolled in employer coverage have, on average, different levels of morbidity. However, the Treasury Department and the IRS do not expect that the morbidity of the marginal individual—rather than average individual—is significantly different such that there would be large effects on premiums. In some cases, individuals who would have otherwise enrolled in employer plans may have higher than average costs while in other cases those individuals will have lower than average costs. Furthermore, the number of individuals who are expected to switch plans based on this affordability rule will be modest relative to the over 170 million individuals enrolled in employer health plans. As a result, the net effect on employer premiums—if any—is likely to be negligible.

Because the rule is not expected to have a meaningful impact on premiums for employer coverage, the Treasury Department and the IRS disagree that changes in morbidity would result in employers discontinuing coverage or reducing their contributions to that coverage. Additionally, there are several reasons the Treasury Department and the IRS expect that employers will continue to have strong incentives to offer family coverage. The exclusion of employer coverage from taxable income encourages employers to compensate employees with (and increases employees' demand for) generous health coverage in lieu of taxable wages. In addition, employers face competitive pressure to offer generous family coverage to their employees at a relatively low cost. Employers who reduce their contributions for family coverage may find it difficult to recruit or retain employees. Thus, competitive forces in the labor market will

discourage employers from reducing contributions.

B. Effect of New Rules on Individuals

Some commenters asserted that the proposed affordability rule for related individuals would harm individuals and families in various ways. In particular, commenters argued that individuals and families would face increased complexity as they navigate multiple plan choices, including the choice to enroll in ''split coverage'' in which the employee with an affordable offer enrolls in self-only employer coverage and the employee's family members separately enroll in Exchange coverage. Some commenters asserted that the shift to Exchange coverage caused by the proposed rule would be a poor trade-off for individuals and would harm individuals because Exchange coverage in general provides coverage that is inferior to and less generous than employer plans. These commenters asserted, for example, that Exchange coverage may be less expensive than an available employer plan but provide significantly higher deductibles, narrower networks, or lower actuarial value than the available employer plan.

The Treasury Department and the IRS are of the view that providing individuals and families with more choices for health coverage is a positive aspect of the new affordability rule, especially if those additional choices include options for more affordable coverage. The new affordability rule for related individuals does not change the availability of any current coverage options for individuals, nor does it change any aspect of those coverage options. Specifically, family members of employees for whom a PTC may now be allowed as a result of the new affordability rule are free to retain their current coverage, or continue to go without coverage, based on their particular circumstances. Because the coverage decision is voluntary, families who would have enrolled in employer coverage will likely enroll in the Exchange if they expect the benefit of split coverage exceeds the monetary or other cost. As detailed in the Special Analyses section of this preamble, the Treasury Department and the IRS expect that only a limited number of families—relative to the population enrolled in employer coverage and relative to those newly eligible for the PTC—will choose to shift their coverage. Only family members for whom it is advantageous, based on their personal and family circumstances, will choose to shift their coverage.

Further, the Treasury Department and the IRS disagree with commenters who suggest that Exchange coverage is necessarily inferior to employer plans. The cost and quality of employer coverage compared to Exchange coverage will depend on what plans are available to the family and the family's particular circumstances. The Treasury Department and the IRS agree, however, that individuals and families could face new, more complex choices under the new rules as they navigate multiple plan choices, including the choice to enroll in split coverage. Individuals and families will need to assess their current situation and determine whether they want to enroll family members in Exchange coverage with a PTC or in an available employer plan. In comparing their options, these families will need to consider the factors noted by the commenters, including the cost of premiums, the amount of deductibles, the available networks, and the actuarial value of the plans, as well as the various trade-offs if the family is considering split coverage. The Treasury Department and the IRS understand these concerns and are working closely with HHS to ensure that individuals and families have clear and accurate information about the new rules so they can make informed decisions about their health coverage and choose their optimal health coverage. Accordingly, as further explained in section V of this Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS have been working with HHS, and will continue to work with HHS, to ensure that information about the new rules is provided in an accessible fashion to individuals both generally and as part of the Exchange application. In addition, HHS, the Treasury Department, and the IRS encourage individuals to work with agents, brokers, and other assisters when applying for Exchange coverage, whether applying through an Exchange using the Federal eligibility and enrollment platform or a State Exchange using its own platform. Those agents, brokers, and other assisters can help families understand their health coverage options and help them determine which option will best meet their particular needs. The Treasury Department and the IRS also encourage employers to provide employees with resources published by HHS, the Treasury Department, and the IRS relating to the new rules.

C. Effect of New Rules on States

A few commenters asserted that states will face adverse consequences because family members who seek Exchange coverage under the new affordability rule for related individuals may find instead that they qualify for Medicaid or the Children's Health Insurance Program (CHIP). The commenters asserted that people may switch from employer coverage, where states bear no cost, to public programs, the most significant items on state budgets, which will impose new burdens on states. Some of these commenters stated that the new affordability rule will increase costs on state Medicaid programs by increasing the number of people who apply for coverage through the Exchange and then enroll in Medicaid. These commenters cited an analysis by the Urban Institute estimating that 90,000 family members—mainly children—would newly enroll in Medicaid or CHIP owing to their parents seeking Exchange coverage.[54] The Treasury Department and the IRS did not receive comments from any states expressing concern about potential adverse consequences.

As an initial matter, the Treasury Department and the IRS note that Congressional legislation established the Medicaid and CHIP programs prior to, and independent of, the ACA and these final regulations. States have knowingly and consistently elected to participate in the Medicaid and CHIP programs since these programs were adopted. These final regulations have no effect on the Federal standards for those programs, nor do they affect how states determine eligibility for enrollment in their Medicaid or CHIP programs.[55] The Federal government provides the majority of the funding for State Medicaid and CHIP programs. (The exact share varies based on factors such as the state's economic characteristics and the types of beneficiaries who enroll.) In general, states pay no more than half of the costs of additional children who enroll in these programs. Additionally, per capita costs to insure children in these programs are substantially lower than costs for adults.

In addition, despite the commenters' assertions that the final regulations will increase costs to states by increasing enrollment in state programs, the Treasury Department and the IRS view these effects as highly uncertain. Any changes in Medicaid or CHIP enrollment would be second-order

[54] *See* Changing the ''Family Glitch'' Would Make Health Coverage More Affordable for Many Families | Urban Institute.

[55] Although the Federal government imposes certain mandatory coverage requirements, states primarily determine eligibility standards for these programs. *See https://crsreports.congress.gov/product/pdf/R/R43357/16* and *https://crsreports.congress.gov/product/pdf/R/R43949/19.*

effects that would not stem from changes in Medicaid or CHIP eligibility. Although it is possible the rule may indirectly lead to higher state Medicaid or CHIP spending, there are other factors that will reduce costs for state and local governments. In particular, the analysis cited by the commenters finds that over 75 percent of states' higher Medicaid and CHIP costs will be offset by less spending on uncompensated care for the uninsured. The study projects the potential ''tiny'' increase in state spending would also be at least partially offset by additional tax revenue.[56] Because employers are assumed to hold total compensation constant, the Federal government is projected to receive more tax revenue as employers shift compensation from health coverage towards taxable wages; states may receive more tax revenue for the same reason. The combined effect of increased state tax revenue and decreased spending on uncompensated care may completely offset any increase in Medicaid spending. Research has shown that Medicaid expansions under the ACA increased hospital revenue and reduced spending on locally-funded safety net programs, and it is likely that any increase in enrollment in Medicaid and CHIP enrollment that indirectly arises from the rule would have similar effects.[57] Over the long-term, Medicaid and CHIP beneficiaries may also have higher earnings and pay more in taxes.[58] Although it is difficult to quantify the combined effect of these factors on state and local budgets, the Treasury Department and the IRS expect any net impact (whether positive or negative) to be small relative to states' total Medicaid spending.[59]

One commenter asserted that Medicaid and CHIP are associated with narrow networks of medical providers, making it harder for families to find pediatricians and other primary care physicians, dentists, and medical specialists. The Treasury Department and the IRS again note that the final regulations do not require individuals to enroll in any particular type of coverage. Family members who currently are enrolled in an employer plan and are determined eligible for Medicaid or CHIP when they apply for Exchange coverage are not required to leave the employer plan and enroll in Medicaid or CHIP. These family members always have a choice to stay in the employer plan if they prefer the network of medical providers or other aspects of the employer plan to what is provided under Medicaid or CHIP.

IX. Comments Exceeding Scope of Final Regulations

A number of commenters submitted comments on matters not within the purview of the Treasury Department and the IRS. For example, several commenters suggested that the U.S. adopt a Medicare-for-all style of health coverage or offer universal health coverage in a manner similar to the health coverage provided by other countries. Other commenters requested that coverage rules be changed so that children over age 25 could remain enrolled on a parent's health insurance policies, while others recommended that health care providers be required to accept Medicare and Medicaid insurance. These comments are outside the scope of matters handled by the Treasury Department and the IRS and thus are not addressed in the final regulations.

X. Severability

If any provision in this rulemaking is held to be invalid or unenforceable facially, or as applied to any person or circumstance, it shall be severable from the remainder of this rulemaking, and shall not affect the remainder thereof, or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

EOs 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

These final regulations have been designated as subject to review under E.O. 12866 pursuant to the 2018 MOA between the Treasury Department and OMB regarding review of tax regulations.

A. Background

1. Affordability of Employer Coverage for Family Members of an Employee

As noted earlier in this preamble, section 36B provides a PTC for applicable taxpayers who meet certain eligibility requirements, including that the taxpayer or one or more family members is enrolled in a QHP for one or more months in which they are not eligible for other MEC. However, an individual who is eligible to enroll in employer coverage, but chooses not to, is not considered eligible for the employer coverage if it is ''unaffordable.'' Section 36B defines employer coverage as unaffordable for an employee if the employee's share of the self-only premium is more than 9.5 percent of the employee's household income.

Section 1.36B–2(c)(3)(v)(A)(*2*) provides that affordability of employer coverage for each related individual of the employee is determined by the cost of self-only coverage. Thus, the employee and any related individuals included in the employee's family, within the meaning of § 1.36B–1(d), are eligible for MEC and are ineligible for the PTC if (1) the plan provides minimum value and (2) the employee's share of the self-only coverage is not more than 9.5 percent of household income (that is, the self-only coverage for the employee is ''affordable'').

2. Description of the Final Regulations

The final regulations revise § 1.36B–2(c)(3)(v)(A)(*2*) to provide a separate affordability test for related individuals based on the cost to the employee of family coverage. The final regulations do not change the affordability test for the employee. When a family applies for Exchange coverage, the Exchange will ask for information concerning which of the family members are offered coverage by their own employer, and the family members to whom the employer's coverage offer extends. When an applicant for whom APTC is otherwise allowed indicates that their employer offers them coverage, the Exchange will ask for the premium for self-only coverage for the applicant and make an affordability determination for the applicant on that basis. When an applicant for whom APTC is otherwise allowed indicates an offer of coverage through an employer of another family member, the Exchange will ask for the premium for family coverage and make an affordability determination for the applicant on that basis. It is therefore

[56] *See https://www.urban.org/sites/default/files/publication/104223/changing-the-family-glitch-would-make-health-coverage-more-affordable-for-many-families_1.pdf* at pg. 12.

[57] *https://www.aeaweb.org/articles?id=10.1257/pol.20190279.*

[58] *https://academic.oup.com/restud/article/87/2/792/5538992?login=false.*

[59] For context, as of May 2022, there were nearly 89 million individuals enrolled in Medicaid or CHIP. The change of 90,000 people predicted by the Urban Institute analysis is a change of 0.1 percent. *See https://www.medicaid.gov/medicaid/national-medicaid-chip-program-information/downloads/may-2022-medicaid-chip-enrollment-trend-snapshot.pdf.*

possible that family members would be eligible for APTC but the employee would not. In this case, if the entire family chooses to enroll in Exchange coverage with APTC, the APTC would be paid only for coverage of the employee's family members but would not be paid for coverage of the employee.

B. Baseline

The Treasury Department and the IRS have assessed the benefits and costs of the final regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these regulations.

C. Affected Entities

Some families with an offer of employer coverage to the employee and at least one other family member would be newly eligible for the PTC for the Exchange coverage of the non-employee family members. The final regulations will have no effect on families for whom self-only employer coverage costs more than 9.5 percent of household income—as family coverage is more expensive than self-only coverage—because the affordability status of their employer coverage is unchanged. Similarly, the final regulations will not affect families for whom the cost of family employer coverage does not exceed 9.5 percent of household income because their coverage is determined to be affordable either way. In contrast, the final regulations will affect only family members—other than the employee—for whom the employee's cost for the available employer coverage does not exceed 9.5 percent of household income for a self-only plan but does exceed 9.5 percent of household income for a family plan or for whom the offer of the family plan is affordable but does not provide minimum value.

Employers may see some of their employees shift from family coverage to self-only coverage when family members newly qualify for the PTC. The cost per enrollee could increase or decrease depending on the characteristics of those that remain covered. However, this shift will likely lead to a small decrease in the total amount employers are spending on health coverage—due to covering fewer total people—as the Federal government increases spending on PTC for the non-employee family members who move from employer coverage to Exchange coverage.

D. Economic Analysis of the Final Regulations

1. Overview

For some families, the final regulations will lower the premium contributions required to purchase coverage for all family members by allowing family members other than the employee to receive a PTC. For some families with offers of employer coverage who will be newly eligible for the PTC, the combined cost of split coverage (self-only employer coverage for the employee plus PTC-subsidized Exchange coverage for related individuals) will be lower than what they pay for family coverage through the employer. Some low-income families with uninsured individuals where the employee is offered low-cost, self-only employer coverage and relatively high-cost family employer coverage will gain access to a lower-cost option through eligibility for the PTC on behalf of one or more related individuals.

However, the cost for families to purchase Exchange coverage with PTC is determined in part by the applicable percentage and household income, which are the same regardless of the number of individuals actually covered. Therefore, if the number of individuals needing Exchange coverage is small—such as when some family members have access to other MEC—the cost of Exchange coverage per enrollee is relatively high when added to the cost of the employee share of self-only employer coverage. Furthermore, split coverage also means multiple deductibles and maximum out-of-pocket limits for the family, which potentially increases out-of-pocket costs for families. As a result of these features, many families with offers of employer coverage who will be newly eligible for the PTC under the final regulations—including families with some uninsured individuals—would not see any savings in the combined cost of out-of-pocket premiums and cost sharing. Lastly, many families may prefer the benefits and provider networks of employer coverage, compared to Exchange coverage.

Taking all these factors into account, the Treasury Department and the IRS expect new take-up of Exchange coverage may be modest relative to the size of the newly eligible population and relative to the total number of individuals who are either uninsured or covered by employer coverage because many will either still prefer employer coverage or prefer to purchase other goods and services, or save or invest, rather than insure all family members.

The Office of Tax Analysis has evaluated the effect of the policy change on health insurance coverage decisions and the Federal deficit. The policy change is predicted to increase the number of individuals with PTC-subsidized Exchange coverage by approximately 1 million and increase the Federal deficit by an average of $3.8 billion per year over the next 10 years. The deficit increases as enrollment in PTC-subsidized Exchange coverage increases, offset by a modest decrease in the tax exclusion for employer coverage.[60] These changes to the revenue effect associated with the PTC as well as the tax exclusion for employer coverage are transfer payments. Transfer payments are neither a cost nor a benefit. The analysis relied on tax data as well as the Medical Expenditure Panel Survey. The Medical Expenditure Panel Survey dataset includes several variables that are not observed in the tax data such as employee contribution amounts for family coverage as well as health care utilization.

2. Benefits

Gain of health insurance coverage. For those individuals who are uninsured because the premiums for family coverage through a family member's employer are unaffordable, gaining access to the PTC for the purchase of Exchange coverage may make coverage more affordable and may prompt some of them to take up coverage.

Additional health insurance option. For those individuals who are covered by family coverage through a family member's employer that costs more than 9.5 percent of their household income, the final regulations will, by providing access to a PTC, give them an additional option that could provide coverage at a lower cost or with more comprehensive benefits.

3. Costs

Administrative costs. Adding this new option for eligibility for PTC increases the cost to the IRS to evaluate PTC claims. The IRS's PTC infrastructure will require one-time changes to certain processes, forms, and instructions to be implemented in time for the 2023 taxable year, and the cost of these changes is expected to be negligible. The Centers for Medicare & Medicaid Services (CMS), as the administrator of

[60] The predictions rely on various assumptions including, but not limited to, the economic and technical assumptions from the 2023 Mid-Session Review. The assumptions are based on the current law baseline as of August 31, 2022. The baseline includes the PTC changes enacted under the IRA.

the Federally-facilitated Exchanges and the Federal Exchange eligibility and enrollment platform, and the State Exchanges that operate their own Exchange eligibility and enrollment platforms will also incur administrative costs as the Exchanges will have primary responsibility for implementing the rule as part of the eligibility and enrollment process when families are applying for Exchange coverage with APTC. Exchanges will incur one-time costs to update Exchange eligibility systems to account for the new treatment of family contribution amounts for employer coverage for purposes of determining eligibility for APTC. In addition, CMS, State Exchanges, State Medicaid Agencies, and CMS-approved Enhanced Direct Enrollment partners will incur administrative costs to make conforming updates to their respective consumer applications and consumer-facing affordability tools. The Treasury Department and the IRS anticipate total administrative costs to CMS, the Exchanges, State Medicaid Agencies, and Enhanced Direct Enrollment partners associated with the final regulation to be modest.

The Treasury Department and the IRS do not expect any new administrative costs for employers because the final regulations do not impose new reporting requirements. Under current regulations, ALEs must report the cost of self-only coverage on Form 1095–C. The primary purpose of this reporting is to collect information relevant for the administration of the employer shared responsibility provisions in section 4980H. Because the cost of family coverage is not relevant for computing the employer shared responsibility payment, the final regulations do not require ALEs to report the cost of family coverage on Form 1095–C. Further, as noted earlier in this preamble, these final regulations do not amend the regulations under section 6055 or 6056, and the IRS does not intend to revise Form 1095–B or Form 1095–C to require any additional data elements related to the new rules.

4. Transfer Payments

Increased PTC costs for new Exchange enrollees. Because some individuals may be newly eligible for the PTC, some individuals may move from employer coverage or uninsured status to Exchange coverage. Thus, the final regulations may increase the amount of PTC being paid by the government and reduce employer contributions.

Decreased employer exclusion for people who drop employer coverage. If individuals drop their employer coverage, or do not enroll when they otherwise would have, to take up Exchange coverage, the amount of money that was going toward their employer coverage, which provides tax-preferred health benefits, will go into the employee's wages, other employees' wages, and/or employer profits and will no longer be tax exempt. Thus, the final regulations may increase the amount of tax revenue received from income and payroll taxes.

II. Paperwork Reduction Act

This final rule does not include information collections under the Paperwork Reduction Act (5 U.S.C. chapter 35).

III. Regulatory Flexibility Act

It is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6).

As mentioned in the response to commenters, the Treasury Department and the IRS hereby certify that these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the majority of the effect of the final regulations falls on individual taxpayers, and entities will experience only small changes.

Pursuant to section 7805(f) of the Code, these final regulations were submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on their impact on small business, and no comments were received.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

E.O. 13132 (Federalism) prohibits an agency from publishing any rule that has Federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the E.O. This rule does not have Federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the E.O.

VI. Congressional Review Act

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

Statement of Availability of IRS Documents

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

Drafting Information

The principal author of these regulations is Clara L. Raymond of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the Treasury Department and the IRS participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.36B–0 is amended by:
■ a. Adding an entry for § 1.36B–2(c)(3)(v)(A)(*8*);
■ b. Adding entries for § 1.36B–6(a)(1) and (2) and (a)(2)(i) and (ii); and
■ c. Revising the entry for § 1.36B–6(g)(2).

The additions and revisions read as follows:

§ 1.36B–0 Table of contents.

* * * * *

§ 1.36B–2 Eligibility for premium tax credit.

* * * * *

(c) * * *
(3) * * *
(v) * * *
(A) * * *
(*8*) Multiple offers of coverage.
* * * * *

§ 1.36B–6 Premium tax credit definitions.

(a) * * *
(1) Employees.
(2) Related individuals
(i) In general.
(ii) Plans providing MV to employees.
* * * * *
(g) * * *
(2) Exceptions.

■ **Par. 3.** Section 1.36B–2 is amended by:
■ a. Revising the first sentence and adding a new second sentence in paragraph (c)(3)(v)(A)(*2*).
■ b. Adding paragraph (c)(3)(v)(A)(*8*).
■ c. Revising the second sentence of paragraph (c)(3)(v)(B).
■ d. In paragraph (c)(3)(v)(D), Examples 1 through 9 are designated as paragraphs (c)(3)(v)(D)(*1*) through (*9*), respectively.
■ e. In newly designated paragraphs (c)(3)(v)(D)(*3*), (*5*), (*6*), (*7*), and (*9*), redesignating the paragraphs in the first column as the paragraphs in the second column:

Old paragraphs	New paragraphs
(c)(3)(v)(D)(*3*)(i) through (ii).	(c)(3)(v)(D)(*3*)(*i*) through (*ii*)
(c)(3)(v)(D)(*5*)(i) through (ii).	(c)(3)(v)(D)(*5*)(*i*) through (*ii*)
(c)(3)(v)(D)(*6*)(i) through (ii).	(c)(3)(v)(D)(*6*)(*i*) through (*ii*)
(c)(3)(v)(D)(*7*)(i) through (iv).	(c)(3)(v)(D)(*7*)(*i*) through (*iv*)
(c)(3)(v)(D)(*9*)(i) through (ii).	(c)(3)(v)(D)(*9*)(*i*) through (*ii*)

■ f. Revising newly redesignated paragraphs (c)(3)(v)(D)(*1*) and (*2*).
■ g. Redesignating paragraphs (c)(3)(v)(D)(*3*) through (*9*) as paragraphs (c)(3)(v)(D)(*7*) through (*13*), respectively.
■ h. Adding new paragraphs (c)(3)(v)(D)(*3*) through (*6*).
■ i. Revising the heading for newly redesignated paragraph (c)(3)(v)(D)(*7*), the heading and first sentence of newly redesignated paragraph (c)(3)(v)(D)(*8*), the heading of newly redesignated paragraph (c)(3)(v)(D)(*9*), and the first sentence of newly redesignated paragraph (c)(3)(v)(D)(*9*)(*i*).
■ j. In the headings for newly redesignated paragraphs (c)(3)(v)(D)(*10*) through (*13*), removing the first period and adding a colon in its place.
■ k. Revising paragraph (e)(1).
■ l. Adding paragraph (e)(5).

The revisions and additions read as follows:

§ 1.36B–2 Eligibility for premium tax credit.

* * * * *
(c) * * *
(3) * * *
(v) * * *
(A) * * *
(*2*) * * * Except as provided in paragraph (c)(3)(v)(A)(*3*) of this section, an eligible employer-sponsored plan is affordable for a related individual if the employee's required contribution for family coverage under the plan does not exceed the required contribution percentage, as defined in paragraph (c)(3)(v)(C) of this section, of the applicable taxpayer's household income for the taxable year. For purposes of this paragraph (c)(3)(v)(A)(*2*), an employee's required contribution for family coverage is the portion of the annual premium the employee must pay for coverage of the employee and all other individuals included in the employee's family, as defined in § 1.36B–1(d), who are offered coverage under the eligible employer-sponsored plan. * * *
* * * * *
(*8*) *Multiple offers of coverage.* An individual who has offers of coverage under eligible employer-sponsored plans from multiple employers, either as an employee or a related individual, has an offer of affordable coverage if at least one of the offers of coverage is affordable under paragraph (c)(3)(v)(A)(*1*) or (*2*) of this section.
(B) * * * Coverage under an eligible employer-sponsored plan is affordable for a part-year period if the annualized required contribution for self-only coverage, in the case of an employee, or family coverage, in the case of a related individual, under the plan for the part-year period does not exceed the required contribution percentage of the applicable taxpayer's household income for the taxable year. * * *
* * * * *
(D) * * *
(*1*) *Example 1: Basic determination of affordability.* For all of 2023, taxpayer C works for an employer, X, that offers its employees and their spouses a health insurance plan under which, to enroll in self-only coverage, C must contribute an amount for 2023 that does not exceed the required contribution percentage of C's 2023 household income. Because C's required contribution for self-only coverage does not exceed the required contribution percentage of C's household income, under paragraph (c)(3)(v)(A)(*1*) of this section, X's plan is affordable for C, and C is eligible for minimum essential coverage for all months in 2023.
(*2*) *Example 2: Basic determination of affordability for a related individual.* (*i*) The facts are the same as in paragraph (c)(3)(v)(D)(*1*) of this section (Example 1), except that C is married to J, they file a joint return, and to enroll C and J, X's plan requires C to contribute an amount for coverage for C and J for 2023 that exceeds the required contribution percentage of C's and J's household income. J does not work for an employer that offers employer-sponsored coverage.
(*ii*) J is a member of C's family as defined in § 1.36B–1(d). Because C's required contribution for coverage of C and J exceeds the required contribution percentage of C's and J's household income, under paragraph (c)(3)(v)(A)(*2*) of this section, X's plan is unaffordable for J. Accordingly, J is not eligible for minimum essential coverage for 2023. However, under paragraph (c)(3)(v)(A)(*1*) of this section, X's plan is affordable for C, and C is eligible for minimum essential coverage for all months in 2023.
(*3*) *Example 3: Multiple offers of coverage.* The facts are the same as in paragraph (c)(3)(v)(D)(*2*) of this section (Example 2), except that J works all year for an employer that offers employer-sponsored coverage to employees. J's required contribution for the cost of self-only coverage from J's employer does not exceed the required contribution percentage of C's and J's household income. Although the coverage offered by C's employer for C and J is unaffordable for J, the coverage offered by J's employer is affordable for J. Consequently, under paragraphs (c)(3)(v)(A)(*1*) and (*8*) of this section, J is eligible for minimum essential coverage for all months in 2023.
(*4*) *Example 4: Cost of covering individuals not part of taxpayer's family.* (*i*) D and E are married, file a joint return, and have two children, F and G, under age 26. F is a dependent of D and E, but G is not. D works all year for an employer that offers employer-sponsored coverage to employees, their spouses, and their children under age 26. E, F, and G do not work for employers offering coverage. D's required contribution for self-only coverage under D's employer's coverage does not exceed the required contribution percentage of D's and E's household income. D's required contribution for coverage of D, E, F, and G exceeds the required contribution percentage of D's and E's household income, but D's required contribution for coverage of D, E, and F does not exceed the required contribution percentage of the household income.
(*ii*) E and F are members of D's family as defined in § 1.36B–1(d). G is not a member of D's family under § 1.36B–

1(d), because G is not D's dependent. Under paragraph (c)(3)(v)(A)(*1*) of this section, D's employer's coverage is affordable for D because D's required contribution for self-only coverage does not exceed the required contribution percentage of D's and E's household income. D's employer's coverage also is affordable for E and F, because, under paragraph (c)(3)(v)(A)(*2*) of this section, D's required contribution for coverage of D, E, and F does not exceed the required contribution percentage of D's and E's household income. Although D's cost to cover D, E, F, and G exceeds the required contribution percentage of D's and E's household income, under paragraph (c)(3)(v)(A)(*2*) of this section, the cost to cover G is not considered in determining whether D's employer's coverage is affordable for E and F, regardless of whether G actually enrolls in the plan, because G is not in D's family. D, E, and F are eligible for minimum essential coverage for all months in 2023. Under paragraph (c)(4)(i) of this section, G is considered eligible for the coverage offered by D's employer only if G enrolls in the coverage.

(*5*) *Example 5: More than one family member with an employer offering coverage.* (*i*) K and L are married, file a joint return, and have one dependent child, M. K works all year for an employer that offers coverage to employees, spouses, and children under age 26. L works all year for an employer that offers coverage to employees only. K's required contribution for self-only coverage under K's employer's coverage does not exceed the required contribution percentage of K's and L's household income. Likewise, L's required contribution for self-only coverage under L's employer's coverage does not exceed the required contribution percentage of K's and L's household income. However, K's required contribution for coverage of K, L, and M exceeds the required contribution percentage of K's and L's household income.

(*ii*) L and M are members of K's family as defined in § 1.36B–1(d). Under paragraph (c)(3)(v)(A)(*1*) of this section, K's employer's coverage is affordable for K because K's required contribution for self-only coverage does not exceed the required contribution percentage of K's and L's household income. Similarly, L's employer's coverage is affordable for L, because L's required contribution for self-only coverage does not exceed the required contribution percentage of K's and L's household income. Thus, K and L are eligible for minimum essential coverage for all months in 2023. However, under paragraph (c)(3)(v)(A)(*2*) of this section, K's employer's coverage is unaffordable for M, because K's required contribution for coverage of K, L, and M exceeds the required contribution percentage of K's and L's household income. Accordingly, M is not eligible for minimum essential coverage for 2023.

(*6*) *Example 6: Multiple offers of coverage for a related individual.* (*i*) The facts are the same as in paragraph (c)(3)(v)(D)(*5*) of this section (Example 5), except that L works all year for an employer that offers coverage to employees, spouses, and children under age 26. L's required contribution for coverage of K, L, and M does not exceed the required contribution percentage of K's and L's household income.

(*ii*) Although M is not eligible for affordable employer coverage under K's employer's coverage, paragraph (c)(3)(v)(A)(*8*) of this section dictates that L's employer coverage must be evaluated to determine whether L's employer coverage is affordable for M. Under paragraph (c)(3)(v)(A)(*2*) of this section, L's employer's coverage is affordable for M, because L's required contribution for K, L, and M does not exceed the required contribution percentage of K's and L's household income. Accordingly, M is eligible for minimum essential coverage for all months in 2023.

(*7*) *Example 7: Determination of unaffordability at enrollment.* * * *

(*8*) *Example 8: Determination of unaffordability for plan year.* The facts are the same as in paragraph (c)(3)(v)(D)(*7*) of this section (Example 7), except that X's employee health insurance plan year is September 1 to August 31. * * *

(*9*) *Example 9: No affordability information affirmatively provided for annual redetermination.* (*i*) The facts are the same as in paragraph (c)(3)(v)(D)(*7*) of this section (Example 7), except the Exchange redetermines D's eligibility for advance credit payments for 2015.

* * *

* * * * *

(e) * * *

(1) Except as provided in paragraphs (e)(2) through (5) of this section, this section applies to taxable years ending after December 31, 2013.

* * * * *

(5) The first two sentences of paragraph (c)(3)(v)(A)(*2*), paragraph (c)(3)(v)(A)(*8*), the second sentence of paragraph (c)(3)(v)(B), paragraphs (c)(3)(v)(D)(*1*) through (*6*), and the first sentences of paragraphs (c)(3)(v)(D)(*8*) and (*9*) of this section apply to taxable years beginning after December 31, 2022.

■ **Par. 4.** Section 1.36B–3 is amended by revising paragraphs (d)(1)(i) and (n)(1) and adding paragraph (n)(3) to read as follows:

§ 1.36B–3 Computing the premium assistance credit amount.

* * * * *

(d) * * *

(1) * * *

(i) The premiums for the month, reduced by any amounts that were refunded in the same taxable year as the premium liability is incurred, for one or more qualified health plans in which a taxpayer or a member of the taxpayer's family enrolls (enrollment premiums); or

* * * * *

(n) * * *

(1) Except as provided in paragraphs (n)(2) and (3) of this section, this section applies to taxable years ending after December 31, 2013.

* * * * *

(3) Paragraph (d)(1)(i) of this section applies to taxable years beginning after December 31, 2022.

■ **Par. 5.** Section 1.36B–6 is amended by revising paragraphs (a) and (g)(2) to read as follows:

§ 1.36B–6 Minimum value.

(a) *In general*—(1) *Employees.* An eligible employer-sponsored plan provides minimum value (MV) for an employee of the employer offering the coverage only if—

(i) The plan's MV percentage, as defined in paragraph (c) of this section, is at least 60 percent based on the plan's share of the total allowed costs of benefits provided to the employee; and

(ii) The plan provides substantial coverage of inpatient hospital services and physician services.

(2) *Related individuals*—(i) *In general.* An eligible employer-sponsored plan provides MV for an individual who may enroll in the plan because of a relationship to an employee of the employer offering the coverage (a related individual) only if—

(A) The plan's MV percentage, as defined in paragraph (c) of this section, is at least 60 percent based on the plan's share of the total allowed costs of benefits provided to the related individual; and

(B) The plan provides substantial coverage of inpatient hospital services and physician services.

(ii) *Plans providing MV to employees.* If an eligible employer-sponsored plan provides MV to an employee under paragraph (a)(1) of this section, the plan also provides MV for related individuals if—

(A) The scope of benefits is the same for the employee and related individuals; and

(B) Cost sharing (including deductibles, co-payments, coinsurance, and out-of-pocket maximums) under the plan is the same for the employee and related individuals under the tier of coverage that would, if elected, include the employee and all related individuals (disregarding any differences in deductibles or out-of-pocket maximums that are attributable to a different tier of coverage, such as self plus one versus family coverage).

* * * * *

(g) * * *

(2) *Exceptions.* (i) Paragraph (a)(1)(ii) of this section applies for plan years beginning after November 3, 2014; and

(ii) Paragraph (a)(2) of this section applies to taxable years beginning after December 31, 2022.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

Approved: October 1, 2022.

Lily Batchelder,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2022–22184 Filed 10–11–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 560

Publication of Iranian Transactions and Sanctions Regulations Web General License D–2

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of a web general license.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing one general license (GL) issued pursuant to the Iranian Transactions and Sanctions Regulations: GL D–2, which was previously made available on OFAC's website.

DATES: GL D–2 was issued on September 23, 2022. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treas.gov/ofac.*

Background

On September 23, 2022, OFAC issued GL D–2 to authorize certain transactions otherwise prohibited by the Iranian Transactions and Sanctions Regulations, 31 CFR part 560. At the time of issuance, OFAC made GL D–2 available on its website (*www.treas.gov/ofac*). GL D–2 replaced and superseded GL D–1 in its entirety. The text of GL D–2 is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Iranian Transactions and Sanctions Regulations

31 CFR part 560

GENERAL LICENSE D–2

General License With Respect to Certain Services, Software, and Hardware Incident to Communications

(a) To the extent that such transactions are not exempt from the prohibitions of the Iranian Transactions and Sanctions Regulations, 31 CFR part 560 (ITSR), and subject to the restrictions set forth in paragraph (b), the following transactions are authorized:

(1) *Fee-based or no-cost services.* The exportation or reexportation, directly or indirectly, from the United States or by a U.S. person, wherever located, to Iran of fee-based or no-cost services incident to the exchange of communications over the internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, blogging, social media platforms, collaboration platforms, video conferencing, e-gaming, e-learning platforms, automated translation, web maps, and user authentication services, as well as cloud-based services in support of the foregoing or of any other transaction authorized or exempt under the ITSR.

(2) *Fee-based or no-cost software.* (i) *Software subject to the EAR.* The exportation, reexportation, or provision, directly or indirectly, to Iran of fee-based or no-cost software subject to the Export Administration Regulations, 15 CFR parts 730 through 774 (EAR), that is incident to, or enables services incident to, the exchange of communications over the internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, blogging, social media platforms, collaboration platforms, video conferencing, e-gaming, e-learning platforms, automated translation, web maps, and user authentication services, as well as cloud-based services in support of the foregoing or of any other transaction authorized or exempt under the ITSR, provided that such software is designated EAR99 or classified by the U.S. Department of Commerce on the Commerce Control List, 15 CFR part 774, supplement No. 1 (CCL), under export control classification number (ECCN) 5D992.c.

(ii) *Software that is not subject to the EAR because it is of foreign origin and is located outside the United States.* The exportation, reexportation, or provision, directly or indirectly, by a U.S. person, wherever located, to Iran of fee-based or no-cost software that is not subject to the EAR because it is of foreign origin and is located outside the United States, that is incident to, or enables services incident to, the exchange of communications over the internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, blogging, social media platforms, collaboration platforms, video conferencing, e-gaming, e-learning platforms, automated translation, web maps, and user authentication services, as well as cloud-based services in support of the foregoing or of any other transaction authorized or exempt under the ITSR, provided that such software would be designated EAR99 if it were located in the United States or would meet the criteria for classification under ECCN 5D992.c if it were subject to the EAR.

Note to paragraphs (a)(1) and (a)(2). See 31 CFR 560.540 for authorizations relating to the exportation to persons in Iran of additional no-cost services incident to the exchange of personal communications over the internet and no-cost software necessary to enable such services.

(3) *Additional Software, Hardware, and Related Services.* To the extent not authorized by paragraphs (a)(1) or (a)(2) of this general license, the exportation, reexportation, or provision, directly or indirectly, to Iran of certain software and hardware incident to communications, as well as related services, as follows:

(i) In the case of hardware and software subject to the EAR, the items specified in the Annex to this general license;

(ii) In the case of hardware and software that is not subject to the EAR because it is of foreign origin and is located outside the United States that is exported, reexported, or provided,

directly or indirectly, by a U.S. person, wherever located, hardware and software that is of a type described in the Annex to this general license provided that it would be designated EAR99 if it were located in the United States or would meet the criteria for classification under the relevant ECCN specified in the Annex to this general license if it were subject to the EAR; and

(iii) In the case of software not subject to the EAR because it is described in 15 CFR 734.3(b)(3) that is exported, reexported, or provided, directly or indirectly, from the United States or by a U.S. person, wherever located, software that is of a type described in the Annex to this general license.[1]

Note to paragraphs (a)(2) and (a)(3). The authorizations in paragraphs (a)(2) and (a)(3) of this general license include the exportation, reexportation, or provision, directly or indirectly, to Iran of authorized hardware and software by an individual leaving the United States for Iran.

(4) *internet connectivity services and telecommunications capacity.* The exportation or reexportation, directly or indirectly, from the United States or by a U.S. person, wherever located, to Iran of non-commercial-grade internet connectivity services, to include cloud-based services, and the provision, sale, or leasing of capacity on telecommunications transmission facilities (such as satellite or terrestrial network connectivity) incident to communications.

Note to paragraph (a)(4): See 31 CFR 560.508 for authorizations relating to transactions with respect to the receipt and transmission of telecommunications involving Iran.

(5) *Importation into the United States of hardware and software previously exported to Iran.* The importation into the United States of hardware and software authorized for exportation, reexportation, or provision to Iran under 31 CFR 560.540(a), paragraphs (a)(2) or (a)(3) of this general license, or paragraphs (a)(2) or (a)(3) of General License D–1, by an individual entering the United States, directly or indirectly, from Iran, provided that the items previously were exported, reexported, or provided by the individual to Iran pursuant to 31 CFR 560.540(a), paragraphs (a)(2) or (a)(3) of this general license, or paragraphs (a)(2) or (a)(3) of General License D–1 when it was in effect.

(6) *Publicly available,*[2] *no cost services and software to the Government of Iran.*[3] *(i) Services.* The exportation or reexportation, directly or indirectly, from the United States or by a U.S. person, wherever located, to the Government of Iran of services described in 31 CFR 560.540(a)(1) or categories (6) through (11) of the Annex to this general license, provided that such services are publicly available at no cost to the user. *(ii) Software.* The exportation, reexportation, or provision, directly or indirectly, to the Government of Iran of software described in 31 CFR 560.540(a)(2) or categories (6) through (11) of the Annex to this general license, read in conjunction with paragraph (a)(3) of this general license, provided that such software is publicly available at no cost to the user.

Note 1 to paragraph (a). In sub-paragraph (a)(6), the term ''publicly available'' refers generally to software that is widely available to the public. Sub-paragraph (a)(3)(iii) refers to software that is described in 15 CFR 734.3(b)(3), which defines ''publicly available'' software for purposes of the EAR. The scope of the term ''publicly available'' in paragraph (a)(6) of this general license thus differs from the scope of the Department of Commerce's regulation at 15 CFR 734.3(b)(3) as referenced in subparagraph (a)(3)(iii) of this general license.

Note 2 to paragraph (a). The authorizations of U.S. persons set forth in paragraph (a) of this general license extend to entities owned or controlled by a U.S. person and established or maintained outside the United States (''U.S.-owned or -controlled foreign entities''), subject to the conditions set forth in 31 CFR 560.556.

Note 3 to paragraph (a). Nothing in this general license relieves the exporter from compliance with the export license application requirements of another Federal agency.

(b) This general license does not authorize:

(1) The exportation, reexportation, or provision, directly or indirectly, of the services, software, or hardware specified in paragraph (a) with knowledge or reason to know that such services, software, or hardware are intended for the Government of Iran, except for services or software specified in paragraph (a)(6).

(2) The exportation, reexportation, or provision, directly or indirectly, of the services, software, or hardware specified in paragraph (a) to any person whose property and interests in property are blocked pursuant to any part of 31 CFR chapter V, other than persons whose property and interests in property are blocked solely pursuant to Executive Order 13599 as the Government of Iran.

(3) The exportation or reexportation, directly or indirectly, of commercial-grade internet connectivity services or telecommunications transmission facilities (such as dedicated satellite links or dedicated lines that include quality of service guarantees).

(4) The exportation or reexportation, directly or indirectly, of web-hosting services that are for websites of commercial endeavors located in Iran or of domain name registration services for or on behalf of a person located in Iran or the Government of Iran.

(5) Any transaction by a U.S.-owned or -controlled foreign entity otherwise prohibited by 31 CFR 560.215 if the transaction would be prohibited by any other part of chapter V if engaged in by a U.S. person or in the United States.

(6) Any action or activity involving any item (including information) subject to the EAR that is prohibited by, or otherwise requires a license under, part 744 of the EAR or participation in any transaction involving a person whose export privileges have been denied pursuant to part 764 or 766 of the EAR, without authorization from the Department of Commerce.

(c) Transfers of funds from Iran or for or on behalf of a person in Iran in furtherance of an underlying transaction authorized by paragraph (a) may be processed by U.S. depository institutions and U.S. registered brokers or dealers in securities so long as they are consistent with 31 CFR 560.516.[4]

(d) Specific licenses may be issued on a case-by-case basis for the exportation, reexportation, or provision of services, software, or hardware incident to communications not specified in paragraph (a) or the Annex to this general license or other activities to support internet freedom in Iran, including development and hosting of anti-surveillance software by Iranian developers.

(e) Effective September 23, 2022, General License D–1, dated February 7, 2014, is replaced and superseded in its entirety by this General License D–2.

Andrea M. Gacki,

[1] See Note 1 to paragraph (a) of this general license.

[2] See Note 1 to paragraph (a) of this general license.

[3] See 31 CFR 560.304.

[4] This general license does not authorize any transaction prohibited by any part of chapter V of 31 CFR other than part 560. Accordingly, the transfer of funds may not be by, to, or through any of the following: (1) a person whose property and interests in property are blocked pursuant to the Weapons of Mass Destruction Proliferators Sanctions Regulations, 31 CFR part 544, or the Global Terrorism Sanctions Regulations, 31 CFR part 594; or (2) a person whose property and interests in property are blocked pursuant to any other part of 31 CFR chapter V, or any Executive order, except an Iranian financial institution whose property and interests in property are blocked solely pursuant to 31 CFR part 560 or Executive Order 13902.

Director, Office of Foreign Assets Control
Dated: September 23, 2022

Annex to General License D–2: Services, Software, and Hardware Incident to Communications Authorized for Exportation, Reexportation, or Provision to Iran by Paragraph (a)(3) of General License D–2

Note: See paragraph (a)(3)(ii)–(iii) of General License D–2 for authorizations related to certain hardware and software that is of a type described below but that is not subject to the EAR.

(1.)	Mobile phones (including but not limited to smartphones), Personal Digital Assistants (PDAs), Subscriber Identity Module (SIM) cards, and accessories for such devices designated EAR99 or classified on the CCL under ECCN 5A992.c; drivers and connectivity software for such hardware designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such hardware and software.
(2.)	Satellite phones and Broadband Global Area Network (BGAN) hardware designated EAR99 or classified under ECCN 5A992.c; demand drivers and connectivity software for such hardware designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such hardware and software.
(3.)	Consumer * modems, network interface cards, radio equipment (including antennae), routers, switches, and WiFi access points, designed for 50 or fewer concurrent users, designated EAR99 or classified under ECCNs 5A992.c, 5A991.b.2, or 5A991.b.4; drivers, communications, and connectivity software for such hardware designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such hardware and software.
(4.)	Residential consumer * satellite terminals, transceiver equipment (including but not limited to antennae, receivers, set-top boxes and video decoders) designated EAR99 or classified under ECCNs 5A992.c, 5A991.b.2, or 5A991.b.4; drivers, communications, and connectivity software for such hardware designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such hardware and software.
(5.)	Laptops, tablets, and personal computing devices, and peripherals for such devices (including but not limited to consumer* disk drives and other data storage devices) and accessories for such devices (including but not limited to keyboards and mice) designated EAR99 or classified on the CCL under ECCNs 5A992.c, 5A991.b.2, 5A991.b.4, or 4A994.b; computer operating systems and software required for effective consumer use of such hardware, including software updates and patches, designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such hardware and software.
(6.)	Anti-virus and anti-malware software designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such software.
(7.)	Anti-tracking software designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such software.
(8.)	Mobile operating systems, online application for mobile operating systems (app) stores, and related software, including apps designed to run on mobile operating systems, designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such software.
(9.)	Anti-censorship tools and related software designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such software.
(10.)	Virtual Private Network (VPN) client software, proxy tools, and fee-based client personal communications tools including voice, text, video, voice-over-IP telephony, video chat, and successor technologies, and communications and connectivity software required for effective consumer use designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such software.
(11.)	Provisioning and verification software for Secure Sockets Layers (SSL) certificates designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such software.

* For purposes of this Annex, the term ''consumer'' refers to items that are: (1) generally available to the public by being sold, without restriction, from stock at retail selling points by means of any of the following: (a) over-the-counter transactions; (b) mail order transactions; (c) electronic transactions; or (d) telephone call transactions; and (2) designed for installation by the user without further substantial support by the supplier.

Andrea M. Gacki,
Director, Office of Foreign Assets Control.
[FR Doc. 2022–22233 Filed 10–12–22; 8:45 am]
BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General License 13B

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of a web general license.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing one general license (GL) issued pursuant to the Russian Harmful Foreign Activities Sanctions Regulations: GL 13B, which was previously issued on OFAC's website.

DATES: GL 13B was issued on September 8, 2022. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treas.gov/ofac.*

Background

On September 8, 2022, OFAC issued GL 13B on its website to authorize certain transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587. GL 13B replaced and superseded in its entirety GL 13A. GL 13B expires on December 7, 2022. The text of GL 13B is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR part 587

GENERAL LICENSE 13B

Authorizing Certain Administrative Transactions Prohibited by Directive 4 Under Executive Order 14024

(a) Except as provided in paragraph (b) of this general license, U.S. persons, or entities owned or controlled, directly or indirectly, by a U.S. person, are authorized to pay taxes, fees, or import duties, and purchase or receive permits, licenses, registrations, or certifications, to the extent such transactions are prohibited by Directive 4 under Executive Order (E.O.) 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation,* provided such transactions are ordinarily incident and necessary to the day-to-day operations in the Russian Federation of such U.S. persons or entities, through 12:01 a.m. eastern standard time, December 7, 2022.

(b) This general license does not authorize:

(1) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation; or

(2) Any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR, unless separately authorized.

(c) Effective September 8, 2022, General License No. 13A, dated May 25, 2022, is replaced and superseded in its entirety by this General License No. 13B.

Andrea M. Gacki,
Director, Office of Foreign Assets Control

Dated: September 8, 2022

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–22236 Filed 10–12–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Determinations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of determinations.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing one sectoral determination issued pursuant to an April 15, 2021 Executive order, as well as a category of services determination issued pursuant to an April 6, 2022 Executive order. Each determination was previously issued on OFAC's website.

DATES: The Determination Pursuant to Section (1)(a)(i) of Executive Order 14024 was issued on September 15, 2022. The Determination Pursuant to Section 1(a)(ii) of Executive Order 14071 was issued on September 15, 2022 and takes effect on October 15, 2022.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treas.gov/ofac.*

Background

On April 15, 2021, the President, invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), issued Executive Order (E.O.) 14024 (86 FR 20249, April 19, 2022). Among other prohibitions, section 1(a) of E.O. 14024 blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any U.S. person of, any person determined by the Secretary of the Treasury, in consultation with the Secretary of State: (i) to operate or have operated in the technology sector or the defense and related materiel sector of the Russian Federation economy, or any other sector of the Russian Federation economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State.

On April 6, 2022, the President, invoking the authority of, *inter alia,* IEEPA, issued E.O. 14071 of April 6, 2022, ''Prohibiting New Investment in and Certain Services to the Russian Federation in Response to Continued Russian Federation Aggression'' (87 FR 20999, April 8, 2022). Among other prohibitions, section 1(a)(ii) of E.O. 14071 prohibits the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any category of services as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, to any person located in the Russian Federation.

On September 15, 2022, pursuant to delegated authority, the Director of OFAC, in consultation with the Department of State, issued a sectoral determination pursuant to E.O. 14024. This determination took effect upon publication on OFAC's website, which occurred on September 15, 2022. Also on September 15, 2022, pursuant to delegated authority, the Director of OFAC, in consultation with the Department of State, issued a category of services determination pursuant to E.O. 14071. This determination takes effect at 12:01 a.m. eastern daylight time on October 15, 2022.

The texts of the September 15, 2022 sectoral determination pursuant to E.O. 14024, and the September 15, 2022 category of services determination pursuant to E.O. 14071, are below.

OFFICE OF FOREIGN ASSETS CONTROL

Determination Pursuant to Section 1(a)(i) of Executive Order 14024

Section 1(a) of Executive Order (E.O.) 14024 of April 15, 2021 (''Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation'') imposes economic sanctions on any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, or the Secretary of State, in consultation with the Secretary of the Treasury, to operate or have operated in such sectors of the Russian Federation economy as may be determined, pursuant to section 1(a)(i) of E.O. 14024, by the Secretary of the Treasury, in consultation with the Secretary of State.

To further address the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States described in E.O. 14024, and in consultation with the

Department of State and pursuant to 31 CFR 587.802, I hereby determine that section 1(a)(i) shall apply to the quantum computing sector of the Russian Federation economy. Any person that the Secretary of the Treasury or the Secretary of the Treasury's designee, in consultation with the Secretary of State or the Secretary of State's designee, or the Secretary of State or the Secretary of State's designee, in consultation with the Secretary of the Treasury or the Secretary of the Treasury's designee, subsequently determines operates or has operated in this sector shall be subject to sanctions pursuant to section 1(a)(i).

This determination shall take effect upon publication by the Office of Foreign Assets Control on the Department of the Treasury's website.

Andrea M. Gacki,
Director, Office of Foreign Assets Control

OFFICE OF FOREIGN ASSETS CONTROL

Determination Pursuant to Section 1(a)(ii) of Executive Order 14071

Prohibitions Related to Certain Quantum Computing Services

Pursuant to sections 1(a)(ii), 1(b), and 5 of Executive Order (E.O.) 14071 of April 6, 2022 (''Prohibiting New Investment in and Certain Services to the Russian Federation in Response to Continued Russian Federation Aggression'') and 31 CFR 587.802, the Director of the Office of Foreign Assets Control, in consultation with the Department of State, hereby determines that the prohibitions in section 1(a)(ii) of E.O. 14071 shall apply to quantum computing services. As a result, the following activities are prohibited, except to the extent provided by law, or unless licensed or otherwise authorized by the Office of Foreign Assets Control:

the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of quantum computing services to any person located in the Russian Federation.

This determination excludes the following:

(1) any service to an entity located in the Russian Federation that is owned or controlled, directly or indirectly, by a United States person;

(2) any service in connection with the wind down or divestiture of an entity located in the Russian Federation that is not owned or controlled, directly or indirectly, by a Russian person.

This determination shall take effect beginning at 12:01 a.m. eastern daylight time on October 15, 2022.

Andrea M. Gacki,
Director, Office of Foreign Assets Control
September 15, 2022

Andrea M. Gacki,
Director, Office of Foreign Assets Control.

[FR Doc. 2022–22162 Filed 10–12–22; 8:45 am]
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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 591

Publication of Venezuela Sanctions Regulations Web General License 3 and Subsequent Iterations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing nine general licenses (GLs) issued in the Venezuela Sanctions Regulations program: GLs 3, 3A, 3B, 3C, 3D, 3E, 3F, and 3G, each of which was previously issued on OFAC's website and is now expired, as well as GL 3H, which was also previously issued on OFAC's website.

DATES: General License 3H was issued on May 12, 2020. See **SUPPLEMENTARY INFORMATION** of this document for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website *www.treasury.gov/ofac.*

Background

On August 25, 2017, OFAC issued GL 3 to authorize certain transactions otherwise prohibited by Executive Order 13808 of August 24, 2017, ''Imposing Additional Sanctions With Respect to the Situation in Venezuela'' (82 FR 41155, August 29, 2017). At the time of issuance, OFAC made GL 3 available on its website (*www.treas.gov/ofac*). Subsequently, OFAC issued eight further iterations of GL 3, which extended the duration and modified the scope of the authorization: on January 28, 2019, OFAC issued GL 3A which superseded GL 3; on February 1, 2019, OFAC issued GL 3B, which superseded GL 3A; on February 11, 2019, OFAC issued GL 3C, which superseded GL 3B; on March 8, 2019, OFAC issued GL 3D, which superseded GL 3C; on April 17, 2019, OFAC issued GL 3E, which superseded GL 3D; on August 5, 2019, OFAC issued GL 3F, which superseded GL 3E; on October 1, 2019, OFAC issued GL 3G, which superseded GL 3F; and on May 12, 2020, OFAC issued GL 3H, which superseded GL 3G. Each GL was made available on OFAC's website when it was issued. On November 22, 2019, OFAC incorporated the prohibitions of Executive Order 13808, as well as of any other Executive orders issued pursuant to the national emergency declared in Executive Order 13692 of March 8, 2015, into the Venezuelan Sanctions Regulations, 31 CFR part 591. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order of August 24, 2017

Imposing Additional Sanctions With Respect to the Situation in Venezuela

GENERAL LICENSE 3

Authorizing Transactions Related to, Provision of Financing for, and Other Dealings in Certain Bonds

(a) Except as provided in paragraph (c) of this general license, all transactions related to, the provision of financing for, and other dealings in bonds specified in the Annex to this general license that would be prohibited by Subsection l(a)(iii) of Executive Order of August 24, 2017, ''Imposing Additional Sanctions with Respect to the Situation in Venezuela,'' are authorized.

(b) Except as provided in paragraph (c) of this general license, all transactions related to, the provision of financing for, and other dealings in bonds that were issued both (i) prior to the effective date of Executive Order of August 24, 2017, and (ii) by U.S. person entities owned or controlled, directly or indirectly, by the Government of Venezuela, are authorized.

(c) This general license does not authorize any transaction that is otherwise prohibited by Executive Order of August 24, 2017, Executive Order 13692 of March 8, 2015, or any part of 31 CFR chapter V.

Andrea Gacki,
Acting Director, Office of Foreign Assets Control

Dated: August 25, 2017

Annex—Venezuela-Related Bonds Described in Paragraph (a) of General License 3

The list below may also be found at this URL in standalone formats that are print-ready and spreadsheet-ready. *https://www.treasury.gov/resource-center/sanctions/Programs/Pages/ven_gl.aspx.*

List of Venezuela-related Bonds Described in Paragraph (a) of General License 3, as of August 25, 2017:

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
XS0356521160	EH2888749	CA La Electricidad de Caracas	8.5	4/10/2008	4/10/2018
USG2025MAB75	CP5100153	Cerro Negro Finance Ltd	7.9	6/18/1998	12/1/2020
US156877AC63	156877AC6	Cerro Negro Finance Ltd	8.03	6/18/1998	6/1/2028
USG2025MAC58	CP5100211	Cerro Negro Finance Ltd	8.03	6/18/1998	6/1/2028
US156877AB80	156877AB8	Cerro Negro Finance Ltd	7.9	6/18/1998	12/1/2020
XS0294364954	EG3110533	Petroleos de Venezuela SA	5.375	4/12/2007	4/12/2027
XS0294367205	EG3110772	Petroleos de Venezuela SA	5.5	4/12/2007	4/12/2037
USP7807HAK16	EI4173619	Petroleos de Venezuela SA	8.5	10/29/2010	11/2/2017
US716558AB79	716558AB7	Petroleos de Venezuela SA	8.5	10/29/2010	11/2/2017
US716558AC52	716558AC5	Petroleos de Venezuela SA	12.75	2/17/2011	2/17/2022
USP7807HAM71	EI5787318	Petroleos de Venezuela SA	12.75	2/17/2011	2/17/2022
US716558AD36	716558AD3	Petroleos de Venezuela SA	9	11/17/2011	11/17/2021
USP7807HAP03	EI8799468	Petroleos de Venezuela SA	9	11/17/2011	11/17/2021
USP7807HAQ85	EJ1968233	Petroleos de Venezuela SA	9.75	5/17/2012	5/17/2035
US716558AE19	716558AE1	Petroleos de Venezuela SA	9.75	5/17/2012	5/17/2035
USP7807HAR68	EJ9776299	Petroleos de Venezuela SA	6	11/15/2013	11/15/2026
US716558AF83	716558AF8	Petroleos de Venezuela SA	6	11/15/2013	11/15/2026
USP7807HAT25	EK2909308	Petroleos de Venezuela SA	6	5/16/2014	5/16/2024
US716558AG66	716558AG6	Petroleos de Venezuela SA	6	5/16/2014	5/16/2024
XS1126891685	JV9618804	Petroleos de Venezuela SA	6	10/28/2014	10/28/2022
USP7807HAV70	QZ9940003	Petroleos de Venezuela SA	8.5	10/28/2016	10/27/2020
US716558AH40	716558AH4	Petroleos de Venezuela SA	8.5	10/28/2016	10/27/2020
USG70415AC18	DD0110070	Petrozuata Finance Inc	8.37	6/27/1997	10/1/2022
US71676QAE61	71676QAE6	Petrozuata Finance Inc	8.37	6/27/1997	10/1/2022
XS0082274118	EC0634765	Pulp & Paper International Invts Ltd	8.5	12/2/1997	12/2/2002
XS0838835451	EJ4041160	Republic of Venezuela 11.75% Euro-Dollar Bonds 2026 Ltd/The.	11.75	10/3/2012	10/21/2026
XS0504851535	EI2372072	Republic of Venezuela 8.25% Bonds 2024 Ltd/The.	8.25	4/30/2010	10/13/2024
XS0838864808	EJ4040618	Republic of Venezuela 8.25% Bonds 2024 Ltd/The.	8.25	10/3/2012	10/13/2024
USN7992HAA07	EF3856640	Sidetur Finance BV	10	5/3/2006	4/20/2016
US825870AA62	825870AA6	Sidetur Finance BV	10	5/3/2006	4/20/2016
XS0081483090	922655BR5	Venezuela Global Strip	0	9/18/1997	9/15/2017
XS0081484817	GG7366808	Venezuela Global Strip	0	9/18/1997	9/15/2021
XS0081487166	922655CJ2	Venezuela Global Strip	0	9/18/1997	3/15/2026
XS0081483843	922655BV6	Venezuela Global Strip	0	9/18/1997	9/15/2019
XS0081483504	922655BU8	Venezuela Global Strip	0	9/18/1997	3/15/2019
XS0081486861	922655CH6	Venezuela Global Strip	0	9/18/1997	9/15/2025
XS0081484064	922655BW4	Venezuela Global Strip	0	9/18/1997	3/15/2020
XS0081483413	922655BT1	Venezuela Global Strip	0	9/18/1997	9/15/2018
XS0081487240	922655CK9	Venezuela Global Strip	0	9/18/1997	9/15/2026
XS0081486515	922655CG8	Venezuela Global Strip	0	9/18/1997	3/15/2025
XS0081484908	922655CA1	Venezuela Global Strip	0	9/18/1997	3/15/2022
XS0081485202	922655CB9	Venezuela Global Strip	0	9/18/1997	9/15/2022
XS0081485467	922655CD5	Venezuela Global Strip	0	9/18/1997	9/15/2023
XS0081483330	922655BS3	Venezuela Global Strip	0	9/18/1997	3/15/2018
XS0081486192	922655CF0	Venezuela Global Strip	0	9/18/1997	9/15/2024
XS0081484221	922655BX2	Venezuela Global Strip	0	9/18/1997	9/15/2020
XS0081485541	922655CE3	Venezuela Global Strip	0	9/18/1997	3/15/2024
XS0081484650	922655BY0	Venezuela Global Strip	0	9/18/1997	3/15/2021
XS0081485384	922655CC7	Venezuela Global Strip	0	9/18/1997	3/15/2023
XS0081487679	922655CL7	Venezuela Global Strip	0	9/18/1997	3/15/2027
XS0081469008	922655CS2	Venezuela Global Strip	0	9/18/1997	9/15/2027
XS0081487836	922655CM5	Venezuela Global Strip	0	9/18/1997	9/15/2027
XS0081469859	922655CR4	Venezuela Global Strip	0	#N/A Field Not Applicable.	9/15/2027
XS0081488644	922655CQ6	Venezuela Global Strip	0	#N/A Field Not Applicable.	9/15/2027
XS0029484788	EF3043504	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029484861	EF3042142	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029484515	EF3043546	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029485322	TT3352321	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029484945	TT2005359	Venezuela Government International Bond	0	12/18/1990	4/15/2020
US922646AS37	922646AS3	Venezuela Government International Bond	9.25	9/18/1997	9/15/2027

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
US922646AT10	922646AT1	Venezuela Government International Bond	13.625	8/6/1998	8/15/2018
USP9395PAA95	EF5132735	Venezuela Government International Bond	13.625	9/27/2001	8/15/2018
US922646BE32	922646BE3	Venezuela Government International Bond	13.625	9/27/2001	8/15/2018
USP97475AD26	ED2379482	Venezuela Government International Bond	7	12/1/2003	12/1/2018
US922646BL74	922646BL7	Venezuela Government International Bond	9.375	1/14/2004	1/13/2034
XS0217249126	ED8955574	Venezuela Government International Bond	7.65	4/21/2005	4/21/2025
USP97475AG56	EF1877168	Venezuela Government International Bond	6	12/9/2005	12/9/2020
USP97475AJ95	EH0305910	Venezuela Government International Bond	7	11/15/2007	3/31/2038
USP17625AB33	EH3345228	Venezuela Government International Bond	9.25	5/7/2008	5/7/2028
USP17625AA59	EH3344783	Venezuela Government International Bond	9	5/7/2008	5/7/2023
USP97475AN08	EH9901297	Venezuela Government International Bond	7.75	10/13/2009	10/13/2019
USP97475AP55	EH9901214	Venezuela Government International Bond	8.25	10/13/2009	10/13/2024
USP17625AC16	EI3500440	Venezuela Government International Bond	12.75	8/23/2010	8/23/2022
USP17625AD98	EI7507573	Venezuela Government International Bond	11.95	8/5/2011	8/5/2031
USP17625AE71	EI8410553	Venezuela Government International Bond	11.75	10/21/2011	10/21/2026
SE0005994167	EK3410280	Nynas AB	STIB3M +750.0.	06/26/2014	06/26/2018

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13808 of August 24, 2017

Imposing Additional Sanctions With Respect to the Situation in Venezuela

GENERAL LICENSE 3A

Authorizing Transactions Related to, Provision of Financing for, and Other Dealings in Certain Bonds

(a) Except as provided in paragraph (c) of this general license, all transactions related to, the provision of financing for, and other dealings in bonds specified in the Annex to this general license that would be prohibited by Subsection 1(a)(iii) of Executive Order 13808 of August 24, 2017, are authorized.

(b) Except as provided in paragraph (c) of this general license, all transactions related to, the provision of financing for, and other dealings in bonds that were issued both (i) prior to August 25, 2017 (the effective date of Executive Order of August 24, 2017), and (ii) by U.S. person entities owned or controlled, directly or indirectly, by the Government of Venezuela, other than Nynas AB, PDV Holding, Inc. (PDVH), CITGO Holding, Inc., and any of their subsidiaries, are authorized.

(c) This general license does not authorize any transaction that is otherwise prohibited by Executive Order 13850 of November 1, 2018, Executive Order 13835 of May 21, 2018, Executive Order 13827 of March 19, 2018, Executive Order 13808 of August 24, 2017, Executive Order 13692 of March 8, 2015, or any part of 31 CFR chapter V.

(d) Effective January 28, 2019, General License No. 3, dated August 25, 2017, is replaced and superseded in its entirety by this General License No. 3A.

Andrea Gacki,
Director, Office of Foreign Assets Control
Dated: January 28, 2019

Annex—Venezuela-Related Bonds Described in Paragraph (a) of General License 3A

List of Venezuela-related Bonds Described in Paragraph (a) of General License 3A, as of January 28, 2019:

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
XS0356521160	EH2888749	CA La Electricidad de Caracas	8.5	4/10/2008	4/10/2018
USG2025MAB75	CP5100153	Cerro Negro Finance Ltd	7.9	6/18/1998	12/1/2020
US156877AC63	156877AC6	Cerro Negro Finance Ltd	8.03	6/18/1998	6/1/2028
USG2025MAC58	CP5100211	Cerro Negro Finance Ltd	8.03	6/18/1998	6/1/2028
US156877AB80	156877AB8	Cerro Negro Finance Ltd	7.9	6/18/1998	12/1/2020
XS0082274118	EC0634765	Pulp & Paper International Invts Ltd	8.5	12/2/1997	12/2/2002
XS0838835451	EJ4041160	Republic of Venezuela 11.75% Euro-Dollar Bonds 2026 Ltd/The.	11.75	10/3/2012	10/21/2026
XS0504851535	EI2372072	Republic of Venezuela 8.25% Bonds 2024 Ltd/The.	8.25	4/30/2010	10/13/2024
XS0838864808	EJ4040618	Republic of Venezuela 8.25% Bonds 2024 Ltd/The.	8.25	10/3/2012	10/13/2024
USN7992HAA07	EF3856640	Sidetur Finance BV	10	5/3/2006	4/20/2016
US825870AA62	825870AA6	Sidetur Finance BV	10	5/3/2006	4/20/2016
XS0081483090	922655BR5	Venezuela Global Strip	0	9/18/1997	9/15/2017
XS0081484817	GG7366808	Venezuela Global Strip	0	9/18/1997	9/15/2021
XS0081487166	922655CJ2	Venezuela Global Strip	0	9/18/1997	3/15/2026
XS0081483843	922655BV6	Venezuela Global Strip	0	9/18/1997	9/15/2019
XS0081483504	922655BU8	Venezuela Global Strip	0	9/18/1997	3/15/2019
XS0081486861	922655CH6	Venezuela Global Strip	0	9/18/1997	9/15/2025
XS0081484064	922655BW4	Venezuela Global Strip	0	9/18/1997	3/15/2020
XS0081483413	922655BT1	Venezuela Global Strip	0	9/18/1997	9/15/2018
XS0081487240	922655CK9	Venezuela Global Strip	0	9/18/1997	9/15/2026
XS0081486515	922655CG8	Venezuela Global Strip	0	9/18/1997	3/15/2025
XS0081484908	922655CA1	Venezuela Global Strip	0	9/18/1997	3/15/2022
XS0081485202	922655CB9	Venezuela Global Strip	0	9/18/1997	9/15/2022
XS0081485467	922655CD5	Venezuela Global Strip	0	9/18/1997	9/15/2023
XS0081483330	922655BS3	Venezuela Global Strip	0	9/18/1997	3/15/2018
XS0081486192	922655CF0	Venezuela Global Strip	0	9/18/1997	9/15/2024

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
XS0081484221	922655BX2 ..	Venezuela Global Strip	0	9/18/1997	9/15/2020
XS0081485541	922655CE3 ..	Venezuela Global Strip	0	9/18/1997	3/15/2024
XS0081484650	922655BY0 ..	Venezuela Global Strip	0	9/18/1997	3/15/2021
XS0081485384	922655CC7 ..	Venezuela Global Strip	0	9/18/1997	3/15/2023
XS0081487679	922655CL7 ..	Venezuela Global Strip	0	9/18/1997	3/15/2027
XS0081469008	922655CS2 ..	Venezuela Global Strip	0	9/18/1997	9/15/2027
XS0081487836	922655CM5	Venezuela Global Strip	0	9/18/1997	9/15/2027
XS0081469859	922655CR4 ..	Venezuela Global Strip	0	#N/A Field Not Applicable.	9/15/2027
XS0081488644	922655CQ6 ..	Venezuela Global Strip	0	#N/A Field Not Applicable.	9/15/2027
XS0029484788	EF3043504 ..	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029484861	EF3042142 ..	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029484515	EF3043546 ..	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029485322	TT3352321 ...	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029484945	TT2005359 ...	Venezuela Government International Bond	0	12/18/1990	4/15/2020
US922646AS37	922646AS3 ..	Venezuela Government International Bond	9.25	9/18/1997	9/15/2027
US922646AT10	922646AT1 ..	Venezuela Government International Bond	13.625	8/6/1998	8/15/2018
USP9395PAA95	EF5132735 ..	Venezuela Government International Bond	13.625	9/27/2001	8/15/2018
US922646BE32	922646BE3 ..	Venezuela Government International Bond	13.625	9/27/2001	8/15/2018
USP97475AD26	ED2379482 ..	Venezuela Government International Bond	7	12/1/2003	12/1/2018
US922646BL74	922646BL7 ...	Venezuela Government International Bond	9.375	1/14/2004	1/13/2034
XS0217249126	ED8955574 ..	Venezuela Government International Bond	7.65	4/21/2005	4/21/2025
USP97475AG56	EF1877168 ..	Venezuela Government International Bond	6	12/9/2005	12/9/2020
USP97475AJ95	EH0305910 ..	Venezuela Government International Bond	7	11/15/2007	3/31/2038
USP17625AB33	EH3345228 ..	Venezuela Government International Bond	9.25	5/7/2008	5/7/2028
USP17625AA59	EH3344783 ..	Venezuela Government International Bond	9	5/7/2008	5/7/2023
USP97475AN08	EH9901297 ..	Venezuela Government International Bond	7.75	10/13/2009	10/13/2019
USP97475AP55	EH9901214 ..	Venezuela Government International Bond	8.25	10/13/2009	10/13/2024
USP17625AC16	EI3500440	Venezuela Government International Bond	12.75	8/23/2010	8/23/2022
USP17625AD98	EI7507573	Venezuela Government International Bond	11.95	8/5/2011	8/5/2031
USP17625AE71	EI8410553	Venezuela Government International Bond	11.75	10/21/2011	10/21/2026

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13808 of August 24, 2017

Imposing Additional Sanctions With Respect to the Situation in Venezuela

GENERAL LICENSE 3B

Authorizing Transactions Related to, Provision of Financing for, and Other Dealings in Certain Bonds

(a) Except as provided in paragraph (e) of this general license, all transactions related to, the provision of financing for, and other dealings in bonds specified in the Annex to this general license that would be prohibited by Subsection 1(a)(iii) of Executive Order (E.O.) 13808 of August 24, 2017, are authorized, provided that any divestment or transfer of, or facilitation of divestment or transfer of, any holdings in such bonds must be to a non-U.S. person.

(b) Except as provided in paragraph (e) of this general license, U.S. persons are authorized to engage in all transactions prohibited by Subsection 1(a)(iii) of E.O. 13808 that are ordinarily incident and necessary to facilitating, clearing, and settling trades of holdings in the bonds specified in the Annex to this general license, provided such trades were placed prior to 4:00 p.m. eastern standard time on February 1, 2019.

(c) Except as provided in paragraph (e) of this general license, all transactions and activities prohibited by Section 1(a)(iii) of E.O. 13808 that are ordinarily incident and necessary to the wind down of financial contracts or other agreements that were entered into prior to 4:00 p.m. eastern standard time on February 1, 2019, involving, or linked to, bonds specified in the Annex to this general license are authorized. This authorization is valid through 12:01 a.m. eastern standard time, March 3, 2019.

(d) Except as provided in paragraph (e) of this general license, all transactions related to, the provision of financing for, and other dealings in bonds that were issued both (i) prior to August 25, 2017 (the effective date of E.O. 13808), and (ii) by U.S. person entities owned or controlled, directly or indirectly, by the Government of Venezuela, other than Nynas AB, PDV Holding, Inc. (PDVH), CITGO Holding, Inc., and any of their subsidiaries, are authorized.

(e) This general license does not authorize any transaction that is otherwise prohibited by Executive Order 13850 of November 1, 2018, Executive Order 13835 of May 21, 2018, Executive Order 13827 of March 19, 2018, Executive Order 13808 of August 24, 2017, Executive Order 13692 of March 8, 2015, or any part of 31 CFR chapter V.

(f) Effective February 1, 2019, General License No. 3A, dated January 28, 2019, is replaced and superseded in its entirety by this General License No. 3B.

Andrea Gacki,
Director, Office of Foreign Assets Control

Dated: February 1, 2019

Annex—Venezuela-Related Bonds Described in Paragraphs (a), (b), and (c) of General License 3B

List of Venezuela-Related Bonds Described in Paragraphs (a), (b), and (c) of General License 3B, as of February 1, 2019:

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
XS0082274118	EC0634765 ..	Pulp & Paper International Invts Ltd	8.5	12/2/1997	12/2/2002
XS0838835451	EJ4041160 ...	Republic of Venezuela 11.75% Euro-Dollar Bonds 2026 Ltd/The.	11.75	10/3/2012	10/21/2026
XS0504851535	EI2372072	Republic of Venezuela 8.25% Bonds 2024 Ltd/The.	8.25	4/30/2010	10/13/2024
XS0838864808	EJ4040618 ...	Republic of Venezuela 8.25% Bonds 2024 Ltd/The.	8.25	10/3/2012	10/13/2024
USN7992HAA07	EF3856640 ..	Sidetur Finance BV	10	5/3/2006	4/20/2016
US825870AA62	825870AA6 ..	Sidetur Finance BV	10	5/3/2006	4/20/2016
XS0081483090	922655BR5 ..	Venezuela Global Strip	0	9/18/1997	9/15/2017
XS0081484817	GG7366808	Venezuela Global Strip	0	9/18/1997	9/15/2021
XS0081487166	922655CJ2 ...	Venezuela Global Strip	0	9/18/1997	3/15/2026
XS0081483843	922655BV6 ..	Venezuela Global Strip	0	9/18/1997	9/15/2019
XS0081483504	922655BU8 ..	Venezuela Global Strip	0	9/18/1997	3/15/2019
XS0081486861	922655CH6 ..	Venezuela Global Strip	0	9/18/1997	9/15/2025
XS0081484064	922655BW4	Venezuela Global Strip	0	9/18/1997	3/15/2020
XS0081483413	922655BT1 ..	Venezuela Global Strip	0	9/18/1997	9/15/2018
XS0081487240	922655CK9 ..	Venezuela Global Strip	0	9/18/1997	9/15/2026
XS0081486515	922655CG8 ..	Venezuela Global Strip	0	9/18/1997	3/15/2025
XS0081484908	922655CA1 ..	Venezuela Global Strip	0	9/18/1997	3/15/2022
XS0081485202	922655CB9 ..	Venezuela Global Strip	0	9/18/1997	9/15/2022
XS0081485467	922655CD5 ..	Venezuela Global Strip	0	9/18/1997	9/15/2023
XS0081483330	922655BS3 ..	Venezuela Global Strip	0	9/18/1997	3/15/2018
XS0081486192	922655CF0 ..	Venezuela Global Strip	0	9/18/1997	9/15/2024
XS0081484221	922655BX2 ..	Venezuela Global Strip	0	9/18/1997	9/15/2020
XS0081485541	922655CE3 ..	Venezuela Global Strip	0	9/18/1997	3/15/2024
XS0081484650	922655BY0 ..	Venezuela Global Strip	0	9/18/1997	3/15/2021
XS0081485384	922655CC7 ..	Venezuela Global Strip	0	9/18/1997	3/15/2023
XS0081487679	922655CL7 ..	Venezuela Global Strip	0	9/18/1997	3/15/2027
XS0081469008	922655CS2 ..	Venezuela Global Strip	0	9/18/1997	9/15/2027
XS0081487836	922655CM5	Venezuela Global Strip	0	9/18/1997	9/15/2027
XS0081469859	922655CR4 ..	Venezuela Global Strip	0	#N/A Field Not Applicable.	9/15/2027
XS0081488644	922655CQ6 ..	Venezuela Global Strip	0	#N/A Field Not Applicable.	9/15/2027
XS0029484788	EF3043504 ..	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029484861	EF3042142 ..	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029484515	EF3043546 ..	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029485322	TT3352321 ...	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029484945	TT2005359 ...	Venezuela Government International Bond	0	12/18/1990	4/15/2020
US922646AS37	922646AS3 ..	Venezuela Government International Bond	9.25	9/18/1997	9/15/2027
US922646AT10	922646AT1 ..	Venezuela Government International Bond	13.625	8/6/1998	8/15/2018
USP9395PAA95	EF5132735 ..	Venezuela Government International Bond	13.625	9/27/2001	8/15/2018
US922646BE32	922646BE3 ..	Venezuela Government International Bond	13.625	9/27/2001	8/15/2018
USP97475AD26	ED2379482 ..	Venezuela Government International Bond	7	12/1/2003	12/1/2018
US922646BL74	922646BL7 ...	Venezuela Government International Bond	9.375	1/14/2004	1/13/2034
XS0217249126	ED8955574 ..	Venezuela Government International Bond	7.65	4/21/2005	4/21/2025
USP97475AG56	EF1877168 ..	Venezuela Government International Bond	6	12/9/2005	12/9/2020
USP97475AJ95	EH0305910 ..	Venezuela Government International Bond	7	11/15/2007	3/31/2038
USP17625AB33	EH3345228 ..	Venezuela Government International Bond	9.25	5/7/2008	5/7/2028
USP17625AA59	EH3344783 ..	Venezuela Government International Bond	9	5/7/2008	5/7/2023
USP97475AN08	EH9901297 ..	Venezuela Government International Bond	7.75	10/13/2009	10/13/2019
USP97475AP55	EH9901214 ..	Venezuela Government International Bond	8.25	10/13/2009	10/13/2024
USP17625AC16	EI3500440	Venezuela Government International Bond	12.75	8/23/2010	8/23/2022
USP17625AD98	EI7507573	Venezuela Government International Bond	11.95	8/5/2011	8/5/2031
USP17625AE71	EI8410553	Venezuela Government International Bond	11.75	10/21/2011	10/21/2026

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13808 of August 24, 2017

Imposing Additional Sanctions With Respect to the Situation in Venezuela

GENERAL LICENSE 3C

Authorizing Transactions Related to, Provision of Financing for, and Other Dealings in Certain Bonds

(a) Except as provided in paragraphs (e) and (f) of this general license, all transactions related to, the provision of financing for, and other dealings in bonds specified in the Annex to this general license (GL 3C Bonds) that would be prohibited by Subsection 1(a)(iii) of Executive Order (E.O.) 13808 of August 24, 2017, are authorized, provided that any divestment or transfer of, or facilitation of divestment or transfer of, any holdings in such bonds must be to a non-U.S. person.

(b) Except as provided in paragraph (f) of this general license, U.S. persons are authorized to engage in all transactions prohibited by Subsection 1(a)(iii) of E.O. 13808 that are ordinarily incident and necessary to facilitating, clearing, and settling trades of holdings in GL 3C Bonds, provided such trades were placed prior to 4:00 p.m. eastern standard time on February 1, 2019.

(c) Except as provided in paragraph (f) of this general license, all transactions and activities prohibited by Section 1(a)(iii) of E.O. 13808 that are ordinarily incident and necessary to the wind down of financial contracts or other agreements that were entered into prior to 4:00 p.m. eastern standard time on February 1, 2019, involving, or linked to, GL 3C Bonds are authorized. This authorization is valid through 12:01 a.m. eastern standard time, March 11, 2019.

(d) Except as provided in paragraph (f) of this general license, all transactions related to, the provision of financing for, and other dealings in bonds that were issued both (i) prior to August 25, 2017 (the effective date of E.O. 13808), and (ii) by U.S. person entities owned or controlled, directly or indirectly, by the Government of Venezuela, other than Nynas AB, PDV Holding, Inc. (PDVH), CITGO Holding, Inc., and any of their subsidiaries, are authorized.

(e) Paragraph (a) of this general license does not authorize U.S. persons to purchase or invest in, or to facilitate the purchase of or investment in, directly or indirectly, bonds issued by the Government of Venezuela prior to August 25, 2017 (including the GL 3C Bonds), other than purchases of or investments in GL 3C Bonds that are ordinarily incident and necessary to the divestment or transfer of holdings in GL 3C Bonds.

(f) This general license does not authorize any transaction that is otherwise prohibited by Executive Order 13850 of November 1, 2018, Executive Order 13835 of May 21, 2018, Executive Order 13827 of March 19, 2018, Executive Order 13808 of August 24, 2017, Executive Order 13692 of March 8, 2015, or any part of 31 CFR chapter V.

(g) Effective February 11, 2019, General License No. 3B, dated February 1, 2019, is replaced and superseded in its entirety by this General License No. 3C.

Andrea Gacki,
Director, Office of Foreign Assets Control
Dated: February 11, 2019

Annex—Venezuela-Related Bonds Described in Paragraph (a) of General License 3C (GL 3C Bonds)

List of GL 3C Bonds, as of February 11, 2019:

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
XS0082274118	EC0634765 ..	Pulp & Paper International Invts Ltd	8.5	12/2/1997	12/2/2002
XS0838835451	EJ4041160 ...	Republic of Venezuela 11.75% Euro-Dollar Bonds 2026 Ltd/The.	11.75	10/3/2012	10/21/2026
XS0504851535	EI2372072	Republic of Venezuela 8.25% Bonds 2024 Ltd/The.	8.25	4/30/2010	10/13/2024
XS0838864808	EJ4040618 ...	Republic of Venezuela 8.25% Bonds 2024 Ltd/The.	8.25	10/3/2012	10/13/2024
USN7992HAA07	EF3856640 ..	Sidetur Finance BV	10	5/3/2006	4/20/2016
US825870AA62	825870AA6 ..	Sidetur Finance BV	10	5/3/2006	4/20/2016
XS0081483090	922655BR5 ..	Venezuela Global Strip	0	9/18/1997	9/15/2017
XS0081484817	GG7366808	Venezuela Global Strip	0	9/18/1997	9/15/2021
XS0081487166	922655CJ2 ...	Venezuela Global Strip	0	9/18/1997	3/15/2026
XS0081483843	922655BV6 ..	Venezuela Global Strip	0	9/18/1997	9/15/2019
XS0081483504	922655BU8 ..	Venezuela Global Strip	0	9/18/1997	3/15/2019
XS0081486861	922655CH6 ..	Venezuela Global Strip	0	9/18/1997	9/15/2025
XS0081484064	922655BW4	Venezuela Global Strip	0	9/18/1997	3/15/2020
XS0081483413	922655BT1 ..	Venezuela Global Strip	0	9/18/1997	9/15/2018
XS0081487240	922655CK9 ..	Venezuela Global Strip	0	9/18/1997	9/15/2026
XS0081486515	922655CG8 ..	Venezuela Global Strip	0	9/18/1997	3/15/2025
XS0081484908	922655CA1 ..	Venezuela Global Strip	0	9/18/1997	3/15/2022
XS0081485202	922655CB9 ..	Venezuela Global Strip	0	9/18/1997	9/15/2022
XS0081485467	922655CD5 ..	Venezuela Global Strip	0	9/18/1997	9/15/2023
XS0081483330	922655BS3 ..	Venezuela Global Strip	0	9/18/1997	3/15/2018
XS0081486192	922655CF0 ..	Venezuela Global Strip	0	9/18/1997	9/15/2024
XS0081484221	922655BX2 ..	Venezuela Global Strip	0	9/18/1997	9/15/2020
XS0081485541	922655CE3 ..	Venezuela Global Strip	0	9/18/1997	3/15/2024
XS0081484650	922655BY0 ..	Venezuela Global Strip	0	9/18/1997	3/15/2021
XS0081485384	922655CC7 ..	Venezuela Global Strip	0	9/18/1997	3/15/2023
XS0081487679	922655CL7 ..	Venezuela Global Strip	0	9/18/1997	3/15/2027
XS0081469008	922655CS2 ..	Venezuela Global Strip	0	9/18/1997	9/15/2027
XS0081487836	922655CM5	Venezuela Global Strip	0	9/18/1997	9/15/2027
XS0081469859	922655CR4 ..	Venezuela Global Strip	0	#N/A Field Not Applicable.	9/15/2027
XS0081488644	922655CQ6 ..	Venezuela Global Strip	0	#N/A Field Not Applicable.	9/15/2027

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
XS0029484788	EF3043504 ..	Venezuela Government International Bond ...	0	12/18/1990 ...	4/15/2020
XS0029484861	EF3042142 ..	Venezuela Government International Bond ...	0	12/18/1990 ...	4/15/2020
XS0029484515	EF3043546 ..	Venezuela Government International Bond ...	0	12/18/1990 ...	4/15/2020
XS0029485322	TT3352321 ...	Venezuela Government International Bond ...	0	12/18/1990 ...	4/15/2020
XS0029484945	TT2005359 ...	Venezuela Government International Bond ...	0	12/18/1990 ...	4/15/2020
US922646AS37	922646AS3 ..	Venezuela Government International Bond ...	9.25	9/18/1997	9/15/2027
US922646AT10	922646AT1 ..	Venezuela Government International Bond ...	13.625	8/6/1998	8/15/2018
USP9395PAA95	EF5132735 ..	Venezuela Government International Bond ...	13.625	9/27/2001	8/15/2018
US922646BE32	922646BE3 ..	Venezuela Government International Bond ...	13.625	9/27/2001	8/15/2018
USP97475AD26	ED2379482 ..	Venezuela Government International Bond ...	7	12/1/2003	12/1/2018
US922646BL74	922646BL7 ...	Venezuela Government International Bond ...	9.375	1/14/2004	1/13/2034
XS0217249126	ED8955574 ..	Venezuela Government International Bond ...	7.65	4/21/2005	4/21/2025
USP97475AG56	EF1877168 ..	Venezuela Government International Bond ...	6	12/9/2005	12/9/2020
USP97475AJ95	EH0305910 ..	Venezuela Government International Bond ...	7	11/15/2007 ...	3/31/2038
USP17625AB33	EH3345228 ..	Venezuela Government International Bond ...	9.25	5/7/2008	5/7/2028
USP17625AA59	EH3344783 ..	Venezuela Government International Bond ...	9	5/7/2008	5/7/2023
USP97475AN08	EH9901297 ..	Venezuela Government International Bond ...	7.75	10/13/2009 ...	10/13/2019
USP97475AP55	EH9901214 ..	Venezuela Government International Bond ...	8.25	10/13/2009 ...	10/13/2024
USP17625AC16	EI3500440	Venezuela Government International Bond ...	12.75	8/23/2010	8/23/2022
USP17625AD98	EI7507573	Venezuela Government International Bond ...	11.95	8/5/2011	8/5/2031
USP17625AE71	EI8410553	Venezuela Government International Bond ...	11.75	10/21/2011 ...	10/21/2026

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Imposing Additional Sanctions With Respect to the Situation in Venezuela

GENERAL LICENSE 3D

Authorizing Transactions Related to, Provision of Financing for, and Other Dealings in Certain Bonds

(a) Except as provided in paragraphs (e) and (f) of this general license, all transactions related to, the provision of financing for, and other dealings in bonds specified in the Annex to this general license (GL 3D Bonds) that would be prohibited by Subsection 1(a)(iii) of Executive Order (E.O.) 13808 of August 24, 2017, are authorized, provided that any divestment or transfer of, or facilitation of divestment or transfer of, any holdings in such bonds must be to a non-U.S. person.

(b) Except as provided in paragraph (f) of this general license, U.S. persons are authorized to engage in all transactions prohibited by Subsection 1(a)(iii) of E.O. 13808 that are ordinarily incident and necessary to facilitating, clearing, and settling trades of holdings in GL 3D Bonds, provided such trades were placed prior to 4:00 p.m. eastern standard time on February 1, 2019.

(c) Except as provided in paragraph (f) of this general license, all transactions and activities prohibited by Section 1(a)(iii) of E.O. 13808 that are ordinarily incident and necessary to the wind down of financial contracts or other agreements that were entered into prior to 4:00 p.m. eastern standard time on February 1, 2019, involving, or linked to, GL 3D Bonds are authorized. This authorization is valid through 12:01 a.m. eastern daylight time, May 10, 2019.

(d) Except as provided in paragraph (f) of this general license, all transactions related to, the provision of financing for, and other dealings in bonds that were issued both (i) prior to August 25, 2017 (the effective date of E.O. 13808), and (ii) by U.S. person entities owned or controlled, directly or indirectly, by the Government of Venezuela, other than Nynas AB, PDV Holding, Inc. (PDVH), CITGO Holding, Inc., and any of their subsidiaries, are authorized.

(e) Paragraph (a) of this general license does not authorize U.S. persons to purchase or invest in, or to facilitate the purchase of or investment in, directly or indirectly, bonds issued by the Government of Venezuela prior to August 25, 2017 (including the GL 3D Bonds), other than purchases of or investments in GL 3D Bonds that are ordinarily incident and necessary to the divestment or transfer of holdings in GL 3D Bonds.

(f) This general license does not authorize any transaction that is otherwise prohibited by Executive Order 13850 of November 1, 2018, Executive Order 13835 of May 21, 2018, Executive Order 13827 of March 19, 2018, Executive Order 13808 of August 24, 2017, Executive Order 13692 of March 8, 2015, or any part of 31 CFR chapter V.

(g) Effective March 8, 2019, General License No. 3C, dated February 11, 2019, is replaced and superseded in its entirety by this General License No. 3D.

Andrea Gacki,
Director, Office of Foreign Assets Control

Dated: March 8, 2019

Annex—Venezuela-Related Bonds Described in Paragraph (a) of General License 3D (GL 3D Bonds)

List of GL 3D Bonds, as of March 8, 2019:

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
XS0082274118	EC0634765 ..	Pulp & Paper International Invts Ltd	8.5	12/2/1997	12/2/2002
XS0838835451	EJ4041160 ...	Republic of Venezuela 11.75% Euro-Dollar Bonds 2026 Ltd/The.	11.75	10/3/2012	10/21/2026
XS0504851535	EI2372072	Republic of Venezuela 8.25% Bonds 2024 Ltd/The.	8.25	4/30/2010	10/13/2024
XS0838864808	EJ4040618 ...	Republic of Venezuela 8.25% Bonds 2024 Ltd/The.	8.25	10/3/2012	10/13/2024
USN7992HAA07	EF3856640 ..	Sidetur Finance BV	10	5/3/2006	4/20/2016
US825870AA62	825870AA6 ..	Sidetur Finance BV	10	5/3/2006	4/20/2016
XS0081483090	922655BR5 ..	Venezuela Global Strip	0	9/18/1997	9/15/2017
XS0081484817	GG7366808	Venezuela Global Strip	0	9/18/1997	9/15/2021

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
XS0081487166	922655CJ2	Venezuela Global Strip	0	9/18/1997	3/15/2026
XS0081483843	922655BV6	Venezuela Global Strip	0	9/18/1997	9/15/2019
XS0081483504	922655BU8	Venezuela Global Strip	0	9/18/1997	3/15/2019
XS0081486861	922655CH6	Venezuela Global Strip	0	9/18/1997	9/15/2025
XS0081484064	922655BW4	Venezuela Global Strip	0	9/18/1997	3/15/2020
XS0081483413	922655BT1	Venezuela Global Strip	0	9/18/1997	9/15/2018
XS0081487240	922655CK9	Venezuela Global Strip	0	9/18/1997	9/15/2026
XS0081486515	922655CG8	Venezuela Global Strip	0	9/18/1997	3/15/2025
XS0081484908	922655CA1	Venezuela Global Strip	0	9/18/1997	3/15/2022
XS0081485202	922655CB9	Venezuela Global Strip	0	9/18/1997	9/15/2022
XS0081485467	922655CD5	Venezuela Global Strip	0	9/18/1997	9/15/2023
XS0081483330	922655BS3	Venezuela Global Strip	0	9/18/1997	3/15/2018
XS0081486192	922655CF0	Venezuela Global Strip	0	9/18/1997	9/15/2024
XS0081484221	922655BX2	Venezuela Global Strip	0	9/18/1997	9/15/2020
XS0081485541	922655CE3	Venezuela Global Strip	0	9/18/1997	3/15/2024
XS0081484650	922655BY0	Venezuela Global Strip	0	9/18/1997	3/15/2021
XS0081485384	922655CC7	Venezuela Global Strip	0	9/18/1997	3/15/2023
XS0081487679	922655CL7	Venezuela Global Strip	0	9/18/1997	3/15/2027
XS0081469008	922655CS2	Venezuela Global Strip	0	9/18/1997	9/15/2027
XS0081487836	922655CM5	Venezuela Global Strip	0	9/18/1997	9/15/2027
XS0081469859	922655CR4	Venezuela Global Strip	0	#N/A Field Not Applicable.	9/15/2027
XS0081488644	922655CQ6	Venezuela Global Strip	0	#N/A Field Not Applicable.	9/15/2027
XS0029484788	EF3043504	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029484861	EF3042142	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029484515	EF3043546	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029485322	TT3352321	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029484945	TT2005359	Venezuela Government International Bond	0	12/18/1990	4/15/2020
US922646AS37	922646AS3	Venezuela Government International Bond	9.25	9/18/1997	9/15/2027
US922646AT10	922646AT1	Venezuela Government International Bond	13.625	8/6/1998	8/15/2018
USP9395PAA95	EF5132735	Venezuela Government International Bond	13.625	9/27/2001	8/15/2018
US922646BE32	922646BE3	Venezuela Government International Bond	13.625	9/27/2001	8/15/2018
USP97475AD26	ED2379482	Venezuela Government International Bond	7	12/1/2003	12/1/2018
US922646BL74	922646BL7	Venezuela Government International Bond	9.375	1/14/2004	1/13/2034
XS0217249126	ED8955574	Venezuela Government International Bond	7.65	4/21/2005	4/21/2025
USP97475AG56	EF1877168	Venezuela Government International Bond	6	12/9/2005	12/9/2020
USP97475AJ95	EH0305910	Venezuela Government International Bond	7	11/15/2007	3/31/2038
USP17625AB33	EH3345228	Venezuela Government International Bond	9.25	5/7/2008	5/7/2028
USP17625AA59	EH3344783	Venezuela Government International Bond	9	5/7/2008	5/7/2023
USP97475AN08	EH9901297	Venezuela Government International Bond	7.75	10/13/2009	10/13/2019
USP97475AP55	EH9901214	Venezuela Government International Bond	8.25	10/13/2009	10/13/2024
USP17625AC16	EI3500440	Venezuela Government International Bond	12.75	8/23/2010	8/23/2022
USP17625AD98	EI7507573	Venezuela Government International Bond	11.95	8/5/2011	8/5/2031
USP17625AE71	EI8410553	Venezuela Government International Bond	11.75	10/21/2011	10/21/2026

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13808 of August 24, 2017

Imposing Additional Sanctions With Respect to the Situation in Venezuela

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

GENERAL LICENSE 3E

Authorizing Transactions Related to, Provision of Financing for, and Other Dealings in Certain Bonds

(a) Except as provided in paragraphs (e) and (f) of this general license, all transactions related to, the provision of financing for, and other dealings in bonds specified in the Annex to this general license (GL 3E Bonds) that would be prohibited by Subsection 1(a)(iii) of Executive Order (E.O.) 13808, as amended by E.O. 13857 of January 25, 2019 (''Taking Additional Steps to Address the National Emergency With Respect to Venezuela'') (E.O. 13808), or by E.O. 13850, as amended by E.O. 13857 (E.O. 13850), are authorized, provided that any divestment or transfer of, or facilitation of divestment or transfer of, any holdings in such bonds must be to a non-U.S. person.

(b) Except as provided in paragraph (f) of this general license, U.S. persons are authorized to engage in all transactions prohibited by Subsection 1(a)(iii) of E.O. 13808 or by E.O. 13850 that are ordinarily incident and necessary to facilitating, clearing, and settling trades of holdings in GL 3E Bonds, provided such trades were placed prior to 4:00 p.m. eastern standard time on February 1, 2019.

(c) Except as provided in paragraph (f) of this general license, all transactions and activities prohibited by Section 1(a)(iii) of E.O. 13808 or by E.O. 13850 that are ordinarily incident and necessary to the wind down of financial contracts or other agreements that were entered into prior to 4:00 p.m. eastern standard time on February 1, 2019, involving, or linked to, GL 3E Bonds are authorized. This authorization is valid through 12:01 a.m. eastern daylight time, September 30, 2019.

(d) Except as provided in paragraph (f) of this general license, all transactions related to, the provision of financing for, and other dealings in

bonds that were issued both (i) prior to August 25, 2017 (the effective date of E.O. 13808), and (ii) by U.S. person entities owned or controlled, directly or indirectly, by the Government of Venezuela, other than Nynas AB, PDV Holding, Inc. (PDVH), CITGO Holding, Inc., and any of their subsidiaries, are authorized.

(e) Paragraph (a) of this general license does not authorize:

(1) U.S. persons to sell, or to facilitate the sale of, GL3E Bonds to, directly or indirectly, any person whose property and interests in property are blocked pursuant to E.O. 13850, including Banco Central de Venezuela, Petróleos de Venezuela, S.A. (PdVSA), or any entities in which the Banco Central de Venezuela or PdVSA owns, directly or indirectly, a 50 percent or greater interest.

(2) U.S. persons to purchase or invest in, or to facilitate the purchase of or investment in, directly or indirectly, GL 3E Bonds, other than purchases of or investments in GL 3E Bonds that are ordinarily incident and necessary to the divestment or transfer of holdings in GL 3E Bonds.

(f) This general license does not authorize any transaction that is otherwise prohibited by E.O. 13850 of November 1, 2018, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, E.O. 13692 of March 8, 2015, each as amended by E.O. 13857, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than transactions involving Banco Central de Venezuela that are described in this general license.

(g) Effective April 17, 2019, General License No. 3D, dated March 8, 2019, is replaced and superseded in its entirety by this General License No. 3E.

Andrea Gacki,
Director, Office of Foreign Assets Control
Dated: April 17, 2019

Annex—Venezuela-Related Bonds Described in Paragraph (a) of General License 3E (GL 3E Bonds)

List of GL 3E Bonds, as of April 17, 2019:

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
XS0082274118	EC0634765	Pulp & Paper International Invts Ltd	8.5	12/2/1997	12/2/2002
XS0838835451	EJ4041160	Republic of Venezuela 11.75% Euro-Dollar Bonds 2026 Ltd/The.	11.75	10/3/2012	10/21/2026
XS0504851535	EI2372072	Republic of Venezuela 8.25% Bonds 2024 Ltd/The.	8.25	4/30/2010	10/13/2024
XS0838864808	EJ4040618	Republic of Venezuela 8.25% Bonds 2024 Ltd/The.	8.25	10/3/2012	10/13/2024
USN7992HAA07	EF3856640	Sidetur Finance BV	10	5/3/2006	4/20/2016
US825870AA62	825870AA6	Sidetur Finance BV	10	5/3/2006	4/20/2016
XS0081483090	922655BR5	Venezuela Global Strip	0	9/18/1997	9/15/2017
XS0081484817	GG7366808	Venezuela Global Strip	0	9/18/1997	9/15/2021
XS0081487166	922655CJ2	Venezuela Global Strip	0	9/18/1997	3/15/2026
XS0081483843	922655BV6	Venezuela Global Strip	0	9/18/1997	9/15/2019
XS0081483504	922655BU8	Venezuela Global Strip	0	9/18/1997	3/15/2019
XS0081486861	922655CH6	Venezuela Global Strip	0	9/18/1997	9/15/2025
XS0081484064	922655BW4	Venezuela Global Strip	0	9/18/1997	3/15/2020
XS0081483413	922655BT1	Venezuela Global Strip	0	9/18/1997	9/15/2018
XS0081487240	922655CK9	Venezuela Global Strip	0	9/18/1997	9/15/2026
XS0081486515	922655CG8	Venezuela Global Strip	0	9/18/1997	3/15/2025
XS0081484908	922655CA1	Venezuela Global Strip	0	9/18/1997	3/15/2022
XS0081485202	922655CB9	Venezuela Global Strip	0	9/18/1997	9/15/2022
XS0081485467	922655CD5	Venezuela Global Strip	0	9/18/1997	9/15/2023
XS0081483330	922655BS3	Venezuela Global Strip	0	9/18/1997	3/15/2018
XS0081486192	922655CF0	Venezuela Global Strip	0	9/18/1997	9/15/2024
XS0081484221	922655BX2	Venezuela Global Strip	0	9/18/1997	9/15/2020
XS0081485541	922655CE3	Venezuela Global Strip	0	9/18/1997	3/15/2024
XS0081484650	922655BY0	Venezuela Global Strip	0	9/18/1997	3/15/2021
XS0081485384	922655CC7	Venezuela Global Strip	0	9/18/1997	3/15/2023
XS0081487679	922655CL7	Venezuela Global Strip	0	9/18/1997	3/15/2027
XS0081469008	922655CS2	Venezuela Global Strip	0	9/18/1997	9/15/2027
XS0081487836	922655CM5	Venezuela Global Strip	0	9/18/1997	9/15/2027
XS0081469859	922655CR4	Venezuela Global Strip	0	#N/A Field Not Applicable.	9/15/2027
XS0081488644	922655CQ6	Venezuela Global Strip	0	#N/A Field Not Applicable.	9/15/2027
XS0029484788	EF3043504	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029484861	EF3042142	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029484515	EF3043546	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029485322	TT3352321	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029484945	TT2005359	Venezuela Government International Bond	0	12/18/1990	4/15/2020
US922646AS37	922646AS3	Venezuela Government International Bond	9.25	9/18/1997	9/15/2027
US922646AT10	922646AT1	Venezuela Government International Bond	13.625	8/6/1998	8/15/2018
USP9395PAA95	EF5132735	Venezuela Government International Bond	13.625	9/27/2001	8/15/2018
US922646BE32	922646BE3	Venezuela Government International Bond	13.625	9/27/2001	8/15/2018
USP97475AD26	ED2379482	Venezuela Government International Bond	7	12/1/2003	12/1/2018
US922646BL74	922646BL7	Venezuela Government International Bond	9.375	1/14/2004	1/13/2034
XS0217249126	ED8955574	Venezuela Government International Bond	7.65	4/21/2005	4/21/2025
USP97475AG56	EF1877168	Venezuela Government International Bond	6	12/9/2005	12/9/2020
USP97475AJ95	EH0305910	Venezuela Government International Bond	7	11/15/2007	3/31/2038
USP17625AB33	EH3345228	Venezuela Government International Bond	9.25	5/7/2008	5/7/2028

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
USP17625AA59	EH3344783	Venezuela Government International Bond	9	5/7/2008	5/7/2023
USP97475AN08	EH9901297	Venezuela Government International Bond	7.75	10/13/2009	10/13/2019
USP97475AP55	EH9901214	Venezuela Government International Bond	8.25	10/13/2009	10/13/2024
USP17625AC16	EI3500440	Venezuela Government International Bond	12.75	8/23/2010	8/23/2022
USP17625AD98	EI7507573	Venezuela Government International Bond	11.95	8/5/2011	8/5/2031
USP17625AE71	EI8410553	Venezuela Government International Bond	11.75	10/21/2011	10/21/2026

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13808 of August 24, 2017

Imposing Additional Sanctions With Respect to the Situation in Venezuela

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

Executive Order of August 5, 2019

Blocking Property of the Government of Venezuela

GENERAL LICENSE 3F

Authorizing Transactions Related to, Provision of Financing for, and Other Dealings in Certain Bonds

(a) Except as provided in paragraphs (e) and (f) of this general license, all transactions related to, the provision of financing for, and other dealings in bonds specified in the Annex to this general license (GL 3F Bonds) that would be prohibited by Subsection 1(a)(iii) of Executive Order (E.O.) 13808, or by E.O. 13850, each as amended by E.O. 13857 of January 25, 2019, or by E.O. of August 5, 2019, are authorized, provided that any divestment or transfer of, or facilitation of divestment or transfer of, any holdings in such bonds must be to a non-U.S. person.

(b) Except as provided in paragraph (f) of this general license, U.S. persons are authorized to engage in all transactions prohibited by Subsection 1(a)(iii) of E.O. 13808 or by E.O. 13850, each as amended, or by E.O. of August 5, 2019 that are ordinarily incident and necessary to facilitating, clearing, and settling trades of holdings in GL 3F Bonds, provided such trades were placed prior to 4:00 p.m. eastern standard time on February 1, 2019.

(c) Except as provided in paragraph (f) of this general license, all transactions and activities prohibited by Section 1(a)(iii) of E.O. 13808 or by E.O. 13850, each as amended, or by E.O. of August 5, 2019 that are ordinarily incident and necessary to the wind down of financial contracts or other agreements that were entered into prior to 4:00 p.m. eastern standard time on February 1, 2019, involving, or linked to, GL 3F Bonds are authorized. This authorization is valid through 12:01 a.m. eastern daylight time, September 30, 2019.

(d) Except as provided in paragraph (f) of this general license, all transactions related to, the provision of financing for, and other dealings in bonds that were issued both (i) prior to August 25, 2017 (the effective date of E.O. 13808), and (ii) by U.S. person entities owned or controlled, directly or indirectly, by the Government of Venezuela, other than Nynas AB, PDV Holding, Inc. (PDVH), CITGO Holding, Inc., and any of their subsidiaries, are authorized.

(e) Paragraph (a) of this general license does not authorize:

(1) U.S. persons to sell, or to facilitate the sale of, GL3F Bonds to, directly or indirectly, any person whose property and interests in property are blocked pursuant to E.O. 13850, as amended, or E.O. of August 5, 2019.

(2) U.S. persons to purchase or invest in, or to facilitate the purchase of or investment in, directly or indirectly, GL 3F Bonds, other than purchases of or investments in GL 3F Bonds that are ordinarily incident and necessary to the divestment or transfer of holdings in GL 3F Bonds.

(f) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a), (b), (c), and (d); or

(2) Any transaction that is otherwise prohibited by E.O. of August 5, 2019, or E.O. 13850, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808, or E.O. 13692 of March 8, 2015, each as amended, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the transactions involving the Government of Venezuela, including Banco Central de Venezuela, that are described in this general license.

(g) Effective August 5, 2019, General License No. 3E, dated April 17, 2019, is replaced and superseded in its entirety by this General License No. 3F.

Andrea Gacki,
Director, Office of Foreign Assets Control
Dated: August 5, 2019

Annex—Venezuela-Related Bonds Described in Paragraph (a) of General License 3F (GL 3F Bonds)

List of GL 3F Bonds, as of August 5, 2019:

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
XS0082274118	EC0634765	Pulp & Paper International Invts Ltd	8.5	12/2/1997	12/2/2002
XS0838835451	EJ4041160	Republic of Venezuela 11.75% Euro-Dollar Bonds 2026 Ltd/The.	11.75	10/3/2012	10/21/2026
XS0504851535	EI2372072	Republic of Venezuela 8.25% Bonds 2024 Ltd/The.	8.25	4/30/2010	10/13/2024
XS0838864808	EJ4040618	Republic of Venezuela 8.25% Bonds 2024 Ltd/The.	8.25	10/3/2012	10/13/2024
USN7992HAA07	EF3856640	Sidetur Finance BV	10	5/3/2006	4/20/2016
US825870AA62	825870AA6	Sidetur Finance BV	10	5/3/2006	4/20/2016
XS0081483090	922655BR5	Venezuela Global Strip	0	9/18/1997	9/15/2017
XS0081484817	GG7366808	Venezuela Global Strip	0	9/18/1997	9/15/2021
XS0081487166	922655CJ2	Venezuela Global Strip	0	9/18/1997	3/15/2026
XS0081483843	922655BV6	Venezuela Global Strip	0	9/18/1997	9/15/2019
XS0081483504	922655BU8	Venezuela Global Strip	0	9/18/1997	3/15/2019
XS0081486861	922655CH6	Venezuela Global Strip	0	9/18/1997	9/15/2025
XS0081484064	922655BW4	Venezuela Global Strip	0	9/18/1997	3/15/2020

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
XS0081483413	922655BT1 ..	Venezuela Global Strip	0	9/18/1997	9/15/2018
XS0081487240	922655CK9 ..	Venezuela Global Strip	0	9/18/1997	9/15/2026
XS0081486515	922655CG8 ..	Venezuela Global Strip	0	9/18/1997	3/15/2025
XS0081484908	922655CA1 ..	Venezuela Global Strip	0	9/18/1997	3/15/2022
XS0081485202	922655CB9 ..	Venezuela Global Strip	0	9/18/1997	9/15/2022
XS0081485467	922655CD5 ..	Venezuela Global Strip	0	9/18/1997	9/15/2023
XS0081483330	922655BS3 ..	Venezuela Global Strip	0	9/18/1997	3/15/2018
XS0081486192	922655CF0 ..	Venezuela Global Strip	0	9/18/1997	9/15/2024
XS0081484221	922655BX2 ..	Venezuela Global Strip	0	9/18/1997	9/15/2020
XS0081485541	922655CE3 ..	Venezuela Global Strip	0	9/18/1997	3/15/2024
XS0081484650	922655BY0 ..	Venezuela Global Strip	0	9/18/1997	3/15/2021
XS0081485384	922655CC7 ..	Venezuela Global Strip	0	9/18/1997	3/15/2023
XS0081487679	922655CL7 ..	Venezuela Global Strip	0	9/18/1997	3/15/2027
XS0081469008	922655CS2 ..	Venezuela Global Strip	0	9/18/1997	9/15/2027
XS0081487836	922655CM5	Venezuela Global Strip	0	9/18/1997	9/15/2027
XS0081469859	922655CR4 ..	Venezuela Global Strip	0	#N/A Field Not Applicable.	9/15/2027
XS0081488644	922655CQ6 ..	Venezuela Global Strip	0	#N/A Field Not Applicable.	9/15/2027
XS0029484788	EF3043504 ..	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029484861	EF3042142 ..	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029484515	EF3043546 ..	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029485322	TT3352321 ...	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029484945	TT2005359 ...	Venezuela Government International Bond	0	12/18/1990	4/15/2020
US922646AS37	922646AS3 ..	Venezuela Government International Bond	9.25	9/18/1997	9/15/2027
US922646AT10	922646AT1 ..	Venezuela Government International Bond	13.625	8/6/1998	8/15/2018
USP9395PAA95	EF5132735 ..	Venezuela Government International Bond	13.625	9/27/2001	8/15/2018
US922646BE32	922646BE3 ..	Venezuela Government International Bond	13.625	9/27/2001	8/15/2018
USP97475AD26	ED2379482 ..	Venezuela Government International Bond	7	12/1/2003	12/1/2018
US922646BL74	922646BL7 ...	Venezuela Government International Bond	9.375	1/14/2004	1/13/2034
XS0217249126	ED8955574 ..	Venezuela Government International Bond	7.65	4/21/2005	4/21/2025
USP97475AG56	EF1877168 ..	Venezuela Government International Bond	6	12/9/2005	12/9/2020
USP97475AJ95	EH0305910 ..	Venezuela Government International Bond	7	11/15/2007	3/31/2038
USP17625AB33	EH3345228 ..	Venezuela Government International Bond	9.25	5/7/2008	5/7/2028
USP17625AA59	EH3344783 ..	Venezuela Government International Bond	9	5/7/2008	5/7/2023
USP97475AN08	EH9901297 ..	Venezuela Government International Bond	7.75	10/13/2009	10/13/2019
USP97475AP55	EH9901214 ..	Venezuela Government International Bond	8.25	10/13/2009	10/13/2024
USP17625AC16	EI3500440	Venezuela Government International Bond	12.75	8/23/2010	8/23/2022
USP17625AD98	EI7507573	Venezuela Government International Bond	11.95	8/5/2011	8/5/2031
USP17625AE71	EI8410553	Venezuela Government International Bond	11.75	10/21/2011	10/21/2026

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13808 of August 24, 2017

Imposing Additional Sanctions With Respect to the Situation in Venezuela

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

Executive Order 13884 of August 5, 2019

Blocking Property of the Government of Venezuela

GENERAL LICENSE 3G

Authorizing Transactions Related to, Provision of Financing for, and Other Dealings in Certain Bonds

(a) Except as provided in paragraphs (e) and (f) of this general license, all transactions related to, the provision of financing for, and other dealings in bonds specified in the Annex to this general license (GL 3G Bonds) that would be prohibited by Subsection 1(a)(iii) of Executive Order (E.O.) 13808, or by E.O. 13850, each as amended by E.O. 13857 of January 25, 2019, or by E.O. 13884 of August 5, 2019, are authorized, provided that any divestment or transfer of, or facilitation of divestment or transfer of, any holdings in such bonds must be to a non-U.S. person.

(b) Except as provided in paragraph (f) of this general license, U.S. persons are authorized to engage in all transactions prohibited by Subsection 1(a)(iii) of E.O. 13808 or by E.O. 13850, each as amended, or by E.O. 13884 that are ordinarily incident and necessary to facilitating, clearing, and settling trades of holdings in GL 3G Bonds, provided such trades were placed prior to 4:00 p.m. eastern standard time on February 1, 2019.

(c) Except as provided in paragraph (f) of this general license, all transactions and activities prohibited by Section 1(a)(iii) of E.O. 13808 or by E.O. 13850, each as amended, or by E.O. 13884 that are ordinarily incident and necessary to the wind down of financial contracts or other agreements that were entered into prior to 4:00 p.m. eastern standard time on February 1, 2019, involving, or linked to, GL 3G Bonds are authorized. This authorization is valid through 12:01 a.m. eastern daylight time, March 31, 2020.

(d) Except as provided in paragraph (f) of this general license, all transactions related to, the provision of financing for, and other dealings in bonds that were issued both (i) prior to August 25, 2017 (the effective date of E.O. 13808), and (ii) by U.S. person entities owned or controlled, directly or indirectly, by the Government of Venezuela, other than Nynas AB, PDV Holding, Inc. (PDVH), CITGO Holding,

Inc., and any of their subsidiaries, are authorized.

(e) Paragraph (a) of this general license does not authorize:

(1) U.S. persons to sell, or to facilitate the sale of, GL3G Bonds to, directly or indirectly, any person whose property and interests in property are blocked pursuant to E.O. 13850, as amended, or E.O. 13884.

(2) U.S. persons to purchase or invest in, or to facilitate the purchase of or investment in, directly or indirectly, GL 3G Bonds, other than purchases of or investments in GL 3G Bonds that are ordinarily incident and necessary to the divestment or transfer of holdings in GL 3G Bonds.

(f) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a), (b), (c), and (d); or

(2) Any transaction that is otherwise prohibited by E.O. 13884, or E.O. 13850, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808, or E.O. 13692 of March 8, 2015, each as amended, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the transactions involving the Government of Venezuela, including Banco Central de Venezuela, that are described in this general license.

(g) Effective September 30, 2019, General License No. 3F, dated August 5, 2019, is replaced and superseded in its entirety by this General License No. 3G.

Andrea Gacki,
Director, Office of Foreign Assets Control
Dated: October 1, 2019

Annex—Venezuela-Related Bonds Described in Paragraph (a) of General License 3G (GL 3G Bonds)

List of GL 3G Bonds, as of September 30, 2019:

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
XS0082274118	EC0634765 ..	Pulp & Paper International Invts Ltd	8.5	12/2/1997	12/2/2002
XS0838835451	EJ4041160 ...	Republic of Venezuela 11.75% Euro-Dollar Bonds 2026 Ltd/The.	11.75	10/3/2012	10/21/2026
XS0504851535	EI2372072	Republic of Venezuela 8.25% Bonds 2024 Ltd/The.	8.25	4/30/2010	10/13/2024
XS0838864808	EJ4040618 ...	Republic of Venezuela 8.25% Bonds 2024 Ltd/The.	8.25	10/3/2012	10/13/2024
USN7992HAA07	EF3856640 ..	Sidetur Finance BV	10	5/3/2006	4/20/2016
US825870AA62	825870AA6 ..	Sidetur Finance BV	10	5/3/2006	4/20/2016
XS0081483090	922655BR5 ..	Venezuela Global Strip	0	9/18/1997	9/15/2017
XS0081484817	GG7366808	Venezuela Global Strip	0	9/18/1997	9/15/2021
XS0081487166	922655CJ2 ...	Venezuela Global Strip	0	9/18/1997	3/15/2026
XS0081483843	922655BV6 ..	Venezuela Global Strip	0	9/18/1997	9/15/2019
XS0081483504	922655BU8 ..	Venezuela Global Strip	0	9/18/1997	3/15/2019
XS0081486861	922655CH6 ..	Venezuela Global Strip	0	9/18/1997	9/15/2025
XS0081484064	922655BW4	Venezuela Global Strip	0	9/18/1997	3/15/2020
XS0081483413	922655BT1 ..	Venezuela Global Strip	0	9/18/1997	9/15/2018
XS0081487240	922655CK9 ..	Venezuela Global Strip	0	9/18/1997	9/15/2026
XS0081486515	922655CG8 ..	Venezuela Global Strip	0	9/18/1997	3/15/2025
XS0081484908	922655CA1 ..	Venezuela Global Strip	0	9/18/1997	3/15/2022
XS0081485202	922655CB9 ..	Venezuela Global Strip	0	9/18/1997	9/15/2022
XS0081485467	922655CD5 ..	Venezuela Global Strip	0	9/18/1997	9/15/2023
XS0081483330	922655BS3 ..	Venezuela Global Strip	0	9/18/1997	3/15/2018
XS0081486192	922655CF0 ..	Venezuela Global Strip	0	9/18/1997	9/15/2024
XS0081484221	922655BX2 ..	Venezuela Global Strip	0	9/18/1997	9/15/2020
XS0081485541	922655CE3 ..	Venezuela Global Strip	0	9/18/1997	3/15/2024
XS0081484650	922655BY0 ..	Venezuela Global Strip	0	9/18/1997	3/15/2021
XS0081485384	922655CC7 ..	Venezuela Global Strip	0	9/18/1997	3/15/2023
XS0081487679	922655CL7 ..	Venezuela Global Strip	0	9/18/1997	3/15/2027
XS0081469008	922655CS2 ..	Venezuela Global Strip	0	9/18/1997	9/15/2027
XS0081487836	922655CM5	Venezuela Global Strip	0	9/18/1997	9/15/2027
XS0081469859	922655CR4 ..	Venezuela Global Strip	0	#N/A Field Not Applicable.	9/15/2027
XS0081488644	922655CQ6 ..	Venezuela Global Strip	0	#N/A Field Not Applicable.	9/15/2027
XS0029484788	EF3043504 ..	Venezuela Government International Bond ...	0	12/18/1990 ...	4/15/2020
XS0029484861	EF3042142 ..	Venezuela Government International Bond ...	0	12/18/1990 ...	4/15/2020
XS0029484515	EF3043546 ..	Venezuela Government International Bond ...	0	12/18/1990 ...	4/15/2020
XS0029485322	TT3352321 ...	Venezuela Government International Bond ...	0	12/18/1990 ...	4/15/2020
XS0029484945	TT2005359 ...	Venezuela Government International Bond ...	0	12/18/1990 ...	4/15/2020
US922646AS37	922646AS3 ..	Venezuela Government International Bond ...	9.25	9/18/1997	9/15/2027
US922646AT10	922646AT1 ..	Venezuela Government International Bond ...	13.625	8/6/1998	8/15/2018
USP9395PAA95	EF5132735 ..	Venezuela Government International Bond ...	13.625	9/27/2001	8/15/2018
US922646BE32	922646BE3 ..	Venezuela Government International Bond ...	13.625	9/27/2001	8/15/2018
USP97475AD26	ED2379482 ..	Venezuela Government International Bond ...	7	12/1/2003	12/1/2018
US922646BL74	922646BL7 ...	Venezuela Government International Bond ...	9.375	1/14/2004	1/13/2034
XS0217249126	ED8955574 ..	Venezuela Government International Bond ...	7.65	4/21/2005	4/21/2025
USP97475AG56	EF1877168 ..	Venezuela Government International Bond ...	6	12/9/2005	12/9/2020
USP97475AJ95	EH0305910 ..	Venezuela Government International Bond ...	7	11/15/2007 ...	3/31/2038
USP17625AB33	EH3345228 ..	Venezuela Government International Bond ...	9.25	5/7/2008	5/7/2028
USP17625AA59	EH3344783 ..	Venezuela Government International Bond ...	9	5/7/2008	5/7/2023
USP97475AN08	EH9901297 ..	Venezuela Government International Bond ...	7.75	10/13/2009 ...	10/13/2019
USP97475AP55	EH9901214 ..	Venezuela Government International Bond ...	8.25	10/13/2009 ...	10/13/2024

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
USP17625AC16	EI3500440	Venezuela Government International Bond	12.75	8/23/2010	8/23/2022
USP17625AD98	EI7507573	Venezuela Government International Bond	11.95	8/5/2011	8/5/2031
USP17625AE71	EI8410553	Venezuela Government International Bond	11.75	10/21/2011	10/21/2026

OFFICE OF FOREIGN ASSETS CONTROL

Venezuela Sanctions Regulations

31 CFR Part 591

GENERAL LICENSE NO. 3H

Authorizing Transactions Related to, Provision of Financing for, and Other Dealings in Certain Bonds

(a) Except as provided in paragraphs (e) and (f) of this general license, all transactions related to, the provision of financing for, and other dealings in bonds specified in the Annex to this general license (GL 3H Bonds) that would be prohibited by Subsection 1(a)(iii) of Executive Order (E.O.) 13808 of August 24, 2017 or by E.O. 13850 of November 1, 2018, each as amended by E.O. 13857 of January 25, 2019, or by E.O. 13884 of August 5, 2019, as collectively incorporated into the Venezuela Sanctions Regulations, 31 CFR part 591 (the VSR), are authorized, provided that any divestment or transfer of, or facilitation of divestment or transfer of, any holdings in such bonds must be to a non-U.S. person.

(b) Except as provided in paragraph (f) of this general license, U.S. persons are authorized to engage in all transactions prohibited by Subsection 1(a)(iii) of E.O. 13808 or by E.O. 13850, each as amended, or by E.O. 13884, as collectively incorporated into the VSR, that are ordinarily incident and necessary to facilitating, clearing, and settling trades of holdings in GL 3H Bonds, provided such trades were placed prior to 4:00 p.m. eastern standard time on February 1, 2019.

(c) Except as provided in paragraph (f) of this general license, all transactions and activities prohibited by Subsection 1(a)(iii) of E.O. 13808 or by E.O. 13850, each as amended, or by E.O. 13884, as collectively incorporated into the VSR, that are ordinarily incident and necessary to the wind down of financial contracts or other agreements that were entered into prior to 4:00 p.m. eastern standard time on February 1, 2019, involving, or linked to, GL 3H Bonds are authorized. This authorization is valid through 12:01 a.m. eastern daylight time, March 31, 2020.

(d) Except as provided in paragraph (f) of this general license, all transactions related to, the provision of financing for, and other dealings in bonds that were issued both (i) prior to August 25, 2017 (the effective date of E.O. 13808), and (ii) by U.S. person entities owned or controlled, directly or indirectly, by the Government of Venezuela, other than PDV Holding, Inc. (PDVH), CITGO Holding, Inc., and any of their subsidiaries, that would be prohibited by E.O. 13808 or E.O. 13850, each as amended, or by E.O. 13884, as collectively incorporated into the VSR, are authorized.

(e) Paragraph (a) of this general license does not authorize:

(1) U.S. persons to sell, or to facilitate the sale of, GL 3H Bonds to, directly or indirectly, any person whose property and interests in property are blocked pursuant to the VSR; or

(2) U.S. persons to purchase or invest in, or to facilitate the purchase of or investment in, directly or indirectly, GL 3H Bonds, other than purchases of or investments in GL 3H Bonds that are ordinarily incident and necessary to the divestment or transfer of holdings in GL 3H Bonds.

(f) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to the VSR, or any other part of 31 CFR chapter V, except as authorized by paragraphs (a), (b), (c), and (d); or

(2) Any transactions or activities otherwise prohibited by the VSR, or any other part of 31 CFR chapter V, or any transactions or activities with any blocked persons other than transactions or activities involving the Government of Venezuela, including Banco Central de Venezuela, that are described in this general license.

(g) Effective May 12, 2020, General License No. 3G, dated October 1, 2019, is replaced and superseded in its entirety by this General License No. 3H.

Andrea Gacki,

Director, Office of Foreign Assets Control

Dated: May 12, 2020

Annex—Venezuela-Related Bonds Described in Paragraph (a) of General License No. 3H (GL 3H Bonds)

List of GL 3H Bonds, as of May 12, 2020:

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
XS0082274118	EC0634765	Pulp & Paper International Invts Ltd	8.5	12/2/1997	12/2/2002
XS0838835451	EJ4041160	Republic of Venezuela 11.75% Euro-Dollar Bonds 2026 Ltd/The.	11.75	10/3/2012	10/21/2026
XS0504851535	EI2372072	Republic of Venezuela 8.25% Bonds 2024 Ltd/The.	8.25	4/30/2010	10/13/2024
XS0838864808	EJ4040618	Republic of Venezuela 8.25% Bonds 2024 Ltd/The.	8.25	10/3/2012	10/13/2024
USN7992HAA07	EF3856640	Sidetur Finance BV	10	5/3/2006	4/20/2016
US825870AA62	825870AA6	Sidetur Finance BV	10	5/3/2006	4/20/2016
XS0081483090	922655BR5	Venezuela Global Strip	0	9/18/1997	9/15/2017
XS0081484817	GG7366808	Venezuela Global Strip	0	9/18/1997	9/15/2021
XS0081487166	922655CJ2	Venezuela Global Strip	0	9/18/1997	3/15/2026
XS0081483843	922655BV6	Venezuela Global Strip	0	9/18/1997	9/15/2019
XS0081483504	922655BU8	Venezuela Global Strip	0	9/18/1997	3/15/2019
XS0081486861	922655CH6	Venezuela Global Strip	0	9/18/1997	9/15/2025
XS0081484064	922655BW4	Venezuela Global Strip	0	9/18/1997	3/15/2020
XS0081483413	922655BT1	Venezuela Global Strip	0	9/18/1997	9/15/2018
XS0081487240	922655CK9	Venezuela Global Strip	0	9/18/1997	9/15/2026
XS0081486515	922655CG8	Venezuela Global Strip	0	9/18/1997	3/15/2025
XS0081484908	922655CA1	Venezuela Global Strip	0	9/18/1997	3/15/2022
XS0081485202	922655CB9	Venezuela Global Strip	0	9/18/1997	9/15/2022

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
XS0081485467	922655CD5 ..	Venezuela Global Strip	0	9/18/1997	9/15/2023
XS0081483330	922655BS3 ..	Venezuela Global Strip	0	9/18/1997	3/15/2018
XS0081486192	922655CF0 ..	Venezuela Global Strip	0	9/18/1997	9/15/2024
XS0081484221	922655BX2 ..	Venezuela Global Strip	0	9/18/1997	9/15/2020
XS0081485541	922655CE3 ..	Venezuela Global Strip	0	9/18/1997	3/15/2024
XS0081484650	922655BY0 ..	Venezuela Global Strip	0	9/18/1997	3/15/2021
XS0081485384	922655CC7 ..	Venezuela Global Strip	0	9/18/1997	3/15/2023
XS0081487679	922655CL7 ..	Venezuela Global Strip	0	9/18/1997	3/15/2027
XS0081469008	922655CS2 ..	Venezuela Global Strip	0	9/18/1997	9/15/2027
XS0081487836	922655CM5	Venezuela Global Strip	0	9/18/1997	9/15/2027
XS0081469859	922655CR4 ..	Venezuela Global Strip	0	#N/A Field Not Applicable.	9/15/2027
XS0081488644	922655CQ6 ..	Venezuela Global Strip	0	#N/A Field Not Applicable.	9/15/2027
XS0029484788	EF3043504 ..	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029484861	EF3042142 ..	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029484515	EF3043546 ..	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029485322	TT3352321 ...	Venezuela Government International Bond	0	12/18/1990	4/15/2020
XS0029484945	TT2005359 ...	Venezuela Government International Bond	0	12/18/1990	4/15/2020
US922646AS37	922646AS3 ..	Venezuela Government International Bond	9.25	9/18/1997	9/15/2027
US922646AT10	922646AT1 ..	Venezuela Government International Bond	13.625	8/6/1998	8/15/2018
USP9395PAA95	EF5132735 ..	Venezuela Government International Bond	13.625	9/27/2001	8/15/2018
US922646BE32	922646BE3 ..	Venezuela Government International Bond	13.625	9/27/2001	8/15/2018
USP97475AD26	ED2379482 ..	Venezuela Government International Bond	7	12/1/2003	12/1/2018
US922646BL74	922646BL7 ...	Venezuela Government International Bond	9.375	1/14/2004	1/13/2034
XS0217249126	ED8955574 ..	Venezuela Government International Bond	7.65	4/21/2005	4/21/2025
USP97475AG56	EF1877168 ..	Venezuela Government International Bond	6	12/9/2005	12/9/2020
USP97475AJ95	EH0305910 ..	Venezuela Government International Bond	7	11/15/2007	3/31/2038
USP17625AB33	EH3345228 ..	Venezuela Government International Bond	9.25	5/7/2008	5/7/2028
USP17625AA59	EH3344783 ..	Venezuela Government International Bond	9	5/7/2008	5/7/2023
USP97475AN08	EH9901297 ..	Venezuela Government International Bond	7.75	10/13/2009	10/13/2019
USP97475AP55	EH9901214 ..	Venezuela Government International Bond	8.25	10/13/2009	10/13/2024
USP17625AC16	EI3500440	Venezuela Government International Bond	12.75	8/23/2010	8/23/2022
USP17625AD98	EI7507573	Venezuela Government International Bond	11.95	8/5/2011	8/5/2031
USP17625AE71	EI8410553	Venezuela Government International Bond	11.75	10/21/2011	10/21/2026

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–22198 Filed 10–12–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 591

Publication of Venezuela Sanctions Regulations Web General License 9 and Subsequent Iterations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing eight general licenses (GLs) issued in the Venezuela Sanctions Regulations program: GLs 9, 9A, 9B, 9C, 9D, 9E, and 9F, each of which was previously issued on OFAC's website and is now expired, as well as GL 9G, which was also previously issued on OFAC's website.

DATES: General License 9G was issued on May 12, 2020. See **SUPPLEMENTARY INFORMATION** of this document for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website *www.treasury.gov/ofac.*

Background

OFAC issued GL 9 on January 28, 2019 pursuant to Executive Order (E.O.) 13808 of August 24, 2017, ''Imposing Additional Sanctions With Respect to the Situation in Venezuela'' (82 FR 41155, August 29, 2017) and E.O. 13850 of November 1, 2018, ''Blocking Property of Additional Persons Contributing to the Situation in Venezuela'' (83 FR 55243, November 2, 2018) to authorize certain transactions otherwise prohibited by the Executive Orders. At the time of issuance, OFAC made GL 9 available on its website (*www.treas.gov/ofac*). Subsequently, OFAC issued seven further iterations of GL 9, which extended the duration and modified the scope of the authorization: on February 1, 2019, OFAC issued GL 9A, which superseded GL 9; on February 11, 2019, OFAC issued GL 9B, which superseded GL 9A; on March 8, 2019, OFAC issued GL 9C, which superseded GL 9B; on April 17, 2019, OFAC issued GL 9D, which superseded GL 9C; on August 5, 2019, OFAC issued GL 9E, which superseded GL 9D; on September 30, 2019 OFAC issued GL 9F, which superseded 9E, and on May 12, 2020, OFAC issued GL 9G, which superseded 9F. Each GL was made available on OFAC's website when it was issued. As reflected in the authorities section of subsequent general licenses, on November 22, 2019, OFAC incorporated the prohibitions of Executive Order 13808, as well as of any other Executive orders issued pursuant to the national emergency declared in Executive Order 13692 of March 8,

2015, into the Venezuelan Sanctions Regulations, 31 CFR part 591. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13808 of August 24, 2017

Imposing Additional Sanctions With Respect to the Situation in Venezuela

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

GENERAL LICENSE 9

Authorizing Transactions Related to Dealings in Certain Debt

(a) Except as provided in paragraph (d) of this general license, all transactions and activities prohibited by Section 1(a)(iii) of Executive Order 13808 (E.O. 13808) or Executive Order 13850 that are ordinarily incident and necessary to dealings in any debt (including the bonds listed on the Annex to this general license, promissory notes, and other receivables) of Petróleos de Venezuela, S.A. (PdVSA) or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest (together, PdVSA-related debt), issued prior to August 25, 2017 (the effective date of E.O. 13808), are authorized, provided that any divestment or transfer of, or facilitation of divestment or transfer of, any holdings in such debt must be to a non-U.S. person.

(b) The transactions and activities authorized in paragraph (a) include facilitating, clearing, and settling transactions to divest to a non-U.S. person PdVSA-related debt, including on behalf of U.S. persons.

(c) Except as provided in paragraph (d) of this general license, all transactions and activities prohibited by Section 1(a)(iii) of E.O. 13808 that are ordinarily incident and necessary to dealings in any bonds that were issued prior to August 25, 2017 (the effective date of E.O. 13808) by the following entities or any of their subsidiaries, are authorized:

- PDV Holdings, Inc.
- CITGO Holdings, Inc.
- Nynas AB

(d) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraph (a);

(2) U.S. persons to sell PdVSA-related debt to, to purchase or invest in debt of, or to facilitate such transactions with, directly or indirectly, any person whose property and interests in property are blocked pursuant to E.O. 13850, including PdVSA and any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest, other than purchases of or investments in PdVSA-related debt (including settlement of purchases or sales that were pending on January 28, 2019) that are ordinarily incident and necessary to the divestment or transfer of PdVSA-related debt;

(3) Any transaction that is otherwise prohibited under Executive Order 13850 of November 1, 2018, Executive Order 13835 of May 21, 2018, Executive Order 13827 of March 19, 2018, Executive Order 13808 of August 24, 2017, Executive Order 13692 of March 8, 2015, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the transactions described in paragraph (a) of this general license.

Andrea Gacki,

Director, Office of Foreign Assets Control

Dated: January 28, 2019

Annex—Bonds Described in Paragraph (a) of General License 9

List of Bonds Described in Paragraph (a) of General License 9, as of January 28, 2019:

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
XS0294364954	EG3110533	Petroleos de Venezuela SA	5.375	4/12/2007	4/12/2027
XS0294367205	EG3110772	Petroleos de Venezuela SA	5.5	4/12/2007	4/12/2037
USP7807HAK16	EI4173619	Petroleos de Venezuela SA	8.5	10/29/2010	11/2/2017
US716558AB79	716558AB7	Petroleos de Venezuela SA	8.5	10/29/2010	11/2/2017
US716558AC52	716558AC5	Petroleos de Venezuela SA	12.75	2/17/2011	2/17/2022
USP7807HAM71	EI5787318	Petroleos de Venezuela SA	12.75	2/17/2011	2/17/2022
US716558AD36	716558AD3	Petroleos de Venezuela SA	9	11/17/2011	11/17/2021
USP7807HAP03	EI8799468	Petroleos de Venezuela SA	9	11/17/2011	11/17/2021
USP7807HAQ85	EJ1968233	Petroleos de Venezuela SA	9.75	5/17/2012	5/17/2035
US716558AE19	716558AE1	Petroleos de Venezuela SA	9.75	5/17/2012	5/17/2035
USP7807HAR68	EJ9776299	Petroleos de Venezuela SA	6	11/15/2013	11/15/2026
US716558AF83	716558AF8	Petroleos de Venezuela SA	6	11/15/2013	11/15/2026
USP7807HAT25	EK2909308	Petroleos de Venezuela SA	6	5/16/2014	5/16/2024
US716558AG66	716558AG6	Petroleos de Venezuela SA	6	5/16/2014	5/16/2024
XS1126891685	JV9618804	Petroleos de Venezuela SA	6	10/28/2014	10/28/2022
USP7807HAV70	QZ9940003	Petroleos de Venezuela SA	8.5	10/28/2016	10/27/2020
US716558AH40	716558AH4	Petroleos de Venezuela SA	8.5	10/28/2016	10/27/2020
SE0005994167	EK3410280	Nynas AB	STIB3M +750.0.	06/26/2014	06/26/2018

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13808 of August 24, 2017

Imposing Additional Sanctions With Respect to the Situation in Venezuela

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

GENERAL LICENSE 9A

Authorizing Transactions Related to Dealings in Certain Securities

(a) Except as provided in paragraph (f) of this general license, all transactions and activities prohibited by Section 1(a)(iii) of Executive Order 13808 (E.O. 13808) or Executive Order 13850 (E.O. 13850) that are ordinarily incident and necessary to dealings in any debt (including the bonds listed on the Annex to this general license, promissory notes, and other receivables) of, or equity in, Petróleos de Venezuela, S.A. (PdVSA) or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest (together, PdVSA securities), issued prior to August 25, 2017 (the effective date of E.O. 13808), are authorized, provided that any divestment or transfer of, or facilitation of divestment or transfer of, any holdings in such PdVSA securities must be to a non-U.S. person.

(b) The transactions and activities authorized in paragraph (a) include facilitating, clearing, and settling transactions to divest to a non-U.S. person PdVSA securities, including on behalf of U.S. persons.

(c) Except as provided in paragraph (f) of this general license, all transactions and activities prohibited by Section 1(a)(iii) of E.O. 13808 or E.O. 13850 that are ordinarily incident and necessary to facilitating, clearing, and settling trades of holdings in the PdVSA securities referred to in paragraph (a) of this general license are authorized, provided such trades were placed prior to 4:00 p.m. eastern standard time on January 28, 2019.

(d) Except as provided in paragraph (f) of this general license, all transactions and activities prohibited by Section 1(a)(iii) of E.O. 13808 or E.O 13850 that are ordinarily incident and necessary to the wind down of financial contracts or other agreements that were entered into prior to 4:00 p.m. eastern standard time on January 28, 2019, involving, or linked to, PdVSA securities issued prior to August 25, 2017 are authorized. This authorization is valid through 12:01 a.m. eastern standard time, March 3, 2019.

(e) Except as provided in paragraph (f) of this general license, all transactions and activities prohibited by Section 1(a)(iii) of E.O. 13808 or E.O. 13850 that are ordinarily incident and necessary to dealings in any bonds that were issued prior to August 25, 2017 (the effective date of E.O. 13808) by the following entities or any of their subsidiaries, are authorized:

- PDV Holdings, Inc.
- CITGO Holdings, Inc.
- Nynas AB

(f) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a), (c), (d), and (e);

(2) U.S. persons to sell PdVSA securities to, to purchase or invest in securities of, or to facilitate such transactions with, directly or indirectly, any person whose property and interests in property are blocked pursuant to E.O. 13850, including PdVSA and any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest, other than purchases of or investments in PdVSA securities (including settlement of purchases or sales that were pending on January 28, 2019) that are ordinarily incident and necessary to the divestment or transfer of PdVSA securities; or

(3) Any transaction that is otherwise prohibited under Executive Order 13850 of November 1, 2018, Executive Order 13835 of May 21, 2018, Executive Order 13827 of March 19, 2018, Executive Order 13808 of August 24, 2017, Executive Order 13692 of March 8, 2015, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the transactions described in paragraph (a) of this general license.

(g) Effective February 1, 2019, General License No. 9, dated January 28, 2019, is replaced and superseded in its entirety by this General License No. 9A.

Andrea Gacki,
Director, Office of Foreign Assets Control

Dated: February 1, 2019

Annex—Bonds Described in Paragraph (a) of General License 9A

List of Bonds Described in Paragraph (a) of General License 9A, as of February 1, 2019:

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
XS0294364954	EG3110533 ..	Petroleos de Venezuela SA	5.375	4/12/2007	4/12/2027
XS0294367205	EG3110772 ..	Petroleos de Venezuela SA	5.5	4/12/2007	4/12/2037
USP7807HAK16	EI4173619	Petroleos de Venezuela SA	8.5	10/29/2010	11/2/2017
US716558AB79	716558AB7 ..	Petroleos de Venezuela SA	8.5	10/29/2010	11/2/2017
US716558AC52	716558AC5 ..	Petroleos de Venezuela SA	12.75	2/17/2011	2/17/2022
USP7807HAM71	EI5787318	Petroleos de Venezuela SA	12.75	2/17/2011	2/17/2022
US716558AD36	716558AD3 ..	Petroleos de Venezuela SA	9	11/17/2011	11/17/2021
USP7807HAP03	EI8799468	Petroleos de Venezuela SA	9	11/17/2011	11/17/2021
USP7807HAQ85	EJ1968233 ...	Petroleos de Venezuela SA	9.75	5/17/2012	5/17/2035
US716558AE19	716558AE1 ..	Petroleos de Venezuela SA	9.75	5/17/2012	5/17/2035
USP7807HAR68	EJ9776299 ...	Petroleos de Venezuela SA	6	11/15/2013	11/15/2026
US716558AF83	716558AF8 ..	Petroleos de Venezuela SA	6	11/15/2013	11/15/2026
USP7807HAT25	EK2909308 ..	Petroleos de Venezuela SA	6	5/16/2014	5/16/2024
US716558AG66	716558AG6 ..	Petroleos de Venezuela SA	6	5/16/2014	5/16/2024
XS1126891685	JV9618804 ...	Petroleos de Venezuela SA	6	10/28/2014	10/28/2022
USP7807HAV70	QZ9940003 ..	Petroleos de Venezuela SA	8.5	10/28/2016	10/27/2020
US716558AH40	716558AH4 ..	Petroleos de Venezuela SA	8.5	10/28/2016	10/27/2020
SE0005994167	EK3410280 ..	Nynas AB	STIB3M +750.0.	06/26/2014	06/26/2018
USG70415AC18	DD0110070 ..	Petrozuata Finance Inc	8.37	6/27/1997	10/1/2022
US71676QAE61	71676QAE6	Petrozuata Finance Inc	8.37	6/27/1997	10/1/2022
USG2025MAB75	CP5100153 ..	Cerro Negro Finance Ltd	7.9	6/18/1998	12/1/2020
US156877AC63	156877AC6 ..	Cerro Negro Finance Ltd	8.03	6/18/1998	6/1/2028
USG2025MAC58	CP5100211 ..	Cerro Negro Finance Ltd	8.03	6/18/1998	6/1/2028

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
US156877AB80	156877AB8 ..	Cerro Negro Finance Ltd	7.9	6/18/1998	12/1/2020
XS0356521160	EH2888749 ..	CA La Electricidad de Caracas	8.5	4/10/2008	4/10/2018

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13808 of August 24, 2017

Imposing Additional Sanctions With Respect to the Situation in Venezuela

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

GENERAL LICENSE 9B

Authorizing Transactions Related to Dealings in Certain Securities

(a) Except as provided in paragraphs (f) and (g) of this general license, all transactions and activities prohibited by Section l(a)(iii) of Executive Order 13808 (E.O. 13808) or Executive Order 13850 (E.O. 13850) that are ordinarily incident and necessary to dealings in any debt (including the bonds listed on the Annex to this general license, promissory notes, and other receivables) of, or any equity in, Petróleos de Venezuela, S.A. (PdVSA) or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest, issued prior to August 25, 2017 (the effective date of E.O. 13808) (together, PdVSA securities), are authorized, provided that any divestment or transfer of, or facilitation of divestment or transfer of, any holdings in such PdVSA securities must be to a non-U.S. person.

(b) The transactions and activities authorized in paragraph (a) include facilitating, clearing, and settling transactions to divest to a non-U.S. person PdVSA securities, including on behalf of U.S. persons.

(c) Except as provided in paragraph (g) of this general license, all transactions and activities prohibited by Section l(a)(iii) of E.O. 13808 or E.O. 13850 that are ordinarily incident and necessary to facilitating, clearing, and settling trades of holdings in PdVSA securities are authorized, provided such trades were placed prior to 4:00 p.m. eastern standard time on January 28, 2019.

(d) Except as provided in paragraph (g) of this general license, all transactions and activities prohibited by Section l(a)(iii) of E.O. 13808 or E.O 13850 that are ordinarily incident and necessary to the wind down of financial contracts or other agreements that were entered into prior to 4:00 p.m. eastern standard time on January 28, 2019, involving, or linked to, PdVSA securities are authorized. This authorization is valid through 12:01 a.m. eastern standard time, March 11, 2019.

(e) Except as provided in paragraph (g) of this general license, all transactions and activities prohibited by Section l(a)(iii) of E.O. 13808 or E.O. 13850 that are ordinarily incident and necessary to dealings in any bonds that were issued prior to August 25, 2017 (the effective date of E.O. 13808) by the following entities or any of their subsidiaries, are authorized:

- PDV Holdings, Inc.
- CITGO Holdings, Inc.
- Nynas AB

(f) Paragraph (a) of this general license does not authorize:

(1) U.S. persons to sell, or to facilitate the sale of, PdVSA securities to, directly or indirectly, any person whose property and interests in property are blocked pursuant to E.O. 13850, including PdVSA and any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest; or

(2) U.S. persons to purchase or invest in, or to facilitate the purchase of or investment in, directly or indirectly, PdVSA securities, other than purchases of or investments in PdVSA securities (including settlement of purchases or sales that were pending on January 28, 2019) that are ordinarily incident and necessary to the divestment or transfer of holdings in PdVSA securities.

(g) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a), (c), (d), and (e); or

(2) Any transaction that is otherwise prohibited under Executive Order 13850 of November 1, 2018, Executive Order 13835 of May 21, 2018, Executive Order 13827 of March 19, 2018, Executive Order 13808 of August 24, 2017, Executive Order 13692 of March 8, 2015, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the transactions described in this general license.

(h) Effective February 11, 2019, General License No. 9A, dated February 1, 2019, is replaced and superseded in its entirety by this General License No. 9B.

Andrea Gacki,
Director, Office of Foreign Assets Control
Dated: February 11, 2019

Annex—Bonds Described in Paragraph (a) of General License 9B

List of Bonds Described in Paragraph (a) of General License 9B, as of February 11, 2019:

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
XS0294364954	EG3110533 ..	Petroleos de Venezuela SA	5.375	4/12/2007	4/12/2027
XS0294367205	EG3110772 ..	Petroleos de Venezuela SA	5.5	4/12/2007	4/12/2037
USP7807HAK16	EI4173619	Petroleos de Venezuela SA	8.5	10/29/2010	11/2/2017
US716558AB79	716558AB7 ..	Petroleos de Venezuela SA	8.5	10/29/2010	11/2/2017
US716558AC52	716558AC5 ..	Petroleos de Venezuela SA	12.75	2/17/2011	2/17/2022
USP7807HAM71	EI5787318	Petroleos de Venezuela SA	12.75	2/17/2011	2/17/2022
US716558AD36	716558AD3 ..	Petroleos de Venezuela SA	9	11/17/2011	11/17/2021
USP7807HAP03	EI8799468	Petroleos de Venezuela SA	9	11/17/2011	11/17/2021
USP7807HAQ85	EJ1968233 ...	Petroleos de Venezuela SA	9.75	5/17/2012	5/17/2035
US716558AE19	716558AE1 ..	Petroleos de Venezuela SA	9.75	5/17/2012	5/17/2035
USP7807HAR68	EJ9776299 ...	Petroleos de Venezuela SA	6	11/15/2013	11/15/2026
US716558AF83	716558AF8 ..	Petroleos de Venezuela SA	6	11/15/2013	11/15/2026
USP7807HAT25	EK2909308 ..	Petroleos de Venezuela SA	6	5/16/2014	5/16/2024
US716558AG66	716558AG6 ..	Petroleos de Venezuela SA	6	5/16/2014	5/16/2024
XS1126891685	JV9618804 ...	Petroleos de Venezuela SA	6	10/28/2014	10/28/2022

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
USP7807HAV70	QZ9940003 ..	Petroleos de Venezuela SA	8.5	10/28/2016	10/27/2020
US716558AH40	716558AH4 ..	Petroleos de Venezuela SA	8.5	10/28/2016	10/27/2020
SE0005994167	EK3410280 ..	Nynas AB	STIB3M +750.0.	06/26/2014	06/26/2018
USG70415AC18	DD0110070 ..	Petrozuata Finance Inc	8.37	6/27/1997	10/1/2022
US71676QAE61	71676QAE6	Petrozuata Finance Inc	8.37	6/27/1997	10/1/2022
USG2025MAB75	CP5100153 ..	Cerro Negro Finance Ltd	7.9	6/18/1998	12/1/2020
US156877AC63	156877AC6 ..	Cerro Negro Finance Ltd	8.03	6/18/1998	6/1/2028
USG2025MAC58	CP5100211 ..	Cerro Negro Finance Ltd	8.03	6/18/1998	6/1/2028
US156877AB80	156877AB8 ..	Cerro Negro Finance Ltd	7.9	6/18/1998	12/1/2020
XS0356521160	EH2888749 ..	CA La Electricidad de Caracas	8.5	4/10/2008	4/10/2018

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13808 of August 24, 2017

Imposing Additional Sanctions With Respect to the Situation in Venezuela

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

GENERAL LICENSE 9C

Authorizing Transactions Related to Dealings in Certain Securities

(a) Except as provided in paragraphs (f) and (g) of this general license, all transactions and activities prohibited by Section 1 (a)(iii) of Executive Order 13808 (E.O. 13808) or Executive Order 13850 (E.O. 13850) that are ordinarily incident and necessary to dealings in any debt (including the bonds listed on the Annex to this general license, promissory notes, and other receivables) of, or any equity in, Petr6leos de Venezuela, S.A. (PdVSA) or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest, issued prior to August 25, 2017 (the effective date of E.O. 13808) (together, PdVSA securities), are authorized, provided that any divestment or transfer of, or facilitation of divestment or transfer of, any holdings in such PdVSA securities must be to a non-U.S. person.

(b) The transactions and activities authorized in paragraph (a) include facilitating, clearing, and settling transactions to divest to a non-U.S. person PdVSA securities, including on behalf of U.S. persons.

(c) Except as provided in paragraph (g) of this general license, all transactions and activities prohibited by Section l(a)(iii) of E.O. 13808 or E.O. 13850 that are ordinarily incident and necessary to facilitating, clearing, and settling trades of holdings in PdVSA securities are authorized, provided such trades were placed prior to 4:00 p.m. eastern standard time on January 28, 2019.

(d) Except as provided in paragraph (g) of this general license, all transactions and activities prohibited by Section l(a)(iii) of E.O. 13808 or E.O 13850 that are ordinarily incident and necessary to the wind down of financial contracts or other agreements that were entered into prior to 4:00 p.m. eastern standard time on January 28, 2019, involving, or linked to, PdVSA securities are authorized. This authorization is valid through 12:01 a.m. eastern daylight time, May 10, 2019.

(e) Except as provided in paragraph (g) of this general license, all transactions and activities prohibited by Section l(a)(iii) of E.O. 13808 or E.O. 13850 that are ordinarily incident and necessary to dealings in any bonds that were issued prior to August 25, 2017 (the effective date of E.O. 13808) by the following entities or any of their subsidiaries, are authorized:

- PDV Holdings, Inc.
- CITGO Holdings, Inc.
- Nynas AB

(f) Paragraph (a) of this general license does not authorize:

(1) U.S. persons to sell, or to facilitate the sale of, PdVSA securities to, directly or indirectly, any person whose property and interests in property are blocked pursuant to E.O. 13850, including PdVSA and any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest; or

(2) U.S. persons to purchase or invest in, or to facilitate the purchase of or investment in, directly or indirectly, PdVSA securities, other than purchases of or investments in PdVSA securities (including settlement of purchases or sales that were pending on January 28, 2019) that are ordinarily incident and necessary to the divestment or transfer of holdings in PdVSA securities.

(g) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a), (c), (d), and (e); or

(2) Any transaction that is otherwise prohibited under Executive Order 13850 of November 1, 2018, Executive Order 13835 of May 21, 2018, Executive Order 13827 of March 19, 2018, Executive Order 13808 of August 24, 2017, Executive Order 13692 of March 8, 2015, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the transactions described in this general license.

(h) Effective March 8, 2019, General License No. 9B, dated February 11, 2019, is replaced and superseded in its entirety by this General License No. 9C.

Andrea Gacki,
Director, Office of Foreign Assets Control
Dated: March 8, 2019

Annex—Bonds Described in Paragraph (a) of General License 9C

List of Bonds Described in Paragraph (a) of General License 9C, as of March 8, 2019:

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
XS0294364954	EG3110533 ..	Petroleos de Venezuela SA	5.375	4/12/2007	4/12/2027
XS0294367205	EG3110772 ..	Petroleos de Venezuela SA	5.5	4/12/2007	4/12/2037
USP7807HAK16	EI4173619	Petroleos de Venezuela SA	8.5	10/29/2010	11/2/2017
US716558AB79	716558AB7 ..	Petroleos de Venezuela SA	8.5	10/29/2010	11/2/2017
US716558AC52	716558AC5 ..	Petroleos de Venezuela SA	12.75	2/17/2011	2/17/2022
USP7807HAM71	EI5787318	Petroleos de Venezuela SA	12.75	2/17/2011	2/17/2022

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
US716558AD36	716558AD3 ..	Petroleos de Venezuela SA	9	11/17/2011	11/17/2021
USP7807HAP03	EI8799468	Petroleos de Venezuela SA	9	11/17/2011	11/17/2021
USP7807HAQ85	EJ1968233 ...	Petroleos de Venezuela SA	9.75	5/17/2012	5/17/2035
US716558AE19	716558AE1 ..	Petroleos de Venezuela SA	9.75	5/17/2012	5/17/2035
USP7807HAR68	EJ9776299 ...	Petroleos de Venezuela SA	6	11/15/2013	11/15/2026
US716558AF83	716558AF8 ..	Petroleos de Venezuela SA	6	11/15/2013	11/15/2026
USP7807HAT25	EK2909308 ..	Petroleos de Venezuela SA	6	5/16/2014	5/16/2024
US716558AG66	716558AG6 ..	Petroleos de Venezuela SA	6	5/16/2014	5/16/2024
XS1126891685	JV9618804 ...	Petroleos de Venezuela SA	6	10/28/2014	10/28/2022
USP7807HAV70	QZ9940003 ..	Petroleos de Venezuela SA	8.5	10/28/2016	10/27/2020
US716558AH40	716558AH4 ..	Petroleos de Venezuela SA	8.5	10/28/2016	10/27/2020
SE0005994167	EK3410280 ..	Nynas AB	STIB3M +750.0.	06/26/2014	06/26/2018
USG70415AC18	DD0110070 ..	Petrozuata Finance Inc	8.37	6/27/1997	10/1/2022
US71676QAE61	71676QAE6	Petrozuata Finance Inc	8.37	6/27/1997	10/1/2022
USG2025MAB75	CP5100153 ..	Cerro Negro Finance Ltd	7.9	6/18/1998	12/1/2020
US156877AC63	156877AC6 ..	Cerro Negro Finance Ltd	8.03	6/18/1998	6/1/2028
USG2025MAC58	CP5100211 ..	Cerro Negro Finance Ltd	8.03	6/18/1998	6/1/2028
US156877AB80	156877AB8 ..	Cerro Negro Finance Ltd	7.9	6/18/1998	12/1/2020
XS0356521160	EH2888749 ..	CA La Electricidad de Caracas	8.5	4/10/2008	4/10/2018

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13808 of August 24, 2017

Imposing Additional Sanctions With Respect to the Situation in Venezuela

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

GENERAL LICENSE 9D

Authorizing Transactions Related to Dealings in Certain Securities

(a) Except as provided in paragraphs (f) and (g) of this general license, all transactions and activities prohibited by Section l(a)(iii) of Executive Order (E.O.) 13808 of August 24, 2017, as amended by E.O. 13857 of January 25, 2019 (''Taking Additional Steps to Address the National Emergency With Respect to Venezuela'') (E.O. 13808), or by E.O. 13850, as amended by E.O. 13857 (E.O. 13850), that are ordinarily incident and necessary to dealings in any debt (including the bonds listed on the Annex to this general license, promissory notes, and other receivables) of, or any equity in, Petróleos de Venezuela, S.A. (PdVSA) or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest, issued prior to August 25, 2017 (the effective date of E.O. 13808) (together, PdVSA securities), are authorized, provided that any divestment or transfer of, or facilitation of divestment or transfer of, any holdings in such PdVSA securities must be to a non-U.S. person.

(b) The transactions and activities authorized in paragraph (a) include facilitating, clearing, and settling transactions to divest to a non-U.S. person PdVSA securities, including on behalf of U.S. persons.

(c) Except as provided in paragraph (g) of this general license, all transactions and activities prohibited by Section l(a)(iii) of E.O. 13808 or by E.O. 13850 that are ordinarily incident and necessary to facilitating, clearing, and settling trades of holdings in PdVSA securities are authorized, provided such trades were placed prior to 4:00 p.m. eastern standard time on January 28, 2019.

(d) Except as provided in paragraph (g) of this general license, all transactions and activities prohibited by Section l(a)(iii) of E.O. 13808 or by E.O 13850 that are ordinarily incident and necessary to the wind down of financial contracts or other agreements that were entered into prior to 4:00 p.m. eastern standard time on January 28, 2019, involving, or linked to, PdVSA securities are authorized. This authorization is valid through 12:01 a.m. eastern daylight time, September 30, 2019.

(e) Except as provided in paragraph (g) of this general license, all transactions and activities prohibited by Section l(a)(iii) of E.O. 13808 or by E.O. 13850 that are ordinarily incident and necessary to dealings in any bonds that were issued prior to August 25, 2017 (the effective date of E.O. 13808) by the following entities or any of their subsidiaries, are authorized:

- PDV Holdings, Inc.
- CITGO Holdings, Inc.
- Nynas AB

(f) Paragraph (a) of this general license does not authorize:

(1) U.S. persons to sell, or to facilitate the sale of, PdVSA securities to, directly or indirectly, any person whose property and interests in property are blocked pursuant to E.O. 13850, including Banco Central de Venezuela, PdVSA, or any entity in which PdVSA or Banco Central de Venezuela owns, directly or indirectly, a 50 percent or greater interest; or

(2) U.S. persons to purchase or invest in, or to facilitate the purchase of or investment in, directly or indirectly, PdVSA securities, other than purchases of or investments in PdVSA securities (including settlement of purchases or sales that were pending on January 28, 2019) that are ordinarily incident and necessary to the divestment or transfer of holdings in PdVSA securities.

(g) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a), (c), (d), and (e); or

(2) Any transaction that is otherwise prohibited under Executive Order 13850 of November 1, 2018, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, E.O. 13692 of March 8, 2015, each as amended by E.O. 13857, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the transactions involving Banco Central de Venezuela, PdVSA, or any entity in which PdVSA or Banco Central de Venezuela owns, directly or indirectly, a 50 percent or greater interest described in this general license.

(h) Effective April 17, 2019, General License No. 9C, dated March 8, 2019, is replaced and superseded in its entirety by this General License No. 9D.

Andrea Gacki,
Director, Office of Foreign Assets Control

Dated: April 17, 2019

Annex—Bonds Described in Paragraph (a) of General License 9D

List of Bonds Described in Paragraph (a) of General License 9D, as of April 17, 2019:

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
XS0294364954	EG3110533	Petroleos de Venezuela SA	5.375	4/12/2007	4/12/2027
XS0294367205	EG3110772	Petroleos de Venezuela SA	5.5	4/12/2007	4/12/2037
USP7807HAK16	EI4173619	Petroleos de Venezuela SA	8.5	10/29/2010	11/2/2017
US716558AB79	716558AB7	Petroleos de Venezuela SA	8.5	10/29/2010	11/2/2017
US716558AC52	716558AC5	Petroleos de Venezuela SA	12.75	2/17/2011	2/17/2022
USP7807HAM71	EI5787318	Petroleos de Venezuela SA	12.75	2/17/2011	2/17/2022
US716558AD36	716558AD3	Petroleos de Venezuela SA	9	11/17/2011	11/17/2021
USP7807HAP03	EI8799468	Petroleos de Venezuela SA	9	11/17/2011	11/17/2021
USP7807HAQ85	EJ1968233	Petroleos de Venezuela SA	9.75	5/17/2012	5/17/2035
US716558AE19	716558AE1	Petroleos de Venezuela SA	9.75	5/17/2012	5/17/2035
USP7807HAR68	EJ9776299	Petroleos de Venezuela SA	6	11/15/2013	11/15/2026
US716558AF83	716558AF8	Petroleos de Venezuela SA	6	11/15/2013	11/15/2026
USP7807HAT25	EK2909308	Petroleos de Venezuela SA	6	5/16/2014	5/16/2024
US716558AG66	716558AG6	Petroleos de Venezuela SA	6	5/16/2014	5/16/2024
XS1126891685	JV9618804	Petroleos de Venezuela SA	6	10/28/2014	10/28/2022
USP7807HAV70	QZ9940003	Petroleos de Venezuela SA	8.5	10/28/2016	10/27/2020
US716558AH40	716558AH4	Petroleos de Venezuela SA	8.5	10/28/2016	10/27/2020
SE0005994167	EK3410280	Nynas AB	STIB3M +750.0.	06/26/2014	06/26/2018
USG70415AC18	DD0110070	Petrozuata Finance Inc	8.37	6/27/1997	10/1/2022
US71676QAE61	71676QAE6	Petrozuata Finance Inc	8.37	6/27/1997	10/1/2022
USG2025MAB75	CP5100153	Cerro Negro Finance Ltd	7.9	6/18/1998	12/1/2020
US156877AC63	156877AC6	Cerro Negro Finance Ltd	8.03	6/18/1998	6/1/2028
USG2025MAC58	CP5100211	Cerro Negro Finance Ltd	8.03	6/18/1998	6/1/2028
US156877AB80	156877AB8	Cerro Negro Finance Ltd	7.9	6/18/1998	12/1/2020
XS0356521160	EH2888749	CA La Electricidad de Caracas	8.5	4/10/2008	4/10/2018

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13808 of August 24, 2017

Imposing Additional Sanctions With Respect to the Situation in Venezuela

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

Executive Order of August 5, 2019

Blocking Property of the Government of Venezuela

GENERAL LICENSE 9E

Authorizing Transactions Related to Dealings in Certain Securities

(a) Except as provided in paragraphs (f) and (g) of this general license, all transactions and activities prohibited by Section 1(a)(iii) of Executive Order (E.O.) 13808 or by E.O. 13850, as amended by E.O. 13857 of January 25, 2019, or by E.O. of August 5, 2019 that are ordinarily incident and necessary to dealings in any debt (including the bonds listed on the Annex to this general license, promissory notes, and other receivables) of, or any equity in, Petróleos de Venezuela, S.A. (PdVSA) or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest, issued prior to August 25, 2017 (the effective date of E.O. 13808) (together, PdVSA securities), are authorized, provided that any divestment or transfer of, or facilitation of divestment or transfer of, any holdings in such PdVSA securities must be to a non-U.S. person.

(b) The transactions and activities authorized in paragraph (a) include facilitating, clearing, and settling transactions to divest to a non-U.S. person PdVSA securities, including on behalf of U.S. persons.

(c) Except as provided in paragraph (g) of this general license, all transactions and activities prohibited by Section 1(a)(iii) of E.O. 13808 or by E.O. 13850, each as amended, or by E.O. of August 5, 2019, that are ordinarily incident and necessary to facilitating, clearing, and settling trades of holdings in PdVSA securities are authorized, provided such trades were placed prior to 4:00 p.m. eastern standard time on January 28, 2019.

(d) Except as provided in paragraph (g) of this general license, all transactions and activities prohibited by Section 1(a)(iii) of E.O. 13808 or by E.O 13850, each as amended, or by E.O. of August 5, 2019, that are ordinarily incident and necessary to the wind down of financial contracts or other agreements that were entered into prior to 4:00 p.m. eastern standard time on January 28, 2019, involving, or linked to, PdVSA securities are authorized. This authorization is valid through 12:01 a.m. eastern daylight time, September 30, 2019.

(e) Except as provided in paragraph (g) of this general license, all transactions and activities prohibited by Section 1(a)(iii) of E.O. 13808, as amended, by E.O. 13850, as amended, or by E.O. of August 5, 2019 that are ordinarily incident and necessary to dealings in any bonds that were issued prior to August 25, 2017 (the effective date of E.O. 13808) by the following entities or any of their subsidiaries, are authorized:

- PDV Holdings, Inc.
- CITGO Holdings, Inc.
- Nynas AB

(f) Paragraph (a) of this general license does not authorize:

(1) U.S. persons to sell, or to facilitate the sale of, PdVSA securities to, directly or indirectly, any person whose property and interests in property are blocked pursuant to E.O. 13850, as amended, or E.O. of August 5, 2019; or

(2) U.S. persons to purchase or invest in, or to facilitate the purchase of or investment in, directly or indirectly,

PdVSA securities, other than purchases of or investments in PdVSA securities (including settlement of purchases or sales that were pending on January 28, 2019) that are ordinarily incident and necessary to the divestment or transfer of holdings in PdVSA securities.

(g) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a), (c), (d), and (e); or

(2) Any transaction that is otherwise prohibited by E.O. of August 5, 2019, or E.O. 13850, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808, or E.O. 13692 of March 8, 2015, each as amended by E.O. 13857, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the transactions involving Government of Venezuela, including Banco Central de Venezuela, PdVSA, or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest that are described in this general license.

(h) Effective August 5, 2019, General License No. 9D, dated April 17, 2019, is replaced and superseded in its entirety by this General License No. 9E.

Andrea Gacki,

Director, Office of Foreign Assets Control

Dated: August 5, 2019

Annex—Bonds Described in Paragraph (a) of General License 9E

List of Bonds Described in Paragraph (a) of General License 9E, as of August 5, 2019:

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
XS0294364954	EG3110533	Petroleos de Venezuela SA	5.375	4/12/2007	4/12/2027
XS0294367205	EG3110772	Petroleos de Venezuela SA	5.5	4/12/2007	4/12/2037
USP7807HAK16	EI4173619	Petroleos de Venezuela SA	8.5	10/29/2010	11/2/2017
US716558AB79	716558AB7	Petroleos de Venezuela SA	8.5	10/29/2010	11/2/2017
US716558AC52	716558AC5	Petroleos de Venezuela SA	12.75	2/17/2011	2/17/2022
USP7807HAM71	EI5787318	Petroleos de Venezuela SA	12.75	2/17/2011	2/17/2022
US716558AD36	716558AD3	Petroleos de Venezuela SA	9	11/17/2011	11/17/2021
USP7807HAP03	EI8799468	Petroleos de Venezuela SA	9	11/17/2011	11/17/2021
USP7807HAQ85	EJ1968233	Petroleos de Venezuela SA	9.75	5/17/2012	5/17/2035
US716558AE19	716558AE1	Petroleos de Venezuela SA	9.75	5/17/2012	5/17/2035
USP7807HAR68	EJ9776299	Petroleos de Venezuela SA	6	11/15/2013	11/15/2026
US716558AF83	716558AF8	Petroleos de Venezuela SA	6	11/15/2013	11/15/2026
USP7807HAT25	EK2909308	Petroleos de Venezuela SA	6	5/16/2014	5/16/2024
US716558AG66	716558AG6	Petroleos de Venezuela SA	6	5/16/2014	5/16/2024
XS1126891685	JV9618804	Petroleos de Venezuela SA	6	10/28/2014	10/28/2022
USP7807HAV70	QZ9940003	Petroleos de Venezuela SA	8.5	10/28/2016	10/27/2020
US716558AH40	716558AH4	Petroleos de Venezuela SA	8.5	10/28/2016	10/27/2020
SE0005994167	EK3410280	Nynas AB	STIB3M +750.0.	06/26/2014	06/26/2018
USG70415AC18	DD0110070	Petrozuata Finance Inc	8.37	6/27/1997	10/1/2022
US71676QAE61	71676QAE6	Petrozuata Finance Inc	8.37	6/27/1997	10/1/2022
USG2025MAB75	CP5100153	Cerro Negro Finance Ltd	7.9	6/18/1998	12/1/2020
US156877AC63	156877AC6	Cerro Negro Finance Ltd	8.03	6/18/1998	6/1/2028
USG2025MAC58	CP5100211	Cerro Negro Finance Ltd	8.03	6/18/1998	6/1/2028
US156877AB80	156877AB8	Cerro Negro Finance Ltd	7.9	6/18/1998	12/1/2020
XS0356521160	EH2888749	CA La Electricidad de Caracas	8.5	4/10/2008	4/10/2018

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13808 of August 24, 2017

Imposing Additional Sanctions With Respect to the Situation in Venezuela

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

Executive Order 13884 of August 5, 2019

Blocking Property of the Government of Venezuela

GENERAL LICENSE 9F

Authorizing Transactions Related to Dealings in Certain Securities

(a) Except as provided in paragraphs (f) and (g) of this general license, all transactions and activities prohibited by Section 1(a)(iii) of Executive Order (E.O.) 13808 or by E.O. 13850, as amended by E.O. 13857 of January 25, 2019, or by E.O. 13884 that are ordinarily incident and necessary to dealings in any debt (including the bonds listed on the Annex to this general license, promissory notes, and other receivables) of, or any equity in, Petróleos de Venezuela, S.A. (PdVSA) or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest, issued prior to August 25, 2017 (the effective date of E.O. 13808) (together, PdVSA securities), are authorized, provided that any divestment or transfer of, or facilitation of divestment or transfer of, any holdings in such PdVSA securities must be to a non-U.S. person.

(b) The transactions and activities authorized in paragraph (a) include facilitating, clearing, and settling transactions to divest to a non-U.S. person PdVSA securities, including on behalf of U.S. persons.

(c) Except as provided in paragraph (g) of this general license, all transactions and activities prohibited by Section 1(a)(iii) of E.O. 13808 or by E.O. 13850, each as amended, or by E.O. 13884, that are ordinarily incident and necessary to facilitating, clearing, and settling trades of holdings in PdVSA securities are authorized, provided such trades were placed prior to 4:00 p.m. eastern standard time on January 28, 2019.

(d) Except as provided in paragraph (g) of this general license, all transactions and activities prohibited by Section 1(a)(iii) of E.O. 13808 or by E.O 13850, each as amended, or by E.O. 13884, that are ordinarily incident and necessary to the wind down of financial contracts or other agreements that were entered into prior to 4:00 p.m. eastern standard time on January 28, 2019, involving, or linked to, PdVSA

securities are authorized. This authorization is valid through 12:01 a.m. eastern daylight time, March 31, 2020.

(e) Except as provided in paragraph (g) of this general license, all transactions and activities prohibited by Section 1(a)(iii) of E.O. 13808, as amended, by E.O. 13850, as amended, or by E.O. 13884 that are ordinarily incident and necessary to dealings in any bonds that were issued prior to August 25, 2017 (the effective date of E.O. 13808) by the following entities or any of their subsidiaries, are authorized:

- PDV Holdings, Inc.
- CITGO Holdings, Inc.
- Nynas AB

(f) Paragraph (a) of this general license does not authorize:

(1) U.S. persons to sell, or to facilitate the sale of, PdVSA securities to, directly or indirectly, any person whose property and interests in property are blocked pursuant to E.O. 13850, as amended, or E.O. 13884; or

(2) U.S. persons to purchase or invest in, or to facilitate the purchase of or investment in, directly or indirectly, PdVSA securities, other than purchases of or investments in PdVSA securities (including settlement of purchases or sales that were pending on January 28, 2019) that are ordinarily incident and necessary to the divestment or transfer of holdings in PdVSA securities.

(g) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V, except as authorized by paragraphs (a), (c), (d), and (e); or

(2) Any transaction that is otherwise prohibited by E.O. 13884, or E.O. 13850, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808, or E.O. 13692 of March 8, 2015, each as amended by E.O. 13857, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the transactions involving Government of Venezuela, including Banco Central de Venezuela, PdVSA, or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest that are described in this general license.

(h) Effective September 30, 2019, General License No. 9E, dated August 5, 2019, is replaced and superseded in its entirety by this General License No. 9F.

Andrea Gacki,
Director, Office of Foreign Assets Control

Dated: September 30, 2019

Annex—Bonds Described in Paragraph (a) of General License 9F

List of Bonds Described in Paragraph (a) of General License 9F, as of September 30, 2019:

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
XS0294364954	EG3110533 ..	Petroleos de Venezuela SA	5.375	4/12/2007	4/12/2027
XS0294367205	EG3110772 ..	Petroleos de Venezuela SA	5.5	4/12/2007	4/12/2037
USP7807HAK16	EI4173619	Petroleos de Venezuela SA	8.5	10/29/2010	11/2/2017
US716558AB79	716558AB7 ..	Petroleos de Venezuela SA	8.5	10/29/2010	11/2/2017
US716558AC52	716558AC5 ..	Petroleos de Venezuela SA	12.75	2/17/2011	2/17/2022
USP7807HAM71	EI5787318	Petroleos de Venezuela SA	12.75	2/17/2011	2/17/2022
US716558AD36	716558AD3 ..	Petroleos de Venezuela SA	9	11/17/2011	11/17/2021
USP7807HAP03	EI8799468	Petroleos de Venezuela SA	9	11/17/2011	11/17/2021
USP7807HAQ85	EJ1968233 ...	Petroleos de Venezuela SA	9.75	5/17/2012	5/17/2035
US716558AE19	716558AE1 ..	Petroleos de Venezuela SA	9.75	5/17/2012	5/17/2035
USP7807HAR68	EJ9776299 ...	Petroleos de Venezuela SA	6	11/15/2013	11/15/2026
US716558AF83	716558AF8 ..	Petroleos de Venezuela SA	6	11/15/2013	11/15/2026
USP7807HAT25	EK2909308 ..	Petroleos de Venezuela SA	6	5/16/2014	5/16/2024
US716558AG66	716558AG6 ..	Petroleos de Venezuela SA	6	5/16/2014	5/16/2024
XS1126891685	JV9618804 ...	Petroleos de Venezuela SA	6	10/28/2014	10/28/2022
USP7807HAV70	QZ9940003 ..	Petroleos de Venezuela SA	8.5	10/28/2016	10/27/2020
US716558AH40	716558AH4 ..	Petroleos de Venezuela SA	8.5	10/28/2016	10/27/2020
SE0005994167	EK3410280 ..	Nynas AB	STIB3M +750.0.	06/26/2014	06/26/2018
USG70415AC18	DD0110070 ..	Petrozuata Finance Inc	8.37	6/27/1997	10/1/2022
US71676QAE61	71676QAE6	Petrozuata Finance Inc	8.37	6/27/1997	10/1/2022
USG2025MAB75	CP5100153 ..	Cerro Negro Finance Ltd	7.9	6/18/1998	12/1/2020
US156877AC63	156877AC6 ..	Cerro Negro Finance Ltd	8.03	6/18/1998	6/1/2028
USG2025MAC58	CP5100211 ..	Cerro Negro Finance Ltd	8.03	6/18/1998	6/1/2028
US156877AB80	156877AB8 ..	Cerro Negro Finance Ltd	7.9	6/18/1998	12/1/2020
XS0356521160	EH2888749 ..	CA La Electricidad de Caracas	8.5	4/10/2008	4/10/2018

OFFICE OF FOREIGN ASSETS CONTROL

Venezuela Sanctions Regulations

31 CFR part 591

GENERAL LICENSE NO. 9G

Authorizing Transactions Related to Dealings in Certain Securities

(a) Except as provided in paragraphs (f) and (g) of this general license, all transactions and activities prohibited by Subsection 1(a)(iii) of Executive Order (E.O.) 13808 of August 24, 2017 or by E.O. 13850 of November 1, 2018, each as amended by E.O. 13857 of January 25, 2019, or by E.O. 13884 of August 5, 2019, as collectively incorporated into the Venezuela Sanctions Regulations, 31 CFR part 591 (the VSR), that are ordinarily incident and necessary to dealings in any debt (including the bonds listed on the Annex to this general license, promissory notes, and other receivables) of, or any equity in, Petróleos de Venezuela, S.A. (PdVSA) or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest, issued prior to August 25, 2017 (the effective date of E.O. 13808) (together, ''PdVSA Securities''), are authorized, provided that any divestment or transfer of, or facilitation of divestment or transfer of, any holdings in such PdVSA Securities must be to a non-U.S. person.

(b) The transactions and activities authorized in paragraph (a) include facilitating, clearing, and settling transactions to divest to a non-U.S. person PdVSA Securities, including on behalf of U.S. persons.

(c) Except as provided in paragraph (g) of this general license, all transactions and activities prohibited by Subsection 1(a)(iii) of E.O. 13808 or by E.O. 13850, each as amended, or by E.O. 13884, as collectively incorporated into

the VSR, that are ordinarily incident and necessary to facilitating, clearing, and settling trades of holdings in PdVSA Securities are authorized, provided such trades were placed prior to 4:00 p.m. eastern standard time on January 28, 2019.

(d) Except as provided in paragraph (g) of this general license, all transactions and activities prohibited by Subsection 1(a)(iii) of E.O. 13808 or by E.O 13850, each as amended, or by E.O. 13884, as collectively incorporated into the VSR, that are ordinarily incident and necessary to the wind down of financial contracts or other agreements that were entered into prior to 4:00 p.m. eastern standard time on January 28, 2019, involving, or linked to, PdVSA Securities are authorized. This authorization is valid through 12:01 a.m. eastern daylight time, March 31, 2020.

(e) Except as provided in paragraph (g) of this general license, all transactions and activities prohibited by Subsection 1(a)(iii) of E.O. 13808 or by E.O. 13850, each as amended, or by E.O. 13884, as collectively incorporated into the VSR, that are ordinarily incident and necessary to dealings in any bonds that were issued prior to August 25, 2017 (the effective date of E.O. 13808) by the following entities or any of their subsidiaries, are authorized:

- PDV Holdings, Inc.
- CITGO Holdings, Inc.

(f) Paragraph (a) of this general license does not authorize:

(1) U.S. persons to sell, or to facilitate the sale of, PdVSA Securities to, directly or indirectly, any person whose property and interests in property are blocked pursuant to the VSR; or

(2) U.S. persons to purchase or invest in, or to facilitate the purchase of or investment in, directly or indirectly, PdVSA Securities, other than purchases of or investments in PdVSA Securities (including settlement of purchases or sales that were pending on January 28, 2019) that are ordinarily incident and necessary to the divestment or transfer of holdings in PdVSA Securities.

(g) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to the VSR, or any other part of 31 CFR chapter V, except as authorized by paragraphs (a), (c), (d), and (e); or

(2) Any transactions or activities otherwise prohibited by the VSR, or any other part of 31 CFR chapter V, or any transactions or activities with any blocked persons other than transactions or activities involving Government of Venezuela, including Banco Central de Venezuela, PdVSA, or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest, that are described in this general license.

(h) Effective May 12, 2020, General License No. 9F, dated September 30, 2019, is replaced and superseded in its entirety by this General License No. 9G.

Andrea Gacki,
Director, Office of Foreign Assets Control
Dated: May 12, 2020

Annex—Bonds Described in Paragraph (a) of General License No. 9G

List of Bonds Described in Paragraph (a) of General License No. 9G, as of May 12, 2020:

ISIN	CUSIP	Issuer name	Cpn	Issue date	Maturity
XS0294364954	EG3110533	Petroleos de Venezuela SA	5.375	4/12/2007	4/12/2027
XS0294367205	EG3110772	Petroleos de Venezuela SA	5.5	4/12/2007	4/12/2037
USP7807HAK16	EI4173619	Petroleos de Venezuela SA	8.5	10/29/2010	11/2/2017
US716558AB79	716558AB7	Petroleos de Venezuela SA	8.5	10/29/2010	11/2/2017
US716558AC52	716558AC5	Petroleos de Venezuela SA	12.75	2/17/2011	2/17/2022
USP7807HAM71	EI5787318	Petroleos de Venezuela SA	12.75	2/17/2011	2/17/2022
US716558AD36	716558AD3	Petroleos de Venezuela SA	9	11/17/2011	11/17/2021
USP7807HAP03	EI8799468	Petroleos de Venezuela SA	9	11/17/2011	11/17/2021
USP7807HAQ85	EJ1968233	Petroleos de Venezuela SA	9.75	5/17/2012	5/17/2035
US716558AE19	716558AE1	Petroleos de Venezuela SA	9.75	5/17/2012	5/17/2035
USP7807HAR68	EJ9776299	Petroleos de Venezuela SA	6	11/15/2013	11/15/2026
US716558AF83	716558AF8	Petroleos de Venezuela SA	6	11/15/2013	11/15/2026
USP7807HAT25	EK2909308	Petroleos de Venezuela SA	6	5/16/2014	5/16/2024
US716558AG66	716558AG6	Petroleos de Venezuela SA	6	5/16/2014	5/16/2024
XS1126891685	JV9618804	Petroleos de Venezuela SA	6	10/28/2014	10/28/2022
USP7807HAV70	QZ9940003	Petroleos de Venezuela SA	8.5	10/28/2016	10/27/2020
US716558AH40	716558AH4	Petroleos de Venezuela SA	8.5	10/28/2016	10/27/2020
USG70415AC18	DD0110070	Petrozuata Finance Inc	8.37	6/27/1997	10/1/2022
US71676QAE61	71676QAE6	Petrozuata Finance Inc	8.37	6/27/1997	10/1/2022
USG2025MAB75	CP5100153	Cerro Negro Finance Ltd	7.9	6/18/1998	12/1/2020
US156877AC63	156877AC6	Cerro Negro Finance Ltd	8.03	6/18/1998	6/1/2028
USG2025MAC58	CP5100211	Cerro Negro Finance Ltd	8.03	6/18/1998	6/1/2028
US156877AB80	156877AB8	Cerro Negro Finance Ltd	7.9	6/18/1998	12/1/2020
XS0356521160	EH2888749	CA La Electricidad de Caracas	8.5	4/10/2008	4/10/2018

Andrea M. Gacki,
Director, Office of Foreign Assets Control.
[FR Doc. 2022–22197 Filed 10–12–22; 8:45 am]
BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0805]

Safety Zones in Reentry Sites; Jacksonville, Daytona, Cape Canaveral, Florida

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard is activating three safety zones for the SpaceX Commercial Crew-4 mission, reentry vehicle splashdown, and recovery operations. These operations will occur in the U.S. Exclusive Economic Zone (EEZ). Our regulation for safety zones in reentry sites within the Seventh Coast Guard District identifies the regulated areas for this event. No U.S.-flagged

vessel may enter the safety zones unless authorized by the Captain of the Port Jacksonville or a designated representative. Foreign-flagged vessels are encouraged to remain outside the safety zones.

DATES: The regulations in 33 CFR 165.T07–0289 will be enforced for the safety zones identified in the **SUPPLEMENTARY INFORMATION** section below for the dates and times specified.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST2 Shawn Keeman, Waterways Management Division, U.S. Coast Guard; telephone 904–714–7661, email *Shawn.R.Keeman@uscg.mil.*

SUPPLEMENTARY INFORMATION: With this document, the Coast Guard Captain of the Port (COTP) Jacksonville is activating three safety zones as listed in 33 CFR 165.T07–0289(a)(1) through (3), on October 13, 2022, through October 17, 2022, for the SpaceX Commercial Crew-4 mission (Crew-4), reentry vehicle splashdown, and the associated recovery operations in the U.S. EEZ. These three safety zones are located within the COTP Jacksonville Area of Responsibility (AOR) offshore of Jacksonville, Daytona, and Cape Canaveral, Florida. The COTP Jacksonville is activating these safety zones in order to protect vessels and waterway users from the potential hazards created by reentry vehicle splashdowns and recovery operations. In accordance with the general regulations in 33 CFR part 165, subpart C, no U.S.-flagged vessel may enter the safety zones unless authorized by the COTP Jacksonville or a designated representative except as provided in § 165.T07–0289(d)(3). All foreign-flagged vessels are encouraged to remain outside the safety zones.

There are two other safety zones listed in § 165.T07–0289(a)(4) through (5), which are located within the COTP St. Petersburg AOR, that are being simultaneously activated through a separate notification of enforcement of the regulation document issued under Docket Number USCG–2022–0807.[1]

Twenty-four hours prior to the Crew-4 recovery operations scheduled on October 13, 2022, the COTP Jacksonville or COTP St. Petersburg, or designated representative will inform the public whether any of the five safety zones described in § 165.T07–0289(a) will remain activated (subject to enforcement). If one of the safety zones described in § 165.T07–0289(a) remains activated, it will be enforced for four hours prior to the Crew-4 splashdown and remain activated until announced by Broadcast Notice to Mariners on VHF–FM channel 16, and/or Marine Safety Information Bulletin (as appropriate) that the safety zone is no longer subject to enforcement. After the Crew-4 reentry vehicle splashdown, the COTP or a designated representative will grant general permission to come no closer than 3 nautical miles of any reentry vehicle or space support vessel engaged in the recovery operations, within the activated safety zone described in § 165.T07–0289(a). Once the reentry vehicle, and any personnel involved in reentry service, are removed from the water and secured onboard a space support vessel, the COTP or designated representative will issue a Broadcast Notice to Mariners on VHF–FM channel 16 announcing the activated safety zone is no longer subject to enforcement. The recovery operations are expected to last approximately one hour.

The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

Dated: October 7, 2022.

Janet D. Espino-Young,

Captain, U.S. Coast Guard, Captain of the Port Jacksonville.

[FR Doc. 2022–22279 Filed 10–12–22; 8:45 am]

BILLING CODE 9110–04–P

[1] This notification of enforcement of the regulation can be found at: *https://regulations.gov* by searching for docket number USCG–2022–0807.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0851]

RIN 1625–AA00

Safety Zone; Verdigris River MM 431 Through MM 432, Catoosa, OK

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain navigable waters of the Verdigris River, Mile Marker (MM) 431 through MM 432, Catoosa, OK. This rule is necessary to provide for the safety of life on navigable waters during a bridge demolition. All vessels and persons are prohibited from entering the demolition area unless specifically authorized by the Captain of the Port Sector Lower Mississippi River or a designated representative.

DATES: This rule is effective from 8 a.m. through 7 p.m. on October 14, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0851 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MSTC Lindsey Swindle, U.S. Coast Guard; telephone 901–521–4813, email *Lindsey.M.Swindle@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Lower Mississippi River
DHS Department of Homeland Security
FR Federal Register
MM Mile marker
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. Immediate action is needed to protect persons and property from the potential safety hazards associated with the bridge demolition. The NPRM process would delay the establishment of the safety zone until after the date of the event and compromise public safety. We must establish this temporary safety zone immediately and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with the safety hazards associated with the bridge demolition.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Lower Mississippi River (COTP) has determined that potential hazards associated with the bridge demolition would be a safety concern for all persons and vessels on the Verdigris River in the vicinity of MM 431 to MM 432, Catoosa, OK. This rule is needed to protect persons, property, infrastructure, and the marine environment in all waters of the Verdigris River within the safety zone during the bridge demolition.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 8 a.m. through 7 p.m. on October 14, 2022. The safety zone will cover all navigable waters of the Verdigris River in the vicinity of MM 431 to MM 432, Catoosa, OK. The duration of this safety zone is intended to ensure the safety of waterway users on these navigable waters during the bridge demolition.

Entry of persons or vessels into this safety zone is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Lower Mississippi River. Persons or vessels seeking to enter the safety zones must request permission from the COTP or a designated representative by telephone at 314–269–2332. If permission is granted, all persons and vessels must comply with the instructions of the COTP or a designated representative. The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone will temporarily restrict navigation on the Verdigris River in the vicinity of MM 431 to MM 432, Catoosa, OK., from 8:00 a.m. through 7 p.m. on October 14, 2022. Moreover, The Coast Guard will issue BNMs, LNMs, and/or MSIBs, as appropriate. The rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 through 4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone on the Verdigris River in the vicinity of MM 431 to MM

432, Catoosa, OK, that will prohibit entry into this zone. The safety zone will only be enforced while operations preclude the safe navigation of the established channel. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T08–0851 to read as follows:

§ 165.T08–0851 Safety Zone; Verdigris River, MM 431 through MM 432, Catoosa, OK.

(a) *Location.* The following area is a safety zone: All navigable waters of the Verdigris River in the vicinity of MM 431 through MM 432, Catoosa, OK.

(b) *Definitions.* As used in this section, designated representative means a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Lower Mississippi River designated by or assisting the Captain of the Port Sector Lower Mississippi River (COTP) in the enforcement of the safety zone.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF–FM channel 16 or by telephone at 314–269–2332. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This safety zone will be enforced from 8 a.m. to 7 p.m. on October 14, 2022.

(e) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts, as appropriate.

Dated: October 5, 2022.

R.S. Rhodes,

Captain, U.S. Coast Guard, Captain of the Port Sector Lower Mississippi River.

[FR Doc. 2022–22218 Filed 10–12–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 2 and 7

[Docket No. PTO–T–2021–0008]

RIN 0651–AD55

Changes To Implement Provisions of the Trademark Modernization Act of 2020; Delay of Effective Date and Correction

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule and final rule; delay of effective date and correction.

SUMMARY: On November 17, 2021, the United States Patent and Trademark Office (USPTO or Office) published in the **Federal Register** a final rule amending its regulations to implement provisions of the Trademark Modernization Act of 2020 (TMA). This action changes the effective date for the regulations published in the November 17, 2021, final rule that established new Office action response periods and set fees for requests to extend Office action response deadlines. This action resets the effective date for responses and extensions from December 1, 2022, to December 3, 2022, in the examination of applications, and from December 1, 2022, to October 7, 2023, in the examination of post-registration filings.

DATES:

Delay of effective date: As of October 13, 2022, in the final rule published at 86 FR 64300 on November 17, 2021, the effective date of amendatory instructions 3 (§ 2.6), 10 (§ 2.62), 11 (§ 2.63), 12 (§ 2.65), and 13 (§ 2.66) is delayed from December 1, 2022, to December 3, 2022, and the effective date of amendatory instructions 29 (§ 2.163), 30 (§ 2.165), 31 (§ 2.176), 33 (§ 2.184), 34 (§ 2.186), 37 (§ 7.6), 38 (§ 7.39), and 39 (§ 7.40) is delayed from December 1, 2022, to October 7, 2023.

Correction date: The correction to § 2.6 in this final rule is effective December 3, 2022.

Effective date: The amendment to § 2.6 in this final rule is effective October 7, 2023.

FOR FURTHER INFORMATION CONTACT: Catherine Cain, Office of the Deputy Commissioner for Trademark Examination Policy, USPTO, at 571–272–8946 or *TMPolicy@uspto.gov*.

SUPPLEMENTARY INFORMATION: On November 17, 2021, the USPTO published in the **Federal Register** a final rule amending the Rules of Practice in Trademark Cases to implement provisions of the TMA (86 FR 64300). As part of that final rule, the USPTO amended 37 CFR 2.62 to: (1) set a period of three months for responses to Office actions in applications under sections 1 and/or 44 of the Trademark Act (Act), and (2) provide the option to request a single three-month extension of the deadline, subject to the payment of a fee. The three-month response period and extension also applied to Office actions issued in connection with post-registration maintenance and renewal filings. The deadline for responses to Office actions issued in connection with applications under section 66(a) of the Act was not changed in that final rule and remains at six months. The final rule stated that the other changes would go into effect on December 1, 2022.

Under this final rule, the USPTO hereby resets the effective date for the regulations establishing Office action response periods and setting fees for requests to extend Office action response deadlines. The three-month response deadline and extension provisions for Office actions issued in connection with applications will be effective on December 3, 2022. The three-month response deadline and extension provisions for Office actions issued regarding post-registration maintenance filings will go into effect on October 7, 2023.

The change to the response deadline and the provision of an extension request involve significant updates to the USPTO's information technology

(IT) systems and examination processes. The two-day change in the effective date to Saturday, December 3, 2022, for Office actions issued prior to registration will allow the USPTO to deploy the necessary IT updates without impacting applicants who have a response deadline of December 3, 2022, for Office actions issued prior to the effective date. When the deadline for a response to an Office action falls on a Saturday, Sunday, or Federal holiday, the response is considered timely if the action is received, or the fee is paid, on the following day that is not a Saturday, Sunday, or Federal holiday. 35 U.S.C. 21(b); 37 CFR 2.196. In the event of an unanticipated interruption in the Trademark Electronic Application System on December 3, 2022, parties who have a response due on that date would have until Monday, December 5, 2022, to submit a timely response.

Postponing the changes with regard to the deadline to respond to post-registration Office actions to October 7, 2023, will allow the USPTO additional time to update IT systems for the post-registration changes. This final rule will also provide the public an opportunity to more fully comprehend the nature of, and prepare to comply with, the new provisions before they are effective.

As a result of resetting the effective date, it was necessary to make corrections and amendments to the amendatory instruction and regulatory text at 37 CFR 2.6(a)(28), published in the November 17, 2021, final rule, to implement the new effective dates. No substantive changes were made to the provisions in § 2.6(a)(28).

Rulemaking Requirements

A. Administrative Procedure Act: The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. See *Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals are procedural where they do not change the substantive standard for reviewing claims); and *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive).

Accordingly, prior notice and opportunity for public comment for this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. See *Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice-and-comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'' (quoting 5 U.S.C. 553(b)(A))).

Moreover, the Director of the USPTO, pursuant to the authority at 5 U.S.C. 553(b)(B), finds good cause to adopt the change in this final rule without prior notice and an opportunity for public comment, as such procedures would be impracticable and contrary to the public interest. Immediate implementation of the resetting of the effective date, and the correction and amendment to the regulatory text, are in the public interest because they will allow the USPTO additional time to ensure that the means for the internal implementation of the provisions in the November 17, 2021, final rule are in place before it goes into effect. The additional time would also benefit the public, as it would provide an opportunity for the public to more fully comprehend the new response periods before they become effective. Delaying this final rule to satisfy notice-and-comment procedures is impracticable because doing so would allow the changes to the November 17, 2021, final rule that are being discussed in this final rule to go into effect before the USPTO is ready to implement the new response periods. Therefore, the Director finds there is good cause to waive notice-and-comment procedures for this final rule.

B. Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a Regulatory Flexibility Act analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are required. *See* 5 U.S.C. 603.

C. Executive Order 12866 (Regulatory Planning and Review): This rule has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The USPTO has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the USPTO has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) provided the public with a meaningful opportunity to participate in the regulatory process, including soliciting the views of those likely affected, prior to issuing a notice of proposed rulemaking, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across Government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes, to the extent applicable.

E. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) have substantial direct effects on one or more Indian tribes, (2) impose substantial direct compliance costs on Indian tribal governments, or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and (b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government

Accountability Office. The changes in this rule are not expected to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rule is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of $100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of $100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act of 1969: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act of 1995: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

O. Paperwork Reduction Act of 1995: This final rule does not involve information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information has a valid OMB control number.

P. E-Government Act Compliance: The USPTO is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Justin Isaac, Acting USPTO Information Collection Officer, at *Information.Collection@uspto.gov* or 571–272–7392.

List of Subjects in 37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

Correction to November 2021 Final Rule

■ Effective December 3, 2022, in FR Doc. 2021–24926, at 86 FR 64300 in the **Federal Register** of Wednesday, November 17, 2021, on page 64325, in the second column, in amendatory instruction 3 for § 2.6, paragraph (a)(28) is corrected to read as follows:

§ 2.6 [Corrected]

(a) * * *

(28) *Extension of time for filing a response to an Office action under § 2.62(a)(2).* (i) For filing a request for an extension of time for filing a response to an Office action under § 2.62(a)(2) on paper—$225.00.

(ii) For filing a request for an extension of time for filing a response to an Office action under § 2.62(a)(2) via TEAS—$125.00.

* * * * *

For the reasons stated in the preamble and under the authority contained in 15 U.S.C. 1123 and 35 U.S.C. 2, as amended, the USPTO amends part 2 of title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 1113, 1123; 35 U.S.C. 2; sec. 10, Pub. L. 112–29, 125 Stat. 284; Pub. L. 116–260, 134 Stat. 1182, unless otherwise noted. Sec. 2.99 also issued under secs. 16, 17, 60 Stat. 434; 15 U.S.C. 1066, 1067.

■ 2. Effective October 7, 2023, amend § 2.6 by revising paragraph (a)(28) to read as follows:

§ 2.6 Trademark fees.

(a) * * *

(28) *Extension of time for filing a response to an Office action under § 2.62(a)(2), § 2.163(c), § 2.165(c), § 2.176, § 2.184(b)(2), or § 2.186(c).* (i) For filing a request for an extension of time for filing a response to an Office action under § 2.62(a)(2), § 2.163(c), § 2.165(c), § 2.176, § 2.184(b)(2), or § 2.186(c) on paper—$225.00.

(ii) For filing a request for an extension of time for filing a response to an Office action under § 2.62(a)(2), § 2.163(c), § 2.165(c), § 2.176, § 2.184(b)(2), or § 2.186(c) via TEAS—$125.00.

* * * * *

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2022–22217 Filed 10–12–22; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R4–OAR–2022–0226; FRL–10161–02–R4]

Air Plan Approval; South Carolina; Revisions to Startup, Shutdown, and Malfunction Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC), on November 4, 2016. This revision was submitted by South Carolina in response to a finding of substantial inadequacy and SIP call published by EPA on June 12, 2015, of provisions in the South Carolina SIP related to excess emissions during startup, shutdown, and malfunction (SSM) events. EPA is approving the SIP revision and finds that the revision corrects the deficiencies identified in the June 12, 2015, SIP call. EPA is also approving portions of multiple SIP revisions previously submitted by SC DHEC on October 1, 2007, July 18, 2011, August 8, 2014, and August 12, 2015, as they relate to the provisions identified in the June 12, 2015, SIP call.

DATES: This rule is effective November 14, 2022.

ADDRESSES: EPA has established a docket for these actions under Docket Identification No. EPA–R4–OAR–2022–0226. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly

available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Estelle Bae, Air Permits Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Bae can be reached by telephone at (404) 562–9143 or via electronic mail at *bae.estelle@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On August 23, 2022, EPA proposed to approve portions of multiple SIP revisions submitted by SC DHEC on October 1, 2007, July 18, 2011, August 8, 2014, August 12, 2015, and November 17, 2016. *See* 87 FR 51631. In that notice of proposed rulemaking (NPRM), EPA also proposed to determine that the SIP revision corrects the deficiencies with respect to the South Carolina SIP that the Agency identified in the June 12, 2015, action entitled ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction'' (''2015 SSM SIP Action''). *See* 80 FR 33839 (June 12, 2015). The reasons for the proposed approval and determination are stated in the August 23, 2022, NPRM (*see* 87 FR 51631) and will not be restated here. The public comment period for EPA's proposed approval and determination ended on September 22, 2022. EPA received one set of comments in a joint letter submitted by the Sierra Club and the Environmental Integrity Project (hereinafter collectively referred to as the commenter) on September 20, 2022. These comments are available in the docket for these actions.

II. Response to Comments

The commenter provided comments both in support of and adverse to EPA's proposed actions. EPA will not address the comments that express support for the proposed actions. Instead, this section of the final rulemaking notice will focus on the portion of the September 20, 2022, letter that did not support the proposed actions.

Comment: The commenter states that EPA should disapprove or conditionally approve the revision to South Carolina's visible emissions rule at Regulation 61–62.5, Standard No. 1, Section I.C[1] that adds an exemption for ''natural gas and propane fired units'' from the requirement that the owner or operator maintain a startup and shutdown log. The commenter alleges that burning these two fuels has the potential to emit elevated levels of particulate matter (PM), sulfur oxides (SO_X), nitrogen oxides (NO_X), and other pollutants that may contribute to opacity during SSM events and that adequate recordkeeping requirements during startup and shutdown periods are essential for determining compliance with the Clean Air Act (CAA or Act). According to the commenter, excluding these fuel-burning sources from the recordkeeping requirement undermines the applicable emission limits in the South Carolina SIP and ''frustrates'' federal CAA enforcement.

Response: EPA disagrees that the Agency should disapprove or conditionally approve the addition of an exemption from the requirement to keep logs of startups and shutdowns for fuel burning units that fire only natural gas and propane in Regulation 61–62.5, Standard No. 1, Section I.C. The existing SIP-approved text of Section I.C states:

> The opacity standards set forth above do not apply during startup or shutdown. Owners and operators shall, to the extent practicable, maintain and operate any source including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. In addition, the owner or operator shall maintain a log of the time, magnitude, duration and any other pertinent information to determine periods of startup and shutdown and make available to the Department upon request.

In the NPRM, EPA proposed to approve two revisions to this text. The first revision, state-effective in 2016, directly addresses the 2015 SSM SIP Action by removing the first sentence of the paragraph, which provides an exemption from opacity standards during startup or shutdown. This change satisfies EPA's June 12, 2015, SIP call for South Carolina regarding Section I.

The second revision, state-effective in 2011 and 2015,[2] inserts the phrase ''of fuel burning sources except natural gas and propane fired units'' following the word ''operator'' into the third sentence of the text. The effect of this change was to specify that the requirement to maintain a startup and shutdown log applies to fuel burning sources but does not apply to units that fire natural gas or propane.[3]

The purpose of the startup and shutdown recordkeeping requirement in Section I.C was to identify those periods when fuel burning sources were exempt from opacity standards by requiring sources to log when startup and shutdown events took place. However, because EPA is removing that exemption from the SIP through this final rulemaking, the opacity limits of Regulation 61–62.5, Standard No. 1 now apply at all times. Consequently, the rule does not differentiate periods of startup and shutdown from other modes of operation as related to compliance with the opacity limits, and therefore a requirement to keep startup and shutdown logs is no longer needed for determining compliance for any sources, including those that burn fuels other than natural gas or propane. Nevertheless, the State has not removed the requirement for operations that burn fuels other than natural gas or propane to maintain startup and shutdown logs.

Additionally, the revision to Regulation 61–62.5, Standard No. 1, Section I.C. being approved does not affect any excess emission recordkeeping or reporting requirements under the SIP. For example, facilities are generally required to obtain operating permits pursuant to South Carolina's Regulation 61–62.1, ''Definitions and General Requirements,'' at Section II, ''Permit Requirements.'' Section II.C.3 of this regulation requires sources that are not required to have continuous emission monitoring systems (CEMS) to report to the State, emissions due to equipment

[1] Section I.C. regulates visible emissions from fuel burning operations, setting opacity limits from twenty to sixty percent, depending on the age of the source and whether emissions are caused by soot blowing.

[2] The July 18, 2011, submittal revised subparagraph C of Section I, ''Visible Emissions,'' by excluding natural gas fired units from the requirement to maintain a log to determine periods of startup and shutdown. The August 12, 2015, submittal further revised the subparagraph adding propane fired units to the log keeping exception.

[3] As noted in the NPRM, EPA included this revision in an August 16, 2017, direct final rulemaking notice. However, due to the receipt of an adverse comment, EPA withdrew the direct final rule, and thus, the revision remained pending. *See* 82 FR 47640 (October 13, 2017).

failures that are greater than those described for normal operation in the permit application and that last for one hour or more. The initial report must be made within 24 hours of the beginning of the occurrence of such emissions and a follow up written report must be made within 30 days. The written report covers, among other things, the magnitude of the excess emissions, the time and duration of the excess emissions, and the nature and cause of the excess emissions. For sources that are required to operate CEMS, Section II.C.4 requires regular ''reports as specified in applicable parts of'' the State's regulations. Also, Regulation 61–62.5, Standard No. 1, Section IV, ''Opacity Monitoring Requirements,'' requires semiannual compliance reporting for sources required to install and operate continuous opacity monitoring systems (COMS).[4] This report would require the disclosure of all instances in which the opacity provisions of Section I of Standard No. 1 have been exceeded and include an account of the nature and cause of the excess visible emissions.

The Agency acknowledges the commenter's concern that burning natural gas and propane emits pollutants that have the potential to contribute to visible emissions. However, visible emissions concerns from the burning of natural gas and propane are minor relative to other available fuels. Firing these two fuels is typically associated with few monitoring requirements, if any. *See, e.g.,* 40 CFR part 63, subpart DDDDD, 40 CFR part 60, subpart Da, and 40 CFR part 75. Notwithstanding this fact, excess emissions are required to be reported in the manner just described. For the reasons stated above and in the NPRM, EPA is finalizing its approval of this change to 61–62.5, Standard No. 1, Section I.C.

III. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, and as discussed in Section I of this preamble, EPA is finalizing the incorporation by reference into the South Carolina SIP of Regulation 61–62.1, Section II.L, ''Emergency Provisions,'' which regulates permit requirements to document emergencies, State effective on September 23, 2016;[5] Regulation 61–62.5, Standard No. 1, Section I, ''Visible Emissions,'' which regulates visible emissions from fuel burning operations, State effective on September 23, 2016; and Regulation 61–62.5, Standard No. 4, Section XI, ''Total Reduced Sulfur (TRS) Emissions of Kraft Pulp Mills,'' which regulates emissions of total reduced sulfur at Kraft pulp mills, State effective on September 23, 2016. EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[6]

III. Final Actions

EPA is approving South Carolina's November 4, 2016, SIP submission with respect to Regulation 61–62.1, Section II.L; Regulation 61–62.5, Standard No. 1, Section I.C; and Regulation 61–62.5, Standard No. 4, Section XI.D.4. EPA is also approving portions of the October 1, 2007, July 18, 2011, August 8, 2014, and August 12, 2015, South Carolina SIP submissions that seek revisions to these provisions, as specified in Section II of the July 26, 2022, NPRM. EPA has also determined that these SIP revisions correct the deficiencies identified in the 2015 SSM SIP Action and fully satisfy South Carolina's obligations with respect to the SIP call included in the 2015 SSM SIP Action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. Accordingly, these actions merely approve removal of State law not meeting Federal requirements and do not impose additional requirements beyond those already imposed by State law. For that reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

Because these final actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law, these final actions for the State of South Carolina do not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, these actions will not impose substantial direct costs on Tribal governments or preempt Tribal law. The Catawba Indian Nation (CIN) Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120 (Settlement Act), ''all state and local environmental laws and

[4] Sources that fire only gaseous fuel would be exempt from the COMS requirements and instead would be subject to the excess emissions reporting established via permitting at Regulation 61–62.1, Section II.C.

[5] The remaining portions of Regulation 61–62.1, Section II, retain the June 24, 2005, State effective date, as currently approved in the South Carolina SIP under 40 CFR 52.2120(c). Additionally, although Section II.G of Regulation 61–62.1 retains the June 24, 2005, State effective date, paragraph G.6 specifically is being removed from the South Carolina SIP because it is being recodified as Section II.L of Regulation 61–62.1. These changes are explained in more detail in Section II.A of the August 23, 2022, NPRM.

[6] *See* 62 FR 27968 (May 22, 1997).

regulations apply to the Catawba Indian Nation and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' The CIN also retains authority to impose regulations applying higher environmental standards to the Reservation than those imposed by state law or local governing bodies, in accordance with the Settlement Act.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by December 12, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these actions for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action(s). These actions may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2) of the CAA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Daniel Blackman,

Regional Administrator, Region 4.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart PP—South Carolina

■ 2. In § 52.2120(c), amend the table by:

■ a. Under the undesignated heading ''Regulation No. 62.1,'' revise the entry for ''Section II''; and

■ b. Under the undesignated heading ''Regulation No. 62.5'':

■ i. Under ''Standard No. 1,'' revise the entry for ''Section I''; and

■ ii. Under ''Standard No. 4,'' revise the entry for ''Section XI''.

The revisions read as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

EPA-Approved South Carolina Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
Regulation No. 62.1	Definitions and General Requirements.			
*	* *	*	*	* *
Section II	Permit Requirements	6/24/2005	6/2/2008, 73 FR 31369	Except for Section II.L, approved on October 13, 2022 with a state effective date of September 23, 2016.
*	* *	*	*	* *
Regulation No. 62.5	Air Pollution Control Standards.			
Standard No. 1	Emission from Fuel Burning Operations.			
Section I	Visible Emissions	9/23/2016	10/13/2022, [Insert citation of publication].	
*	* *	*	*	* *
Standard No. 4	Emissions from Process Industries.			
*	* *	*	*	* *
Section XI	Total Reduced Sulfur Emissions of Kraft Pulp Mills.	9/23/2016	10/13/2022, [Insert citation of publication].	
*	* *	*	*	* *

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[FR Doc. 2022–21972 Filed 10–12–22; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 87, No. 197
Thursday, October 13, 2022

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 ENERGY

10 CFR Part 431

[EERE–2022–BT–STD–0002]

RIN 1904–AF40

Energy Conservation Program: Energy Conservation Standards for Fans and Blowers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notification of data availability (''NODA'').

SUMMARY: On February 8, 2022, the U.S. Department of Energy (''DOE'') published a request for information regarding energy conservation standards for fans and blowers. In this NODA, DOE is publishing preliminary inputs and methodology for its technology, screening, engineering, shipments, markups, life cycle cost, and energy use analysis for air circulating fans. Air circulating fans are a subcategory of fans; however, air circulating fans were not included in the Appliance Standards and Rulemaking Federal Advisory (''ASRAC'') negotiations undertaken in 2015 (see Docket No. EERE–2013–BT–STD–0006). The purpose of this NODA is to provide stakeholders with the opportunity to review and provide comment on DOE's preliminary technical and economic evaluation of air circulating fans, prior to DOE's publication of a notice of proposed rulemaking for all fans and blowers. The analysis presented in this NODA is consistent with the air circulating fans scope and definitions that DOE proposed in the July 25, 2022, test procedure notice of proposed rulemaking (''NOPR'') for fans and blowers (''July 2022 TP NOPR''). DOE requests comments, data, and information regarding its analysis.

DATES: Written comments and information will be accepted on or before November 28, 2022.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov,* under docket number EERE–2022–BT–STD–0002. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2022–BT–STD–0002, by any of the following methods:

Email: FansAndBlowers 2022STD0002@ee.doe.gov. Include the docket number EERE–2022–BT–STD–0002 in the subject line of the message.

Postal Mail: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

Hand Delivery/Courier: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section IV of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, public meeting transcripts, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *www.regulations.gov/docket/EERE–2022–BT–STD–0002.* The docket web page contains instructions on how to access all documents, including public comments in the docket. See section III.A of this document for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Matthew Schneider, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 597–6265. Email: *matthew.schneider@hq.doe.gov.*

For further information on how to submit a comment, or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

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Introduction

A. Authority

The Energy Policy and Conservation Act, as amended (EPCA),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C [1] of EPCA, added by Public Law 95–619, Title IV, section 441(a) (42 U.S.C. 6311–6317 as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency.

EPCA specifies a list of equipment that constitutes covered equipment (hereafter referred to as ''covered equipment'').[2] EPCA also provides that ''covered equipment'' includes any other type of industrial equipment for which the Secretary of Energy (''Secretary'') determines inclusion is necessary to carry out the purpose of Part A–1. (42 U.S.C. 6311(1)(L), 6312(b)) EPCA specifies the types of industrial equipment that can be classified as covered in addition to the equipment enumerated in 42 U.S.C. 6311(1) This industrial equipment includes fans and blowers. (42 U.S.C. 6311(2)(B)(ii) and (iii)) Additionally, industrial equipment must be of a type that consumes, or is designed to consume, energy in operation; is distributed in commerce for industrial or commercial use[4]; and is not a covered product as defined in 42 U.S.C. 6291(a)(2) other than a component of a covered product with respect to which there is in effect a determination under 42 U.S.C. 6312(c). (42 U.S.C. 6311(2)(A)) On August 19, 2021, DOE published a final determination that the inclusion of fans and blowers as covered equipment was necessary to carry out the purpose of Part A–1 and classified fans and blowers as covered equipment. 86 FR 46579, 46588. Air circulating fans are a class of fans and blowers.

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers. (42 U.S.C. 6316, 42 U.S.C. 6296)

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede state laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of federal preemption for particular state laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D))

In proposing new standards, DOE must evaluate a proposal against the criteria detailed in 42 U.S.C. 6295(o), discussed further in section I.C of this document, and follow the rulemaking procedures set out in 42 U.S.C. 6295(p). (42 U.S.C. 6316(a))

DOE is publishing this NODA to collect data and information to inform its decision consistent with its obligations under EPCA.

B. Deviation From Appendix A

In accordance with Section 3(a) of appendix A to subpart C of 10 CFR part 430, DOE notes that it is deviating from that appendix's provision requiring a 75-day comment period for all pre-NOPR standards documents. (Section 6(d)(2) of appendix A to subpart C of 10 CFR part 430) DOE is instead providing a 45-day comment period which DOE believes is appropriate given the substantial stakeholder engagement to date, as discussed in section I.C of this document. The request for information on air circulating fans published on February 8, 2022, provided early notice to interested parties that the Department was interested in evaluating potential energy savings for this equipment. 87 FR 7048. Further, a 45-day comment period will allow DOE to review comments received in response to this NODA and use it to inform the analysis of equipment considered in evaluating potential energy conservation standards.

C. Background

On June 28, 2011, DOE published a notice of proposed coverage determination proposing that fans, blowers, and fume hoods would qualify as covered equipment under EPCA. 76 FR 37678. DOE noted that there were no statutory definitions for ''fan,'' ''blower,'' or ''fume hood,'' and presented definitions for consideration. 76 FR 37678, 37679. DOE subsequently published a framework document on February 1, 2013, detailing the analytical approach for developing potential energy conservation standards for commercial and industrial fans and blowers should the Secretary classify such equipment as covered equipment (''Framework Document''). 78 FR 7306. In the Framework Document, DOE determined that it lacked authority to establish energy conservation standards for fume hoods because fume hoods are not listed as a type of equipment for which DOE could establish standards. (Docket EERE–2013–BT–STD–0006, No. 1 at p. 15) DOE acknowledged that the fan, which provides ventilation for the fume hood, consumes the largest portion of energy within the fume hood system, and that DOE planned to cover all commercial and industrial fan types, which included fans used to ventilate fume hoods. *Id.*

On December 10, 2014, DOE published a NODA presenting an analysis estimating the economic impacts and energy savings from potential energy conservation standards for certain fans and blowers. This analysis did not include air circulating fans. 79 FR 73246.

On April 1, 2015, DOE published a notice of intent to establish an Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) Working Group for fans (hereafter referred to as the ''Working Group''). 80 FR 17359.

The Working Group [3] commenced negotiations at an open meeting on May

[1] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1 and hereafter referred to as Part A–1.

[2] ''Covered equipment'' means one of the following types of industrial equipment: Electric motors and pumps; small commercial package air conditioning and heating equipment; large commercial package air conditioning and heating equipment; very large commercial package air conditioning and heating equipment; commercial refrigerators, freezers, and refrigerator-freezers; automatic commercial ice makers; walk-in coolers and walk-in freezers; commercial clothes washers; packaged terminal air-conditioners and packaged terminal heat pumps; warm air furnaces and packaged boilers; and storage water heaters, instantaneous water heaters, and unfired hot water storage tanks. (42 U.S.C. 6311(1)(A)–(K))

[3] The Working Group was comprised of representatives from AAON, Inc.; AcoustiFLO LLC; AGS Consulting LLC; Air Movement and Control Association (AMCA); Air Conditioning, Heating, and Refrigeration Institute (AHRI), Appliance Standards Awareness Project (ASAP); Berner International Corp; Buffalo Air Handling Company;

Continued

18, 2015 and held 16 meetings and three webinars to discuss scope, metrics, test procedures, and standard levels for fans and blowers.[4] The Working Group concluded its negotiations on September 3, 2015, and, by consensus vote,[5] approved a term sheet containing 27 recommendations related to scope, test procedure and energy conservation standards (''term sheet''). (See Docket No. EERE–2013–BT–STD–0006, No. 179) ASRAC approved the term sheet on September 24, 2015. (Docket No. EERE–2013–BT–NOC–0005; Public Meeting Transcript, No. 58, at p. 29) The Working Group term sheet recommended the exclusion of air circulating fans. (See Docket No. EERE–2013–BT–STD–0006, No. 179, Recommendation #2 at p. 2) On November 1, 2016, DOE published a third notification of data availability (''November 2016 NODA'') that presented a revised analysis for fans and blowers other than air circulating fans, consistent with the scope and metric recommendations of the term sheet. 81 FR 75742.

On January 10, 2020, DOE received a petition from the Air Movement and Control Association, International (''AMCA''), Air Conditioning Contractors of America, and Sheet Metal & Air Conditioning Contractors of America requesting that DOE establish a test procedure for certain categories of fans based on an upcoming industry test method, AMCA Standard 214, ''Test Procedure for Calculating Fan Energy Index (FEI) for Commercial and Industrial Fans and Blowers'' DOE published a notice of petition for rulemaking and request for public comment (''April 2020 Notice of Petition for Rulemaking''). 85 FR 22677 (Apr. 23, 2020). AMCA, Air Conditioning Contractors of America, and Sheet Metal & Air Conditioning Contractors have since withdrawn their petition (EERE–2011–BT–DET–0045–00012, at p. 1)

In conjunction with this notice of petition for rulemaking, on May 10, 2021, DOE published a request for information requesting comments on a potential fan or blower definition. 86 FR 24752. On August 19, 2021, DOE published in the **Federal Register** a final coverage determination classifying fans and blowers as covered equipment. 86 FR 46579.

On October 1, 2021, DOE published a request for information pertaining to test procedures for fans and blowers (''October 2021 TP RFI''). 86 FR 54412. As part of the October 2021 TP RFI, DOE discussed the potential scope and definitions for air circulating fans. 86 FR 54412, 54414–54415. DOE is considering including air circulating fans in its analysis of potential energy conservation standards for fans and blowers. As noted previously, air circulating fans were not included in the scope of the term sheet and were not previously analyzed by the Department. DOE published a separate request for information on February 8, 2022, to seek input to aid in the development of the technical and economic analyses regarding whether standards for air circulating fans may be warranted (hereinafter referred to as the ''ECS RFI''). 87 FR 7048. DOE received comments in response to the ECS RFI from the interested parties listed in Table I–1.

TABLE I–1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE ECS RFI

Commenter(s)	Reference in this NODA	Comment No. in the Docket	Commenter type
Air Movement and Control Association	AMCA	9,10	Trade Association.
Appliance Standards Awareness Project, American Council for an Energy Efficient Economy, Natural Resources Defense Council, and Northwest Energy Efficiency Alliance.	Joint Commenters	6	Efficiency Organizations.
California Investor-Owned Utilities	CA IOUs	7	Utility.
ebm-papst Inc.	ebm-papst	8	Manufacturer.
Robert Akscyn	Akscyn	2	Individual.
Rubén Guerra	Guerra	3	Individual.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[6] Comments received from the two individuals listed in Table I–1 are not discussed further in because they were either not relevant to the RFI or provide procedural recommendations.[7] [8]

Some of the comments received in response to the ECS RFI were related to the fans and blower test procedure. DOE published a proposed test procedure for fans and blowers on July 25, 2022 (''July 2022 TP NOPR'') in which it addressed the ECS RFI comments related to test procedure issues, including those related to definitions, scope of the test procedure, and metrics. 87 FR 44194.

To date, DOE has not proposed energy conservation standards for fans and

Carnes Company; Daikin/Goodman; ebm-papst; Greenheck; Morrison Products; Natural Resources Defense Council; Newcomb & Boyd; Northwest Energy Efficiency Alliance; CA IOUs; Regal Beloit Corporation; Rheem Manufacturing Company; Smiley Engineering LLC representing Ingersoll Rand/Trane; SPX Cooling Technologies/CTI; The New York Blower Company; Twin City Companies, Ltd; U.S. Department of Energy; and United Technologies/Carrier.

[4] Details of the negotiation sessions can be found in the public meeting transcripts that are posted to the docket for the energy conservation standard rulemaking at: *www.regulations.gov/docket?D=EERE–2013–BT–STD–0006*.

[5] At the beginning of the negotiated rulemaking process, the Working Group defined that before any vote could occur, the Working Group must establish a quorum of at least 20 of the 25 members and defined consensus as an agreement with less than four negative votes. Twenty voting members of the Working Group were present for this vote. Two members (Air Conditioning, Heating, and Refrigeration Institute and Ingersoll Rand/Trane) voted no.

[6] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop energy conservation standards for fans and blowers. (Docket No. EERE–2022–BT–STD–0002, which is maintained at *www.regulations.gov*) The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

[7] A comment from R. Guerra stated that they own a residential ceiling fan that produces its own energy (Guerra, No. 3 at p. 1). DOE notes that the fans evaluated in this rulemaking exclude both ceiling fans and furnace fans.

[8] R. Akscyn recommended that DOE provide a short RFI summary so stakeholders do not have to review such lengthy documents and that DOE consider presenting the variables included in its analyses in terms of dimensional parameters. (Akscyn, No. 2 at pp. 1–3) DOE appreciates these suggestions. With respect to the structure and length of RFIs, DOE notes that it has certain legal obligations which it must fulfill for every document that is published. In most documents, DOE includes summaries and headings to aid stakeholder review. Additionally, DOE notes that the purpose of an RFI is to collect data and information. The purpose of this document is to present DOE's analyses to support potential energy conservation standards for fans and blowers.

blowers, including air circulating fans. This NODA presents DOE's planned inputs and preliminary analysis to inform the development of potential energy conservation standards for air circulating fans. As previously discussed, DOE previously published and received public comment on three NODAs for fans and blowers, excluding air circulating fans. DOE plans to rely on the existing analysis from the Working Group for fans and blowers other than air circulating fans. This NODA focuses exclusively on air circulating fans and is intended to support DOE as it completes a notice of proposed rulemaking analysis for all fans and blowers, including air circulating fans. While the discussion in this NODA is specific to air circulating fans, DOE welcomes additional comments and data on fans and blowers other than air circulating fans relevant to its analysis of any potential energy conservation standards for all fans and blowers. In addition, DOE may consider conducting a separate rulemaking specific to air circulating fans instead of including air circulating fans as part of the fans and blowers rulemaking.

II. Summary of the Analyses Performed by DOE

This NODA focuses exclusively on air circulating fans and is intended to support DOE as it completes the notice of proposed rulemaking analysis for all fans and blowers, including air circulating fans. This NODA discusses the following for air circulating fans: (1) scope; (2) technology options; (3) engineering analysis; (4) markups analysis; (5) energy use analysis; (6) life cycle cost (''LCC'') and payback period (''PBP'') analyses; and (7) national impacts analysis. The items listed in Table II–1 provide an overview of the information about which DOE is requesting feedback. A supplemental spreadsheet documenting the assumptions and approach to the engineering analysis is included in the docket and accessible via the equipment rulemaking website. (See *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=51&action=viewlive*)

TABLE II–1—OVERVIEW OF DATA PRESENTED IN THIS NODA

Analysis	Data presented
Scope	Scope of equipment considered in the analysis of any potential energy conservation standards and related definitions.
Technology Options	More efficient motors.
	Improved aerodynamic design (inclusive of blade shape and material selection).
Engineering Analysis	Representative sizes.
	Determination of baseline fan efficiency.
	Determination of efficiency levels by applying different technology options.
	Estimates for manufacturer production cost and manufacturer conversion cost at each efficiency level.
	Manufacturer markup.
Markups Analysis	Distribution channels.
	Fraction of sales going through each channel.
	Distribution channel markups and sales tax.
Energy Use Analysis	Average operating hours per day.
	Distribution of operating hours.
	Fraction of time spent in each mode (*i.e.,* speed setting).
Life Cycle Costs and Payback Period Analysis	Review of repair, installation, and repair practices and costs.
	Energy prices.
	Lifetimes of air circulating fans.
	Discount rates.
	Review of available data to determine efficiency distributions.
National Impact Analysis	Base year shipments.
	Shipments growth rates and information related to shipments projections.
	Information related to efficiency trends.

A. Scope

As stated previously, the July 2022 TP NOPR discussed potential scope and definitions for air circulating fans, which include unhoused air circulating fan heads and housed air circulating fan heads. 87 FR 44194. In the July 2022 TP NOPR, DOE proposed that the test procedure would be applicable to all air circulating fans and proposed to define an air circulating fan as a fan that has no provision for connection to ducting or separation of the fan inlet from its outlet using a pressure boundary, operates against zero external static pressure loss, and is not a jet fan. 87 FR 44194, 44215.

DOE is considering including all air circulating fans in its analysis of potential energy conservation standards for fans and blowers. This includes unhoused air circulating fan head and housed air circulating fan head, for which DOE proposed definitions as part of the July 2022 TP NOPR (87 FR 44194, 44216).

In the July 2022 TP NOPR, DOE also provided definitions for subsets of housed air circulating fan heads, specifically air circulating axial panel fans, box fans, cylindrical air circulating fans, and housed centrifugal air circulating fans. 87 FR 44194, 44216.

DOE notes that the definitions used in this NODA are aligned with the proposed definitions in the July 2022 TP NOPR, which in turn were derived from definitions proposed by the AMCA. In response to the ECS RFI, AMCA provided additional comments to the docket on July 7, 2022, summarizing definitions to terms under consideration by the committee revising the ANSI/AMCA 230–15 standard, ''Laboratory Methods of Testing Air Circulating Fans for Rating and Certification'' (''AMCA 230–15''). (AMCA, No. 10, p. 1) AMCA's comments focused on definitions for different categories of air circulating fans and provided context for how air circulating fans might be grouped. (AMCA, No. 10, pp. 1–10) DOE will further address the scope and definitions of air circulating fan categories in the test procedure rulemaking and plans to consider AMCA's comments as part of the test procedure rulemaking.

DOE also notes that in response to the ECS RFI, the Joint Commenters expressed their support for establishing energy conservation standards for air

circulating fans, including air circulating fan heads, box fans, personnel coolers, and table fans. (Joint Commenters, No. 6 at p. 1) Additionally, the Joint Commenters agreed that, based on the definition fans and blowers, air circulating fan heads, box fans, personnel coolers, and table fans are within the scope of the fans and blowers equipment category. *Id.* Additionally, ebm-papst supported the inclusion of air circulating fans in the DOE test procedure and energy conservation standards for fans and blowers. (ebm-papst, No. 8 at p. 2) During the public meeting held for the July 2022 TP NOPR, AMCA commented that they believed it would be best to separate air circulating fans into a separate rulemaking from fans and blowers. (Public Meeting Transcript, EERE–2021–BT–TP–0021, No. 18 at pp. 12, 27, 43–44) Morrison Products supported AMCA's position that air circulating fans should be considered in a separate rulemaking. (Public Meeting Transcript, No. 18 at pp. 91–92) DOE has reviewed existing regulatory definitions and market materials and believes that air circulating fans fall within the definition of fans and blowers. DOE will review stakeholder comments and may consider a separate rulemaking for air circulating fans.

B. Technology Options

In the ECS RFI, DOE presented improved aerodynamic design, blade shape, more efficient motors, material selection, and variable-speed drives as potential technology options for air circulating fans and requested comment on: (1) how the specific technologies would impact air circulating fan efficiency; (2) whether the technologies listed apply equally to different categories of air circulating fans; (3) the impact of curved blades and airfoil blades on air circulating fan efficiency; (4) the impact of blade materials on fan efficiency; and (5) the percentage of air circulating fans sold with a motor and with variable-speed drive. 87 FR 7048, 7052.

In response, the Joint Commenters urged DOE to consider more efficient motors and more efficient blade designs in its analysis because of their energy savings potential. (Joint Commenters, No. 6 at p. 2) Specifically, they stated that alternating current (''AC'') direct-drive motors offer better efficiency than belt drives and that direct current (''DC'') motors are more efficient than AC motors. *Id.* They added that more advanced blade designs, such as airfoil blades, can improve the efficiency of a fan relative to traditional single-thickness blades. *Id.* emb-papst commented that to improve fan efficiency, inlet cones or bells and outlet vanes are occasionally included on air circulating fan housings and that winglets and rings are sometimes used on impellers. (ebm-papst, No. 8 at p. 3) Additionally, ebm-papst stated that the most efficient air circulating fans on the market (maximum available technology or ''max-tech'') often include the following features: an electronically commutated motor (''ECM''), injection-molded axial impellers, and outlet guide vanes. (ebm-papst, No. 8 at p. 4) Finally, ebm-papst commented that they are unaware of any air circulating fans that are sold without a motor. (ebm-papst, No. 8 at p. 3)

During manufacturer interviews,[9] many manufacturers stated that they would switch to more efficient motors before redesigning the housing and impeller (*i.e.,* the blade assembly), since fan redesign results in significant conversion costs. However, improving the overall fan aerodynamics with the addition of attachments, such as inlet cones or outlet vanes might be done before moving to higher efficiency and more costly motors.

DOE is not aware of any circulating fans that were distributed in commerce without an electric motor. Based on review of the Bioenvironmental and Structural System Laboratory (''BESS Labs'') database and air circulating fan teardowns, most motors paired with air circulating fans are not currently in the scope of DOE energy conservation standards (because they are split-phase (''SP'') motors and permanent split capacitor (''PSC'') motors).[10] As such, DOE expects that, in many cases, fan manufacturers are using lower efficiency motors. Therefore, in this NODA, DOE's analysis focuses primarily on improving air circulating fan efficiency through the use of more efficient motors, as described in more detail in section II.D.3.c. DOE also evaluates the efficiency gains and relative costs associated with fan aerodynamic redesign. Notably, DOE is conducting a separate energy conservation rulemaking for electric motors in which it is considering standards for certain single-speed SP electric motors, single-speed shaded pole electric motors, and single-speed PSC motors. (See Docket No. EERE–2020–BT–STD–0007) The Department will consider any outcome of the electric motors rulemaking when conducting its analysis of potential energy conservation standards for air circulating fans.

Issue 1: DOE requests comment on its assumption that most motors paired with air circulating fans are lower efficiency induction motors that are not currently regulated by DOE. Additionally, DOE requests data on the percentage of air circulating fans that include a SP, PSC, shaded pole, or electronically commuted motors.

C. Screening Analysis

DOE uses the following five screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking: (1) Technological feasibility; (2) Practicability to manufacturer, install, and service; (3) Impacts on product utility or product availability; (4) Adverse impacts on health or safety; and (5) Unique pathway proprietary technologies. 10 CFR part 430, subpart C, appendix A, sections 6(b)(3) and 7(b). If DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis.

DOE did not conduct a screening analysis for this NODA and instead is presenting analyses for more efficient motors with efficiency and cost estimates for aerodynamic redesign in order to receive stakeholder feedback. In future analysis to support this rulemaking, DOE may screen out some or all of the technologies discussed based on one or more of the screening criteria.

Issue 2: DOE requests comment on if or how the five screening criteria may impact the application of an aerodynamic redesign (including changes to housing, impeller and/or blade design), more efficient motors, or VSDs (''variable-speed drives'') as design options in the current rulemaking analysis.

D. Engineering Analysis

The purpose of the engineering analysis is to determine the incremental manufacturing cost associated with producing products at higher efficiency

[9] DOE conducted manufacturer interviews specific to air circulating fans from May 24 to May 31, 2022, to gather information for its analyses presented in this NODA. Four manufacturers opted to participate in these interviews.

[10] SP and PSC motors are types of single-phase motors that are not currently included in the scope of electric motors at 10 CFR 431.25 because only polyphase motors are included in this scope. SP and PSC motors are not currently included in the scope of small electric motors at 10 CFR 431.441 because they do not meet the statutory definition of ''small electric motor'' as defined at 10 CFR 431.442. In March 2022, DOE published a preliminary analysis for the ongoing energy conservation standards rulemaking for electric motors that included SP and PSC motors in its analysis. 87 FR 11650.

levels. The primary considerations in the engineering analysis are the selection of efficiency levels to analyze (*i.e.,* the ''efficiency analysis'') and the determination of product cost at each efficiency level (*i.e.,* the ''cost analysis'').

DOE conducts the efficiency analysis using either an efficiency-level approach, a design option approach, or a combination of both. Under the efficiency-level approach, the efficiency levels to be considered in the analysis are determined based on the market distribution of existing products (in other words, observing the range of efficiency and efficiency-level ''clusters'' that already exist on the market). This approach typically starts with compiling a comprehensive list of products available on the market, such as from DOE's product certification database. Next, the list of models is ranked by efficiency level from lowest to highest, and DOE typically creates a scatter plot to visualize the distribution of efficiency levels. From these rankings and visual plots, efficiency levels can be identified by examining clusters of models around common efficiency levels. The maximum efficiency level currently available on the market can also be identified.

Under the design option approach, the efficiency levels to be considered in the analysis are determined through detailed engineering calculations and/or computer simulations of the efficiency improvements from implementing specific design options that have been identified in the technology assessment. In an iterative fashion, design options can also be identified during product teardowns, described below. The design option approach is typically used when a comprehensive database of certified models is unavailable (for example, if a product is not yet regulated) and therefore the efficiency-level approach cannot be used.

In certain rulemakings, the efficiency-level approach (based on actual products on the market) will be extended using the design option approach to define ''gap fill'' levels (levels that bridge large gaps between other identified efficiency levels) and/or to extrapolate to the ''max-tech'' level (the level that DOE determines is the maximum achievable efficiency level), particularly in cases where the ''max-tech'' level exceeds the maximum efficiency level currently available on the market.

The cost analysis portion of the engineering analysis is conducted using one or a combination of cost approaches. The selection of the cost approach depends on a variety of factors such as the availability and reliability of information on product features and pricing, the physical characteristics of the regulated product, and the practicability of purchasing the product on the market. DOE generally uses the following cost approaches:

Physical teardown: Under this approach, DOE physically dismantles a commercially available product, component-by-component, to develop a detailed bill of materials (''BOM'') for the product.

Catalog teardown: In lieu of physically deconstructing a product, DOE identifies each component using available parts diagrams (available from manufacturer websites or appliance repair websites, for example) to develop the BOM for the product.

Price surveys: If neither a physical nor catalog teardown is feasible (for example, for tightly integrated products that are infeasible to disassemble and for which parts diagrams are unavailable), DOE conducts retail price surveys by scanning retailer websites and other marketing materials. This approach must be coupled with assumptions regarding distributor markups and retailer markups in order to estimate the actual manufacturing cost of the product.

Manufacturer interviews: DOE may conduct voluntary interviews with manufacturers to gather confidential information that can be used in its analyses. This information can include manufacturing costs, materials prices, and markups that can be used in DOE's cost analysis.

The engineering analysis conducted for this NODA used a design option approach supplemented by an efficiency level approach. The cost analysis relied on physical and catalog tear downs, cost analyses from other rulemakings, and confidential information provided by manufacturers.

1. Methodology

The engineering analysis presented in this NODA is consistent with the scope, definitions, and metric proposed in the July 2022 TP NOPR for all fans (including air circulating fans), except where described below.

a. Metric

In the July 2022 TP NOPR, DOE proposed to use the fan energy index (''FEI'') or weighted average FEI (in the case of multi-speed and variable-speed air circulating fans) as the efficiency metric for fans and blowers, including air circulating fans. (87 FR 44194, 44237–44238) FEI is an index calculated using the fan electrical input power at a given operating point, divided by the electrical input power of a reference fan at the same operating point. The FEI allows for the evaluation of fan or blower efficiency across a range of operating conditions, captures the performance of the motor, transmission, or motor controllers (if present), and enables differentiation of fans with motors, transmissions, and motor controller with different efficiencies. In the July 2022 TP NOPR, DOE proposed that the metric be determined as follows: (1) for single-speed fans, FEI would be evaluated at the single available speed and corresponding duty point; (2) for multi-speed fans and variable-speed fans, a weighted average FEI would be determined using a weighted average of all speeds tested. (87 FR 44194, 44238)

DOE notes that the BESS Labs combined database does not provide performance data for multiple speed fans at all the test speeds proposed in the July 2022 TP NOPR. Therefore, for this NODA, DOE evaluated potential efficiency improvements based only on high-speed test data. Because fans are typically less efficient at their maximum speed, DOE expects that this assumption provides a conservative estimate of potential efficiency gains relative to the baseline. In future analysis, DOE expects to conduct its analysis consistent with the approach adopting in the forthcoming fans and blower test procedure.

In the July 2022 TP NOPR, DOE also proposed FEI reference constants for flow rate, pressure and the efficiency target for air circulating fans. (87 FR 44194, 44230, 44232) Specifically, DOE proposed a flow rate constant (Q_0) of 3,201, and pressure constant (P_0) of 0 and an efficiency target (η_0) of 0.38. *Id.* DOE utilized these proposed constants in its calculations of reference FEI used in the engineering analysis. In the supplemental NODA spreadsheet included in this docket, DOE also provided performance in terms of cubic feet per minute per watt (or CFM/W), since the FEI metric is still relatively new. (See Docket No. EERE–2022–BT–STD–0002, No. 11)

b. Air Circulating Fan Performance Data

AMCA stated that no air circulating fans are currently certified by AMCA. (AMCA, No. 9 at p. 4) Additionally, AMCA commented that air circulating fan product literature may advertise fan performance calculated using multiple versions of the AMCA 230 standard (*e.g.,* AMCA 230–1999, AMCA 230–2007, AMCA 230–2012, AMCA 230–2015 without errata, and AMCA 230–15 with 2021 errata). They stated that all of these versions, except for AMCA 230–15

with 2021 errata, have at least one error with respect to thrust, volumetric flow rate, or input power. AMCA added that this is an issue for the purchaser, either because purchasers are not aware of these errors or because manufacturers are not required to state how air circulating fan performance values were obtained. (*Id.*) AMCA also provided a table in their response to the ECS RFI showing the corrections made between each version of AMCA 230. (AMCA, No. 9 at p. 5, Table 1) The contents of this table are reproduced below in Table II–2.

TABLE II–2—SUMMARY OF ERRORS AND CORRECTIONS IN ANSI/AMCA STANDARD 230

Year	Thrust	Volumetric-flow-rate equation	Input power
1999	No conversion for density	Incorrect—based on actual atmospheric density, but calculation exaggerated by multiplication factor of 1.414 (√2).	No conversion for density.
2007	Conversion to standard air density.	Not calculated	No conversion for density.
2012	Conversion to standard air density.	Incorrect—uses converted thrust but actual air density	No conversion for density.
2015	Conversion to standard air density.	Correct—uses converted thrust and standard air density.	No conversion for density.
2015: 2021 erratum	Conversion to standard air density.	Correct—uses converted thrust and standard air density.	Conversion to standard air density.

During interviews, manufacturers stated that data collected by BESS Labs, associated with the University of Illinois-Champaign, is the best source for air circulating fan data.[11] BESS Labs maintains a database of housed and unhoused air circulating fan heads that are used primarily in the agricultural industry (*i.e.,* poultry houses, greenhouses, dairy barns). DOE notes that these air circulating fans heads are tested by BESS Labs according to AMCA 230–12. DOE used the BESS Labs test data and applied conversion formulas to calculate the performance data of the fans according to AMCA 230–15 with 2021 errata. Details of these performance calculations are available in the supplementary spreadsheet attached to this docket. (EERE–2022–BT–STD–0002, No. 11)

DOE did not receive sufficient air circulating fan performance data from the ECS RFI stakeholder comment responses or from manufacturers during the interview process. Therefore, for this analysis, DOE relied primarily on the BESS Labs circulating fans database (''BESS Labs Database''). The BESS Labs Database categorizes circulating fans into the following categories: basket, box, panel, tube, tube with bell inlet, vented tube, wire basket, and wire tube.

Based on the proposed definitions discussed in section II.A, DOE mapped the categories in the BESS Labs Database as shown in Table II–3.

TABLE II–3—DOE CATEGORIZATION OF BESS LABS DATABASE CIRCULATING FAN CATEGORIES

July 2022 TP NOPR terminology	BESS labs database category
Unhoused air circulating fan head	Basket.
Housed air circulating fan head	
Box fan	Box.
Cylindrical air circulating fan	Tube, Tube with Bell Inlet, Vented Tube.
Air circulating axial panel fan	Panel.

For this initial analysis, DOE evaluated unhoused air circulating fan heads, box fans, and cylindrical air circulating fans.[12] DOE expects that the technology options evaluated in its analysis of these fans would be applicable to air circulating axial panel fans, especially improved motor efficiency. DOE expects that it will conduct additional analysis on air circulating axial panel fans in a subsequent part of this rulemaking.

DOE further notes that the BESS Lab Database did not include any housed centrifugal air circulating fans. DOE expects that it will conduct additional analysis on housed centrifugal air circulating fans in a subsequent part of this rulemaking. In addition, the BESS Labs Database includes very few air circulating fans with input power less than 125 W. DOE expects that it will conduct additional analysis on air circulating fans with input power less than 125 W in a subsequent part of this rulemaking.

To further inform its analysis, DOE completed testing and teardowns on a small sample of housed and unhoused air circulating fan heads.[13] For this analysis, DOE is assuming that the combination of housed and unhoused air circulating fan heads listed in the BESS Labs Database and those additional fans that DOE tested at BESS Labs (''BESS Labs Combined Database'') are representative of the air circulating fan head market. However, the air circulating axial panel fans in the BESS Labs database were excluded from DOE's analysis and housed centrifugal air circulating fans and air circulating fans with input power less than 125 W

[11] BESS Labs is a research, product-testing and educational laboratory. BESS Labs provides engineering data to air in the selection and design of agricultural buildings and assists equipment manufactures in developing better products. Test reports for circulating fans are publicly available at *bess.illinois.edu/current.asp.*

[12] The BESS Labs Database classifies circulating fans as basket, box, panel, tube, tube with bell inlet, vented tube, wire basket, and wire tube fans. DOE evaluated 58 box fans (housed circulating fan heads) and 40 tube fans (housed air circulating fan heads) and 102 basket fans (unhoused air circulating fan heads) in the BESS Labs Database, accessed on June 17, 2022.

[13] DOE tested seven basket fans (unhoused air circulating fan heads) and 11 tube fans (housed air circulating fan heads) and two box fans (housed air circulating fans heads) at BESS Labs. Where DOE has relied on the test data from these fans in addition to the BESS Labs Database, DOE has used the term ''BESS Labs Combined Database''.

were not represented in the BESS Labs Combined Database.

Issue 3: DOE requests comment on its assumption that the BESS Labs Combined Database is representative of the air circulating fan head market, with the exception of housed centrifugal air circulating fans and air circulating fans with input power less than 125 W which are not represented in the BESS Labs Combined Database.

Issue 4: DOE requests additional information for all categories of air circulating fans, including: manufacturer name, model number, fan diameter, blade number, blade shape, blade material, housing type, housing material, spacing between the blade tip and the housing, and housing depth with associated performance data obtained using AMCA 230–15 with 2021 errata (or sufficient information that can be used to correct to AMCA 230–15 with 2021 errata). DOE additionally requests the following information on the motors sold within each fan model: motor type (*i.e.,* SP, PSC, ECM, polyphase, etc.), type of drive (*i.e.,* direct or belt), motor horsepower (''hp''), motor full-load efficiency (if available), motor rotations per minute, number of speeds, motor electric requirements (*i.e.,* volts, amps, frequency, phase, AC/DC), and whether a variable-speed drive is included with the fan.

The minimum and maximum diameter housed and unhoused air circulating fan heads in the BESS Labs Combined Database are 12 inches and 52 inches, respectively. Although DOE did not evaluate fans smaller or larger than these diameters in this NODA, in the absence of additional data, DOE may consider extrapolating BESS Labs data to smaller and larger diameters using fan affinity laws to the extent such extrapolation is representative of the performance of such fans.

Issue 5: DOE requests comment on the potential of using fan affinity laws to extrapolate BESS Labs performance data to air circulating fan heads with diameters less than 12 inches and greater than 52 inches. Additionally, DOE requests model characteristics and performance data obtained using AMCA 230–15 plus 2021 errata (or sufficient information than can be used to correct to AMCA 230–15 plus 2021 errata) for air circulating fans with diameters both smaller than and larger than those listed in the BESS Labs Database.

2. Equipment Classes and Representative Sizes

In the ECS RFI, DOE requested comment on whether it should consider air circulating fan heads, personnel coolers, box fans, and table fans as separate categories (*i.e.,* equipment classes) or whether some or all of these four categories should be grouped together when evaluating potential energy conservation standards for air circulating fan heads. 87 FR 7048, 7051. DOE additionally requested whether these four fan categories have unique features or applications that might warrant separate consideration in the energy standards analysis. *Id.* Finally, DOE requested comment on whether it should consider separate equipment classes for air circulating fan heads based on diameter, operating speed, efficiency, or utility. *Id.*

The Joint Commenters stated that portable blowers may require an equipment class separate from air circulating fans because they provide a unique application (*i.e.,* drying floors), have centrifugal rather than axial construction, and are relatively low in efficiency. (Joint Commenters, No. 6 at p. 2) In the July 2022 TP NOPR, DOE proposed a definition for ''housed centrifugal air circulating fan'', which it believes is the same fan type that the Joint Commenters describe as a portable blower. 87 FR 44194, 44216. As discussed in section II.D.2.a, however, DOE has not yet finalized equipment classes for air circulating fans. DOE is requesting additional information and data on the utility of different fan categories to further inform its analysis.

AMCA commented that air circulating fan heads, box fans, personnel coolers, and table fans all provide directional airflow. (AMCA, No. 9 at p. 2) ebm-papst indicated that designing an air circulating fan for high outlet velocity may be an impediment to achieving greater fan efficiency. (ebm-papst, No. 8 at p. 3) DOE interprets this comment to mean that the utility of an air circulating fan (*i.e.,* a fan designed for high outlet velocity vs. more diffuse flow) may impact its efficiency.

a. Equipment Classes

When evaluating and establishing energy efficiency standards, DOE often divides covered equipment into separate classes by the type of energy used, equipment capacity, or some other performance-related features that justify differing standards. In deciding whether a performance-related feature justifies a different standard, DOE generally considers such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (42 U.S.C. 6295(q) and 6316(a))

DOE has not yet identified equipment classes for air circulating fans, but is considering the following performance-related features that may justify separate equipment classes:

(1) Presence or absence of a safety guard;

(2) Presence or absence of housing;

(3) Housing design (*i.e.,* box, panel, cylindrical, bladeless, thermal, etc.);

(4) Blade type (axial, centrifugal);

(5) Drive type (belt, direct);

(6) Number of discrete speed settings (single-speed, two-speed, three-speed, etc.);

(7) Power requirements (input power, phase, voltage, etc.); and

(8) Air velocity or throw.

For the purposes of this NODA, DOE grouped all air circulating fans analyzed into a single equipment class.

Issue 6: DOE requests comment on whether, and if so how, each of the following performance-related features may impact utility of air circulating fans: presence or absence of a safety guard, presence or absence of housing, housing design, blade type, drive type, number of discrete speed settings, power requirements, and air velocity or throw. DOE requests additional feedback and data or information on other air circulating fan features that may impact utility for the end user and might form the basis for classification.

Issue 7: DOE requests comment with supporting data on whether the following performance-related features provide substantially different utility, or are expected to have a significant impact on efficiency because of how they are used: (1) housed vs. unhoused air circulating fan heads; (2) direct-driven vs. belt-driven air circulating fan heads; and (3) single-phase vs. polyphase air circulating fan heads. DOE also requests information on any additional features that may impact air circulating fan head utility.

b. Representative Sizes

The minimum and maximum diameters reported in the BESS Labs Database for housed and unhoused air circulating fan heads are 12 inches and 52 inches, respectively. DOE notes that diameter has been used to define representative units for ceiling fans and for previous analyses conducted on fans and blowers that are not air circulating fans.[14] Therefore, DOE developed a diameter histogram using the BESS Labs Combined Database to determine

[14] On November 1, 2016, DOE published a notification of data availability (''November 2016 NODA'') that presented an analysis for fans and blowers other than air circulating fans. 81 FR 75742. The engineering analysis evaluated manufacturer production cost as a function of efficiency level for 10-inch, 20-inch and 30-inch diameter fans and blowers that are not air circulating fans. See *www.regulations.gov/document/EERE–2013–BT–STD–0006–0189.*

representative diameters for analysis. Based on this distribution, DOE chose the following representative diameters for its analysis in this NODA: 12 inches, 20 inches, 24 inches, 36 inches and 50 inches. More details on the diameter distribution can be found in the supplementary spreadsheet included in the docket. (See Docket No. EERE–2022–BT–STD–0002, No. 11)

Issue 8: DOE requests comment on whether the diameters chosen for representative units in this analysis (*i.e.,* 12 inches, 20 inches, 24 inches, 36 inches, and 50 inches) accurately represent the diameters with the highest sales volume available in the air circulating fan market. DOE also requests comment on whether diameter is an appropriate representative metric for air circulating fans.

For each representative diameter, DOE used the most common motor shaft output power value in the BESS Labs Combined Database as the representative motor hp. Table II–4 summarizes the motor hp associated with each representative diameter in DOE's NODA analysis. More details on the motor hp distribution can be found in the supplementary spreadsheet included in the docket. (See Docket No. EERE–2022–BT–STD–0002, No. 11)

TABLE II–4—REPRESENTATIVE DIAMETERS AND ASSOCIATED REPRESENTATIVE MOTOR INPUT POWER USE IN THIS ANALYSIS

Representative diameter (inches)	Representative motor input power (hp)
12	0.1
20	0.33
24	0.5
36	0.5
50	1

Issue 9: DOE requests comment on whether the motor hp it has associated with each representative diameter (*i.e.,* 0.1 hp for 12 inches, 0.33 hp for 20 inches, 0.5 hp for 24 inches and 36 inches, and 1 hp for 50 inches) appropriately represent the motor hp for fans sold with those corresponding diameters.

To simplify the discussion in this NODA, the efficiency model and the cost model are discussed using a 24-inch representative unit. DOE's analysis for other representative units is included in the supplemental spreadsheet included in the docket. (See Docket No. EERE–2022–BT–STD–0002, No. 11)

3. Efficiency Model

The efficiency model is a key analytical tool used to construct cost-efficiency curves. This model is used to estimate efficiencies at different efficiency levels using a design option approach supplemented with a performance approach.

a. BESS Combined Database

DOE calculated FEI for all fans in the BESS Labs Combined Database by correcting the BESS data for air density, consistent with AMCA 230–15 (with 2021 errata) and using the FEI equation proposed in the July 2022 TP NOPR. 87 FR 44194, 44230, 44232. A plot of average FEI as a function of representative diameter and number of representative units analyzed in the BESS Labs Combined Database is shown in Figure 1.

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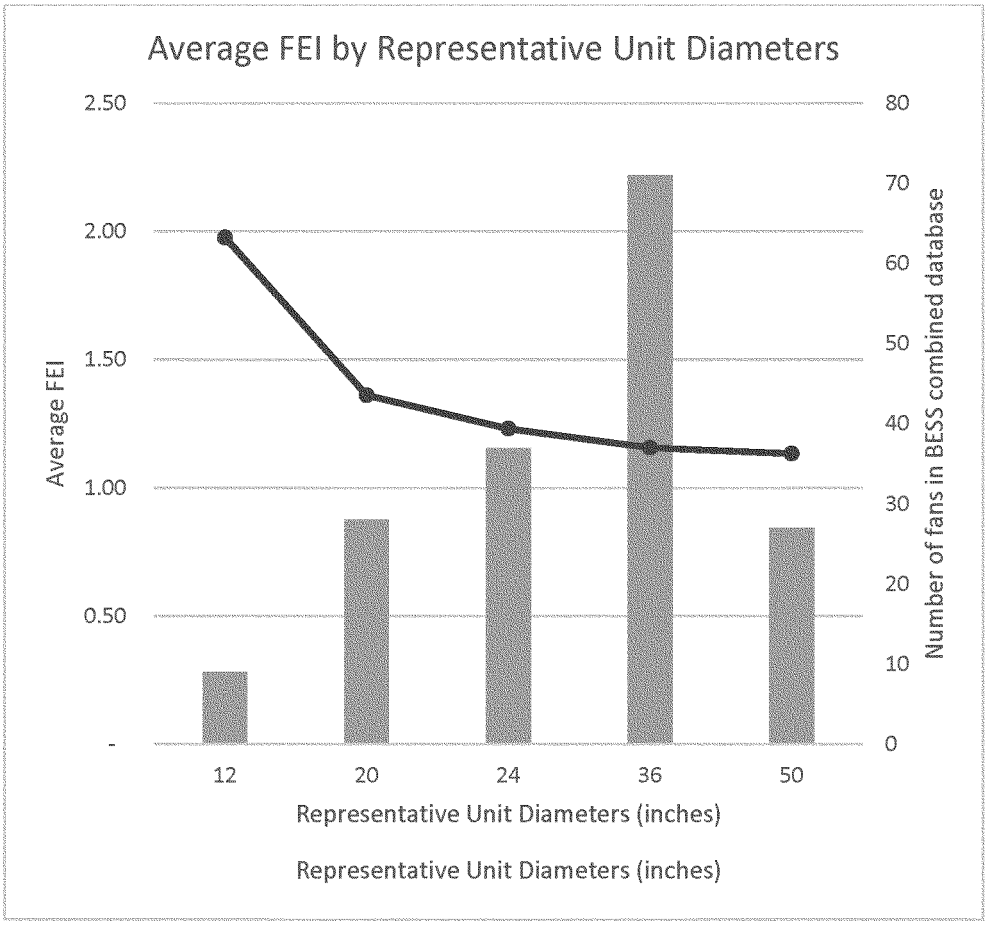

Figure 1: Average FEI and Number of Fans in the BESS Combined Database as a Function of Representative Diameter.

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As shown in Figure 1, FEI ranges from 0.39 to 2.74. A plot showing FEI for all fans in the BESS Labs Combined Database as a function of diameter can be found in the supplemental spreadsheet attached to this docket. (See Docket No. EERE–2022–BT–STD–0002, No. 11) FEI has minimal variance between 20-inch and 50-inch diameter fans; however, FEI increases sharply at diameters less than 20 inches. DOE expects this is because the reference fan used in the FEI calculation assumes a belt-drive. Table II–5 shows the number of direct-drive and the number of belt-drive air circulating fans in the BESS Labs Combined Database for each representative diameter. Relative to DOE's representative diameters, belt-driven fans are observed only at 36 inches and 50 inches. Only at 50 inches do belt-driven fans become more prevalent in the BESS Labs Combined Database than direct-drive fans.

TABLE II–5—DISTRIBUTION OF DIRECT-DRIVE AND BELT-DRIVE FANS IN THE BESS LABS COMBINED DATABASE BY DIAMETER

Diameter (inches)	Number of direct-drive	Number of belt-driven	Grand total
12	9	0	9
20	28	0	28
24	37	0	37
36	62	9	71
50	5	22	27

DOE also reviewed the BESS Labs Combined Database to understand the types of motors sold with air circulating fans. DOE evaluated motor type, model, and corresponding product literature for the 20 fans in the BESS Labs Combined Database that DOE tested, in addition to the 10 most efficient and least efficient fans in the database. DOE found that

every fan evaluated as part of this exercise used either a single-phase PSC motor, a polyphase motor,[15] or an ECM. There was only one ECM fan in the BESS Labs Combined Database. Details of this analysis can be found in the supplemental spreadsheet attached to this docket. (See Docket No. EERE–2022–BT–STD–0002, No. 11)

DOE also compared the FEI values of fans that use single-phase and fans that use polyphase motors in the BESS Labs Combined Database and did not find a significant difference between the two. However, as discussed in a notice of proposed rulemaking for dedicated purpose pool pump motors published on June 21, 2021, DOE has previously found that polyphase motors are generally more efficient than single-phase motors due to differences in their construction. 87 FR 37122, 37136. For both the efficiency and cost analyses here, DOE opted to evaluate single-phase motor technologies only. Given that polyphase motors are generally more efficient than single-phase motors, DOE believes this is a more conservative approach. While DOE evaluated only single-phase motor technologies, it utilized the FEI data of both single-phase and polyphase motor fans in the BESS Labs Combined Database when determining FEI values. DOE did this since this approach provided more FEI data, and, despite the expectation that polyphase motors are generally more efficient than single-phase motors, there was not a significant difference in FEI between single-phase and polyphase fans in the database.

Although the BESS Labs Combined Database lists only PSC motors and one ECM, DOE's review of the air circulating fan market indicated that SP motors are also used in air circulating fans. In general, SP motors are the least efficient, ECMs are the most efficient, and PSC motor efficiency falls between SP motors and ECMs. The efficiency of each motor type can be improved by using higher quality steel and magnets, or by using more magnetic material. For this analysis, DOE assumed that the least efficient fans on the market (baseline) used SP motors and therefore evaluated potential air circulating fan efficiency improvements by replacing an SP motor with a PSC motor (''PSC 1''), replacing a PSC 1 motor with a more efficient PSC motor (''PSC 2''), and replacing a PSC 2 motor with an ECM.

Issue 10: DOE requests comment on its use of SP motors as the baseline for air circulating fans. Additionally, DOE seeks feedback on its choice of motor technologies (SP motor to PSC 1 motor, PSC 1 motor to PSC 2 motor, and PSC 2 motor to ECM) to estimate air circulating fan efficiency increases from one efficiency level to the next.

Additionally, DOE considered the efficiency gains that might be obtained from improving the aerodynamic design of an air circulating fan. DOE's analysis of the BESS Labs Combined Database did not indicate that any particular aerodynamic features, including blade design or housing/guard design, had a significant impact on air circulating fan efficiency. However, feedback received during manufacturer interviews indicated that blade design and housing/guard design can impact fan efficiency. For blade design, manufacturers generally responded that decreasing the number of fan blades, optimizing the blade shape for efficiency, and, for housed fans, decreasing the clearance between the blade tip and the housing can all improve the efficiency of air circulating fans. However, manufacturers added that decreasing the blade tip clearance can also increase the noise generated by the fan. For unhoused air circulating fans, manufacturers stated that increasing the spacing between wire guard wires and redesigning the motor hub supports more efficient airflow. For housed air circulating fans, manufacturers discussed the potential for improving fan efficiency by adjusting the inlet and outlet geometries to improve airflow.

Table II–6 summarizes the technology options DOE analyzed for each efficiency level.

TABLE II–6: TECHNOLOGY OPTIONS ASSOCIATED WITH EACH EFFICIENCY LEVEL

EL0 (baseline)	EL1	EL2	EL3	EL4
SP motor	PSC 1	PSC 2	ECM	ECM and Aerodynamic redesign.

DOE discusses its analysis of baseline efficiency and the efficiencies that it used in its analysis for each EL in the following sections.

b. Baseline Fan Efficiencies

The baseline configuration represents the lowest efficiency level commonly available in the market. Because energy conservation standards do not currently exist for air circulating fans, DOE must establish a baseline configuration using available information, as opposed to an existing energy conservation standard. The baseline configuration defines the energy consumption and associated cost for the lowest efficiency fan analyzed in each equipment class.

DOE assumed that baseline air circulating fans use SP motors because they are the least expensive type of air circulating fan motor on the market. As stated in the previous section, SP motors are less efficient than other electric motors available. Since DOE does not have test data for air circulating fans sold with a SP motor, DOE defined EL1 as a fan in the BESS Labs Combined Database with a PSC 1 motor. Using data from an electric motors database compiled by the Department (''Motors Database''), DOE established the loss in efficiency by replacing a PSC 1 motor (EL 1) with an SP motor (EL 0 or baseline).

Data in the Motors Database include information on motor topology (*i.e.,* whether the motor is SP, PSC, or another type), motor enclosure (*i.e.,* whether the motor is enclosed [16] or not or whether it is air-over [17] or not), motor hp, and motor efficiency. DOE notes that the motors in its Motors Database are not currently subject to DOE standards. Given that motor manufacturers are not required to certify motor performance values to DOE, it is possible that the nominal efficiency values presented in the catalog data are not accurate. During its review of air circulating fan motor literature, DOE found that every fan for which the motor enclosure type was divulged used

[15] Single-phase motors have a single conductor through which the alternating current input signal is sent to the motor. Polyphase motors have multiple conductors through which alternating current input signals that are phase-shifted from each other are sent to the motor.

[16] ''Enclosed'' motors are dust-tight, meaning that they prevent the free exchange of air to the point that particulates cannot enter the motor enclosure. ''Open'' motors allow the free exchange of air through the motor enclosure via openings designed for ventilation.

[17] ''Air-over'' motors are used specifically for fans and blowers, are placed in the pathway of the airflow, and are cooled by the airflow.

an air-over motor. Therefore, in this analysis, DOE assumed that all motors used for air circulating fans are air-over motors, and it considered only data for air-over SP motors and for air-over PSC motors in the Motors Database. ECMs were not included in the Motors Database.

To determine the differences in efficiency between SP motors and PSC motors, DOE used SP motor and PSC motor data from the motor database. DOE calculated the average efficiencies of SP motors and PSC motors for each motor output value in the database, then applied best fit curves to the average efficiency values as a function of horsepower. DOE used these equations to estimate SP motor and PSC 1 motor efficiencies and to calculate the decrease in efficiency from PSC 1 motors to SP motors for each representative unit horsepower. Using this approach, the efficiency decrease for the 24-inch diameter fan, correlating to the 0.5 hp unit, is 8.3 percent. Further details of how the efficiency difference between SP motors and PSC 1 motors was determined and applied to the fan FEI values can be found in Section II.D.3.c of this NODA and the supplementary spreadsheet attached to this docket. (See Docket No. EERE–2022–BT–STD–0002, No. 11)

Issue 11: DOE requests comment on its assumption that motors used in air circulating fans are exclusively air-over motors. If this is not the case, DOE requests information on the other types of motors that are sold with air circulating fans and data on the percentage of air circulating fans that are sold with motors other than air-over motors. Additionally, DOE requests information on whether or not the type of motor supplied with an air circulating fan is a function of air circulating fan category (*e.g.,* unhoused air circulating fan head, box fan, cylindrical air circulating fan, etc.).

To determine FEI values at EL 1, DOE established a separate FEI value at EL1 for fans less than 20 inches in diameter and for fans greater than or equal to 20 inches in diameter, consistent with the average FEI values shown in Figure 1, where FEI increases significantly below a diameter of 20 inches. Using the BESS Labs Combined Database, DOE defined EL1 as the 5th percentile of FEI values calculated for the 12-inch representative unit (FEI = 1.70) and the 5th percentile of FEI values calculated for all representative units with diameters at or above 20 inches (FEI = 0.79). The 5th percentile was chosen to conservatively capture the efficiencies of the least efficient air circulating fans in the database, which DOE assumed also used the least efficient PSC 1 motors, while excluding potential outliers with very low FEI values. Further details of this analysis can be found in the supplementary spreadsheet attached to this docket. (See Docket No. EERE–2022–BT–STD–0002, No. 11) Since DOE estimated SP motors to be 8.3 percent less efficient than PSC 1 motors for the 24-inch, 0.5 hp representative unit, DOE defined the baseline (EL 0) for this representative unit at FEI = 0.73. FEI values calculated for the 24-inch representative unit are shown in Table II–7 at the end of this section. Further details of this analysis can be found in the supplementary spreadsheet attached to this docket (see Docket No. EERE–2022–BT–STD–0002, No. 11).

Issue 12: DOE requests feedback on whether catalog performance data on SP motors and PSC motors is generally representative of the performance of the SP and PSC motors included with air circulating fans.

Issue 13: DOE requests feedback on the methodology used to determine the baseline efficiency values for the representative units, including its method of first establishing the EL1 efficiency and then determining the baseline efficiency by reducing the EL1 efficiency by the difference in efficiency between a PSC motor and a SP motor. Additionally, DOE requests data on the expected average improvement in air circulating fan efficiency when a SP motor is replaced by a PSC 1 motor.

c. Improving Efficiency With More Efficient Motors

This section describes how DOE estimated improvements in air circulating fan efficiency by using more efficient motors.

When substituting a more efficient motor for a less efficient motor, DOE assumed that the duty point of the fan (*i.e.,* the fan's airflow and pressure) remained the same, and that the only change in motor performance was a decrease in input power. Factors such as motor speed and inrush current were assumed to remain constant with the change in motor. This assumption enabled DOE to assume that a percent change in FEI is equal to a percent change in motor efficiency using the equations defined in ANSI/AMCA Standard 214–21, ''Test Procedure for Calculating Fan Energy Index (FEI) for Commercial and Industrial Fans and Blowers.'' This aligns with the July 2022 TP NOPR approach for calculating FEI. 87 FR 44194, 44230, 44232. A description of how DOE derived this relationship is provided in the supplementary spreadsheet attached to this docket. (See Docket No. EERE–2022–BT–STD–0002, No. 11) Throughout the remainder of this NODA, DOE will therefore discuss efficiency increases in terms of FEI and not in terms of motor efficiency increases. In the future, DOE may consider performing this analysis in terms of motor losses and shaft power, consistent with other rulemakings. See the ceiling fans preliminary analysis published February 9, 2022 (''Ceiling Fan Preliminary Analysis''). 87 FR 7758. See also the electric motors preliminary analysis published March 2, 2022 (''Electric Motors Preliminary Analysis''). 87 FR 11650.

Issue 14: DOE requests feedback on its assumption that airflow, pressure, and motor performance (for example, speed and inrush current) remain constant when replacing a less efficient motor with a more efficient motor in an air circulating fan. If airflow, pressure, or motor performance are not maintained when using a more efficient motor, DOE requests feedback and data on how it should conduct this analysis.

To determine the PSC 2 motor efficiencies, DOE again used PSC motor data from the motor database. Rather than fitting a curve to the average PSC motor efficiency values at each motor output power value, as it did for the PSC 1 motor curve, DOE instead fit a curve to the 95th percentile PSC motor efficiency values. The 95th percentile was chosen so that the efficiency values for PSC 2 motors were close to the maximum possible PSC motor efficiencies. DOE then used this curve to estimate PSC 2 motor efficiencies for the representative unit motor output power values.

For the representative units in this NODA that used 0.5 hp motors, replacing a 0.5 hp PSC 1 motor with a 0.5 hp PSC 2 motor increases the air circulating fan FEI by 11.2 percent. The resulting FEI for the 24-inch, 0.5 hp representative unit with a PSC 2 motor is therefore 0.88. (See Table II–7 at the end of this section) The supplementary spreadsheet attached to this docket provides more details on how efficiency increases from PSC 1 motors to PSC 2 motors were determined. (See Docket No. EERE–2022–BT–STD–0002, No. 11)

Issue 15: DOE requests feedback on whether the efficiency gains shown in the supplementary spreadsheet are realistic efficiency gains when replacing a lower efficiency PSC motor (*i.e.,* PSC 1 motor) with a higher efficiency PSC motor (*i.e.,* PSC 2 motor). If these assumptions are not realistic, DOE requests data demonstrating air circulating fan motor efficiency as a function of hp, as well as data for motor hp as a function of fan diameter.

To evaluate the efficiency increase when changing to an ECM, DOE used a 2018 pool pump motor database containing information on ECMs that was compiled by DOE in support of its dedicated purpose pool pump rulemaking (''DPPP Motor Database''). Most motors in the DPPP Motor Database were 1 hp and higher; therefore, DOE fit a curve to the ECM data at each motor hp and used this curve to extrapolate the data and estimate motor efficiencies at fractional hp for ECMs. The resulting ECM efficiency for the 24-inch, 0.5 hp representative unit is 83.2 percent, an efficiency increase of 23.9 percent from a PSC 1 motor to an ECM and a FEI of 0.98 at EL 3 (see Table II–7 at the end of this section). Further details of this analysis can be found in the supplementary spreadsheet attached to this docket. (See Docket No. EERE–2022–BT–STD–0002, No. 11)

Issue 16: DOE requests feedback on its use of dedicated purpose pool pump motors as a source for comparing PSC motor and ECM efficiency. Additionally, DOE requests information on whether motors used for this purpose are comparable to air circulating fan motors. DOE further requests feedback on whether the efficiency increases from PSC 1 motors to ECM that DOE presents are realistic. If dedicated purpose pool pump motors are not representative of air circulating fans motors, or DOE's estimated efficiency increases are not realistic, DOE requests data on the difference between PSC 1 motor efficiency and ECM efficiency and the difference between PSC 2 motor efficiency and ECM efficiency for air circulating fans. DOE also requests comment on its use of extrapolation of these data to obtain efficiency values at fractional hp.

d. Improving Efficiency Through Aerodynamic Redesign

This section describes how DOE evaluated increasing the energy efficiency of air circulating fans by improving fan component aerodynamic design.

While EL3 assumes that air circulating fan efficiency is increased through the use of an ECM, EL4 evaluates the efficiency impact from adding an ECM and improving the aerodynamic design of the fan. This ''max-tech'' level represents the highest efficiency available on the market. The fans in the BESS Labs Combined Database used almost exclusively PSC motors, so DOE assumed that the maximum efficiencies in the database corresponded to the use of a PSC 2 motor with a highly efficient aerodynamic design. Presumably, the maximum efficiencies achieved by a fan with a PSC motor and no aerodynamic redesign would be captured by the FEI values determined for EL 2 for each representative unit. The efficiency gain due to improvements in aerodynamic design can therefore be quantified by determining the difference between the maximum FEI values in the database and the efficiency levels determined for EL 2. DOE used the maximum FEI values in the BESS Labs Combined Database for each representative unit to develop a curve for the PSC 2 plus aerodynamic redesign FEI values as a function of diameter. The resulting FEI value for the 24-inch, 0.5 hp representative unit is 1.89. DOE then determined the percent increase from the EL 2 FEI values to the FEI values determined from the curve fit to establish the increase in efficiency due to aerodynamic redesign for each representative unit. This percent increase for the 24-inch, 0.5 hp representative unit was 114.39 percent. DOE then applied the percent increases in FEI due to aerodynamic redesign to the EL 3 FEI values to determine the EL 4 FEI values. The resulting EL 4 FEI value for the 24-inch, 0.5 hp representative unit was 2.10. Further details of this analysis can be found in the supplementary spreadsheet attached to this docket. (See Docket No. EERE–2022–BT–STD–0002, No. 11)

Issue 17: DOE requests feedback on the FEI values that it determined and its approach for estimating FEI values for an air circulating fan that includes both an ECM and improved aerodynamic design.

e. Results for a 24-inch, 0.5 hp Representative Unit

FEI values calculated for each efficiency level for the 24-inch, 0.5 hp representative unit are shown in Table II–7 . Information on the FEI values calculated for other representative units can be found in the supplementary spreadsheet attached to this docket. (See Docket No. EERE–2022–BT–STD–0002, No. 11)

TABLE II–7—FEI VALUES FOR 24-INCH, 0.5 hp REPRESENTATIVE UNIT

EL0 (baseline)	EL1	EL2	EL3	EL4
0.73	0.79	0.88	0.98	2.10

4. Cost Model

The cost model is a key analytical tool used to construct cost-efficiency curves. This model is used to estimate manufacturing production costs at various efficiency levels using a design option approach.

a. Cost Model Structure and Process

This section describes the process by which the cost model converts the physical information in each product's BOM into manufacturing cost estimates. The cost model is based on production activities and divides factory costs into materials, labor, depreciation, and overhead. The material costs include both raw materials and purchased part costs. The labor costs include fabrication, assembly, and indirect and overhead (burdened) labor rates. The depreciation costs include manufacturing equipment depreciation, tooling depreciation, and building depreciation. The overhead costs include indirect process costs, utilities, equipment and building maintenance, and rework. DOE lists the cost inputs of these categories in Table II–8.

TABLE II–8—COST MODEL CATEGORIES AND DESCRIPTIONS

Major category	Subcategory	Description
Material Costs	Direct	Raw materials (*e.g.,* coils of sheet metal) and purchased parts (*e.g.,* fan motors, compressors).

TABLE II–8—COST MODEL CATEGORIES AND DESCRIPTIONS—Continued

Major category	Subcategory	Description
	Indirect	Material used during manufacturing (*e.g.,* welding rods, die oil, release media).
Manufacturing Labor	Assembly	Part/unit assembly on manufacturing line.
	Fabrication	Conversion of raw material into parts ready for assembly.
	Indirect	Fraction of overall labor not associated directly with product manufacturing (*e.g.,* forklift drivers, quality control).
	Supervisory	Fraction of indirect labor that is paid a higher wage.
Depreciation	Equipment, Conveyor, Building	Straight line depreciation over expected life.
	Tooling	Cost is allocated on a per-use basis or obsolescence, whichever is shorter.
Other Overhead	Utilities	A fixed fraction of all material costs meant to cover electricity and other utility costs.
	Maintenance	Based on installed equipment and tooling investment.
	Property Tax and Insurance	A fixed fraction based on total unit costs.

To determine material costs, DOE followed one of two different paths, depending on whether a subassembly was purchased (outsourced) or produced in-house. For purchased parts, DOE gathered price quotations from major suppliers at different production volumes. For parts produced in-house, DOE reconstructed manufacturing processes for each part using modeling software based on internal expertise. For the raw materials being converted to ready-to-assemble parts, DOE estimated manufacturing process parameters (manufacturing equipment use and time for each item, the required initial material quantity, scrap, etc.) to determine the value of each component.

Using this process, DOE was able to assign manufacturing labor time, equipment utilization, and other important factors to each subassembly for each unit considered in this analysis. The last step was to convert the information into dollar values. To perform this task, DOE collected information on such factors as labor rates, tooling depreciation, and costs of purchased raw materials. DOE assumed values for these parameters using internal expertise and confidential information available to its contractors.

In sum, DOE assigned costs of labor, materials, and overhead to each part, whether purchased or produced in-house. DOE then aggregated single-part costs into major assemblies (*e.g.,* for air circulating fans this would include packaging, housing, impeller, controls and wiring, motor, guard, and mounting gear) and summarized these costs in a spreadsheet. All parameters related to manufacture and assembly were then aggregated to determine facility requirements at various manufacturing scales. The final cost obtained by the cost model is the manufacturer production cost (''MPC''), representing the total cost to the manufacturer of producing the component.

b. Cost Model Assumptions

Assumptions about manufacturer practices and cost structure play an important role in estimating the MPC of the products. DOE based assumptions about the sourcing of parts and in-house fabrication on industry experience, information in trade publications, and discussions with manufacturers. DOE used assumptions regarding the manufacturing process parameters, (*e.g.,* equipment use, labor rates, tooling depreciation, and cost of purchased raw materials) to determine the value of each component. The following sections describe the cost model assumptions related to material prices, purchased parts and factory parameters.

Raw Material Prices

For parts fabricated in-house, the prices of the underlying ''raw'' metals (*e.g.,* tube, sheet metal) are estimated on the basis of 5-year averages to smooth out spikes in demand. Other ''raw'' materials such as plastic resins, insulation materials, etc. are estimated on a current-market basis. The costs of raw materials are based on manufacturer interviews, quotes from suppliers, and secondary research. Past results are updated periodically and/or inflated to present-day prices using indices from resources such as MEPS International,[18] PolymerUpdate,[19] the U.S. geologic survey (''USGS''),[20] and the Bureau of Labor Statistics (''BLS'').[21]

Fabricated Parts and Purchased Parts

DOE characterized parts based on whether manufacturers fabricated them in-house or purchased them from outside suppliers. For fabricated parts, DOE estimated the price of intermediate materials (*e.g.,* tube, sheet metal) and the cost of forming them into finished parts. DOE estimated initial raw material dimensions to account for scrap. For scrap materials that are recyclable, DOE assigned a scrap credit that is a fraction of the base material cost. Non-recyclable materials incur a disposal cost for all scrap. For purchased parts, DOE estimated the purchase price for original equipment manufacturers based on its confidential parts database and industry expertise. For the purpose of this analysis, DOE assumed that all components of the fan were purchased from outside suppliers. This assumption was made because of the relatively low volume of manufacturing for air circulating fans compared to other products, which increases the likelihood that parts are purchased rather than manufactured in-house.

As previously stated, variability in the costs of purchased parts can account for large changes in the overall MPC values calculated. Purchased part costs can vary significantly based on the quantities desired and the component suppliers chosen. The purchased part prices used in this study were typical values based on estimated production volume and other factors. However,

[18] More information on MEPS International may be found at: *www.meps.co.uk/.*

[19] More information on PolymerUpdate may be found at: *www.polymerupdate.com.*

[20] More information on the USGS metal price statistics may be found at: *www.usgs.gov/centers/nmic/commondity-statistics-and-information.*

[21] More information on the BLS producer price indices may be found at: *www.bls.gov/ppi/.*

variability in these prices may exist on a case-by-case basis.

Due to the great diversity of manufacturing scale in the fans industry, DOE estimates that the purchased parts costs could vary significantly by manufacturer. Some parts like motors, and impellers may be produced in-house by some manufacturers and purchased by others, changing likely overall system costs and investment requirements.

Factory Parameters

Certain factory parameters, such as fabrication rates, labor rates, and wages, also affect the cost of each unit produced. DOE factory parameter assumptions were based on internal expertise and may be updated based on manufacturer feedback. Table II–9 lists the factory parameter assumptions used in the cost models. These assumptions are generalized to represent typical production and are not intended to model a specific factory.

TABLE II–9—FACTORY PARAMETER ASSUMPTIONS FOR AIR CIRCULATING FANS

Parameter	Estimate
Actual Annual Production Volume	25,000
Work Days Per Year (days)	250
Fabrication Shifts Per Day (shifts)	1
Assembly Shifts Per Day (shifts)	1
Fabrication Labor Wages ($/hr)	16
Assembly Labor Wages ($/hr)	16
Burdened Fabrication Labor Wage ($/hr)	24
Burdened Assembly Labor Wage ($/hr)	24
Fabrication Worker Hours Per Year	250
Assembly Worker Hours Per Year	250
Supervisor Span (workers/supervisor)	25
Supervisor Wage Premium (over fabrication and assembly wage)	30%
Fringe Benefits Ratio	50%
Indirect to Direct Labor Ratio	33%
Length of Shift (hr)	8
Worker Downtime	10%
Actual units per day	100
Average Equipment Installation Cost (% of purchase price)	10%
Average Scrap Credit (relative to base material cost)	30%
Non-recyclable Trash Cost ($/lb)	$0

Issue 18: DOE requests comment on its factory parameter assumptions for typical air circulating fan production.

c. Determination of Air Circulating Fan MPC

DOE conducted teardowns on four housed and five unhoused air circulating fan heads ranging in diameter from 18 inches to 30 inches and created a BOM for each fan. For this NODA, DOE used the BOM for what DOE considered to be a representative baseline 24-inch unhoused fan without a motor and one representative baseline 24-inch housed fan without a motor. The baseline unhoused air circulating fan material and production costs were scaled to each of the unhoused representative diameters (*i.e.,* 12, 20, 36, and 50 inches) by the ratio of the representative diameters to 24 inches. For housed air circulating fans, DOE determined material and production costs for the 24-inch housed fan, then used the ratio between the 24-inch housed and unhoused costs to estimate housed fan costs at each representative diameter. DOE's cost data for diameters other than 24 inches is included in the supplement spreadsheet included in the docket. (See Docket No. EERE–2022–BT–STD–0002, No. 11) Table II–10 summarizes the characteristics assumed for 24-inch housed and unhoused baseline fans. DOE assumed that these fans were manufactured in China, and that material and parts were also sourced from China.

TABLE II–10—MATERIAL AND PRODUCTION CHARACTERISTICS FOR BASELINE 24-INCH HOUSED AND UNHOUSED AIR CIRCULATING FAN

	Unhoused	Housed
Blade Type	Propeller	Propeller.
Blade Shape	Rectangular	Rectangular.
Blade Material	Galvanized Cold Rolled Steel ("CRS")	Galvanized CRS.
Hub Material	Aluminum CRS	Aluminum CRS.
Type of Housing	Basket	Tube.
Housing Material	CRS-Wire	CRS-Wire and polypropylene.

Issue 19: DOE requests comment on whether or not its baseline material assumptions are representative of baseline fans distributed into commerce. If DOE's baseline material assumptions are not representative, DOE requests information and data on materials typically used in the air circulating fans currently on the market.

Housed and unhoused baseline 24-inch air circulating fan cost estimates are summarized in Table II–11.

TABLE II–11—ESTIMATED MPCS FOR AIR CIRCULATING FANS WITH NO MOTORS

	Fan cost (no motor)
24-inch Unhoused	$26.06

TABLE II–11—ESTIMATED MPCS FOR AIR CIRCULATING FANS WITH NO MOTORS—Continued

	Fan cost (no motor)
24-inch Housed	69.89

Issue 20: DOE requests comment on its estimated base MPC for air circulating fans with no motors at each of the representative diameters evaluated. (See supplemental spreadsheet included in Docket No. EERE–2022–BT–STD–0002, No. 11)

As discussed previously, DOE used a design option approach to structure its engineering analysis. DOE assumed that baseline fans with fractional motor hp would be equipped with a SP motor. For each efficiency level analyzed (*i.e.,* EL1, EL2, and EL 3), DOE assumed that a more efficient motor is substituted into the same fan. At EL 4, DOE assumed the most efficient motor was paired with improved aerodynamic design of the fan.

To estimate manufacturer costs for SP motors, PSC motors, and ECMs, DOE used motor costs from its internal parts database and assumed a motor to fan manufacturer markup of 1.37.[22] DOE did not have specific cost data for SP motors, and therefore used costs for shaded-pole motors as a proxy for SP motor costs. See 2009 CR Report. To estimate motor costs for the motor hp used in the representative units evaluated for this analysis, DOE determined the equation of the best fit line for hp as a function of motor cost and calculated motor cost at 0.1, 0.33, 0.5, and 1 hp for SP motors, PSC motors and ECMs.

DOE's parts database does not differentiate between motor efficiency. DOE therefore estimated PSC 1 motor cost using a best fit line for cost as a function of hp. For PSC 2 motor costs, DOE determined a best fit line identified the 95th cost percentile for each representative unit/motor hp, and then determined the best fit line through these points. Table II–12 summarizes estimated motor costs for the 24-inch air circulating fan at each EL evaluated.

TABLE II–12—ESTIMATED MOTOR COSTS AT EACH EL FOR 24-INCH DIAMETER AIR CIRCULATING FANS

Motor hp	EL0	EL1	EL2	EL3
0.5	$26.05	$64.32	$79.78	$114.45

Issue 21: DOE requests comment on whether replacing a given fan motor with a more efficient fan motor will result in similar efficiency and cost impacts for housed and unhoused air circulating fan heads.

Issue 22: DOE requests comment on its estimated motor costs SP motors (EL0), PSC motors (EL1), higher efficiency PSC motors (EL2), and ESMs (EL3) at each hp associated with the representative diameters evaluated. (See supplemental spreadsheet included in Docket No. EERE–2022–BT–STD–0002, No. 11)

Table II–13 summarizes the total estimated cost of the fan assembly, including the motor, for 24-inch unhoused and housed fans.

TABLE II–13—TOTAL AIR CIRCULATING FAN COST FOR A 24-INCH HOUSED AND UNHOUSED FAN AT EL0, EL1, EL2, AND EL3

Type	Motor hp	EL 0	EL 1	EL 2	EL 3
Unhoused	0.5	$52.12	$90.38	$105.84	$140.51
Housed	0.5	95.94	134.21	149.67	184.34

Issue 23: DOE requests comment on its estimated housed and unhoused air circulating fan costs at each EL and for each representative unit. (See supplemental spreadsheet included in Docket No. EERE–2022–BT–STD–0002, No. 11)

As mentioned previously, DOE is assuming that a max-tech air circulating fan (*i.e.,* EL4) would undergo aerodynamic redesign and contain an ECM. Aerodynamic redesign includes modifications to a fan's housing, blade/impeller, and/or guard that would include fan model redesign, re-engineering, and upgraded/new tooling equipment. These modifications result in a one-time cost that is not captured by MPC but may be represented by capital conversion costs. DOE used the conversion costs for axial cylindrical housed fans, presented in the November 2016 NODA,[23] as a proxy for estimating air circulating fan conversion costs. After adjusting for inflation, DOE estimates an air circulating fan redesign cost of $720,300 per fan. Additional information on DOE's assumptions and analysis may be found in the supplemental spreadsheet associated with this docket (see Docket No. EERE–2022–BT–STD–0002, No. 11).

Issue 24: DOE requests comment on and additional data to support its estimated air circulating fan conversion costs to undergo aerodynamic redesign.

[22] A markup of 1.37 for motors at or below 5 hp was used in the Electric Motors Preliminary Analysis Technical Support Document (TSD) (see section 5.4.8.4, Docket No. EERE–2020–BT–STD–0007–0010 at *regulations.gov*).

[23] See EERE–2013–BT–STD–0006–0189 at *regulations.gov.*

5. Manufacturer Selling Price

The manufacturer selling price (''MSP'') is the price of the equipment when it is sold by the manufacturer to the first party in the distribution chain. It includes all direct and indirect production costs, other costs such as research and development, and the manufacturer's profit.

When developing cost-efficiency curves during its engineering analysis, DOE typically uses MSP as a function of efficiency. For simplicity, DOE is presenting the results of its cost model for this NODA in terms of MPC.

The MSP is expressed as the product of the MPC and the manufacturer markup. Based on information obtained during interviews with manufacturers, DOE is assuming that the average manufacturer markup for a baseline fan is 1.5.50 percent, meaning the MSP is During interviews, manufacturers stated that they expected to be able to maintain their profit margin if DOE were to set energy efficiency standards for air circulating fans; therefore, DOE is assuming that the average MSP in a market with standards would also be 1.5.

Issue 25: DOE requests comment on whether or not an average MSP of 1.5 is representative for the air circulating fan market. If an average MSP of 1.5 is not representative, DOE requests information of what a more representative MSP would be. Additionally, DOE requests comment on whether or not MSP for air circulating fans will remain constant in the case of new energy conservation standards. If not, DOE seeks information on the magnitude by which MSP might change under potential energy efficiency standards.

E. Markups Analysis

The markups analysis develops appropriate markups (*e.g.,* retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert MSP estimates derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin.

DOE developed baseline and incremental markups for each actor in the distribution chain. Baseline markups are applied to the price of products with baseline efficiency, while incremental markups are applied to the difference in price between baseline and higher efficiency models (the incremental cost increase). The incremental markup is typically less than the baseline markup and is designed to maintain similar per-unit operating profit before and after new or amended standards.[24]

In the ECS RFI, DOE requested information to help characterize distribution channels for air circulating fans. DOE also requested data on the fraction of sales that go through these channels. 87 FR 7048, 7054. DOE did not receive any input on this topic.

DOE identified two distribution channels for air circulating fans, depending on the input power of the fan at maximum speed. Air circulating fans with input power less than 125 Watts (W) are primarily used in residential applications.[25] Data from the Association of Home Appliance Manufacturers (''AHAM'') indicate that an majority of residential appliances are sold through retail outlets.[26] Because DOE is not aware of any other distribution channel that plays a significant role for air circulating fans with input power less than 125 W, DOE estimates that such air circulating fans are purchased by consumers from retail outlets (including online retailers).

For air circulating fans with input power greater than or equal to 125 W, DOE estimates that the primary distribution channel is that the manufacturer sells the equipment to a distributor, who in turn sells it to the customer. DOE is also aware of another direct sale channel for air circulating fans greater than or equal to 125 W where the manufacturer sells the equipment directly to a customer through their in-house distributor. In addition, DOE considered additional channels that included a contractor based on input from manufacturer interviews. Further, DOE estimated the fraction of shipments of air circulating fans with input power greater than or equal to 125 W going through each channel based on feedback from manufacturer interviews. Information from the manufacturer interviews also indicated that some fraction of shipments (10–15 percent) are sold to consumers via an original equipment manufacturer (''OEM'') and a distributor. However, DOE is not aware of any OEM equipment that would incorporate an air circulating fan and therefore did not consider this channel.

[24] Because the projected price of standards-compliant products is typically higher than the price of baseline products, using the same markup for the incremental cost and the baseline cost would result in higher per-unit operating profit. While such an outcome is possible, DOE maintains that in markets that are reasonably competitive it is unlikely that standards would lead to a sustainable increase in profitability in the long run.

[25] DOE notes that distribution for residential use does not preclude coverage as covered equipment, so long as the equipment is of a type that is also distributed in commerce for industrial and commercial use.

[26] Association of Home Appliance Manufacturers. *Fact Book 2009*. 2009. AHAM: Washington, DC.

Table II–14 summarizes the air circulating fan distribution channels identified by DOE.

TABLE II–14—DISTRIBUTION CHANNELS FOR AIR CIRCULATING FANS

Air circulating fan input power at maximum speed (W)	Distribution channel	Fraction of shipments (%)
Less than 125 W	Manufacturer → Retailer → Consumer	100
Greater than or equal to 125 W	Manufacturer → Distributor → Consumer	40
	Manufacturer → Distributor → Contractor → Consumer	20
	Manufacturer → In-house Distributor → Consumer	30
	Manufacturer → In-house Distributor → Contractor → Consumer	10

To estimate average baseline and incremental markups for each actor in the distribution channels, DOE relied on data from the 2017 Annual Retail Trade Survey,[27] the 2017 Annual Wholesale Trade Survey,[28] and RS Means.[29] In addition to the markups, DOE obtained state and local taxes from data provided by the Sales Tax Clearinghouse.[30] Table II–15 and Table II–16 and show the resulting baseline markups, incremental markups, and sales tax.

TABLE II–15—DISTRIBUTION CHANNEL MARKUPS FOR AIR CIRCULATING FANS WITH INPUT POWER LESS THAN 125 W

Distribution channel	Manufacturer → retailer → consumer (100% shipments)	
	Baseline	Incremental
Retailer	1.486	1.238
Sales Tax	1.073	1.073
Overall Markup	1.594	1.328

TABLE II–16—DISTRIBUTION CHANNEL MARKUPS FOR AIR CIRCULATING FANS WITH INPUT POWER GREATER THAN OR EQUAL TO 125 W

	Manufacturer → distributor → consumer (40% shipments)		Manufacturer → distributor → contractor → consumer (20% shipments)		Manufacturer → in-house distributor → consumer (30% shipments)		Manufacturer → in-house distributor → contractor → consumer (10% shipments)	
	Base.*	Inc.*	Base.	Inc.	Base.	Inc.	Base.	Inc.
(In-house) Distributor	1.412	1.194	1.412	1.194	1.412	1.194	1.412	1.194
Contractor			1.100	1.100			1.100	1.100
Sales Tax	1.073	1.073	1.073	1.073	1.073	1.073	1.073	1.073
Overall Markup	1.516	1.281	1.667	1.409	1.516	1.281	1.667	1.409

*Base. = baseline, Inc. = Incremental.

Issue 26: DOE requests feedback and information on the distribution channels identified for air circulating fans, and on any other distribution channel that DOE should consider. DOE also requests data on the fraction of sales that go through these channels.

F. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of air circulating fans at different efficiencies for a representative sample of consumers, and to assess the energy savings potential of increased air circulating fan efficiency. The energy use analysis estimates the range of energy use of air circulating fans in the field (*i.e.,* as they are actually used by consumers). The energy use analysis provides the basis for other analyses DOE performs, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards.

In any future analysis, DOE may consider calculating the energy use by combining air circulating fan input power consumption in each mode (*e.g.,* high speed, medium speed, low speed) from the engineering analysis with operating hours spent in each mode. To characterize variability and uncertainty, the energy use is calculated for a representative sample of air circulating fan consumers. This method of analysis, referred to as a Monte Carlo method, is explained in more detail in section II.G of this document. Results of the energy use analysis for each representative air circulating fan will be derived from a sample of 10,000 consumers. DOE then plans on using the range of energy use results in the LCC and PBP analyses and the average of the energy use results in the National Impact Analysis (''NIA'') analysis. This section presents DOE's approach to develop consumer samples and the operating hour inputs that DOE is considering using in any future energy use analysis. For each consumer in the sample, DOE will associate a value of air circulating fan operating

[27] Available at *www.census.gov/data/tables/2017/econ/arts/annual-report.html;* NAICS 443—Electronics and Appliance Stores.

[28] Available at: *www.census.gov/programs-surveys/awts.html;* NAICS 4238—Machinery, equipment, and supplies merchant wholesalers.

[29] RS Means Electrical Cost Data 2021. Available at: *www.rsmeans.com.*

[30] Sales Tax Clearinghouse Inc., State Sales Tax Rates Along with Combined Average City and County Rates (2022), available at *https://thestc.com/STrates.stm* (last accessed June 6, 2022).

hours drawn from a statistical distribution as described in the remainder of this section.

1. Fans With Input Power Less Than 125 W

a. Sample of Consumers

DOE is considering including only residential applications in the energy use analysis of air circulating fans with input power below 125 W. Although some of these air circulating fans are used in commercial or industrial settings, DOE believes that they represent a very small portion of the total market for such air circulating fans. To develop a representative sample of consumers, DOE is considering using the Energy Information Administration (''EIA'') 2020 Residential Energy Consumption Survey (''RECS'') [31] to choose a random sample of households in which new air circulating fans could be installed. RECS is a national survey of housing units that collects statistical information on the consumption of, and expenditures for, energy in housing units, along with data on energy-related characteristics of the housing units and occupants. RECS collects data on thousands of housing units, and was constructed by EIA to be a national representation of the household population in the United States. Although RECS contains information on operation for many appliances, it contains no information on the operation of air circulating fans within each household. RECS reports only the number of floor or window fans in the household which is the category of appliance closest to air circulating fans.

In creating the sample of RECS households, DOE is planning on using the subset of RECS records that met the criterion that the household had at least one ''floor or window fan''. DOE is planning on choosing a sample of 10,000 households from RECS to estimate annual energy use for air circulating fans with input power less than 125 W. Because RECS provides no means of determining the subset of air circulating fans in a given household, DOE will use the same sample for all equipment classes.

[31] Department of Energy, Energy Information Administration. *2020 Residential Energy Consumption Survey (RECS).* 2020. (Last accessed July 6, 2022) *www.eia.gov/consumption/residential/data/2020/.*

b. Operating Hours

In the ECS RFI, DOE requested information to characterize the annual operating hours of air circulating fans and time spent in each operating mode, if applicable, by sector of application, and geographical region. 87 FR 7048, 7054. In response, ebm-papst commented that the use of agricultural fans, residential fans, commercial fans, and basket fans used for distribution transformers are all very different (ebm-papst, No. 8 at p. 4). ebm-papst did not provide additional information to characterize operating conditions. DOE did not receive other comments on this topic.

DOE reviewed existing studies on air circulating fans used in residential applications and found that these are often studied in combination with ceiling fans, indicating that they likely operate similarly.[32] In the absence of existing data indicating the daily hours of operation specific to air circulating fans with input power less than 125 W, DOE used the same annual operating hours as developed for standard, hugger, and very small diameter ceiling fans in the Ceiling Fans Preliminary Analysis to characterize the operating hours of air circulating fans with input power less than 125 W.[33] The ceiling fan preliminary analysis relied on a distribution of operating hours, with an average of 6.45 hours of operation per day with 33 percent at high speed, 38 percent at medium speed, and 29 percent at low speed. DOE assumes this is also representative of air circulating fan usage with input power less than 125W and plans on applying this load profile in any future energy use calculation. DOE notes that some air circulating fans may not have three available speeds, in which case DOE plans on adjusting the time spent in each mode according to the fan's speed capability (*e.g.,* assuming 100 percent of operation at the one available speed for single-speed air circulating fans).

[32] Ecodesign Lot 10 Comfort Fans Study, Preparatory Study on Environmental Performance of Residential Room Conditioning Appliances (airco and ventilation) Study on comfort fans—final report October 2008, after SH comments *www.eceee.org/static/media/uploads/site-2/ecodesign/products/airco-ventilation/finalreport-cf.zip.*

[33] See Section 7.3.2. of Chapter 7 of the ceiling fan preliminary analysis Technical Support Document, *www.regulations.gov/document/EERE-2021-BT-STD-0011-0015.*

2. Fans With Input Power Greater Than or Equal to 125 W

a. Sample of Consumers

DOE is considering including only commercial, industrial, and agricultural applications in the energy use analysis of air circulating fans with input power greater than or equal to 125 W. Although some air circulating fans with input power greater than or equal to 125 W are used in residential applications, DOE believes that they represent a very small portion of the total market for such fans. DOE plans on creating a sample of 10,000 consumers for each equipment class to represent the range of air circulating fan energy use in the commercial, industrial, and agricultural sectors.

b. Operating Hours

As noted previously, DOE did not receive any information related to the operating hours of air circulating fans. In the absence of data indicating the daily hours of operation specific to air circulating fans, DOE estimated that air circulating fans with input power greater than or equal to 125 W operate, on average, 12 hours per day, consistent with the hours of use estimated for large-diameter ceiling fans in the Ceiling Fan Preliminary Analysis.[34] To represent a range of possible operating hours around this representative value, DOE will be drawing 10,000 samples from a uniform distribution between 6 hours per day and 18 hours per day (assuming a uniform distribution of operating hours due to the limited availability of information).

In the July 2022 TP NOPR, the efficiency metric is calculated assuming that the performance at each of the five tested speeds is weighted equally, as there are not available data to suggest a different distribution of time spent at each speed. 87 FR 44194, 44238. For this NODA, DOE assumed an equal amount of time would be spent at each speed, in alignment with the approach in the July 2022 TP NOPR.

Table II–17 summarizes the inputs to the energy use calculation identified by DOE. For each consumer in the samples, DOE will associate a value of air circulating fan operating hours drawn from a statistical distribution as described in Table II–17.

[34] See Section 7.4.2 of Chapter 7 of the Ceiling Fan Preliminary Analysis Technical Support Document, *www.regulations.gov/document/EERE-2021-BT-STD-0011-0015.*

TABLE II–17—INPUTS TO THE ENERGY USE CALCULATION

Input to the energy use calculation	Air circulating fan with input power at maximum speed less than 125 W	Air circulating fan with input power at maximum speed greater than or equal to 125 W
Average Operating Hours per Day	6.45 hours per day	12 hours per day.
Statistical Distribution	Based on Consumer Survey	Uniform Distribution between 6 hours per day and 18 hours per day.
Fraction of time spent in each mode	33% on high speed, 38% on medium speed, 29% on low speed.	Equal amount of time at each tested speed.

Issue 27: DOE seeks comment on the estimated average number of operating hours per year, distribution of operating hours, and the estimated fraction of time spent at each speed setting for air circulating fans with input power less than 125 W and those with input power greater than or equal to 125 W. In addition, if DOE should consider different operating hours for specific applications (*e.g.,* air circulating fans used in agricultural applications, thermal mixing fans) DOE requests data on how to best characterize operating hours for these various applications.

G. Life Cycle Cost and Payback Period Analyses

The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE uses the following two metrics to measure consumer impacts:

- The LCC is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.
- The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

For any given efficiency level, DOE measures the change in LCC relative to the LCC in the no-new-standards case, which reflects the estimated efficiency distribution of air circulating fans in the absence of new energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline product. For each considered efficiency level in each equipment class, DOE plans on calculating the LCC and PBP for a nationally representative sample of consumers.

In addition, the computer model that DOE plans on using to calculate the LCC and PBP relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and air circulating fan consumer samples. The model calculates the LCC and PBP for equipment at each efficiency level for 10,000 consumers per simulation run. The analytical results include a distribution of 10,000 data points showing the range of LCC savings for a given efficiency level relative to the no-new-standards case efficiency distribution. In performing an iteration of the Monte Carlo simulation for a given consumer, equipment efficiency is chosen based on its probability. If the chosen equipment efficiency is greater than or equal to the efficiency of the standard level under consideration, the LCC and PBP calculation reveals that a consumer is not impacted by the standard level. By accounting for consumers who already purchase more efficient equipment, DOE avoids overstating the potential benefits from increasing equipment efficiency.

This section presents the approach and data DOE used to derive inputs to the LCC and PBP analysis not previously described in this document. All inputs to the LCC and PBP analyses are summarized in Table II–18.

TABLE II–18—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS

Inputs	Source/method
Equipment Cost	Will be derived by multiplying MSPs by distribution channel markups and sales tax, as appropriate. DOE uses historical data to derive a constant price index to project equipment costs.
Installation Costs	Assumed installation costs do not vary by efficiency level.
Annual Energy Use	*Annual energy use:* Based on the time spent in each model multiplied by the input power in each mode. *Variability:* Based on discrete and uniform probability distributions.
Energy Prices	*Electricity:* Average and marginal prices based on Edison Electric Institute (''EEI'') data for 2021. *Variability:* Based on sector and geographical region.
Energy Price Trends	Based on 2022 Annual Energy Outlook (''*AEO2022*'') price projections (or most recent version available at the time of the analysis).
Repair and Maintenance Costs	Assumed maintenance costs do not vary by efficiency level. Assumed no repair costs for air circulating fans with input power less than 125 W. Assumed one motor repair for air circulating fans with input power greater than or equal to 125 W, with a lifetime that exceeds the average lifetime.

TABLE II–18—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS—Continued

Inputs	Source/method
Equipment Lifetime	*Average:* 10 years for air circulating fans with input power less than 125 W. And 30 years for air circulating fans with input power greater than or equal to 125 W. *Variability:* Based on Weibull distribution.
Discount Rates	*Residential:* approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances. *Commercial/Industrial/Agricultural:* Calculated as the weighted average cost of capital for entities purchasing pool pumps. Primary data source was Damodaran Online.
Compliance Date	5 years after publication of any final rule.

Issue 28: DOE requests feedback on the inputs and considered methods used for the LCC and PBP analyses.

1. Equipment Price

To calculate consumer equipment costs, DOE multiplies the MSPs developed in the engineering analysis by the distribution channel markups described previously (along with sales taxes). As previously discussed, DOE uses different distribution channel markups for baseline equipment and higher efficiency equipment, because DOE applies an incremental markup to the increase in MSP associated with higher efficiency equipment.

To project equipment costs in the projected compliance year, DOE plans on developing an equipment price trend. Because the motor is the most costly component of the air circulating fan, DOE believes that historic prices of electric motors provide a reasonable basis for considering trends in the price of air circulating fans.

DOE is planning on obtaining historical Producer Price Index (''PPI'') data for integral hp motors and generators manufacturing spanning the time period from 1969 to 2021 and for fractional hp motors and generators manufacturing between 1967 and 2021 from the BLS.[35] The PPI data reflect nominal prices, adjusted for product quality changes. An inflation-adjusted (deflated) price index for fractional hp motors and generators manufacturing was calculated by dividing the PPI series by the Gross Domestic Product Chained Price Index. Previous DOE analysis that relied on the same approach and data sources resulted in a constant price trend assumption to project future electric motor prices.[36] Similarly, DOE expects to rely on a constant price trend for air circulating fans.

2. Installation, Repair and Maintenance Costs

DOE reviewed available air circulating fan installation, maintenance, and repair cost information.

For air circulating fans with input power less than 125 W, which DOE is assuming are primarily used in residential applications, a previous study focused on air circulating fans used in residential settings estimated no installation, repair, or maintenance costs for these fans.[37] DOE believes this is a representative characterization of these costs as these air circulating fans are plug-in equipment that do not require any maintenance and are unlikely to be repaired due to the relatively low equipment price.

For air circulating fans with input power greater than 125 W, which DOE assumes are primarily used in commercial, industrial, and agricultural applications, DOE did not find any information supporting changes in installation and maintenance costs as a function of efficiency. Therefore, because DOE expresses results in terms of LCC savings, DOE is not planning to account for installation costs in the LCC (the difference in installation costs between a baseline and more efficient air circulating fan would be zero and would have no impact on the calculated LCC savings). In terms of repairs, DOE has identified the motor replacement as a potential repair. Depending on the design options considered, DOE may include different repair costs by EL to reflect differences in motor replacement costs. DOE did not find any information related to motor repair frequency in air circulating fans. For air circulating fans greater than or equal to 125 W, DOE is considering accounting for one motor replacement for consumers that have an air circulating fan with a sampled lifetime exceeding the average lifetime.

Issue 29: DOE requests information on its assumptions related to installation, maintenance, and repair practices of air circulating fans. Specifically, DOE requests feedback and data on whether installation, maintenance, and repair costs of air circulating fans are expected to be different at higher efficiency levels in comparison to the baseline installation, maintenance, and repair costs. To the extent that these costs differ, DOE seeks supporting data and the reasons for those differences.

Issue 30: DOE requests information on the repair frequency of air circulating fans (*i.e.,* how many repairs in a lifetime) by category (*i.e.,* unhoused air circulating fan heads, air circulating axial panel fan, box fan, cylindrical air circulating fan, and housed centrifugal air circulating fan) and on its approach to consider a single repair for certain air circulating fans with input power greater than or equal to 125 W.

3. Energy Prices

DOE is planning on using average and marginal electricity prices in 2021 for each census division using data from the EEI Typical Bills and Average Rates reports [38] and the methodology described in two Lawrence Berkeley National Laboratory reports.[39] [40] DOE's

[35] Series ID PCU3353123353123 and PCU3353123353121 for integral and fractional hp motors and generators manufacturing, respectively; *www.bls.gov/ppi/*.

[36] See Electric Motors Energy Conservation Standards Preliminary Analysis Technical Support Document, Chapter 8: Life Cycle Cost and Payback Period Analysis (p. 269). Available at: *www.regulations.gov/document/EERE-2020-BT-STD-0007-0010*.

[37] Ecodesign Lot 10 Comfort Fans Study, Preparatory Study on Environmental Performance of Residential Room Conditioning Appliances (airco and ventilation) Study on comfort fans—final report October 2008, after SH comments (p. 44; p. 71–73) *www.eceee.org/static/media/uploads/site-2/ecodesign/products/airco-ventilation/finalreport-cf.zip*.

[38] Edison Electric Institute, EEI Typical Bills and Average Rates Report (2021). Washington, DC.

[39] Katie Coughlin and Berket Beraki, ''Non-Residential Electricity Prices: A Review of Data Sources and Estimation Methods,'' April 15, 2019, *doi.org/10.2172/1515782*.

methodology allows electricity prices to vary by sector, region, and season. In the analysis, variability in electricity prices is chosen to be consistent with the way the consumer economic and energy use characteristics are defined in the LCC and PBP analyses. Table II–19 shows the average and marginal prices for each sector of application.

TABLE II–19—ELECTRICITY PRICES IN 2021

Sector	Average price *2021$/kWh*	Marginal price *2021$/kWh*
Residential	0.157	0.151
Commercial (small)	0.123	0.117
Commercial (large)	0.097	0.083
Industrial	0.081	0.069

To estimate electricity prices in future years, DOE is planning on multiplying the 2021 electricity prices by the sector-specific forecasts of annual national average price changes from EIA's Reference case in the AEO 2022. The reference case is a business-as-usual estimate, given known market, demographic, and technological trends. AEO2022 has an end year of 2050. DOE assumes a flat rate of change in prices from 2050. The values for the industrial sector are used for the agricultural sector as well.

4. Lifetime

The equipment lifetime is the age at which given equipment is retired from service. DOE typically develops survival probabilities using on a Weibull function to characterize variability in lifetimes. In preparation for this NODA, DOE reviewed data available for air circulating fan lifetime.

For air circulating fans with input power less than 125 W, which are primarily used in residential applications, a previous study focused on air circulating fans used in residential settings estimated air circulating fan lifetimes at 10 years on average.[41]

For air circulating fans with input power greater than or equal to 125 W, DOE did not find data specific to such fans and instead is considering an average lifetime of 30 years across all sectors, as used to characterize fan and blower lifetimes in a previous DOE analysis.[42]

Issue 31: DOE requests comment on the estimated average equipment lifetimes for air circulating fans. DOE also requests information related to minimum and maximum equipment lifetimes (in years or total mechanical hours).

5. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to consumers to estimate the present value of future operating cost savings. DOE estimated a distribution of discount rates for air circulating fan consumers based on the opportunity cost of consumer funds.

DOE applies weighted average discount rates calculated from consumer debt and asset data, rather than marginal or implicit discount rates.[43] The LCC analysis estimates net present value over the lifetime of the equipment, so the appropriate discount rate will reflect the general opportunity cost of household funds, taking this time scale into account. Given the long time horizon modeled in the LCC analysis, the application of a marginal interest rate associated with an initial source of funds is inaccurate. Regardless of the method of purchase, consumers are expected to continue to rebalance their debt and asset holdings over the LCC analysis period, based on the restrictions consumers face in their debt payment requirements and the relative size of the interest rates available on debts and assets. DOE estimates the aggregate impact of this rebalancing using the historical distribution of debts and assets.

To establish residential discount rates for the LCC analysis, DOE identified all relevant household debt or asset classes in order to approximate a consumer's opportunity cost of funds related to appliance energy cost savings. It estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's Survey of Consumer Finances[44] (''SCF'') for 1995, 1998, 2001, 2004, 2007, 2010, 2013, 2016, and 2019. Using the SCF and other sources, DOE developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which amended standards would take effect. In the LCC calculation, to account for variation among households, DOE will assign each RECS household a specific discount rate drawn the distributions for the appropriate income group (RECS provides household income data). The average discount rate in 2021 across all types of household debt and equity and income groups, weighted by the shares of each type, is 4.3 percent.

DOE applies weighted average discount rates calculated from consumer debt and asset data, rather than marginal or implicit discount rates. DOE notes that the LCC does not analyze the appliance purchase decision, so the implicit discount rate is not relevant in this model. The LCC estimates net present value over the lifetime of the

[40] Katie Coughlin and Bereket Beraki, ''Residential Electricity Prices: A Review of Data Sources and Estimation Methods,'' 2018.

[41] Ecodesign Lot 10 Comfort Fans Study, Preparatory Study on Environmental Performance of Residential Room Conditioning Appliances (airco and ventilation) Study on comfort fans—final report October 2008, after SH comments (p. 44) *www.eceee.org/static/media/uploads/site-2/ecodesign/products/airco-ventilation/finalreport-cf.zip*.

[42] On November 1, 2016, DOE published a notification of data availability (''November 2016 NODA'') that presented an analysis for fans and blowers other than air circulating fans. 81 FR 75742. The lifetime assumptions and data source supporting the life cycle cost calculation of the November 2016 NODA are available online at *www.regulations.gov/document/EERE-2013-BT-STD-0006-0190* (see ''Lifetime'' worksheet). The average lifetime estimate was based on input from a subject matter expert John Murphy. ''Commercial and Industrial Fans Life-cycle Cost Informational Interview.'' Telephone interview. 13 May 2014.

[43] The implicit discount rate is inferred from a consumer purchase decision between two otherwise identical goods with different first cost and operating cost. It is the interest rate that equates the increment of first cost to the difference in net present value of lifetime operating cost, incorporating the influence of several factors: transaction costs; risk premiums and response to uncertainty; time preferences; interest rates at which a consumer is able to borrow or lend. The implicit discount rate is not appropriate for the LCC analysis because it reflects a range of factors that influence consumer purchase decisions, rather than the opportunity cost of the funds that are used in purchases.

[44] U.S. Board of Governors of the Federal Reserve System. *Survey of Consumer Finances.* 1995, 1998, 2001, 2004, 2007, 2010, 2013, 2016, and 2019. (Last accessed June 15, 2022) *www.federalreserve.gov/econresdata/scf/scfindex.htm.*

product, so the appropriate discount rate will reflect the general opportunity cost of household funds, taking this time scale into account. Given the long time horizon modeled in the LCC, the application of a marginal interest rate associated with an initial source of funds is inaccurate. Regardless of the method of purchase, consumers are expected to continue to rebalance their debt and asset holdings over the LCC analysis period, based on the restrictions consumers face in their debt payment requirements and the relative size of the interest rates available on debts and assets. DOE estimates the aggregate impact of this rebalancing using the historical distribution of debts and assets.

To establish commercial, industrial, and agricultural discount rates, DOE estimated the weighted average cost of capital using data from Damodaran Online.[45] The weighted average cost of capital is commonly used to estimate the present value of cash flows to be derived from a typical company project or investment. Most companies use both debt and equity capital to fund investments, so their cost of capital is the weighted average of the cost to the firm of equity and debt financing. DOE estimated the cost of equity using the capital asset pricing model, which assumes that the cost of equity for a particular company is proportional to the systematic risk faced by that company. The average commercial, industrial, and agricultural discount rates in 2021 are 6.77 percent, 7.25 percent, and 7.15 percent respectively.

6. Efficiency Distribution in the No-New Standards Case

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considers the projected distribution (market shares) of equipment efficiencies in the no-new-standards case (*i.e.,* the case without new energy conservation standards) in the anticipated compliance year of any future energy conservations standards.

For air circulating fans with input power less than 125 W, DOE did not find any data regarding the distributions of equipment efficiencies in the no-new-standards case. In the absence of any data, DOE is conservatively considering assuming all shipments are at the baseline level (EL 0).

For air circulating fans with input power greater than or equal to 125 W, DOE is planning on using the distributions based on model counts at each efficiency level analyzed from the BESS Labs Database to develop 2021 distributions of equipment efficiencies in the no-new-standards case. DOE notes that the BESS Labs Database only publishes performance at limited operating points for a given model, allowing DOE to calculate the FEI at a single operating point (and not as a weighted average). In the absence of other data, DOE will use this as a proxy for determining the weighted average FEI of air circulating fans with variable and multi-speed capability. In addition, DOE will apply equipment efficiency trends (see section II.H.3 of this document) to project the efficiency distribution for the no-new-standards case in the compliance year.

Using the projected distribution of efficiencies for air circulating fans, DOE plans on randomly assigning an equipment efficiency to each household and commercial, industrial, or agricultural consumer drawn from the consumer samples. If a consumer is assigned an equipment efficiency that is greater than or equal to the efficiency under consideration, the consumer would not be affected by a standard at that efficiency level.

Issue 32: DOE requests comment on its approach to derive efficiency distribution in the no-new standards case for each air circulating fan category and input regarding 2021 (or most recent year available) equipment efficiency distributions. Additionally, DOE seeks data that would support changes in efficiency distributions over time in the no-new standards case. To the extent any of the efficiency distributions in the no-new standards case differ by size or other consumer or design characteristic, DOE requests information to characterize these variations.

H. National Impact Analysis

The NIA estimates the national energy savings (''NES'') and the net present value (''NPV'') of total consumer costs and savings expected to result from new standards at specific efficiency levels (referred to as candidate standard levels).[46] DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual equipment shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the present analysis, DOE projected the energy savings, operating cost savings, equipment costs, and NPV of consumer benefits over the lifetime of air circulating fans sold over a 30-year period starting in the compliance year.

DOE evaluates the impacts of new or amended standards by comparing a case without such standards with standards case projections (''no-new-standards case''). The no-new-standards case characterizes energy use and consumer costs for each equipment class in the absence of new or amended energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each equipment class if DOE adopted new or amended standards at specific energy efficiency levels for that class. For each efficiency level, DOE considers how a given standard would likely affect the market shares of equipment with efficiencies greater than the standard.

The NIA calculations use typical values (as opposed to probability distributions) as inputs. Critical inputs to this analysis include shipments projections, estimated product lifetimes, product installed costs and operating costs, product annual energy consumption, the base case efficiency projection, and discount rates. In this section, DOE discusses specific inputs to the NIA, not previously discussed in this document, for which it requests comment and feedback.

1. Base Year Shipments

DOE develops shipments forecasts to calculate the national impacts of potential energy conservation standards on energy consumption, NPV, and future manufacturer cash flows. DOE shipments projections are typically based on available historical data broken out by equipment class, capacity, and efficiency. Current sales estimates allow for a more accurate model that captures recent trends in the market.

For air circulating fans with input power less than 125 W, DOE reviewed shipments data from the Appliance Magazine market research,[47] which provides 1981–1994 shipments estimates of air circulating fans used in residential settings and of ceiling fans. On average during the period 1981–1994, the data showed that shipments of such air circulating fans represented 91 percent of ceiling fan shipments. DOE

[45] Damodaran Online, *Data Page: Costs of Capital by Industry Sector* (2020). (Last accessed February 1, 2021) *pages.stern.nyu.edu/~adamodar/*.

[46] The NIA accounts for impacts in the 50 states and U.S. territories.

[47] Appliance Magazine market research, Appliance Historical Statistical review, 1954–2012, January 2014.

assumed that this ratio is still representative of the market in 2020 and calculated shipments of air circulating fans with input power less than 125 W by multiplying the 2020 ceiling fan shipments data published in a previous DOE study [48] by 0.91, which resulted in 19.2 million units in 2020. DOE did not find data to characterize shipments by equipment classes in that input power range.

For air circulating fans with input power greater than or equal to 125 W, DOE obtained 2021 shipments estimates from manufacturer interviews for unhoused air circulating fan heads and cylindrical air circulating fans.[49] DOE then used model counts from the BESS Labs Database to estimate market shares by air circulating fan category. Table II–20 shows the estimated market shares by category based on model counts from the BESS Labs Database. Based on this data, DOE estimated that unhoused air circulating fan headsand cylindrical air circulating fans represent a combined 30 percent of the total market of air circulating fans with input power greater than or equal to 125 W. In addition, DOE adjusted the market shares of unhoused air circulating fan heads (22 percent) and cylindrical air circulating fans (8 percent) from the BESS Labs database to account for the market shares from the shipments estimates provided in manufacturer interviews (*i.e.,* 20 percent and 10 percent, respectively). DOE then used unadjusted market shares by category as presented in Table II–20 to calculate shipments of air circulating fans for which manufacturer interviews did not provide estimates. The BESS Labs Database does not include any housed centrifugal air circulating fans. DOE did not find any data to estimate the shipments of housed centrifugal air circulating fans.

TABLE II–20—AIR CIRCULATING FANS WITH INPUT POWER GREATER THAN OR EQUAL TO 125 W—MARKET SHARE BY EQUIPMENT CLASS (EXCLUDING HOUSED CENTRIFUGAL AIR CIRCULATING FANS)

DOE terminology	BESS category	Market share based on model counts (%)	Calculated market share (%) *	Estimated 2021 shipments (units)
Unhoused Air Circulating Fan Head	Basket fan	22	20	494,950
Box fan	Box fan	11	11	275,018
Air circulating axial panel fan	Panel fan	59	59	1,475,098
Cylindrical air circulating fan	Tube fan	8	10	255,100
Housed centrifugal air circulating fan	N/A	N/A	N/A	N/A
Total		100	100	2,500,167

* Adjusted market shares of Unhoused Air Circulating Fan Head and Cylindrical air circulating fan based on shipments estimates from manufacturer interviews.

Finally for air circulating fans with input power greater than or equal to 125 W, based on information from manufacturer interviews, DOE estimated that while some fans are used in commercial and industrial settings, the majority of these fans are used in agricultural applications. In the absence of any quantitative data to characterize the fraction of shipments by sector, DOE assumed 75 percent of shipments are used in agricultural settings,[50] 12.5 percent in commercial settings, and 12.5 percent in industrial applications.

2. Shipments Projections

In response to the February 2022 ECS RFI, ebm-papst suggested that the growth of indoor horticulture, a need for farm animal cooling due to climate change, and a need for auxiliary cooling on distribution transformers due to electrification of climate change could all be reasons for possible growth in the air circulating fan market. (ebm-papst, No. 8 at p. 4)

To project shipments of air circulating fans with input power less than 125 W, DOE is considering using an annual growth rate of 5 percent based on the Appliance Magazine market research data,[51] which provides 1981–1994 shipments estimates for air circulating fans used in residential settings.

For air circulating fans with input power greater than or equal to 125 W, DOE estimates that shipments of such fans follow similar trends as shipments of large-diameter ceiling fans. Therefore, DOE is considering projecting shipments of air circulating fans with input power greater than or equal to 125 W based on the growth rates projected for shipments of large-diameter ceiling fans.[52] DOE notes that this corresponds to a compound annual growth rate of 8.3 percent for the period 2020–2030.

DOE may consider alternative approaches to project shipments depending on stakeholder comment and any additional data that may become available.

Issue 33: DOE requests comment on the estimated 2020 shipments of air circulating fans for each market segment considered (*i.e.,* below 125 W, and at or above 125 W) and seeks input on the fraction of shipments by air circulating fan category (*i.e.,* unhoused air circulating fan heads, air circulating axial panel fan, box fan, cylindrical air circulating fan, and housed centrifugal air circulating fan). In addition, DOE requests 2021 annual sales data (or the most recent year available)—*i.e.,* number of shipments—for air circulating fans and annual historical shipments data for 2016–2020 (or most recent years available). If disaggregated data of annual sales are not available for different air circulating fan categories, DOE requests more aggregated data of annual sales as available.

Issue 34: DOE requests comment on the estimated market share by sector. DOE requests 2016–2021 data (or the most recent years available) on the fraction of shipments in the industrial, commercial, and residential sectors for

[48] See Chapter 9 of the ceiling fan preliminary analysis Technical Support Document *www.regulations.gov/document/EERE-2021-BT-STD-0011-0015.*

[49] Information from manufacturer interviews indicated shipments estimates of 494,950 units of unhoused air circulating fan heads and 255,100 units of cylindrical air circulating fans.

[50] DOE assumed the mid-point between 50 and 100 percent of shipments (75 percent) go to agriculture. Distributed the remaining shipments equally across the commercial and industrial sectors.

[51] Appliance Magazine market research, Appliance Historical Statistical review, 1954–2012, January 2014.

[52] See Chapter 9 of the ceiling fan preliminary analysis Technical Support Document (TSD) *https://www.regulations.gov/document/EERE-2021-BT-STD-0011-0015.*

air circulating fans. In each sector, DOE requests 2016–2021 data (or the most recent years available) on the fraction of shipments that represent replacement versus new installations.

Issue 35: DOE requests comments on its approach to project shipments of air circulating fans. DOE requests information on the rate at which annual sales (*i.e.,* number of shipments) of air circulating fans is expected to change in the next 5–10 years. If possible, DOE requests this information for each air circulating fan category (*i.e.,* unhoused air circulating fan heads, air circulating axial panel fan, box fan, cylindrical air circulating fan, and housed centrifugal air circulating fan). If disaggregated data of annual sales are not available for each air circulating fan category, DOE requests more aggregated data of annual sales.

3. Equipment Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases over the entire 30-year analysis period. To project the trend in efficiency absent amended standards for air circulating fans, DOE did not find any historical equipment efficiency data. Instead, in order to incorporate any efficiency trends, DOE may consider an approach that shifts a fraction of the market share in the single-speed levels (*e.g.,* 1 percent) to the variable-speed efficiency levels to reflect the growing market share of variable-speed air circulating fans. DOE may consider alternative approaches to project equipment efficiency depending on stakeholder comment and any additional data that may become available.

For standards cases, DOE is considering a ''roll up'' scenario to establish the shipment-weighted efficiency for the year that standards are assumed to become effective. In this scenario, the market share of products in the no-new-standards case that do not meet the standard under consideration would ''roll up'' to meet the new standard level, and the market share of products above the standard would remain unchanged. To project the trend in efficiency in the various standard case considered, DOE would then apply the same shift towards variable-speed efficiency levels as in the no-new-standard case for the standards cases.

Issue 36: DOE requests comments on its approach to project equipment efficiency for air circulating fans. DOE requests data and information on any trends in the fans market that could be used to forecast expected trends in market share by efficiency levels for air circulating fans. If disaggregated data are not available for each air circulating fan category, DOE requests more aggregated data.

III. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this notification of data availability no later than the date provided in the **DATES** section at the beginning of this document. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (''faxes'') will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free from any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted or redacted. DOE will make its own determination about the confidential

status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

B. Issues on Which DOE Seeks Comment

As indicated in the analyses previously, DOE is seeking further comment and/or data on certain issues. For reference, these issues from the above analyses include the following:

Issue 1: DOE requests comment on its assumption that most motors paired with air circulating fans are lower efficiency induction motors that are not currently regulated by DOE. Additionally, DOE requests data on the percentage of air circulating fans that include a SP, PSC, shaded pole, or electronically commuted motors.

Issue 2: DOE requests comment on if or how the five screening criteria may impact the application of an aerodynamic redesign (including changes to housing, impeller and/or blade design), more efficient motors, or VSDs (''variable-speed drives'') as design options in the current rulemaking analysis.

Issue 3: DOE requests comment on its assumption that the BESS Labs Combined Database is representative of the air circulating fan head market, with the exception of housed centrifugal air circulating fans and air circulating fans with input power less than 125 W which are not represented in the BESS Labs Combined Database.

Issue 4: DOE requests additional information for all categories of air circulating fans, including: manufacturer name, model number, fan diameter, blade number, blade shape, blade material, housing type, housing material, spacing between the blade tip and the housing, and housing depth with associated performance data obtained using AMCA 230–15 with 2021 errata (or sufficient information that can be used to correct to AMCA 230–15 with 2021 errata). DOE additionally requests the following information on the motors sold within each fan model: motor type (*i.e.,* SP, PSC, ECM, polyphase, etc.), type of drive (*i.e.,* direct or belt), motor horsepower (''hp''), motor full-load efficiency (if available), motor rotations per minute, number of speeds, motor electric requirements (*i.e.,* volts, amps, frequency, phase, AC/DC), and whether a variable-speed drive is included with the fan.

Issue 5: DOE requests comment on the potential of using fan affinity laws to extrapolate BESS Labs performance data to air circulating fan heads with diameters less than 12 inches and greater than 52 inches. Additionally, DOE requests model characteristics and performance data obtained using AMCA 230–15 plus 2021 errata (or sufficient information than can be used to correct to AMCA 230–15 plus 2021 errata) for air circulating fans with diameters both smaller than and larger than those listed in the BESS Labs Database.

Issue 6: DOE requests comment on whether, and if so how, each of the following performance-related features may impact utility of air circulating fans: presence or absence of a safety guard, presence or absence of housing, housing design, blade type, drive type, number of discrete speed settings, power requirements, and air velocity or throw. DOE requests additional feedback and data or information on other air circulating fan features that may impact utility for the end user and might form the basis for classification.

Issue 7: DOE requests comment with supporting data on whether the following performance-related features provide substantially different utility, or are expected to have a significant impact on efficiency because of how they are used: (1) housed vs. unhoused air circulating fan heads; (2) direct-driven vs. belt-driven air circulating fan heads; and (3) single-phase vs. polyphase air circulating fan heads. DOE also requests information on any additional features that may impact air circulating fan head utility.

Issue 8: DOE requests comment on whether the diameters chosen for representative units in this analysis (*i.e.,* 12 inches, 20 inches, 24 inches, 36 inches, and 50 inches) accurately represent the diameters with the highest sales volume available in the air circulating fan market. DOE also requests comment on whether diameter is an appropriate representative metric for air circulating fans.

Issue 9: DOE requests comment on whether the motor hp it has associated with each representative diameter (*i.e.,* 0.1 hp for 12 inches, 0.33 hp for 20 inches, 0.5 hp for 24 inches and 36 inches, and 1 hp for 50 inches) appropriately represent the motor hp for fans sold with those corresponding diameters.

Issue 10: DOE requests comment on its use of SP motors as the baseline for air circulating fans. Additionally, DOE seeks feedback on its choice of motor technologies (SP motor to PSC 1 motor, PSC 1 motor to PSC 2 motor, and PSC 2 motor to ECM) to estimate air circulating fan efficiency increases from one efficiency level to the next.

Issue 11: DOE requests comment on its assumption that motors used in air circulating fans are exclusively air-over motors. If this is not the case, DOE requests information on the other types of motors that are sold with air circulating fans and data on the percentage of air circulating fans that are sold with motors other than air-over motors. Additionally, DOE requests information on whether or not the type of motor supplied with an air circulating fan is a function of air circulating fan category (*e.g.,* unhoused air circulating fan head, box fan, cylindrical air circulating fan, etc.).

Issue 12: DOE requests feedback on whether catalog performance data on SP motors and PSC motors is generally representative of the performance of the SP and PSC motors included with air circulating fans.

Issue 13: DOE requests feedback on the methodology used to determine the baseline efficiency values for the representative units, including its method of first establishing the EL1 efficiency and then determining the baseline efficiency by reducing the EL1 efficiency by the difference in efficiency between a PSC motor and a SP motor. Additionally, DOE requests data on the expected average improvement in air circulating fan efficiency when a SP motor is replaced by a PSC 1 motor.

Issue 14: DOE requests feedback on its assumption that airflow, pressure, and motor performance (for example, speed and inrush current) remain constant when replacing a less efficient motor with a more efficient motor in an air circulating fan. If airflow, pressure, or motor performance are not maintained when using a more efficient motor, DOE requests feedback and data on how it should conduct this analysis.

Issue 15: DOE requests feedback on whether the efficiency gains shown in the supplementary spreadsheet are realistic efficiency gains when replacing a lower efficiency PSC motor (*i.e.,* PSC 1 motor) with a higher efficiency PSC motor (*i.e.,* PSC 2 motor). If these assumptions are not realistic, DOE requests data demonstrating air circulating fan motor efficiency as a function of hp, as well as data for motor hp as a function of fan diameter.

Issue 16: DOE requests feedback on its use of dedicated purpose pool pump motors as a source for comparing PSC motor and ECM efficiency. Additionally, DOE requests information on whether motors used for this purpose are comparable to air circulating fan motors. DOE further requests feedback on whether the efficiency increases from

PSC 1 motors to ECM that DOE presents are realistic. If dedicated purpose pool pump motors are not representative of air circulating fans motors, or DOE's estimated efficiency increases are not realistic, DOE requests data on the difference between PSC 1 motor efficiency and ECM efficiency and the difference between PSC 2 motor efficiency and ECM efficiency for air circulating fans. DOE also requests comment on its use of extrapolation of these data to obtain efficiency values at fractional hp.

Issue 17: DOE requests feedback on the FEI values that it determined and its approach for estimating FEI values for an air circulating fan that includes both an ECM and improved aerodynamic design.

Issue 18: DOE requests comment on its factory parameter assumptions for typical air circulating fan production.

Issue 19: DOE requests comment on whether or not its baseline material assumptions are representative of baseline fans distributed into commerce. If DOE's baseline material assumptions are not representative, DOE requests information and data on materials typicaly used in the air circulating fans currently on the market.

Issue 20: DOE requests comment on its estimated base MPC for air circulating fans with no motors at each of the representative diameters evaluated. (See supplemental spreadsheet included in Docket No. EERE–2022–BT–STD–0002, No. 11)

Issue 21: DOE requests comment on whether replacing a given fan motor with a more efficient fan motor will result in similar efficiency and cost impacts for housed and unhoused air circulating fan heads.

Issue 22: DOE requests comment on its estimated motor costs SP motors (EL0), PSC motors (EL1), higher efficiency PSC motors (EL2), and ESMs (EL3) at each hp associated with the representative diameters evaluated. (See supplemental spreadsheet included in Docket No. EERE–2022–BT–STD–0002, No. 11)

Issue 23: DOE requests comment on its estimated housed and unhoused air circulating fan costs at each EL and for each representative unit. (See supplemental spreadsheet included in Docket No. EERE–2022–BT–STD–0002, No. 11)

Issue 24: DOE requests comment on and additional data to support its estimated air circulating fan conversion costs to undergo aerodynamic redesign.

Issue 25: DOE requests comment on whether or not an average MSP of 1.5 is representative for the air circulating fan market. If an average MSP of 1.5 is not representative, DOE requests information of what a more representative MSP would be. Additionally, DOE requests comment on whether or not MSP for air circulating fans will remain constant in the case of new energy conservation standards. If not, DOE seeks information on the magnitude by which MSP might change under potential energy efficiency standards.

Issue 26: DOE requests feedback and information on the distribution channels identified for air circulating fans, and on any other distribution channel that DOE should consider. DOE also requests data on the fraction of sales that go through these channels.

Issue 27: DOE seeks comment on the estimated average number of operating hours per year, distribution of operating hours, and the estimated fraction of time spent at each speed setting for air circulating fans with input power less than 125 W and those with input ower greater than or equal to 125 W. In addition, if DOE should consider different operating hours for specific applications (*e.g.,* air circulating fans used in agricultural applications, thermal mixing fans) DOE requests data on how to best characterize operating hours for these various applications.

Issue 28: DOE requests feedback on the inputs and considered methods used for the LCC and PBP analyses.

Issue 29: DOE requests information on its assumptions related to installation, maintenance, and repair practices of air circulating fans. Specifically, DOE requests feedback and data on whether installation, maintenance, and repair costs of air circulating fans are expected to be different at higher efficiency levels in comparison to the baseline installation, maintenance, and repair costs. To the extent that these costs differ, DOE seeks supporting data and the reasons for those differences.

Issue 30: DOE requests information on the repair frequency of air circulating fans (*i.e.,* how many repairs in a lifetime) by category (*i.e.,* unhoused air circulating fan heads, air circulating axial panel fan, box fan, cylindrical air circulating fan, and housed centrifugal air circulating fan) and on its approach to consider a single repair for certain air circulating fans with input power greater than or equal to 125 W.

Issue 31: DOE requests comment on the estimated average equipment lifetimes for air circulating fans. DOE also requests information related to minimum and maximum equipment lifetimes (in years or total mechanical hours).

Issue 32: DOE requests comment on its approach to derive efficiency distribution in the no-new standards case for each air circulating fan category and input regarding 2021 (or most recent year available) equipment efficiency distributions. Additionally, DOE seeks data that would support changes in efficiency distributions over time in the no-new standards case. To the extent any of the efficiency distributions in the no-new standards case differ by size or other consumer or design characteristic, DOE requests information to characterize these variations.

Issue 33: DOE requests comment on the estimated 2020 shipments of air circulating fans for each market segment considered (*i.e.,* below 125 W, and at or above 125 W) and seeks input on the fraction of shipments by air circulating fan category (*i.e.,* unhoused air circulating fan heads, air circulating axial panel fan, box fan, cylindrical air circulating fan, and housed centrifugal air circulating fan). In addition, DOE requests 2021 annual sales data (or the most recent year available)—*i.e.,* number of shipments—for air circulating fans and annual historical shipments data for 2016–2020 (or most recent years available). If disaggregated data of annual sales are not available for different air circulating fan categories, DOE requests more aggregated data of annual sales as available.

Issue 34: DOE requests comment on the estimated market share by sector. DOE requests 2016–2021 data (or the most recent years available) on the fraction of shipments in the industrial, commercial, and residential sectors for air circulating fans. In each sector, DOE requests 2016–2021 data (or the most recent years available) on the fraction of shipments that represent replacement versus new installations.

Issue 35: DOE requests comments on its approach to project shipments of air circulating fans. DOE requests information on the rate at which annual sales (*i.e.,* number of shipments) of air circulating fans is expected to change in the next 5–10 years. If possible, DOE requests this information for each air circulating fan category (*i.e.,* unhoused air circulating fan heads, air circulating axial panel fan, box fan, cylindrical air circulating fan, and housed centrifugal air circulating fan). If disaggregated data of annual sales are not available for each air circulating fan category, DOE requests more aggregated data of annual sales.

Issue 36: DOE requests comments on its approach to project equipment efficiency for air circulating fans. DOE requests data and information on any trends in the fans market that could be used to forecast expected trends in

market share by efficiency levels for air circulating fans. If disaggregated data are not available for each air circulating fan category, DOE requests more aggregated data.

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notification of the availability of the preliminary technical support document and request for comment.

Signing Authority

This document of the Department of Energy was signed on October 5, 2022, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on October 6, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

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Notices

Federal Register

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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

Office of Inspector General

Privacy Act of 1974; Systems of Records

AGENCY: Office of Inspector General, USDA.

ACTION: Notice of modified systems of records.

SUMMARY: The U.S. Department of Agriculture (USDA), Office of Inspector General (OIG) proposes to amend its systems of records by modifying six existing routine uses, adding one new routine use applicable to all systems of records, and making technical changes and corrections to its existing system of records notices. Based on these amendments, and to conform all system of records notices to the template prescribed by the Office of the Federal Register and the Office of Management and Budget, USDA OIG is re-publishing all of its system of records notices in their entirety.

DATES: Comments must be received on or before November 14, 2022. The new and modified routine uses and the substantive modifications and technical revisions to USDA OIG's systems of records, will be applicable on November 14, 2022, unless USDA OIG receives comments and determines that changes to the system of records notices are necessary.

ADDRESSES: You may submit comments, identified by docket number OIG–2022–0001 by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: comments@oig.usda.gov.*
- *Fax:* (202) 690–1528.
- *Mail:* Christy A. Slamowitz, Counsel to the Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, STOP 2308, Washington, DC 20250–2308.
- *Instructions:* All submissions received must include the agency name and docket number. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket or to read background documents or comments received, go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions and for privacy issues please contact: Cyrus Geranmayeh, Assistant Counsel to the Inspector General, USDA OIG, (202) 720–9110.

SUPPLEMENTARY INFORMATION: On August 13, 2015, USDA OIG published in the **Federal Register** all of USDA OIG's system of records notices (SORNs) in a single document based on several updates to the agency's systems of records and for the convenience of interested parties (80 FR 48476). Appendix A to the SORNs, which sets forth the regional office and sub-office locations of USDA OIG Systems of Records USDA/OIG–1, USDA/OIG–2, USDA/OIG–3, USDA/OIG–5, and USDA/OIG–9, also was updated and published in full on August 13, 2015 (80 FR 48488). USDA OIG modified and published its SORN for System of Records USDA/OIG–8 in its entirety on January 23, 2017 (82 FR 7795).

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and OMB Circular No. A–108, USDA OIG has reviewed its Privacy Act SORNs and has determined that it needs to update current language for several notice section headings. USDA OIG is making the changes to clarify descriptions of existing systems and the records maintained in each system. In addition to the specific amendments described for each system below, USDA OIG is applying the following three modifications to all systems of records: (1) replacing the term ''computerized'' with ''electronic'' when describing the storage of records in the system; (2) adding that access to electronic and paper records is limited to those individuals with a ''need to know'' for the performance of their official duties; and (3) updating the system location for the data centers maintaining electronic records. USDA OIG determined that adopting the term ''electronic'' provides a more inclusive and more precise description of the storage practices in place for each system, and incorporating the ''need to know'' requirement clarifies a comprehensive access limitation that complements existing physical, administrative, and technical safeguards. Finally, since USDA OIG published its SORNs on August 13, 2015, USDA OIG no longer maintains computer servers at the USDA OIG headquarters offices.

Additionally, for Systems of Records USDA/OIG–2, USDA/OIG–3, USDA/OIG–4, USDA/OIG–8, and USDA/OIG–9, USDA OIG is updating its procedures for accessing and contesting records originally collected by other Federal agencies and maintained in USDA OIG's systems. Specifically, USDA OIG will coordinate with the appropriate Federal agency or consult the applicable agency SORN for such purposes.

USDA OIG also determined that it needs to modify six existing routine uses and to add one new routine use applicable to all of USDA OIG's systems of records to share information with other Federal agencies or Federal entities, as required by OMB Memorandum No. M–17–12, ''Preparing for and Responding to a Breach of Personally Identifiable Information,'' dated January 3, 2017, to assist USDA OIG in preventing, minimizing, or remedying the risk of harm to the requesters, USDA OIG, the Federal Government, or national security. USDA OIG has determined that the release of information for the purposes provided in the new and modified routine uses is a necessary and proper use of the information in the systems of records and is compatible and consistent with the purpose for which the records are collected. Finally, USDA OIG is replacing the term ''OIG'' with ''USDA OIG'' for all routine uses to ensure consistency with other sections of the **Federal Register** publication.

System of Records USDA/OIG–6 was reserved when the other system notices were published in full on August 13, 2015 (80 FR 48476). Although it is not being modified in this publication, we are including it again to avoid confusion regarding its continued reserved status.

Revised System of Records—Employee Records—USDA/OIG–1 (Amendment to Notice)

USDA OIG is updating the purpose section to clarify that the system includes both current and historical records, and covers current and former USDA OIG employees. Since the notice

for this system was last published on August 13, 2015, USDA OIG relocated its Office of Compliance and Integrity (OCI) to the headquarters offices; therefore, USDA OIG is deleting OCI's former physical address in Beltsville, Maryland, from the system location section. USDA OIG also is adding the following records categories to more appropriately reflect the scope of information maintained in the system: employee work schedules; Service Computation Dates; birth dates; veteran status; applicable pension system; life insurance benefits; and requests for accommodations. The retrieval practices for this system are being updated to indicate that, in addition to the existing personal identifiers, records may be retrieved by an employee identification number. USDA OIG also is clarifying that agency employees may access electronic records using their personal identity verification (PIV) card or a username and password, including through the agency's virtual private network (VPN). Finally, based on updates to the General Records Schedules issued by the National Archives and Records Administration (NARA), USDA OIG is revising references to the records retention and disposal policies to reflect the new schedules.

Revised System of Records—Confidential Human Source and Undercover Agent Records—USDA/OIG–2 (Amendment to Notice)

USDA OIG is revising the system name by replacing the term ''Informant'' with ''Confidential Human Source'' to align with USDA OIG's relevant internal directive and related Department of Justice guidance titled ''Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources,'' issued December 13, 2006. Since the notice for this system was last published on August 13, 2015, USDA OIG relocated its Office of Compliance and Integrity (OCI) to the headquarters offices; therefore, USDA OIG is deleting OCI's former physical address in Beltsville, Maryland from the system location section. USDA OIG also is updating the system manager section to include reference to the Director, OCI. USDA OIG also is amending the section regarding the retrieval of system records to explain that in addition to the name of a confidential human source, investigative operative, or USDA OIG special agent, records may be retrieved by identifying numbers assigned to such individuals; moreover, both identifiers also pertain to other law enforcement agency personnel involved in undercover activities. Finally, USDA OIG is modifying the description of safeguards in place for records maintained in this system by clarifying that certain electronic records maintained in computer systems and applications are protected through use of usernames, passwords, and PIV cards; electronic records are maintained on other data storage devices, such as external flash or hard drives; and paper records are kept in limited access areas during duty hours and in locked offices during nonduty hours.

Revised System of Records—Investigative Files and Automated Investigative Indices System—USDA/OIG–3 (Amendment to Notice)

USDA OIG is adding references to USDA employees, USDA contractors, and other individuals and entities associated with USDA in the purpose section to clarify the scope of investigations conducted by USDA OIG. Since the notice for this system was last published on August 13, 2015, USDA OIG relocated its Office of Compliance and Integrity (OCI) to the headquarters offices; therefore, USDA OIG is deleting OCI's former physical address in Beltsville, Maryland from the system location section. USDA OIG also is updating the locations of the computer servers that are responsible for maintaining system records. USDA OIG is revising the categories of individuals covered by the system to clarify that the investigative indices and files document individuals who are the subject of preliminary inquiries, as well as the subject of investigations that are ultimately opened or declined for opening. USDA OIG also is modifying the categories of individuals covered by the system (1) to reflect that potential violations may involve administrative, civil, and/or criminal laws and regulations; (2) to replace the phrase ''closely connected with'' with ''relevant to, or contacted as part of,'' for clarity; and (3) to note that complainants also may be covered by the USDA/OIG–4 system of records. USDA OIG is adding a records category to include electronic records maintained by USDA OIG's Asset Forfeiture Unit. USDA OIG also is revising the records retrieval section to explain that the prior reference to retrieving electronic records alphabetically pertained to the subject, complainant, or USDA OIG investigator's name, and to add the retrieval practices for hard copy files. Finally, USDA OIG is clarifying the description of safeguards in place for such records by adding that protections relating to electronic records include use of a confidential username, password, and PIV card, and that files relating to closed investigations are transferred to Federal Records Centers maintained and operated by NARA.

Revised System of Records—OIG Hotline Complaint Records—USDA/OIG–4 (Amendment to Notice)

USDA OIG is amending the categories of covered individuals to clarify that the system also covers complaints or reports of violations or misconduct allegedly committed by USDA OIG personnel. USDA OIG is revising the categories of records section to clarify that (1) complaints received by USDA OIG may originate from Federal, State, or tribal agencies; (2) USDA OIG may refer complaints to Federal, State, or tribal agencies as well; and (3) the records categories include both the results of a USDA OIG review or the results of a Federal, State, or tribal agency inquiry. USDA OIG is updating the retrieval practices to indicate that records also may be retrieved by names of witnesses. Finally, USDA OIG is making a technical edit to the safeguards section by replacing ''files'' with ''paper records'' and updating the records access procedures to include use of a confidential username, password, and PIV card for access to electronic files.

Revised System of Records—Automated Reporting and General Operations Systems (ARGOS), USDA/OIG–5 (Amendment to Notice)

USDA OIG has determined that the agency no longer uses the Audit Subsystem within ARGOS to manage audit employee assignments or to facilitate reporting of USDA OIG audit activities to Congress. However, USDA OIG is maintaining references in the system notice for audit activities until existing records, including legacy information, pertaining to such activities are ultimately removed pursuant to an applicable disposition authority. USDA OIG also is adding a reference to USDA OIG contractors to appropriately reflect the categories of USDA OIG individuals and sources of records covered by the system. Following a review of the records maintained in the system, USDA OIG determined that a record retention schedule for the system is necessary; therefore, USDA OIG is clarifying that no records will be destroyed until a retention schedule approved by NARA is in place. Finally, USDA OIG is making technical changes to the storage and retrieval practices for clarity.

Revised System of Records—Freedom of Information Act and Privacy Act Request Records USDA/OIG–7 (Amendment to Notice)

USDA OIG is modifying the notice to clarify that (1) the individuals covered by the system and record source categories also include individuals who have submitted an administrative appeal, and (2) USDA OIG retrieves records from the system by requester or appellant name and/or a unique control number that USDA OIG assigned to the request or administrative appeal. Finally, based on updates to the General Records Schedules issued by NARA since USDA OIG last published its system of records notices, USDA OIG is updating the records retention and disposal policies to reflect the new schedules.

Revised System of Records—Office of Analytics and Innovation's Holistic Information Analytics and Visualization Environment (HIAVE)—USDA/OIG–8 (Amendment to Notice)

System of Records USDA/OIG–8 ''Office of Data Sciences (ODS) Research Aggregated Data Analysis Repository (RADAR) System,'' was last updated on January 23, 2017 (82 FR 7795). Since that date, USDA OIG has renamed ODS as the Office of Analytics and Innovation (OAI). Therefore, USDA OIG is amending the system name and system manager to reflect the new titles of the responsible office and responsible official. USDA OIG also is updating the system name by replacing ''Research Aggregated Data Analysis Repository (RADAR) System'' with ''Holistic Information Analytics and Visualization Environment (HIAVE)'' to reflect the current USDA OIG-wide data and analytics environment and its evolution since the original system of records was first established; the new system name captures the basis, intent, and use of the system. USDA OIG also is revising (1) the purpose section to clarify that OAI supports USDA OIG activities by performing advanced statistical techniques and data modeling with data USDA OIG has the legal authority to obtain, and (2) the categories of individuals and categories records maintained in the system. USDA OIG is deleting reference to ''media, including periodicals, newspapers, and broadcast transcripts'' in the system notice as such sources no longer provide records maintained in the system. Finally, USDA OIG is clarifying that the system no longer maintains paper records and that electronic records are protected through system usernames and passwords, use of a PIV card, and encryption.

Revised System of Records—Audit Records—USDA/OIG–9 (Amendment to Notice)

USDA OIG is updating the purpose section to clarify that in addition to the existing uses, USDA OIG maintains the system for managing employee time for each assignment, tracking training records of audit employees, and facilitating USDA OIG's external reporting requirements. USDA OIG also is deleting the following sentence from the categories of records section because USDA OIG determined it was duplicative: ''The information consists of audit work papers and reports.'' Finally, the technical and physical safeguards section for this system is being updated to include use of a PIV card for protecting electronic records and to replace the term ''file folders'' with ''paper records.''

Routine Uses 1, 2, 3, 12, and 19—Technical Changes

USDA OIG is revising five existing routines uses to permit disclosure to tribal authorities for the specific purposes described for each use. USDA OIG determined the proposed revisions for each routine use more clearly recognize the sovereignty of tribal governments, which was not reflected in existing references to other agencies and public authorities. For Routine Uses 1, 2, 3, and 12, USDA OIG is revising the routine uses further to permit disclosure to law enforcement task forces; the addition will facilitate information sharing and communications that may be necessary for official purposes. Finally, for Routine Use 12, USDA OIG is removing the term ''program'' when describing computer matching and adding reference to other non-benefit programs administered by an agency to clarify the scope of computer matching activities covered by the routine use.

Routine Use 16 (Disclosures Relating to Information Compromises)—Technical Change

In 2007, OMB suggested that all agencies publish a routine use for appropriate systems of records specifically applying to the disclosure of information in connection with response and remedial efforts in the event of a data breach. See ''Safeguarding Against and Responding to the Breach of Personally Identifiable Information,'' OMB Memorandum No. M–07–16, at 11 (May 22, 2007). Accordingly, in 2008, USDA OIG added Routine Use 16 to cover such disclosures (73 FR 43398). In January 2017, OMB issued new guidance that rescinded and replaced its 2007 guidance; the new guidance provided updated model text for agencies to include as a routine use applicable to the agency's SORNs. See OMB Memorandum No. M–17–12, at 11. USDA OIG proposes revising Routine Use 16 by using the new model language that OMB recommends all agencies use.

The current language of Routine Use 16 is as follows:

16. A record from the system of records may be disclosed to appropriate agencies, entities, and persons when: (a) OIG suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) USDA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by USDA or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USDA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

The revised routine use will then read as follows:

16. A record from the system of records may be disclosed to appropriate agencies, entities, and persons when: (a) USDA OIG or USDA suspects or has confirmed that there has been a breach of the system of records; (b) USDA OIG has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, USDA OIG or USDA (including their information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USDA OIG's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

Routine Use 16, as revised, will continue to apply to Systems of Records USDA/OIG–1, USDA/OIG–2, USDA/OIG–3, USDA/OIG–4, USDA/OIG–5, USDA/OIG–7, USDA/OIG–8, and USDA/OIG–9.

New Routine Use

USDA OIG proposes to add one new routine use. The new routine use (proposed 22) is proposed to allow the disclosure of information to another

Federal agency or entity in order to assist such agency or entity in responding to suspected or confirmed breaches. This routine use is mandated by OMB. See OMB Memorandum No. M–17–12, at 11.

The text of proposed Routine Use 22 will be applicable to Systems of Records USDA/OIG–1, USDA/OIG–2, USDA/OIG–3, USDA/OIG–4, USDA/OIG–5, USDA/OIG–7, USDA/OIG–8, and USDA/OIG–9, and will read as follows:

22. A record from the system of records may be disclosed to another Federal agency or Federal entity, when USDA OIG determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

In accordance with 5 U.S.C. 552a(r), USDA OIG has provided a report to OMB, the Committee on Oversight and Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate, on the proposed systems of records.

Dated: October 4, 2022.

Phyllis K. Fong,

Inspector General, Department of Agriculture.

Accordingly, USDA OIG is republishing the notices for all of its systems of records in their entirety, as amended, to incorporate the modifications described above, to conform to the new SORN template provided in appendix II of OMB Circular A–108, and for the convenience of interested parties, as follows:

Routine Uses

The following 22 routine uses are applicable as noted below to USDA OIG's systems of records:

1. A record from the system of records which indicates either by itself or in combination with other information, a violation or potential violation of a contract or law, whether civil, criminal, or regulatory, or which otherwise reflects on the qualifications or fitness of a licensed (or seeking to be licensed) individual, may be disclosed to a Federal, State, tribal, local, foreign, or self-regulatory agency (including but not limited to organizations such as professional associations or licensing boards), other public authority, or law enforcement task force that investigates or prosecutes or assists in such investigation, prosecution, enforcement, implementation, or issuance of the statute, rule, regulation, order, or license.

2. A record from the system of records may be disclosed to a Federal, State, tribal, local, or foreign agency, other public authority, law enforcement task force, consumer reporting agency, or professional organization maintaining civil, criminal, or other relevant enforcement or other pertinent records, such as current licenses, in order to obtain information relevant to a USDA OIG decision concerning employee retention or other personnel action, issuance of a security clearance, letting of a contract or other procurement action, issuance of a benefit, establishment of a claim, collection of a delinquent debt, or initiation of an administrative, civil, or criminal action.

3. A record from the system of records may be disclosed to a Federal, State, tribal, local, foreign, or self-regulatory agency (including but not limited to organizations such as professional associations or licensing boards), other public authority, or law enforcement task force to the extent the information is relevant and necessary to the requestor's hiring or retention of an individual or any other personnel action; issuance or revocation of a security clearance, license, grant, or other benefit; establishment of a claim; letting of a contract; reporting of an investigation of an individual; or for purposes of a suspension or debarment action, or the initiation of administrative, civil, or criminal action.

4. A record from the system of records may be disclosed to any source—private or public—to the extent necessary to secure from such source information relevant to a legitimate USDA OIG investigation, audit, or other inquiry.

5. A record from the system of records may be disclosed to the U.S. Department of Justice or in a proceeding before a court, administrative tribunal, or adjudicative body, when:

(a) USDA OIG, or any component thereof;

(b) Any employee of USDA OIG in his or her official capacity;

(c) Any employee of USDA OIG in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where USDA OIG determines that litigation is likely to affect USDA or any of its components,

is a party to the litigation or has an interest in such litigation, and USDA OIG determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, USDA OIG determines that disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

6. A record from the system of records may be disclosed to a Member of Congress from the record of an individual in response to an inquiry from the Member of Congress made at the request of that individual. In such cases, however, the Member's right to a record is no greater than that of the individual.

7. A record from the system of records may be disclosed to the U.S. Department of Justice for the purpose of obtaining its advice on a USDA OIG audit, investigation, or other inquiry, including Freedom of Information Act or Privacy Act matters.

8. A record from the system of records may be disclosed to the Office of Management and Budget for the purpose of obtaining its advice regarding USDA OIG obligations under the Privacy Act or in connection with the review of private relief legislation.

9. A record from the system of records may be disclosed to a private firm with which USDA OIG contemplates it will contract or with which it has contracted for the purpose of performing any functions or analyses that facilitate or are relevant to a USDA OIG investigation, audit, inspection, or other inquiry. Such contractor or private firm shall be required to maintain Privacy Act safeguards with respect to such records.

10. A record from the system of records may be disclosed in response to a subpoena issued by a Federal agency having the power to subpoena records of other Federal agencies, provided the subpoena is channeled through the head of the agency, if the USDA OIG determines that: (a) The head of the agency or authorized designee signs the subpoena; (b) the subpoena specifies the information sought and the law enforcement purpose served; (c) the records are both relevant and necessary to the proceeding; and (d) such release is compatible with the purpose for which the records were collected.

11. A record from the system of records may be disclosed to a grand jury agent pursuant either to a Federal or State grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, provided that the grand jury channels its request through the cognizant U.S. Attorney, that the U.S. Attorney has been delegated the authority to make such

requests by the Attorney General, and that the U.S. Attorney actually signs the letter specifying both the information sought and the law enforcement purpose served. In the case of a State grand jury subpoena, the State equivalent of the U.S. Attorney and Attorney General shall be substituted.

12. A record from the system of records may be disclosed to a Federal, State, tribal, local, or foreign agency, other public authority, or law enforcement task force for use in computer matching to prevent and detect fraud and abuse in benefit or other programs administered by any agency, to support civil and criminal law enforcement activities of any agency and its components, and to collect debts and overpayments owed to any agency and its components.

13. Relevant information from a system of records may be disclosed to the news media and general public where there exists a legitimate public interest, *e.g.,* to assist in the location of fugitives, to provide notification of arrests, or where necessary for protection from imminent threat of life or property except to the extent USDA OIG determines that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

14. A record may be disclosed to any official charged with the responsibility to conduct qualitative assessment, peer, or similar reviews of internal safeguards and management procedures employed in investigative, audit, and inspection and evaluation operations. This disclosure category includes members of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) or any successor entity and officials and administrative staff within their chain of command, as well as authorized officials of the U.S. Department of Justice and the Federal Bureau of Investigation.

15. In the event that these records respond to an audit, investigation, or review, which is conducted pursuant to an authorizing law, rule, or regulation, and in particular those conducted at the request of CIGIE, the records may be disclosed to CIGIE or any successor entity and other Federal agencies, as necessary.

16. A record from the system of records may be disclosed to appropriate agencies, entities, and persons when: (a) USDA OIG or USDA suspects or has confirmed that there has been a breach of the system of records; (b) USDA OIG has determined that as a result of the suspected or confirmed compromise there is a risk of harm to individuals, USDA OIG or USDA (including their information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USDA's or USDA OIG's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

17. A record from the system of records may be disclosed to a Federal agency or professional organization to document continuing professional education required by the Government Auditing Standards published by the U.S. Government Accountability Office. The record must be relevant to the determination of competency and compliance with the general qualification standard for government auditing, and retention of an employee or other personnel action.

18. A record from the system of records may be disclosed to complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

19. A record from the system of records may be disclosed to a former employee of USDA OIG for purposes of: responding to an official inquiry by a Federal, State, tribal, or local government entity or professional licensing authority, in accordance with applicable USDA regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where USDA OIG requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of official responsibility.

20. A record may be disclosed to members and employees of CIGIE, or any successor entity, for the preparation of reports to the President and Congress on the activities of the Inspectors General.

21. A record may be disclosed to the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities under 5 U.S.C. 552(h), to review administrative agency policies, procedures, and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

22. A record may be disclosed to another Federal agency or Federal entity, when USDA OIG determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

SYSTEM OF RECORDS

SYSTEM NAME AND NUMBER:

Employee Records, USDA/OIG–1.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

In USDA OIG headquarters offices, 1400 Independence Avenue SW, Washington, DC 20250; data centers managed by the USDA, Digital Infrastructure Services Center, 8930 Ward Parkway, Kansas City, MO 64114, and 4300 Goodfellow Boulevard, Saint Louis, MO 63120; and OIG regional offices and sub-offices, listed in appendix A.

SYSTEM MANAGER(S):

Assistant Inspector General for Management, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, 5 U.S.C. app. 3; 5 U.S.C. 301; 7 U.S.C. 2270.

PURPOSE(S) OF THE SYSTEM:

This system consists of records compiled for personnel, payroll, and time-reporting purposes. In addition, this system contains all records created and/or maintained about employees as required by the Office of Personnel Management (OPM) as well as documents relating to personnel matters and determinations. Retirement, life, and health insurance benefit records are collected and maintained in order to administer the Federal Employees Retirement System, Civil Service Retirement System, Federal Employees' Group Life Insurance Plan, and the Federal Employees Health Benefit Program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current OIG temporary and permanent employees, former OIG

employees, and applicants for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records show or relate to employment, personnel management, and work-related information, including position; work schedule; classification and title; grade, pay rate, and pay; pension system; Service Computation Dates; dates of birth; veteran status; temporary and permanent addresses and telephone numbers for home and work; copies of security clearance forms; program and performance evaluations; promotions; retirement; disciplinary actions and appeals; incentive programs; unemployment compensation; leave; complaints and grievances; overpayments; health benefits; life insurance; equal employment opportunity; requests for accommodation; automation of personnel data; travel information; accident reports and related information; activity reports; participation in savings and contribution programs; availability for employment, assignment, or transfer; qualifications (for law enforcement employees this includes Attorney General designations, training certificates, physical fitness data, and medical officer's certification excluding personal medical data); awards; hours worked; issuance of credentials, passports and other identification; assignment and accountability of property and other things of value; parking space assignments; training and development; special assignments; and exit interviews.

Other employee records are covered by other systems as follows: for Official Personnel Folder (OPF) data refer to USDA/OP–1 Personnel and Payroll System for USDA Employees; for medical records, including SF–78, Certificate of Medical Examination, and drug testing records, refer to OPM/GOVT–10 Employee Medical File System; for pre-employment inquiries refer to USDA/OIG–3, Investigative Files and Automated Investigative Indices; for executive branch personnel financial disclosure statements and other ethics program records refer to OGE/GOVT–1, Executive Branch Personnel Public Financial Disclosure Reports and Other Named-Retrieved Ethics Program Records; for annual confidential financial disclosure statements refer to OGE/GOVT–2, Executive Branch Confidential Financial Disclosure Reports.

RECORD SOURCE CATEGORIES:

The primary information is furnished by the individual employee to whom it applies. Additional information is provided by supervisors, coworkers, references, and others.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Routine Uses 1 through 13, 16, 19, 21, and 22 apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The system consists of electronic and paper records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The records are retrieved by an individual's name, employee identification number, and/or Social Security Number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records are retained and disposed of in compliance with the General Records Schedule, NARA. Retention periods and disposal methods vary by record categories as set forth in NARA General Records Schedules 2.1 through 2.7.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to system records is limited to those individuals who have an official ''need to know'' for the information in the performance of their official duties. Access to electronic files is limited to username and password, use of a personal identity verification card, or through the agency's virtual private network, which restricts access using encryption techniques. Paper records are maintained in limited-access areas during duty hours and in locked offices during nonduty hours.

RECORD ACCESS PROCEDURES:

An individual may request access to a record in this system that pertains to them by submitting a written request to the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 2308, Washington, DC 20250–2308.

CONTESTING RECORD PROCEDURES:

An individual may contest information in this system that pertains to them by submitting a written request to the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 2308, Washington, DC 20250–2308.

NOTIFICATION PROCEDURES:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to them, from the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 2308, Washington, DC 20250–2308.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

80 FR 48476 (August 13, 2015).

SYSTEM NAME AND NUMBER:

Confidential Human Source and Undercover Agent Records, USDA/OIG–2.

SECURITY CLASSIFICATION:

Sensitive but Unclassified and/or Controlled Unclassified Information.

SYSTEM LOCATION:

In USDA OIG headquarters offices, 1400 Independence Avenue SW, Washington, DC 20250; data centers managed by the USDA, Digital Infrastructure Services Center, 8930 Ward Parkway, Kansas City, MO 64114; and 4300 Goodfellow Boulevard, Saint Louis, MO 63120; and OIG regional offices and sub-offices, listed in appendix A.

SYSTEM MANAGER(S):

Assistant Inspector General for Investigations, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250; and the Director, Office of Compliance and Integrity, 1400 Independence Avenue SW, Washington, DC 20250.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, 5 U.S.C. app. 3; 5 U.S.C. 301; 7 U.S.C. 2270.

PURPOSE(S) OF THE SYSTEM:

To track the identities of, and related information regarding, confidential human sources (CHS), investigative operatives, and undercover OIG special agents and other law enforcement agency personnel.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CHS, investigative operatives, and undercover OIG special agents and other law enforcement agency personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information including names, occupations, criminal histories, and other information about CHS and investigative operatives, together with allegations against them, and the types

of information previously furnished by or to be expected from them. Types, dates of issuance and destruction, and details of undercover identification documents used by OIG special agents and other law enforcement agency personnel for undercover activities.

RECORD SOURCE CATEGORIES:

This system contains materials for which sources need not be reported.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Routine Uses 1 through 13, 16, 18, 19, 21, and 22 apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The system consists of electronic and paper records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The records are retrieved by name and/or identifying number of CHS, investigative operative, or OIG special agent and other law enforcement agency personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records contained in this system are currently unscheduled. A record retention schedule will be developed and submitted to NARA for approval. No records will be destroyed until a NARA approved record retention schedule is in place.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to system records is limited to those individuals who have an official ''need to know'' for the information in the performance of their official duties. Electronic files stored on computer systems and applications are protected through system usernames and complex passwords and use of a personal identity verification card; all other records are kept in limited-access areas during duty hours and in locked offices during nonduty hours.

RECORD ACCESS PROCEDURES:

An individual may request access to a record in this system that pertains to them by submitting a written request to the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 2308, Washington, DC 20250–2308. This system may contain records originally collected by USDA and other Federal agencies, and governed by USDA or other Federal agency system of records notices. Where appropriate, coordination with the appropriate USDA agency, or consultation with the applicable Federal agency procedures, will be effected regarding individuals accessing records in the relevant system of records.

CONTESTING RECORD PROCEDURES:

An individual may contest information in this system that pertains to them by submitting a written request to the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 2308, Washington, DC 20250–2308. This system may contain records originally collected by USDA and other Federal agencies, and governed by USDA or other Federal agency system of records notices. Where appropriate, coordination with the appropriate USDA agency, or consultation with the applicable Federal agency procedures, will be effected regarding individuals contesting records in the relevant system of records.

NOTIFICATION PROCEDURES:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to them, from the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 2308, Washington, DC 20250–2308.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j)(2), this system of records is exempted from all provisions of the Privacy Act of 1974, 5 U.S.C. 552a, as amended, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i). Pursuant to 5 U.S.C. 552a(k)(2) and (5), this system is exempted from the following provisions of the Privacy Act of 1974, 5 U.S.C. 552a: subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

HISTORY:

80 FR 48476 (August 13, 2015).

SYSTEM NAME AND NUMBER:

Investigative Files and Automated Investigative Indices System, USDA/OIG–3.

SECURITY CLASSIFICATION:

Sensitive but Unclassified and/or Controlled Unclassified Information.

SYSTEM LOCATION:

Paper files are maintained in the USDA OIG headquarters office at 1400 Independence Avenue SW, Washington, DC 20250; and in the OIG regional offices and Investigations sub-offices listed in appendix A. The OIG regional offices and Investigations sub-offices maintain paper files containing the report of investigation and the work papers for each allegation investigated by that office. The headquarters files contain a copy of every investigative report, but do not contain work papers and may not contain copies of all correspondence. Older investigative files may be stored in Federal Records Centers or on microfiche, microfilm, or electronic image filing systems. Therefore, delays in retrieving this material can be expected. Selected portions of records have been digitized—see section 1 of ''Categories of records'' below. These records, used as an investigative tool, are accessible to authorized OIG personnel via computer terminals located in each OIG office and secure laptop computers assigned to OIG personnel. These records are maintained in data centers managed by the USDA, Digital Infrastructure Services Center, 8930 Ward Parkway, Kansas City, MO 64114, and 4300 Goodfellow Boulevard, Saint Louis, MO 63120.

SYSTEM MANAGER(S):

Assistant Inspector General for Investigations, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250; and the Director, Office of Compliance and Integrity, 1400 Independence Avenue SW, Washington, DC 20250.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, 5 U.S.C. app. 3; 5 U.S.C. 301; 7 U.S.C. 2270.

PURPOSE(S) OF THE SYSTEM:

The records maintained in the system are used by USDA OIG in furtherance of the responsibilities of the Inspector General, pursuant to the Inspector General Act of 1978, as amended, to conduct and supervise investigations relating to USDA programs, operations, and employees, as well as contractors and other individuals and entities associated with USDA; to promote economy, efficiency, and effectiveness in the administration of such programs and operations; and to prevent and detect fraud and abuse in such programs and operations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individual names in the OIG investigative indices and investigative files fall into one or more of the following categories:

1. Subjects. These are individuals and entities against whom allegations of wrongdoing have been made. In some instances, these individuals and entities have been the subjects of preliminary inquiries or official investigations conducted by OIG to determine whether allegations are substantiated. In other instances, the allegations were deemed to lack information facilitating investigation or not within the purview of the OIG's authority to investigate.

2. Principals. These are individuals and entities who are not named subjects of investigative inquiries, but may be responsible for or involved in potential violations of administrative, civil, and/or criminal laws and regulations. For example, the responsible officers of a firm alleged to have violated laws or regulations might be individually listed in the OIG index.

3. Complainants. These are individuals and entities who may or may not have requested anonymity or confidentiality regarding their identity, and who allege administrative, civil, or criminal wrongdoing, mismanagement, or unfair treatment by USDA employees, contractors, subcontractors, grantees, or subgrantees and/or other persons or entities, relating to USDA programs. This category may include individuals also covered by the OIG Hotline Complaint Records, USDA/OIG–4, system of records.

4. Others. These are all other individuals and entities relevant to, or contacted as part of, a matter investigated by OIG.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the OIG Investigative Files and Automated Investigative Indices System consist of:

1. Electronic records retrieved by investigation record number or alphabetically by the names of individuals, organizations, and firms. A separate record for each contains, if applicable, identification of the OIG file or files which contain information on that subject and if such information was available when the record was created or modified; the individual's name, address, sex, race, date and place of birth, relationship to the investigation, FBI or State criminal identification number, and Social Security Number;

2. Paper records containing sheets of paper or microfiche of such sheets from investigative and other reports, correspondence, and informal notes and notations concerning (a) one investigative matter or (b) a number of incidents of the same sort of alleged violation or irregularity; and

3. Where an investigation is being or will be conducted, but has not been completed, various investigation management records, investigator's notes, statements of witnesses, and copies of records. These are contained on cards and sheets of paper located in an OIG office or in the possession of the OIG investigator. Certain investigation and management records are retained electronically in the system after the investigative report is released as a means of following action taken on the basis of the OIG investigative report.

4. Electronic records pertaining to administrative, civil, or criminal forfeiture actions are also maintained by the Asset Forfeiture Unit, which include subject names and interested parties, inventories of seized items, and petitions for remission submitted by USDA on behalf of OIG.

RECORD SOURCE CATEGORIES:

This system contains materials for which sources need not be reported.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Routine Uses 1 through 16 and 18 through 22 apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The system consists of electronic and paper records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Electronic records are retrieved alphabetically by subject or complainant names, OIG investigator's name, or by using the investigation record number, with each record identifying one or more OIG investigative files or administrative files arranged numerically by file number. Paper records are retrieved by subject name(s) or investigation record number, with each record identifying one or more OIG investigative files or administrative files arranged numerically by file number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records are retained and disposed of in compliance with OIG's record disposition authority, approved by NARA (Job No. N1–016–00–3, dated October 17, 2001).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to system records is limited to those individuals who have an official ''need to know'' for the information in the performance of their official duties. Paper records are kept in limited access areas during duty hours, in locked offices during nonduty hours, or in the possession of the investigator. Electronic records are protected through use of a personal identity verification card and by requiring a confidential username and password. Investigative case files relating to closed investigations are transferred to Federal Records Centers maintained and operated by NARA.

RECORD ACCESS PROCEDURES:

An individual may request access to a record in this system that pertains to them by submitting a written request to the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 2308, Washington, DC 20250–2308. This system may contain records originally collected by USDA and other Federal agencies, and governed by USDA or other Federal agency system of records notices. Where appropriate, coordination with the appropriate USDA agency, or consultation with the applicable Federal agency procedures, will be effected regarding individuals accessing records in the relevant system of records.

CONTESTING RECORD PROCEDURES:

An individual may contest information in this system that pertains to them by submitting a written request to the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 2308, Washington, DC 20250–2308. This system may contain records originally collected by USDA and other Federal agencies, and governed by USDA or other Federal agency system of records notices. Where appropriate, coordination with the appropriate USDA agency, or consultation with the applicable Federal agency procedures, will be effected regarding individuals contesting records in the relevant system of records.

NOTIFICATION PROCEDURES:

Inquiries and requests should be addressed to the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 2308, Washington, DC 20250–2308.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j)(2), this system of records is exempted from all provisions of the Privacy Act of 1974, 5 U.S.C. 552a, as amended, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i). Pursuant to 5 U.S.C. 552a(k)(2) and (5), this system is exempted from

the following provisions of the Privacy Act of 1974, 5 U.S.C. 552a: subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

HISTORY:

80 FR 48476 (August 13, 2015).

SYSTEM NAME AND NUMBER:

OIG Hotline Complaint Records, USDA/OIG–4.

SECURITY CLASSIFICATION:

Sensitive but Unclassified and/or Controlled Unclassified Information.

SYSTEM LOCATION:

In USDA OIG headquarters offices at 1400 Independence Avenue SW, Washington, DC 20250; and data centers managed by the USDA, Digital Infrastructure Services Center, 8930 Ward Parkway, Kansas City, MO 64114, and 4300 Goodfellow Boulevard, Saint Louis, MO 63120.

SYSTEM MANAGER(S):

Assistant Inspector General for Investigations, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, 5 U.S.C. app. 3; 5 U.S.C. 301; 7 U.S.C. 2270.

PURPOSE(S) OF THE SYSTEM:

To record complaints and allegations of wrongdoing, and requests for assistance; to document inquiries received by OIG; to compile statistical information; to provide prompt, responsive, and accurate information regarding the status of open complaints; to provide a record of complaint disposition and to record actions taken and notifications of interested parties and agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Complainants are persons who report or complain of possible criminal, civil, or administrative violations of law, rule, regulation, policy, or procedure, or fraud, waste, abuse, mismanagement, gross waste of funds, or abuse of authority in USDA programs or operations or allegedly committed by USDA OIG personnel; or specific dangers to public health or safety, misuse of government property, personnel misconduct, discrimination, or other irregularities affecting USDA programs.

2. Subjects are persons against whom such complaints and allegations are made.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Identities of complainants, if known, and subjects.

2. Details of each complaint or allegation.

3. OIG complaint number and control number(s) used by Federal, State, or tribal agencies for tracking each complaint.

4. Responses from Federal, State, or tribal agencies to which complaints are referred for inquiry.

5. Summaries of substantiated information and results of OIG, Federal, State, or tribal agency inquiry into the complaint.

RECORD SOURCE CATEGORIES:

Identities of complainants and subjects are provided by individual complainants. Additional information may be provided by individual complainants, subjects, and/or third parties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Routine Uses 1 through 16 and 18 through 22 apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The system consists of electronic and paper records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The records are retrieved primarily by name of the subject, complainant, or witness; records may also be retrieved by complaint number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records are retained and disposed of in compliance with OIG's record disposition authority, approved by NARA (Job No. N1–016–00–3, dated October 17, 2001).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to system records is limited to those individuals who have an official ''need to know'' for the information in the performance of their official duties. Paper records are kept in limited access areas during duty hours, in locked offices during nonduty hours, or in the possession of the investigator. Electronic records are protected through use of a personal identity verification card and by requiring a confidential username and password.

RECORD ACCESS PROCEDURES:

An individual may request access to a record in this system that pertains to them by submitting a written request to the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 2308, Washington, DC 20250–2308. This system may contain records originally collected by USDA and other Federal agencies, and governed by USDA or other Federal agency system of records notices. Where appropriate, coordination with the appropriate USDA agency, or consultation with the applicable Federal agency procedures, will be effected regarding individuals accessing records in the relevant system of records.

CONTESTING RECORD PROCEDURES:

An individual may contest information in this system that pertains to them by submitting a written request to the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 2308, Washington, DC 20250–2308. This system may contain records originally collected by USDA and other Federal agencies, and governed by USDA or other Federal agency system of records notices. Where appropriate, coordination with the appropriate USDA agency, or consultation with the applicable Federal agency procedures, will be effected regarding individuals contesting records in the relevant system of records.

NOTIFICATION PROCEDURES:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to them, from the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 2308, Washington, DC 20250–2308.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j)(2), this system of records is exempted from all provisions of the Privacy Act of 1974, 5 U.S.C. 552a, as amended, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i). Pursuant to 5 U.S.C. 552a(k)(2) and (5), this system is exempted from the following provisions of the Privacy Act of 1974, 5 U.S.C. 552a: subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

HISTORY:

80 FR 48476 (August 13, 2015).

SYSTEM NAME AND NUMBER:

Automated Reporting and General Operations Systems (ARGOS), USDA/OIG–5.

SECURITY CLASSIFICATION:

Sensitive but Unclassified and/or Controlled Unclassified Information.

SYSTEM LOCATION:

In USDA OIG headquarters offices at 1400 Independence Avenue SW, Washington, DC 20250; data centers managed by the USDA, Digital Infrastructure Services Center, 8930 Ward Parkway, Kansas City, MO 64114, and 4300 Goodfellow Boulevard, Saint Louis, MO 63120; and accessible via remote computer terminals to authorized OIG personnel in OIG regional offices and sub-offices, listed in appendix A.

SYSTEM MANAGER(S):

Audit Subsystem—Assistant Inspector General for Audit, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250.

Investigations Subsystem—Assistant Inspector General for Investigations, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, 5 U.S.C. app. 3; 5 U.S.C. 301; 7 U.S.C. 2270.

PURPOSE(S) OF THE SYSTEM:

The records maintained in the system are used by USDA OIG in furtherance of the responsibilities of the Inspector General, pursuant to the Inspector General Act of 1978, as amended, to conduct and supervise audits and investigations relating to USDA programs and operations; to promote economy, efficiency, and effectiveness in the administration of such programs and operations; and to prevent and detect fraud, waste, and abuse in such programs and operations. The system is used primarily to manage investigative cases, to facilitate reporting of OIG investigative activities to Congress and other Governmental entities, and to generate audit assignment numbers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

OIG employees or contractors who participate in either audit or investigative assignments; subjects of investigations; principals; and others associated with investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

ARGOS provides OIG management officials with a wide range of information on audit and investigative operations. The system identifies individual assignments of employees and provides information on their use of direct and indirect time, significant dates relating to each assignment, reported dollar deficiencies, recoveries, penalties, investigative prosecutions, convictions, and other legal and administrative actions. The system also contains records of audit employee training history.

RECORD SOURCE CATEGORIES:

Information in the system is obtained from OIG employees and contractors and from various source documents related to audit and investigative activities, including assignment letters, employee time reports, and case entry sheets.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Routine Uses 1 through 13 and 15 through 22 apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The system consists of electronic and paper records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information in the system generally can be retrieved by OIG personnel in the headquarters and regional offices. Information may be retrieved by a subject's name, an OIG employee's name, an assignment number, or a geographic location.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records contained in this system are currently unscheduled. A record retention schedule will be developed and submitted to NARA for approval. No records will be destroyed until a NARA approved record retention schedule is in place.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to system records is limited to those individuals who have an official ''need to know'' for the information in the performance of their official duties. Normal computer security is maintained including password protection and use of a personal identity verification card. Paper records and source documents are maintained in limited-access areas during duty hours and in locked offices during nonduty hours.

RECORD ACCESS PROCEDURES:

An individual may request access to a record in this system that pertains to them by submitting a written request to the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 2308, Washington, DC 20250–2308.

CONTESTING RECORD PROCEDURES:

An individual may contest information in this system that pertains to them by submitting a written request to the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 2308, Washington, DC 20250–2308.

NOTIFICATION PROCEDURES:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to them, from the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 2308, Washington, DC 20250–2308.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j)(2), the Investigations Subsystem and the Investigation Employee Time System of this system of records are exempted from all provisions of the Privacy Act of 1974, 5 U.S.C. 552a, as amended, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i). Pursuant to 5 U.S.C. 552a(k)(2) and (k)(5), the Investigations Subsystem and the Investigation Employee Time System of this system are exempted from the following provisions of the Privacy Act of 1974, 5 U.S.C. 552a: subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

HISTORY:

80 FR 48476 (August 13, 2015).

SYSTEM NAME AND NUMBER:

USDA/OIG–6, reserved for future use.

SYSTEM NAME AND NUMBER:

Freedom of Information Act and Privacy Act Request Records, USDA/OIG–7.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

In the USDA OIG headquarters office at 1400 Independence Avenue SW, Washington, DC 20250; and data centers managed by the USDA, Digital Infrastructure Services Center, 8930 Ward Parkway, Kansas City, MO 64114, and 4300 Goodfellow Boulevard, Saint Louis, MO 63120.

SYSTEM MANAGER(S):

Counsel to the Inspector General, Office of Counsel, Office of Inspector

General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 2308, Washington, DC 20250–2308.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, 5 U.S.C. app. 3; 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 552a.

PURPOSE(S) OF THE SYSTEM:

To assist OIG in carrying out its responsibilities under the Freedom of Information Act and the Privacy Act.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records of individuals who have submitted requests and administrative appeals under the Freedom of Information Act and/or the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records consist of the incoming request, all correspondence developed during the processing of the request, the final reply, and any incoming requests and responses for FOIA appeals, including any litigation in U.S. District Court, and in some instances copies of requested records and records under administrative appeal.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual submitting the request or administrative appeal and from OIG employees processing the request or administrative appeal. Records in this system may have originated in other USDA OIG systems of records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Routine Uses 7, 16, 19, 21 and 22 apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The system consists of electronic and paper records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The records are retrieved by requester or appellant name and/or by using a unique control number that is assigned to the request or administrative appeal upon date of receipt.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records are retained and disposed of in compliance with the General Records Schedule, NARA. Retention periods and disposal methods vary by record categories as set forth in NARA General Records Schedule 4.2, Information Access and Protection Records.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to system records is limited to those individuals who have an official ''need to know'' for the information in the performance of their official duties. Freedom of Information Act and Privacy Act request records are stored in file cabinets in limited-access areas during duty hours and in locked offices during nonduty hours. Electronic records maintained in a secure computer system are protected through system usernames, passwords, and use of a personal identity verification card. The computer server is maintained in a secure, access-controlled area within an access-controlled building.

RECORD ACCESS PROCEDURES:

An individual may request access to a record in this system that pertains to them by submitting a written request to the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 2308, Washington, DC 20250–2308.

CONTESTING RECORD PROCEDURES:

An individual may contest information in this system that pertains to them by submitting a written request to the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 2308, Washington, DC 20250–2308.

NOTIFICATION PROCEDURES:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to them, from the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 2308, Washington, DC 20250–2308.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

80 FR 48476 (August 13, 2015).

SYSTEM NAME AND NUMBER:

Office of Analytics and Innovation's (OAI) Holistic Information Analytics and Visualization Environment (HIAVE) System, USDA/OIG–8.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

USDA, Digital Infrastructure Services Center, 8930 Ward Parkway, Kansas City, MO 64114, and 4300 Goodfellow Boulevard, Saint Louis, MO 63120.

SYSTEM MANAGER(S):

Assistant Inspector General for Analytics and Innovation, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, 5 U.S.C. app. 3; 5 U.S.C. 301.

PURPOSE(S) OF THE SYSTEM:

The records maintained in this system are used by OIG to fulfill its statutory mission under the Inspector General Act, as amended, to conduct, supervise, and coordinate audits, inspections, and investigations relating to the programs and operations of USDA; and to promote economy, efficiency, and effectiveness in the administration of, and prevent and detect fraud, waste, and abuse in, the programs and operations of USDA. The system will use data that OIG has the legal authority to obtain and maintain to perform advanced statistical techniques and data modeling for indications of fraud, waste, and abuse, and internal control weaknesses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for or received benefits, grants, payments, contracts, loans, and salary from USDA; those individuals who provided benefits or services under a program administered by USDA; individuals who are associated with various Federal or State programs and whose actions impact USDA; USDA employees, consultants, contractors, grantees, advisory committee members, and others who receive funds from the Department for performing services; individuals who have transacted with, utilized, or are covered by a USDA agency or program, and their surviving spouses, children, dependent parents and siblings; individuals who have transacted with, utilized, or are covered under a program of another Federal or State agency that is associated with a USDA program, and their surviving spouses, children, dependent parents and siblings; individuals alleged to have violated laws, regulations, or policies relating to USDA programs; individuals involved with hearings or inquiries relating to USDA programs; and Federal employees who apply for and/or utilize Government programs or receive or

expend funds in an official capacity for USDA.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes but is not limited to names, Social Security Numbers, dates of birth, addresses, telephone numbers, email addresses, benefits information, application information, payments, banking and financial information, contracts, loans, salary, travel, hearings, inquiries, investigations, audits, reviews, and other records relevant to benefits or programs administered by USDA or associated Federal or State programs. The system also includes resulting business intelligence and risk analysis platforms and tools.

RECORD SOURCE CATEGORIES:

Information in this system will include records obtained from systems of records maintained by USDA or other Federal agencies; individuals; non-Government, commercial, public, and private agencies and organizations; and publicly-available databases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Routine Uses 1 through 16, and 19 through 22 apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records are maintained in electronic form.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system of records may be retrieved by any identifying information of an individual or institution.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records obtained from USDA are maintained and disposed of in accordance with the General Records Schedules, NARA, or the Department's record disposition authority applicable to the records. A new records retention and disposition schedule is under development for OIG. Until NARA approves a retention and disposition schedule for these records, OIG will not destroy any records.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to system records is limited to those individuals who have an official ''need to know'' for the information in the performance of their official duties. Electronic records maintained in a secure computer system are protected through system usernames and passwords, use of a personal identity verification card, and encryption. The computer server is maintained in a secure, access-controlled area within an access-controlled building.

RECORD ACCESS PROCEDURES:

An individual may request access to a record in this system which pertains to them by submitting a written request to the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 2308, Washington, DC 20250–2308. This system may contain records originally collected by USDA and other Federal agencies, and governed by USDA or other Federal agency system of records notices. Where appropriate, coordination with the appropriate USDA agency, or consultation with the applicable Federal agency procedures, will be effected regarding individuals accessing records in the relevant system of records.

CONTESTING RECORD PROCEDURES:

An individual may contest information in this system that pertains to them by submitting a written request to the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 2308, Washington, DC 20250–2308. This system may contain records originally collected by USDA and other Federal agencies, and governed by USDA or other Federal agency system of records notices. Where appropriate, coordination with the appropriate USDA agency, or consultation with the applicable Federal agency procedures, will be effected regarding individuals contesting records in the relevant system of records.

NOTIFICATION PROCEDURES:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to them, from the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 2308, Washington, DC 20250–2308.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

No exemptions are applicable to records created by OIG in this system. For individual records originating within a USDA or other Federal agency system of records, OIG will continue to apply any applicable Privacy Act exemptions to those individual records.

HISTORY:

USDA OIG updated and published its system of records notices in their entirety on August 13, 2015 (80 FR 48476). System of Records USDA/OIG–8, originally established on March 5, 2009 (74 FR 9584), was included and updated in that consolidated notice. OIG subsequently modified the system of records on January 23, 2017 (82 FR 7795).

SYSTEM NAME AND NUMBER:

Audit Records, USDA/OIG–9.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

In USDA OIG headquarters offices, 1400 Independence Avenue SW, Washington, DC 20250; data centers managed by the USDA, Digital Infrastructure Services Center, 8930 Ward Parkway, Kansas City, MO 64114, and 4300 Goodfellow Boulevard, Saint Louis, MO 63120; and OIG Audit regional offices and sub-offices, listed in appendix A.

SYSTEM MANAGER(S):

Assistant Inspector General for Audit, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, 5 U.S.C. app. 3; 5 U.S.C. 301.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to maintain a management information system for USDA OIG audit projects and personnel and to assist in the accurate and timely conduct of audits.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered consist of: (1) USDA program participants and USDA employees who are associated with an activity that OIG is auditing or reviewing; (2) requesters of an OIG audit or other activity; and (3) persons and entities performing some other role of significance to the OIG's efforts, such as relatives or business associates of USDA program participants or employees, potential witnesses, or persons who represent legal entities that are connected to an OIG audit or other activity. The system also tracks information pertaining to OIG staff handling the audit or other activity, and may contain names of relevant staff in other agencies and private sector entities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of materials compiled and/or generated in connection with audits and other activities performed by OIG staff. These materials include work papers and information regarding the planning, conduct, and resolution of audits and reviews of USDA programs and participants in those programs, internal legal assistance requests, information requests, responses to such requests, and reports of findings.

RECORD SOURCE CATEGORIES:

Information in the system is obtained from various source documents related to audits, including USDA, other Federal agencies, the Government Accountability Office, law enforcement agencies, program participants including individuals and business entities, subject individuals, complainants, witnesses, and other non-governmental sources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Routine Uses 1 through 16 and 19 through 22 apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The system consists of electronic and paper records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information in the system generally can be retrieved by OIG personnel in the headquarters and regional offices. Information is generally retrieved by audit assignment number. However, information can be retrieved by using alphanumeric queries and personal identifiers.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records are retained and disposed of in compliance with OIG's record disposition authority, approved by NARA (Job No. N1–016–00–3, dated October 17, 2001).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to system records is limited to those individuals who have an official ''need to know'' for the information in the performance of their official duties. Normal computer security is maintained including password protection and use of a personal identity verification card. Paper records are kept in limited-access areas during duty hours and in locked offices during nonduty hours.

RECORD ACCESS PROCEDURES:

An individual may request access to a record in this system that pertains to them by submitting a written request to the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 2308, Washington, DC 20250–2308. This system may contain records originally collected by USDA and other Federal agencies, and governed by USDA or other Federal agency system of records notices. Where appropriate, coordination with the appropriate USDA agency, or consultation with the applicable Federal agency procedures, will be effected regarding individuals accessing records in the relevant system of records.

CONTESTING RECORD PROCEDURES:

An individual may contest information in this system that pertains to them by submitting a written request to the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 2308, Washington, DC 20250–2308. This system may contain records originally collected by USDA and other Federal agencies, and governed by USDA or other Federal agency system of records notices. Where appropriate, coordination with the appropriate USDA agency, or consultation with the applicable Federal agency procedures, will be effected regarding individuals contesting records in the relevant system of records.

NOTIFICATION PROCEDURES:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to them, from the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 2308, Washington, DC 20250–2308.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

80 FR 48476 (August 13, 2015).

Appendix A

OIG/Investigations Regional Offices

Northeast Region: 26 Federal Plaza, Room 1409, New York, New York 10278

Southeast Region: 401 W Peachtree Street NW, Room 2329, Atlanta, Georgia 30308

Midwest Region: 11 West Quincy Court, Suite 275, Chicago, Illinois 60604

Southwest Region: 101 S Main Street, Room 311, Temple, Texas 76501

Western Region: 1301 Clay Street, Suite 1580S, Dellums Federal Building, Oakland, California 94612

OIG/Audit Regional Offices

Eastern Region: 10301 Baltimore Avenue, Suite 4200, Beltsville, Maryland 20705

Midwestern Region: 8930 Ward Parkway, Suite 3016, Kansas City, Missouri 64114

Western Region: 1301 Clay Street, Suite 1580S, Dellums Federal Building, Oakland, California 94612

OIG/Investigations Sub-offices

700 W Capitol Avenue, Room 2518, Little Rock, Arkansas 72201

401 W Washington Street, Space 77, Suite 425, Phoenix, Arizona 85003

21660 Copley Drive, Suite 370, Diamond Bar, California 91765

2440 Tulare Street, Suite 230, Fresno, California 93721

501 I Street, Suite 12–200, Sacramento, California 95814

1 Denver Federal Center, Building 67, Room 112, Denver, Colorado 80225

299 E Broward Boulevard, Room 210, Ft. Lauderdale, Florida 33301

P.O. Box 952973, Lake Mary, Florida 32795

210 Walnut Street, Suite 573, Des Moines, Iowa 50309

601 West Broadway, Room 617, Louisville, Kentucky 40202

600 S Maestri Place, Room 833, New Orleans, Louisiana 70130

10301 Baltimore Avenue, Suite 4200, Beltsville, Maryland 20705

2852 Eyde Parkway, Suite 220, East Lansing, Michigan 48823

1 Federal Drive, Suite G–603, Fort Snelling, Minnesota 55111

111 E Capitol Street, Suite 425, Jackson, Mississippi 39201

8930 Ward Parkway, Suite 3016, Kansas City, Missouri 64114

1222 Spruce Street, Room 2.202E, St. Louis, Missouri 63103

100 Centennial Mall North, Room 290, Lincoln, Nebraska 68508

1 Stiles Road, Suite 304, Salem, New Hampshire 03079

344 W Genesee Street, Suite 202, Syracuse, New York 13202

4407 Bland Road, Suite 203, Raleigh, North Carolina 27609

304 E Broadway, Room 336, Bismarck, North Dakota 58501

201 Superior Avenue, Suite 550, Cleveland, Ohio 44114

215 Dean A. McGee Avenue, Suite 609, Oklahoma City, Oklahoma 73102

100 SW Main Street, Suite 625, Portland, Oregon 97204

660 American Avenue, Suite 201, King of Prussia, Pennsylvania 19406

700 Grant Street, Suite 2110, Pittsburgh, Pennsylvania 15219

167 N Main Street, Suite B–312, Memphis, Tennessee 38103

1114 Commerce Street, Santa Fe Building, Suite 202, Dallas, Texas 75242

400 N 8th Street, Room 526, Richmond, Virginia 23219

33810 Weyerhaeuser Way S, Suite 170, Federal Way, Washington 98001

OIG/Audit Sub-offices

501 I Street, Suite 12–200, Sacramento, California 95814

401 W Peachtree Street NW, Room 2328, Atlanta, Georgia 30308

11 W Quincy Court, Suite 275, Chicago, Illinois 60604

4407 Bland Road, Suite 200, Raleigh, North Carolina 27609

100 SW Main Street, Suite 625, Portland, Oregon 97204

1114 Commerce Street, Santa Fe Building, Suite 202, Dallas, Texas 75242

101 S Main Street, Suite 324, Temple, Texas 76501

[FR Doc. 2022–22005 Filed 10–12–22; 8:45 am]

BILLING CODE 3410–23–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Survey of Construction: Questionnaire for Building Permit Official

AGENCY: Census Bureau, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed extension of the Survey of Construction: Questionnaire for Building Permit Official prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before December 13, 2022.

ADDRESSES: Interested persons are invited to submit written comments by email to *Thomas.J.Smith@census.gov.* Please reference Survey of Construction: Questionnaire for Building Permit Official in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2022–0018, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to William Abriatis, Chief, Residential Construction Branch, Economic Indicators Division, 301–763–3686, and *William.M.Abriatis@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau plans to request a three-year extension of the current Office of Management and Budget (OMB) clearance of the Questionnaire for Building Permit Official (SOC–QBPO). The Census Bureau uses the Computer-Assisted Personal Interviewing (CAPI) electronic questionnaire SOC–QBPO to collect information from state and local building permit officials on: (1) the types of residential permits they issue, (2) the length of time a permit is valid, (3) how they store permits, and (4) the geographic coverage of the permit system. We need this information to carry out the sampling for the Survey of Housing Starts, Sales, and Completions (OMB number 0607–0110), also known as Survey of Construction (SOC). The SOC provides widely used measures of construction activity, including the Principal Economic Indicators: New Residential Construction, and New Residential Sales.

The current OMB clearance is scheduled to expire on May 31, 2023. We will continue to use the current CAPI questionnaire. The overall length of the interview will not change, and the sample size will only receive a minor downward revision.

II. Method of Collection

The Census Bureau uses its field representatives to obtain information on the operating procedures of a permit office using the SOC–QBPO. The field representative visits the permit office, conducts the interview with office staff, and completes this electronic form.

III. Data

OMB Control Number: 0607–0125.

Form Number(s): SOC–QBPO.

Type of Review: Regular submission, Request for an Extension, without Change, of a Currently Approved Collection.

Affected Public: State and local Government.

Estimated Number of Respondents: 1,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 250 hours.

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Sections 131 and 182.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–22190 Filed 10–12–22; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–954]

Certain Magnesia Carbon Bricks From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) continues to determine that the 30 companies subject to this administrative review of the antidumping duty (AD) order on certain magnesia carbon bricks from the People's Republic of China (China) are part of the China-wide entity because they did not demonstrate eligibility for separate rates. The period of review (POR) is September 1, 2020, through August 31, 2021.

DATES: Applicable October 13, 2022.

FOR FURTHER INFORMATION CONTACT: Nathan James, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5305.

SUPPLEMENTARY INFORMATION:

Background

On June 9, 2022, Commerce published the preliminary results of this administrative review.[1] We invited parties to comment on the *Preliminary Results.* No party submitted comments. Accordingly, the final results remain unchanged from the *Preliminary Results.*

Scope of the Order [2]

The scope of the *Order* covers magnesia carbon bricks from China. For a complete description of the scope of the *Order, see* the *Preliminary Results.*

Final Results of Administrative Review

We received no comments, and made no changes to the *Preliminary Results.* We continue to find that the 30 companies subject to this review did not file a no-shipment certification, a separate rate application, or a separate rate certificate. Thus, Commerce continues to determine that these companies have not demonstrated their eligibility for separate rate status. In this administrative review, no party requested a review of the China-wide entity, and Commerce did not self-initiate a review of the China-wide entity. Because no review of the China-wide entity is being conducted, the China-wide entity rate is not subject to change as a result of this review. The rate previously established for the China-wide entity is 236.00 percent.[3]

Assessment Rates

Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review in accordance with section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act). For the 30 companies subject to this review, we will instruct CBP to apply the China-wide rate of 236.00 percent to all entries of subject merchandise during the POR. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided by section 751(a)(2)(C) of the Act: (1) for previously investigated or reviewed Chinese and non-Chinese exporters that received a separate rate in a prior segment of this proceeding, and which were not assigned the China-wide rate in this review, the cash deposit rate will continue to be the existing exporter-specific rate published for the most recently completed segment of this proceeding; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the China-wide rate of 236.00 percent; and (3) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h) and 351.221(b)(5).

Dated: October 5, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–22273 Filed 10–12–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 221004–0210]

Manufacturing USA Semiconductor Institutes

AGENCY: National Institute of Standards and Technology, Department of Commerce.

[1] *See Certain Magnesia Carbon Bricks from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 35161 (June 9, 2022) (*Preliminary Results*).

[2] *See Certain Magnesia Carbon Bricks from Mexico and the People's Republic of China: Antidumping Duty Orders,* 75 FR 57257 (September 20, 2010) (*Order*).

[3] *Id.*

ACTION: Notice; request for information.

SUMMARY: The National Institute of Standards and Technology (NIST) is seeking public input to inform the design of, and requirements for, potential Manufacturing USA institutes to strengthen the semiconductor and microelectronics innovation ecosystem, which could include design, fabrication, advanced test, assembly, and packaging capability. These Manufacturing USA institutes are envisioned in Title XCIX of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Creating Helpful Incentives to Produce Semiconductors (CHIPS) for America) to support efforts in research and development as well as education and workforce development, and that Act also provides for complementary initiatives including the National Semiconductor Technology Center, the National Advanced Packaging Manufacturing Program, and the NIST laboratories program supporting measurement science and standards. Responses to this Request for Information (RFI) will inform NIST's development of funding opportunities for federal assistance to establish Manufacturing USA semiconductor institutes.

DATES: Comments must be received by 11:59 p.m. Eastern time November 28, 2022. Written comments in response to the RFI should be submitted according to the instructions in the **ADDRESSES** and **SUPPLEMENTARY INFORMATION** sections below. Submissions received after that date may not be considered.

ADDRESSES:

For Comments

Comments may be submitted by either of the following methods:

- *Electronic submission:* Submit electronic public comments via the Federal eRulemaking Portal.

1. Go to *www.regulations.gov* and enter NIST–2022–0002 in the search field,
2. Click the ''Comment Now!'' icon, complete the required fields, and
3. Enter or attach your comments.

- *Email:* Comments in electronic form may also be sent to *MfgRFI@nist.gov* in any of the following formats: HTML; ASCII; Word; RTF; or PDF.

Please submit comments only and include your name, organization's name (if any), and cite ''Manufacturing USA semiconductor institutes'' in all correspondence. Comments containing references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials.

All comments responding to this document will be a matter of public record. Relevant comments will generally be available on the Federal eRulemaking Portal at *http://www.Regulations.gov* and on NIST's website at *https://www.nist.gov/oam/manufacturing-usa-semiconductor-institute-request-information-rfi.* NIST will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. Therefore, do not submit confidential business information or otherwise sensitive, protected, or personal information, such as account numbers, Social Security numbers, or names of other individuals.

For RFI Informational Webinars

NIST will hold informational webinars explaining how the public can submit comments. Details about these informational webinars, including dates and registration deadlines, will be announced at *https://www.nist.gov/oam/manufacturing-usa-semiconductor-institute-request-information-rfi.*

FOR FURTHER INFORMATION CONTACT: For questions about this RFI contact: Kelley Rogers in the Office of Advanced Manufacturing, National Institute of Standards and Technology, telephone number 301–219–8543 or email *MfgRFI@nist.gov.* Please direct media inquiries to NIST's Office of Public Affairs at (301) 975–2762.

SUPPLEMENTARY INFORMATION:

Background

Semiconductors are fundamental to nearly all modern industrial and national security activities, and they are essential building blocks of critical and emerging technologies, such as artificial intelligence, autonomous systems, next generation communications, and quantum computing.

The U.S. semiconductor industry has historically led in many parts of the semiconductor supply chain, such as research and development (R&D), chip design, and manufacturing. Over the past several years, the U.S. position in the global semiconductor industry has faced numerous challenges. In 2019, the United States accounted for 11 percent of global semiconductor fabrication capacity, down from 13 percent in 2015 and continuing a long-term decline from around 37 percent in 1990. Semiconductor packaging also presents a critical supply chain challenge since less than 3% of global packaging capacity is in North America.[1] Much of the overseas semiconductor manufacturing capacity is in Taiwan, South Korea, and, increasingly, China.[2]

The fragility of the current global semiconductor supply chain was put squarely on display in 2020. The industry faced significant disruptions as a result of the coronavirus pandemic, a fire affecting a major supplier in Japan, and a severe winter storm that disabled production in facilities in Texas for several days.[3] These events, together with other factors, such as pandemic-induced shifts in consumer demand, contributed to a global semiconductor shortage that affected multiple manufacturing sectors that rely on semiconductors as critical components for their finished products. Especially severely hit was the automotive industry, which saw plants idled for months.[4]

The Department of Commerce published a Request for Information (or ''RFI'') in September of 2021 on the semiconductor supply chain (86 FR 53031, September 24, 2021). More than 150 responses were received from commenters including nearly every major semiconductor producer and representative companies that consume these products across multiple industry sectors. These responses provided new insight into the complex and global semiconductor supply chain.[5] Respondents pointed out a major supply and demand gap that is increasing annually, with very limited inventory on hand for key industries.

To strengthen the U.S. position in semiconductor R&D and manufacturing, Congress authorized a set of programs in Title XCIX of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, as amended by sections 103 and 105 of the CHIPS Act of 2022 (Pub. L. 117–167, Division A), codified at 15 U.S.C. 4651 *et seq.* (hereinafter, CHIPS for America Act). This comprehensive set of programs is intended to restore U.S. leadership in semiconductor manufacturing by providing incentives and encouraging investment to expand manufacturing capacity for the most advanced

[1] *https://semiengineering.com/expanding-advanced-packaging-production-in-the-u-s/.*

[2] *https://www.semiconductors.org/wp-content/uploads/2020/09/Government-Incentives-and-US-Competitiveness-in-Semiconductor-Manufacturing-Sep-2020.pdf.*

[3] *https://www.ept.ca/features/global-chip-shortage-a-timeline-of-unfortunate-events/.*

[4] *https://hbr.org/2021/02/why-were-in-the-midst-of-a-global-semiconductor-shortage.*

[5] *https://www.commerce.gov/news/blog/2022/01/results-semiconductor-supply-chain-request-information.*

semiconductor designs as well as those of more mature designs that are still in high demand, and would grow the research and innovation ecosystem for semiconductor and microelectronics R&D in the United States, including the investments in the infrastructure necessary to better integrate advances in research into semiconductor manufacturing.

President Biden's American Jobs Plan [6] calls for at least $50 billion to fund this set of programs. As funded by section 102 of the CHIPS Act of 2022:

- $39 billion is available for a program to incentivize investment in facilities and equipment in the United States for the fabrication, assembly, testing, advanced packaging, production, or research and development of semiconductors, materials used to manufacture semiconductors, or semiconductor manufacturing equipment;
- $11 billion is available to support several R&D and infrastructure investments including the establishment of a National Semiconductor Technology Center, investments in advanced packaging, the creation of up to three Manufacturing USA institutes targeting semiconductors, and expansion of NIST's metrology R&D in support of semiconductor and microelectronics R&D.

Under Section 9906(f) of the CHIPS for America Act, the Director of NIST may establish up to three Manufacturing USA Institutes described in section 34(d) of the NIST Act (15 U.S.C. 278s(d)) that are focused on semiconductor manufacturing. In addition, the Secretary of Commerce may award financial assistance to any Manufacturing USA institute for work relating to semiconductor manufacturing. Such institutes may emphasize the following:

(1) Research to support the virtualization and automation of maintenance of semiconductor machinery.

(2) Development of new advanced test, assembly and packaging capabilities.

(3) Developing and deploying educational and skills training curricula needed to support the industry sector and ensure the United States can build and maintain a trusted and predictable talent pipeline.

Request for Information

This RFI outlines the information NIST is seeking from the public to inform the development of up to three Manufacturing USA semiconductor institutes that will strengthen leadership and national resilience of the U.S. semiconductor and microelectronics industry and other industries that rely on microelectronics, through research and development of manufacturing technology, and enhanced education and workforce development.

The following questions cover the major areas about which NIST seeks comment. They are not intended to limit the topics that may be addressed. Responses may include any topic believed to have implications for the development of Manufacturing USA semiconductor institutes, regardless of whether the topic is included in this document. Any one of the topics listed below, on its own, in combination with other topics listed, or in combination with other topics not contained in this notice, could be the basis of a Manufacturing USA semiconductor institute.

When addressing the topics below, commenters may address the practices of their organization or a group of organizations with which they are familiar. If desired, commenters may provide information about the type, size, and location of the organization(s). Provision of such information is optional and will not affect NIST's consideration.

NIST is seeking comments on the following questions, and encourages responses from the public, including key stakeholders in the semiconductor and microelectronics ecosystem, for the purpose of informing the design of a funding opportunity for Manufacturing USA semiconductor institutes:

Institute Scope

1. The Manufacturing USA semiconductor institute program is one component of an $11 billion R&D effort that includes the National Advanced Packaging Manufacturing Program, the National Semiconductor Technology Research Center and the NIST laboratories. The entire R&D program is intended to be interconnected and comprehensive, with no gaps and minimal redundancy, to position the United States for technology and workforce leadership in the semiconductor and microelectronics sector for the long-term prosperity of the nation. Additionally, the Manufacturing USA authorizing statute specifies that new institutes must not substantially duplicate the technology focus of any other Manufacturing USA institute. From your perspective, what role do you envision for new Manufacturing USA semiconductor institutes that will best complement the other R&D investments and remain consistent with the programmatic purposes of Manufacturing USA? Since the Secretary of Commerce may award financial assistance to any existing Manufacturing USA institutes for work relating to semiconductor manufacturing, what role do you envision for existing, federally-sponsored Manufacturing USA institutes with respect to semiconductor manufacturing?

2. The technological breadth of innovation in semiconductors and microelectronics is likely larger than can be served by any single Manufacturing USA institute. Therefore, each Manufacturing USA semiconductor institute should have an appropriate scope to ensure that each institute is impactful and does not duplicate efforts of other programs. Historically, institutes in the current network of existing Manufacturing USA institutes have generally been funded for an initial 5 years at $150 million to $600 million, including federal funding and cost-sharing (co-investment) from non-federal partners. What would be the ideal scope and corresponding financial investment from federal and non-federal partners, for a Manufacturing USA semiconductor institute to achieve the needed impact on competitiveness?

3. Potential technology areas of focus that could be addressed by the Manufacturing USA semiconductor institutes to complement the National Advanced Packaging Manufacturing Program and the National Semiconductor Technology Research Center in Question 1 are listed below. What are your thoughts on the appropriateness of each for the scope of work for a Manufacturing USA semiconductor institute? What other topics should be included in the scope of an institute?

- *Chip-package architectures and co-design* of integrated circuits and advanced packaging. May include artificial intelligence, security, test methodologies, etc.
- *Technologies to increase the microelectronics manufacturing productivity* of American workers, lower costs and offset the drastic shortfall of skilled workers.
- *Assembly and Test metrologies* to develop new analytical equipment and analysis capabilities based upon standards.
- *Coding and system software* with novel computing paradigms and architectures, including chiplet compatibility with earlier generations.

[6] *https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan/.*

• *Integration of security into packaging,* interposers and/or substrates.
• *High Density Interposers and substrates,* incorporating new materials and designs.
• *Chiplet-enabled trusted packaging* facilities that obviate the need for trusted foundries.
• *New materials,* such as glass for substrates, or compound semiconductors.
• *Environmental Sustainability* for semiconductor manufacturing.
• *Analog and Gigahertz Technology* materials and metrology, enabling beyond 5G, the Industrial Internet of Things and Industry 4.0.
• *Performance and Process Modeling and Metrology*

4. What criteria should be used to select technology focus areas in delineating the scope for a Manufacturing USA institute focused on semiconductor manufacturing?

5. What technology focus areas that meet the criteria suggested in Question 4 above would you be willing to co-invest in?

Institute Structure and Governance

6. Existing Manufacturing USA institutes were launched and operate in alignment with the design principles published in 2012 as the *National Network for Manufacturing Innovation: A Preliminary Design* (*https://www.manufacturingusa.com/reports/national-network-manufacturing-innovation-preliminary-design*). Are there any unique considerations for the semiconductor and microelectronics sector that may require modifications to the conventional design for any Manufacturing USA semiconductor institutes under consideration?

7. Semiconductor R&D and manufacturing cover substantial technical breadth. What business models or best practices should be employed by a Manufacturing USA semiconductor institute to support U.S. leadership and effectively manage emerging technologies to support commercialization? What advantages or disadvantages would there be to one ''super-sized'' Manufacturing USA semiconductor institute that would cover the technology sector broadly? Since Congress authorized the NIST Director to establish up to three institutes, what advantages or disadvantages would there be for multiple Manufacturing USA semiconductor institutes each with a smaller scope focused on a specific technology area? How would one Manufacturing USA semiconductor institute or multiple institutes structure relationships with other significant partners to spur collaborative work?

8. What membership and participation structure for a Manufacturing USA semiconductor institute would be most effective for ensuring participation by industry, academia, and other critical stakeholders, particularly with respect to financial and intellectual property obligations, access, and licensing? Based on your knowledge of current Manufacturing USA institute practices, are the needs of potential semiconductor institutes different than for other institutes?

Strategies for Driving Co-Investment and Engagement

9. The authorizing statute for Manufacturing USA requires at least an equal non-federal co-investment in Manufacturing USA institutes to match the federal investment. From your perspective, what are the most significant considerations to garner support for the required co-investment for a Manufacturing USA semiconductor institute? What is the anticipated impact of the new Investment Tax Credit (ITC) for industry established in the CHIPS Act on the level of investment in the new Manufacturing USA semiconductor institute(s), in facilities, including for manufacturing equipment and construction? How might a Manufacturing USA semiconductor institute be set up to best leverage the Investment Tax Credit?

10. For the required non-federal co-investment for a Manufacturing USA semiconductor institute, with respect to the different types of co-investment (*e.g.,* cash, equipment donations, facilities access, etc.), are there factors unique to the semiconductor industry that would impact how the co-investment could be structured to best support the institute?

11. What arrangements for co-investment proportions and types could help a Manufacturing USA semiconductor institute sustain operations in the absence of continued federal support?

12. A Manufacturing USA semiconductor institute should support domestic competitiveness. How should relationships with foreign entities be structured or constrained to support domestic manufacturing priorities while maximizing the opportunities to leverage international expertise and resources? In what circumstances should the Manufacturing USA Semiconductor institutes and NIST as the federal sponsor, consider membership requests from foreign-owned businesses?

13. How should a new Manufacturing USA semiconductor institute engage other existing Manufacturing USA institutes (*https://www.manufacturingusa.com/institutes*), including those awarded funds for work related to semiconductor manufacturing, and other manufacturing related programs and networks such as the Manufacturing Extension Partnership (*https://www.nist.gov/mep*) and the U.S. Department of Energy's Next Generation Power Electronics National Manufacturing Innovation Institute (''Power America'')?

14. How should a Manufacturing USA semiconductor institute interact with State and local economic development entities?

15. How should a Manufacturing USA semiconductor institute coordinate with and inform standards development bodies on the need to modify existing or develop new standards as a result of this initiative?

Education and Workforce Development

16. How could a Manufacturing USA semiconductor institute best support advanced manufacturing workforce development and/or awareness at all educational levels (*e.g.,* for K–12 through post-graduate students)?

17. How could a Manufacturing USA semiconductor institute best engage and leverage the diversity of educational and vocational training organizations (*e.g.,* universities, community colleges, trade schools, etc.)?

18. How could a Manufacturing USA semiconductor institute best ensure that advanced manufacturing workforce development activities address the industry's priorities?

19. How could a Manufacturing USA semiconductor institute best leverage and complement existing education and workforce development programs?

20. What measures could assess Manufacturing USA semiconductor institute performance and impact on education and workforce development?

21. How might a Manufacturing USA semiconductor institute integrate research and development activities and education to best prepare the current and future workforce?

22. How could a Manufacturing USA semiconductor institute help build a steady pipeline of skilled workers? What knowledge, skills and abilities will future workers need, and are there workers with those skills currently employed in other sectors?

23. How could a Manufacturing USA semiconductor institute broaden the talent base (*i.e.,* embrace diversity, equity, inclusion, and accessibility; reach women and minority

communities, engage non-traditional workers, engage separating service members, veterans, and families) to modernize the workforce?

24. What type of education and workforce development activities should a Manufacturing USA semiconductor institute support (*e.g.,* curricula, online education, hybrid, entrepreneurship opportunities, credentialing, regional development, train the trainers, internships/apprenticeship, learning labs, etc.) and why?

Metrics and Success

25. What metrics could be used to best evaluate the performance of a Manufacturing USA semiconductor institute in accelerating innovation, and any associated impacts on economic competitiveness and national security? Are there sector-specific metrics for an institute in the semiconductor technology space?

26. What type of metrics could be used to best evaluate the performance and impact of a Manufacturing USA semiconductor institute on education and workforce development in support of U.S. competitiveness?

27. What type of metrics could be used to best evaluate the performance and impact of a Manufacturing USA semiconductor institute in establishing and expanding the U.S. semiconductor manufacturing ecosystem?

28. What constitutes a successful first year for a Manufacturing USA semiconductor institute? What forms of support, and from which partners, are needed to ensure a successful first year?

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2022–22221 Filed 10–12–22; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Deputy Secretary of Defense, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Business Board (''the Board'') will take place.

DATES: Closed to the public Wednesday, November 9, 2022 from 9:00 a.m. to 11:00 a.m., 3:00 p.m. to 4:10 p.m., and from 6:00 p.m. to 7:30 p.m. Open to the public Thursday, November 10, 2022 from 8:30 a.m. to 12:35 p.m. All Eastern time.

ADDRESSES: The open and closed portions of the meeting will be in the Pentagon Library Conference Center Room M1 and 4D880 in the Pentagon, Washington DC. The open public portions of the meeting will be conducted by teleconference only. To participate in the open public portion of the meeting, see the Meeting Accessibility section for instructions.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Hill, Designated Federal Officer (DFO) of the Board in writing at Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155; or by email at *jennifer.s.hill4.civ@mail.mil;* or by phone at 571–342–0070.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., app.), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The mission of the Board is to examine and advise the Secretary of Defense on overall DoD management and governance. The Board provides independent, strategic-level, private sector and academic advice and counsel on enterprise-wide business management approaches and best practices for business operations and achieving National Defense goals.

Agenda: The Board will begin in closed session on November 9, 2022 from 9:00 a.m. to 11:00 a.m. with opening remarks by Ms. Jennifer Hill, the DFO and the Board's Chair, Hon. Deborah James. The Board will receive a classified brief on the resiliency of the Defense Industrial Base from Hon. Kathleen Hicks, Deputy Secretary of Defense, followed by a classified update on DoD events by Secretary of Defense, Hon. Lloyd J. Austin III. The DFO will then adjourn the closed session. The Board will reconvene in closed session on November 9, 2022 at 3:00 p.m. Ms. Jennifer Hill, the DFO will open the closed session. Next, the Board will receive a classified briefing on streamlining DoD intelligence processes by Hon. Ronald S. Moultrie, Under Secretary of Defense for Intelligence & Security. Hon. Deborah James, the Board's Chair will provide remarks and the DFO will adjourn the closed session. The Board will also meet in closed session November 9, 2022 from 6:00 p.m. to 7:30 p.m. The DFO will open the closed session followed by the Chair's welcome. The Board will receive a classified brief by Hon. Heidi Shyu, Under Secretary of Defense for Research and Engineering on how the Department is preparing for future conflicts. The DFO will adjourn the closed session. The Board will begin in open session on November 10, 2022 at 8:30 a.m. with opening remarks by the DFO and Chair's welcome to members and guests by Hon. Deborah James. Next, will be a presentation, deliberation, and vote on the Defense Business Board ''Recommendations to Improve Department of Defense Business Health Metrics'' study led by Ms. Erin Hill, Chair, Business Transformation Advisory Subcommittee. The Board will then receive a follow up brief on the dissolution of the Office of the Chief Management Officer and current business improvement efforts by Hon. Michael B. Donley, Director, Administration and Management. Hon. Gilbert Cisneros, Under Secretary of Defense for Personnel and Readiness, will provide an update on DoD Civilian Training. Closing remarks by the Chair, Hon. Deborah James and the DFO will adjourn the open session. The latest version of the agenda will be available on the Board's website at: *https://dbb.defense.gov/Meetings/Meeting-November-2022/.*

Meeting Accessibility: In accordance with Section 10(d) of the FACA and 41 CFR 102–3.155, it is hereby determined that portions of the November 9–10, 2022 meeting of the Board will include classified information and other matters covered by 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public on November 9, 2022 from 9:00 a.m. to 11:00 a.m., from 3:00 p.m. to 4:10 p.m., and from 6:00 p.m. to 7:30 p.m. This determination is based on the consideration that it is expected that discussions throughout these periods will involve classified matters of national security. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of these portions of the meeting. To permit these portions of the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the Board's findings and recommendations to the Secretary of Defense and to the Deputy Secretary of Defense. Pursuant to section 10(a)(1) of the FACA and 41 CFR 102–3.140, the portion of the meeting on November 10, 2022 from 8:30 a.m. to 12:35 p.m. is open to the public. Persons desiring to attend the

public session are required to register. To attend the public session submit your name, affiliation/organization, telephone number, and email contact information to the Board at *osd.pentagon.odam.mbx.defense-business-board@mail.mil.* Requests to attend the public session must be received no later than 4:00 p.m. on Monday, November 7, 2022. Upon receipt of this information, the Board will provide further instructions for telephonically attending the meeting.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, the public or interested organizations may submit written comments or statements to the Board in response to the stated agenda of the meeting or regarding the Board's mission in general. Written comments or statements should be submitted to Ms. Jennifer Hill, the DFO, via electronic mail (the preferred mode of submission) at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The DFO must receive written comments or statements submitted in response to the agenda set forth in this notice by Wednesday, November 2, 2022 to be considered by the Board. The DFO will review all timely submitted written comments or statements with the Board Chair, and ensure the comments are provided to all members of the Board before the meeting. Written comments or statements received after this date may not be provided to the Board until its next scheduled meeting. Please note that all submitted comments and statements will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board's website.

Dated: October 6, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–22163 Filed 10–12–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0125]

Agency Information Collection Activities; Comment Request; Annual State Application Under Part B of the Individuals With Disabilities Act as Amended in 2004

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before December 12, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0125. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208C, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Jennifer Simpson, (202) 245–6042.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Annual State Application Under Part B of the Individuals with Disabilities Act as Amended in 2004.

OMB Control Number: 1820–0030.

Type of Review: Extension without change of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 60.

Total Estimated Number of Annual Burden Hours: 2,340.

Abstract: The Individuals with Disabilities Education Act, signed on December 3, 2004, became Public Law 108–446. In accordance with 20 U.S.C. 1412(a) a State is eligible for assistance under Part B for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the conditions found in 20 U.S.C. 1412. Information Collection 1820–0030 is being extended so that a State can provide assurances that it either has or does not have in effect policies and procedures to meet the eligibility requirements of Part B of the Act as found in Public Law 108–446. Information Collection 1820–0030 corresponds with 34 CFR 300.100–176; 300.199; 300.640–645; 300.646–647 and 300.705. These sections include the requirement that the Secretary and local educational agencies located in the State be notified of any State-imposed rule, regulation, or policy that is not required by this title and Federal regulations.

In addition, Information Collection 1820–0300 is being updated to make a nonsubstantive change to the application template to address a

statement that is referenced in two places in the application document. The statement appears under Section II.C. (Certifications), item number two and is also referenced under Section II.D (Statement). This statement pertains to a provision, under the Education Department General Administrative Regulations (EDGAR) at 34 CFR 76.104, relating to State eligibility, authority and approval to submit and carry out the provisions of its State application, and consistency of that application with State law are in place within the State. The purpose of the nonsubstantive change is to remove the statement from under Section II.C. (Certifications) in order to eliminate the duplication of the statement within the application template.

Dated: October 6, 2022.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–22160 Filed 10–12–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0101]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application To Participate in Federal Student Financial Aid Programs (PEPS)

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new collection.

DATES: Interested persons are invited to submit comments on or before November 14, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed ICR that is described below. The Department is especially interested in public comments addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public record.

Title of Collection: Application to Participate in Federal Student Financial Aid Programs (PEPS).

OMB Control Number: 1845–NEW.

Type of Review: New collection.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 7,286.

Total Estimated Number of Annual Burden Hours: 24,352.

Abstract: The Department of Education (the Department) developed the Application for Approval to Participate in the Federal Student Financial Aid Programs to comply with statutory requirements of collecting necessary information under the Higher Education Act of 1965, as amended. This new collection is a request to continue use of the version of the application that was last approved in 2019 under 1845–0012. That information collection is undergoing clearance to reflect the revision of the information collection as the Department transitions to an electronic webform housed on the FSA Partner Connect system. The revision may not be ready for implementation by the current form expiration date of November 30, 2022. The Department is therefore requesting approval of the currently approved form/format in this new collection.

Dated: October 6, 2022.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–22196 Filed 10–12–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Notice of request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995.

DATES: Comments regarding this proposed information collection must be received on or before December 12, 2022. If you anticipate any difficulty in submitting comments within that period, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

ADDRESSES: Written comments may be sent to Scott Whiteford, Director, Office of Asset Management, 950 L' Enfant Plaza, Washington, DC 20585, (202) 287–1563, or by email at *scott.whiteford@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Scott Whiteford, Director, Office of Asset Management, 950 L' Enfant Plaza, Washington, DC 20585, (202) 287–1563, or by email at *scott.whiteford@hq.doe.gov.* The collection instrument can be viewed at *https://www.property.reporting.gov/PPRT/_ui/core/chatter/ui/ChatterPage.*

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains:

(1) *OMB No.:* 1910–1000.

(2) *Information Collection Request Titled:* Personal Property.

(3) *Type of Review:* Renewal.

(4) *Purpose:* The data collected is used by Department of Energy (DOE) leadership to exercise oversight and control over management of Government furnished personal property in the hands of DOE's management and operating (M&O) contractors and Federal Acquisition Regulation (FAR) contractors. The contractor management oversight and control function covers the ways in which DOE contractors provide goods and services for DOE organizations and activities in accordance with the terms of their contracts; the applicable statutory, regulatory, and mission support requirements of the Department; and regulations in the functional areas covered by this package.

(5) *Annual Estimated Number of Respondents:* 284.

(6) *Annual Estimated Number of Total Responses:* 284.

(7) *Annual Estimated Number of Burden Hours:* 1730.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $230,090.

Statutory Authority: The basic authority for these collections is the statute establishing the Department of Energy (''Department of Energy Organization Act'', Pub. L. 95–91, August 4, 1977) which vests the Secretary of Energy with the executive direction and management functions, authority and responsibilities for the Department, including contract management.

Signing Authority

This document of the Department of Energy was signed on September 16, 2022, by Scott L. Whiteford, Director, Office of Asset Management, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on October 7, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022–22220 Filed 10–12–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its collection, titled U.S. Department of Energy Better Buildings Challenge, Better Buildings Alliance and the Better Buildings, Better Plants Voluntary Pledge Program, OMB Control Number 1910–5141. The proposed collection will allow DOE to operate voluntary programs intended to drive energy efficiency and emissions reductions within the marketplace. Questions will allow DOE to recognize program partners for their success, build web pages that educate the public on successful energy efficiency strategies, and draft publicly available progress reports.

DATES: Comments regarding this collection must be received on or before November 14, 2022. If you anticipate that you will be submitting comments but find it difficult to do so within the period allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 881–8585.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Maria Vargas, EE–5A/Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, by phone at (202) 586–7899, by fax at (202) 586–8177, or by email at *maria.vargas@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:* 1910–5141; (2) *Information Collection Request Title:* U.S. Department of Energy Better Buildings Challenge, Better Buildings Alliance and the Better Buildings, Better Plants Voluntary Pledge Program; (3) *Type of Request:* Extension with Revision of a Currently Approved Collection; (4) *Purpose:* This Information Collection Request applies to four Department of Energy (DOE) voluntary leadership initiatives that fall under DOE's Better Buildings Initiative. Respondents will be representatives from organizations that have voluntary joined one of these initiatives. The information will be used to recognize program partners for their success, build web pages that educate the public on successful energy efficiency strategies, and draft publicly available progress reports; (5) *Annual Estimated Number of Respondents:* 841; (6) *Annual Estimated Number of Total Responses:* 841; (7) *Annual Estimated Number of Burden Hours:* 1,854.25; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $84,869.

Statutory Authority

Section 421 [1] of the Energy Independence and Security Act of 2007 (EISA 2007) (42 U.S.C. 17081) authorizes DOE to establish a national high-performance green building clearinghouse. Section 911 of the Energy Policy Act of 2005, as amended (42 U.S.C. 16191), instructs DOE to conduct programs that include research, development, demonstration, and commercial application of cost-effective technologies to improve the energy efficiency and environmental performance of buildings. Additionally, Section 106 of the Energy Policy Act of 2005 (EPAct 2005, Pub. L. 190–58) permits the U.S. Secretary of Energy to enter into voluntary agreements with industry to reduce energy intensity by not less than 2.5 percent per year.

Signing Authority

This document of the Department of Energy was signed on October 4, 2022,

[1] Section 421, Subtitle G of EISA 2007 requires the submission of a biennial report detailing activities and accomplishments in support of the High-Performance Green Building Initiatives and other government initiatives that affect commercial buildings.

by Carolyn Snyder, Deputy Assistant Secretary for Energy Efficiency, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on October 7, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022–22222 Filed 10–12–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–3–000.
Applicants: Jackson Generation, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Jackson Generation, LLC.
Filed Date: 10/6/22.
Accession Number: 20221006–5094.
Comment Date: 5 p.m. ET 10/27/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–872–001; ER20–813–001.
Applicants: Mercuria Energy America, Inc., Mercuria Commodities Canada Corporation.
Description: Notice of Change in Status of Mercuria Energy America, LLC, et al.
Filed Date: 10/5/22.
Accession Number: 20221005–5170.
Comment Date: 5 p.m. ET 10/26/22.
Docket Numbers: ER22–1089–003.
Applicants: Jackson Generation, LLC.
Description: Compliance filing: Informational filing to be effective N/A.
Filed Date: 10/6/22.
Accession Number: 20221006–5027.
Comment Date: 5 p.m. ET 10/27/22.
Docket Numbers: ER22–1703–002.
Applicants: Salem Harbor Power Development LP.
Description: Notice of Non-Material Change in Status of Salem Harbor Power Development LP.
Filed Date: 10/5/22.
Accession Number: 20221005–5169.
Comment Date: 5 p.m. ET 10/26/22.
Docket Numbers: ER22–2048–001.
Applicants: Skipjack Solar Center, LLC.
Description: Tariff Amendment: Deficiency Response in Docket ER22–2048 to be effective 6/8/2022.
Filed Date: 10/6/22.
Accession Number: 20221006–5123.
Comment Date: 5 p.m. ET 10/27/22.
Docket Numbers: ER22–2187–000; ER22–2188–000.
Applicants: Northwest Ohio IA, LLC, Northwest Ohio Solar, LLC.
Description: Second Supplement to June 24, 2022 Northwest Ohio Solar, LLC, et al. tariff filing.
Filed Date: 10/5/22.
Accession Number: 20221005–5174.
Comment Date: 5 p.m. ET 10/26/22
Docket Numbers: ER22–2365–001.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.
Description: Tariff Amendment: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.17(b): 2022–10–06_SA 3861 Deficiency Response Ameren-ComEd Construction Agreement to be effective 9/12/2022.
Filed Date: 10/6/22.
Accession Number: 20221006–5125.
Comment Date: 5 p.m. ET 10/27/22.
Docket Numbers: ER22–2369–002.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.
Description: Tariff Amendment: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.17(b): 2022–10–06_SA 3862 Deficiency Response Ameren-ComEd As Available Agreement to be effective 9/12/2022.
Filed Date: 10/6/22.
Accession Number: 20221006–5127.
Comment Date: 5 p.m. ET 10/27/22.
Docket Numbers: ER22–2452–001.
Applicants: Kentucky Utilities Company.
Description: Tariff Amendment: APCO Borderline Agreement Response to September 15, 2022 Deficiency Letter to be effective 10/1/2022.
Filed Date: 10/6/22.
Accession Number: 20221006–5025.
Comment Date: 5 p.m. ET 10/27/22.
Docket Numbers: ER22–2858–000.
Applicants: Ball Hill Wind Energy, LLC.
Description: Supplement to September 15, 2022, Ball Hill Wind Energy, LLC tariff filing.
Filed Date: 10/5/22.
Accession Number: 20221005–5144.
Comment Date: 5 p.m. ET 10/26/22.
Docket Numbers: ER22–2859–000.
Applicants: Bluestone Wind, LLC.
Description: Supplement to September 15, 2022, Bluestone Wind, LLC tariff filing.
Filed Date: 10/5/22.
Accession Number: 20221005–5168.
Comment Date: 5 p.m. ET 10/26/22.
Docket Numbers: ER22–2963–001.
Applicants: Yellowbud Solar, LLC.
Description: Tariff Amendment: Supplement to Application for Market-Based Rate Authority to be effective 11/1/2022.
Filed Date: 10/6/22.
Accession Number: 20221006–5108.
Comment Date: 5 p.m. ET 10/27/22.
Docket Numbers: ER23–22–000.
Applicants: Puget Sound Energy, Inc.
Description: § 205(d) Rate Filing: Proposed Amendments to the PSE OATT to be effective 12/4/2022.
Filed Date: 10/6/22.
Accession Number: 20221006–5000.
Comment Date: 5 p.m. ET 10/27/22.
Docket Numbers: ER23–23–000.
Applicants: American Illuminating Company, LLC.
Description: Tariff Amendment: Cancellation of Market Based Rate Tariff to be effective 10/7/2022.
Filed Date: 10/6/22.
Accession Number: 20221006–5005.
Comment Date: 5 p.m. ET 10/27/22.
Docket Numbers: ER23–24–000.
Applicants: Unitil Energy Systems, Inc.
Description: Unitil Energy Systems, Inc. Notice of Termination of Interim Distribution Wheeling Agreement with Briar Hydro Associates, LP.
Filed Date: 10/5/22.
Accession Number: 20221005–5173.
Comment Date: 5 p.m. ET 10/26/22.
Docket Numbers: ER23–25–000.
Applicants: Jackson Generation, LLC.
Description: Jackson Generation, LLC Request a One-Time Limited Waiver of the 90-day Notice Requirement Contained in Schedule 2 of the PJM Tariff.
Filed Date: 10/6/22.
Accession Number: 20221006–5026.
Comment Date: 5 p.m. ET 10/27/22.
Docket Numbers: ER23–26–000.
Applicants: American Transmission Company LLC, Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: American Transmission Company LLC submits tariff filing per 35.13(a)(2)(iii: 2022–10–06_SA 3909 ATC-City of Negaunee PCA (Irontown) to be effective 12/6/2022.

Filed Date: 10/6/22.
Accession Number: 20221006–5050.
Comment Date: 5 p.m. ET 10/27/22.
Docket Numbers: ER23–27–000.
Applicants: New York Independent System Operator, Inc.
Description: Tariff Amendment: Notice of Cancellation of EPCA SA No. 2592 among NYISO, Roaring Brook, NYPA to be effective 12/6/2022.
Filed Date: 10/6/22.
Accession Number: 20221006–5052.
Comment Date: 5 p.m. ET 10/27/22.
Docket Numbers: ER23–28–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA/CSA, SA Nos. 5562/5563; Queue No. AB2–032/AB2–153 to be effective 1/16/2020.
Filed Date: 10/6/22.
Accession Number: 20221006–5061.
Comment Date: 5 p.m. ET 10/27/22.
Docket Numbers: ER23–29–000.
Applicants: Cargill Power Markets, LLC.
Description: Tariff Amendment: Notice of Cancellation of MBR Tariff to be effective 10/7/2022.
Filed Date: 10/6/22.
Accession Number: 20221006–5067.
Comment Date: 5 p.m. ET 10/27/22.
Docket Numbers: ER23–30–000.
Applicants: Baron Winds LLC.
Description: Baseline eTariff Filing: Application for Market Based Rate Authority to be effective 12/5/2022.
Filed Date: 10/6/22.
Accession Number: 20221006–5132.
Comment Date: 5 p.m. ET 10/27/22.
Docket Numbers: ER23–31–000.
Applicants: Pattersonville Solar Facility LLC.
Description: Compliance filing: Notice of Succession and Revisions to Market-Based Rate Tariff to be effective 10/7/2022.
Filed Date: 10/6/22.
Accession Number: 20221006–5133.
Comment Date: 5 p.m. ET 10/27/22.

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 or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) 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.

Dated: October 6, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–22228 Filed 10–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. IC22–24–000 and RD22–2–000]

Commission Information Collection Activities (Ferc–725z); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–725Z (Mandatory Reliability Standards: IRO Reliability Standards), which will be submitted to the Office of Management and Budget (OMB) for review. No comments were received on the 60-day notice published on August 3, 2022 for IC22–24–000. This notice includes modifications of Reliability Standard IRO–008 (version update) included in FERC–725Z as published in Docket No. RD–22–2–000. The burden totals have been merged to include the new updated version of IRO–008–3.

DATES: Comments on the collection of information are due November 14, 2022.

ADDRESSES: Send written comments on FERC–725Z to OMB through *www.reginfo.gov/public/do/PRAMain.* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number (1902–0276) in the subject line of your comments. Comments should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Please submit copies of your comments to the Commission. You may submit copies of your comments (identified by Docket No. IC22–24–000) by one of the following methods:

Electronic filing through *https://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) delivery: Deliver to:* Federal Energy Regulatory Commission, Secretary of the Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review'' field, select Federal Energy Regulatory Commission; click ''submit,'' and select ''comment'' to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: *https://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov/ferc-online/overview.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–725Z (Mandatory Reliability Standards: IRO Reliability Standards).

OMB Control No.: 1902–0276.

Type of Request: Extension for the currently approved information collection and approval of revisions made by Docket No. RD22–2 (IRO–008–3 version update).

Abstract: On August 8, 2005, The Electricity Modernization Act of 2005, which is Title XII of the Energy Policy Act of 2005 (EPAct 2005), was enacted into law.[1] Under section 215 of the Federal Power Act (FPA) implemented in 18 CFR 40, the Commission requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable

[1] The Energy Policy Act of 2005 (EPAct), Public Law No 109–58, Title XII, Subtitle A, 119 Stat. 594, 941 (2005), codified at 16 U.S.C. 824o (2000).

Reliability Standards,[2] which are subject to Commission review and approval. In 2006, the Commission established a process to select and certify an ERO and, subsequently, certified the North American Electric Reliability Corporation (NERC) as the ERO.[3]

The ERO develops proposed Reliability Standards[4] and, if approved by NERC, submits them to the Commission for review and approval. When the standards are approved by the Commission, the Reliability Standards become mandatory and must be enforced by the ERO, subject to Commission oversight.

The IRO Reliability Standards (IRO–001–4, IRO–002–7, IRO–008–2, IRO–009–2, IRO–010–2, IRO–014–3, IRO–017–1, and IRO–018–1) mentioned below are included in FERC–725Z:

IRO–001–4

The purpose of IRO–001–4 is to establish the responsibility of Reliability Coordinators to act or direct other entities to act.

IRO–002–7

In a joint petition dated May 30, 2019, the North American Electric Reliability Corporation (''NERC'') and Western Electricity Coordinating Council (''WECC'') requested Commission approval for Reliability Standard IRO–002–6 (now IRO–002–7) (Reliability Coordination, Monitoring and Analysis). NERC and WECC stated that the ''Reliability Standard IRO–002–7 reflects the addition of a regional Variance containing additional requirements applicable to Reliability Coordinators providing service to entities in the Western Interconnection.'' NERC maintains that the data exchange capability requirement in Reliability Standard IRO–002–7, Requirement R1 is covered by Reliability Standard IRO–008–2.

IRO–008–3 as Approved in Docket No. RD22–2 (Formerly IRO–008–2)

Requirement R1 obligates the reliability coordinator (RC) to perform operational planning analyses to assess whether the planned operations for the next-day will exceed System Operating Limits and Interconnection Reliability Operating Limits within its wide area. NERC asserts that ''to perform the required operational planning analyses, the Reliability Coordinator must have the data it deems necessary from those entities that possess it.'' The revisions in IRO–008–3 apply to the RC and requires RCs to perform analyses and assessments to prevent instability, uncontrolled separation, or cascading. NERC added a new requirement requiring an RC to use its SOL methodology when determining SOL exceedances for its analyses and assessments and further revised a requirement requiring the RC to use its SOL risk-based notification framework when communicating SOL or IROL exceedances.

IRO–009–2

Currently effective IRO–009–2, applicable to reliability coordinators, is to prevent instability, uncontrolled separation, or cascading outages that adversely impact the reliability of the interconnection by ensuring prompt action to prevent or mitigate instances of exceeding Interconnection Reliability Operating Limits (IROLs).

IRO–010–2

Additionally, regarding data exchange, NERC cites Reliability Standard IRO–010–2 (Reliability Coordinator Data Specification and Collection) and its stated purpose of preventing instability, uncontrolled separation, or cascading outages ''by ensuring the Reliability Coordinator has the data it needs to monitor and assess the operation of its Reliability Coordinator Area.'' NERC states that under Reliability Standard IRO–010–2, Requirements R1, R2, and R3, the reliability coordinator must specify the data necessary for it to perform its operational planning analyses and provide the specifications to the entities from which it needs data who then must comply with the data request using a mutually agreeable format and security protocols.

IRO–014–3

The purpose of Reliability Standard IRO–014–3 is to ensure that each Reliability Coordinator's operations are coordinated such that they will not adversely impact other Reliability Coordinator Areas and to preserve the reliability benefits of interconnected operations.

IRO–017–1

The purpose of IRO–017–1 (Outage Coordination) is to ensure that outages are properly coordinated in the Operations Planning time horizon and Near-Term Transmission Planning Horizon. Reliability coordinators, planning coordinators, balancing authorities, transmission owners, and transmission planners are applicable entities for IRO–017–1.

IRO–018–1

IRO–018–1 (Reliability Coordinator Real-time Reliability Monitoring and Analysis Capabilities), requirement R3, requires reliability coordinators to have an alarm process monitor that provides notification to system operators when the failure of a real-time monitoring alarm processor has occurred.

All IRO Standards build on monitoring real-time assessments and supporting effective situational awareness. The Reliability Standards accomplish this by requiring applicable entities to: (1) provide notification to operators of real-time monitoring alarm failures; (2) provide operators with indications of the quality of information being provided by their monitoring and analysis capabilities; and (3) address deficiencies in the quality of information being provided by their monitoring and analysis capabilities.

NERC observes that the performance of the requirements it cites is premised on the existence of data exchange capabilities, regardless of whether a separate requirement expressly requires the reliability coordinator to have data exchange capabilities in place.

Type of Respondents: Reliability coordinators (RC), planning coordinators (PC), balancing authorities (BA), transmission owners (TO), transmission planners (TP), Transmission Operators (TOP) are included entities for FERC–725Z.

Estimate of Annual Burden:[5] The Commission presents the estimates in the annual public reporting burden and cost[6] as follows.

[2] The Federal Power Act (as modified by the EPAct) states ''[t]he terms ''reliability standard'' means a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system. The term includes requirements for the operation of existing bulk-power system facilities, including cybersecurity protection, and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the bulk-power system, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.''

[3] North American Electric Reliability Corp., 116 FERC ¶ 61,062, order on reh'g and compliance, 117 FERC ¶ 61,126 (2006), order on compliance, 118 FERC ¶ 61,190, order on reh'g, 119 FERC ¶ 61,046 (2007), aff'd sub nom. *Alcoa Inc.* v. *FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

[4] The NERC Standard Processes Manual, Appendix 3A of the NERC Rules Of Procedure, (posted at *https://www.nerc.com/FilingsOrders/us/RuleOfProcedureDL/SPM_Clean_Mar2019.pdf*) describes the process for developing, modifying, withdrawing, or retiring a Reliability Standard.

[5] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. For further explanation of what is included in the information collection burden, refer to 5 Code of Federal Regulations 1320.3.

[6] The hourly cost figures, for salary plus benefits, for the standards are based on Bureau of Labor

Due to the version update of IRO–008–2 (now IRO–008–3) in Docket No. RD22–2, the burden increased to 977 annual responses and 53,142 annual burden hours.

FERC–725Z—Reporting and Recordkeeping Requirements for Reliability Standards IRO–001, IRO–002, IRO–008, IRO–009, IRO–010, IRO–014, IRO–017, and IRO–018

Information collection requirements	Number of respondents & type of entity (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours & cost per response ($) (4)	Total annual burden hours & total annual cost ($) (3) * (4) = (5)	Total annual burden cost (5)/(1)
IRO–001–4	12 (RC)	1	12	24 hrs. $1,731.60	288 hrs. $20,779.20	$1,731.60
	168 (TOP)	1	168	12 hrs. $865.80	2,016 hrs. $145,454.40	865.80
IRO–002–7	12 (RC)	1	12	24 hrs., $1,731.60	288 hrs., $20,779.20	1,731.60
IRO–008–2 (now IRO–008–3) See table below.	12 (RC)	1	12	160 hrs., $11,544	1,920 hrs., $138,528	11,544
IRO–009–2	12 (RC)	1	12	12 hrs. $865.80	144 hrs. $10,389.60	865.80
IRO–010–3	12 (RC)	1	12	24 hrs., $1,731.60	288 hrs., $20,779.20	1,731.60
IRO–014–3	12 (RC)	1	12	12 hrs., $865.80	144 hrs., $10,389.60	865.80
IRO–017–1	12 (RC)	1	12	1,200 hrs., $86,580	14,400 hrs., $1,038,960	86,580
	63 (PC)	1	63	96 hrs., $6,926.40	6,048 hrs., $436,363.20	6,926.40
	204 (TP)	1	204	96 hrs., $6,926.40	19,584 hrs., $1,412,985.60.	6,926.40
	326 (TO)	1	326	8 hrs., $577.20	2,608 Hrs., $188,167.20	577.20
	96 (BA)	1	96	8 hr., $577.20	758 hrs., $54,689.70	577.20
IRO–018–1	12 (RC)	1	12	34 hrs., $2,453.10	288 hrs., $20,779.20	2,453.10
Total for FERC–725Z			953		48,774 hrs., $3,519,044.10.	

In reviewing FERC–725Z for the IRO Reliability Standards, the number of entities/respondents was checked and broken down into type of entity for each reliability standard. In the past, combining reliability standards caused the same reliability standard to be inadvertently accounted for multiple times, resulting in the previously recorded 6,686 responses. These numbers were revised and updated to provide the new calculated total of 953 responses. Staff looked at each reliability standard as its own unique project and in doing so eliminated the multiple entity count by making a more accurate representation of the number of responses.[7]

FERC–725Z (Modifications Due to RD22–2) [8]

Ongoing Estimate Year 3 Ongoing					
IRO–008–3	RC (12)	1	12	32 hrs., $2784	384 hrs. $33,408.
One-Time Estimate Years 1 and 2					
IRO–008–3	RC (12)	1	12	16 hrs., $1,392	144 hrs. $16,704.
Sub-Total for FERC–725Z (as modified in RD22–2)			24		528 hrs. $50,112.
Sub-Total for IRO–008–3 One-time			12		2,304 hrs., $200,448.
Sub-Total for IRO–008–3 Ongoing			12		2,064 hrs., $179,568.
Total for FERC–725 Z			977		53,142 hrs., $3,834,195.3.

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: October 6, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–22225 Filed 10–12–22; 8:45 am]

BILLING CODE 6717–01–P

Statistics (BLS) information (at *http://www.bls.gov/oes/current/naics2_22.htm*), as of May 2021, and benefits information for March 2021 (at *https://www.bls.gov/news.release/ecec.nr0.htm*). For salary plus benefits, for reporting requirements, an electrical engineer (code 17–2071) is $72.15/hour (wages plus benefits) for the information collection requirements.

[7] According to the NERC Registry list of May 6, 2022.

[8] FERC staff estimates that industry costs for salary plus benefits are similar to Commission costs. The FERC 2021 average salary plus benefits for one FERC full-time equivalent (FTE) is $180,703/year (or $87.00/hour) posted by the Bureau of Labor Statistics for the Utilities sector (available at *https://www.bls.gov/oes/current/naics3_221000.htm*).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL22–87–000]

Ledyard Windpower, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On September 30, 2022, the Commission issued an order in Docket No. EL22–87–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether Ledyard Windpower, LLC's Rate Schedule [1] is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Ledyard Windpower, LLC,* 180 FERC ¶ 61,224 (2022).

The refund effective date in Docket No. EL22–87–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL22–87–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2021), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: October 6, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–22226 Filed 10–12–22; 8:45 am]

BILLING CODE 6717–01–P

[1] Ledyard Windpower, LLC, Market-Based Rates Tariff, Rate Schedule FERC No. 1, Rate Schedule FERC No. 1—Reactive Power Compensation (0.0.0).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–161–000]

Gulf South Pipeline Company, LLC; Notice of Availability of the Environmental Assessment for the Proposed Index 130 MS River Replacement Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Index 130 MS River Replacement Project, proposed by Gulf South Pipeline Company, LLC (Gulf South) in the above-referenced docket. To accommodate the Mississippi River Ship Channel Deepening Project, Gulf South requests authorization to replace via horizontal directional drill (HDD) its MS River Crossing consisting of three 20-inch-diameter pipelines with approximately 5,750 feet of two 30-inch-diameter pipelines under the Mississippi River, in Ascension Parish, Louisiana.

The EA assesses the potential environmental effects of the construction and operation of the Index 130 MS River Replacement Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

In the proposed Index 130 MS River Replacement Project, Gulf South requests authorization to:

- replace via HDD its existing pipelines, MS River Crossing, under the Mississippi River and install tie-in, auxiliary and appurtenant equipment including new mainline valves all to reconnect to the existing mainlines;
- abandon in-place and by removal the existing MS River Crossing; and
- reconfigure its tie-in for an existing Gulf South pipeline, Index 804 located on the east bank of the Mississippi River, which would require constructing approximately 730 feet of 6-inch-diameter pipeline to a new tie-in point on the Index 130 and 130L.

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*), select ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP22–161). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on November 4, 2022.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature 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 must select the type of filing you are making. If you are filing a comment on a particular project, please select ''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 (CP22–161–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at *https://www.ferc.gov/ferc-online/ferc-online/how-guides.*

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: October 5, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–22173 Filed 10–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–15–000.

Applicants: Southeast Supply Header, LLC.

Description: § 4(d) Rate Filing: October 2022 Clean-up Filing to be effective 11/5/2022.

Filed Date: 10/5/22.

Accession Number: 20221005–5078.

Comment Date: 5 p.m. ET 10/17/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) 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.

Filings in Existing Proceedings

Docket Numbers: RP21–441–000.

Applicants: Florida Gas Transmission Company, LLC.

Description: Refund Report: RP21–441–000 Rate Case Refund Report to be effective N/A.

Filed Date: 9/28/22.

Accession Number: 20220928–5052.

Comment Date: 5 p.m. ET 10/11/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

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.

Dated: October 6, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–22227 Filed 10–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD23–3–000]

Establishing Interregional Transfer Capability Transmission Planning and Cost Allocation Requirements; Notice of Staff-Led Workshop

Take notice that Federal Energy Regulatory Commission (Commission) staff will convene a workshop to discuss whether and how the Commission could establish a minimum requirement for interregional transfer capability [1] for public utility transmission providers in transmission planning and cost allocation processes in the above-captioned proceeding on December 5 and 6, 2022, from approximately 12:00 p.m. to 5:00 p.m. Eastern Time.

This workshop will consider the question of whether and how to establish a minimum requirement for interregional transfer capability. Topics for discussion may include: how to identify the purpose and value of setting a minimum requirement for interregional transfer capability; how to develop appropriate criteria, metrics, and models to establish a minimum requirement for interregional transfer capability; the transmission planning horizon and minimum interregional transfer capability requirements; whether operational agreements currently act as a barrier to interregional transfer capability; and how the costs of transmission facilities identified to achieve a minimum requirement for interregional transfer capability should be allocated between and/or within

[1] The Commission's regulations, as revised by Order No. 890, define total transfer capability as ''the amount of electric power that can be moved or transferred reliably from one area to another area of the interconnected transmission systems by way of all transmission lines (or paths) between those areas under specified system conditions, or such definition as contained in Commission-approved Reliability Standards.'' 18 CFR 35.6(b)(1)(vi) (2021). In the context of interregional transfer capability, an ''area'' in the above definition would be a transmission planning region.

public utility transmission providers' transmission planning regions.

The workshop will take place virtually, with remote participation from both presenters and attendees. Further details on remote attendance and participation will be released prior to the workshop.

Individuals interested in participating as panelists should submit a self-nomination email by 5:00 p.m. Eastern Time on October 21, 2022, to *TransferCapabilityWorkshop@ferc.gov.* Each nomination should state the proposed panelist's name, contact information, organizational affiliation, position title, a short biography, and what topic(s) the proposed panelist would speak on. If applicable, please also include with the nomination the name and contact information of any other individual that should also be copied on correspondence.

The workshop will be open to the public and there is no fee for attendance. An additional supplemental notice will be issued with further details regarding the workshop agenda and logistics, as well as any changes in timing. Information will also be posted on the Calendar of Events on the Commission's website, *www.ferc.gov,* prior to the event.

The workshop will be transcribed and webcast. Transcripts will be available for a fee from Ace Reporting (202–347–3700). A free webcast of this event is available through the Commission's website. Anyone with internet access who desires to view this event can do so by navigating to *www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The Federal Energy Regulatory Commission provides technical support for the free webcasts. Please call (202) 502–8680 or email *customer@ferc.gov* if you have any questions.

Commission workshops are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this workshop, please contact Jessica Cockrell at *jessica.cockrell@ferc.gov* or (202) 502–8190. For information related to logistics, please contact Sarah McKinley at *sarah.mckinley@ferc.gov* or (202) 502–8368.

Dated: October 6, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–22230 Filed 10–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10853–027]

Otter Tail Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for temporary variance of Article 401.

b. *Project No:* 10853–027.

c. *Date Filed:* May 3, 2022.

d. *Applicant:* Otter Tail Power Company (licensee).

e. *Name of Project:* Otter Tail River Hydroelectric Project.

f. *Location:* The project is located on the Otter Tail River, in Otter Tail County, Minnesota. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Darin Solberg, *Dsolberg@otpco.com.*

i. *FERC Contact:* Margaret Noonan, (202) 502–8971, *Margaret.Noonan@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* 30 days from the date of notice issuance.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–10853–027. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant proposes a temporary variance from the target water surface elevation requirements of Article 401 of the license for Hoot Diversion Dam reservoir (1,256.00 mean sea level). The licensee states that over the past several months, it had been unable to maintain the newly established target elevation at the Hoot Diversion Dam reservoir due to (1) unusually low inflow within the past year, requiring the licensee to cease hydropower operations at Hoot Lake in order to maintain minimum flow in the bypassed reach; and (2) the decommissioning of the Hoot Lake thermal plant on May 31, 2021, which previously drew approximately 200 cubic feet per second from Hoot Lake. With no outflow from Hoot Lake, the reservoir levels in Hoot Lake and the Hoot Diversion Dam reservoir equalized. The licensee lowered the elevation at Hoot Diversion Dam reservoir by approximately 1.6 feet in response to prevent the water level in Hoot Lake from rising above its maximum allowed elevation. The licensee has been consulting with Minnesota Department of Natural Resources to discuss possible engineering solutions to resolve the reservoir elevation issue. To allow time for the licensee to consult, design, and implement a solution, the licensee requests the variance extend until December 31, 2022.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects.

For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: October 6, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–22231 Filed 10–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2322–069; 2322071; 2325–100; 2574–092; 2611–091]

Brookfield White Pine Hydro, LLC; Merimil Limited Partnership; Hydro-Kennebec, LLC; Notice of Supplemental Information Filing and Soliciting Comments

Take notice that the following supplemental information has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Supplemental information to pending filings regarding salmon mortality and protective measures.

b. *Project Nos.:* P–2322–069; P–2322–071; P–2325–100; P–2574–092; P–2611–091.

c. *Date Filed:* September 21, 2022.

d. *Applicants:* Brookfield White Pine Hydro, LLC; Merimil Limited Partnership; Hydro-Kennebec, LLC.

e. *Name of Projects:* Shawmut, Weston, Lockwood, and Hydro-Kennebec Hydroelectric Projects.

f. *Location:* The projects are located on the lower Kennebec River in Kennebec and Somerset Counties, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Kelly Maloney, Licensing and Compliance Manager, Brookfield White Pine Hydro, LLC., 150 Main Street, Lewiston, ME 04240; telephone: (207) 755–5605.

i. *FERC Contact:* Marybeth Gay, (202) 502–6125, *Marybeth.Gay@ferc.gov;* or Matt Cutlip, (503) 552–2762, *Matt.Cutlip@ferc.gov.*

j. *Deadline for filing comments: 20 days from the notice date.* Reply comments due *30 days from the notice date.*

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2322–069; P–2322–071; P–2325–100; P–2574–092; and P–2611–091.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Filing:* On September 21, 2022, Brookfield Power US Asset Management, LLC (Brookfield), on behalf of the affiliated licensees for the Shawmut (P–2322), Weston (P–2325), Lockwood (P–2574), and Hydro-Kennebec (P–2611) projects, filed supplemental information for the following pending items: (1) the January 31, 2020 Final License Application for the Shawmut Project; (2) the June 1, 2021 Interim Species Protection Plan (Interim Plan) for the Shawmut Project; and (3) the June 1, 2021 Final Species Protection Plan (Final Plan) for the Lockwood, Weston, and Hydro-Kennebec projects.

Brookfield states that, while conducting its analysis of the Final Plan, Interim Plan, and their associated Biological Assessments, the National Marine Fisheries Service (NMFS) requested that Brookfield better address delayed mortality for salmon smolts passing downstream of the first receiver at each of the projects. Brookfield's filing contains that analysis. Further, Brookfield states that it and NMFS evaluated measures previously contemplated within the adaptive management provisions included as part of the Final Plan, Interim Plan, and relicensing proceeding, which could be implemented on an accelerated schedule to minimize and/or mitigate the effects of delayed mortality.

Based on these discussions, Brookfield now proposes to implement several measures from the adaptive management provisions proposed in the Final Plan to improve smolt survival during spill and through the fishways as well as reduce entrainment, as appropriate, for each of the specific projects. Brookfield states that it would implement these measures concurrently with, or in advance of, the other actions proposed in the Final Plan.

Similarly, as a supplement to the final license application for the Shawmut Project, Brookfield now proposes to add measures to reduce entrainment, provide safe downstream passage

routes, and improve smolt passage survival conditions during spill. Brookfield also says that it may seek Commission authorization to implement these newly proposed measures in advance of the Commission's licensing decision.

Brookfield additionally proposes mitigation measures, including the funding of habitat restoration projects within the Kennebec River watershed and Merrymeeting Bay Salmon Habitat Recovery Unit, as discussed in the Final Plan. Brookfield also commits to stocking smolts in the Sandy River for up to 6 years to support studies to verify compliance with the proposed upstream and downstream passage standards, as discussed in the Final Plan.

l. *Location of Filing:* A copy of the supplemental information can be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: October 5, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–22171 Filed 10–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC22–25–000]

Commission Information Collection Activities (FERC–725P1); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission FERC–725P1 (Mandatory Reliability Standards: PRC–005–6 Reliability Standards), which will be submitted to the Office of Management and Budget (OMB) for review. No Comments were received on the 60-day notice published on August 3, 2022.

DATES: Comments on the collection of information are due November 14, 2022.

ADDRESSES: Send written comments on FERC–725P1 to OMB through *www.reginfo.gov/public/do/PRAMain.* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number (1902–0280) in the subject line of your comments. Comments should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Please submit copies of your comments to the Commission. You may submit copies of your comments (identified by Docket No. IC22–25–000) by one of the following methods:

Electronic filing through *https://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (Including Courier) Delivery:* Deliver to: Federal Energy Regulatory Commission, Secretary of the Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review'' field, select Federal Energy Regulatory Commission; click ''submit,'' and select ''comment'' to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: *https://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov/ferc-online/overview.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–725P1 (Mandatory Reliability Standards: PRC–005–6 Reliability Standard).

OMB Control No.: 1902–0280.

Abstract: The Commission requires the information collected by the FERC–725P1 to implement the statutory provisions of section 215 of the Federal Power Act (FPA). On August 8, 2005, Congress enacted into law the Electricity Modernization Act of 2005, which is title XII, subtitle A, of the Energy Policy Act of 2005 (EPAct 2005). EPAct 2005 added a new section 215 to the FPA, which required a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO subject to Commission oversight, or the Commission can independently enforce Reliability Standards.

On February 3, 2006, the Commission issued Order No. 672, implementing section 215 of the FPA. Pursuant to Order No. 672, the Commission certified one organization, North American Electric Reliability Corporation (NERC), as the ERO. The Reliability Standards developed by the ERO and approved by the Commission apply to users, owners and operators of the Bulk-Power System as set forth in each Reliability Standard.

On November 13, 2015, the North American Electric Reliability Corporation filed a petition for Commission approval of proposed Reliability Standard PRC–005–6 (Protection System, Automatic Reclosing, and Sudden Pressure Relaying Maintenance). NERC also requested approval of the proposed implementation plan for PRC–005–6, and the retirement of previous versions of Reliability Standard PRC–005.

NERC explained in its petition that Reliability Standard PRC–005–6 represented an improvement upon the most recently approved version of the standard, PRC–005–4. FERC approved the proposed Reliability Standard PRC–005–6 on December 18, 2015.

Type of Respondent: Transmission Owner (TO), Distribution Provider (DP), and Generator Owners (GOs).

Estimate of Annual Burden: [1] The Commission estimates the annual public reporting burden for the information collection as: [2]

FERC–725P1—MANDATORY RELIABILITY STANDARDS: PRC–005–6 [3]

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden hours & cost per response [4]	Total annual burden hours & total annual cost
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)
PRC–005–6 Reliability Standard	TO (332)	1	332	2 hrs.; $144.30	664 hrs.; $47,907.60.
	GO (1094)	1	1,094	2 hrs.; $144.30	2,188 hrs.; $157,864.20.
	DP (302)	1	302	2 hrs.; $144.30	604 hrs.; $43,578.60.
			1,728		3,456 hrs.; $249,350.40.

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: October 5, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–22172 Filed 10–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD23–1–000]

City of Aurora, Colorado; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On October 3, 2022, the City of Aurora, Colorado, filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA). The proposed Gun Club Hydroelectric Energy Recovery Project would have an installed capacity of 56 kilowatts (kW), and would be located along a municipal water supply pipeline in Aurora, Arapahoe County, Colorado.

Applicant Contact: Gregg Semler, InPipe Energy, 920 SW 6th Ave. 12th Floor, Portland, OR 97204, 503–341–0004, *gregg@inpipeenergy.com*.

FERC Contact: Christopher Chaney, 202–502–6778, *christopher.chaney@ferc.gov*.

Qualifying Conduit Hydropower Facility Description: The project would consist of: (1) a 56-kW turbine generating unit within an existing 15-foot by 32-foot vault, (2) intake and discharge pipes connecting to the existing water supply line, and (3) appurtenant facilities. The proposed project would have an estimated annual generation of approximately 255,000 kilowatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A)	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar man-made water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i)	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii)	The facility has an installed capacity that does not exceed 40 megawatts	Y
FPA 30(a)(3)(C)(iii)	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: The proposed Gun Club Hydroelectric Energy Recovery Project will not alter the primary purpose of the conduit, which is to transport water for municipal consumption. Therefore, based upon the above criteria, Commission staff preliminarily determines that the operation of the project described above satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 30 days from the issuance date of this notice. Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

[1] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to title 5 Code of Federal Regulations 1320.3.

[2] Total number of responses have increased due an accurate estimate in burden and due to an increase in review and adjustment of existing program for reclosing relays and associated equipment.

[3] Entities affected by the PRC–005–6 Reliability Standard are registered to serve any of the following roles: TO = Transmission Owner; GO = Generator Owner; DP = Distribution Provider. Some entities are registered to serve multiple roles.

[4] The estimated hourly cost (salary plus benefits) provided in this section is based on the salary figures (*http://www.bls.gov/oes/current/naics2_22.htm*) and benefits (*http://www.bls.gov/news.release/ecec.nr0.htm*) for May 2021 posted by the Bureau of Labor Statistics for the Utilities sector. The hourly estimates for salary plus benefits are $72.15/hour based on the Electrical Engineering career (Occupation Code: 17–2071).

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may send a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Locations of Notice of Intent: 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 website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (*i.e.,* CD23–1) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. Copies of the notice of intent can be obtained directly from the applicant. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: October 6, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–22229 Filed 10–12–22; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2001–2005 (2021).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10284–01–OMS]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, Idaho Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Environmental Protection Agency's (EPA) approval of the Idaho Department of Environmental Quality (ID DEQ) request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA approves the authorized program revisions/modifications as of October 13, 2022.

FOR FURTHER INFORMATION CONTACT: Shirley M. Miller, U.S. Environmental Protection Agency, Office of Information Management, Mail Stop 2824T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566–2908, *miller.shirley@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On May 16, 2022, the Idaho Department of Environmental Quality (ID DEQ) submitted an application titled shared services integrated into CDX system for revisions/modifications to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed ID DEQ's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve ID DEQ's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR is being published in the **Federal Register**:

- Part 52: Approval and Promulgation of Implementation Plans (SIP/Clean Air Act Title II) Reporting under 40 CFR 50 through 52

ID DEQ was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: October 7, 2022.

Jennifer Campbell,

Director, Office of Information Management.

[FR Doc. 2022–22248 Filed 10–12–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Selected Balance Sheet Items for Discount Window Borrowers (OMB No. 7100–0289).

DATES: Comments must be submitted on or before December 12, 2022.

ADDRESSES: You may submit comments, identified by FR 2046, by any of the following methods:

- *Agency website: https://www.federalreserve.gov/*. Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx*.
- *Email: regs.comments@federalreserve.gov*. Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement, and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Collection title: Selected Balance Sheet Items for Discount Window Borrowers.

Collection identifier: FR 2046.

OMB control number: 7100–0289.

Frequency: On occasion.

Respondents: Depository institutions.

Estimated number of respondents: Primary and Secondary Credit, 1; Seasonal Credit, 32; Seasonal Credit, borrower in questionable financial condition, 1.

Estimated average hours per response: Primary and Secondary Credit, 0.75; Seasonal Credit, 0.25; Seasonal Credit, borrower in questionable financial condition, 0.75.

Estimated annual burden hours: Primary and Secondary Credit, 1; Seasonal Credit, 88; Seasonal Credit, borrower in questionable financial condition, 1.

General description of collection: The Board's Regulation A—Extensions of Credit by Federal Reserve Banks (12 CFR part 201) requires that Reserve Banks review balance sheet data in determining whether to extend credit and to help ascertain whether undue use is made of such credit. Balance sheet data are collected on the FR 2046 report from certain institutions that borrow from the discount window in order to monitor discount window borrowing.

Legal authorization and confidentiality: The FR 2046 report is authorized pursuant to sections 4(8),[1] 10B,[2] and 19(b)(7)[3] of the Federal Reserve Act (FRA), which authorize Federal Reserve Banks to provide discounts or advances to a member bank or other depository institution and to demand notes secured to the satisfaction of each Reserve Bank, and authorize the Board to establish rules and regulations under which a Reserve Bank may extend such credit.[4] Specifically, section 4(8) of the FRA requires each Reserve Bank to keep itself informed of the general character and amount of the loans and investments of a depository

[1] 12 U.S.C. 301.

[2] 12 U.S.C. 347b.

[3] 12 U.S.C. 461(b)(7).

[4] Section 142 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, Title I, Subtitle E, 142 (Dec. 19, 1991)), amended section 10B of the FRA (12 U.S.C. 347b(b)) to discourage Reserve Banks from making advances to undercapitalized and critically undercapitalized depository institutions by imposing liability on the Board for certain losses incurred by the funds administered by the Federal Deposit Insurance Corporation. *See* 58 FR 45851 (Aug. 31, 1993).

institution ''with a view to ascertaining whether undue use is being made of bank credit,'' and instructs that, ''in determining whether to grant or refuse advances, rediscounts, or other credit accommodations, the Federal [R]eserve [B]ank shall give consideration to such information.'' Section 10B of the FRA permits Federal Reserve Banks to make advances to member banks ''under rules and regulations prescribed by the Board.'' Section 19(b)(7) of the FRA provides that any depository institution that holds reservable deposits is entitled to the same discount and borrowing privileges as member banks.

In addition, section 9(6)[5] of the FRA, which requires state member banks to file reports of condition and of the payment of dividends with the Federal Reserve, provides authority to collect balance sheet information from state member banks. Sections 2A[6] and 11[7] of the FRA, respectively, as well as section 7(c)(2) of the International Banking Act,[8] authorize the Board to collect balance sheet data from domestically chartered commercial banks and U.S. branches and agencies of foreign banks.

If requested by the lending Reserve Bank, a depository institution that borrowed from the discount window must submit the FR 2046 report. Accordingly, the obligation to respond is mandatory.

The Federal Reserve publishes aggregate data on discount window lending, which does not identify individual borrowers. In addition, the Dodd-Frank Wall Street Reform and Consumer Protection Act requires the Board to publish certain information on individual discount window borrowers and transactions (*i.e.,* the identity of the borrower, the amount that was borrowed, the interest rate, and the types and amounts of collateral or assets pledged) after an approximately two year lag.[9] The FR 2046 report is considered confidential until the fact that the institution borrowed from the discount window is disclosed. Until this point, the fact that this report was filed would constitute nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, because it would reveal the fact of discount window borrowing, as only borrowers are required to file this form. Thus, this information is kept confidential under exemption 4 of the Freedom of Information Act (FOIA), which protects from disclosure trade secrets and privileged or confidential commercial or financial information.[10] Once the fact that an institution borrowed from the discount window is disclosed, the FR 2046 report is no longer considered confidential in the event a FOIA request is received.

Board of Governors of the Federal Reserve System, October 7, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–22240 Filed 10–12–22; 8:45 am]

BILLING CODE 6210–01–P

[5] 12 U.S.C. 324.

[6] 12 U.S.C. 225a.

[7] 12 U.S.C. and 248(a)(2) and (i).

[8] 12 U.S.C. 3105(c)(2)).

[9] 12 U.S.C. 248(s).

[10] 5 U.S.C. 552(b)(4).

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Notice of Branch Closure (FR 4031; OMB No. 7100–0264).

DATES: Comments must be submitted on or before December 12, 2022.

ADDRESSES: You may submit comments, identified by FR 4031, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement, and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions,

including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Collection title: Notice of Branch Closure.

Collection identifier: FR 4031.

OMB control number: 7100–0264.

Frequency: Annually.

Respondents: State member banks (SMBs).

Estimated number of respondents: Regulatory notice, 103; Adoption of policy, 1; Customer mailing, 103; and Posted notice, 103.

Estimated average hours per response: Regulatory notice, 2; Adoption of policy, 8; Customer mailing, 0.75; and Posted notice, 0.25.

Estimated annual burden hours: Regulatory notice, 206; Adoption of policy, 8; Customer mailing, 77; and Posted notice, 26.

General description of collection: The reporting, recordkeeping, and disclosure requirements regarding the closing of any branch of an insured depository institution are contained in section 42 of the Federal Deposit Insurance Act (FDI Act), as supplemented by an interagency policy statement on branch closings. The Board uses the information in the FR 4031 to fulfill its statutory obligation to supervise SMBs.

Legal authorization and confidentiality: The FR 4031 is authorized pursuant to Section 42(a)(1) of the FDI Act, which requires insured depository institutions to submit notices to the appropriate Federal banking agency related to proposed branch closures, and section 11 of the Federal Reserve Act, which authorizes the Board to require state member banks to submit information as the Board deems necessary. The requirements associated with FR 4031 are mandatory.

Generally, information collected pursuant to the FR 4031 is not considered to be confidential. However, an insured state member bank may request confidential treatment pursuant to exemption 4 of the Freedom of Information Act, which protects trade secrets and privileged or confidential commercial or financial information.[1]

Board of Governors of the Federal Reserve System, October 7, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–22241 Filed 10–12–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Disclosure Requirements and Recordkeeping Requirements Associated with Regulation CC (FR CC; OMB No. 7100–0235).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Collection title: Disclosure Requirements and Recordkeeping Requirements Associated with Regulation CC.

Collection identifier: FR CC.

OMB control number: 7100–0235.

Frequency: Event-generated.

Respondents: State member banks and uninsured state branches and agencies of foreign banks.

Estimated number of respondents: Bank burden: 686 (except for Changes in policy, 100); Consumer burden: 17,150.

Estimated average hours per response: Specific availability policy disclosures and initial disclosures, 0.02; Longer delays on a case-by-case basis—Notice in specific policy disclosure, 0.05; Notice of exceptions, 0.05; Locations where employees accept consumer deposits and ATMs, 0.25; Quinquennial inflation adjustments for disclosures (annualized), 8; Annual notice of new ATMs, 5; Changes in policy, 20; Notification of quinquennial inflation adjustments (annualized), 4; Notice of nonpayment on paying bank, 0.02; Notification to customer, 0.02; Expedited recredit for consumers, 0.25; Expedited recredit for banks, 0.25; Consumer awareness, 0.02; Expedited recredit claim notice, 0.25.

Estimated annual burden hours: Specific availability policy disclosures and initial disclosures, 6,860; Longer delays on a case-by-case basis—Notice in specific policy disclosure, 24,010; Notice of exceptions, 68,600; Locations where employees accept consumer deposits and ATMs, 172; Quinquennial inflation adjustments for disclosures (annualized), 5,488; Annual notice of new ATMs, 3,430; Changes in policy, 4,000; Notification of quinquennial inflation adjustments (annualized), 2,744; Notice of nonpayment on paying bank, 480; Notification to customer, 5,076; Expedited recredit for consumers, 6,003; Expedited recredit for banks, 2,573; Consumer awareness, 4,116; Expedited recredit claim notice, 4,288.

General description of collection: Regulation CC—Availability of Funds and Collection of Checks (12 CFR 229), which implements the Expedited Funds

[1] 5 U.S.C. 552(b)(4).

Availability Act of 1987 (EFA Act) [1] and the Check Clearing for the 21st Century Act of 2003 (Check 21 Act),[2] requires banks [3] to make funds deposited in transaction accounts available within specified time periods, disclose their availability policies to customers, and begin accruing interest on such deposits promptly. The disclosures are intended to alert customers that their ability to use deposited funds may be delayed, prevent unintentional (and potentially costly) overdrafts, and allow customers to compare the policies of different banks before deciding at which bank to deposit funds. Regulation CC also requires notice to the depositary bank and to a customer of nonpayment of a check. Model disclosure forms, clauses, and notices are appended to the regulation to ease compliance.

Legal authorization and confidentiality: Section 609 of the EFA Act, as amended by section 1086 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[4] states that, ''the Board, jointly with the Director of the Bureau of Consumer Financial Protection, shall prescribe regulations—(1) to carry out the provisions of this chapter; (2) to prevent the circumvention or evasion of such provisions; and (3) to facilitate compliance with such provisions.'' Additionally, section 15 of the Check 21 Act [5] authorizes the Board to ''prescribe such regulations as the Board determines to be necessary to implement, prevent circumvention or evasion of, or facilitate compliance with the provisions of this chapter.'' The Board is therefore authorized by these statutory provisions to promulgate the disclosure and recordkeeping requirements contained in Regulation CC. The disclosure and recordkeeping requirements in Regulation CC are mandatory. The information that Regulation CC requires of consumers who are making an expedited recredit claim is required to obtain a benefit.

Because records required by Regulation CC are maintained at each banking organization, the Freedom of Information Act (FOIA) would only be implicated if the Board obtained such records as part of the examination or supervision of a banking organization. In the event the records are obtained by the Board as part of an examination or supervision of a financial institution, this information may be considered confidential pursuant to exemption 8 of the FOIA, which protects information contained in ''examination, operating, or condition reports'' obtained in the bank supervisory process.[6]

Current actions: On May 24, 2022, the Board published a notice in the **Federal Register** (87 FR 31560) requesting public comment for 60 days on the extension, without revision, of the FR CC. The comment period for this notice expired on July 25, 2022. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, October 7, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–22242 Filed 10–12–22; 8:45 am]

BILLING CODE 6210–01–P

[1] See 12 U.S.C. 4001 *et seq.*

[2] See 12 U.S.C. 5001 *et seq.*

[3] For purposes of Regulation CC, banks are commercial banks, savings associations, credit unions, and U.S. branches and agencies of foreign banks.

[4] 12 U.S.C. 4008.

[5] 12 U.S.C. 5014.

[6] 5 U.S.C. 552(b)(8).

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Intermittent Survey of Businesses (FR 1374; OMB No. 7100–0302).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Collection title: Intermittent Survey of Businesses.

Collection identifier: FR 1374.

OMB control number: 7100–0302.

Frequency: Annual, and as needed.

Respondents: Businesses, and as warranted by economic conditions, state and local governments.

Estimated number of respondents: 1,500.

Estimated average hours per response: 0.25.

Estimated annual burden hours: 1,125.

General description of collection: The FR 1374 survey data are used to gather information to enable the Federal Reserve System to carry out its policy and operational responsibilities. Under the guidance of the Board, Reserve Banks survey business contacts as economic developments warrant. Usually, these voluntary surveys are conducted by telephoning or emailing purchasing managers, economists, or other knowledgeable individuals at selected, relevant businesses. Reserve Banks may also use online survey tools to collect responses to the survey. The frequency and content of the questions, as well as the entities contacted, vary depending on developments in the economy. These surveys are conducted to provide Board members and Reserve Bank presidents real-time insights into economic conditions. The Board tailors these survey questions to match current concerns and interests, but they are not meant to supplant the more rigorous, existing economic reporting. The Board collects individual responses from the Reserve Banks and then distributes aggregate information to Board members and Reserve Bank presidents.

Legal authorization and confidentiality: The FR 1374 is authorized by sections 2A and 12A of the Federal Reserve Act (FRA). Section 2A of the FRA requires that the Board and the Federal Open Market Committee (FOMC) ''maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively

the goals of maximum employment, stable prices, and moderate long-term interest rates.'' Section 12A of the FRA further requires the FOMC to implement ''regulations relating to the open market operations'' conducted by Federal Reserve Banks ''with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country.'' The Board and FOMC use the information obtained through the FR 1374 to discharge these responsibilities.

Responding to surveys under the FR 1374 is voluntary. Individual respondents may request confidential treatment for information provided in response to a survey in accordance with the Board's Rules Regarding Availability of Information,[1] and any such requests for confidential treatment will be reviewed on a case-by-case basis. Information may be kept confidential under exemption 4 of the Freedom of Information Act to the extent it is confidential commercial or financial information that is both customarily and actually treated as private.

Current actions: On July 5, 2022, the Board published a notice in the **Federal Register** (87 FR 39831) requesting public comment for 60 days on the extension, without revision, of the FR 1374. The comment period for this notice expired on September 6, 2022. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, October 7, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–22238 Filed 10–12–22; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

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 question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than October 26, 2022.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Ohnward Bancshares, Inc., Maquoketa, Iowa;* to engage de novo in the nonbanking activities of providing tax planning and preparation, management consulting services, and data processing, pursuant to Section 225.28(b)(6)(vi), (b)(9)(i)(A), and (b)(14)(i), respectively, of the Board's Regulation Y.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–22193 Filed 10–12–22; 8:45 am]

BILLING CODE 6210–01–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 regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than October 28, 2022.

A. Federal Reserve Bank of San Francisco (Joseph Cuenco, Assistant Vice President, Formations & Transactions) 101 Market Street, San Francisco, California 94105–1579:

1. *The Vanguard Group, Inc., Malvern, Pennsylvania; on behalf of itself, its subsidiaries and affiliates, including investment companies registered under the Investment Company Act of 1940, other pooled investment vehicles, and institutional accounts that are sponsored, managed, or advised by Vanguard;* to acquire additional voting shares of CVB Financial Corp., and thereby indirectly acquire additional voting shares of Citizens Business Bank, both of Ontario, California.

2. *The Vanguard Group, Inc., Malvern, Pennsylvania; on behalf of itself, its subsidiaries and affiliates, including investment companies registered under the Investment Company Act of 1940, other pooled investment vehicles, and institutional accounts that are sponsored, managed, or advised by Vanguard;* to acquire additional voting shares of LendingClub Corporation, San Francisco, California, and thereby indirectly acquire additional voting shares of LendingClub Bank, National Association, Lehi, Utah.

3. *The Vanguard Group, Inc., Malvern, Pennsylvania; on behalf of itself, its subsidiaries and affiliates, including investment companies registered under the Investment Company Act of 1940, other pooled investment vehicles, and institutional accounts that are sponsored, managed, or advised by Vanguard;* to acquire additional voting shares of Washington Federal, Inc., and thereby indirectly acquire additional voting shares of Washington Federal Bank, both of Seattle, Washington.

[1] 12 CFR 261.17.

Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2022–22348 Filed 10–12–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Consumer Satisfaction Questionnaire (FR 1379a), Federal Reserve Consumer Help—Consumer Survey (FR 1379b), Consumer Complaint Form (FR 1379c), and Interagency Appraisal Complaint Form (FR 1379d) (collectively FR 1379; OMB No. 7100–0135).

DATES: Comments must be submitted on or before December 12, 2022.

ADDRESSES: You may submit comments, identified by FR 1379, by any of the following methods:

- *Agency website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement, and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Collection title: Consumer Satisfaction Questionnaire, Federal Reserve Consumer Help—Consumer Survey, Consumer Complaint Form, and Interagency Appraisal Complaint Form.

Collection identifier: FR 1379.

OMB control number: 7100–0135.

Frequency: Event generated.

Respondents: The FR 1379 panel comprises appraisers, individuals, and other entities.

Estimated number of respondents: FR 1379c, 11,853 and FR 1379d, 3.

Estimated average hours per response: FR 1379c, 0.16666 and FR 1379d, 0.5.

Estimated annual burden hours: FR 1379c, 1,975 and FR 1379d, 2.

General description of collection: The FR 1379a is sent to consumers who have filed complaints with the Federal Reserve against state member banks or other financial institutions supervised by the Board. The information is used to assess the satisfaction of the consumers with the Federal Reserve's handling of, and written response to, their complaints at the conclusion of an investigation. The FR 1379b is a survey sent to consumers who contact the Federal Reserve Consumer Help (FRCH) desk to file a complaint or inquiry. The information is used to determine whether consumers are satisfied with the way the FRCH handled their complaint. The FR 1379c form addresses the burden associated with consumers electronically submitting a complaint against a financial institution to the FRCH. The FR 1379d form collects information about complaints regarding a regulated institution's non-compliance with the appraisal independence standards and the Uniform Standards of Professional Appraisal Practice, including

complaints from appraisers, individuals, and other entities.

Proposed revisions: The Board proposes to discontinue the FR 1379a and FR1379b surveys. The Board has not administered these surveys to consumers in at least 10 years and does not foresee a need to administer those surveys in the future.

Legal authorization and confidentiality: The Board uses information obtained via the FR 1379 forms to fulfill its obligations under section 8 of the Federal Deposit Insurance Act,[1] section 11(a) of the Federal Reserve Act,[2] and Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act.[3] The FR 1379 forms are voluntary.

Individual respondents may request confidential treatment in accordance with the Board's Rules Regarding Availability of Information.[4] Requests for confidential treatment of information are reviewed on a case-by-case basis. To the extent information provided under these collections is nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, or to the extent the information reflects personnel and medical files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, the information may be protected from disclosure pursuant to exemptions 4 or 6 of the Freedom of Information Act.[5]

Determinations regarding disclosure of the information collected via the FR 1379 forms will be made in accordance with the Privacy Act.[6] A hyperlink directing the respondent to the relevant Privacy Act statement is provided in these forms on the Board's website.

Board of Governors of the Federal Reserve System, October 7, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–22239 Filed 10–12–22; 8:45 am]

BILLING CODE 6210–01–P

[1] 12 U.S.C. 1818 (authorizing the Board to enforce compliance with laws against entities within its jurisdiction, including state member banks).

[2] 12 U.S.C. 248(a) (authorizing the Board to examine the affairs of each Federal Reserve Bank and of each member bank).

[3] 12 U.S.C. 3339 (requiring the Board to prescribe appropriate standards for the performance of real estate appraisals in connection with federally related transactions under its jurisdiction).

[4] 12 CFR 261.17.

[5] 5 U.S.C. 552(b)(4); (b)(6).

[6] 5 U.S.C. 552a(b).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2022–0120]

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting and request for comment.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting of the Advisory Committee to the Director, Centers for Disease Control and Prevention (ACD, CDC). This is a hybrid meeting, accessible both in person and virtually (webcast live via the World Wide Web). It is open to the public and limited only by the space available. Time will be available for public comment.

DATES: The meeting will be held on November 2, 2022, from 10:00 a.m. to 4:30 p.m. and November 3, 2022 from 9:00 a.m. to 12:00 p.m., EDT (times are subject to change).

Written comments must be received on or before October 24, 2022.

ADDRESSES: *Meeting address:* CDC Roybal Campus, Building 19, Room 3B, 1600 Clifton Road NE, Atlanta, Georgia 30329–4027. The conference room accommodates approximately 200 people.

Please note that the meeting location, the CDC Roybal Campus, is a federal facility and in-person access is limited to United States citizens unless prior authorizations, taking up to 30 to 60 days, have been made. Visitors must follow all directions for access to CDC facilities. Directions for visitors to CDC, including safety requirements related to COVID–19, are available at *https://www.cdc.gov/screening/visitors.html.*

Registration: You must register to attend this meeting in person. If you wish to attend in person, please submit a request by email to *ACDirector@cdc.gov* or by telephone at (404) 639–0390 at least 5 business days in advance of the meeting. No registration is required to view the meeting via the World Wide Web. Information for accessing the webcast will be available at *https://www.cdc.gov/about/advisory-committee-director/.*

Written comments: You may submit comments, identified by Docket No. CDC–2022–0120, by either of the methods listed below. Do not submit comments for the docket by email. CDC does not accept comments for the docket by email.

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Kerry Caudwell, MPA, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H21–10, Atlanta, Georgia 30329–4027. Attn: Docket No. CDC–2022–0120.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.* Written comments received in advance of the meeting will be included in the official record of the meeting.

FOR FURTHER INFORMATION CONTACT: Kerry Caudwell, MPA, Office of the Chief of Staff, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H21–10, Atlanta, Georgia 30329–4027; Telephone: (404) 639–0390; Email: *ACDirector@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The Advisory Committee to the Director, CDC, shall advise the Secretary, HHS, and the Director, CDC, on policy and broad strategies that will enable CDC to fulfill its mission of protecting health through health promotion, prevention, and preparedness. The committee recommends ways to prioritize CDC's activities, improve results, and address health disparities. It also provides guidance to help CDC work more effectively with its various private and public sector constituents to make health protection a practical reality.

Matters to be Considered: The agenda will include discussions regarding CDC's current and future work in the following topic areas: (1) data modernization; (2) laboratory quality; and (3) health equity. The ACD will hear reports from its working groups on these three topics. In addition, the ACD will have presentations on the COVID–19 and Monkeypox responses, Social Determinants of Health and CDC's *Moving Forward* initiative. Agenda items are subject to change as priorities dictate.

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and

data. Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. CDC will carefully consider all comments submitted into the docket.

Oral Public Comment: This meeting will include time for members of the public to make an oral comment. Oral public comment will occur before any scheduled votes. Priority will be given to individuals who submit a request to make an oral public comment before the meeting according to the procedure below.

Procedure for Oral Public Comment: All persons interested in making an oral public comment at the November 2 and 3, 2022, ACD meeting must submit a request by visiting *https://www.cdc.gov/about/advisory-committee-director/* no later than 11:59 p.m., EDT, October 24, 2022, according to the instructions provided.

If the number of persons requesting to speak is greater than can be reasonably accommodated during the scheduled time, CDC will conduct a lottery to determine the speakers for the scheduled public comment session. CDC staff will notify individuals regarding their request to speak via email by October 26, 2022. To accommodate the significant interest in participation in the oral public comment session of ACD meetings, each speaker will be limited to 2 minutes, and each speaker may only speak once per meeting.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–22215 Filed 10–12–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Center for Preparedness and Response (BSC, CPR)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Board of Scientific Counselors, Center for Preparedness and Response (BSC, CPR). This is a hybrid meeting, accessible both in person and virtually. It is open to the public and limited only by the space available and the number of internet conference accesses available. Time will be available for public comment.

DATES: The meeting will be held on November 15, 2022, from 10:30 a.m. to 5:00 p.m., EST, and November 16, 2022, from 10:00 a.m. to 2:30 p.m., EST.

ADDRESSES: CDC, 1600 Clifton Road NE, Atlanta, Georgia 30329–4027. The conference room will have seating for approximately 40 people.

Please note that the meeting location is a federal facility and in-person access is limited to United States citizens unless prior authorizations, taking up to 30 to 60 days, have been made. Visitors must follow all directions for access to CDC facilities. Directions for visitors to CDC, including safety requirements related to COVID–19, are available at *https://www.cdc.gov/screening/visitors.html.*

If you wish to attend in person, please submit a request by email to Ms. Dometa Ouisley, Management Analyst, Office of Science and Public Health Practice, Center for Preparedness and Response (CPR), CDC, at *DOuisley@cdc.gov* at least 5 business days in advance of the meeting.

If you wish to attend the meeting virtually, please register by accessing the link at: *https://cdc.zoomgov.com/webinar/register/WN_jZsYAhDQSYOqDwZs2G6Ang.* Instructions to access the Zoom virtual meeting will be provided in the link following registration.

FOR FURTHER INFORMATION CONTACT: Dometa Ouisley, Management Analyst, Office of Science and Public Health Practice, CPR, CDC, 1600 Clifton Road NE, Mailstop H21–6, Atlanta, Georgia 30329–4027; Telephone: (404) 639–7450; Email: *DOuisley@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: This Board is charged with providing advice and guidance to the Secretary, Department of Health and Human Services; the Assistant Secretary for Health; the Director, Centers for Disease Control and Prevention; and the Director, Center for Preparedness and Response, concerning strategies and goals for the programs and research within CPR, monitoring the overall strategic direction and focus of the CPR Divisions and Offices, and administration and oversight of peer review for CPR scientific programs. For additional information about the Board, please visit: *https://www.cdc.gov/cpr/bsc/index.htm.*

Matters to be Considered: The agenda for Day 1 will include CPR Division Updates and Discussion; a CPR Diversity, Equity, Inclusion and Accessibility Update; and Data Modernization and Outbreak Forecasting Analytics. The agenda for Day 2 will include CDC Response Updates; a U.S. National Authority for Containment of Poliovirus and Polio Containment Workgroup Update; a Strategic Capacity Building and Innovation Program Review Working Group Update; Risk Communications during Public Health Emergencies; and a BSC Discussion of Future Meeting Topics. Agenda items are subject to change as priorities dictate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–22213 Filed 10–12–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Nominations for Appointment to the World Trade Center Health Program Scientific/Technical Advisory Committee (WTCHP–STAC)

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), in accordance with provisions of the James Zadroga 9/11 Health and Compensation Act of 2010 (42 U.S.C. 300mm–1(a)(2)), is seeking nominations for membership on the World Trade Center (WTC) Health Program Scientific/Technical Advisory Committee (WTCHP–STAC). The WTCHP–STAC consists of 17 members including experts in fields associated with occupational medicine, pulmonary medicine, environmental medicine, environmental health, industrial hygiene, epidemiology, toxicology, and mental health, and representatives of WTC responders as well as representatives of certified-eligible WTC survivors.

DATES: Nominations for membership on the WTCHP–STAC must be received no later than November 14, 2022. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be mailed to NIOSH Docket 229–J, c/o Mia Wallace, Committee Management Specialist, National Institute for Occupational Safety and Health (NIOSH), CDC, 1600 Clifton Road NE, Mailstop V24–4, Atlanta, Georgia 30329–4027, or emailed (recommended) to *nioshdocket@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Tania Carreón-Valencia, Ph.D., MS, Designated Federal Officer, WTCHP–STAC, CDC, 1600 Clifton Road NE, Mailstop R–12, Atlanta, Georgia 30329–4027; Telephone: (513) 841–4515 (this is not a toll-free number); Email: *TCarreonValencia@cdc.gov.*

SUPPLEMENTARY INFORMATION: The WTCHP–STAC reviews scientific and medical evidence and makes recommendations to the Administrator of the WTC Health Program on additional Program eligibility criteria and additional WTC-related health conditions, reviews and evaluates policies and procedures used to determine whether sufficient evidence exists to support adding a health condition to the List of WTC-Related Health Conditions, makes recommendations regarding individuals to conduct independent peer reviews of the scientific and technical evidence underlying a final rule adding a condition to the List of WTC-Related Health Conditions, and provides consultation on research regarding certain health conditions related to the September 11, 2001, terrorist attacks.

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to accomplishing the Committee's objectives. The Administrator of the WTC Health Program is seeking nominations for members fulfilling the following categories:

- Occupational physician;
- Environmental medicine or environmental health professional; and
- Representative of WTC responders.

Members may be invited to serve for four-year terms. Selection of members is based on candidates' qualifications to contribute to the accomplishment of WTCHP–STAC objectives. More information on the Committee is available at *https://www.cdc.gov/wtc/stac.html.*

The U.S. Department of Health and Human Services (HHS) policy stipulates that committee membership be balanced in terms of points of view represented and the Committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees, requiring the filing of financial disclosure reports at the beginning and annually during their terms. NIOSH identifies potential candidates and provides a slate of nominees for consideration to the Director of CDC for WTCHP–STAC membership each year; CDC reviews the proposed slate of candidates and provides a slate of nominees for consideration to HHS for final selection. HHS notifies CDC; CDC notifies NIOSH; and NIOSH notifies the candidates of their appointments as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year.

Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address);
- The category of membership (environmental medicine or environmental health specialist, occupational physician, pulmonary physician, representative of WTC responders, certified-eligible WTC survivor representative, industrial hygienist, toxicologist, epidemiologist, or mental health professional) that the candidate is qualified to represent;
- A summary of the background, experience, and qualifications that demonstrates the candidate's suitability for the nominated membership category; and
- At least one letter of recommendation from person(s) not employed by the U.S. Department of Health and Human Services. Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (*e.g.,* CDC, NIH, FDA).

Nominations may be submitted by the candidate him- or herself, or by the person/organization recommending the candidate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–22212 Filed 10–12–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0945–0003–60D]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health

and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before December 12, 2022.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 264–0041.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier OS–0945–0003–60D and project title for reference, to Sherrette A. Funn, email: *Sherrette.Funn@hhs.gov,* or call (202) 264–0041 the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (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.

Title of the Collection: HIPAA Privacy, Security, and Breach Notification Rules, and Supporting Regulations Contained in 45 CFR parts 160 and 164.

Type of Collection: Extension.

OMB No. 0945–0003: Office for Civil Rights (OCR)—Health Information Privacy Division.

Abstract: Office for Civil Rights (OCR) requests approval to extend this existing, approved collection without changing any collection requirements. In 2021, OCR published a Notice of Proposed Rulemaking (NPRM) proposing modifications to the HIPAA Rules that would affect the hourly burdens associated with the HIPAA Rules. 86 FR 6446. OCR is reviewing public comment received on the NPRM about existing burdens associated with compliance with the HIPAA Rules, available at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202011-0945-001,* and on changes in burden that could result from the modifications proposed in the NPRM. OCR will update this ICR to reflect the input we receive on this notice and through the rulemaking process.

Likely Respondents: HIPAA covered entities, business associates, individuals, and professional and trade associations of covered entities and business associates.

ANNUALIZED BURDEN HOUR TABLE

Section	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response [1]	Total burden hours
160.204	Process for Requesting Exception Determinations (states or persons).	1	1	16	16
164.308	Risk Analysis—Documentation [2]	1,700,000	1	10	17,000,000
164.308	Information System Activity Review—Documentation.	1,700,000	12	0.75	15,300,000
164.308	Security Reminders—Periodic Updates	1,700,000	12	1	20,400,000
164.308	Security Incidents (other than breaches)—Documentation.	1,700,000	52	5	442,000,000
164.308	Contingency Plan—Testing and Revision	1,700,000	1	8	13,600,000
164.308	Contingency Plan—Criticality Analysis	1,700,000	1	4	6,800,000
164.310	Maintenance Records	1,700,000	12	6	122,400,000
164.314	Security Incidents—Business Associate reporting of incidents (other than breach) to Covered Entities.	1,000,000	12	20	240,000,000
164.316	Documentation—Review and Update [3]	1,700,000	1	6	10,200,000
164.404	Individual Notice—Written and Email Notice (drafting) [4].	58,482	1	0.5	29,241
164.404	Individual Notice—Written and Email Notice (preparing and documenting notification).	58,482	1	0.5	29,241
164.404	Individual Notice—Written and Email Notice (processing and sending) [5].	58,482	1,941	0.008	908,108
164.404	Individual Notice—Substitute Notice (posting or publishing) [6].	2,746	1	1	2,746
164.404	Individual Notice—Substitute Notice (staffing toll-free number) [7].	2,746	1	3.42	9,391
164.404	Individual Notice—Substitute Notice (individuals' voluntary burden to call toll-free number for information) [8], [9].	113,264	1	0.125	14,158
164.406	Media Notice [10]	267	1	1.25	334
164.408	Notice to Secretary (notice for breaches affecting 500 or more individuals).	267	1	1.25	334
164.408	Notice to Secretary (notice for breaches affecting fewer than 500 individuals) [11].	58,215	1	1	58,215
164.410	Business Associate notice to Covered Entity—500 or more individuals affected.	20	1	50	1,000
164.410	Business Associate notice to Covered Entity—Less than 500 individuals affected.	1,165	1	8	9,320
164.414	500 or More Affected Individuals (investigating and documenting breach).	267	1	50	13,350
164.414	Less than 500 Affected Individuals (investigating and documenting breach)—affecting 10–499.	2,479	1	8	19,832
164.414	Less than 500 Affected Individuals (investigating and documenting breach)—affecting <10.	55,736	1	4	222,944

ANNUALIZED BURDEN HOUR TABLE—Continued

Section	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response [1]	Total burden hours
164.504	Uses and Disclosures—Organizational Requirements.	700,000	1	0.083333333	58,333
164.508	Uses and Disclosures for Which Individual authorization is required.	700,000	1	1	700,000
164.512	Uses and Disclosures for Research Purposes [12].	113,524	1	0.083333333	9,460
164.520	Notice of Privacy Practices for Protected Health Information (health plans—periodic distribution of NPPs by paper mail) [13], [18].	100,000,000	1	0.004166667	416,667
164.520	Notice of Privacy Practices for Protected Health Information (health plans—periodic distribution of NPPs by electronic mail) [19].	100,000,000	1	0.002783333	278,333
164.520	Notice of Privacy Practices for Protected Health Information (health care providers—dissemination and acknowledgement) [14].	613,000,000	1	0.05	30,650,000
164.522	Rights to Request Privacy Protection for Protected Health Information [15].	20,000	1	0.05	1,000
164.524	Access of Individuals to Protected Health Information (disclosures) [16].	200,000	1	0.05	10,000
164.526	Amendment of Protected Health Information (requests).	150,000	1	0.083333333	12,500
164.526	Amendment of Protected Health Information (denials).	50,000	1	0.083333333	4,167
164.528	Accounting for Disclosures of Protected Health Information [17].	5,000	1	0.05	250
	Total		2,070		921,158,940

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2022–22204 Filed 10–12–22; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Biomedical Advanced Research and Development Authority Industry Day 2022

AGENCY: Administration for Strategic Preparedness and Response (ASPR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Biomedical Advanced Research and Development Authority (BARDA) annually hosts BARDA Industry Day (BID), a two-day conference with our industry and government partners to share BARDA's goals and objectives, increase awareness of U.S. government medical countermeasure (MCM) priorities, and facilitate coordination and collaboration between public and private sectors within the health security space.

DATES: BID 2022 will be held virtually from Tuesday, November 15–Wednesday, November 16, 2022. The meeting will begin each day at 9 a.m. Eastern Standard Time.

ADDRESSES: *Procedures for Public Participation:* This meeting is open to the public. Register here: *https://www.medicalcountermeasures.gov/barda/barda-industry-day-2022/.*

FOR FURTHER INFORMATION CONTACT: Ezinne N. Ebi, Biomedical Advanced Research & Development Authority (BARDA), *ezinne.ebi@hhs.gov,* (202) 989–5539.

SUPPLEMENTARY INFORMATION: This year, BARDA plans to discuss the organization's new five-year strategic plan, which focuses on strengthening the health security of the nation, embracing lessons learned from the COVID–19 pandemic, incorporating new avenues of promising research and development, and addressing the imperative for MCMs that are safe, effective, and widely accessible to all Americans. BID 2022 will be an exciting opportunity to explore how the field of MCMs is on the cutting edge of innovation, and how we can work together to prepare for 21st century health security threats.

Dawn O'Connell,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2022–22169 Filed 10–12–22; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, National Human Genome Research Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL HUMAN GENOME RESEARCH INSTITUTE, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Human Genome Research Institute.

Date: November 16–17, 2022.

Time: 2:20 p.m. to 2:45 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Human Genome Research Institute, National Institutes of Health, Building 50, 50 Center Drive, Room 5222C, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Paul Liu, Ph.D., MD, Deputy Scientific Director, National Human Genome Research Institute, National Institutes of Health, Building 50, 50 Center Drive, Room 5222C, Bethesda, MD 20892, (301) 402–2529, *pliu@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 6, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–22161 Filed 10–12–22; 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 10(d) 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: Population Sciences and Epidemiology Integrated Review Group; Population Based Research in Infectious Disease Study Section.

Date: November 9–10, 2022.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lisa Steele, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 257–2638, *steeleln@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–21–004: Maximizing the Scientific Value of Existing Biospecimen Collections (R21).

Date: November 9, 2022.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Health Services and Systems.

Date: November 10, 2022.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Wenjuan Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3154, Bethesda, MD 20892, (301) 480–8667, *wangw22@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: SBIR/STTR Commercialization Readiness Pilot (CRP) Program.

Date: November 10, 2022.

Time: 9:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II 6701 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Allen B. Richon, Ph.D., BS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, (240) 760–0517, *allen.richon@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biobehavioral Processes.

Date: November 10, 2022.

Time: 9:30 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Hoa Thi Vo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1002B2, Bethesda, MD 20892, (301) 594–0776, *voht@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Early Stress, Psychopathology, and Developmental Disabilities.

Date: November 10, 2022.

Time: 10 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rochelle Francine Hentges, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000C, Bethesda, MD 20892, (301) 402–8720, *hentgesrf@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation: Flow Cytometry.

Date: November 10, 2022.

Time: 10 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Robert O'Hagan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (240) 909–6378, *ohaganr2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business Endocrine and Metabolic Systems.

Date: November 10, 2022.

Time: 10 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Baskaran Thyagarajan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 800B, Bethesda, MD 20892, (301) 867–5309, *thyagarajanb2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurological and Neuropsychological Injuries and Disorders.

Date: November 10, 2022.

Time: 10 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Todd Everett White, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–3962, *todd.white@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: October 6, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–22219 Filed 10–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0701]

National Chemical Transportation Safety Advisory Committee; November 2022 Meeting

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The National Chemical Transportation Safety Advisory Committee (Committee) will conduct a series of meetings over 3 days in Houston, TX, to discuss matters relating to the safe and secure marine transportation of hazardous materials. The subcommittee meetings will also be available by videoconference for those unable to attend in person, however the full committee meeting will be held in person only. All meetings will be open to the public.

DATES:

Meetings: National Chemical Transportation Safety Advisory Committee subcommittees will meet on Tuesday, November 1, 2022, and Wednesday, November 2, 2022, from 9 a.m. to 5 p.m. Central Daylight Time (CDT) each day. The full Committee will meet on Thursday, November 3, 2022, from 9 a.m. until 5 p.m. CDT. Please note these meetings may close early if the Committee has completed its business.

Comments and supporting documents: To ensure your comments are reviewed by Committee members before the meeting, submit your written comments no later than October 18, 2022.

ADDRESSES: The meeting will be held at U.S. Coast Guard Marine Safety Unit Texas City, 3101 FM 2004, Texas City, TX 77591.

Pre-registration Information: Pre-registration is required for in-person access to the meeting or to attend the subcommittee meetings by videoconference. Public attendees will be required to pre-register no later than noon CDT on October 18, 2022, to be admitted to the meeting. In-person attendance may be capped due to limited space in the meeting venue, and registration will be on a first-come-first-served basis. To pre-register, contact Lieutenant Ethan Beard at *Ethan.T.Beard@uscg.mil.* You will be asked to provide your name, telephone number, email, company or group with which you are affiliated, and whether you wish to attend virtually or in person; if a foreign national, also provide your country of citizenship, passport country, country of residence, place of birth, passport number, and passport expiration date.

Attendees at the meetings will be required to follow COVID–19 safety guidelines promulgated by the Centers for Disease Control and Prevention (CDC), which may include the need to wear masks. CDC guidance on COVID protocols can be found here: *https://www.cdc.gov/coronavirus/2019-ncov/communication/guidance.html.*

The National Chemical Transportation Safety Advisory Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodation due to a disability to fully participate, please email Lieutenant Ethan Beard at *Ethan.T.Beard@uscg.mil* or call at 202–372–1419 as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the meeting as time permits, but if you want Committee members to review your comment before the meeting, please submit your comments no later than October 18, 2022. We are particularly interested in comments on the issues in the ''Agenda'' section below. We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the docket number [USCG–2022–0701]. Comments received will be posted without alteration at *https://www.regulations.gov,* including any personal information provided. You may wish to review the Privacy and Security Notice found via a link on the homepage of *https://www.regulations.gov.* For more about the privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ethan T. Beard, Alternate Designated Federal Officer of the National Chemical Transportation Safety Advisory Committee, telephone 202–372–1419, or email *Ethan.T.Beard@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of the meeting of the National Chemical Transportation Safety Advisory Committee is in compliance with the *Federal Advisory Committee Act,* (5. U.S.C. appendix). The Committee is authorized by section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018* (Pub. L. 115–282, 132 Stat. 4192) and is codified in 46 U.S.C. 15101. The Committee operates under the provisions of the *Federal Advisory Committee Act* (5 U.S.C. appendix) and 46 U.S.C. 15109. The Committee provides advice and recommendations to the Secretary of Homeland Security on matters related to the safe and secure marine transportation of hazardous materials.

Agenda

Tuesday, November 1, 2022

Three subcommittees will meet separately to discuss the following task statements:

(1) Task Statement 22–01: Recommendations to Support Reductions to Emissions and Environmental Impacts Associated with Marine Transport of Chemicals, Liquefied Gases and Liquefied Natural Gas (LNG).

(2) Task Statement 22–02: Recommendations on Industry Best Practices and Regulatory Updates Related to the Maritime Transportation of Lithium Batteries.

(3) Task Statement 22–03: Recommendations on Testing Requirements for Anti-Flashback Burners for Vapor Control Systems.

The task statements and other subcommittee information are located at Homeport at the following address: *https://homeport.uscg.mil/missions/federal-advisory-committees/national-chemical-transportation-safety-advisory-committee-(nctsac)/task-statements.* The agenda for the discussion of each task statement will include the following:

(1) Introduction and review subcommittee task statement.

(2) Public comment period

(3) Subcommittee discussion and preparation of any proposed recommendations for the NCTSAC meeting on November 3, 2022.

(4) Adjournment of meeting.

Wednesday, November 2, 2022

The subcommittee meeting will separately address Task Statement 21–01: Recommendations on Loading Limits of Gas Carriers and U.S. Coast Guard Supplement to International Hazardous Zone Requirements. The task statement and other subcommittee information is located at Homeport at the following address: *https://*

homeport.uscg.mil/missions/federal-advisory-committees/national-chemical-transportation-safety-advisory-committee-(nctsac)/task-statements. The agenda for the discussion will include the following:

(1) Introduction and review subcommittee task statement.

(2) Public comment period

(3) Subcommittee discussion and preparation of any proposed recommendations for the NCTSAC meeting on November 3, 2022.

(4) Adjournment of meeting.

Thursday, November 3, 2022

The agenda for the National Chemical Transportation Safety Advisory Committee meeting on Thursday, November 3, 2022 is as follows:

(1) Call to order.

(2) Roll call and determination of quorum.

(3) Acceptance of June 9, 2022 meeting minutes and status of task items.

(4) Remarks from U.S. Coast Guard leadership.

(5) Chairman and Designated Federal Officer's remarks.

(6) Committee will review, discuss, and formulate recommendations on the following items:

a. Task Statement 21–01: Recommendations on Loading Limits of Gas Carriers and U.S. Coast Guard Supplement to International Hazardous Zone Requirements;

b. Task Statement 22–01: Recommendations to Support Reductions to Emissions and Environmental Impacts Associated with Marine Transport of Chemicals, Liquefied Gases and Liquefied Natural Gas (LNG);

c. Task Statement 22–02: Recommendations on Industry Best Practices and Regulatory Updates Related to the Maritime Transportation of Lithium Batteries;

d. Task Statement 22–03: Recommendations on Testing Requirements for Anti-Flashback Burners for Vapor Control Systems.

(7) Subcommittee recommendation discussion.

(8) Final public comment period.

(9) Set next meeting date and location.

(10) Adjournment of meeting.

A copy of all meeting documentation will be available at: *https://homeportr.uscg.mil/missions/federal-advisory-committees/national-chemical-transportation-safety-advisory-committee-(nctsac)/committee-meetings* no later than October 25, 2022. Alternatively, you may contact Lieutenant Ethan Beard as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

Public comments or questions will be taken throughout the meetings as the Committee discusses the issues and prior to deliberations and voting. There will be a final public comment period at the end of meetings. Speakers are requested to limit their comments to 2 minutes. Contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above, to register as a speaker.

Dated: October 7, 2022.

Benjamin J. Hawkins,

Deputy Director, Commercial Regulations and Standards.

[FR Doc. 2022–22269 Filed 10–12–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0030; OMB No. 1660–0070]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Fire Department Registry

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the use of a form to collect data for the development and continuation of the National Fire Department Registry.

DATES: Comments must be submitted on or before December 12, 2022.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments at *www.regulations.gov* under Docket ID FEMA–2022–0030. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage.

FOR FURTHER INFORMATION CONTACT: Gayle Kelch, Statistician, FEMA, United States Fire Administration, National Fire Data Center at (301) 447–1154 or email *gayle.kelch@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Fire Prevention and Control Act of 1974 (Pub. L. 93–498), as enacted in 15 U.S.C. chapter 49, provides for the gathering and analyzing of data as deemed useful and applicable for fire departments. The U.S. Fire Administration (USFA) receives many requests from fire service organizations and the general public for information related to fire departments, including total number of departments, number of stations per department, population protected, and number of firefighters. The USFA also has a need for this information to guide programmatic decisions and produce mailing lists for USFA publications.

Recommendations for the creation of the fire department census database came out of a Blue Ribbon Panel's review of the USFA. The report included a review of the structure, mission, and funding of the USFA, future policies, programmatic needs, course development and delivery, and the role of the USFA to reflect changes in the fire service. As a result of those recommendations, the USFA is working to identify all fire departments in the United States to develop a database that will include information related to demographics, capabilities, and activities of fire departments Nationwide. In the fall of 2016, the USFA renamed the census to the National Fire Department Registry. In the fall of 2001, information was collected from 16,000 fire departments. Since the first year of the collection, an additional 11,182 departments have registered for a total of 27,182 fire departments. This leaves an estimated 2,818 departments still to respond. Additionally, about 5,436 current registered departments are contacted by USFA each year and are asked to provide updates to any previously submitted information.

Collection of Information

Title: National Fire Department Registry.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0070.

FEMA Forms: FEMA Form FF–USFA–FY–21–100—Paper Version (formerly 070–0–0–1); FEMA Form FF–USFA–FY–21–110—Online Version (formerly the screenshots of FEMA Form 070–0–0–1).

Abstract: This collection seeks to identify fire departments in the United States to compile a database related to their demographics, capabilities, and activities. The database is used to guide programmatic decisions and provide information to the public and the fire service.

Affected Public: State, local or tribal government.

Estimated Number of Respondents: 6,375.

Estimated Number of Responses: 6,375.

Estimated Total Annual Burden Hours: 1,219.

Estimated Total Annual Respondent Cost: $9,371.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $100,058.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2022–22260 Filed 10–12–22; 8:45 am]

BILLING CODE 9111–76–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–NWRS–2022–N044; FF06R06000–FXRS1265066CCP0S2–123]

Establishment of Lost Trail Conservation Area, Montana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) has established the Lost Trail Conservation Area (LTCA), the 568th unit of the National Wildlife Refuge System. The Service established LTCA on July 13, 2022, with the purchase of a 38,052-acre conservation easement in Flathead and Lincoln counties, Montana.

ADDRESSES: Information on LTCA, including a map depicting the approved conservation area boundary, is available at *https://www.fws.gov/media/lost-trail-conservation-area-land-protection-plan-and-environmental-assessment.*

FOR FURTHER INFORMATION CONTACT: Jamie Hanson, Conservation Planner, (720) 591–8458 or via U.S. mail at Division of Refuge Planning, USFWS, P.O. Box 25486, DFC, Denver, CO 80225. 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), have established the Lost Trail Conservation Area (LTCA), the 568th unit of the National Wildlife Refuge System. We established LTCA on July 13, 2022, with the purchase of a 38,052-acre conservation easement in the northwestern part of Montana, in Flathead and Lincoln Counties. Conservation areas are National Wildlife Refuge System units that consist primarily or entirely of conservation easements on private lands. LTCA is unique in that it includes private timberland that has historically been open to the public on a voluntary basis. The establishment of this conservation area ensures that public recreational access to this land is maintained in perpetuity. LTCA will allow sustainable commercial timber harvests and provide wildlife-dependent recreational opportunities such as hunting, fishing, hiking, and wildlife viewing.

Conservation Area

LTCA's acquisition boundary delineates parcels where the Service may consider negotiations with willing sellers for easement acquisition. Conservation easements will protect critical, State-identified wildlife corridors; guarantee public access for sportspersons and outdoor enthusiasts in perpetuity; and allow for sustainable timber harvest that supports the local economy in northwest Montana. The project protects crucial habitat and linkage corridors for federally listed species, including grizzly bear, Canada lynx, Spalding's catchfly, and other federal trust species. This land will also secure a vital migration corridor for elk and mule deer. Part of the Heart of the Salish Priority Area identified in the Montana Fish, Wildlife, and Parks' Secretarial Order 3362, ''State Action Plan for Big Game Winter Range and Migration Corridors,'' the land within the project area provides over 6,000 hunter-use days per year and is the core area of the most popular elk-hunting district in northwest Montana. LTCA will also support Department of the Interior Secretarial Orders 3347, ''Conservation Stewardship and Outdoor Recreation,'' and 3356, ''Hunting, Fishing, Recreational Shooting, and Wildlife Conservation Opportunities and Coordination with States, Tribes, and Territories,'' by enhancing conservation stewardship; protecting outdoor recreation opportunities for all Americans, including opportunities to hunt and fish; and supporting game species and their habitats for this generation and beyond.

LTCA was funded by the Great American Outdoors Act and Land and Water Conservation Fund. The Service worked in partnership with the Trust for Public Land and the Confederated Salish and Kootenai Tribes (CSKT) to purchase the 38,052-acre conservation easement from continuing owner SPP Montana.

Public Involvement Process

In order to provide the public an opportunity to engage in the planning process, and in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the Service prepared a draft environmental assessment (EA) that evaluated two alternatives and their potential impacts on the project area. The Service released the draft EA with a land protection plan on September 16, 2020, for a 30-day

scoping, public review, and comment period.

The Service coordinated closely with Montana Fish, Wildlife and Parks and Tribes that were potentially affected by the proposal. CSKT expressed their strong support for the project. The Service also reached out to the county commissioners for Lincoln and Flathead counties and received a letter of support from both counties.

In early 2021, the Service released the final EA and land protection plan to authorize easement purchases from willing sellers within the LTCA. In developing the plan, the Service consulted with CSKT on prioritizing important wildlife habitat and its connection to their conserved lands, as well as with the State of Montana to connect landscape-level conservation efforts. Permanent easements on up to 100,000 acres may be added within the project boundary.

Based on the documentation contained in the EA, a finding of no significant impact was signed on November 20, 2020, for the authority to establish the LTCA.

Authorities

The acquisition authorities for easement lands within the proposed LTCA boundary are the Migratory Bird Conservation Act (16 U.S.C. 715a–r), the Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718a–k), the Refuge Recreation Act (16 U.S.C. 460k–460k–4), the Land and Water Conservation Fund Act of 1965 (54 U.S.C. 200301–200310), the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–j), and the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd *et seq.*).

Anna Muñoz,

Deputy Regional Director, Mountain-Prairie Region.

[FR Doc. 2022–22284 Filed 10–12–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R6–ES–2021–0056; FF06E21000 234 FXES11140600000]

Endangered and Threatened Wildlife and Plants; Proposed Amendment to Programmatic Safe Harbor Agreement and Candidate Conservation Agreement With Assurances for Kansas Aquatic Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are announcing the availability of documents associated with an application to amend an enhancement of survival permit (permit) under the Endangered Species Act. The Kansas Department of Wildlife and Parks has applied to amend the existing *Programmatic Safe Harbor Agreement and Candidate Conservation Agreement with Assurances for 14 Aquatic Species in Kansas* (SHA/CCAA) by adding one additional covered species, the western fanshell (*Cyprogenia aberti*). The documents available for review and comment are the applicant's proposed amended programmatic SHA/CCAA, which is part of the permit amendment application, and our draft environmental action statement and low-effect screening form, which support a categorical exclusion for the amendment under the National Environmental Policy Act. We invite comments from the public and Federal, Tribal, State, and local governments.

DATES: We will accept comments received or postmarked on or before November 14, 2022. Comments submitted online at *https://www.regulations.gov* (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Time on November 14, 2022.

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 in Docket No. FWS–R6–ES–2014–0048 at *https://www.regulations.gov.*

Submitting Comments: To submit written comments, please use one of the following methods, and note that your information request or comments are in reference to the Kansas Aquatic SHA/CCAA amendment.

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket Number FWS–R6–ES–2014–0048.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R6–ES–2014–0048; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Gibran Suleiman, by phone at 785–539–3474, extension 114, or by email at *gibran_suleiman@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from the Kansas Department of Wildlife and Parks (KDWP, applicant) to amend their existing 50-year enhancement of survival permit (permit) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The amendment requests the addition of 1 species, the western fanshell, which is currently proposed for Federal listing as a threatened species, to the 14 species that are already covered by the applicant's existing approved programmatic safe harbor agreement (SHA) and candidate conservation agreement with assurances (CCAA) on non-Federal lands in the State of Kansas. The documents available for review and comment are the applicant's proposed amended programmatic SHA/CCAA, which is part of the permit amendment application, and our draft environmental action statement and low-effect screening form for the amendment request, which support a categorical exclusion under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) We invite comments on documents from the public and Federal, Tribal, State, and local governments.

Background

Via a **Federal Register** notice published on September 15, 2021 (86 FR 51366), we announced the availability of KDWP's original application for an enhancement of survival permit with a 50-year term, which included a proposed programmatic SHA/CCAA for 14 aquatic species in Kansas, and our draft environmental action statement and low-effect screening form, which supported a categorical exclusion under NEPA. The comment period was open until October 15, 2021. After considering the application and associated materials, we issued the requested permit. To provide background information, we have made the original 2021 proposed programmatic SHA and CCAA, along with related documents and comments, available for review in *https://www.regulations.gov* under Docket No. FWS–R6–ES–2021–0056; however, we will not be taking further comments on those documents.

Safe Harbor Agreements and Candidate Conservation Agreements With Assurances

A SHA is an agreement between the Service, partners, and landowners for voluntary management of non-Federal lands to contribute towards recovery of ESA-listed species in a manner that is consistent with the Service's policy on SHAs (64 FR 32717, June 17, 1999) and applicable regulations. A CCAA is an agreement between the Service, partners, and landowners for voluntary management of non-Federal lands to remove or reduce key threats to species that may become listed under the ESA, in a manner that is consistent with the Service's policy on CCAAs (81 FR 95164, December 27, 2016) and applicable regulations. In return for implementing conservation measures in a SHA/CCAA, the Service gives participants assurances that the Service will not impose land, water, or resource use restrictions or conservation requirements on ESA-listed species, or those that may become listed, beyond those agreed to in the SHA/CCAA.

Applicant's Proposed Amendment to Programmatic Safe Harbor Agreement/Candidate Conservation Agreement With Assurances

KDWP's purpose in amending its programmatic SHA/CCAA is to include the western fanshell (*Cyprogenia aberti*), in order to facilitate the reintroduction and implementation of conservation measures for the species on non-Federal lands in Kansas. The documents available for review and comment are the proposed amended programmatic SHA/CCAA, which is part of the permit application, and our draft environmental action statement and low-effect screening form, which support a categorical exclusion under NEPA.

To enroll in the programmatic SHA/CCAA, a non-Federal landowner would enter into a landowner agreement with KDWP to enroll all or a portion of their property under the SHA and/or CCAA. Upon signature by both parties, KDWP would issue a certificate of inclusion to the non-Federal landowner, extending assurances and take authorization to the participating landowner for the appropriate covered species. The requested permit duration is for 50 years from December 15, 2021 (the date of original permit issuance). Proposed conservation measures include the introduction, reintroduction, augmentation (release of individuals to supplement an existing population), or translocation of the covered species, and protection or enhancement of aquatic, wetland, riparian, or adjacent upland habitats for the covered species. Conservation measures would be site specific, and would be developed by the participating landowner and KDWP. Incidental take of covered species may occur as a result of the implementation of conservation measures or ongoing land management activities on the enrolled lands.

Covered Species

The addition of the western fanshell to the 14 species in the existing agreement would bring the total number of species covered under the CCAA/SHA to 15. All 15 species are in the table below.

Species name	Scientific name	Federal listing status	**Federal Register** listing citation
Safe Harbor Agreement Covered Species			
Fishes:			
Arkansas River shiner	*Notropis girardi*	Threatened	63 FR 64772; November 13, 1998.
Neosho madtom	*Noturus placidus*	Threatened	55 FR 21148; May 22, 1990.
Neosho mucket	*Lampsilis rafinesqueana*	Endangered	78 FR 57076; September 17, 2013.
Peppered chub	*Macrhybopsis tetranema*	Endangered	87 FR 11188; February 28, 2022.
Topeka shiner	*Notropis topeka*	Endangered	63 FR 69008; December 15, 1998.
Clams:			
Rabbitsfoot	*Quadrula cylindrica cylindrica*	Threatened	78 FR 57076; September 17, 2013.
Candidate Conservation Agreement with Assurances Covered Species			
Reptiles:			
Alligator snapping turtle	*Macrochelys temminckii*	Proposed Threatened	N/A.
Fishes:			
Hornyhead chub	*Nocomis biguttatus*	Unlisted	N/A.
Plains minnow	*Hybognathus placitus*	Unlisted	N/A.
Silver chub	*Macrhybopsis storeriana*	Unlisted	N/A.
Clams:			
Butterfly mussel	*Ellipsaria lineolata*	Unlisted	N/A.
Cylindrical papershell	*Anodontoides ferussacianus*	Unlisted	N/A.
Flat floater	*Anodonta suborbiculata*	Unlisted	N/A.
Fluted shell	*Lasmigona costata*	Unlisted	N/A.
Western fanshell	*Cyprogenia aberti*	Proposed Threatened	N/A.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4321 *et seq.*) and its

implementing regulations (40 CFR 1506.6 and 43 CFR 46).

Drue DeBerry,

Acting Assistant Regional Director, Ecological Services, Mountain-Prairie Region.

[FR Doc. 2022–22249 Filed 10–12–22; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–22–041]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 13, 2022 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. No. 731–TA–1313 (Review)(1,1,1,2-Tetrafluoroethane (R–134a) from China). The Commission is currently scheduled to complete and file its determinations and views of the Commission on October 20, 2022.
5. Outstanding action jackets: none.

CONTACT PERSON FOR MORE INFORMATION: William Bishop, Supervisory Hearings and Information Officer, 202–205–2595.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier notification of this meeting was not possible.

By order of the Commission.

Issued: October 11, 2022.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2022–22397 Filed 10–11–22; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–22–042]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 17, 2022 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. No. 731–TA–1586 (Final)(Sodium Nitrite from Russia). The Commission is currently scheduled to complete and file its determinations and views of the Commission on October 27, 2022.
5. Outstanding action jackets: none.

CONTACT PERSON FOR MORE INFORMATION: William Bishop, Supervisory Hearings and Information Officer, 202–205–2595.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier notification of this meeting was not possible.

By order of the Commission.

Issued: October 11, 2022.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2022–22396 Filed 10–11–22; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 1097]

Bulk Manufacturer of Controlled Substances Application: Bulk Manufacturer of Marihuana: Irvine Labs, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: The Drug Enforcement Administration (DEA) is providing notice of an application it has received from an entity applying to be registered to manufacture in bulk basic class(es) of controlled substances listed in schedule I. DEA intends to evaluate this and other pending applications according to its regulations governing the program of growing marihuana for scientific and medical research under DEA registration.

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 December 12, 2022.

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: The Controlled Substances Act (CSA) prohibits the cultivation and distribution of marihuana except by persons who are registered under the CSA to do so for lawful purposes. In accordance with the purposes specified in 21 CFR 1301.33(a), DEA is providing notice that the entity identified below has applied for registration as a bulk manufacturer of schedule I controlled substances. In response, registered bulk manufacturers of the affected basic class(es), and applicants therefor, may submit electronic comments on or objections of the requested registration, as provided in this notice. This notice does not constitute any evaluation or determination of the merits of the application submitted.

The applicant plans to manufacture bulk active pharmaceutical ingredients (API) for product development and distribution to DEA registered researchers. If the application for registration is granted, the registrant would not be authorized to conduct other activity under this registration aside from those coincident activities specifically authorized by DEA regulations. DEA will evaluate the application for registration as a bulk manufacturer for compliance with all applicable laws, treaties, and regulations and to ensure adequate safeguards against diversion are in place.

As this applicant has applied to become registered as a bulk manufacturer of marihuana, the application will be evaluated under the criteria of 21 U.S.C. 823(a). DEA will conduct this evaluation in the manner described in the rule published at 85 FR 82333 on December 18, 2020, and reflected in DEA regulations at 21 CFR part 1318.

In accordance with 21 CFR 1301.33(a), DEA is providing notice that on September 27, 2022, Irvine Labs, Inc., 7305 Murdy Circle, Huntington Beach, California 92647–3533, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I

The applicant plans to manufacture bulk APIs for product development and distribution to DEA-registered researchers. No other activities for these drug codes are authorized for this registration.

Kristi O'Malley,

Assistant Administrator.

[FR Doc. 2022–22270 Filed 10–12–22; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1092]

Bulk Manufacturer of Controlled Substances Application: Groff NA Hemplex LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Groff NA Hemplex LLC. 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 December 12, 2022. Such persons may also file a written request for a hearing on the application on or before December 12, 2022.

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 August 18, 2022, Groff NA Hemplex LLC., 100 Redco Avenue, Suite A, Red Lion, Pennsylvania 17356–1436, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I

The company is federally authorized to conduct cultivation activities in order to bulk manufacture the listed controlled substances for internal use and for sale to federally registered research investigators. No other activities for these drug codes are authorized for this registration.

Kristi O'Malley,

Assistant Administrator.

[FR Doc. 2022–22266 Filed 10–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1094]

Importer of Controlled Substances Application: National Center for Natural Products Research

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: National Center for Natural Products Research 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 November 14, 2022. Such persons may also file a written request for a hearing on the application on or before November 14, 2022.

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 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on September 5, 2022, National Center for Natural Products Research, 806 Hathorn Road, 135 Coy Waller Lab, University, Mississippi 38677, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I

The company plans to acquire new genetic materials with improved Cannabinoids for research and manufacturing purposes. 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.

Kristi O'Malley,

Assistant Administrator.

[FR Doc. 2022–22267 Filed 10–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1095]

Importer of Controlled Substances Application: Fisher Clinical Services, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Fisher Clinical Services, 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 November 14, 2022. Such persons may also file a written request for a hearing on the application on or before November 14, 2022.

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 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on September 20, 2022, Fisher Clinical Services, Inc, 700A–C Nestle Way, Breinigsville, Pennsylvania 18031–1522, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I
Psilocybin	7437	I
Methylphenidate	1724	II
Levorphanol	9220	II
Noroxymorphone	9668	II
Tapentadol	9780	II

The company plans to import the listed controlled substance(s) for use in clinical trials only. No other activity 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.

Kristi O'Malley,

Assistant Administrator.

[FR Doc. 2022–22268 Filed 10–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Claim for Reimbursement-Assisted Reemployment

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before November 14, 2022.

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.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: To aid in the employment of Federal employees with disabilities related to an on-the-job injury, employers submit Form CA–2231 to claim reimbursement for wages paid under the assisted reemployment project. This information allows for a prompt decision on payment. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 2, 2022 (87 FR 47232).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OWCP.

Title of Collection: Claim for Reimbursement-Assisted Reemployment.

OMB Control Number: 1240–0018.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 14.

Total Estimated Number of Responses: 56.

Total Estimated Annual Time Burden: 28 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D).)

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2022–22244 Filed 10–12–22; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (22–082)]

NASA Advisory Council; Human Exploration and Operations Committee

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Human Exploration and Operations Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC.

DATES: Monday, October, 31, 2022, 8:20 a.m. to 3:35 p.m. eastern time; and Tuesday, November 1, 2022, 9:30 a.m. to 11:30 a.m. eastern time.

ADDRESSES: Meeting will be virtual only. See Webex and audio dial-in information below under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Dr. Bette Siegel, Designated Federal Officer, Human Exploration and Operations Committee, NASA Headquarters, Washington, DC 20546, via email at *bette.siegel@nasa.gov* or phone at 202–358–2245.

SUPPLEMENTARY INFORMATION: As noted above, this meeting will be open to the public via Webex and telephonically. Webex connectivity information is provided below. For audio, when you join the Webex event, you may use your computer or provide your phone number to receive a call back, otherwise, call the U.S. toll conference number listed.

The event address for October 31, 2022 is: *https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=mee6d4206a5bc57fd5b9c4e6dda53eeb9.*

The event number (access code) is 2761 010 0360, and the event password is YePCgpr*633. To join by phone: +1–929–251–9612 (USA Toll 2), or +1–415–527–5035 (US Toll) global call-in numbers. The event address for November 1, 2022 is: *https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=mee6d4206a5bc57fd5b9c4e6dda53eeb9.*

The event number (access code) is 2761 010 0360, and the event password is YePCgpr*633. To join by phone: +1–929–251–9612 (USA Toll 2), or 1–415–527–5035 (US Toll) global call-in numbers.

The agenda for the meeting includes the following topics:

—Space Operations Mission Directorate (SOMD) Status
—Exploration Systems Mission Directorate (ESDMD) Status
—Artemis I and II
—Artemis III–IV
—International Space Station Update
—Commercial Crew
—Commercial Programs

It is imperative that this meeting be held on this day to accommodate the scheduling priorities of the key participants.

Carol Hamilton,

Acting Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2022–22272 Filed 10–12–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Request for Revision of an Information Collection

AGENCY: National Science Foundation.

ACTION: Revision of an approved information collection and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request a revision for the approved collection of research and development data through the CISE REU Sites and Supplements Evaluation. In accordance with the requirement of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve the revision of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by December 12, 2022 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; telephone 703–292–7556 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Computer and Information Science and Engineering (CISE) Research Experiences for Undergraduates (REU) Sites and Supplements Evaluation.

OMB Approval Number: 3145–0266.

Expiration Date of Current Approval: April 30, 2025.

Type of Request: Revision of an approved information collection.

Abstract: Every year the National Science Foundation (NSF) funds hundreds of Research Experience for Undergraduates (REU) activities through its REU program. The Directorate of Computer and Information Science and Engineering (CISE) is seeking to evaluate the effectiveness of the CISE REU program.

The REU program provides undergraduate students at US higher education institutions with opportunities to work with faculty on a research project. They can take the form of REU Sites or REU Supplements. REU Sites are based on independent proposals to initiate and conduct projects that engage a number of students in research. REU Supplements are included as a component of proposals for new or renewal NSF grants or cooperative agreements or may be requested for ongoing NSF-funded research projects.

By offering this opportunity to undergraduate students, the REU program seeks to expand student participation in all kinds of research—both disciplinary and interdisciplinary—encompassing efforts by individual investigators, groups, centers, national facilities, and others. The REU experience integrates research and education to attract a diverse pool of talented students into careers in science and engineering, including teaching and education research related to science and engineering.

The current data collection project intends to measure the impact of the undergraduate REU Sites and REU Supplements programs sponsored by NSF CISE. The project will conduct online surveys to track NSF CISE REU participants over time—including pre-program, post-program and one-year post-program measurement—alongside two comparison groups: (1) students participating in other undergraduate research, and (2) students who do not participate in research. The researchers will supplement REU participants' survey data with basic REU information and perceptions of impact from NSF

CISE REU Principal Investigators (PI's). The evaluation and research questions guiding this project include the following:

1. Who are the students reached through the NSF REU Program, and how do they compare to students participating in other types of research experiences and to students in the broader CISE community?
2. How do CISE REU Sites and REU Supplements differ from other research experiences (*e.g.,* other REUs, internships, and independent research projects)?
3. To what extent are the goals of the NSF REU Program being met by the individual projects within the program, including recruitment and retention of students in science and engineering fields and increasing diversity in these fields?
4. In what ways does participation in REU Sites, REU Supplements, internships, and/or other independent research experiences impact student attitudes and pathways to CISE careers and other research experiences?
5. In what ways does participation in the REU Sites and REU Supplements impact recruitment and retention of students who are underrepresented in computing?

Ultimately, the findings from this data collection will be used to understand and improve the impact of the CISE REU program, including increasing recruitment and retention in science and engineering and promoting a diverse group of computing/STEM careers.

Use of the information: The information collected through this survey will be used to evaluate the NSF CISE REU Program.

Respondents: There will be four types of respondents: NSF CISE REU Site and Supplement participants, a comparison group of undergraduate students who participate in other, non-NSF REU research experiences, a comparison group of undergraduate students who do not participate in research, and NSF CISE REU PI's.

NSF CISE REU participants will include undergraduate students who participate in REU projects in which the project's Principal Investigator chooses to use NSF-sponsored program evaluation services. Participants from the two comparison groups will be identified and recruited from a pool of undergraduates in computing fields who have participated in a prior survey of the Computing Research Association and have agreed to be contacted for future data collection. The participating NSF CISE REU PI's will also complete PI REU Information Forms at the beginning and end of their REUs.

Estimated number of respondents: The study's data collection activities will occur over a span of 18 months. It is estimated that during this time, there will be approximately 2,000 NSF CISE REU survey respondents, 1,000 comparison group survey respondents, and 200 NSF CISE REU PI respondents, for a total of 3,200 respondents.

Average time per reporting: Each online survey for REU participants and comparison group respondents is designed to be completed in 25 minutes or less. Each REU PI Information Form is designed to be completed in 10 minutes or less.

Frequency: Each NSF CISE REU participant will be asked to complete three surveys: (1) a pre-test before they begin their REU project; (2) a post-test, after their REU ends; and (3) a one-year follow-up survey. Within the data collection timeline for this project, this will allow for one full data collection cohort, plus a subset of Cohort 2 summer REU participants who will only complete a pre-test and a post-test, but no follow-up survey. Each comparison group participant, including both those with a different research experience and those with no research experience, will be asked to complete a pre-test survey and a follow-up survey occurring approximately one year later. There will be one full data collection cycle for comparison group participants. Each NSF CISE REU PI will complete a Time 1 PI REU Information Form before their REU begins and a Time 2 REU PI Information Form when their REU ends. There will be two data collection cycles for the REU PIs.

Estimate burden on the public: For REU participants, in the 18 months of data collection, there will be one cohort of complete data collection (pre-test, post-test, and follow-up) and one cohort with a partial data collection cycle (pre-test and post-test only). Based on an expected 1,000 REU participant respondents per cohort, it is expected that a total of approximately 2,000 REU respondents will complete a 25-minute pre-survey in the project. Of these 2,000 REU participant respondents, we expect that approximately 80%, or 1,600, will complete a 25-minute post-survey. For the follow-up survey, only the 1,000 REU participants from the first year's data collection cohort would be able to complete the survey within the time range of the study. It is expected that approximately 50% of these respondents, or N = 500, will complete a 25-minute one-year follow-up survey. This would result in a total of 4,100 25-minute surveys completed by REU respondents, for a total of 1,708 burden hours for this subset of respondents.

For comparison group participants, there will be just one cohort of data collection (pre-test and follow-up). It is expected that a total of 1,000 of these respondents will complete a 25-minute pre-survey in the project. Of these, approximately 50%, or 500, are expected to complete a 25-minute one-year follow-up survey. This would result in a total of 1,500 surveys completed by comparison group respondents, for a total of 625 burden hours.

For REU PI's, there will be 18 months of complete data collection (Time 1 and Time 2 REU PI Information Forms). Based on an expected 100 NSF CISE REU PI's choosing to receive evaluation services in each of the two years, It is expected that a total of approximately 200 REU PI's will complete both the Time 1 and Time 2 PI REU Information Forms (each one takes 10 minutes to complete). This would result in a total of 400 10-minute forms completed by REU PI's, for a total of 67 burden hours for this subset of respondents.

Together, the total estimated survey burden for the project is 2,400 hours. The calculations are shown in Table 1.

TABLE 1—ESTIMATED SURVEY BURDEN

Category of respondent	Number of cohort 1 responses	Number of cohort 2 responses (partial year)	Participation time	Burden (hours)
REU participant Pre-survey	1,000	1,000	25 mins each	833.33
REU participant Post-survey (80% of original)	800	800	25 mins each	666.67
REU participant Follow-up survey (50% of original)	500	Not conducted	25 mins each	208.33
Comparison participant Pre-survey	1,000	Not conducted	25 mins each	416.67
Comparison participant Follow-up survey (50% of original)	500	Not conducted	25 mins each	208.33

TABLE 1—ESTIMATED SURVEY BURDEN—Continued

Category of respondent	Number of cohort 1 responses	Number of cohort 2 responses (partial year)	Participation time	Burden (hours)
REU PI Time 1 Information Form	100	100	10 mins each	33.33
REU PI Time 2 Information Form	100	100	10 mins each	33.33
Total surveys completed	4,000	2,000	400 @10 min 5600 @ 25 mins	2,400

Comments: Comments are invited on:

1. Whether the proposed collection of information is necessary for the evaluation of the CISE REU Sites and Supplements Program.

2. The accuracy of the NSF's estimate of the burden of the proposed collection of information.

3. Ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: October 7, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–22258 Filed 10–12–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 14, 2022. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314 or *ACApermits@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, at the above address, 703–292–4479.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2023–017

1. *Applicant*: Michael Jackson, National Science Foundation, Office of Polar Programs, 2415 Eisenhower Ave, Alexandria, VA 22314

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Area. The applicant seeks an Antarctic Conservation Act permit authorizing entry into Antarctic Specially Protected Areas (ASPA) in association with oversight and management of U.S. Antarctic Program science projects. The applicant proposes to enter specific ASPAs as needed to conduct site visits of various U.S. science teams working in those ASPAs. The applicant proposes to enter ASPAs on an as needed basis and would be accompanied within the ASPA at all times by the science project participants conducting work in that ASPA. No visits to ASPAs would occur if there is no U.S. Antarctic Program science project active in that ASPA.

Location

ASPA 106—Cape Hallett, Northern Victoria Land, Ross Sea; ASPA 113—Litchfield Island, Arthur Habor, Anvers Island; ASPA 121—Cape Royds, Ross Island; ASPA 124—Cape Crozier, Ross Island; ASPA 128—Western Shore of Admiralty Bay, King George Island; ASPA 131—Canada Glacier, Lake Fryxell, Taylor Valley; ASPA 139—Biscoe Point, Anvers Island; ASPA 149—Cape Shirreff and San Telmo Island, Livingston Island, South Shetland Islands; ASPA 155—Cape Evans, Ross Island; ASPA 157—Backdoor Bay, Cape Royds, Ross Island; ASPA 172—Lower Taylor Glacier and Blood Falls, McMurdo Dry Valleys, Victoria Land; ASPA 173—Cape Washington and Silverfish Bay, Terra Nova Bay, Ross Sea; ASPA 176—Rosenthal Islands, Anvers Island.

Dates of Permitted Activities

November 5, 2022–March 30, 2023.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2022–22166 Filed 10–12–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0201]

Information Collection: Export and Import of Nuclear Equipment and Material; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment; correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice that published in the **Federal Register** (FR) on September 27, 2022, regarding a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. This action is necessary to correct the estimated number of annual responses.

DATES: The correction takes effect on October 13, 2022.

ADDRESSES: Please refer to Docket ID NRC–2021–0201 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0201. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the ''For Further Information Contact'' section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The supporting statement and NRC Forms 830, 830A, 831, 831A, are available in ADAMS under Accession Nos. ML22165A280, ML21340A017, ML21340A019, ML21340A020, and ML21340A103.

• *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. 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 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the FR of September 27, 2022, in FR Doc. 2022–20822, on page 58539, in the third column under the heading ''II. Background,'' second paragraph, item number 7 ''The estimated number of annual responses,'' replace ''3,092.'' with ''3,182.''

Dated: October 6, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022–22167 Filed 10–12–22; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2020–171; MC2023–6 and CP2023–6; MC2023–7 and CP2023–7]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 13, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2020–171; *Filing Title:* Notice of the United States Postal Service of Filing Modification Two to Global Reseller Expedited Package 2 Negotiated Service Agreement; *Filing Acceptance Date:* October 5, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* October 13, 2022.

2. *Docket No(s).:* MC2023–6 and CP2023–6; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 60 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 5, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* October 13, 2022.

3. *Docket No(s).:* MC2023–7 and CP2023–7; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 61 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 5, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* October 13, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–22182 Filed 10–12–22; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2020–172; CP2020–179; CP2020–181; and CP2020–182]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 17, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

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The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2020–172; *Filing Title:* Notice of the United States Postal Service of Filing Modification Two to Global Reseller Expedited Package 2 Negotiated Service Agreement; *Filing Acceptance Date:* October 6, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* October 17, 2022.

2. *Docket No(s).:* CP2020–179; *Filing Title:* Notice of the United States Postal Service of Filing Modification Two to Global Reseller Expedited Package 2 Negotiated Service Agreement; *Filing Acceptance Date:* October 6, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* October 17, 2022.

3. *Docket No(s).:* CP2020–181; *Filing Title:* Notice of the United States Postal Service of Filing Modification Two to Global Reseller Expedited Package 2 Negotiated Service Agreement; *Filing Acceptance Date:* October 6, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* October 17, 2022.

4. *Docket No(s).:* CP2020–182; *Filing Title:* Notice of the United States Postal Service of Filing Modification Two to Global Reseller Expedited Package 2 Negotiated Service Agreement; *Filing Acceptance Date:* October 6, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* October 17, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–22265 Filed 10–12–22; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95994; File No. SR–CboeBZX–2022–049]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 21.17 Concerning Drill-Through Protection and Fat Finger Check

October 6, 2022.

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 October 4, 2022, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX Options'') proposes to amend Rule 21.17. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Rule 21.17. Specifically, the Exchange proposes to amend its drill-through protection mechanism and limit order fat finger check.

The Exchange proposes to amend Rule 21.17(d) to update the drill-through protection mechanism to provide orders with additional execution opportunities. Pursuant to the current drill-through protection, if a buy (sell) order enters the Book at the conclusion of the opening auction process or would execute or post to the Book at the time of order entry, the System executes the order up to a buffer amount (the Exchange determines the buffer amount on a class and premium basis) above (below) the offer (bid) limit of the opening collar [3] or the national best bid (''NBO'') (national best offer (''NBB'')) that existed at the time of order entry, respectively (the ''drill-through price'').[4] The System enters an order (or unexecuted portion) not executed pursuant to the provision in the immediately preceding sentence in the Book with a displayed equal to the drill-through price.[5] The order (or unexecuted portion) rests in the Book at the drill-through price [6] until the earlier to occur of its full execution and the end of the duration of a number of consecutive time periods (the Exchange determines on a class-by-class basis the number of periods, which may not exceed five, and the length of the time period in milliseconds, which may not exceed three seconds).[7]

The proposed rule change amends Rule 21.17(d)(2)(A) to eliminate the concept that there will be a maximum number of time periods and proposes that the order (or unexecuted portion) will rest in the Book at the drill-through price for the duration of consecutive time periods.[8] The proposed rule change makes conforming changes to subparagraph (ii) by deleting references to ''the final period'' and subparagraph (iv) by deleting the reference to ''any remaining time period(s),'' as there will no longer be an Exchange-determined limited number of time periods. Currently, as set forth in current subparagraph (i), the drill-through mechanism will continue until the earlier to occur of the order's full execution and the end of the duration of the Exchange-determined number of time periods. The Exchange proposes to amend subparagraph (iv) to describe when the drill-through process will conclude. Specifically, proposed Rule 21.17(d)(2)(D) provides that the order continues through the process described in subparagraph (ii) (as proposed to be amended) until the earliest of the following to occur: (a) the order fully executes; (b) the User cancels the order; and (c) the order's limit price equals or is less than (if a buy order) or greater than (if a sell order) the drill-through price at any time during application of the drill-through mechanism, in which case the order rests in the Book at its limit price, subject to a User's instructions. In other words, the order will continue through consecutive time periods until it fully executes (unless it is cancelled by the User or reaches its limit price prior to full execution), compared to today when the order will continue through consecutive time periods until it fully executes or reaches the Exchange-determined final time period, at which time the order would be cancelled (unless it reaches its limit price prior to full execution). The Exchange believes eliminating the limit on the number of time periods may increase execution opportunities for limit orders, which will still continue to be bound by their limit prices and protected by the limit order fat finger check.[9]

In addition, the Exchange proposes to amend Rule 21.17(b) to add Limit-on-Close orders [10] to the list of orders to which the limit order fat finger check does not apply. Pursuant to the limit order fat finger check, if a User submits a buy (sell) limit order to the System with a price that is more than a buffer amount above (below) the NBO (NBB), the System cancels or rejects the order.[11] Currently, the simple limit order fat finger check does not apply to bulk messages or Stop-Limit Orders.[12] The Exchange proposes to also not apply the limit order fat finger check to Limit-on-Close orders. The limit order fat finger check applies to orders upon entry to the System. However, the limit price of a Limit-on-Close order is intended to relate to the price at the market close, and thus may intentionally be further away from the NBBO at the time the order is entered. This may cause the order to be inadvertently rejected pursuant to this check. The Exchange believes it is not appropriate for this limit order to be subject to the fat finger check, as the check may inadvertently cause rejections for orders with limit prices that are intentionally ''far away'' from the market at the time of order entry.

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.[13] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [14] 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 rule change is consistent with the Section 6(b)(5) [15] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change to eliminate

[3] *See* Rule 21.7(a) for the definition of Opening Collars.

[4] *See* Rule 21.17(d)(1).

[5] *See* Rule 21.17(d)(2).

[6] The proposed rule change adds ''at the drill-through price'' in the first sentence of subparagraph (d)(2)(A), which is a nonsubstantive change, as it reflects current functionality and is stated in the introductory paragraph to Rule 21.17(d)(2). The proposed rule change merely includes this detail in the next portion of the rule for additional clarity.

[7] *See* Rule 21.17(d)(2)(A).

[8] The Exchange will continue to determine on a class-by-class basis the length of the time periods in milliseconds, which may continue to not exceed three seconds.

[9] If a limit price is ''too far away'' from the market, the order will continue to be subject to the limit order fat finger protection set forth in Rule 21.17(b) and thus will still be subject to protection against a potentially erroneous execution due to an order pricing error upon submission.

[10] A ''Limit-on-Close'' or ''LOC'' order is, for an order so designated, a limit order that may not execute on the Exchange until three minutes prior to market close. At that time, the System enters LOC orders into the Book in time sequence (based on the times at which the System initially received them), where they may be processed in accordance with Rule 21.8. The System cancels an LOC order (or unexecuted portion) that does not execute by the market close. Users may not designate bulk messages as LOC. *See* Rule 21.1(f)(7) (definition of ''Limit-on-Close'' and ''LOC'' order).

[11] Rule 21.17(a).

[12] *Id.*

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *Id.*

the maximum number of time periods for which an order will rest in the Book during application of the drill-through protection mechanism will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors, because it will provide orders with additional execution opportunities. These orders may continue to be available on the Book for execution, at a wider range of prices, as opposed to today when such orders are cancelled after a specified number of time periods (depending on the User's instructions and if the order does not reach its limit price prior to the end of those time periods). The Exchange believes these additional execution opportunities will benefit investors that submit such orders and believes such orders will continue to receive protection against potentially erroneous executions, as the limit order fat finger check will continue to apply to them.

Finally, the Exchange believes excluding Limit-on-Close orders from the limit order fat finger check will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors, because it may reduce inadvertent rejections of Limit-on-Close orders, which may be purposely priced further away from the NBBO at the time of entry, as their limit prices are intended to relate to price at the market close. Therefore, this proposed rule change may increase execution opportunities for Users that submit Limit-on-Close orders.

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 the amended drill-through protection mechanism and limit order fat finger check will continue to apply in the same manner to orders of all Users and may lead to increased execution opportunities. 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 purposes of the Act, because the proposed rule change relates solely to Exchange risk controls and how the Exchange handles orders subject to those risk controls.

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:

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6)[17] 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2022–049 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–CboeBZX–2022–049. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2022–049 and should be submitted on or before November 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Lynn Taylor,

Assistant Secretary.

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[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95995; File No. SR–CboeEDGX–2022–044]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 21.17 Concerning Drill-Through Protection and Fat Finger Check

October 6, 2022.

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 October 4, 2022, Cboe EDGX Exchange, Inc.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''Exchange'' or ''''EDGX'''') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX Options'') proposes to amend Rule 21.17. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 21.17. Specifically, the Exchange proposes to amend its drill-through protection mechanism and limit order fat finger check for both simple and complex orders.

The Exchange proposes to amend Rule 21.17(a)(4) and (b)(6) to update the drill-through protection mechanism for simple and complex orders, respectively, to provide orders with additional execution opportunities. Pursuant to the current simple drill-through protection, if a buy (sell) order enters the Book at the conclusion of the opening auction process or would execute or post to the Book at the time of order entry, the System executes the order up to a buffer amount (the Exchange determines the buffer amount on a class and premium basis) above (below) the offer (bid) limit of the opening collar [3] or the national best bid (''NBO'') (national best offer (''NBB'')) that existed at the time of order entry, respectively (the ''drill-through price'').[4] The System enters an order (or unexecuted portion) not executed pursuant to the provision in the immediately preceding sentence in the Book with a displayed equal to the drill-through price.[5] The order (or unexecuted portion) rests in the Book at the drill-through price [6] until the earlier to occur of its full execution and the end of the duration of a number of consecutive time periods (the Exchange determines on a class-by-class basis the number of periods, which may not exceed five, and the length of the time period in milliseconds, which may not exceed three seconds).[7]

The proposed rule change amends Rule 21.17(a)(4)(B)(i) to eliminate the concept that there will be a maximum number of time periods and proposes that the order (or unexecuted portion) will rest in the Book at the drill-through price for the duration of consecutive time periods.[8] The proposed rule change makes conforming changes to subparagraph (ii) by deleting references to ''the final period'' and subparagraph (iv) by deleting the reference to ''any remaining time period(s),'' as there will no longer be an Exchange-determined limited number of time periods. Currently, as set forth in current subparagraph (i), the drill-through mechanism will continue until the earlier to occur of the order's full execution and the end of the duration of the Exchange-determined number of time periods. The Exchange proposes to amend subparagraph (iv) to describe when the drill-through process will conclude. Specifically, proposed Rule 21.17(a)(4)(B)(iv) provides that the order continues through the process described in subparagraph (ii) (as proposed to be amended) until the earliest of the following to occur: (a) the order fully executes; (b) the User cancels the order; and (c) the order's limit price equals or is less than (if a buy order) or greater than (if a sell order) the drill-through price at any time during application of the drill-through mechanism, in which case the order rests in the Book at its limit price, subject to a User's instructions. In other words, the order will continue through consecutive time periods until it fully executes (unless it is cancelled by the User or reaches its limit price prior to full execution), compared to today when the order will continue through consecutive time periods until it fully executes or reaches the Exchange-determined final time period, at which time the order would be cancelled (unless it reaches its limit price prior to full execution). The Exchange believes eliminating the limit on the number of time periods may increase execution opportunities for limit orders, which will still continue to be bound by their limit prices and protected by the limit order fat finger check.[9]

The proposed rule change makes a similar change to the drill-through protection mechanism for complex orders. Specifically, the proposed rule change eliminates the concept that, for complex orders for which the user does not establish a buffer amount (and instead the Exchange-determined default buffer amount applies),[10] there will be a maximum number of time periods and proposes that the complex order (or unexecuted portion) will rest in the Book at the drill-through price for the duration of consecutive time periods.[11] Currently, similar to the drill-through protection mechanism for simple orders (as described above), if a user enters a buy (sell) complex order into the System (and does not enter its own buffer amount), the System executes the order [12] up to a buffer amount above (below) the Synthetic National Best Offer (''SNBO'') (Synthetic National Best Bid (''SNBB'')) that existed at the time of entry (the ''drill-through price'') or initiates a complex order auction (''COA'') at the drill-through price if the order would initiate

[3] *See* Rule 21.7(a) for the definition of Opening Collars.

[4] *See* Rule 21.17(a)(4)(A).

[5] *See* Rule 21.17(a)(4)(B).

[6] The proposed rule change adds ''at the drill-through price'' in the first sentence of subparagraph (a)(1)(B)(i), [sic] which is a nonsubstantive change, as it reflects current functionality and is stated in the introductory paragraph to Rule 21.17(a)(1)(B). [sic] The proposed rule change merely includes this detail in the next portion of the rule for additional clarity.

[7] *See* Rule 21.17(a)(4)(B)(i).

[8] The Exchange will continue to determine on a class-by-class basis the length of the time periods in milliseconds, which may continue to not exceed three seconds.

[9] If a limit price is ''too far away'' from the market, the order will continue to be subject to the limit order fat finger protection set forth in Rule 21.17(c)(1) and thus will still be subject to protection against a potentially erroneous execution due to an order pricing error upon submission.

[10] *See* Rule 21.17(b)(6)(A).

[11] *See* proposed Rule 21.17(b)(6)(B). The proposed rule change has no impact on how the drill-through protection mechanism applies to a complex order for which the inputting user establishes a buffer amount, as in that situation, there is only a single time period pursuant to the current rule (which will continue to be the case).

[12] Executions occur pursuant to Rule 21.20(e).

a COA.[13] For complex orders for which the user did not establish a buffer amount, the complex order (or unexecuted portion) rests in the COB with a displayed price equal to the drill-through price until the earlier to occur of the complex order's full execution and the end of the duration of a number of time periods (the Exchange determines on a class-by-class basis the number of periods, which may not exceed five, and the length of the time period in milliseconds, which may not exceed three seconds). Following the end of each period prior to the final period, the System adds (if a buy order) or subtracts (if a sell order) one buffer amount to the drill-through price displayed during the immediately preceding period (each new price becomes the ''drill-through price''). The complex order (or unexecuted portion) rests in the COB at that new drill-through price during the subsequent period. Following the end of the final period, the System cancels, the complex order (or unexecuted portion) not executed during any time period.[14]

The proposed rule change amends Rule 21.17(b)(6)(B)(i) and (ii) to eliminate the concept that there will be a maximum number of time periods and proposes that the order (or unexecuted portion) will rest in the COB at the drill-through price for the duration of consecutive time periods when a User does not establish its own buffer amount.[15] The proposed rule change makes conforming changes to current subparagraphs (i), (ii), and (iv) (proposed subparagraphs (ii) and (iii)) by deleting references to ''the final period'' and deleting the reference to ''any remaining time period(s),'' as there will no longer be an Exchange-determined limited number of time periods. Currently, as set forth in current subparagraphs (i), (ii), and (iv), if the inputting User does not establish a buffer amount for the complex order, the drill-through mechanism will continue until the earlier to occur of the order's full execution and the end of the duration of the Exchange-determined number of time periods (unless it reaches its limit price prior to full execution), at which time the order would be cancelled. The Exchange proposes to add to the end of proposed subparagraph (ii) when the drill-through process will conclude and what happens at that time for complex orders for which the user did not establish a buffer amount. Specifically, proposed Rule 21.17(b)(6)(B)(ii) provides that the complex order continues through the process described in proposed subparagraph (ii) until the earliest of the following to occur: (a) the complex order fully executes; (b) the User cancels the order; and (c) the complex order's limit price equals or is less than (if a buy order) or greater than (if a sell order) the drill-through price at any time during application of the drill-through mechanism, in which case the complex order rests in the COB at its limit price, subject to a User's instructions.[16] In other words, a complex order for which the User did not establish a buffer amount will continue through consecutive time periods until it fully executes (or is cancelled or reaches its limit price), compared to today when the complex order will continue through consecutive time periods until it fully executes or reaches the Exchange-determined final time period, at which time the order would be cancelled (unless it reaches its limit price, as described in current subparagraph (iv)). The Exchange believes eliminating the limit on the number of time periods may increase execution opportunities for limit orders, which will still continue to be bound by their limit prices and protected by the limit order fat finger check.[17]

The proposed rule change also makes certain nonsubstantive changes to Rule 21.17(b)(6). Specifically, the proposed rule change moves all provisions specific to the application of the drill-through mechanism if the user establishes a buffer amount into Rule 21.17(b)(6)(B)(i) and moves all provisions specific to the application of the drill-through mechanism if the user does not establish a buffer amount into Rule 21.17(b)(6)(B)(ii). This includes incorporating into each of proposed subparagraphs (i) and (ii) how the System handles a complex order if its limit price equals or less than (if a buy order) or greater than (if a sell order) the drill-through price, as described in current subparagraph (iv). As a result, the proposed rule change deletes current subparagraph (iv). Additionally, the proposed rule change moves certain language regarding what happens if the SBBO changes during any period, which applies to all complex orders subject to the drill-through protection mechanism, regardless of whether the user input its own buffer amount, to proposed subparagraph (iii) from current subparagraph (ii) and correspondingly changes current subparagraph (iii) to proposed subparagraph (iv). The proposed rule change makes a nonsubstantive change to the beginning of proposed subparagraph (iii) by changing ''However'' to ''Notwithstanding the above,'' as the Exchange believes that phrase is more appropriate.

In addition, the Exchange proposes to amend Rule 21.17(a)(2) and (b)(7) to add Limit-on-Close orders[18] to the list of orders to which the limit order fat finger check (for simple and complex orders, respectively) does not apply. Pursuant to the limit order fat finger check, if a User submits a buy (sell) limit order to the System with a price that is more than a buffer amount[19] above (below) the NBO (NBB) for simple orders or the SNBO (SNBB) for complex orders, the System cancels or rejects the order.[20] Currently, the simple limit order fat finger check does not apply to bulk messages.[21] The Exchange proposes to also not apply the limit order fat finger check to Limit-on-Close orders (simple and complex). The limit order fat finger check applies to orders upon entry to the System. However, the limit price of a Limit-on-Close order is intended to relate to the price at the market close, and thus may intentionally be further away from the NBBO or SNBBO, as applicable, at the time the order is entered. This may cause the order to be inadvertently rejected pursuant to this check. The Exchange believes it is not

[13] Unlike the simple order drill-through protection mechanism, the complex order drill-through protection mechanism permits users to establish a buffer amount different than the Exchange-determined default buffer amount. *See* Rule 21.17(b)(6)(A). A description of COAs is located in Rule 21.20(d).

[14] *See* current Rule 21.17(b)(6)(B)(i) and (ii). As set forth in current subparagraph (iv), if the complex order's limit price is reached during the application of the drill-through mechanism, the order will rest in the COB at its limit price.

[15] The Exchange will continue to determine on a class-by-class basis the length of the time periods in milliseconds, which may continue to not exceed three seconds.

[16] Proposed clause (c) is applicable today and located in current subparagraph (iv). As described below, the proposed rule change merely moves this provision from current subparagraph (iv) to proposed subparagraph (ii).

[17] If a limit price is ''too far away'' from the market, the order will continue to be subject to the limit order fat finger protection set forth in Rule 21.17(a)(2) and (b)(7) and thus will still be subject to protection against a potentially erroneous execution due to an order pricing error upon submission.

[18] A ''Limit-on-Close'' or ''LOC'' order is, for an order so designated, a limit order that may not execute on the Exchange until three minutes prior to market close. At that time, the System enters LOC orders into the Book in time sequence (based on the times at which the System initially received them), where they may be processed in accordance with Rule 21.8. The System cancels an LOC order (or unexecuted portion) that does not execute by the market close. Users may not designate bulk messages as LOC. *See* Rule 21.1(f)(7) (definition of ''Limit-on-Close'' and ''LOC'' order).

[19] The Exchange determines a default buffer amount on a class-by-class basis; however, for complex orders, a User may establish a higher or lower amount than the Exchange default for a class.

[20] Rule 21.17(a)(2).

[21] *Id.*

appropriate for this limit order to be subject to the fat finger check, as the check may inadvertently cause rejections for orders with limit prices that are intentionally ''far away'' from the market at the time of order entry.

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.[22] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[23] 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 rule change is consistent with the Section 6(b)(5)[24] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change to eliminate the maximum number of time periods for which a simple or complex order will rest in the Book or COB, respectively, during application of the drill-through protection mechanism will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors, because it will provide simple and complex orders with additional execution opportunities. These orders may continue to be available on the Book or COB, as applicable, for execution, at a wider range of prices, as opposed to today when such orders are cancelled after a specified number of time periods (depending on the User's instructions and if the order does not reach its limit price prior to the end of those time periods). The Exchange believes these additional execution opportunities will benefit investors that submit such orders and believes such orders will continue to receive protection against potentially erroneous executions, as the limit order fat finger check will continue to apply to them.

The Exchange believes the proposed nonsubstantive rule changes to the complex order drill-through protection mechanism will protect investors and the public interest, because these changes improve the organization of this rule's provisions by grouping all provisions that apply when a User establishes its own buffer and all provisions that apply when a User does not establish its own buffer, eliminating potential confusion.

Finally, the Exchange believes excluding Limit-on-Close orders from the limit order fat finger check will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors, because it may reduce inadvertent rejections of Limit-on-Close orders, which may be purposely priced further away from the NBBO or SNBBO, as applicable, at the time of entry, as their limit prices are intended to relate to price at the market close. Therefore, this proposed rule change may increase execution opportunities for Users that submit Limit-on-Close orders.

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 the amended drill-through protection mechanism (for both simple and complex orders) and limit order fat finger check will continue to apply in the same manner to orders of all Users and may lead to increased execution opportunities. 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 purposes of the Act, because the proposed rule change relates solely to Exchange risk controls and how the Exchange handles orders subject to those risk controls.

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:

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. 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[25] and Rule 19b–4(f)(6)[26] 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 (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2022–044 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–CboeEDGX–2022–044. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] *Id.*

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(6).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2022–044 and should be submitted on or before November 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96001; File No. SR–CBOE–2022–049]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Facility Fees Section in the Fees Schedule in Connection With the Exchange's New Trading Floor

October 6, 2022.

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 September 26, 2022, 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 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 amend its Facility Fees section in the Fees Schedule in connection with the Exchange's new trading floor. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule in connection with the opening of a new trading floor.[4] Until June 6, 2022, the Exchange conducted open outcry trading at 400 S. LaSalle, Chicago, Illinois (''LaSalle trading floor''). On June 6, 2022, the Exchange moved its open outcry trading operations to a new trading floor located at 141 W Jackson Blvd., Chicago, Illinois (''CBOT Building''). As a result of this transition, certain infrastructure and technology on the LaSalle trading floor were rendered obsolete, and the new trading floor in the CBOT Building has new infrastructure and offers new technology. Accordingly, the Exchange proposes to adopt new, and/or update current, facility fees with respect to the new trading floor, as well as eliminate obsolete facility fees that are only applicable to the Exchange's LaSalle facility and trading floor which is no longer in use as of June 6, 2022.

Booth Fees

Under the current Fees Schedule, the Exchange assesses monthly fees for ''standard Booths'', which refers to a portion of designated space on the trading floor of the Exchange adjacent to or in particular trading crowds, which may be occupied by a Trading Permit Holder (''TPH''), clerks, runners, or other support staff for operational and other business-related activities. The Exchange assesses a monthly fee of $195 for standard Booths located along the perimeter of the trading floor, and $550 for standard Booths located in the OEX, Dow Jones, MNX and VIX trading crowds. The Exchange also assesses monthly fees for ''nonstandard Booths'', which refers to space on the trading floor of the Exchange that is set off from a trading crowd, which may be rented by a TPH for whatever support, office, back-office, or any other business-related activities for which the TPH may choose to use the space. A TPH that rents non-standard booth space on the floor of the Exchange is subject to a base non-standard booth rental fee of $1,250 per month in addition to a square footage fee of $1.70 per square foot per month based on the size of the TPH's non-standard booth. The Exchange proposes to modify and simplify its fees assessed for booth rentals. First, the Exchange proposes to eliminate the distinction between standard and non-standard Booths. The Exchange also proposes to adopt a tiered pricing schedule for Booths based on the number of Booths rented by a TPH. Particularly, the Exchange proposes to adopt the following fees for Booths that are set off from a trading crowd:

Quantity of booths	Monthly fee
1–2	$400
3–6	300
7–10	200
11 or more	100

The proposed tiered pricing provides discounted pricing for additional Booths. For example, if a TPH rented 4 Booths, the TPH would be assessed $1,400 a month (2 Booths at $400 and 2 Booths at $300). The Exchange also proposes to adopt a monthly fee of $750 per booth for any booth located in a

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed the proposed fee changes on June 1, 2022 (SR–CBOE–2022–026). On June 10, 2022, the Exchange withdrew that filing and submitted SR–CBOE–2022–029. On August 5, 2022, the Exchange withdrew that filing and submitted SR–CBOE–2022–042. The Exchange notes no comment letters were received for any previous filing. On September 26, 2022, the Exchange withdrew that filing and submitted this filing.

trading crowd. The Booth Pass-Through Fee would remain unchanged.[5] The Exchange notes that use of Booths, whether or located away from or in a trading crowd are optional and not necessary in order to conduct open outcry trading on the trading floor. Booth spaces are also uniform and nearly identical in size. The Exchange also notes that at this time, the Exchange has ample space on its new trading floor for booth space.

Policy

The Exchange also proposes to update the Exchange's policy (''Policy'') regarding the rental and use of booth space on its trading floor by TPH organizations. The Exchange memorialized the Policy and filed it with the Commission in 1994.[6] The Exchange proposes to update the Policy in a few respects. First, the Exchange proposes to change references to ''Chicago Board Options Exchange, Incorporated'' and ''CBOE'' to ''Cboe Exchange, Inc.,'' and ''Cboe Options'', respectively to reflect the Exchange's current legal name which has been updated since the last update to the Policy. The Exchange also proposes to update the rule reference relating to the Appeals process from Chapter ''19'' to Chapter ''15'' to reflect recent updates to the Exchange's rulebook.

The Exchange notes the Policy includes a section that sets forth the requirement that all TPH organizations renting Booths execute a ''Trading Floor Booth Rental Agreement'' (hereinafter, ''Agreement'') which sets forth the contractual terms, conditions and restrictions governing rental and use of Booths by TPH organizations.[7] A copy of the Agreement was included in the Exchange's 1994 rule filing noted above for the Commission's information.[8] The Agreement specifically sets forth the details of the parties' contractual relationship regarding rental and use of the Booths. Among other provisions, the Agreement includes specific provisions delineating the termination rights of both the TPH organization and the Exchange and sets forth a procedure for adding Booths to and deleting Booths from the Agreement. The Agreement also spells out requirements respecting the TPH's use of the Booths, such as those governing the installation of equipment, the conduct of business, and access of persons to the Booths.

The Exchange has updated the Agreement (which is now referred to as the Agreement for ''standard Booths''). In 2012, the Exchange also created a separate form of the Agreement for non-standard Booths.[9] In connection with the proposal to eliminate non-standard Booths, the Exchange proposes to eliminate use of that agreement. A copy of the standard form of Agreement is included with this filing in Exhibit 3. The Exchange proposes to update this section of the Policy to eliminate references to the non-standard booth agreement. The Exchange also proposes to update the Agreement to (i) change references to ''Chicago Board Options Exchange, Incorporated'' and ''CBOE'' to ''Cboe Exchange, Inc.,'' and ''Cboe Options'', respectively; (ii) update the link to where the Cboe Options Fees Schedule can be found; (iii) eliminate the requirement for Cboe to provide TPH organizations with a copy of TPH Organization's current booth assignments, as it no longer believes such record is necessary or desired by TPHs; and (iv) eliminate Section 13, which prohibits TPH Organizations leasing SPX arbitrage Booths from installing data equipment in such Booths, as the Exchange does not intend to provide such Booths and to the extent it determines to do so in the future does not anticipate maintaining such prohibition. The Exchange will disseminate the updated Policy and forms of the Agreement to TPHs by posting them on the Trading Permit Holder portion of the Cboe website.

Line to Cboe Floor Network

On the LaSalle trading floor, TPHs used various lines and telecommunications (''telco'') circuits to connect to the trading floor. Independent wiring had to be used for each line or telco circuit, which means firms may have needed to relocate their lines or telco circuits if they moved into, or relocated to, a new trading space or Booth. These telco circuits are also on a per device basis. The new trading floor utilizes a single floor network (*i.e.,* ''Cboe Floor Network'') for TPHs' devices consisting of both wired jacks and wireless network access located at kiosks, in trading pits, and in Booths throughout the new trading floor. As such, unlike the LaSalle trading floor infrastructure, TPHs do not need to order lines from the Exchange to specific locations on the floor. Rather, a TPH only needs to order one Ethernet port (''Line'') (or a pair for redundancy) to connect to the Cboe Floor Network and will be able to connect their devices to the Exchange's network anywhere on the trading floor through wired jack ports or the wireless network. Additionally, firms no longer need to provide network equipment to support dedicated lines to the floor, as on the new trading floor the Exchange provides the network switches and local area network (LAN) lines for all firms.

The Exchange believes the new trading floor will provide TPHs more flexibility to move and relocate as needed, as compared to the LaSalle trading floor. If a TPH wished to relocate trading spaces or trading booths on the LaSalle trading floor, it could have triggered installation, relocation and removal of various lines and circuits, which subsequently triggered various installation, relocation and removal fees.[10] For example, on the LaSalle trading floor, if a Market-Maker needed to move to a new trading space, it may have needed to relocate the lines or circuits from its current space to the new space and would be subject to relocation fees such as $129 relocation fee to relocate any Exchangefones and $200 relocation fee for relocation of any Market-Maker Handheld Terminal.[11] As another example, if a TPH needed to relocate to a new Booth, it may have been subject to a relocation fee of $625 for relocating lines from the trading floor to local carriers or the Communications Center.[12] Since all network access is wireless or plug and play at any location on the new trading floor, the new infrastructure eliminates the need for installation of multiple lines, as well as relocation and removal of connectivity lines to devices and also renders the following Lines fees (including fees relating to installation, relocation and removal) obsolete: Intra-Floor, Voice Circuits, Appearances, Data Circuits at Local Carrier, and Data Circuits at In-House Frame. The Exchange therefore proposes to instead adopt a monthly fee of $350 per Line and notes it does not expect TPHs to purchase more than one Line and one redundant Line. The Exchange also proposes to adopt a one-time $500

[5] Pursuant to the Booth Pass-Through Fee, TPHs bear responsibility for all costs associated with any modifications and alterations to any trading floor Booths leased by the TPH (or TPH organization) and must reimburse the Exchange for all costs incurred in connection therewith.

[6] *See* Securities Exchange Act Release No. 33972 (April 28, 1994), 59 FR 23242 (May 5, 1994).

[7] The Agreement is non-negotiable and its terms are the same for every TPH organization.

[8] *See* Securities Exchange Act Release No. 33972 (April 28, 1994), 59 FR 23242 (May 5, 1994).

[9] *See* Securities Exchange Act Release No. 66727 (April 9, 2012), 77 FR 21134 (April 3, 2012) (SR–CBOE–2012–025).

[10] *See* Cboe Options Fees Schedule, Lines Table.

[11] *See* Cboe Options Fees Schedule, Communications Table, Exchangefone and Miscellaneous Table, Market-Maker Handheld Terminal Tethering Services.

[12] *See* Cboe Options Fees Schedule, Lines Table, Lines Direct from Local Carrier to Trading Floor and Lines Between Communication Center and Trading Floor.

installation fee for the installation of the line to the Cboe Floor Network, which is a pass-through fee of what the Exchange is assessed by the building within which the new trading floor resides (*i.e.,* the CBOT Building). The proposed $500 installation fee would include installation of a redundant line at no additional cost and allows the Exchange to recoup the costs it incurs from third-party vendors for the installation of the Lines.

Co-Location and Meet-Me-Room

For a monthly fee, the Exchange historically has provided TPHs (and third-party vendors, collectively ''firms'') with cabinet space in its building for placement of network and server hardware. Particularly, TPHs are charged a monthly fee of $50 per ''U'' of shelf space [13] and Sponsored Users [14] are assessed a monthly fee of $100 per ''U''. Fees are charged in increments of 4 ''U'' (*i.e.,* a minimum of $200 per 4 ''U'' is charged or, for Sponsored Users, a minimum of $400 per 4 ''U'' is charged). A firm also receives power, cooling, security and assistance with installation and connection of the equipment to the Exchange's servers, at no additional charge.

The Exchange will continue to provide firms cabinet space in the new facility (''Meet-me-Room'') for placement of network and server hardware at the same rate of $50 per ''U'', billed in increments of 4 ''U''. The Exchange proposes however to eliminate the separate rate for Co-Location of Equipment Fee for Sponsored Users, as the Exchange does not currently have any Sponsored Users, nor has it had any Sponsored users in several years. As such, the Exchange no longer believes its necessary to maintain a separate rate for Sponsored Users.[15] The Exchange also proposes to relocate the ''Co-Location'' section in the Fees Schedule to immediately follow the ''Lines'' section in the Fees Schedule, as it believes such fees are more appropriately grouped together and will make the Fees Schedule easier to read and follow. The Exchange also believes it will make the Fees Schedule easier to read and follow if it reflects the rate of the minimum increment charged, instead of a broken-out rate that can never be assessed. As noted above, the Fees Schedule currently sets forth the monthly rate per ''U'' (*i.e.,* ''$50 per ''U''), even though it states it only charges in increments of 4 ''U'' (*i.e.,* fee is really $200 per 4 ''U''). The Exchange will continue to charge in increments of 4 ''U'' in the new facility and therefore proposes to update the fee language in the relocated line item to reflect the rate for the minimum increment of 4 ''U''. Despite this language change, the Exchange reiterates it is not changing the amount assessed for the Co-Location of Equipment Fee. Within the new Meet-me-Room however, the Exchange is proposing to limit firms to 8 ''U'' in order to ensure all firms can be accommodated in the Meet-me-Room.

The Exchange next proposes to adopt monthly and installation fees for cross connects, including telecommunication (*i.e.,* telco) and Cboe Floor Network cross connects,[16] within the Meet-Me-Room. Particularly, each cross connect will be subject to a $25 per month per cross connect fee, which is a pass-through fee of what the Exchange is assessed by the CBOT Building for each cross connect. Additionally, firms will be subject to a one-time $500 installation fee for each cross connection, which is also a pass-through fee of what the Exchange is assessed by the CBOT Building. The Exchange notes that at the LaSalle trading floor, the Exchange assessed third-party vendors a $50 per month fee for ''Data Circuits from Local Carrier to Equipment Shelf'' which offers similar cross-connectivity from Local Carriers (telco providers) to a firm's equipment shelf in the current meet-me-room. The Exchange no longer uses data circuits from Local Carriers to equipment on the shelf and proposes to therefore eliminate this fee (currently under the Vendor Services section) from the Fee Schedule.

The Exchange next proposes to adopt a fee relating to accessing the Meet-me-Room. Particularly, in order for a firm to access the Meet-me-Room (*e.g.,* if they need technical support), they must request access. The Exchange notes that because the Meet-me-Room now resides in a building not owned by the Exchange, the Exchange is assessed a fee by a third-party (CBOT Building) for providing firms access to the Meet-me-Room. The Exchange notes that the CBOT Building requires individuals accessing the Meet-me-Room to be accompanied by CBOT Building representatives and therefore assesses a fee associated with the visit. Exchange staff personnel are also present for each visit. The Exchange therefore proposes to adopt a fee to recoup fees it is billed by the CBOT Building for providing this access (''Cboe Datacenter Services''). Specifically, the Exchange proposes to assess a fee of $100 per half-hour (with a 1 hour minimum required). The Exchange notes that it waived this fee for the month of June 2022.[17] Particularly, the Exchange believed that firms may have had a greater need during the first month of operations on the new trading floor to visit the Meet-me-Room. The waiver therefore allowed firms to respond to any potential issues that may have arisen in the Meet-me-Room during the first month at no additional cost. The Exchange anticipates that firm requests for this type of access will be infrequent going forward. The Exchange also notes that it similarly assessed fees for various third-party technical support or vendor services on the LaSalle trading floor.[18] However, these services are no longer available in the new trading floor and the Exchange therefore proposes to eliminate the following corresponding fees: Technical Support Outside Normal Hours, IPC (vendor) Time & Material, IPC (vendor) Time & Material Overtime, After Hours Technician Service, Market-Maker Handheld Tethering Services, and Market-Maker Handheld Tethering Services For Indexes.

Trading Floor Device Fees

The Exchange currently lists various fees under the Trading Floor Terminal Rentals section of the Facility Fees table.[19] For example, TPHs are currently assessed $125 per month for ''PAR Workstations'' to help offset hardware costs incurred by the Exchange in making PAR workstations available to TPHs. A PAR (Public Automated Routing System) Workstation is an Exchange-provided order management tool for use on the Exchange's trading floor by TPHs and PAR Officials to manually handle orders pursuant to the Rules and facilitate open outcry trading. Access to PAR is only available on Exchange-provided tablets (currently Surface Tablets) and the current

[13] The term ''U'' is used to indicate an equipment unit 1.75'' high with a maximum power of 125 watts per U space. Per the Fees Schedule, Co-Location fees are charged in increments of 4 ''U'' (7 inches).

[14] *See* Cboe Options Rule 3.60.

[15] To the extent the Exchange has Sponsored Users in the future, such participants will be assessed the same rate as all other firms (*i.e.,* $50 per ''U'', billed in minimum increments of 4 ''U'').

[16] The Exchange offers fiber cross connect. The cross connects may run between a firm's hardware to a third-party telecommunications service or the Cboe Floor Network switches that will service the trading floor.

[17] *See* Securities Exchange Act Release No. 95155 (June 24, 2022), 87 FR 39145 (June 30, 2022) (SR–CBOE–2022–029).

[18] *See* Cboe Options Fees Schedule, Vendor Services, Technical Support Outside Normal Hours, and Miscellaneous, IPC (vendor) Time & Material, IPC (vendor) Time & Material Overtime, After Hours Technician Service, Market-Maker Handheld Tethering Services, and Market-Maker Handheld Tethering Services For Indexes.

[19] The Exchange proposes to rename this section ''Trading Floor Device Fees''.

monthly fee covers both the Exchange-provided tablet and PAR access. In connection with the transition to the new trading floor, the Exchange proposes to modify the way it assesses fees for use of PAR[20] and also adopt fees for non-Exchange provided tablets that connect to the Exchange's network. Particularly, the Exchange proposes to adopt a separate monthly Exchange Tablet fee of $140 for any tablet provided by the Exchange and a separate monthly fee of $45 to access PAR. TPHs will continue to utilize PAR on the new trading floor, which will continue to only be available on Exchange-provided tablets. Exchange tablets used for PAR may also be used for access to Silexx.[21]

The Exchange also proposes to adopt a separate Exchange Tablet fee as TPHs will have the option of using Exchange-provided tablets for Cloud9, which is the new telecommunication system the Exchange offers on the new trading floor.[22] The Exchange notes that TPHs have the option of using their own tablet to access Cloud9 in lieu of using an Exchange-provided tablet. Such tablets would be subject to the ''TPH-Owned Device Authentication Fee'' described more fully below.

On the new trading floor, TPHs will be able to use a variety of devices such as tablets, laptops, Market-Maker handheld devices, printers, and phone systems. TPHs will be able to connect these devices to the Exchange's network anywhere on the trading floor through wired jack ports or the wireless network on the trading floor, as long as they are onboarded to the Cboe Network Authentication System. The Exchange proposes to assess a fee for TPH-owned devices that connect to the Exchange's network on the new trading floor (''TPH-Owned Device Authentication Fee''). Particularly, the Exchange proposes to assess a fee of $100 per authenticated connection (*i.e.,* when a device connects to the wired jack and/or wireless network on the trading floor).[23] The proposed fee will be based on the maximum number of concurrent authenticated connections made during market hours during the calendar month. As discussed above, the Exchange believes the new trading floor provides TPHs more flexibility to move and relocate any of their devices by eliminating the need for installation, relocation and removal of connectivity lines to devices. Consequently, corresponding monthly, installation, relocation and removal fees will also be eliminated on the new trading floor.

Replacement Fees

The Exchange currently assesses fees related for certain hardware that needs to be replaced because of loss or because of non-normal wear and tear. Particularly, the Exchange assesses the following replacement fees:

Replacement Tablet	$1,300 each.
Replacement Stylus Pen	$100 each.
Replacement Chargers	$75 each.
Replacement Adapters and Protective Cases.	$50 each.

The Exchange proposes to maintain these replacement fees on the new trading floor. However, the Exchange proposes to increase the fee to replace a table from $1,300 per tablet to $1,400 per tablet to reflect increased costs to the Exchange. The Exchange also proposes to adopt a new replacement fee for lost Access Badges at the rate of $100 per badge in order to encourage TPHs to hold onto their badges and not misplace them.

Obsolete Fees

The Exchange next proposes to eliminate fees assessed for technology and infrastructure and related services that will be rendered obsolete upon the transition to the new trading floor. Particularly, the Exchange proposes to eliminate the following fees that have not otherwise been discussed above:

Description	Fee
Arbitrage Phone Positions	$550/month.
HP Laser Printer Paper	$5.00 per packet of 500 sheets.
Zebra Printer Papers	$19.50 per roll.
Zebra Printer Ink	$19.50 per roll.
Forms Storage	$11.
Exchangefone	$935/installation; $129/relocation; $100/removal.
Exchangefone—Maintenance	$57/month.
Exchangefone—With Recorded Coupler Between Booths	$126/relocation.
Exchangefone—Within Booth	$25/relocation.
Single Line—Maintenance	$11.50/month.
Phone Rentals—Monthly Fee	$110/month.
Phone Rentals—Replacement Repairs	cost.
Lines—Intra Floor	$57.75/per month.
Lines—Voice Circuits	$16/month; $52.50/installation; $36.75/removal.
New Circuits—First	$120/installation; $50/removal.
New Circuits—@Additional	$18/installation; $18/removal.
Existing Line Appearance—First	$50/installation; $25/removal.
Existing Line Appearance—A Additional	$18/installation: $18/removal.
Data Circuits (DC) at Local Carrier (entrance)	$16/month; $52.50/installation; $36.75 removal.
DC @In-House Frame—Lines between Local Carrier and Comms Center	$12.75/month; $550/installation.
DC @In-House Frame—Lines Between Comms Center and Trading Floor	$12.75/month; $725/installation; $625/relocation.
DC @In-House Frame—Lines Direct from Local Carrier to Trading Floor	$12.75/month; $725/installation; $625/relocation.
Shelf for Equipment	$100/month.
Lines from Equipment to Floor	$50/month.

[20] The Exchange proposes to replace the reference to ''PAR Workstation'' to ''PAR Access''. Particularly, the current version of PAR is no longer a physical touch screen terminal (*i.e.,* workstation) but an order management tool that can be accessed on a tablet such as a Surface.

[21] Silexx is a User-optional order entry and management trading platform. The Silexx platform consists of a ''front-end'' order entry and management trading platform (also referred to as the ''Silexx terminal'') for listed stocks and options that supports both simple and complex orders, and a ''back-end'' platform which provides a connection to the infrastructure network. The Silexx front-end and back-end platforms are a software application that is installed locally on a user's laptop.

[22] Cloud9 is the voice communication solution for the new trading floor. Cloud9 is a VoIP cloud-based service offering a traditional turret, the Cloud Hub. The Cloud Hub will be provided by Cboe and will need to connect to a laptop or device provided either by the TPH or by Cboe. TPHs may not use the same Exchange Tablet for both PAR and Cloud9.

[23] For example, a TPH that connects to Cloud9 using its own laptop would be assessed $100 per month for that connection. If that same TPH chooses to connect an additional laptop and a printer to the network, that TPH will be assessed a total of $300 per month (*i.e.,* $100 for each of the tablet used for Cloud9, the laptop and the printer).

Description	Fee
Handsets	$79/installation.
Headset Jack	$131/installation; $58 relocation; $28/removal.
Recorder Coupler	$150 new/$50 existing installation; $25/relocation; $25/removal.
Thomson/Other (Basic Service)	$425/month.
Satellite TV	$50/month.
Cboe Options Trading Floor Terminal	$250/month; $175/installation; $225 relocation; $125/removal.
Trading Floor Printer Maintenance[24]	$75/month.

The Exchange also proposes to eliminate all PULSe Workstation fees as PULSe was decommissioned in January 2021, but the Exchange inadvertently did not delete references to PULSe-related fees at that time.

Temporary Fees

In June 2020, the Exchange adopted Footnote 24 of the Fees Schedule to govern pricing changes that would apply for the duration of time the Exchange trading floor was being operated in a modified manner in connection with the COVID–19 pandemic. By way of background, the Exchange closed its trading floor on March 16, 2020 due to the COVID–19 pandemic and reopened its trading floor on June 15, 2020, but with a modified configuration of trading crowds in order to implement social distancing and other measures consistent with local and state health and safety guidelines to help protect the safety and welfare of individuals accessing the trading floor. As a result, the Exchange relocated and modified the physical area of certain trading crowds and also determined and reduced how many floor participants may access the trading floor. In connection with these changes, the Exchange proposed a number of modified billing changes that would remain in place for the duration of the time the Exchange operated in a modified manner. Particularly, the following fees are modified when the Exchange is operating in a modified state due to the COVID–19 pandemic:

Trading Permits	Floor trading permit fees are not to be assessed on the total number of floor trading permits a TPH organization holds, and instead are based on the floor trading permits used by nominees of the TPH each day during the month using the following formula: (i) the number of floor trading permits that have a nominee assigned to it in the Customer Web Portal system (''Portal'') in a given month, multiplied by the number of trading days that the floor is open and that a nominee is assigned to each respective trading permit in that month, divided by (ii) the total number of trading days in a month. The Exchange rounds up to determine the total number of trading permits assessed the fees set forth in the Floor Trading Permit Sliding Scales.
SPX Tier Appointment Fee	The monthly fee for the SPX/SPXW Floor Market-Maker Tier Appointment Fee will be increased to $5,000 per Trading Permit from $3,000 per Trading Permit.
Inactive Nominee Status (Parking Space).	$300 Parking Space Fees is not applied.
Inactive Nominee Status Change (Trading Permit Swap).	$100 Trading Permit Swap Fee is not applied.
SPX/SPXW and SPESG Floor Brokerage Fees.	SPX/SPXW and SPESG Floor Brokerage Fees are be assessed the rate of $0.05 per contract for non-crossed orders and $0.03 per contract for crossed order instead of $0.04 and $0.02, respectively.
Facility Fees	Monthly fees are waived for the following facilities fees: arbitrage phone positions and satellite tv. If a TPH is unable to utilize designated facility services while the trading floor is operating in a modified state, corresponding fees, including for standard and non-standard booth rentals, Exchangefone maintenance, single line maintenance, intra floor lines, voice circuits, data circuits at local carrier (entrance), and data circuits at in-house frame, are waived.

The Exchange notes that while the LaSalle trading floor utilized social distancing and reconfigured trading crowds through its closure (and therefore was considered to be operating in a modified manner), it does not believe it was necessary to implement such safety measures on the new trading floor at the time of transition given recent developments relating to the COVID–19 pandemic. As such, upon moving to the new trading floor on June 6, 2022, the Exchange no longer operates in a modified manner and Footnote 24 does not apply. Accordingly, (1) Floor Trading Permit fees will be assessed based on the total number of floor trading permits a TPH holds each month; (2) Parking Space and Trading Swap fees will no longer be waived; (3) the SPX Floor Tier Appointment Fee will be assessed $3,000 (instead of $5,000)[25] and (iv) SPX/SPXW and SPESG Floor Brokerage fees will be assessed $0.04 per contract for non-crossed orders (instead of $0.05 per contract) and $0.02 per contract for crossed orders (instead of $0.03 per contract). As noted above, arbitrage phone positions, satellite tv, Exchangefone maintenance, single line maintenance, intra floor lines, voice circuits, data circuits at local carrier (entrance), and data circuits at in-house frame are eliminated as of June 1, 2022 so the Exchange proposes to also eliminate references to such fees from Footnote 24.

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.[26] Specifically, the Exchange believes the proposed rule

[24] The Exchange proposes to eliminate a corresponding reference in Footnote 50 to Trading Floor Printer Maintenance in light of the proposal to eliminate this fee.

[25] The Exchange intends to contemporaneously submit a separate rule filing to modify the fee for the SPX Floor Tier Appointment Fee.

[26] 15 U.S.C. 78f(b).

change is consistent with the Section 6(b)(5) [27] 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 rule change is consistent with the Section 6(b)(5) [28] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the proposed changes are prompted by the Exchange's recent transition from its previous trading floor, which it had occupied since the 1980s, to a brand new, modern and upgraded trading floor facility. The Exchange believes customers continue to find value in open outcry trading and rely on the floor for price discovery and the deep liquidity provided by floor Market-Makers and Floor Brokers. The Exchange believes the build out of a new modern trading floor is therefore consistent with its commitment to open outcry trading and focus on providing the best possible trading experience for its customers. Indeed, the new trading floor provides a state-of-the-art environment and technology and more efficient use of physical space, which the Exchange believes better reflects and supports the current trading environment. The Exchange also believes the new infrastructure provides a cost-effective, streamlined, and modernized approach to floor connectivity. For example, the new trading floor has more than 330 individual kiosks, equipped with top-of-the-line technology, that enable floor participants to plug in and use their devices with greater ease and flexibility. It also provides floor Market-Makers and Floor Brokers with more space and increased capacity to support additional floor-based traders on the trading floor. Moreover, the new trading floor is conveniently located across the street from the LaSalle trading floor, resulting in minimal disruption to TPH floor participants, many of whom have office space nearby, including in the CBOT Building. The Exchange believes the CBOT Building, which was also home to the Exchange's original trading floor in the 1970s and early 1980s, is also able to support robust trading floor infrastructure as it currently hosts several banks, trading firms and even trading floors (*i.e.,* trading floors for the Chicago Mercantile Exchange and BOX Options Market).

As described above, the recent transition rendered much of the Exchange's previous trading floor technology and infrastructure obsolete, as it has been replaced by new infrastructure in a new building (no longer owned by the Exchange). As such, the proposed modifications to corresponding facility fees are not only necessary, but the Exchange believes reasonable, equitable and not unfairly discriminatory as discussed in further detail below. The Exchange also believes the proposed rule change results in a streamlined and simplified trading floor and facility fee structure.

Booth Fees

The Exchange believes the proposed Booth Fees are reasonable as they are not a significant departure from fees that were assessed for Booths on the LaSalle trading floor (and in some instances are even lower than currently assessed). Additionally, the Booths on the new trading floor are slightly larger than the standard Booths that were available on the LaSalle trading floor. The proposed fees are also in line with similar fees charged currently and historically at other exchanges with a physical trading floor.[29] The Exchange believes that the proposed booth space fee is equitable and not unfairly discriminatory because it applies uniformly to trading floor participants who choose to rent Booths (and all booths are uniform and nearly identical in size). Moreover, the use of Booths, whether located away from or in a trading crowd, are optional and not necessary in order to conduct open outcry trading on the trading floor.

The Exchange believes the proposed rule changes to the Booth Policy and Agreement make non-substantive changes that merely clarify the Policy and Agreement, make it more accurate, and alleviate potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. The Exchange believes that notwithstanding any of the proposed changes, the Booth Policy and Agreement continues to ensure that trading floor Booths are leased to TPH organizations on equal and non-discriminatory terms.

Line to Cboe Floor Network

The Exchange believes the proposed Line to Cboe Floor Network fee is reasonable as TPHs will not be subject to the current lines and circuit fees set forth in the Fees Schedule, including for relocation and removal, that are assessed on the LaSalle trading floor for similar connectivity to the trading floor network. Additionally, unlike the current floor which requires independent wiring be used for each line or circuit and on a per device basis, the new trading floor will allow TPHs to maintain one Line (or 2 for redundancy purposes). Accordingly, the new trading floor will provide TPHs more flexibility to move and relocate as needed and with greater ease and be able to do so without incurring additional relocation and removal fees. Moreover, firms will no longer need to provide their own network equipment to support dedicated lines to the floor as the Exchange will be providing the network switches and local area network (LAN) lines for all firms on the new trading floor. The Exchange notes that on the LaSalle trading floor, TPHs had to supply their own pair of network switches, which the Exchange estimates cost approximately $5,000 for each switch (*i.e.,* $10,000 total), in addition to ongoing costs incurred for vendor support and staff personnel time. Under the proposal, TPHs are no longer subject to these costs, as the Exchange provides both the network switches and ongoing support. The Exchange also notes other exchanges assess a variety of facility fees relating to connectivity and equipment in order to maintain their trading floor facilities.[30]

The Exchange believes the proposed installation fee is also reasonable as the Exchange is passing through costs it incurs from a third party (*i.e.,* the CBOT Building) with respect to the installation of such Lines. The Exchange believes this fee reasonably represents the

[27] 15 U.S.C. 78f(b)(5).

[28] *Id.*

[29] In 2011, Nasdaq PHLX charged a flat $300 per month fee for Trading/Administrative Booth paid by floor brokers and clearing firms. See Securities Exchange Act Release No. 34–66086 (January 3, 2012), 77 FR 1111 (January 9, 2012) (SR–Phlx–2011–181). NYSE American currently assesses $40 per linear foot per month for all booth space utilized by such Floor Broker.

[30] For example, Nasdaq PHLX assesses a Floor Facility Fee of $330 per month for such purpose. *See* Securities Exchange Act Release No 69672 (June 5, 2013), 78 FR 33873 (May 30, 2013) (SR–PHLX–2013–58). Nasdaq PHLX also assesses a variety of options trading floor fees including for equipment services and relocation requests. *See* Nasdaq PHLX Options 7 Pricing Schedule, Section 9. Other Member Fees, A. Option Trading Floor Fees. *See also* NYSE America Options Fees Schedule, Section IV, Monthly Floor Communication, Connectivity, Equipment and Booth or Podia Fees and NYSE Price List, Equipment Fees.

materials and labor costs of installation which, as discussed above, is assessed by a building that has experience in similar installations as it hosts many other participants in the financial industry, including trading firms and other exchanges' trading floors. The proposed fee also includes a redundant Line at no additional cost. The Exchange believes the proposed monthly and installation Line fees are equitable and not unfairly discriminatory as they will apply uniformly to all trading floor participants.

Co-Location and Meet-Me-Room

The Exchange believes it is reasonable to cap all TPHs and non-TPHs to 8 ''U'' because the Exchange no longer owns the premises in which the Meet-me-Room resides and there is finite amount of space. The proposed cap however applies to all TPHs and non-TPHs uniformly. Additionally, the Exchange believes 8 ''U'' should be sufficient amount of space for any TPH or non-TPH and that with such cap in place there is sufficient space to accommodate all TPHs or non-TPHs who request co-location service. The Exchange believes it's reasonable, equitable and not unfairly discriminatory to eliminate the Co-Location of Equipment Fee for Sponsored Users as it has not had any Sponsored Users in several years. If the Exchange were to approve a Sponsored User, such participant would merely be subject to the remaining (and lower) Co-Location of Equipment Fee (*i.e.,* $200 per 4 ''U''). The Exchange believes the proposed relocation and language updates to the current Co-Location fee are reasonable as the Exchange is not proposing to change the amount assessed but is merely updating and simplifying the Fees Schedule and making it easier to read.

The Exchange believes the proposed $25 per cross-connect monthly fee is reasonable as it is a modest fee that is a pass-through of the fee the Exchange is assessed by a third-party (*i.e.,* the CBOT Building) to maintain such cross connect. Additionally, the Exchange notes third-party vendors such as telecommunication providers will no longer be subject to the $50 per month fee for ''Data Circuits from Local Carrier to Equipment Shelf''. Additionally, the Exchange believes the proposed amount is in line (and lower than) the amount assessed by another exchange for similar cross connects.[31] The proposed cross connect installation fee is also reasonable as it is intended to recoup the fees incurred by the Exchange by third-party vendors for establishing the cross connects. The Exchange believes the installation fee assessed by the CBOT Building is also reasonable as it is in line with installation fees assessed by other data centers and exchanges for installation of cross-connections.[32]

The Exchange believes the proposed Cboe Datacenter Services fee is reasonable as it recoups the costs the Exchange is assessed by the CBOT Building (as the owner of the building) when firms needs to access to the Meet-me-Room for purposes such as on-site support. The Exchange notes that it is aware that other data center facilities similarly require security escorts for Meet-me-Room access and assess fees for such access. Additionally, the Exchange waived the fee for the month of June 2022, so that visits to the Meet-me-Room to address any onboarding questions or issues that arose during the first month in the new facility were free of charge. Moreover, as noted above, the Exchange does not anticipate that access to the Meet-me-Room will be needed on a frequent basis.

The Exchange believes the proposed cross connect and Cboe Datacenter Services fees are also equitable and not unfairly discriminatory as they will apply uniformly to all market participants that request these services, respectively.

Trading Floor Devices

The Exchange believes the proposed changes related to the PAR fee are reasonable as the combined proposed fees for using PAR (*i.e.,* Exchange Tablet fee and PAR Access fee) are only modestly higher than the fee TPHs are currently assessed for use of PAR. The Exchange notes that although TPHs that use PAR will be subject to a modestly higher fee, the PAR Workstation fee has remained unchanged for over eleven years, notwithstanding technology changes and improvements over the last decade, including for example, the ability to also access Silexx from the same tablet on which PAR is accessed.[33] Moreover, the Exchange notes the proposed fee is still lower than fees assessed at other exchanges for trading floor terminals. For example, NYSE American assesses $450 per device per month for Floor Broker Handheld and an additional $215 per month per Exchange sponsored Floor Broker order entry system.[34] Moreover, the Exchange notes that the Exchange provides technical support services for these tablets, eliminating the need for TPHs to purchase protection plans themselves for their device. The Exchange also incurs other costs associated with the tablets that it does not otherwise separately pass through, such as fees incurred for replacement of batteries and other parts. The Exchange will also replace a tablet at no additional cost if a tablet is damaged from normal wear and tear. Further, the Exchange replaces tablets at no additional cost approximately every 3 years. The Exchange believes the proposed Exchange Tablet fee is also reasonable as TPHs may, but do not have to, use an Exchange Tablet to access Cloud9. Indeed, they may use their own TPH-owned device for purposes of accessing Cloud9 and be subject to the alternative, and lower, TPH-Owned Device Authentication Fee.

The Exchange believes the proposed PAR Access fee is equitable and not unfairly discriminatory as it applies to all TPHs using PAR. Moreover, the proposed changes enable the Exchange to offer Exchange-provided tablets for a separate monthly fee to TPHs that wish to use them for Cloud9, which is the Exchange's new telecommunications system that it will offer on the new trading floor. Currently, TPHs are subject to various communication fees including monthly fees, installation fees, relocation fees and removal fees which will no longer be assessed by the Exchange as the Exchange's current communications offerings will be rendered obsolete upon the transition to the new trading floor.[35]

The Exchange believes the proposed TPH-Owned Device Authentication Fee is reasonable as the proposed fee is lower than the proposed fee assessed for Exchange Tablets which may alternatively be used if a TPH is looking to access Silexx or Cloud9. Additionally, the Exchange believes it's reasonable to assess TPHs a monthly fee for access to its network. Particularly, the Exchange expends resources to monitor and maintain the network, and importantly, ensure its secure and resilient. The Exchange also offers assistance during the onboarding process for the devices and expends resources monitoring and troubleshooting networking issues. The Exchange notes that as the number of

[31] *See* Nasdaq PHLX Options 7 Pricing Schedule, Section 9. Other Member Fees, A. Option Trading Floor Fees, Cabinet-to-Cabinet Connectivity and Cabinet-to-Cabinet MPOE Connectivity, which are both subject to a $50 per month fee.

[32] *See, e.g.,* NYSE American Options Fees Schedule, Section V(B).

[33] *See* Securities Exchange Act Release No. 63701 (January 11, 2011), 76 FR 2934 (January 18, 2011) (SR–CBOE–2010–116).

[34] *See also* NYSE America Options Fees Schedule, Section IV, Monthly Floor Communication, Connectivity, Equipment and Booth or Podia Fees.

[35] *See* Cboe Options Fee Schedule, Communications Fees.

devices connected to the network increases, demand of Exchange time and resources may therefore also increase. As such, the Exchange also believes the proposed fee may encourage firms to be efficient with the number of devices it chooses to connect to the network. Moreover, the Exchange believes the new trading floor provides TPHs more flexibility to move and relocate any of their devices by eliminating the need for installation, relocation and removal of connectivity lines to devices and consequently, corresponding monthly, installation, relocation and removal fees. The proposed fee also applies to all TPHs accessing the Cboe floor Network from their own device.

Replacement Items

The Exchange believes the proposed change to increase the tablet replacement fee is reasonable as the proposed amount better reflects the approximate cost to the Exchange to provide a replacement tablet to TPHs. Additionally, the Exchange believes adopting a $100 fee for replaced access badges is reasonable as the Exchange believes it will incentivize TPHs to keep track of their access badges and reduce the need for the Exchange to expend resources to print additional replacement badges. The Exchange believes these changes are also reasonable, equitable and not unfairly discriminatory because TPHs that lose these items or damage these items from non-normal wear or tear should be responsible for the cost of replacement. The Exchange believes the proposed fees will encourage TPHs to take proper care and track of these items. Additionally, the Exchange notes that it will not charge TPHs to replace defective items (that were not the result of non-normal wear and tear).

Obsolete Fees

The Exchange believes eliminating the facility fees discussed above is reasonable as such corresponding services and architecture will be rendered obsolete upon transitioning to the new trading floor. Additionally, the Exchange believes the proposed new fee structure as compared to the fees being eliminated provides for a more streamlined and simplified approach to facility fees. The Exchange believes the proposed elimination of these fees is equitable and not unfairly discriminatory as it will apply uniformly to all TPHs. The proposal to eliminate references to these fees in Footnote 12, 24 and 50 also maintains clarity in the Fees Schedule and avoids potential confusion.

Footnote 24

As discussed above, as of June 6, 2022, the Exchange no longer operates in a modified state due to the COVID–19 pandemic as the Exchange no longer maintains a modified configuration of trading crowds to implement social distancing nor does it reduce or limit how many floor participants may access the trading floor. Accordingly, because the Exchange is not considered to be operating in a modified configuration as of June 6, 2022, Footnote 24 is no longer applicable and the modified billing practices will revert back to original billing.

In sum and in addition to all the reasons discussed above, the Exchange believes its proposed fees are reasonable in light of the numerous benefits the new trading floor provides its floor participants. The Exchange believes the new trading floor provides for state-of-the-art infrastructure, enhanced technology capabilities, and a flexible, open and dynamic environment to facilitate more seamless and efficient interaction between traders. The Exchange also notes that it considered a number of factors in determining the location of the new trading floor including cost to the Exchange and its TPHs, as well as the convenience of location for the trading floor community and Exchange staff. Another critical consideration was whether the new building would have the necessary infrastructure and ability to support a sophisticated and state-of-the art trading floor. As the CBOT Building already hosts several trading firms and two other exchange trading floors, the Exchange felt confident the CBOT Building would be able to accommodate the Exchange's technology and infrastructure needs for its floor. The Exchange therefore believes the amounts of the fees assessed by the CBOT Building that it proposes to pass-through are reasonable. The proposed fees are also in line with fees assessed by other data centers and exchanges for similar technology and services. For example, as noted above, the $25 cross connect fee is lower than the fees assessed by other exchanges for similar cross connections.

The Exchange also notes that is has not sought to pass through other costs incurred in connection with the new trading floor, including design, construction and other on-going maintenance costs. Moreover, the Exchange has not modified many of its facilities fees in several years. The Exchange therefore believes the proposed fees are reasonable because they allow the Exchange to recoup fees associated with the costs of operating a modern and cutting-edge trading floor and offset and keep pace with increasing technology costs.

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 changes will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes would be applied in the same manner to all similarly situated participants and as such, would not impose a disparate burden on competition among the same classes of market participants. As described in further detail above, the proposed fees are also applicable only to market participants that choose to avail themselves to the corresponding facility services. For example, only firms that choose to rent Booths (which are optional and not required for open-outcry trading) will be subject to the proposed Booth Fees. Similarly, only firms that choose to purchase Exchange-provided tablets are subject to the tablet fee, and firms may otherwise choose to purchase and provide their own tablets.

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 proposed rule changes apply only to fees relating to the Exchange's floor facility. Further, as described in detail above, the Exchange believes its proposed facilities fees are in line with facility fees assessed at other exchanges that maintain physical trading floors. Additionally, the Exchange notes it operates in a highly competitive market. In addition to Cboe Options, TPHs have numerous alternative venues that they may participate on and director their order flow, including 15 other options exchanges (four of which also maintain physical trading floors), as well as off-exchange venues, where competitive products are available for trading. Based on publicly available information, no single options exchange has more than 18% of the market share of executed volume of options trades.[36] Therefore, no exchange possesses significant

[36] *See* Cboe Global Markets, U.S. Options Market Volume Summary by Month (September 26, 2022), available at *http://markets.cboe.com/us/options/market_share/*.

pricing power in the execution of option order flow. 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.'' [37] The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[38] Accordingly, the Exchange does not believe its proposed changes to the incentive programs 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 is effective upon filing pursuant to Section 19(b)(3)(A) [39] of the Act and subparagraph (f)(2) of Rule 19b–4 [40] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [41] 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2022–049 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–2022–049. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2022–049, and should be submitted on or before November 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 2022–22180 Filed 10–12–22; 8:45 am]

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[37] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[38] NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[39] 15 U.S.C. 78s(b)(3)(A).

[40] 17 CFR 240.19b–4(f)(2).

[41] 15 U.S.C. 78s(b)(2)(B).

[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95990; File No. SR–FINRA–2022–028]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 0150 (Application of Rules to Exempted Securities Except Municipal Securities)

October 6, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 29, 2022, the Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] 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 amend paragraph (c) of FINRA Rule 0150 (Application of Rules to Exempted Securities Except Municipal Securities) to clarify the application of specified

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

FINRA rules to transactions in, and business activities relating to, exempted securities, including government securities (other than municipal securities).[4] The proposed rule change would also amend Capital Acquisition Broker (''CAB'') Rule 015 (Application of Rules to Municipal Securities) to more closely track the text of FINRA Rule 0150, and for consistency with the revisions to FINRA Rule 0150 made pursuant to this rule filing.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.[5]

FINRA Rules

* * * * *

0100. General Standards

* * * * *

0150. Application of Rules to Exempted Securities Except Municipal Securities

(a) through (b) No Change.

(c) Unless otherwise indicated within a particular Rule, the following rules are applicable to transactions in, and business activities relating to, exempted securities, except municipal securities, conducted by members and associated persons: Rules *0110, 0120, 0130, 0140, 0160, 0170, 0190, 1010, 1011, IM–1011–1, IM–1011–2, IM–1011–3, 1012, 1013, IM–1013–1, IM–1013–2, 1014, 1015, 1016, 1017, 1019,* 1020, *1021, 1122, 1200 Series (other than Rules 1220(a)(5), (a)(6), (a)(7), (b)(4), (b)(5) and (b)(6)),* 2010, 2020, *2030, 2040,* 2060, *2070, 2080, 2081, 2090,* 2111, 2122, *2130, 2140,* 2150, *2165,* 2210, 2211, 2212, *2213, 2214, 2216, 2220,* 2231, 2232, 2261, *2263, 2264, 2266, 2267,* 2268, 2269, *2270, 2272, 2273,* 2320(g), *2360,* [3110] *3100 Series, 3200 Series,* [3210, 3220, 3260, 3270, 3280,] *3300 Series, 4100 Series,* [4120, 4130,] 4210, *4220, 4230, 4310 Series,* [4311,] 4330, *4340,* 4360, *4370, 4380,* 4510 Series, *4520 Series,* 4530, *4540, 4570, 4580, 4590,* 5160, 5210, 5220, 5230, 5310, 5340, 6700 Series, *7730, 8100 Series,* [8110, 8120,] 8210, *8211, 8300 Series,* [8310, 8311, 8312, 8320, 8330] *9000 Series* [and 9552], *12000 Series, 13000 Series, and 14000 Series.*

* * * * *

Capital Acquisition Broker Rules

010. General Standards

* * * * *

015. Application of Rules to *Exempted Securities Except* Municipal Securities

[FINRA Rule 0150 shall apply to the Capital Acquisition Broker Rules.]

(a) For purposes of this Rule, the terms ''exempted securities'' and ''municipal securities'' shall have the meanings specified in Sections 3(a)(12) and 3(a)(29) of the Exchange Act, respectively.

(b) The Capital Acquisition Broker Rules are not intended to be, and shall not be construed as, rules concerning transactions in municipal securities.

(c) Unless otherwise indicated within a particular Rule, all Capital Acquisition Broker Rules are applicable to transactions in, and business activities related to, exempted securities, except municipal securities, conducted by capital acquisition brokers and their associated persons, other than Capital Acquisition Broker Rules 512 and 515.

(d) Nothing in this Rule shall be deemed to expand or otherwise alter the scope of activities permitted for capital acquisition brokers under Capital Acquisition Broker Rule 016(c).

* * * * *

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

Prior to 1986, broker-dealers engaged solely in a government securities business were not required to register with the SEC and become members of a registered securities exchange or a registered securities association, such as FINRA (then NASD).[6] Moreover, the Exchange Act expressly prohibited FINRA from adopting and enforcing compliance with its rules in connection with transactions by its members in exempted securities, including government securities.[7]

The Government Securities Act of 1986 (''GSA''),[8] however, amended the Exchange Act to require broker-dealers that engaged exclusively in transactions in government securities to register with the SEC and become members of a registered securities exchange or a registered securities association if they effected transactions in, or induced or attempted to induce the purchase or sale of, any government securities.[9] The GSA also amended the Exchange Act to authorize a registered securities association, such as FINRA, to adopt and implement rules for specified limited purposes to govern transactions by its members in exempted securities (other than municipal securities).[10] The

[4] For purposes of the proposed rule change, the terms ''exempted securities,'' ''government securities'' and ''municipal securities'' shall have the meanings as specified in Exchange Act Sections 3(a)(12), 3(a)(42) and 3(a)(29), respectively. 15 U.S.C. 78c(a)(12), (a)(42) and (a)(29).

[5] FINRA notes that some of the rules listed in FINRA Rule 0150(c) include provisions that are not applicable to government securities in whole or in part. For instance, notwithstanding the presence of FINRA Rule 2232 in FINRA Rule 0150(c), FINRA Rule 2232(b) is inapplicable by its terms to government securities that are not also equity securities. In addition, FINRA Rules 2232(c) through (f) are not applicable to U.S. Treasury securities. *See* Securities Exchange Act Release No. 79346 (November 17, 2016), 81 FR 84659, 84661 (November 23, 2016) (Order Approving File No. SR–FINRA–2016–032). FINRA also notes that some of the rules listed in FINRA Rule 0150(c) are applicable to exempted securities other than government securities. For example, FINRA Rule 2320(g) (Member Compensation) is applicable to group variable contracts that are exempted securities.

[6] On July 30, 2007, NASD and NYSE consolidated their member regulation, enforcement and dispute resolution operations into a combined organization, FINRA. *See* Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007), as amended by Securities Exchange Act Release No. 56145A (May 30, 2008), 73 FR 32377 (June 6, 2008) (Order Approving File No. SR–NASD–2007–023). For consistency purposes, when discussing FINRA or the predecessor NASD, this filing will refer solely to FINRA.

[7] Specifically, Section 15A(f) of the Exchange Act provided that ''[n]othing in this section shall be construed to apply with respect to any transaction by a broker or dealer in any exempted security.'' *See* 15 U.S.C. 78*o*–3 (historical notes).

[8] Public Law 99–571, 100 Stat. 3208 (1986).

[9] *See supra* note 8. (amending the Exchange Act to add Section 15C(a)(1)(A) to require the registration of a government securities broker or dealer).

[10] The GSA, among other things, amended Section 15A(f) to add paragraph (2), which provided that a registered securities association could adopt and implement rules with respect to exempted securities to (A) enforce compliance with applicable provisions of the Exchange Act; (B) provide for appropriate discipline of members for violations of applicable provisions of the Exchange Act; (C) provide for reasonable inspection and examination of members' books and records; (D) deny or condition the membership of a broker-dealer that does not meet standards for financial responsibility or conduct under the Exchange Act; (E) bar any person from being associated with a member if such person has engaged in prohibited

GSA did not authorize FINRA to apply its rules, including its sales practice rules (which were then part of the Rules of Fair Practice), that were outside of those specified areas to transactions in exempted securities.[11] In 1988, FINRA amended its existing rules and adopted new rules to carry out its responsibilities under the GSA.[12]

In 1993, Congress enacted the Government Securities Act Amendments of 1993 (''GSAA''), which removed all previous limitations on the ability of FINRA to apply its rules, including its sales practice rules, to transactions by members in exempted securities, other than municipal securities.[13] Subsequently, in 1996, with oversight by the SEC and the SEC's consultation with the Department of the Treasury, FINRA specified provisions of its Rules of Fair Practice that would be applicable to exempted securities, other than municipal securities.[14]

In 2001, for ease of reference, FINRA adopted NASD Rule 0116 (now FINRA Rule 0150), which was intended to codify, with some additions,[15] the rules that were approved by the Commission as applicable to transactions in, and business activities relating to, government securities, and more broadly exempted securities (other than municipal securities), and that were expressly listed in the 1996 Approval Order.[16] FINRA has amended Rule 0150 since its original adoption, but it has not updated the rule routinely.[17]

More recently, on August 19, 2016, the SEC's Division of Trading and Markets requested that FINRA undertake a comprehensive review of its rulebook to identify existing FINRA rules that exclude or may otherwise not apply to U.S. Treasury securities (or government securities more generally), or for which the applicability of the rule to U.S. Treasury securities requires clarification, and to assess the continuing validity for such exclusions.[18] In response, FINRA undertook a review of its rulebook for this purpose.[19] FINRA also reviewed its rulebook to identify the rules that are applicable to government securities, and those rules whose applicability to government securities requires clarification. On October 17, 2016, FINRA submitted a letter in response to the Commission's request.[20]

Rules To Be Added to FINRA Rule 0150

As an initial step in responding to the SEC staff's request, the proposed rule change would amend FINRA Rule 0150(c) to add to its list of rules those that are currently applicable to exempted securities, including government securities, but which are not currently listed in that rule. The rules that FINRA is proposing to add are rules that have general application to the activities of all FINRA members, irrespective of business model or client base. In addition, the proposed rule change would modernize and make current the list of rules in Rule 0150. It is not intended to substantively change the current application or requirements of FINRA rules to exempted securities. As stated in Rule 0150, the application of any listed rules, or specific provisions of those rules, to exempted securities, including government securities, is governed by the language of the rule itself.[21]

conduct or refused to provide requested information; and (F) prohibit fraudulent, misleading, deceptive and false advertising. *See* 100 Stat. 3208, 3218.

[11] In contrast, the GSA did not prevent registered securities exchanges, such as the NYSE, from applying their rules to government securities transactions. *See* United States Government Accountability Office, U.S. Government Securities: More Transaction Information and Investor Protection Measures Are Needed, September 1990 at 47 (noting that although the GSA did not authorize FINRA to apply its sales practice rules to government securities transactions, the GSA did not prevent registered securities exchanges, such as the NYSE, from applying their rules to government securities transactions), available at *https://www.gao.gov/assets/ggd-90-114.pdf.*

[12] Specifically, FINRA amended its By-Laws to address government securities transactions by members and the eligibility of sole government securities broker-dealers to become members. FINRA also amended Schedule C to the NASD By-Laws, which contained rules relating to membership and registration, to provide for the registration of government securities principals and government securities representatives. In addition, FINRA adopted a subset of rules designated as ''Government Securities Rules,'' which addressed books and records, supervisory procedures and the regulation of members experiencing financial or operational difficulties or changing their exemptive status under SEA Rule 15c3–3. The Government Securities Rules also included provisions regarding communications with the public and FINRA's ability to bring disciplinary actions for violations involving government securities transactions. *See* Securities Exchange Act Release No. 26240 (November 2, 1988), 53 FR 45412 (November 9, 1988) (Order Approving File No. SR–NASD–88–12). The terms ''sole government securities broker-dealers,'' ''government securities broker-dealers,'' ''registered government securities brokers and dealers'' and ''government securities broker or dealer'' as used in this proposed rule change refer to brokers and dealers that engage exclusively in transactions in government securities and that are registered under Section 15C of the Exchange Act.

[13] Government Securities Act Amendments of 1993, Public Law 103–202, 1(a), 107 Stat. 2344 (1993).

[14] *See* Securities Exchange Act Release No. 37588 (August 20, 1996), 61 FR 44100 (August 27, 1996) (Order Approving File No. SR–NASD–95–39) (''1996 Approval Order''). While not expressly listed as rules applicable to exempted securities in the 1996 Approval Order, the 1996 Approval Order noted that the general provisions of Articles I and II of the Rules of Fair Practice relating to the adoption, application and definitions of rules, which were formerly in the Government Securities Rules, also applied to government securities. In addition, the 1996 Approval Order stated that Schedule C to the By-Laws would apply to the personnel of sole government securities broker-dealers, including persons selling options on government securities.

[15] NASD Rule 0116 codified a FINRA staff interpretation that the non-cash compensation provisions of NASD Rule 2820(g) (now FINRA Rule 2320(g)) apply to group variable contracts that are exempted securities.

[16] *See* Securities Exchange Act Release No. 44631 (July 31, 2001), 66 FR 41283 (August 7, 2001) (Order Approving File No. SR–NASD–00–38).

[17] For example, in 2015, FINRA amended Rule 0150 to expressly apply FINRA Rule 2121 (Fair Prices and Commissions) to transactions in exempted securities that are government securities. *See* Securities Exchange Act Release No. 76639 (December 14, 2015), 80 FR 79112 (December 18, 2015) (Order Approving File No. SR–FINRA–2015–033). In addition, FINRA has replaced references to NASD rules when those rules were transferred into the FINRA rulebook as consolidated FINRA rules. *See, e.g.,* Securities Exchange Act Release No. 78851 (September 15, 2016), 81 FR 64969 (September 21, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2016–036) (replacing NASD IM–2210–2 with FINRA Rule 2211).

[18] *See* Letter from Stephen Luparello, Director, Division of Trading and Markets, SEC, to Robert W. Cook, President and Chief Executive Officer, FINRA, dated August 19, 2016, available at *https://www.sec.gov/divisions/marketreg/letter-to-finra-regulation-of-us-treasury-securities.pdf.*

[19] The current FINRA rulebook consists of (1) FINRA rules; and (2) the Temporary Dual FINRA-NYSE Member Rule Series (formerly Incorporated NYSE Rules and Incorporated NYSE Rule Interpretations). While the FINRA rules generally apply to all FINRA members, the Temporary Dual FINRA-NYSE Member Rule Series apply solely to those members of FINRA that are also members of NYSE on or after July 30, 2007. As previously mentioned, the Temporary Dual FINRA-NYSE Member Rule Series historically were not subject to the same limitations with respect to their applicability to government securities as FINRA rules. *See supra* note 11. Accordingly, FINRA believes that the Temporary Dual FINRA-NYSE Member Rule Series currently apply to exempted securities, including government securities, unless otherwise indicated by a particular rule.

[20] *See* Letter from Robert W. Cook, President and Chief Executive Officer, FINRA, to Stephen Luparello, Director, Division of Trading and Markets, SEC, dated October 17, 2016, available at *https://www.sec.gov/divisions/marketreg/letter-from-finra-regulation-of-us-treasury-securities.pdf.*

[21] For example, FINRA Rule 7730(b), by its terms, currently excludes transactions in U.S. Treasury Securities, as defined under FINRA rules, from the TRACE transaction reporting fees. *See* Securities Exchange Act Release No. 79116, (October 18, 2016), 81 FR 73167, 73169 (October 24, 2016) (Order Approving File No. SR–FINRA-2016–027). While the proposed rule change would amend Rule 0150 to include Rule 7730, Rule 7730(b) would continue by its terms to exclude transactions in U.S. Treasury Securities, as defined under FINRA rules. Further, in updating FINRA Rule 0150, FINRA is not suggesting that every type of exempted security is subject to each rule listed in paragraph (c). It could be the case that a listed rule applies, by its terms, to a subcategory of exempted securities based on the characteristics of that security. For example, FINRA understands that U.S. Treasury securities do not have callable features. However, government-sponsored enterprises (''GSEs''), whose securities are considered by statute to be exempted securities, may issue callable securities.

General Standards Rules

The proposed rule change would amend FINRA Rule 0150(c) to expressly add FINRA Rules 0110 (Adoption of Rules), 0120 (Effective Date), 0130 (Interpretation), 0140 (Applicability), 0160 (Definitions), 0170 (Delegation, Authority and Access) and 0190 (Effective Date of Revocation, Cancellation, Expulsion, Suspension or Resignation) (collectively, the ''General Standards Rules''), which will clarify the applicability of these rules to exempted securities, including government securities.[22] The General Standards Rules govern the adoption, application and interpretation of FINRA rules and set forth specified definitions not contained in the FINRA By-Laws. In addition, these rules address FINRA's delegation of responsibilities to its subsidiary, and its authority and access with respect to its subsidiary. The General Standards Rules apply to all FINRA members, irrespective of business model or client base.

Membership Rules

The proposed rule change would amend FINRA Rule 0150(c) to include FINRA Rule 1011 (Definitions), IM–1011–1 (Safe Harbor for Business Expansions), IM–1011–2 (Business Expansions and Covered Pending Arbitration Claims), IM–1011–3 (Business Expansions and Persons with Specified Risk Events), Rule 1012 (General Provisions), Rule 1013 (New Member Application and Interview), IM–1013–1 (Membership Waive-In Process for Certain New York Stock Exchange Member Organizations), IM–1013–2 (Membership Waive-In Process for Certain NYSE American LLC Member Organizations), Rule 1014 (Department Decision), Rule 1015 (Review by National Adjudicatory Council), Rule 1016 (Discretionary Review by FINRA Board), Rule 1017 (Application for Approval of Change in Ownership, Control, or Business Operations), Rule 1019 (Application to the SEC for Review), Rule 1021 (Foreign Members) and Rule 1122 (Filing of Misleading Information as to Membership or Registration) (together, the ''Membership Rules''). The Membership Rules provide a means for FINRA, through its Membership Application Program (''MAP''), to assess the proposed business activities of potential and current members with the ultimate goal of ensuring that each applicant is capable of conducting its business in compliance with applicable rules and regulations, and that its business practices are consistent with just and equitable principles of trade. The Membership Rules provide, for example, the standards of review for new member applications (''NMAs'') and continuing membership applications (''CMAs''). In addition, among other requirements, the Membership Rules require consideration of whether persons associated with an applicant have disciplinary actions taken against them by other industry authorities, customer complaints, adverse arbitrations, pending or unadjudicated matters, civil actions, remedial actions imposed or other industry-related matters that could pose a threat to public investors. The Membership Rules apply to all applicants for membership and all existing members. FINRA does not have a separate membership process for persons engaged in activities relating to exempted securities, including government securities.

The following is a summary of the Membership Rules:

- FINRA Rule 1011 (defines relevant terms for purposes of the Membership Rules);
- FINRA IM–1011–1 (creates a safe harbor for certain types of expansions that are presumed not to be a ''material change in business operations'' and, therefore, do not require a member to file a CMA pursuant to FINRA Rule 1017);
- FINRA IM–1011–2 (provides that the safe harbor for business expansions in FINRA IM–1011–1 is not available to any member that is seeking to add one or more associated persons involved in sales and one or more of those associated persons has a ''covered pending arbitration claim,'' an unpaid arbitration award or unpaid settlement related to an arbitration);
- FINRA IM–1011–3 (provides that the safe harbor for business expansions in FINRA IM–1011–1 is not available to any member that is seeking to add a natural person who has, in the prior five years, one or more ''final criminal matters'' or two or more ''specified risk events'' and seeks to become an owner, control person, principal, or registered person of the member);
- FINRA Rule 1012 (provides information regarding, among others, the methods for submitting the applications required by the other Membership Rules, provisions governing when a membership application is considered to have lapsed as well as rules on ex parte communications in the event that a member requests review of a FINRA membership decision by the National Adjudicatory Council (''NAC''), pursuant to FINRA Rule 1015);
- FINRA Rule 1013 (sets forth the requirements for an NMA, including how to file, the documents that applicants must submit, the ability of FINRA to request additional documentation and to reject an application that is ''not substantially complete,'' and the process for conducting membership interviews);
- FINRA IM–1013–1 and IM–1013–2 (establish a waive-in process to expedite the approval of membership applications of NYSE-only member organizations and NYSE American member organizations that were required to become FINRA members following the consolidation of NASD and NYSE's member regulation operations);[23]
- FINRA Rule 1014 (sets forth the standards for admission, the process and timing for granting or denying an application, the timing and content requirements for FINRA's decision and submission of a membership agreement and the effectiveness of restrictions in the membership agreement);
- FINRA Rule 1015 (permits an applicant to submit a request for review by the NAC of an adverse decision rendered on an NMA or a CMA);
- FINRA Rule 1016 (permits a governor of the FINRA Board to call for a discretionary review of a membership proceeding);
- FINRA Rule 1017 (provides that specified changes in a member's ownership, control or business operations require the firm to file a CMA, which is subject to FINRA approval);
- FINRA Rule 1019 (provides that a person aggrieved by final action of FINRA under the Membership Rules may apply for review by the SEC);
- FINRA Rule 1021 (sets forth specific obligations for foreign members, which are members that do not maintain an office in the United States that is responsible for preparing and maintaining financial and other reports required to be filed with the SEC and FINRA); and
- FINRA Rule 1122 (prohibits members and associated persons from filing with FINRA incomplete or misleading membership or registration information).

Registration Rules

The proposed rule change would amend FINRA Rule 0150(c) to add to the list of rules that are applicable to exempted securities, including government securities, the rules relating

[22] *See supra* note 14 (noting the application of the general provisions of the Rules of Fair Practice to government securities).

[23] *See supra* note 6.

to the qualification and registration of associated persons (collectively, the ''Registration Rules''). In general, the Registration Rules: (1) require that persons engaged in a member's investment banking or securities business who are to function as representatives or principals register with FINRA in each category of registration appropriate to their functions by passing one or more qualification examinations; (2) exempt specified associated persons from the registration requirements; and (3) provide for permissive registration of specified persons. FINRA believes that the identified Registration Rules are applicable to government securities because they are applicable to the activities of all members, irrespective of business model or client base.[24]

Specifically, the proposed rule change would add the following Registration Rules to FINRA Rule 0150(c):

- FINRA Rule 1010 (Electronic Filing Requirements for Uniform Forms) (sets forth the filing and signature requirements for the Uniform Forms (*e.g.,* Form U4 (Uniform Application for Securities Industry Registration or Transfer)); and
- FINRA Rule 1200 Series (Registration and Qualification):
  - FINRA Rule 1210 (Registration Requirements) (requires that each person engaged in the investment banking or securities business of a member register with FINRA as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in FINRA Rule 1220, unless exempt from registration pursuant to FINRA Rule 1230. FINRA Rule 1210 also provides that such person is not qualified to function in any registered capacity other than that for which the person is registered, unless otherwise stated in the rules); [25]
  - FINRA Rule 1220 (Registration Categories) (sets forth the definitions of ''principal'' and ''representative'' as well as the qualification and registration requirements for, among others, General Securities Principals, Financial and Operations Principals, Registered Options Principals, Government Securities Principals, General Securities Sales Supervisors, General Securities Representatives and Operations Professionals); [26]
  - FINRA Rule 1230 (Associated Persons Exempt from Registration) (identifies associated persons who are not required to be registered with FINRA, including, among others, associated persons whose functions are solely and exclusively clerical or ministerial); [27] and
  - FINRA Rule 1240 (Continuing Education Requirements) (sets forth the continuing education requirements, which consist of a Regulatory Element and a Firm Element, and the Maintaining Qualifications Program through which eligible individuals may maintain their qualification in a representative or principal registration category following the termination of that registration category).

Rules Relating to Members' Financial Condition and Margin-Related Rules

The proposed rule change would amend FINRA Rule 0150(c) to add rules that have general applicability to members and relate to members' financial condition and margin practices.[28] These rules play an important role in supporting the SEC's minimum net capital and other financial responsibility requirements and support FINRA's authority to execute effectively its financial and operational surveillance and examination programs. In general, these rules: (1) establish criteria promoting the permanency of members' capital; (2) require the review and approval of specific material financial transactions; and (3) establish criteria intended to identify members approaching financial difficulty and to monitor their financial and operational condition.

Several of the rules relating to members' financial condition and margin requirements, including, for example, FINRA Rules 4120 (Regulatory Notification and Business Curtailment), 4130 (Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational Difficulties) and 4210 (Margin Requirements) are currently listed in FINRA Rule 0150 as applicable to transactions in exempted securities, including government securities. For conformity, FINRA is proposing to amend FINRA Rule 0150(c) to include other financial condition- and margin-related rules of general applicability. As a result, the proposed rule change would amend FINRA Rule 0150(c) to add the following rules to the list of rules that are applicable to exempted securities, including government securities:

- FINRA Rule 2264 (Margin Disclosure Statement) (requires members that open margin accounts for or on behalf of non-institutional customers to deliver to such customers, prior to or at the time of opening the account, a specified margin disclosure statement highlighting the risks involved in trading securities in a margin account);
- FINRA Rule 2266 (SIPC Information) (sets forth specified requirements for providing Securities Investor Protection Corporation (SIPC) information to customers); [29]
- FINRA Rule 4100 Series (Financial Condition)
  - FINRA Rule 4110 (Capital Compliance) (sets forth requirements relating to a member's financial responsibility, including, among others: authorizing FINRA to prescribe greater net capital requirements for carrying and clearing members when deemed necessary for the protection of investors or in the public interest; requiring members to suspend all business operations during any period in which a member is not in compliance with the applicable net capital requirements of

[24] FINRA anticipates specifically addressing the application of some of the Registration Rules, including FINRA Rules 1220(a)(5) (Investment Banking Principal), 1220(a)(6) (Research Principal), 1220(a)(7) (Securities Trader Principal), 1220(b)(4) (Securities Trader), 1220(b)(5) (Investment Banking Representative) and 1220(b)(6) (Research Analyst), to government securities activities as part of a separate proposal.

[25] Further, FINRA Rule 1210 addresses the following: (1) requirement to have a minimum number of registered principals; (2) ability to maintain permissive registrations for associated persons; (3) requirement to pass an appropriate qualification examination(s); (4) process for obtaining a waiver of a qualification examination(s); (5) requirements applicable to registered persons functioning as principals prior to passing an appropriate principal qualification examination; (6) rules of conduct for taking examinations and confidentiality of examinations; (7) waiting periods for retaking a failed examination; (8) requirement that registered persons satisfy continuing education; (9) lapse of registration and expiration of the Securities Industry Essentials examination; (10) waiver of examinations for individuals working for a financial services industry affiliate; (11) status of persons serving in the Armed Forces of the United States; and (12) impermissible registrations.

[26] The rule also addresses the following: (1) status of certain foreign registrations; (2) additional requirements for registered persons engaged in security futures activities; (3) requirements applicable to members operating with only one Registered Options Principal; (4) scope of the General Securities Sales Supervisor category; (5) scope of the Operations Professional category; and (6) status of eliminated registration categories.

[27] In addition, the rule clarifies that the function of accepting customer orders is not considered a clerical or ministerial function.

[28] FINRA notes that rules relating to members' financial condition historically have been applicable to all members, including sole government securities broker-dealers. For example, Section 6 of the Government Securities Rules, which applied to sole government securities broker-dealers before the Government Securities Rules merged into the Rules of Fair Practice in 1996, governed the regulation of activities of members experiencing financial or operational difficulties.

[29] FINRA notes that the Securities Investor Protection Act of 1970 (''SIPA'') excludes a government securities broker or dealer from the definition of ''persons registered as brokers or dealers'' for purposes of SIPA. *See* 15 U.S.C. 78lll(12). Therefore, FINRA Rule 2266 does not apply to such members.

SEA Rule 15c3–1; governing the limitations on the withdrawal of a firm's equity capital; providing for sale-and-leasebacks, factoring, financing loans and similar arrangements; addressing subordinated loans, notes collateralized by securities and capital borrowing; addressing compliance with other applicable laws for purposes of the approval of a subordinated loan agreement; and providing that the requirements of the rule also apply to members that clear customer transactions or hold customer funds in a bank account pursuant to the exemptive provisions of SEA Rule 15c3–3(k)(2)(i));

- FINRA Rule 4111 (Restricted Firm Obligations) (allows FINRA to impose obligations on members with significantly higher levels of risk-related disclosures than other similarly sized peers, based on numeric, threshold-based criteria);
- FINRA Rule 4140 (Audit) (provides FINRA the authority to request an audit or an agreed-upon procedures review under circumstances specified in the rule);
- FINRA Rule 4150 (Guarantees by, or Flow Through Benefits for, Members) (sets forth the notice requirement when a member guarantees, endorses or assumes, directly or indirectly, the obligations or liabilities of another person (including an entity), and the approval requirements when a member receives flow-through capital benefits in accordance with Appendix C of SEA Rule 15c3–1); and
- FINRA Rule 4160 (Verification of Assets) (provides that a member, when notified by FINRA, may not continue to custody or retain record ownership of assets at a non-member financial institution, which, upon FINRA staff's request, fails promptly to provide FINRA with written verification of assets maintained by the member at such financial institution);

• FINRA Rule 4200 Series (Margin):

- FINRA Rule 4220 (Daily Record of Required Margin) (sets forth the requirements for daily recordkeeping of initial and maintenance margin calls that are issued pursuant to the Federal Reserve Board's Regulation T and the FINRA margin rules); [30] and
- FINRA Rule 4230 (Required Submissions for Requests for Extensions of Time Under Regulation T and SEA Rule 15c3–3) (governs members' requests for extensions of time, as permitted in accordance with the Federal Reserve Board's Regulation T and SEA Rule 15c3–3(n)); [31]

• FINRA Rule 4310 Series (Member Agreements and Contracts):

- FINRA Rule 4314 (Securities Loans and Borrowings) (sets forth the obligations of a firm that engages in lending and borrowing securities and establishes consistent disclosure and recordkeeping requirements relating to a firm's securities lending activities);

• FINRA Rule 4340 (Callable Securities) (provides clarity to customers about the procedures used by a member when a security is called or redeemed prior to maturity);

• FINRA Rule 4520 Series (Financial Records and Reporting Requirements):

- FINRA Rule 4521 (Notifications, Questionnaires and Reports) (addresses FINRA's authority to request financial and operational information from members to carry out its surveillance and examination responsibilities and sets forth the reporting requirements for members carrying margin accounts for customers);
- FINRA Rule 4522 (Periodic Security Counts, Verifications and Comparisons) (requires each member that is subject to the requirements of SEA Rule 17a–13 to make the counts, examinations, verifications, comparisons and entries set forth in SEA Rule 17a–13 and further requires each carrying or clearing member subject to SEA Rule 17a–13 to make more frequent counts, examinations, verifications, comparisons and entries where prudent business practice would require);
- FINRA Rule 4523 (Assignment of Responsibility for General Ledger Accounts and Identification of Suspense Accounts) (sets forth requirements intended to ensure the accuracy of a member's financial books and records, including the requirement that each member designate an associated person to be responsible for each general ledger bookkeeping account and account of like function used by the member); and
- FINRA Rule 4524 (Supplemental FOCUS Information) (requires each member, as FINRA designates, to file as a supplement to the FOCUS Report, additional financial or operational schedules or reports as FINRA deems necessary or appropriate for the protection of investors or in the public interest); [32] and

• FINRA Rule 4540 (Reporting Requirements for Clearing Firms) (requires each member clearing firm or self-clearing firm to report to FINRA in such format as FINRA may require, prescribed data pertaining to the member and any member broker-dealer for which it clears; the rule also provides that a member may submit a written request for exemptive relief, pursuant to the FINRA Rule 9600 Series (Procedures for Exemptions), from the reporting requirements of Rule 4540, and specifies the circumstances under which FINRA will grant such exemptive requests).

FINRA acknowledges that some of the rules listed above do not apply to members that are sole government securities broker-dealers because such members are subject to separate laws, rules and regulations or are otherwise excluded from the FINRA requirements. For example, as noted above, a government securities broker or dealer is excluded from the definition of ''persons registered as brokers or

[30] The initial margin requirement on exempted securities held in a margin account is the margin required by the broker in good faith or applicable SRO margin requirement, whichever is greater. Accordingly, the initial margin requirements on exempted securities positions set by FINRA Rule 4210 act as a floor on the requirement under Regulation T. Rule 4220 requires members to make a daily record of initial or additional margin that must be obtained in a customer's account as set forth in Rule 4210.

[31] Section 220.4(c)(3)(i) of Regulation T requires any margin call to be satisfied within one payment period (four business days) after the margin deficiency is created, but Section 220.4(c)(3)(ii) of Regulation T allows a broker-dealer to obtain an extension of that payment period from its examining authority. This time limit applies to all transactions effected in margin accounts, including transactions in exempted securities. Accordingly, firms may make Regulation T extension requests involving exempted securities that are governed by FINRA Rule 4230.

In addition, under SEA Rule 15c3–3(m), as modified by Treasury Rules 403.1 and 403.4(m), if an exempted security sold long by a customer has not been delivered within 30 business days (60 business days if it is a mortgage-backed security) after the settlement date, the broker-dealer generally must buy-in the customer. If a national securities association is satisfied that a broker-dealer is acting in good faith and exceptional circumstances warrant the action, the national securities association may, on application from the broker-dealer, grant an extension of the time before the broker-dealer must buy-in the customer. Therefore, FINRA Rule 4230, which governs these requests for extensions of time is applicable to transactions in exempted securities.

[32] The Supplemental Statement of Income (''SSOI''), the Supplemental Inventory Schedule (''SIS'') and the Derivatives and Other Off-Balance Sheet Items Schedule (''OBS''), all of which were adopted pursuant to FINRA Rule 4524 as supplements to the FOCUS Report, require the reporting of various figures that are based on all securities, including government securities. While firms that are government securities broker-dealers do not file a FOCUS Report and instead are required to file reports concerning their financial and operational status using the Finances and Operations of Government Securities Brokers and Dealers Report (''FOGS Report''), such firms are subject to FINRA Rule 4524 and the financial or operational schedules or reports, as designated by FINRA, adopted pursuant to that rule. *See e.g.,* Securities Exchange Act Release No. 73192 (September 23, 2014), 79 FR 58390 (September 29, 2014) (Order Approving File No. SR–FINRA–2014–025) (approving the adoption of the SIS, including with respect to filers of FOGS Reports).

dealers'' for purposes of SIPA.[33] Therefore, FINRA Rule 2266 does not apply to such members. In addition, members that are registered government securities brokers and dealers are subject to separate capital compliance provisions from those set forth in FINRA Rule 4110.[34] By listing these rules under FINRA Rule 0150(c), FINRA is not changing the underlying requirements otherwise applicable to such members.

Rules Relating to Members' Books and Records and General Supervisory Obligations

FINRA Rule 3110 (Supervision) and the FINRA Rule 4510 Series (Books and Records Requirements) apply to transactions in exempted securities, including government securities, and are currently listed in FINRA Rule 0150(c). FINRA Rule 3110 requires a firm to establish and maintain a system to supervise the activities of its associated persons that is reasonably designed to achieve compliance with the applicable securities laws and regulations and FINRA rules. The rule details requirements for a firm to have reasonably designed written supervisory procedures (''WSPs'') to supervise the activities of its associated persons and the types of businesses in which it engages. Among other things, a firm's WSPs must address supervision of supervisory personnel and provide for the review of a firm's investment banking and securities business, correspondence and internal communications, and customer complaints. The rules governing books and records, including the FINRA Rule 4510 Series, in general, require members to make and preserve specific books and records to show compliance with applicable securities laws, rules and regulations, and to enable FINRA and SEC staffs to conduct effective examinations.

FINRA is proposing a conforming change to FINRA Rule 0150(c) to expressly include those rules of general applicability that are based on, or related to, the obligations imposed by FINRA Rule 3110 and the FINRA Rule 4510 Series. In particular, the proposed rule change would add the following rules to the list of rules in FINRA Rule 0150(c):

- FINRA Rule 3100 Series (Supervisory Responsibilities):
  - FINRA Rule 3120 (Supervisory Control System) (establishes the requirements on members to test and verify supervisory procedures);
  - FINRA Rule 3130 (Annual Certification of Compliance and Supervisory Processes) (requires each member to designate one or more principals to serve as a chief compliance officer(s) and further requires that the chief executive officer(s) certify annually that the member has in place processes to establish, maintain, review, modify and test policies and procedures reasonably designed to achieve compliance with applicable FINRA rules, MSRB rules and federal securities laws and regulations);
  - FINRA Rule 3150 (Holding of Customer Mail) (allows a firm to hold a customer's mail for a specific time period in accordance with the customer's written instructions if the firm meets several conditions);
  - FINRA Rule 3160 (Networking Arrangements Between Members and Financial Institutions) (provides the conditions for a member that is a party to a networking arrangement with a financial institution under which the member offers broker-dealer services, regardless of whether the member is conducting broker-dealer services on or off the premises of a financial institution); and
  - FINRA Rule 3170 (Tape Recording of Registered Persons by Certain Firms) (requires a firm to establish, enforce and maintain special written procedures supervising the telemarketing activities of all of its registered persons, including the tape recording of conversations, if the firm has hired more than a specified percentage of registered persons from firms that meet the rule's definition of ''disciplined firm'');
- FINRA Rule 3200 Series (Responsibilities Relating to Associated Persons):
  - FINRA Rule 3230 (Telemarketing) (requires members to maintain do-not-call lists, to limit the hours of telephone solicitations and prohibits members from using deceptive and abusive acts and practices in connection with telemarketing);
  - FINRA Rule 3240 (Borrowing From or Lending to Customers) (provides members the opportunity to evaluate the appropriateness of particular lending arrangements between their registered persons and customers, to the extent permitted by the member, and the potential for conflicts of interests between both the registered person and his or her customer and the registered person and the member with which he or she is associated);
  - FINRA Rule 3241 (Registered Person Being Named a Customer's Beneficiary or Holding a Position of Trust for a Customer) (limits a registered person from being named a beneficiary, executor or trustee, or to have a power of attorney or similar position of trust for or on behalf of a customer); and
  - FINRA Rule 3250 (Designation of Accounts) (establishes a general requirement that a member must hold each customer account in the customer's name, except that a member may identify a customer's account with a number or symbol, as long as the member maintains documentation identifying the customer);
- FINRA Rule 3300 Series (Anti-Money Laundering):
  - FINRA Rule 3310 (Anti-Money Laundering Compliance Program) (requires each member to develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the member's compliance with the Bank Secrecy Act and its implementing regulations);
- FINRA Rule 4570 (Custodian of Books and Records) (requires a member to designate as the custodian of its required books and records, pursuant to SEA Rule 17a–4, on Form BDW (Uniform Request for Broker-Dealer Withdrawal) a person who is associated with the firm at the time Form BDW is filed); and
- FINRA Rule 4580 (Books and Records Requirements for Government Distribution and Solicitation Activities) (establishes the recordkeeping requirements in connection with FINRA Rule 2030 (Engaging in Distribution and Solicitation Activities with Government Entities) and requires covered members that engage in distribution or solicitation activities with a government entity on behalf of any investment adviser that provides or is seeking to provide investment advisory services to such government entity to maintain books and records that will allow FINRA to examine for compliance with FINRA Rule 2030).[35]

Procedural Rules

FINRA is proposing to amend FINRA Rule 0150(c) to add a number of procedural rules—including the FINRA Code of Procedure, Code of Arbitration Procedure for Customer Disputes, Code of Arbitration Procedure for Industry Disputes, Code of Mediation Procedure and other procedural rules—to clarify their application to transactions in, or business activities relating to, exempted securities, including government securities. These rules of general applicability provide the procedural framework for FINRA to ensure that

[33] *See* 15 U.S.C. 78lll(12) and *supra* note 29.

[34] *See* 17 CFR 402.2 (setting forth the capital requirements for registered government securities brokers and dealers).

[35] *See infra* note 41.

members and associated persons comply with FINRA rules, MSRB rules and the federal securities laws and provide for the effective and efficient resolution of customer and industry disputes.

Code of Procedure

FINRA believes that the FINRA Rule 9000 Series (Code of Procedure) is applicable to transactions in exempted securities. The Code of Procedure governs proceedings for disciplining members and associated persons (including review of disciplinary proceedings by the NAC and FINRA Board and application for SEC review), proceedings for regulating the activities of members experiencing financial or operational difficulties, and proceedings for suspensions, cancellations and bars. These are foundational rules applicable to all FINRA members, irrespective of business model or client base, and they provide the procedural framework for enforcing many of the rules listed in FINRA Rule 0150.[36] In this regard, several of the rules that are currently applicable to exempted securities would be rendered operationally meaningless without the application of the Code of Procedure. For example, the sanctions under FINRA Rule 8310 (Sanctions for Violation of the Rules) are contingent on compliance with the Code of Procedure.

FINRA Arbitration and Mediation Codes

The FINRA Rule 12000 Series (Code of Arbitration Procedure for Customer Disputes or ''Customer Code'') and FINRA Rule 13000 Series (Code of Arbitration Procedure for Industry Disputes or ''Industry Code'') (collectively, the ''Codes'') contain the rules that govern arbitration between investors and industry parties and between or among industry-only parties. The Codes provide, among other things, the procedural rules for arbitration, initiating and responding to claims, the appointment of arbitrators, arbitration discovery, hearing and fees and awards. These rules are essential to the arbitration forum and have general applicability to all FINRA members, irrespective of business model or client base. As such, FINRA is proposing to amend FINRA Rule 0150 to explicitly add the Codes as applicable to transactions in exempted securities, including government securities. FINRA notes that, following the GSAA, FINRA amended the Code of Arbitration Procedure to explicitly allow claims relating to transactions in exempted securities, including government securities, to be submitted to the Office of Dispute Resolution for arbitration under the Code of Arbitration Procedure without limitation.[37]

The proposed rule change would amend FINRA Rule 0150(c) to add the FINRA Rule 14000 Series (Code of Mediation Procedure) to the list of rules that are expressly applicable to transactions in, and business activities relating to, exempted securities, including government securities. FINRA's mediation forum serves an important public interest and furthers investor protection by providing a valuable alternative to arbitration. The Code of Mediation Procedure provides the procedural framework for parties wishing to mediate disputes through FINRA's mediation program. The Code of Mediation Procedure contains, for example, provisions governing the effect of mediation on arbitration proceedings, mediator selection, mediation ground rules and fees for mediation. Similar to the Codes, the Code of Mediation Procedure has general applicability to all FINRA members.

Other Procedural and Related Rules

In addition to the procedural rules discussed above, FINRA proposes to amend FINRA Rule 0150(c) to add FINRA Rules 2080 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD) System), 2081 (Prohibited Conditions Relating to Expungement of Customer Dispute), 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4) and 8313 (Release of Disciplinary Complaints, Decisions and Other Information) to the list of rules that are applicable to transactions in, and business activities relating to, exempted securities, including government securities.

FINRA recognizes that accurate and complete reporting in the CRD system is an important component of investor protection, and FINRA Rules 2080 and 2081, which have general applicability to all FINRA members, further this purpose.

FINRA Rule 2080 addresses the expungement of customer dispute information from the CRD system and provides that a court of competent jurisdiction must order or confirm all expungement directives before FINRA will expunge customer dispute information from the CRD system. The rule also requires that FINRA members or associated persons name FINRA as an additional party in any court proceeding in which they seek an order to expunge customer dispute information or request confirmation of an award containing an order of expungement, unless the requirement is waived in accordance with the rule.

FINRA Rule 2081 prohibits members and associated persons from conditioning or seeking to condition settlement of a dispute with a customer on, or to otherwise compensate the customer for, the customer's agreement to consent to, or not to oppose, the firm's or associated person's request to expunge such customer dispute information from the CRD system.

FINRA Rule 2263 requires members to provide each associated person, whenever the associated person is asked to sign a new or amended Form U4, with certain written disclosures regarding the nature and process of arbitration proceedings. This rule ensures that associated persons of all members understand that the Form U4 contains a predispute arbitration clause and that by signing the Form U4, the associated persons are agreeing to be bound by the arbitration proceedings. The rule applies generally to all members and associated persons.

FINRA Rule 8313 governs FINRA's release of disciplinary and other information to the public. The rule is applicable to all members, irrespective of business model or client base.

Trade Reporting and Operational Rules

FINRA is also proposing to amend FINRA Rule 0150(c) to add several trade reporting and operational rules that have general application to the conduct of members. Specifically, the proposed rule change would add the following rules to FINRA Rule 0150(c):

- FINRA Rule 4370 (Business Continuity Plans and Emergency Contact Information) (requires a member to create, maintain, review at least annually and update upon any material change, a written business continuity plan identifying procedures relating to an emergency or significant business disruption and enumerates the minimum elements that a member's business continuity plan must address, to the extent those elements are applicable and necessary to the firm's business);
- FINRA Rule 4380 (Mandatory Participation in FINRA BC/DR Testing Under Regulation SCI) (authorizes FINRA to designate firms that are subject to mandatory participation in business continuity and disaster recovery (BC/DR) testing under

[36] The Rule 9000 Series also includes FINRA's revolving door rules, which are applicable to all firm types.

[37] *See* Securities Exchange Act Release No. 40103 (June 19, 1998), 63 FR 34951 (June 26, 1998) (Order Approving File No. SR–NASD–98–04).

Regulation SCI, which will be conducted once per year);

• FINRA Rule 4590 (Synchronization of Member Business Clocks) (requires that firms synchronize their business clocks that are used for purposes of recording the date and time of any event that must be recorded pursuant to the FINRA By-Laws or other FINRA rules (*e.g.,* the time a trade was executed or the time an order was received or routed), with reference to a time source as designated by FINRA); [38]

• FINRA Rule 7730 (Trade Reporting and Compliance Engine (TRACE)) (sets forth the TRACE transaction reporting fees and the TRACE data products offered by FINRA and the fees associated with those products); [39] and

• FINRA Rule 8211 (Automated Submission of Trading Data Requested by FINRA) (requires members to submit specified trade data in automated format as may be prescribed by FINRA).

Other Rules

Finally, FINRA is proposing to amend FINRA Rule 0150(c) to add other rules that relate to customer protection and have general applicability to the conduct of members and associated persons or that are applicable to exempted securities, including government securities. These other rules are:

• FINRA Rule 2030 (Engaging in Distribution and Solicitation Activities with Government Entities) (regulates members engaging in distribution or solicitation activities with government entities on behalf of investment advisers); [40]

• FINRA Rule 2040 (Payments to Unregistered Persons) (governs the payment of transaction-based compensation by members to unregistered persons, including retired representatives and foreign finders);

• FINRA Rule 2070 (Transactions Involving FINRA Employees) (addresses conflicts of interests involving FINRA employees and plays a vital role in helping FINRA monitor whether employees are abiding by trading restrictions imposed by the FINRA Code of Conduct);

• FINRA Rule 2090 (Know Your Customer) (requires members to use reasonable diligence in regard to the opening and maintenance of every account, in order to know and retain the essential facts concerning every customer to effectively service customer accounts, act in accordance with any special handling instructions, understand the authority of each person acting on behalf of customers, and comply with applicable laws, regulations and rules);

• FINRA Rule 2130 (Approval Procedures for Day-Trading Accounts) (requires firms that promote day-trading strategies, directly or indirectly, to deliver the risk disclosure statement set forth in FINRA Rule 2270 (Day-Trading Risk Disclosure Statement), to a non-institutional customer prior to opening the account for the customer, and to (1) approve the customer's account for day-trading in accordance with procedures set forth in the rule or (2) obtain a written agreement from the customer stating that the customer does not intend to use the account for day-trading activities);

• FINRA Rule 2140 (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes) (prohibits members or associated persons from interfering with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other bona fide claim);

• FINRA Rule 2165 (Financial Exploitation of Specified Adults) (permits members to place temporary holds on disbursements of funds or securities from the accounts of specified customers where there is a reasonable belief of financial exploitation of such customers);

• FINRA Rule 2213 (Requirements for the Use of Bond Mutual Fund Volatility Ratings) (imposes conditions and disclosure requirements on a firm that distributes a retail communication that includes a ''bond mutual fund volatility rating,'' including that the rating must be based on objective factors, such as the credit quality of the fund's individual portfolio holdings, the market price volatility of the portfolio, the fund's performance, and specific risks, such as interest rate risk, prepayment risk and currency risk);

• FINRA Rule 2214 (Requirements for the Use of Investment Analysis Tools) (provides a limited exception to the general prohibition on members' communications that predict or project performance, as set forth in paragraph (d)(1)(F) of FINRA Rule 2210 (Communications with the Public), for investment analysis tools, provided that specified conditions are met);

• FINRA Rule 2216 (Communications with the Public About Collateralized Mortgage Obligations (''CMOs'')) (sets forth standards applicable to retail communications concerning CMOs);

• FINRA Rule 2220 (Options Communications) (sets forth a member's obligations with respect to its options communications with the public); [41]

• FINRA Rule 2267 (Investor Education and Protection) (requires members to provide customers at least once every calendar year in writing (which may be electronic) with: (1) FINRA's website address; (2) the BrokerCheck hotline number; and (3) a statement regarding the availability of an investor brochure that includes information describing BrokerCheck);

[38] Rule 4590 applies to members' business clocks that are used for purposes of recording the date and time of any event that must be recorded pursuant to the FINRA By-Laws or other FINRA rules. As specified in Rule 6730(e)(8), an ''Auction Transaction'' in a U.S. Treasury Security, as defined under FINRA rules, shall not be reported to FINRA. Accordingly, the application of Rule 4590 to exempted securities does not cover auction transactions in U.S. Treasury securities, and it does not alter members' obligations to comply with any clock synchronization requirements otherwise applicable to U.S. Treasury securities auctions.

[39] FINRA notes, however, that Rule 7730(b), by its terms, currently excludes transactions in U.S. Treasury Securities, as defined under FINRA rules, from the TRACE transaction reporting fees. *See* Securities Exchange Act Release No. 79116, (October 18, 2016), 81 FR 73167, 73169 (October 24, 2016) (Order Approving File No. SR–FINRA–2016–027). *See also supra* note 21.

[40] FINRA Rule 2030 is modeled after Rule 206(4)-5 under the Investment Advisers Act of 1940 (''SEC Pay-to-Play Rule'') that addresses pay-to-play practices by investment advisers. *See* Securities Exchange Act Release No. 78683 (August 25, 2016), 81 FR 60051 (August 31, 2016) (Order Approving File No. SR–FINRA–2015–056) (''Approval Order''); *see also* Investment Advisers Act Release No. 4532 (September 20, 2016), 81 FR 66526 (September 28, 2016) (finding that Rule 2030 imposes substantially equivalent or more stringent restrictions on members than the SEC Pay-to-Play Rule imposes on investment advisers and is consistent with the objectives of the SEC Pay-to-Play Rule). Neither the SEC Pay-to-Play Rule nor FINRA's Rule 2030 exclude specific products, *see* Approval Order, 81 FR 60051, 60058–59. In addition, both the SEC Pay-to-Play Rule and FINRA Rule 2030 define the term ''government entity'' to mean any state or political subdivision of a state, including their agencies, authorities and instrumentalities, a pool of assets sponsored or established by the state or political subdivision or any agency, authority or instrumentality thereof, or a plan or program of such government entity. *See* 17 CFR 275.206(4)-5(f)(5); FINRA Rule 2030(g)(6).

[41] At the time of the 1996 Approval Order, FINRA Rule 2220 required that firms designate a specific individual as a Compliance Registered Options Principal with responsibility for approving certain options communications. The rule has changed since that time, eliminating this operational condition, and currently requires that, among other things, a designated Registered Options Principal(s) review and approve all retail communications, which would allow more than one individual to review and approve such communications. Moreover, all firms that are engaged in, or intend to engage in, transactions in options with the public must have at least one Registered Options Principal pursuant to FINRA Rule 1220(a)(8) (Registered Options Principal). FINRA believes that the requirements relating to options on government securities should be consistent, to the extent applicable, with the requirements for options covered by FINRA Rule 2360 (Options).

• FINRA Rule 2270 (Day-Trading Risk Disclosure Statement) (requires firms that promote day-trading strategies, directly or indirectly, to deliver the risk disclosure statement set forth in the rule to a non-institutional customer prior to opening the account for the customer);

• FINRA Rule 2272 (Sales and Offers of Sales of Securities on Military Installations) (governs sales and offers of sales of securities by members on the premises of any military installation to members of the Armed Forces of the United States or their dependents); [42]

• FINRA Rule 2273 (Educational Communication Related to Recruitment Practices and Account Transfers) (provides that a member that hires or associates with a registered representative must furnish to a former customer of the representative, individually (in paper or electronic form) required educational communication when: (1) the member, directly or through a representative, individually contacts a former customer of that representative to transfer assets; or (2) a former customer of the representative, absent individual contact, transfers assets to an account assigned, or to be assigned, to the representative at the member); and

• FINRA Rule 2360 (Options) (addresses specific risks that pertain to options, and implements provisions of the federal securities laws and SEC rules, including, among other things, provisions requiring specific disclosure documents, additional diligence in approving the opening of accounts, and specific requirements for confirmations, account statements, suitability, recordkeeping and reporting).[43]

Capital Acquisition Broker Rules

The CAB Rules are a separate set of FINRA rules for firms that meet the definition of a ''capital acquisition broker'' and that elect to be governed under this rule set. CABs are members that engage in a limited range of activities, essentially advising companies and private equity funds on capital raising and corporate restructuring, and acting as placement agents for sales of unregistered securities to institutional investors under limited conditions. Members that elect to be governed under the CAB rule set are not permitted, among other things, to carry or maintain customer accounts, handle customers' funds or securities, accept customers' trading orders, or engage in proprietary trading or market-making.[44]

CAB Rule 015 states that FINRA Rule 0150 shall apply to the CAB Rules. FINRA proposes to amend CAB Rule 015 to more closely track the text of FINRA Rule 0150, and to be consistent with the revisions to FINRA Rule 0150 made pursuant to this rule filing.

Proposed CAB Rule 015(a), which defines the terms ''exempted securities'' and ''municipal securities,'' is exactly the same as FINRA Rule 0150(a). Similar to FINRA Rule 0150(b), proposed CAB Rule 015(b) provides that the CAB Rules are not intended to be, and shall not be construed as, rules concerning transactions in municipal securities.

Proposed CAB Rule 015(c) resembles FINRA Rule 0150(c), but refers to the CAB Rules that apply to transactions in, and business activities related to, exempted securities, except municipal securities, conducted by CABs and their associated persons, rather than to FINRA Rules. In this regard, FINRA proposes to apply all CAB Rules, other than CAB Rules 512 (Private Placements of Securities Issued by Members) and 515 (Fairness Opinions), to such transactions and activities, because either the CAB Rule provides that all CABs are subject to a FINRA Rule included in FINRA Rule 0150(c), or the CAB Rule has provisions that are similar to those in FINRA Rules included in FINRA Rule 0150(c). FINRA does not propose to apply CAB Rules 512 and 515 to such activities and transactions, because those rules provide that CABs are subject to FINRA Rules 5122 and 5150, respectively, which are not included in FINRA Rule 0150(c).

Proposed CAB Rule 015(d) provides that nothing in this Rule shall be deemed to expand or otherwise alter the scope of activities permitted for CABs under CAB Rule 016(c) (the definition of ''capital acquisition broker''). The purpose of this provision is to make clear that CAB Rule 015 is not intended to define the scope of activities in which CABs may engage. Instead, CAB Rule 016(c) defines what activities in which a CAB may engage.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be 270 days after the date of the filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[45] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

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. As stated above, the proposed rule change does not impact the current status of any of the listed rules, but serves to modernize FINRA Rule 0150 to include rules of general applicability to all FINRA members.

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

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) of the Act [46] and Rule 19b–4(f)(6) thereunder.[47]

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.

[42] Rule 2272 requires, among other things, a member engaging in sales or offers of sales of securities on the premises of a Military Installation to any member of the U.S. Armed Forces or his or her dependents to provide a clear and conspicuous disclosure with the identity of the member offering the securities and stating that the securities are not being offered or provided by the member of behalf of the Federal Government, and that the offer of such securities is not sanctioned, recommended or encouraged by the Federal Government. *See* Rule 2272(b). The rule applies to all members seeking to engage in sales or offers of sales of securities, irrespective of the type of securities offered. While some exempted securities are issued by the U.S. Federal Government (*e.g.,* U.S. Treasury securities), other exempted securities (*e.g.,* group variable contracts) are not.

[43] *See supra* note 41.

[44] *See* CAB Rule 016(c).

[45] 15 U.S.C. 78*o*–3(b)(6).

[46] 15 U.S.C. 78s(b)(3)(A).

[47] 17 CFR 240.19b–4(f)(6).

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–2022–028 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–2022–028. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2022–028 and should be submitted on or before November 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 2022–22174 Filed 10–12–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96006; File No. SR–MIAX–2022–35]

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange LLC To Amend Its Fee Schedule

October 7, 2022.

Pursuant to the provisions of 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 October 4, 2022, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to (i) amend the Other Market Participant Transaction Fees table[3] to amend the fee applicable to the option component of a stock-option order; and (ii) modify the Priority Customer Rebate Program (''PCRP'')[4] as it pertains to per contract credits for PRIME Agency Orders submitted by Priority Customers.[5] The Exchange initially filed this proposal on September 1, 2022 as SR–MIAX–2022–28. On September 20, 2022, the Exchange withdrew SR–MIAX–2022–28 and resubmitted the proposal as SR–MIAX–2022–31. On September 28, 2022, the Exchange withdrew SR–MIAX–2022–31 and resubmitted the proposal as SR–MIAX–2022–33. On October 4, 2022, the Exchange withdrew SR–MIAX–2022–33 and resubmitted the proposal as SR–MIAX–2022–35. The proposed changes are immediately effective.

Background

Stock-Option Orders

A ''complex order'' is any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the ''legs'' or ''components'' of the complex order), for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purposes

[48] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Section (1)(a)(ii) of the Exchange's Fee Schedule.

[4] Under the PCRP, MIAX Options credits each Member the per contract amount resulting from each Priority Customer order transmitted by that Member which is executed electronically on the Exchange in all multiply-listed option classes (excluding, in simple or complex as applicable, QCC and cQCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, C2C and cC2C Orders, PRIME and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, PRIME and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Exchange Rule 1400), provided the Member meets certain percentage thresholds in a month as described in the Priority Customer Rebate Program table. *See* Fee Schedule, Section (1)(a)(iii).

[5] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Exchange Rule 100.

of executing a particular investment strategy. Mini-options may only be part of a complex order that includes other mini-options. Only those complex orders in the classes designated by the Exchange and communicated to Members via Regulatory Circular with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis and communicated to Members via Regulatory Circular, are eligible for processing.

A complex order can also be a ''stock-option order'' as described further, and subject to the limitations set forth, in Interpretations and Policies .01 of Exchange Rule 518. A stock-option order is an order to buy or sell a stated number of units of an underlying security (stock or Exchange Traded Fund Share (''ETF'')) or a security convertible into the underlying stock (''convertible security'') coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (i) the same number of units of the underlying security or convertible security, or (ii) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying security or convertible security in the option leg to the total number of units of the underlying security or convertible security in the stock leg. Only those stock-option orders in the classes designated by the Exchange and communicated to Members via Regulatory Circular with no more than the applicable number of legs as determined by the Exchange on a class-by-class basis and communicated to Members via Regulatory Circular, are eligible for processing.[6]

Currently, under the Other Market Participant Transaction Fees table, the Exchange charges Public Customers that are not Priority Customers a fee of $0.47 per contract for executions of simple and complex orders in Penny Classes and $0.75 per contract for executions of simple and complex orders in Non-Penny Classes, and assesses a $0.12 per contract surcharge for trading against a Priority Customer complex order in Penny and Non-Penny Classes.

The Exchange now proposes to adopt new note ''!!'' which will be applicable to the option component of a stock-option order and which will provide that, any Member whose Affiliate qualifies for Priority Customer Rebate Program volume tier 4 in the relevant month will be assessed a total of $0.10 per contract on the option component of a stock-option order for executions in Penny or Non-Penny Classes, and the per contract surcharge for trading against a Priority Customer complex order will not apply.[7] Therefore, a qualifying Member will be charged $0.10 per contract for executions in Penny or Non-Penny Classes, and the $0.12 per contract surcharge for trading against a Priority Customer Order in Penny or Non-Penny Classes will not be assessed.

PRIME Agency Orders

PRIME is a process by which a Member may electronically submit for execution (''Auction'') an order it represents as agent (''Agency Order'') against principal interest, and/or an Agency Order against solicited interest.[8] The Member that submits the Agency Order (''Initiating Member'') agrees to guarantee the execution of the Agency Order by submitting a contra-side order representing principal interest or solicited interest.[9] Currently, the Exchange provides a per contract credit for PRIME Agency Orders of $0.10 for Priority Customer Agency Orders in Tier 1, and a per contract credit of $0.11 for Priority Customer Agency Orders in Tiers 2 through 4.[10]

Proposal

The Exchange proposes to adopt a new table under the PCRP for PRIME Agency Orders for Priority Customers Origins that will provide an adjustment to the credit provided for PRIME Agency Orders to Priority Customers in a tiered structure dependent upon the break-up percentage of the order. The Exchange proposes to adopt new note ''!!!'' to state that, for Priority Customer PRIME Agency Orders the Exchange will apply the per contract adjustment to the PRIME Agency rebate provided under the Priority Customer Rebate Program dependent upon the order break-up percentage as described in the table above, (the Per Contract Adjustment for PRIME Agency Order table).

The proposed Per Contract Adjustment for PRIME Agency Order table will provide that if the PRIME Agency Order has a break-up percentage of 0–20% the per contract credit provided for PRIME Agency Orders will be reduced by $0.02. If the PRIME Agency Order has a break-up percentage greater than 20% and up to 40% the per contract credit provided for PRIME Agency Orders will be reduced by $0.01. If the PRIME Agency Order has a break-up percentage greater than 40% and up to 60% no adjustment will be applied to the per contract credit provided for PRIME Agency Orders. If the PRIME Agency Order has a break-up percentage greater than 60% and up to 80% the per contract credit provided for PRIME Agency Orders will be increased by $0.01. If the PRIME Agency Order has a break-up percentage greater than 80% and up to 100% the per contract credit provided for PRIME Agency Orders will be increased by $0.02. Current break-up and other credits remain unchanged and will continue to apply.

The Exchange currently provides a PRIME Break-up credit of $0.25 per contract in Penny Classes and $0.60 per contract in Non-Penny Classes. Additionally, the Exchange provides an enhanced PRIME break-up credit of $0.69 per contract to the EEM that submitted a PRIME Order in a Non-Penny Class that trades with PRIME AOC Responses and/or PRIME participating quotes or orders, if the PRIME Order experiences a break-up of greater than 40%, which is not changing under this proposal.[11]

The following examples are provided to illustrate how the base agency (unchanged under this proposal), proposed adjustment, and break-up credits (unchanged under this proposal), will apply. For example, as proposed if an Electronic Exchange Member (''EEM'')[12] in Tier 1 submits a Priority Customer PRIME Agency Order in a Penny Class that trades 100% with the contra side order, the EEM will receive the Agency Rebate of $0.10 with the appropriate $0.02 adjustment applied ($0.02 credit reduction) for a net credit of $0.08. If an EEM in Tier 1 submits a Priority Customer PRIME Agency Order in a Penny Class that is 100% broken

[6] *See* Exchange Rule 518(a)(5).

[7] The Exchange charges a stock-handling fee of $0.0010 per share (capped at $50 per order, per day) for the stock leg of stock-option orders (including stock-option eQuotes) executed against other stock-option orders in the complex order book, which the Exchange must route to an outside venue. In addition, the Exchange will pass through to the Member any fees assess by the routing broker-dealer utilized by the Exchange with respect to the execution of the stock leg of any such order (with such fees to be passed through at cost). The Exchange notes that this fee is not changing under this proposal. *See* the Exchange's Fee Schedule, Section (1)(a)(x) on its public website (available at *https://www.miaxoptions.com/fees*).

[8] *See* Exchange Rule 515A(a).

[9] *See* Exchange Rule 51A(a)(ii).

[10] *See* the Exchange's Fee Schedule, Section (1)(a)(iii), on its public website (available at *https://www.miaxoptions.com/fees*).

[11] *See* the Exchange's Fee schedule, footnote ''*'' of Section (1)(a)(v), on its public website (available at *https://www.miaxoptions.com/fees*).

[12] The term ''Electronic Exchange Member'' or ''EEM'' means the holder of Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

up, the EEM will receive the Agency Rebate of $0.10 with the appropriate $0.02 adjustment applied ($0.02 additional credit) for a net credit of $0.12, in addition to a break-up credit of $0.25 (which is not changing under this proposal) [13] for a total credit of $0.37. Similarly if the order had been 70% broken up, the EEM would receive the Agency Rebate of $0.10 with the appropriate $0.01 adjustment applied ($0.01 additional credit) for a net credit of $0.11, in addition to a break-up credit of $0.25 for a total credit of $0.36. If the order had been 30% broken up, the EEM would receive the Agency Rebate of $0.10 with the appropriate $0.01 adjustment applied ($0.01 credit reduction) for a net credit of $0.09, in addition to a break-up credit of $0.25 for a total credit of $0.34. The break-up credit and its application remains unchanged under the Exchange's proposal.

The Exchange is making the proposed change for business and competitive reasons, as the Exchange believes that adjusting its rebates will allow the Exchange to remain competitive and will continue to incentivize EEMs to submit Priority Customer PRIME Agency Orders to the Exchange.

b. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [14] in general, and furthers the objectives of Section 6(b)(4) of the Act [15] 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 Act [16] 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 its proposal provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is one of 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 12% of the market share of executed volume of multiply-listed equity and exchange-traded fund (''ETF'') options trades as of August 29, 2022, for the month of August 2022.[17] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of August 29, 2022, the Exchange has a total market share of 5.67% of all equity options volume, for the month of August 2022.[18]

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 use of certain categories of products, in response to fee changes. For example, on March 1, 2019, the Exchange filed with the Commission an immediately effective filing to decrease certain credits assessable to Members pursuant to the PCRP.[19] The Exchange experienced a decrease in total market share between the months of February and March of 2019. Accordingly, the Exchange believes that the March 1, 2019, fee change may have contributed to the decrease in the Exchange's market share and, as such, the Exchange believes competitive forces constrain options exchange transaction and non-transaction fees.

Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to the competitive environment, the Exchange offers specific rates and credits in its fees schedule, like those of other options exchanges' fees schedules, which the Exchange believes provides incentives to Members to increase order flow of certain qualifying orders.

The Exchange believes that its proposal to modify the Other Market Participant Transaction Fees table to provide for a total per contract fee of $0.10 on the option component of a stock-option order for qualifying participants is consistent with Section 6(b)(4) of the Act [20] because it is equitable and not unfairly discriminatory as the fee is assessed uniformly to all Public Customers that are not Priority Customers that have an Affiliate in Tier 4 of the PCRP for the relevant month, that execute stock-option orders on the Exchange.

The Exchange also believes that this proposal is consistent with Section 6(b)(5) of the Act [21] because it perfects the mechanisms of a free and open market and a national market system and protects investors and the public interest because it provides an additional incentive for Members to increase Priority Customer order flow to the Exchange in order to obtain the highest volume threshold, which benefits all market participants by providing more trading opportunities and tighter spreads. Additionally, the proposed discount encourages Members to submit Priority Customer Orders to the Exchange which will continue to result in increased volume which benefits all Exchange participants by providing more trading opportunities.

The Exchange believes that its proposal to adopt a tiered adjustment table for per contract credits applied to PRIME Agency Orders based upon break-up percentage is consistent with Section 6(b)(4) of the Act [22] in that the proposal is reasonable, equitable and not unfairly discriminatory as it applies uniformly to all similarly situated Members.

The Exchange believes that the proposed incentive structure is fair, equitable and not unreasonably discriminatory. The PCRP is reasonably designed because it will continue to provide an incentive to providers of Priority Customer order flow to send that Priority Customer order flow to the Exchange to receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all participants.

The Exchange believes that its proposed Per Contract Adjustment for PRIME Agency Order table will continue to incentivize EEMs to submit Priority Customer PRIME Agency Orders to the Exchange, and that the reduction of the rebate when the break-up percentage is less than 40%, is not so significant that it will disincentivize EEMs from submitting Priority Customer PRIME Agency Orders to the Exchange. The Exchange believes that adjusting its rebates and providing an

[13] *See* the Exchange's Fee Schedule, Section (1)(a)(v), on its public website (available at *https://www.miaxoptions.com/fees*).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78f(b)(5).

[17] *See* MIAX's ''The market at a glance/MTD AVERAGE'', available at *https://www.miaxoptions.com/* (last visited August 29, 2022).

[18] *See id.*

[19] *See* Securities Exchange Act Release No. 85301 (March 13, 2019), 84 FR 10166 (March 19, 2019) (SR–MIAX–2019–09).

[20] 15 U.S.C. 78f(b)(4).

[21] 15 U.S.C. 78f(b)(1) and (b)(5).

[22] *Id.*

additional credit of $0.01 (when the order break-up percentage is greater than 60%) and an additional credit of $0.02 (when the order break-up percentage is greater than 80%) will both incentivize EEMs to submit Priority Customer PRIME Agency Orders to the Exchange and will also contribute to more robust PRIME Auctions and potentially lead to greater liquidity and price improvement for orders submitted to the Exchange's PRIME. The decision to implement the Per Contract Adjustment for PRIME Agency Order table is based on an analysis of current revenue and volume levels and is designed to encourage Priority Customer order flow to PRIME Auctions.

In addition, The Exchange believes that its proposal is consistent with Section 6(b)(5) of the Act [23] because it perfects the mechanisms of a free and open market and a national market system and protects investors and the public interest because Priority Customer order flow will bring greater volume and liquidity to the Exchange, which benefits all market participants by providing more trading opportunities and tighter spreads. To the extent Priority Customer order flow is increased by this proposal, market participants will increasingly compete for the opportunity to trade on the Exchange including sending more orders and provided narrower and larger-sized quotations in the effort to trade with such Priority Customer order flow.

The Exchange believes that the proposed Per Contract Adjustment for PRIME Agency Order table that provides a tiered incentive structure for Priority Customer PRIME Agency Orders based upon order break-up percentage is equitable and not unfairly discriminatory because the proposed incentive table will apply equally to all similarly situated EEMs that submit Priority Customer PRIME Agency Orders to the Exchange.

The Exchange believes that providing an adjustment to the rebate provided to EEMs that submit Priority Customer PRIME Agency Orders that are broken-up by a certain percentage is equitable and not unfairly discriminatory because the proposed Per Contract Adjustment for PRIME Agency Order table will apply equally to all Priority Customer PRIME Agency Orders. The Exchange does not believe the reduction of the rebate will serve to disincentivize EEMs from submitting Priority Customer PRIME Agency Orders to the Exchange, and believes that the enhanced rebate may further incentivize EEMs to submit Priority Customer PRIME Agency Orders to the Exchange. Further, the Exchange believes that the application of the Per Contract Adjustment for PRIME Agency Order table is equitable and not unfairly discriminatory because Priority Customer order flow enhances liquidity on the Exchange, in turn providing more trading opportunities and attracting other market participants, thus improving liquidity and facilitating tighter spreads, to the benefit of all market participants.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and self-regulatory organization (''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.'' [24]

The Exchange believes that the ever-shifting market shares 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 transaction and non-transaction fee changes. 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 the proposal reflects a reasonable and competitive pricing structure which will continue to incentivize market participants to direct liquidity adding orders to the Exchange, which the Exchange believes would enhance liquidity and market quality on the exchange to the benefit of all Members.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act [25] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change in connection with stock-option orders or Priority Customer PRIME Agency Orders will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the changes apply uniformly to all similarly situated Members in a uniform manner.

The Exchange believes that its proposal to modify the Other Market Participant Transaction Fees table to provide for a total per contract fee of $0.10 on the option component of a stock-option order for qualifying participants provides an additional incentive for Members to increase Priority Customer order flow to the Exchange in order to obtain the highest volume threshold, which benefits all market participants by providing more trading opportunities and tighter spreads. Additionally, the proposed discount encourages Members to submit Priority Customer Orders to the Exchange which will continue to result in increased volume on the Exchange which benefits all Exchange participants by providing more trading opportunities.

The Exchange believes that its proposal to adopt a tiered adjustment table for per contract credits applied to PRIME Agency Orders based upon break-up percentage will not impose a burden on competition as it applies uniformly to all similarly situated Members. Similarly, the Exchange believes the proposed Per Contract Adjustment for PRIME Agency Order table should continue to incentivize EEMs to submit Priority Customer PRIME Agency Orders to the Exchange, and that the reduction of the rebate when the break-up percentage is less than 40%, is not so significant that it will disincentivize EEMs from submitting Priority Customer PRIME Agency Orders to the Exchange.

These proposed changes should enable the Exchange to continue to attract liquidity to the Exchange and compete for order flow with other exchanges. However, this competition does not create an undue burden on competition but rather offers all market participants the opportunity to receive the benefit of competitive pricing. The proposed changes are intended to keep the Exchange's fees and rebates highly

[23] 15 U.S.C. 78f(b)(4).

[24] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[25] 15 U.S.C. 78f(b)(4) and (5).

competitive with those of other exchanges, and to encourage liquidity on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its rebates and fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule changes reflect this competitive environment because the proposal modifies the Exchange's fees and rebates in a manner that encourages market participants to continue to provide liquidity and to send order flow to the Exchange.

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.'' [26] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[27] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[26] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 47396, 37499 (June 29, 2005).

[27] *NetCoalition* v. *SEC*, 615 F.3d 525, 539 (D.C. Cir 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[28] and Rule 19b–4(f)(2) [29] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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 SR–MIAX–2022–35 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–2022–35. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2022–35 and should be submitted on or before November 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Lynn Taylor,

Assistant Secretary.

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[28] 15 U.S.C. 78s(b)(3)(A)(ii).

[29] 17 CFR 240.19b–4(f)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96007; File No. SR–MIAX–2022–32]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Extend the Waiver Period for Certain Non-Transaction Fees and To Extend the SPIKES Options Market Maker Incentive Program Until December 31, 2022

October 7, 2022.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 29, 2022, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Fee Schedule (the ''Fee Schedule'') to: (1) extend the waiver period for certain non-transaction fees applicable to Market Makers [3] that trade solely in Proprietary Products [4] until December 31, 2022; and (2) extend the SPIKES Options Market Maker Incentive Program (the ''Incentive Program'') until December 31, 2022.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to: (1) extend the waiver period for certain non-transaction fees applicable to Market Makers that trade solely in Proprietary Products until December 31, 2022; and (2) extend the Incentive Program until December 31, 2022.

Background

On October 12, 2018, the Exchange received approval from the Commission to list and trade on the Exchange options on the SPIKES® Index, a new index that measures expected 30-day volatility of the SPDR S&P 500 ETF Trust (commonly known and referred to by its ticker symbol, ''SPY'').[5] The Exchange adopted its initial SPIKES options transaction fees on February 15, 2019 and adopted a new section of the Fee Schedule—Section (1)(a)(xi), SPIKES—for those fees.[6] Options on the SPIKES Index began trading on the Exchange on February 19, 2019.

On May 31, 2019, the Exchange filed its first proposal in a series of proposals with the Commission to amend the Fee Schedule to waive certain non-transaction fees applicable to Market Makers that trade solely in Proprietary Products (including options on the SPIKES Index) beginning September 30, 2019, through September 30, 2022.[7] In particular, the Exchange adopted fee waivers for Membership Application fees, monthly Market Maker Trading Permit fees, Application Programming Interface (''API'') Testing and Certification fees for Members,[8] and monthly MIAX Express Interface (''MEI'') Port [9] fees assessed to Market Makers that trade solely in Proprietary Products (including options on SPIKES) throughout the entire period of September 30, 2019 through September 30, 2022. The Exchange now proposes to extend the waiver period for the same non-transaction fees applicable to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until December 31, 2022. In particular, the Exchange proposes to waive Membership Application fees, monthly Market Maker Trading Permit fees, Member API Testing and Certification fees, and monthly MEI Port fees assessed to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until December 31, 2022.

Membership Application Fees

The Exchange currently assesses a one-time Membership Application fee for applications of potential Members. The Exchange assesses a one-time Membership Application fee on the earlier of (i) the date the applicant is certified in the membership system, or (ii) once an application for MIAX membership is finally denied. The one-time application fee is based upon the applicant's status as either a Market Maker or an Electronic Exchange Member (''EEM'').[10] A Market Maker is assessed a one-time Membership Application fee of $3,000.

The Exchange proposes that the waiver for the one-time Membership Application fee of $3,000 for Market Makers that trade solely in Proprietary Products (including options on SPIKES) will be extended from September 30, 2022 until December 31, 2022, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposed change is to continue to provide an incentive for potential Market Makers to submit membership applications, which should result in an increase of potential liquidity in Proprietary Products, including options on SPIKES. Even though the Exchange proposes to extend the waiver of this particular fee, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness that the Exchange intends to assess such a fee after December 31, 2022.

Trading Permit Fees

The Exchange issues Trading Permits that confer the ability to transact on the Exchange. MIAX Trading Permits are issued to Market Makers and EEMs. Members receiving Trading Permits during a particular calendar month are

[3] The term ''Market Makers'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[4] The term ''Proprietary Product'' means a class of options that is listed exclusively on the Exchange. *See* Exchange Rule 100.

[5] *See* Securities Exchange Act Release No. 84417 (October 12, 2018), 83 FR 52865 (October 18, 2018) (SR–MIAX–2018–14) (Order Granting Approval of a Proposed Rule Change by Miami International Securities Exchange, LLC to List and Trade on the Exchange Options on the SPIKES® Index).

[6] *See* Securities Exchange Release No. 85283 (March 11, 2019), 84 FR 9567 (March 15, 2019) (SR–MIAX–2019–11). The Exchange initially filed the proposal on February 15, 2019 (SR–MIAX–2019–04). That filing was withdrawn and replaced with SR–MIAX–2019–11. On September 30, 2020, the Exchange filed its proposal to, among other things, reorganize the Fee Schedule to adopt new Section (1)(b), Proprietary Products Exchange Fees, and moved the fees and rebates for SPIKES options into new Section (1)(b)(i). *See* Securities Exchange Act Release Nos. 90146 (October 9, 2020), 85 FR 65443 (October 15, 2020) (SR–MIAX–2020–32) *and* 90814 (December 29, 2020), 86 FR 327 (January 5, 2021) (SR–MIAX–2020–39).

[7] *See* Securities Exchange Act Release Nos. 86109 (June 14, 2019), 84 FR 28860 (June 20, 2019) (SR–MIAX–2019–28); 87282 (October 10, 2019), 84 FR 55658 (October 17, 2019) (SR–MIAX–2019–43); 87897 (January 6, 2020), 85 FR 1346 (January 10, 2020) (SR–MIAX–2019–53); 89289 (July 10, 2020), 85 FR 43279 (July 16, 2020) (SR–MIAX–2020–22); 90146 (October 9, 2020), 85 FR 65443 (October 15, 2020) (SR–MIAX–2020–32); 90814 (December 29, 2020), 86 FR 327 (January 5, 2021) (SR–MIAX–2020–39); 91498 (April 7, 2021), 86 FR 19293 (April 13, 2021) (SR–MIAX–2021–06); 93881 (December 30, 2021), 87 FR 517 (January 5, 2022) (SR–MIAX–2021–63); 95259 [sic] (July 12, 2022), 87 FR 42754 (July 17 [sic], 2022) (SR–MIAX–2022–24).

[8] 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.

[9] Full Service MEI Ports provide Market Makers with the ability to send Market Maker simple and complex quotes, eQuotes, and quote purge messages to the MIAX System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per matching engine. *See* Fee Schedule, note 27.

[10] The term ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

assessed monthly Trading Permit fees as set forth in the Fee Schedule. As it relates to Market Makers, MIAX currently assesses a monthly Trading Permit fee in any month the Market Maker is certified in the membership system, is credentialed to use one or more MIAX MEI Ports in the production environment and is assigned to quote in one or more classes. MIAX assesses the monthly Market Maker Trading Permit fee for its Market Makers based on the greatest number of classes listed on MIAX that the MIAX Market Maker was assigned to quote in on any given day within a calendar month and the applicable fee rate is the lesser of either the per class basis or percentage of total national average daily volume measurements. A MIAX Market Maker is assessed a monthly Trading Permit fee according to the following table: [11]

Type of trading permit	Monthly MIAX trading permit fee	Market maker assignments (the lesser of the applicable measurements below) Ω	
		Per class	% of National average daily volume
Market Maker (includes RMM, LMM, PLMM).	$7,000.00	Up to 10 Classes	Up to 20% of Classes by volume.
	12,000.00	Up to 40 Classes	Up to 35% of Classes by volume.
	*17,000.00	Up to 100 Classes	Up to 50% of Classes by volume.
	*22,000.00	Over 100 Classes	Over 50% of Classes by volume up to all Classes listed on MIAX.

Ω Excludes Proprietary Products.

* For these Monthly MIAX Trading Permit Fee levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be $15,500 instead of the fee otherwise applicable to such level.

MIAX proposes that the waiver for the monthly Trading Permit fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) will be extended from September 30, 2022, to December 31, 2022, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposed change is to continue to provide an incentive for Market Makers to provide liquidity in Proprietary Products on the Exchange, which should result in increasing potential order flow and volume in Proprietary Products, including options on SPIKES. Even though the Exchange proposes to extend the waiver of this particular fee, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness to potential Members seeking a Trading Permit that the Exchange intends to assess such a fee after December 31, 2022.

The Exchange also proposes that Market Makers who trade Proprietary Products (including options on SPIKES) along with multi-listed classes will continue to not have Proprietary Products (including SPIKES) counted toward those Market Makers' class assignment count or percentage of total national average daily volume. This exclusion is noted with the symbol ''Ω'' following the table that shows the monthly Trading Permit fees currently assessed to Market Makers in Section (3)(b) of the Fee Schedule.

API Testing and Certification Fee

The Exchange assesses an API Testing and Certification fee to all Members depending upon Membership type. An API makes it possible for Members' software to communicate with MIAX software applications, and is subject to Members testing with, and certification by, MIAX. The Exchange offers four types of interfaces: (i) the Financial Information Exchange Port (''FIX Port''),[12] which enables the FIX Port user (typically an EEM or a Market Maker) to submit simple and complex orders electronically to MIAX; (ii) the MEI Port, which enables Market Makers to submit simple and complex electronic quotes to MIAX; (iii) the Clearing Trade Drop Port (''CTD Port''),[13] which provides real-time trade clearing information to the participants to a trade on MIAX and to the participants' respective clearing firms; and (iv) the FIX Drop Copy Port (''FXD Port''),[14] which provides a copy of real-time trade execution, correction and cancellation information through a FIX Port to any number of FIX Ports designated by an EEM to receive such messages.

API Testing and Certification fees for Market Makers are assessed (i) initially per API for CTD and MEI ports in the month the Market Maker has been credentialed to use one or more ports in the production environment for the tested API and the Market Maker has been assigned to quote in one or more classes, and (ii) each time a Market Maker initiates a change to its system that requires testing and certification. API Testing and Certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. The Exchange currently assesses a Market Maker an API Testing and Certification fee of $2,500. The API Testing and Certification fees represent costs incurred by the Exchange as it works with each Member for testing and certifying that the Member's software systems communicate properly with MIAX's interfaces.

MIAX proposes to extend the waiver of the API Testing and Certification fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) from September 30, 2022 until December 31, 2022, which the

[11] *See* Fee Schedule, Section (3)(b).

[12] A FIX Port is an interface with MIAX systems that enables the Port user (typically an Electronic Exchange Member or a Market Maker) to submit simple and complex orders electronically to MIAX. *See* Fee Schedule, note 24.

[13] Clearing Trade Drop (''CTD'') provides Exchange members with real-time clearing trade updates. The updates include the Member's clearing trade messages on a low latency, real-time basis. The trade messages are routed to a Member's connection containing certain information. The information includes, among other things, the following: (i) trade date and time; (ii) symbol information; (iii) trade price/size information; (iv) Member type (for example, and without limitation, Market Maker, Electronic Exchange Member, Broker-Dealer); (v) Exchange Member Participant Identifier (''MPID'') for each side of the transaction, including Clearing Member MPID; and (vi) strategy specific information for complex transactions. CTD Port Fees will be assessed in any month the Member is credentialed to use the CTD Port in the production environment. *See* Fee Schedule, Section (5)(d)iii.

[14] The FIX Drop Copy Port (''FXD'') is a messaging interface that will provide a copy of real-time trade execution, trade correction and trade cancellation information for simple and complex orders to FIX Drop Copy Port users who subscribe to the service. FIX Drop Copy Port users are those users who are designated by an EEM to receive the information and the information is restricted for use by the EEM only. FXD Port Fees will be assessed in any month the Member is credentialed to use the FXD Port in the production environment. *See* Fee Schedule, Section (5)(d)iv.

Exchange proposes to state in the Fee Schedule. The purpose of this proposed change is to continue to provide an incentive for potential Market Makers to develop software applications to trade in Proprietary Products, including options on SPIKES. Even though the Exchange proposes to extend the waiver of this particular fee, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness that the Exchange intends to assess such a fee after December 31, 2022.

MEI Port Fees

MIAX assesses monthly MEI Port fees to Market Makers in each month the Member has been credentialed to use the MEI Port in the production environment and has been assigned to quote in at least one class. The amount of the monthly MEI Port fee is based upon the number of classes in which the Market Maker was assigned to quote on any given day within the calendar month, and upon the class volume percentages set forth in the Fee Schedule. The class volume percentage is based on the total national average daily volume in classes listed on MIAX in the prior calendar quarter. Newly listed option classes are excluded from the calculation of the monthly MEI Port fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume. The Exchange assesses MIAX Market Makers the monthly MEI Port fee based on the greatest number of classes listed on MIAX that the MIAX Market Maker was assigned to quote in on any given day within a calendar month and the applicable fee rate that is the lesser of either the per class basis or percentage of total national average daily volume measurement. MIAX assesses MEI Port fees on Market Makers according to the following table: [15]

Monthly MIAX MEI fees	Market maker assignments (the lesser of the applicable measurements below) Ω	
	Per class	% of National average daily volume
$5,000.00	Up to 5 Classes	Up to 10% of Classes by volume.
$10,000.00	Up to 10 Classes	Up to 20% of Classes by volume.
$14,000.00	Up to 40 Classes	Up to 35% of Classes by volume.
$17,500.00 *	Up to 100 Classes	Up to 50% of Classes by volume.
$20,500.00 *	Over 100 Classes	Over 50% of Classes by volume up to all Classes listed on MIAX.

Ω Excludes Proprietary Products.

* For these Monthly MIAX MEI Fees levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be $14,500 instead of the fee otherwise applicable to such level.

MIAX proposes to extend the waiver of the monthly MEI Port fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) from September 30, 2022 until December 31, 2022, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposal is to continue to provide an incentive to Market Makers to connect to MIAX through the MEI Port such that they will be able to trade in MIAX Proprietary Products. Even though the Exchange proposes to extend the waiver of this particular fee, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness that the Exchange intends to assess such a fee after December 31, 2022.

The Exchange notes that for the purposes of this proposed change, other Market Makers who trade MIAX Proprietary Products (including options on SPIKES) along with multi-listed classes will continue to not have Proprietary Products (including SPIKES) counted toward those Market Makers' class assignment count or percentage of total national average daily volume. This exclusion is noted by the symbol ''Ω'' following the table that shows the monthly MEI Port Fees currently assessed for Market Makers in Section (5)(d)(ii) of the Fee Schedule.

The proposed extension of the fee waivers are targeted at market participants, particularly market makers, who are not currently members of MIAX, who may be interested in being a Market Maker in Proprietary Products on the Exchange. The Exchange estimates that there are fewer than ten (10) such market participants that could benefit from the extension of these fee waivers. The proposed extension of the fee waivers does not apply differently to different sizes of market participants, however the fee waivers do only apply to Market Makers (and not EEMs).

Market Makers, unlike other market participants, take on a number of obligations, including quoting obligations that other market participants do not have. Further, Market Makers have added market making and regulatory requirements, which normally do not apply to other market participants. For example, Market Makers have obligations to maintain continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and to not make bids or offers or enter into transactions that are inconsistent with a course of dealing. Accordingly, the Exchange believes it is reasonable and not unfairly discriminatory to continue to offer the fee waivers to Market Makers because the Exchange is seeking additional liquidity providers for Proprietary Products, in order to enhance liquidity and spreads in Proprietary Products, which is traditionally provided by Market Makers, as opposed to EEMs.

Incentive Program Extension

On September 30, 2021, the Exchange filed its initial proposal to implement a SPIKES Options Market Maker Incentive Program for SPIKES options to incentivize Market Makers to improve liquidity, available volume, and the quote spread width of SPIKES options beginning October 1, 2021, and ending December 31, 2021.[16] Technical details regarding the Incentive Program were

[15] *See* Fee Schedule (5)(d)(ii).

[16] *See* SR–MIAX–2021–45.

published in a Regulatory Circular on September 30, 2021.[17] On October 12, 2021, the Exchange withdrew SR–MIAX–2021–45 and refiled its proposal to implement the Incentive Program to provide additional details.[18] In that filing, the Exchange specifically noted that the Incentive Program would expire at the end of the period (December 31, 2021) unless the Exchange filed another 19b–4 Filing to amend the fees (or extend the Incentive Program).[19]

On December 23, 2021, the Exchange filed its proposal to extend the Incentive Program until March 31, 2022.[20] In that filing, the Exchange specifically noted that the Incentive Program would expire at the end of the period (March 31, 2022) unless the Exchange filed another 19b–4 Filing to amend the fees (or extend the Incentive Program).[21] On March 23, 2022, the Exchange filed its proposal to extend the Incentive Program until June 30, 2022.[22] In that filing, the Exchange specifically noted that the Incentive Program would expire at the end of the period (June 30, 2022) unless the Exchange filed another 19b–4 Filing to amend the fees (or extend the Incentive Program).[23] On June 29, 2022, the Exchange filed its proposal to extend the Incentive Program until September 30, 2022.[24] In that filing, the Exchange specifically noted that the Incentive Program would expire at the end of the period (September 30, 2022) unless the Exchange filed another 19b–4 Filing to amend the fees (or extend the Incentive Program).[25] The Exchange now proposes to extend the Incentive Program for three months, with the Incentive Program ending on December 31, 2022.[26]

The Exchange proposes to extend the Incentive Program for SPIKES options to continue to incentivize Market Makers to improve liquidity, available volume, and the quote spread width of SPIKES options. Currently, to be eligible to participate in the Incentive Program, a Market Maker must meet certain minimum requirements related to quote spread width in certain in-the-money (ITM) and out-of-the-money (OTM) options as determined by the Exchange and communicated to Members via Regulatory Circular.[27] Market Makers must also satisfy a minimum time in the market in the front 2 expiry months of 70%, and have an average quote size of 25 contracts. The Exchange established two separate incentive compensation pools that are used to compensate Market Makers that satisfy the criteria pursuant to the Incentive Program.

The first pool (Incentive 1) has a total amount of $40,000 per month, which is allocated to Market Makers that meet the minimum requirements of the Incentive Program. Market Makers are required to meet minimum spread width requirements in a select number of ITM and OTM SPIKES option contracts as determined by the Exchange and communicated to Members via Regulatory Circular.[28] A complete description of how the Exchange calculates the minimum spread width requirements in ITM and OTM SPIKES options can be found in the published Regulatory Circular.[29] Market Makers are also required to maintain the minimum spread width, described above, for at least 70% of the time in the front two (2) SPIKES options contract expiry months and maintain an average quote size of at least 25 SPIKES options contracts. The amount available to each individual Market Maker is capped at $10,000 per month for satisfying the minimum requirements of the Incentive Program. In the event that more than four Market Makers meet the requirements of the Incentive Program, each qualifying Market Maker is entitled to receive a pro-rated share of the $40,000 monthly compensation pool dependent upon the number of qualifying Market Makers in that particular month.

The second pool (Incentive 2 Pool) is capped at a total amount of $100,000 per month which is used during the Incentive Program to further incentivize Market Makers who meet or exceed the requirements of Incentive 1 (''qualifying Market Makers'') to provide tighter quote width spreads. The Exchange ranks each qualifying Market Maker's quote width spread relative to each other qualifying Market Maker's quote width spread. Market Makers with tighter spreads in certain strikes, as determined by the Exchange and communicated to Members via Regulatory Circular,[30] are eligible to receive a pro-rated share of the compensation pool as calculated by the Exchange and communicated to Members via Regulatory Circular,[31] not to exceed $25,000 per Member per month. Qualifying Market Makers are ranked relative to each other based on the quality of their spread width (*i.e.,* tighter spreads are ranked higher than wider spreads) and the Market Maker with the best quality spread width receives the highest rebate, while other eligible qualifying Market Makers receive a rebate relative to their quality spread width.

The Exchange proposes to extend the Incentive Program until December 31, 2022. The Exchange does not propose to make any amendments to how it calculates any of the incentives provided for in Incentive Pools 1 or 2. The details of the Incentive Program can continue to be found in the Regulatory Circular that was published on September 30, 2021 to all Exchange Members.[32] The purpose of this extension is to continue to incentivize Market Makers to improve liquidity, available volume, and the quote spread width of SPIKES options. The Exchange will announce the extension of the Incentive Program to all Members via a Regulatory Circular.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[33] in general, and furthers the objectives of Section 6(b)(4) of the Act[34] in particular, in that it is an equitable allocation of reasonable 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 Act 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 proposal to extend the fee waiver period for certain non-transaction fees for

[17] *See* MIAX Options Regulatory Circular 2021–56, SPIKES Options Market Maker Incentive Program (September 30, 2021) *available at https://www.miaxoptions.com/sites/default/files/circularfiles/MIAX_Options_RC_2021_56.pdf.*

[18] *See* Securities Exchange Act Release No. 93424 (October 26, 2021), 86 FR 60322 (November 1, 2021) (SR–MIAX–2021–49).

[19] *See id.,* at note 4.

[20] *See* Securities Exchange Act Release No. 93881 (December 30, 2021), 87 FR 517 (January 5, 2022) (SR–MIAX–2021–63).

[21] *See id.,* at note 20.

[22] *See* Securities Exchange Act Release No. 94574 (April 1, 2022), 87 FR 20492 (April 7, 2022) (SR–MIAX–2022–12).

[23] *See id.,* at note 12.

[24] *See* Securities Exchange Act Release No. 95259 [sic] (July 12, 2022), 87 FR 42754 (July 17 [sic], 2022) (SR–MIAX–2022–24).

[25] *See id.,* at note 24.

[26] The Exchange notes that at the end of the extension period, the Incentive Program will expire unless the Exchange files another 19b–4 Filing to amend the terms or extend the Incentive Program.

[27] *See supra* note 17.

[28] *See id.*

[29] *See id.*

[30] *See id.*

[31] *See id.*

[32] *See id.*

[33] 15 U.S.C. 78f(b).

[34] 15 U.S.C. 78f(b)(4) and (5).

Market Makers that trade solely in Proprietary Products is an equitable allocation of reasonable fees because the proposal continues to waive non-transaction fees for a limited period of time in order to enable the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants in MIAX's Proprietary Products, including options on SPIKES. The Exchange believe the proposed extension of the fee waivers is fair and equitable and not unreasonably discriminatory because it applies to all market participants not currently registered as Market Makers at the Exchange. Any market participant may choose to satisfy the additional requirements and obligations of being a Market Maker and trade solely in Proprietary Products in order to qualify for the fee waivers.

The Exchange believes that the proposed extension of the fee waivers is equitable and not unfairly discriminatory for Market Makers as compared to EEMs because Market Makers, unlike other market participants, take on a number of obligations, including quoting obligations that other market participants do not have. Further, Market Makers have added market making and regulatory requirements, which normally do not apply to other market participants. For example, Market Makers have obligations to maintain continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and to not make bids or offers or enter into transactions that are inconsistent with a course of dealing.

The Exchange believes it is reasonable and equitable to continue to waive the one-time Membership Application Fee, monthly Trading Permit Fee, API Testing and Certification Fee, and monthly MEI Port Fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) until December 31, 2022, since the waiver of such fees provides incentives to interested market participants to trade in Proprietary Products. This should result in increasing potential order flow and liquidity in MIAX Proprietary Products, including options on SPIKES.

The Exchange believes it is reasonable and equitable to continue to waive the API Testing and Certification fee assessable to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until December 31, 2022, since the waiver of such fees provides incentives to interested Members to develop and test their APIs sooner. Determining system operability with the Exchange's system will in turn provide MIAX with potential order flow and liquidity providers in Proprietary Products.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory that Market Makers who trade in Proprietary Products along with multi-listed classes will continue to not have Proprietary Products counted toward those Market Makers' class assignment count or percentage of total national average daily volume for monthly Trading Permit Fees and monthly MEI Port Fees in order to incentivize existing Market Makers who currently trade in multi-listed classes to also trade in Proprietary Products, without incurring certain additional fees.

The Exchange believes that the proposed extension of the fee waivers constitutes an equitable allocation of reasonable fees and other charges among its Members and issuers and other persons using its facilities. The proposed extension of the fee waivers means that all prospective market makers that wish to become Market Maker Members of the Exchange and quote solely in Proprietary Products may do so and have the above-mentioned fees waived until December 31, 2022. The proposed extension of the fee waivers will continue to not apply to potential EEMs because the Exchange is seeking to enhance the quality of its markets in Proprietary Products through introducing more competition among Market Makers in Proprietary Products. In order to increase the competition, the Exchange believes that it must continue to waive entry type fees for such Market Makers. EEMs do not provide the benefit of enhanced liquidity which is provided by Market Makers, therefore the Exchange believes it is reasonable and not unfairly discriminatory to continue to only offer the proposed fee waivers to Market Makers (and not EEMs). Further, the Exchange believes it is reasonable and not unfairly discriminatory to continue to exclude Proprietary Products from an existing Market Maker's permit fees and port fees, in order to incentive such Market Makers to quote in Proprietary Products. The amount of a Market Maker's permit and port fee is determined by the number of classes quoted and volume of the Market Maker. By excluding Proprietary Products from such fees, the Exchange is able to incentivize Market Makers to quote in Proprietary Products. EEMs do not pay permit and port fees based on the classes traded or volume, so the Exchange believes it is reasonable, equitable, and not unfairly discriminatory to only offer the exclusion to Market Makers (and not EEMs).

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to extend the Incentive Program for Market Makers in SPIKES options. The Incentive Program is reasonably designed because it will continue to incentivize Market Makers to provide quotes and increased liquidity in select SPIKES options contracts. The Incentive Program is reasonable, equitably allocated and not unfairly discriminatory because all Market Makers in SPIKES options may continue to qualify for Incentive 1 and Incentive 2, dependent upon each Market Maker's quoting in SPIKES options in a particular month. Additionally, if a SPIKES Market Maker does not satisfy the requirements of Incentive Pool 1 or 2, then it simply will not receive the rebate offered by the Incentive Program for that month.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to continue to offer this financial incentive to SPIKES Market Makers because it will continue to benefit all market participants trading in SPIKES options. SPIKES options is a Proprietary Product on the Exchange and the continuation of the Incentive Program encourages SPIKES Market Makers to satisfy a heightened quoting standard, average quote size, and time in market. A continued increase in quoting activity and tighter quotes may yield a corresponding increase in order flow from other market participants, which benefits all investors by deepening the Exchange's liquidity pool, potentially providing greater execution incentives and opportunities, while promoting market transparency and improving investor protection.

The Exchange believes that the Incentive Program is equitable and not unfairly discriminatory because it will continue to promote an increase in SPIKES options liquidity, which may facilitate tighter spreads and an increase in trading opportunities to the benefit of all market participants. The Exchange believes it is reasonable to operate the Incentive Program for a continued limited period of time to strengthen market quality for all market participants. The resulting increased volume and liquidity will benefit those Members who are eligible to participate in the Incentive Program and will also continue to benefit those Members who are not eligible to participate in the Incentive Program by providing more trading opportunities and tighter spreads.

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.

Intra-Market Competition

The Exchange believes that the proposal to extend certain of the non-transaction fee waivers until December 31, 2022 for Market Makers that trade solely in Proprietary Products would increase intra-market competition by incentivizing new potential Market Makers to quote in Proprietary Products, which will enhance the quality of quoting and increase the volume of contracts in Proprietary Products traded on MIAX, including options on SPIKES. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity for the Exchange's Proprietary Products. Enhanced market quality and increased transaction volume in Proprietary Products that results from the anticipated increase in Market Maker activity on the Exchange will benefit all market participants and improve competition on the Exchange.

The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes for each separate type of market participant (new Market Makers and existing Market Makers) will be assessed equally to all such market participants. While different fees are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances as discussed above. For example, Market Makers have quoting obligations that other market participants (such as EEMs) do not have.

The Exchange believes that the proposed extension of the Incentive Program would continue to increase intra-market competition by incentivizing Market Makers to quote SPIKES options, which will continue to enhance the quality of quoting and increase the volume of contracts available to trade in SPIKES options. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity for SPIKES options. Enhanced market quality and increased transaction volume in SPIKES options that results from the anticipated increase in Market Maker activity on the Exchange will benefit all market participants and improve competition on the Exchange.

Inter-Market Competition

The Exchange does not believe that the proposed rule changes will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed extension of the fee waivers and the extension of the Incentive Program apply only to the Exchange's Proprietary Products (including options on SPIKES), which are traded exclusively on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[35] and Rule 19b–4(f)(2)[36] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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–MIAX–2022–32 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–2022–32. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2022–32 and should be submitted on or before November 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

J. Lynn Taylor,

Assistant Secretary.

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[35] 15 U.S.C. 78s(b)(3)(A)(ii).

[36] 17 CFR 240.19b–4(f)(2).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95996; File No. SR–C2–2022–017]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 5.34 Concerning Drill-Through Protection and Fat Finger Check

October 6, 2022.

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 October 4, 2022, Cboe C2 Exchange, Inc. (''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2 Options'') proposes to amend Rule 5.34. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[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 proposes to amend Rule 5.34. Specifically, the Exchange proposes to amend its drill-through protection mechanism for both simple and complex orders and its limit order fat finger check.

The Exchange proposes to amend Rule 5.34(a)(4) and (b)(6) to update the drill-through protection mechanism for simple and complex orders, respectively, to provide orders with additional execution opportunities. Pursuant to the current simple drill-through protection, if a buy (sell) order enters the Book at the conclusion of the opening auction process or would execute or post to the Book at the time of order entry, the System executes the order up to a buffer amount (the Exchange determines the buffer amount on a class and premium basis) above (below) the offer (bid) limit of the opening collar [3] or the national best bid (''NBO'') (national best offer (''NBB'')) that existed at the time of order entry, respectively (the ''drill-through price'').[4] The System enters a limit order (as long as it has a Time-in-Force of Day, Good-til-Cancelled or Good-til-Day) (or unexecuted portion) not executed pursuant to the provision in the immediately preceding sentence in the Book with a displayed equal to the drill-through price.[5] The order (or unexecuted portion) rests in the Book at the drill-through price [6] until the earlier to occur of its full execution and the end of the duration of a number of consecutive time periods (the Exchange determines on a class-by-class basis the number of periods, which may not exceed five, and the length of the time period in milliseconds, which may not exceed three seconds).[7]

The proposed rule change amends Rule 5.34(a)(4)(C)(i) to eliminate the concept that there will be a maximum number of time periods and proposes that the order (or unexecuted portion) will rest in the Book at the drill-through price for the duration of consecutive time periods.[8] The proposed rule change makes conforming changes to subparagraph (ii) by deleting references to ''the final period'' and subparagraph (iv) by deleting the reference to ''any remaining time period(s),'' as there will no longer be an Exchange-determined limited number of time periods. Currently, as set forth in current subparagraph (i), the drill-through mechanism will continue until the earlier to occur of the order's full execution and the end of the duration of the Exchange-determined number of time periods. The Exchange proposes to amend subparagraph (iv) to describe when the drill-through process will conclude. Specifically, proposed Rule 5.34(a)(4)(C)(iv) provides that the order continues through the process described in subparagraph (ii) (as proposed to be amended) until the earliest of the following to occur: (a) the order fully executes; (b) the User cancels the order; and (c) the order's limit price equals or is less than (if a buy order) or greater than (if a sell order) the drill-through price at any time during application of the drill-through mechanism, in which case the order rests in the Book at its limit price, subject to a User's instructions. In other words, the order will continue through consecutive time periods until it fully executes (unless it is cancelled by the User or reaches its limit price prior to full execution), compared to today when the order will continue through consecutive time periods until it fully executes or reaches the Exchange-determined final time period, at which time the order would be cancelled (unless it reaches its limit price prior to full execution). The Exchange believes eliminating the limit on the number of time periods may increase execution opportunities for limit orders, which will still continue to be bound by their limit prices and protected by the limit order fat finger check.[9]

The proposed rule change makes a similar change to the drill-through protection mechanism for complex orders. Specifically, the proposed rule change eliminates the concept that, for complex orders for which the user does not establish a buffer amount (and instead the Exchange-determined default buffer amount applies),[10] there

[3] *See* Rule 5.31(a) for the definition of Opening Collars.

[4] *See* Rule 5.34(a)(4)(A).

[5] *See* Rule 5.34(a)(4)(C).

[6] The proposed rule change adds ''at the drill-through price'' in the first sentence of subparagraph (a)(4)(C)(i), which is a nonsubstantive change, as it reflects current functionality and is stated in the introductory paragraph to Rule 5.34(a)(4)(C). The proposed rule change merely includes this detail in the next portion of the rule for additional clarity.

[7] *See* Rule 5.34(a)(4)(C)(i).

[8] The Exchange will continue to determine on a class-by-class basis the length of the time periods in milliseconds, which may continue to not exceed three seconds.

[9] If a limit price is ''too far away'' from the market, the order will continue to be subject to the limit order fat finger protection set forth in Rule 5.34(c)(1) and thus will still be subject to protection against a potentially erroneous execution due to an order pricing error upon submission.

[10] *See* Rule 5.34(b)(6)(A).

will be a maximum number of time periods and proposes that the complex order (or unexecuted portion) will rest in the Book at the drill-through price for the duration of consecutive time periods.[11] Currently, similar to the drill-through protection mechanism for simple orders (as described above), if a user enters a buy (sell) complex order into the System (and does not enter its own buffer amount), the System executes the order [12] up to a buffer amount above (below) the Synthetic National Best Offer (''SNBO'') (Synthetic National Best Bid (''SNBB'')) that existed at the time of entry (the ''drill-through price'') or initiates a complex order auction (''COA'') at the drill-through price if the order would initiate a COA.[13] For complex orders for which the user did not establish a buffer amount, the complex order (or unexecuted portion) rests in the COB with a displayed price equal to the drill-through price until the earlier to occur of the complex order's full execution and the end of the duration of a number of time periods (the Exchange determines on a class-by-class basis the number of periods, which may not exceed five, and the length of the time period in milliseconds, which may not exceed three seconds). Following the end of each period prior to the final period, the System adds (if a buy order) or subtracts (if a sell order) one buffer amount to the drill-through price displayed during the immediately preceding period (each new price becomes the ''drill-through price''). The complex order (or unexecuted portion) rests in the COB at that new drill-through price during the subsequent period. Following the end of the final period, the System cancels, the complex order (or unexecuted portion) not executed during any time period.[14]

The proposed rule change amends Rule 5.34(b)(6)(B)(i) and (ii) to eliminate the concept that there will be a maximum number of time periods and proposes that the order (or unexecuted portion) will rest in the COB at the drill-through price for the duration of consecutive time periods when a User does not establish its own buffer amount.[15] The proposed rule change makes conforming changes to current subparagraphs (i), (ii), and (iv) (proposed subparagraphs (ii) and (iii)) by deleting references to ''the final period'' and deleting the reference to ''any remaining time period(s),'' as there will no longer be an Exchange-determined limited number of time periods. Currently, as set forth in current subparagraphs (i), (ii), and (iv), if the inputting User does not establish a buffer amount for the complex order, the drill-through mechanism will continue until the earlier to occur of the order's full execution and the end of the duration of the Exchange-determined number of time periods (unless it reaches its limit price prior to full execution), at which time the order would be cancelled. The Exchange proposes to add to the end of proposed subparagraph (ii) when the drill-through process will conclude and what happens at that time for complex orders for which the user did not establish a buffer amount. Specifically, proposed Rule 5.34(b)(6)(B)(ii) provides that the complex order continues through the process described in proposed subparagraph (ii) until the earliest of the following to occur: (a) the complex order fully executes; (b) the User cancels the order; and (c) the complex order's limit price equals or is less than (if a buy order) or greater than (if a sell order) the drill-through price at any time during application of the drill-through mechanism, in which case the complex order rests in the COB at its limit price, subject to a User's instructions.[16] In other words, a complex order for which the User did not establish a buffer amount will continue through consecutive time periods until it fully executes (or is cancelled or reaches its limit price), compared to today when the complex order will continue through consecutive time periods until it fully executes or reaches the Exchange-determined final time period, at which time the order would be cancelled (unless it reaches its limit price, as described in current subparagraph (iv)). The Exchange believes eliminating the limit on the number of time periods may increase execution opportunities for limit orders, which will still continue to be bound by their limit prices and protected by the limit order fat finger check.[17]

The proposed rule change also makes certain nonsubstantive changes to Rule 5.34(b)(6). Specifically, the proposed rule change moves all provisions specific to the application of the drill-through mechanism if the user establishes a buffer amount into Rule 5.34(b)(6)(B)(i) and moves all provisions specific to the application of the drill-through mechanism if the user does not establish a buffer amount into Rule 5.34(b)(6)(B)(ii). This includes incorporating into each of proposed subparagraphs (i) and (ii) how the System handles a complex order if its limit price equals or less than (if a buy order) or greater than (if a sell order) the drill-through price, as described in current subparagraph (iv). As a result, the proposed rule change deletes current subparagraph (iv). Additionally, the proposed rule change moves certain language regarding what happens if the SBBO changes during any period, which applies to all complex orders subject to the drill-through protection mechanism, regardless of whether the user input its own buffer amount, to proposed subparagraph (iii) from current subparagraph (ii) and correspondingly changes current subparagraph (iii) to proposed subparagraph (iv). The proposed rule change makes a nonsubstantive change to the beginning of proposed subparagraph (iii) by changing ''However'' to ''Notwithstanding the above,'' as the Exchange believes that phrase is more appropriate.

In addition, the Exchange proposes to amend Rule 5.34(c)(1)(D) to add Limit-on-Close orders [18] to the list of orders to which the limit order fat finger check does not apply. Pursuant to the limit order fat finger check, if a User submits a buy (sell) limit order to the System with a price that is more than a buffer

[11] *See* proposed Rule 5.34(b)(6)(B). The proposed rule change has no impact on how the drill-through protection mechanism applies to a complex order for which the inputting user establishes a buffer amount, as in that situation, there is only a single time period pursuant to the current rule (which will continue to be the case).

[12] Executions occur pursuant to Rule 5.33(e).

[13] Unlike the simple order drill-through protection mechanism, the complex order drill-through protection mechanism permits users to establish a buffer amount different than the Exchange-determined default buffer amount. *See* Rule 5.34(b)(6)(A). A description of COAs is located in Rule 5.33(d).

[14] *See* current Rule 5.34(b)(6)(B)(i) and (ii). As set forth in current subparagraph (iv), if the complex order's limit price is reached during the application of the drill-through mechanism, the order will rest in the COB at its limit price.

[15] The Exchange will continue to determine on a class-by-class basis the length of the time periods in milliseconds, which may continue to not exceed three seconds.

[16] Proposed clause (c) is applicable today and located in current subparagraph (iv). As described below, the proposed rule change merely moves this provision from current subparagraph (iv) to proposed subparagraph (ii).

[17] If a limit price is ''too far away'' from the market, the order will continue to be subject to the limit order fat finger protection set forth in Rule 5.34(c)(1) and thus will still be subject to protection against a potentially erroneous execution due to an order pricing error upon submission.

[18] A ''Limit-on-Close'' or ''LOC'' order is a limit order that may not execute on the Exchange until three minutes prior to market close. At that time, the System enters LOC orders into the Book in time sequence (based on the times at which the System initially received them), where they may be processed in accordance with Rule 5.32. The System cancels an LOC order (or unexecuted portion) that does not execute by the market close. Users may not designate bulk messages as LOC. *See* Rule 5.6(d) (definition of ''Limit-on-Close'' and ''LOC'' order).

amount [19] above (below) the NBO (NBB) for simple orders or the SNBO (SNBB) for complex orders, the System cancels or rejects the order.[20] Currently, the limit order fat finger check does not apply to bulk messages or stop-limit orders.[21] The Exchange proposes to also not apply the limit order fat finger check to Limit-on-Close orders. The limit order fat finger check applies to orders upon entry to the System. However, the limit price of a Limit-on-Close order is intended to relate to the price at the market close, and thus may intentionally be further away from the NBBO or SNBBO, as applicable, at the time the order is entered. This may cause the order to be inadvertently rejected pursuant to this check. The Exchange believes it is not appropriate for this limit order to be subject to the fat finger check, as the check may inadvertently cause rejections for orders with limit prices that are intentionally ''far away'' from the market at the time of order entry.

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.[22] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [23] 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 rule change is consistent with the Section 6(b)(5) [24] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change to eliminate the maximum number of time periods for which a simple or complex order will rest in the Book or COB, respectively, during application of the drill-through protection mechanism will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors, because it will provide simple and complex orders with additional execution opportunities. These orders may continue to be available on the Book or COB, as applicable, for execution, at a wider range of prices, as opposed to today when such orders are cancelled after a specified number of time periods (depending on the User's instructions and if the order does not reach its limit price prior to the end of those time periods). The Exchange believes these additional execution opportunities will benefit investors that submit such orders and believes such orders will continue to receive protection against potentially erroneous executions, as the limit order fat finger check will continue to apply to them.

The Exchange believes the proposed nonsubstantive rule changes to the complex order drill-through protection mechanism will protect investors and the public interest, because these changes improve the organization of this rule's provisions by grouping all provisions that apply when a User establishes its own buffer and all provisions that apply when a User does not establish its own buffer, eliminating potential confusion.

Finally, the Exchange believes excluding Limit-on-Close orders from the limit order fat finger check will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors, because it may reduce inadvertent rejections of Limit-on-Close orders, which may be purposely priced further away from the NBBO or SNBBO, as applicable, at the time of entry, as their limit prices are intended to relate to price at the market close. Therefore, this proposed rule change may increase execution opportunities for Users that submit Limit-on-Close orders.

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 the amended drill-through protection mechanism (for both simple and complex orders) and limit order fat finger check will continue to apply in the same manner to orders of all Users and may lead to increased execution opportunities. 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 purposes of the Act, because the proposed rule change relates solely to Exchange risk controls and how the Exchange handles orders subject to those risk controls.

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:

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. 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 [25] and Rule 19b–4(f)(6) [26] 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 (*http://www.sec.gov/rules/sro.shtml*); or

[19] The Exchange determines a default buffer amount on a class-by-class basis; however, a User may establish a higher or lower amount than the Exchange default for a class.

[20] Rule 5.34(c)(1).

[21] Rule 5.34(c)(1)(D).

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] *Id.*

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(6).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2022–017 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–C2–2022–017. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2022–017 and should be submitted on or before November 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 2022–22179 Filed 10–12–22; 8:45 am]

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[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95993; File No. SR–Phlx–2022–39]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Two Pilot Programs

October 6, 2022.

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 September 26, 2022, Nasdaq PHLX LLC (''Phlx'' 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 proposes to extend the pilot to permit the listing and trading of options based on 1/100 the value of the Nasdaq–100 Index (''Nasdaq–100'') and the Exchange's nonstandard expirations pilot program, both currently set to expire on November 4, 2022.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[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

Phlx proposes to extend 2 pilots, which are both set to expire on November 4, 2022. The Exchange proposes to extend (1) pilot to permit the listing and trading of options based on 1/100 the value of the Nasdaq–100 Index (''XND Pilot''), and (2) the Exchange's nonstandard expirations pilot program (''Nonstandard Pilot'').

XND Pilot

Phlx filed a rule change to permit the listing and trading of index options on the Nasdaq 100 Micro Index Options (''XND'') on a pilot basis.[3] XND options trade independently of and in addition to NDX options, and the XND options are subject to the same rules that presently govern the trading of index options based on the Nasdaq–100 Index, including sales practice rules, margin requirements, trading rules, and position and exercise limits. Similar to NDX, XND options are European-style and cash-settled, and have a contract multiplier of 100. The contract specifications for XND options mirror in all respects those of the NDX options contract already listed on the Exchange, except that XND options are based on 1/100th of the value of the Nasdaq–100 Index, and are p.m.-settled pursuant to Options 4A, Section 12(a)(5).

The Exchange proposes to amend Phlx Options 4A, Section 12(a)(6) to extend the current XND Pilot period to May 4, 2023. This pilot was previously extended and is currently extended through November 4, 2022.[4] The Exchange continues to have sufficient capacity to handle additional quotations and message traffic associated with the listing and trading of XND options. In addition, index options are integrated into the Exchange's existing surveillance system architecture and are thus subject to the relevant surveillance processes. The Exchange also continues to have adequate surveillance procedures to monitor trading in XND options thereby aiding in the maintenance of a fair and orderly market. Additionally, there is continued investor interest in these products and this extension will provide additional time to collect data related to the XND

[3] *See* Securities Exchange Act Release No. 91524 (April 9, 2021), 86 FR 19909 (April 15, 2021) (SR–Phlx–2021–07) (Approval Order).

[4] *See* Securities Exchange Act Release No. 93447 (October 28, 2021), 86 FR 60719 (November 3, 2021) (SR–Phlx–2021–66); and 94631 (April 7, 2022), 87 FR 21990 (April 13, 2022) (SR–Phlx–2022–16).

Pilot. The Exchange believes that the proposed extension of the XND Pilot will not have an adverse impact on capacity.

XND Pilot Report

The Exchange currently makes public on its website the data and analysis previously submitted to the Commission on the XND Pilot and will continue to make public any data or analysis it submits under the XND Pilot in the future. The Exchange intends to submit a rule change proposing permanency of the XND Pilot and would either provide additional data in such proposal or in an annual report. The Exchange would continue to provide the Commission with ongoing data unless and until the XND Pilot is made permanent or discontinued.

Nonstandard Pilot

On December 15, 2017, the Commission approved a rule change for the listing and trading on the Exchange, on a twelve month pilot basis, of p.m.-settled options on broad-based indexes with nonstandard expirations dates (''Nonstandard Pilot'').[5] The Nonstandard Pilot permits both Weekly Expirations and End of Month (''EOM'') expirations similar to those of the a.m.-settled broad-based index options, except that the exercise settlement value of the options subject to the pilot are based on the index value derived from the closing prices of component stocks. On July 29, 2022, the Commission approved a Proposed Rule Change To Permit the Listing and Trading of p.m.-Settled Nasdaq–100 Index Options That Expire on Tuesday or Thursday Under Its Nonstandard Expirations Pilot Program.[6] The Nonstandard Pilot was extended various times and is currently extended through November 4, 2022.[7]

Pursuant to Phlx Options 4A, Section 12(b)(5)(A) the Exchange may open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration). In addition, the Exchange may also open for trading Weekly Expirations on Nasdaq–100 Index options to expire on any Tuesday or Thursday (other than days that coincide with the third Friday-of-the-month or an EOM expiration). Weekly Expirations are subject to all provisions of Options 4A, Section 12 and are treated the same as options on the same underlying index that expire on the third Friday of the expiration month. Unlike the standard monthly options, however, Weekly Expirations are p.m.-settled.

Similarly, pursuant to Options 4A, Section 12(b)(5)(B) the Exchange may open for trading EOM expirations on any broad-based index eligible for standard options trading to expire on the last trading day of the month. EOM expirations are subject to all provisions of Options 4A, Section 12 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, the EOM expirations are p.m.-settled.

The Exchange now proposes to amend Options 4A, Section 12(b)(5)(C) so that the duration of the Nonstandard Pilot for these nonstandard expirations will be through May 4, 2023. The Exchange continues to have sufficient systems capacity to handle p.m.-settled options on broad-based indexes with nonstandard expirations dates and has not encountered any issues or adverse market effects as a result of listing them. Additionally, there is continued investor interest in these products. The Exchange will continue to make public on its website any data and analysis it submits to the Commission under the Nonstandard Pilot. The Exchange believes that the proposed extension of the Nonstandard Pilot will not have an adverse impact on capacity.

Nonstandard Pilot Report

The Exchange intends to submit a rule change proposing permanency of the Nonstandard Pilot and would either provide additional data in such proposal or in an annual report. The Exchange would continue to provide the Commission with ongoing data unless and until the Nonstandard Pilot is made permanent or discontinued. The annual report will contain an analysis of volume, open interest and trading patterns; a monthly analysis of weekly expiration and End of Month Trading Patterns; and a Provisional Analysis of Index Price Volatility and Share Trading Activity. In addition, for series that exceed certain minimum open interest parameters, the annual report will provide analysis of index price volatility and, if needed, share trading activity.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] 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.

XND Pilot

In particular, the Exchange believes that the XND Pilot has been successful to date. The Exchange has not encountered any problems with the XND Pilot. By extending the XND Pilot, the Exchange believes it will attract order flow to the Exchange, increase the variety of listed options, and provide a valuable hedge tool to retail and other investors. Specifically, the Exchange believes that the XND Pilot will provide additional trading and hedging opportunities for investors while providing the Commission with data to monitor for and assess any potential for adverse market effects of allowing P.M.-settlement for XND options, including on the underlying component stocks.

Nonstandard Pilot

The Exchange believes the proposed rule change will protect investors and the public interest by providing the Exchange, the Commission and investors the benefit of additional time to analyze nonstandard expiration options. In particular, the Exchange believes that the Nonstandard Pilot has been successful to date. The Exchange has not encountered any problems with the Nonstandard Pilot. By extending the Nonstandard Pilot, investors may continue to benefit from a wider array of investment opportunities. Additionally, both the Exchange and the Commission may continue to monitor the potential for adverse market effects

[5] *See* Securities Exchange Act Release No. 82341 (December 15, 2017), 82 FR 60651 (December 21, 2017) (Notice of Filing of Amendment No. 2, Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 and Granting Accelerated Approval of Amendment No. 2, of a Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program).

[6] *See* Securities Exchange Act Release No. 95391 (July 29, 2022), 87 FR 47797 (August 4, 2022) (SR–Phlx–2022–22) (Order Granting Approval of a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Nasdaq–100 Index Options That Expire on Tuesday or Thursday Under Its Nonstandard Expirations Pilot Program).

[7] *See* Securities Exchange Act Release Nos. 84835 (December 17, 2018), 83 FR 65773 (December 21, 2018) (SR–Phlx–2018–80); 85669 (April 17, 2019), 84 FR 16913 (April 23, 2019) (SR–Phlx–2019–13); 87381 (October 22, 2019), 84 FR 57788 (October 28,2 019) (SR–Phlx–2019–43); 88684 (April 17, 2020), 85 FR 22781 (April 23, 2020) (SR–Phlx–2020–24); 90256 (October 22, 2020), 85 FR 68393 (October 28, 2020) (SR–Phlx–2020–48); 91484 (April 6, 2021), 86 FR 19050 (April 12, 2021) (SR–Phlx–2021–21); 93464 (October 29, 2021), 86 FR 60952 (November 4, 2021) (SR–Phlx–2021–65); and 94631 (April 7, 2022), 87 FR 21990 (April 13, 2022) (SR–Phlx–2022–16).

[8] *See* note 5 above.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

of p.m.-settlement on the market, including the underlying cash equities market, at the expiration of these 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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will not impose an undue burden on inter-market competition as this rule change will continue to facilitate the listing and trading of new option products that will enhance competition among market participants, to the benefit of investors and the marketplace. Furthermore, these products could offer a competitive alternative to other existing investment products. Finally, it is possible for other exchanges to develop or license the use of a new or different index to compete with these products and seek Commission approval to list and trade options on such an index.

XND Pilot

XND options would be available for trading to all market participants and therefore would not impose an undue burden on intra-market competition. The continued listing of XND will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the Nasdaq–100.

Nonstandard Pilot

Options with nonstandard expirations would be available for trading to all market participants. The continued listing of the Nonstandard Pilot will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the Nasdaq–100.

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 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[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2022–39 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–2022–39. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2022–39, and should be submitted on or before November 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 2022–22176 Filed 10–12–22; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95992; File No. SR–ISE–2022–20]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Two Pilot Programs

October 6, 2022.

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 September 26, 2022, Nasdaq ISE, LLC (''ISE'' 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.

[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 extend the pilot to permit the listing and trading of options based on ⅕ the value of the Nasdaq–100 Index (''Nasdaq–100'') and the Exchange's nonstandard expirations pilot program, both currently set to expire on November 4, 2022.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE proposes to extend 2 pilots, which are both set to expire on November 4, 2022. The Exchange proposes to extend (1) its pilot to permit the listing and trading of options based on ⅕ the value of the Nasdaq–100 Index (''NQX Pilot''), and (2) the Exchange's nonstandard expirations pilot program (''Nonstandard Pilot'').

NQX Pilot

ISE filed a rule change to permit the listing and trading of index options on the Nasdaq 100 Reduced Value Index (''NQX'') on a twelve month pilot basis.[3] NQX options trade independently of and in addition to NDX options, and the NQX options are subject to the same rules that presently govern the trading of index options based on the Nasdaq–100, including sales practice rules, margin requirements, trading rules, and position and exercise limits. Similar to NDX, NQX options are European-style and cash-settled, and have a contract multiplier of 100. The contract specifications for NQX options mirror in all respects those of the NDX options contract listed on the Exchange, except that NQX options are based on ⅕ of the value of the Nasdaq–100, and are p.m.-settled pursuant to Options 4A, Section 12(a)(6).

The Exchange proposes to amend ISE Options 4A, Section 12(a)(6)(i) to extend the current NQX Pilot period to May 4, 2023. The NQX Pilot was previously extended with the last extension through November 4, 2022.[4] The Exchange continues to have sufficient capacity to handle additional quotations and message traffic associated with the listing and trading of NQX options. In addition, index options are integrated into the Exchange's existing surveillance system architecture and are thus subject to the relevant surveillance processes. The Exchange also continues to have adequate surveillance procedures to monitor trading in NQX options thereby aiding in the maintenance of a fair and orderly market. Additionally, there is continued investor interest in these products and this extension will provide additional time to collect data related to the NQX Pilot. The Exchange believes that the proposed extension of the NQX Pilot will not have an adverse impact on capacity.

NQX Pilot Report

The Exchange currently makes public on its website the data and analysis previously submitted to the Commission on the NQX Pilot and will continue to make public any data or analysis it submits under the NQX Pilot in the future. The Exchange intends to submit a rule change proposing permanency of the NQX Pilot and would either provide additional data in such proposal or in an annual report. The Exchange would continue to provide the Commission with ongoing data unless and until the NQX Pilot is made permanent or discontinued.

Nonstandard Pilot

ISE filed a rule change for the listing and trading on the Exchange, on a twelve month pilot basis, of p.m.-settled options on broad-based indexes with nonstandard expirations dates.[5] The Nonstandard Pilot permits both Weekly Expirations and End of Month (''EOM'') expirations similar to those of the a.m.-settled broad-based index options, except that the exercise settlement value of the options subject to the pilot are based on the index value derived from the closing prices of component stocks. On July 29, 2022, the Commission approved a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Nasdaq–100 Index Options That Expire on Tuesday or Thursday Under Its Nonstandard Expirations Pilot Program.[6] The Nonstandard Pilot was extended various times with the last extension through November 4, 2022.[7]

Supplementary Material .07(a) to Options 4A, Section 12 provides that the Exchange may open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of- the-month or days that coincide with an EOM expiration). In addition, the Exchange may also open for trading Weekly Expirations on Nasdaq–100 Index options to expire on any Tuesday or Thursday (other than days that coincide with the third Friday-of-the-month or an EOM expiration). Weekly Expirations are subject to all provisions of Options 4A, Section 12 and are treated the same as options on the same underlying index that expire on the third Friday of the expiration month. Unlike the standard monthly options, however, Weekly Expirations are p.m.-settled.

Pursuant to Supplementary Material .07(b) to Options 4A, Section 12 the Exchange may open for trading EOM expirations on any broad-based index eligible for standard options trading to expire on the last trading day of the

[3] *See* Securities Exchange Act Release No. 82911 (March 20, 2018), 83 FR 12966 (March 26, 2018) (SR–ISE–2017–106) (Approval Order).

[4] *See* Securities Exchange Act Release Nos. 86071 (June 10, 2019), 84 FR 27822 (June 14, 2019) (SR–ISE–2019–18); 87379 (October 22, 2019), 84 FR 57793 (October 28, 2019) (SR–ISE–2019–27); 88683 (April 17, 2020), 85 FR 22768 (April 23, 2020) (SR–ISE–2020–18); 90257 (October 22, 2020), 85 FR 68387 (October 28, 2020) (SR–ISE–2020–33); 91485 (April 6, 2021), 86 FR 19052 (April 12, 2021) (SR–ISE–2021–05); 93448 (October 28, 2021), 86 FR 60717 (November 3, 2021) (SR–ISE–2021–22); and 94632 (April 7, 2022), 87 FR 21940 (SR–ISE–2022–09).

[5] See Securities Exchange Act Release No. 82612 (February 1, 2018), 83 FR 5470 (February 7, 2018) (approving SR–ISE–2017–111) (Order Approving a Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program).

[6] *See* Securities Exchange Act Release No. 95393 (July 29, 2022), 87 FR 47807 (August 4, 2022) (SR–ISE–2022–13) (Order Granting Approval of a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Nasdaq–100 Index Options That Expire on Tuesday or Thursday Under Its Nonstandard Expirations Pilot Program).

[7] *See* Securities Exchange Act Release Nos. 85030 (February 1, 2019), 84 FR 2633 (February 7, 2019) (SR–ISE–2019–01); 85672 (April 17, 2019), 84 FR 16899 (April 23, 2019) (SR–ISE–2019–11); 87380 (October 22, 2019), 84 FR 57786 (October 28, 2019) (SR–ISE–2019–28); 88681 (April 17, 2020), 85 FR 22775 (April 23, 2020) (SR–ISE–2020–17); 90265 (October 23, 2020), 85 FR 68605 (October 29, 2020) (SR–ISE–2020–34); 91486 (April 6, 2021), 86 FR 19048 (April 12, 2021) (SR–ISE–2021–06); 93449 (October 28, 2021), 86 FR 60679 (November 3, 2021) (SR–ISE–2021–23); and 94632 (April 7, 2022), 87 FR 21940 (SR–ISE–2022–09).

month. EOM expirations are subject to all provisions of Options 4A, Section 12 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, the EOM expirations are p.m.-settled.

The Exchange now proposes to amend Supplementary Material .07(c) to Options 4A, Section 12 so that the duration of the Nonstandard Pilot for these nonstandard expirations will be through May 4, 2023. The Exchange continues to have sufficient systems capacity to handle p.m.-settled options on broad-based indexes with nonstandard expirations dates and has not encountered any issues or adverse market effects as a result of listing them. Additionally, there is continued investor interest in these products. The Exchange will continue to make public on its website any data and analysis it submits to the Commission under the Nonstandard Pilot. The Exchange believes that the proposed extension of the Nonstandard Pilot will not have an adverse impact on capacity.

Nonstandard Pilot Report

The Exchange intends to submit a rule change proposing permanency of the Nonstandard Pilot and would either provide additional data in such proposal or in an annual report. The Exchange would continue to provide the Commission with ongoing data unless and until the Nonstandard Pilot is made permanent or discontinued. The annual report will contain an analysis of volume, open interest and trading patterns; a monthly analysis of weekly expiration and End of Month Trading Patterns; and a Provisional Analysis of Index Price Volatility and Share Trading Activity. In addition, for series that exceed certain minimum open interest parameters, the annual report will provide analysis of index price volatility and, if needed, share trading activity.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] 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.

NQX Pilot

In particular, the Exchange believes that the NQX Pilot has been successful to date. The Exchange has not encountered any problems with the NQX Pilot. By extending the NQX Pilot, the Exchange believes it will attract order flow to the Exchange, increase the variety of listed options, and provide a valuable hedge tool to retail and other investors. Specifically, the Exchange believes that the NQX Pilot will provide additional trading and hedging opportunities for investors while providing the Commission with data to monitor for and assess any potential for adverse market effects of allowing P.M.-settlement for NQX options, including on the underlying component stocks.

Nonstandard Pilot

The Exchange believes the proposed rule change will protect investors and the public interest by providing the Exchange, the Commission and investors the benefit of additional time to analyze nonstandard expiration options. In particular, the Exchange believes that the Nonstandard Pilot has been successful to date. The Exchange has not encountered any problems with the Nonstandard Pilot. By extending the Nonstandard Pilot, investors may continue to benefit from a wider array of investment opportunities. Additionally, both the Exchange and the Commission may continue to monitor the potential for adverse market effects of p.m.-settlement on the market, including the underlying cash equities market, at the expiration of these 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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will not impose an undue burden on inter-market competition as this rule change will continue to facilitate the listing and trading of new option products that will enhance competition among market participants, to the benefit of investors and the marketplace. Furthermore, these products could offer a competitive alternative to other existing investment products. Finally, it is possible for other exchanges to develop or license the use of a new or different index to compete with these products and seek Commission approval to list and trade options on such an index.

NQX Pilot

NQX options would be available for trading to all market participants and therefore would not impose an undue burden on intra-market competition. The continued listing of the NQX Pilot will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the Nasdaq–100.

Nonstandard Pilot

Options with nonstandard expirations would be available for trading to all market participants. The continued listing of the Nonstandard Pilot will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the Nasdaq–100.

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 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[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

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

[8] *See* note 5 above.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2022–20 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–2022–20. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2022–20, and should be submitted on or before November 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 2022–22175 Filed 10–12–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96003; File No. SR–CBOE–2022–050]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

October 6, 2022.

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 September 26, 2022, 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 its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to modify the fee for the SPX (and SPXW) Floor Market-Maker Tier Appointment Fee.[3]

By way of background, Exchange Rule 5.50(g)(2) provides that the Exchange may establish one or more types of tier appointments and Exchange Rule 5.50(g)(2)(B) provides such tier appointments are subject to such fees and charges the Exchange may establish. In 2010, the Exchange established the SPX Tier Appointment and adopted an initial fee of $3,000 per Market-Maker trading permit, per month.[4] The SPX (and SPXW) Tier Appointment fee for Floor Market-Makers currently applies to any Market-Maker that executes any contracts in SPX and/or SPXW on the trading floor.[5] The Exchange now seeks to increase the fee for the SPX/SPXW Floor Market-Maker Tier Appointment from $3,000 per Market-Maker Floor Trading Permit to $5,000 per Market-Maker Floor Trading Permit.

In connection with the proposed change, the Exchange also proposes to update Footnote 24 in the Fees Schedule, as well as remove the reference to Footnote 24 in the Market-Maker Tier Appointment Fee Table. By way of background, in June 2020, the Exchange adopted Footnote 24 to describe pricing changes that would apply for the duration of time the Exchange trading floor was being operated in a modified manner in connection with the COVID–19

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed fee change, among other changes, on June 1, 2022 (SR–CBOE–2022–026). On June 10, 2022, the Exchange withdrew that filing and submitted SR–CBOE–2022–029. On August 5, 2022, the Exchange withdrew that filing and submitted SR–CBOE–2022–042. On September 26, 2022, the Exchange withdrew that filing and submitted this filing to address the proposed fee change relating to the SPX/SPXW Floor Market-Maker Tier Appointment Fee.

[4] *See* Securities Exchange Act Release No. 62386 (June 25, 2010), 75 FR 38566 (July 2, 2010) (SR–CBOE–2010–060).

[5] The Exchange notes that the fee is not assessed to a Market-Maker Floor Permit Holder who only executes SPX (including SPXW) options transactions as part of multi-class broad-based index spread transactions. *See* Cboe Options Fees Schedule, Market-Maker Tier Appointment Fees, Notes.

pandemic.[6] Among other changes, Footnote 24 provided that the monthly fee for the SPX/SPXW Floor Market-Maker Tier Appointment Fee was to be increased to $5,000 per Trading Permit from $3,000 per Trading Permit. As the Exchange now proposes to maintain the $5,000 rate on a permanent basis (*i.e.,* regardless of whether the Exchange is operating in a modified state due to COVID–19 pandemic), the Exchange proposes to eliminate the reference to the SPX/SPXW Floor Market-Maker Tier Appointment Fee in Footnote 24.[7]

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.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [9] 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 rule change is consistent with the Section 6(b)(5) [10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes its proposal to increase the SPX (and SPXW) Floor Market-Maker Tier Appointment fee is reasonable because the proposed amount is not significantly higher than was previously assessed (and is the same amount that has been assessed under Footnote 24 for the last two years). Additionally, the Exchange believes its proposal to increase the fee is reasonable as the fee amount has not been increased since it was adopted over 12 years ago in July 2010.[11] Since its adoption 12 years ago, there has been both inflation and increased costs of services, including relating to facility and technology upgrades associated with the new trading floor. Indeed, the Exchange notes that the trading pit for SPX in particular is the largest trading pit on the new trading floor and represents a significant amount of space on the new trading floor. Additionally, over the last decade the Exchange has made, and continues to make, further investments to encourage growth trends in SPX volume, including investments in marketing, sales teams, global coverage teams, and new product innovations (such as adding additional weekly expirations and LEAPS). The Exchange notes that the SPX (and SPXW) Tier Appointment fee helps fund these efforts. Moreover, although the SPX (and SPXW) Tier Appointment fee has not increased since 2010, SPX volume, including volume on the trading floor, has increased significantly since that time. The Exchange therefore believes the proposed fee increase is reasonable because it allows the Exchange to recoup fees associated with the costs of maintaining and growing SPX and SPXW, which products can help market participants achieve broad market protection.

The proposed change is also equitable and not unfairly discriminatory as it applies to all Market-Makers that trade SPX on the trading floor uniformly. The Exchange believes it's reasonable equitable and not unfairly discriminatory to increase the SPX/SPXW floor Market-Maker Tier Appointment fee and not the SPX/SPXW electronic Market-Maker Tier Appointment fee, as Floor Market-Makers are not subject to other costs that electronic Market-Makers are subject to. For example, while all Floor Market-Makers automatically have an appointment to trade open outcry in all classes traded on the Exchange and at no additional cost per appointment, electronic Market-Makers must select an appointment in a class (such as SPX) to make markets electronically and such appointments are subject to fees under the Market-Maker Electronic Appointments Sliding Scale.[12]

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 changes will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes would be applied in the same manner to all Floor Market-Makers that trade SPX (and/or SPXW). As noted above, the Exchange believes it's reasonable to increase the SPX/SPWX Tier Appointment Fee for only Floor Market-Makers only as opposed to electronic Market-Makers, because electronic Market-Makers are subject to costs Floor Market-Makers are not, such as the fees under Market-Maker EAP [sic] Appointments Sliding Scale.

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 proposed rule changes apply only to a fee relating to a product exclusively listed on the Exchange. Additionally, the Exchange notes it operates in a highly competitive market. In addition to Cboe Options, TPHs have numerous alternative venues that they may participate on (which list products that compete with SPX options) and direct their order flow, including 15 other options exchanges (four of which also maintain physical trading floors), as well as off-exchange venues, where competitive products are available for trading. Based on publicly available information, no single options exchange has more than 18% of the market share of executed volume of options trades.[13] Therefore, no exchange possesses significant pricing power in the execution of option order flow. 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.'' [14] The

[6] *See* Securities Exchange Act Release No. 89189 (June 30, 2020), 85 FR 40344 (July 6, 2020) (SR–CBOE–2020–058).

[7] The Exchange notes that since its transition to a new trading floor facility on June 6, 2022, it has not been operating in a modified manner. As such Footnote 24 (*i.e.,* the modified fee changes it describes) does not currently apply.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] *See* Securities Exchange Act Release No. 62386 (June 25, 2010), 75 FR 38566 (July 2, 2010) (SR–CBOE–2010–060).

[12] *See* Cboe Options Rules 5.50(a) and (e). *See also* Cboe Options Fees Schedule, Market-Maker EAP [sic] Appointments Sliding Scale.

[13] See Cboe Global Markets, U.S. Options Market Volume Summary by Month (September 26, 2022), available at *http://markets.cboe.com/us/options/market_share/.*

[14] See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[15] Accordingly, the Exchange does not believe its proposed changes to the incentive programs 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 Act[16] and paragraph (f) of Rule 19b–4[17] 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2022–050 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–2022–050. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2022–050 and should be submitted on or before November 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 2022–22181 Filed 10–12–22; 8:45 am]

BILLING CODE 8011–01–P

[15] NetCoalition v. SEC, 615 F.3d 525, 539 (DC Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f).

[18] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17649 and #17650; PUERTO RICO Disaster Number PR–00043]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the Commonwealth of Puerto Rico

AGENCY: Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Puerto Rico (FEMA–4671–DR), dated 09/29/2022.

Incident: Hurricane Fiona.

Incident Period: 09/17/2022 through 09/21/2022.

DATES: Issued on 10/05/2022.

Physical Loan Application Deadline Date: 11/28/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 06/29/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Puerto Rico, dated 09/29/2022, is hereby amended to establish the incident period for this disaster as beginning 09/17/2022 through 09/21/2022.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–22252 Filed 10–12–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17640 and #17641; PUERTO RICO Disaster Number PR–00042]

Presidential Declaration Amendment of a Major Disaster for the Commonwealth of Puerto Rico

AGENCY: Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major

disaster for the Commonwealth of Puerto Rico (FEMA–4671–DR), dated 09/21/2022.

Incident: Hurricane Fiona.

Incident Period: 09/17/2022 through 09/21/2022.

DATES: Issued on 10/05/2022.

Physical Loan Application Deadline Date: 11/21/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 06/21/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the Commonwealth of Puerto Rico, dated 09/21/2022, is hereby amended to establish the incident period for this disaster as beginning 09/17/2022 through 09/21/2022.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–22253 Filed 10–12–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17487 and #17488; NEW MEXICO Disaster Number NM–00081]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of New Mexico

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Mexico (FEMA–4652–DR), dated 06/08/2022.

Incident: Wildfires, Straight-line Winds, Flooding, Mudflows, and Debris Flows directly related to the Wildfires.

Incident Period: 04/05/2022 through 07/23/2022.

DATES: Issued on 10/04/2022.

Physical Loan Application Deadline Date: Filing period for county listed below ends on 11/03/2022. Filing Period for the previously declared counties ended on 08/08/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 03/08/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New Mexico, dated 06/08/2022, is hereby amended to include the county listed below. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 to request an application. Applications for physical damages for previously declared counties ended on 08/08/2022. Applications for physical damages for the county listed below may be filed until 11/03/2022. Applications for economic injury may be filed until 03/08/2023.

Primary Counties: Lincoln.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008.)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–22250 Filed 10–12–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration Number #17666 Disaster Number #ZZ–00018]

The Entire United States and U.S. Territories; Military Reservist Economic Injury Disaster Loan Program (MREIDL)

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of the Military Reservist Economic Injury Disaster Loan Program (MREIDL), dated 10/01/2022.

DATES: Issued on 10/01/2022.

MREIDL Loan Application Deadline Date: 1 year after the essential employee is discharged or released from active service.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: This notice establishes the application filing period for the Military Reservist Economic Injury Disaster Loan Program (MREIDL).

Effective 10/01/2022, small businesses employing military reservists may apply for economic injury disaster loans if those employees are ordered to perform active service for a period of more than 30 consecutive days, and those employees are essential to the success of the small businesses' daily operations.

The purpose of the MREIDL program is to provide funds to an eligible small business to meet its ordinary and necessary operating expenses that it could have met, but is unable to meet, because an essential employee was ordered to perform active service for more than 30 consecutive days in his or her role as a military reservist. These loans are intended only to provide the amount of working capital needed by a small business to pay its necessary obligations as they mature until operations return to normal after the essential employee is released from active service. For information/applications contact 1–800–659–2955 or visit *www.sba.gov.* Applications for the Military Reservist Economic Injury Disaster Loan Program may be filed at the above address.

The interest rates are published quarterly in the **Federal Register**. The current rate for eligible small businesses is 3.040.

The number assigned is 17666 0.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–22251 Filed 10–12–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17667 and #17668; FLORIDA Disaster Number FL–00180]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Florida

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Florida (FEMA–4673–DR), dated 10/03/2022.

Incident: Hurricane Ian.

Incident Period: 09/23/2022 and continuing.

DATES: Issued on 10/05/2022.

Physical Loan Application Deadline Date: 12/02/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 07/03/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Florida, dated 10/03/2022, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Desoto, Flagler, Hillsborough, Indian River, Monroe, Putnam, Saint Johns, Seminole, Volusia.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–22255 Filed 10–12–22; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 11881]

60-Day Notice of Proposed Information Collection: Application Under the Hague Convention on the Civil Aspects of International Child Abduction

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to December 12, 2022.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2022–0035'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: Oliphantce@state.gov.*
- *Regular Mail:* Send written comments to U.S. Department of State, CA/OCS/MSU, SA–17, 10th Floor, Washington, DC 20522–1710.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Derek Rivers at SA–17, 10th Floor, Washington, DC 20522–1710, who may be reached on 202–485–6020 or at *Oliphantc@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Application Under the Hague Convention on the Civil Aspects of International Child Abduction.
- *OMB Control Number:* 1405–0076.
- *Type of Request:* Renewal of a previously approved collection.
- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).
- *Form Number:* DS–3013, 3013s.
- *Respondents:* Person seeking return of or access to child.
- *Estimated Number of Respondents:* 332.
- *Estimated Number of Responses:* 332.
- *Average Time per Response:* 60 minutes.
- *Total Estimated Burden Time:* 332 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Application Under the Hague Convention on the Civil Aspects of International Child Abduction (DS–3013 and DS 3013s) is used by parents or legal guardians who are requesting the State Department's assistance in seeking the return of, or access to, a child or children alleged to have been wrongfully removed from or retained outside of the child's habitual residence and currently located in another country that is also party to the Hague Convention on the Civil Aspects of International Child Abduction (the Convention). The application requests information regarding the identities of the applicant, the child or children, and the person alleged to have wrongfully removed or retained the child or children. In addition, the application requires that the applicant provide the circumstances of the alleged wrongful removal or retention and the legal justification for the request for return or access. The State Department, as the U.S. Central Authority for the Convention, uses this information to establish, if possible, the applicants' claims under the Convention; to inform applicants about available remedies under the Convention; and to provide the information necessary to the foreign Central Authority in its efforts to locate the child or children, and to facilitate return of or access to the child or children pursuant to the Convention. 22 U.S.C. 9008 is the legal authority that permits the Department to gather this information.

Methodology

The completed form DS–3013 and DS 3013s may be submitted to the Office of Children's Issues by mail, by fax, or electronically accessed through *www.travel.state.gov.*

Kevin E. Bryant,

Deputy Director, Office of Directive Management, U.S. Department of State.

[FR Doc. 2022–22209 Filed 10–12–22; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 11882]

60-Day Notice of Proposed Information Collection: Smart Traveler Enrollment Program

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to December 12, 2022.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2022–0036'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: Oliphantce@state.gov.*
- *Regular Mail:* Send written comments to U.S. Department of State, CA/OCS/MSU, SA–17, 10th Floor, Washington, DC 20522–1710.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Clifton Oliphant at SA–17, 10th Floor, Washington, DC 20522–1710, who may be reached on 202–485–6020 or at *Oliphantce@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Smart Traveler Enrollment Program.
- *OMB Control Number:* 1405–0152.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services.
- *Form Number:* DS–4024, 4024e.
- *Respondents:* United States Citizens and Nationals.
- *Estimated Number of Respondents:* 1,010,389.
- *Estimated Number of Responses:* 1,010,389.
- *Average Time per Response:* 20 minutes.
- *Total Estimated Burden Time:* 336,796 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Smart Traveler Enrollment Program (STEP) makes it possible for U.S. Citizens and Nationals to register on-line from anywhere in the world. In the event of a family emergency, natural disaster or international crisis, U.S. embassies and consulates rely on this registration information to provide registrants with critical information and assistance. One of the main legal authorities for use of this form is 22 U.S.C. 2715.

Methodology

Ninety-nine percent of responses are received via electronic submission on the internet. The service is available on the Department of State, Bureau of Consular Affairs website *http://travel.state.gov* at *https://step.state.gov/step/.* The paper version of the collection permits respondents who do not have internet access to provide the information to the U.S. embassy or consulate by fax, mail or in person.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, U.S. Department of State.

[FR Doc. 2022–22210 Filed 10–12–22; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 11883]

60-Day Notice of Proposed Information Collection: Local U.S. Citizen Skills/ Resources Survey

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to December 12, 2022.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2022–0037'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: OliphantCE@state.gov.*
- *Regular Mail:* U.S. Department of State, CA/OCS/MSU, SA–17, 10th Floor, Washington, DC 20522–1710.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Local U.S. Citizen Skills/Resources Survey.
- *OMB Control Number:* 1405–0188.
- *Type of Request:* Revision of a currently approved collection.
- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).
- *Form Number:* DS–5506.
- *Respondents:* United States Citizens.
- *Estimated Number of Respondents:* 2,400.
- *Estimated Number of Responses:* 2,400.
- *Average Time per Response:* 15 minutes.
- *Total Estimated Burden Time:* 600 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Local U.S. Citizen Skills/Resources Survey is a systematic method of gathering information about skills and resources from U.S. citizens that will assist in improving the well-being of other U.S. citizens affected or potentially affected by a crisis.

Methodology

This information collection can be completed by the respondent electronically or manually. The information will be collected on-site at a U.S. Embassy/Consulate, by mail, fax, or email.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, Department of State.

[FR Doc. 2022–22208 Filed 10–12–22; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 11884]

60-Day Notice of Proposed Information Collection: Crisis Assistance Request Form

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *December 12, 2022.*

ADDRESSES: You may submit comments by any of the following methods:

• *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2022–0038'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.

• *Email: Oliphantce@state.gov.*

• *Regular Mail:* Send written comments to: Clifton Oliphant, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/MSU), U.S. Department of State, 2201 C. St. NW, Washington, DC 20522.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Clifton Oliphant, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/MSU), U.S. Department of State, 2201 C. St. NW, Washington, DC 20522, who may be reached at *OlipantCE@state.gov* or by phone at 202–485–6020.

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* Crisis Assistance Request Form.

• *OMB Control Number:* 1405–XXXX.

• *Type of Request:* Collection Form Approval.

• *Originating Office:* Bureau of Consular Affairs.

• *Form Number:* No form.

• *Respondents:* U.S. citizens and lawful permanent residents currently in a country experiencing a crisis.

• *Estimated Number of Respondents:* 120,000.

• *Estimated Number of Responses:* 120,000.

• *Average Time per Response:* 5 minutes.

• *Total Estimated Burden Time:* 10,000 hours.

• *Frequency:* Once.

• *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The purpose of the collection is to enable the Department of State to better identify and communicate with U.S. citizens and lawful permanent residents (LPRs) who may be in need of assistance in a country experiencing a crisis. The form asks U.S. citizens and LPRs currently in a country experiencing a crisis to share information with us about their current plans, the number of people in their group, and their exact location. It also asks for their latest contact information and contact information for an emergency contact not currently in the country.

The Department is utilizing this form to acquire the most current and accurate data possible to inform our consular assistance efforts. It will allow us to build a more current picture of how many U.S. citizens plan to remain in the country experiencing a crisis and any who may need reimbursable loan assistance to depart or any other consular assistance. Completion of the form is entirely voluntary.

Methodology

The collection will be completed 100 percent electronically. The respondent will access the form at the following link: *https://cacms.state.gov/s/crisis-intake.* The link will also be accessible from the crisis country's country information page on *www.travel.state.gov,* the U.S. embassy or consulate website for that country, and other Department of State communications. The Department may also choose as appropriate to distribute the form's URL through emails from *@state.gov* email addresses, or in messaging sent as consular information products. The link will only be activated when there is a need to collect the information.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, Department of State.

[FR Doc. 2022–22211 Filed 10–12–22; 8:45 am]

BILLING CODE 4710–06–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Approvals by Rule for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: September 1–30, 2022.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22 (e) and 18 CFR 806.22 (f) for the time period specified above:

Water Source Approval—Issued Under 18 CFR 806.22 f)

1. Beech Resources, LLC; Pad ID: Delta Well Site; ABR–202209004; Lycoming Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: September 9, 2022.

2. Chesapeake Appalachia, L.L.C.; Pad ID: Indian Foot; ABR–202209003; Albany and Monroe Townships, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 9, 2022.

3. Coterra Energy Inc.; Pad ID: Diaz Family LP P2; ABR–202209002; Bridgewater Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: September 9, 2022.

4. Range Resources—Appalachia, LLC; Pad ID: Arrowhead Hunting Club Unit; ABR–20100534.R2; Gallagher Township, Clinton County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 9, 2022.

5. Chesapeake Appalachia, L.L.C.; Pad ID: G & S Big Rigger Drilling Pad; ABR–201207022.R2; Cherry Township, Sullivan County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: September 20, 2022.

6. Chesapeake Appalachia, L.L.C.; Pad ID: SGL–12 J UNIT PAD; ABR–202204001; Leroy Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 20, 2022.

7. Chesapeake Appalachia, L.L.C.; Pad ID: King Drilling Pad #1; ABR–201205007.R2; Towanda Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 20, 2022.

8. Chesapeake Appalachia, L.L.C.; Pad ID: Polowy Drilling Pad #1; ABR–201205008.R2; Ulster Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 20, 2022.

9. Chesapeake Appalachia, L.L.C.; Pad ID: SGL 12 HARDY DRILLING PAD; ABR–201706005.R1; Overton Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 20, 2022.

10. EQT ARO LLC; Pad ID: Kenneth L Martin Pad A; ABR–201208008.R2; Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 20, 2022.

11. EQT ARO LLC; Pad ID: Red Fox H&FC Pad B; ABR–201208010.R2; Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 20, 2022.

12. Repsol Oil & Gas USA, LLC; Pad ID: BOOR (03 010) J; ABR–20100665.R2; Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 20, 2022.

13. Seneca Resources Company, LLC; Pad ID: Davis 829; ABR–201008033.R2; Farmington Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 20, 2022.

14. Seneca Resources Company, LLC; Pad ID: DCNR Tract 007 Pad L; ABR–202209001; Chatham and Shippen Townships, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 20, 2022.

15. Seneca Resources Company, LLC; Pad ID: Dewey Hollow Rod & Gun Club 601; ABR–201007128.R2; Sullivan Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 20, 2022.

16. Chesapeake Appalachia, L.L.C.; Pad ID: BDF; ABR–20100640.R2; Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 21, 2022.

17. Chesapeake Appalachia, L.L.C.; Pad ID: Pieszala; ABR–201007065.R2; Windham Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 21, 2022.

18. Chesapeake Appalachia, L.L.C.; Pad ID: Tiffany; ABR–201007025.R2; Windham Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 21, 2022.

19. EQT ARO LLC; Pad ID: George E Hagemeyer Pad A; ABR–201008077.R2; Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 21, 2022.

20. EQT ARO LLC; Pad ID: Thomas E Smith Pad A; ABR–201008057.R2; Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 21, 2022.

21. Repsol Oil & Gas USA, LLC; Pad ID: DCNR 587 (02 003); ABR–201008069.R2; Ward Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 21, 2022.

22. Repsol Oil & Gas USA, LLC; Pad ID: MORGAN (01 073) K; ABR–20100693.R2; Armenia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 21, 2022.

23. Repsol Oil & Gas USA, LLC; Pad ID: ROY (03 039) J; ABR–20100630.R2; Wells Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 21, 2022.

24. Repsol Oil & Gas USA, LLC; Pad ID: WHITE (03 025) E; ABR–201006101.R2; Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 21, 2022.

25. Chesapeake Appalachia, L.L.C. ; Pad ID: Aikens; ABR–201008068.R2; Litchfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 26, 2022.

26. Chesapeake Appalachia, L.L.C.; Pad ID: Ammerman; ABR–201008099.R2; Litchfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 26, 2022.

27. Chesapeake Appalachia, L.L.C.; Pad ID: Beebe; ABR–20100687.R2; Asylum Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 26, 2022.

28. Chesapeake Appalachia, L.L.C.; Pad ID: Breezy; ABR–201007037.R2; Troy Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 26, 2022.

29. Chesapeake Appalachia, L.L.C.; Pad ID: George; ABR–201008101.R2; Windham Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 26, 2022.

30. Chesapeake Appalachia, L.L.C.; Pad ID: Moore Farm; ABR–201008050.R2; Canton Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 26, 2022.

31. Chesapeake Appalachia, L.L.C.; Pad ID: Strope; ABR–201007035.R2; Ulster Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 26, 2022.

32. EOG Resources, Inc.; Pad ID: MICCIO 1H Pad; ABR–201008119.R2; Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: September 26, 2022.

33. EQT ARO LLC; Pad ID: Wallis Run HC Pad A; ABR–201008078.R2; Cascade Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 26, 2022.

34. Repsol Oil & Gas USA, LLC; Pad ID: EDSELL (05 003) C; ABR–201008076.R2; Pike Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 26, 2022.

35. Repsol Oil & Gas USA, LLC ; Pad ID: O'ROURKE (05 046) W; ABR–201008124.R2; Warren Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 26, 2022.

36. Repsol Oil & Gas USA, LLC; Pad ID: ROCKEFELLER (05 275) F; ABR–202209006; Middletown Township, Susquehanna County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 26, 2022.

37. Seneca Resources Company, LLC; Pad ID: Baker 897; ABR–201008074.R2; Deerfield Township, Tioga County, Pa.; Consumptive

Use of Up to 4.0000 mgd; Approval Date: September 26, 2022.

38. SWN Production Company, LLC; Pad ID: TI–09 BROWN; ABR–201708001.R1; Jackson Township, Lycoming County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: September 26, 2022.

39. Repsol Oil & Gas USA, LLC; Pad ID: BRELSFORD (01 086) H; ABR–201008128.R2; Armenia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 29, 2022.

40. Seneca Resources Company, LLC; Pad ID: DCNR 100 Pad N; ABR–201207014.R2; Lewis Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 29, 2022.

41. Seneca Resources Company, LLC; Pad ID: Old Possessions Hunting Club 485; ABR–201008117.R2; Sullivan Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 29, 2022.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: October 7, 2022.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2022–22246 Filed 10–12–22; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing on November 3, 2022. The Commission will hold this hearing in-person and telephonically. At this public hearing, the Commission will hear testimony on the projects listed in the Supplementary Information section of this notice. The public hearing will also hear testimony regarding the proposed fee schedule for 2023. Such projects and proposals are intended to be scheduled for Commission action at its next business meeting, tentatively scheduled for December 15, 2022, which will be noticed separately. The public should take note that this public hearing will be the only opportunity to offer oral comment to the Commission for the listed projects and proposals. The deadline for the submission of written comments is November 14, 2022.

DATES: The public hearing will convene on November 3, 2022, at 2:30 p.m. The public hearing will end at 5:00 p.m. or at the conclusion of public testimony, whichever is earlier. The deadline for the submission of written comments is Monday, November 14, 2022.

ADDRESSES: This public hearing will be conducted in-person and virtually. You may attend in person at Susquehanna River Basin Commission, 4423 N Front St., Harrisburg, Pennsylvania or join by Web Ex: *https://srbc.webex.com/srbc/j.php?MTID=m0f25e40186c3d78bf502bf6d9528e7a6.*

Meeting number: 177 763 0980; Password: PubHearing110322. Participants may also participate by phone: 1–877–668–4493 Call-in toll-free number (US/Canada); Access code: 177 763 0980.

FOR FURTHER INFORMATION CONTACT: Jason Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423 or *joyler@srbc.net.*

Information concerning the applications for the projects is available at the Commission's Water Application and Approval Viewer at *https://www.srbc.net/waav.* The proposed fee schedule can be found on the Commission's website: *https://www.srbc.net/about/meetings-events/public-hearing.html.* Additional supporting documents are available to inspect and copy in accordance with the Commission's Access to Records Policy at *www.srbc.net/regulatory/policies-guidance/docs/access-to-records-policy-2009-02.pdf.*

SUPPLEMENTARY INFORMATION: The public hearing will cover the following projects:

Projects Scheduled for Action

1. *Project Sponsor and Facility:* Blossburg Municipal Authority, Bloss Township, Tioga County, Pa. Applications for groundwater withdrawals (30-day averages) of up to 0.144 mgd from Taylor Run Well 1 and 0.144 mgd from Taylor Run Well 2.

2. *Project Sponsor and Facility:* BlueTriton Brands, Inc. (Valley View Springs), Hegins Township, Schuylkill County, Pa. Applications for renewal of surface water withdrawal of up to 0.200 mgd (peak day) and consumptive use of up to 0.200 mgd (peak day) (Docket No. 19971101).

3. *Project Sponsor:* Constellation Energy Generation, LLC. *Project Facility:* Three Mile Island Generating Station, Londonderry Township, Dauphin County, Pa. Applications for renewal of groundwater withdrawals (30-day averages) of up to 0.099 mgd from Well A, 0.099 mgd from Well B, and 0.099 mgd from Well C (Docket No. 20110610), and Commission-initiated modification of surface water and consumptive use approvals based on changes in operating status of the project and revised demand projections.

4. *Project Sponsor:* Corning Incorporated. *Project Facility:* Corporate Headquarters, City of Corning, Steuben County, NY. Application for renewal of groundwater withdrawal of up to 1.440 mgd (30-day average) from Well 6A (Docket No. 19981201).

5. *Project Sponsor and Facility:* Dover Township, York County, Pa. Applications for groundwater withdrawals (30-day averages) of up to 0.360 mgd from Well 8 and up to 0.088 mgd from Well 10 (Docket No. 19911104).

6. *Project Sponsor and Facility:* Hughesville Borough Authority, Wolf Township, Lycoming County, Pa. Applications for renewal of groundwater withdrawals (30-day averages) of up to 0.260 mgd from Well 1, 0.260 mgd from Well 2, and 1.440 mgd from Well 3 (Docket No. 20070604).

7. *Project Sponsor:* Municipal Authority of the Township of East Hempfield. *Project Facility:* Hempfield Water Authority, East Hempfield Township, Lancaster County, Pa. Applications for renewal of groundwater withdrawals (30-day averages) of up to 0.353 mgd from Well 6, 0.145 mgd from Well 7, 1.447 mgd from Well 8, and 1.800 mgd from Well 11, and Commission-initiated modification to Docket No. 20120906, which approves withdrawals from Wells 1, 2, 3, 4, and 5 and Spring S–1 (Docket Nos. 19870306, 19890503, 19930101, and 20120906).

8. *Project Sponsor and Facility:* Repsol Oil & Gas USA, LLC (Choconut Creek), Choconut Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20171206).

9. *Project Sponsor:* State College Friends Limited Partnership. *Project Facility:* Toftrees Golf Resort (Pond 9), Patton Township, Centre County, Pa. Applications for surface water withdrawal of up to 0.750 mgd (peak day), and renewal with modification to increase consumptive use (peak day) by an additional 0.480 mgd, for a total consumptive use of up to 0.750 mgd (Docket No. 20021010).

10. *Project Sponsor and Facility:* SWN Production Company, LLC (Lycoming Creek), Lewis Township, Lycoming County, Pa. Application for renewal of surface water withdrawal of up to 0.500 mgd (peak day) (Docket No. 20171208).

11. *Project Sponsor and Facility:* SWN Production Company, LLC (Lycoming Creek), McIntyre Township, Lycoming County, Pa. Application for renewal of

surface water withdrawal of up to 0.500 mgd (peak day) (Docket No. 20171209).

12. *Project Sponsor:* The United States Department of Veterans Affairs. *Project Facility:* Indiantown Gap National Cemetery, East Hanover and Union Townships, Lebanon County, Pa. Application for consumptive use of up to 0.099 mgd (30-day average).

13. *Project Sponsor:* Veolia Water Pennsylvania, Inc. *Project Facility:* Grantham Operation, Upper Allen Township, Cumberland County, Pa. Application for renewal of groundwater withdrawal of up to 0.395 mgd (30-day average) from Well 2 (Docket No. 19901104).

Project Scheduled for Action Involving a Diversion

14. *Project Sponsor and Facility:* BlueTriton Brands, Inc. (Valley View Springs), Hegins Township, Schuylkill County, Pa. Application for approval of an out-of-basin diversion of up to 0.200 mgd (peak day).

Opportunity To Appear and Comment

Interested parties may call into the hearing to offer comments to the Commission on any business listed above, including the fee schedule, required to be the subject of a public hearing. Given the nature of the meeting, the Commission strongly encourages those members of the public wishing to provide oral comments to pre-register with the Commission by emailing Jason Oyler at *joyler@srbc.net* prior to the hearing date. The presiding officer reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing. Access to the hearing via telephone will begin at 2:15 p.m. Guidelines for the public hearing are posted on the Commission's website, *www.srbc.net,* prior to the hearing for review. The presiding officer reserves the right to modify or supplement such guidelines at the hearing. Written comments on any business listed above required to be the subject of a public hearing may also be mailed to Mr. Jason Oyler, Secretary to the Commission, Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pa. 17110–1788, or submitted electronically through *https://www.srbc.net/regulatory/public-comment/.* Comments mailed or electronically submitted must be received by the Commission on or before November 14, 2021, to be considered.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: October 7, 2022.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2022–22245 Filed 10–12–22; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Minor Modifications

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the minor modifications approved for a previously approved project by the Susquehanna River Basin Commission during the period set forth in **DATES.**

DATES: August 1–September 30, 2022

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists previously approved projects, receiving approval of minor modifications, described below, pursuant to 18 CFR 806.18 or to Commission Resolution Nos. 2013–11 and 2015–06 for the time period specified above.

1. Safe Harbor Water Power Corporation—Safe Harbor Hydroelectric Project, Docket No. 19980501, York and Lancaster Counties, Pa.; correction to change expiration and renewal deadline dates; Correction Issue Date: August 24, 2022.

2. Schuylkill Energy Resources, Inc., Docket No. 20220919, Mahanoy Township, Schuylkill County, Pa.; modification approval to change the consumptive use mitigation method; Approval Date: September 27, 2022.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: October 7, 2022.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2022–22247 Filed 10–12–22; 8:45 am]

BILLING CODE 7040–01–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council and the Regional Energy Resource Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The TVA Regional Resource Stewardship Council (RRSC) and Regional Energy Resource Council (RERC) will hold a combined meeting of both councils on November 3, 2022, to seek advice on environmental justice issues in the Tennessee Valley and discuss TVA's sustainability and biodiversity programs.

DATES: The meeting will be held in Nashville, Tennessee, at Sonesta Nashville Airport hotel on Thursday, November 3, 2022, from 8:30 a.m. to 5:00 p.m. C.T. RRSC and RERC council members are invited to attend the meeting in person. The public is invited to view the meeting virtually or to attend in-person. Since TVA will not have a public comment session during the meeting, we invite written comments to be submitted by October 31, 2022, by email to Bekim Haliti at *bhaliti@tva.gov* or mail to Regional Energy Resource Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 9D, Knoxville Tennessee 37902. Health and safety protocols may be required for those who attend in-person as TVA is following CDC guidance on masking and social distancing. A link and instructions to view the meeting will be posted on TVA's RRSC website at *www.tva.gov/rrsc* and TVA's RERC website at *www.tva.gov/rerc* at least one week prior to the scheduled meeting.

ADDRESSES: The public is invited to view the meeting virtually or attend in person. The in-person meeting will be held in the Sonesta Nashville Airport hotel at 600 Marriott Dr., Nashville, TN 37214. Due to space constraints, anyone wishing to attend in person must preregister by 5:00 p.m. E.T. Monday, October 31, 2022, by emailing *bhaliti@tva.gov.* Anyone needing special accommodations should let the contact below know at least one week in advance.

FOR FURTHER INFORMATION CONTACT: Bekim Haliti, *bhaliti@tva.gov,* 931–349–1894.

SUPPLEMENTARY INFORMATION: The RERC was established to advise TVA on its energy resource activities and the priorities among competing objectives and values. The RRSC was established

to advise TVA on its natural resource and stewardship activities, and the priorities among competing objectives and values. The RRSC and RERC are discretionary advisory committees established under the authority of the Tennessee Valley Authority (TVA) in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. 2.

The meeting agenda includes the following:

November 3

1. Welcome and Introductions
2. RRSC/RERC and TVA Meeting Update
3. TVA's Sustainability Work, Biodiversity Policy, and Environmental Justice Program
4. Review and Discuss Advice Questions
5. Finalize Advice Statements

Dated: October 4, 2022.

Melanie Farrell,

Vice President, External Stakeholders and Regulatory Oversight, Tennessee Valley Authority.

[FR Doc. 2022–22170 Filed 10–12–22; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA 2022–0025]

Agency Information Collection Activities: Notice of Request for New Information Collection

AGENCY: Federal Highway Administration (FHWA), 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 to submit one information collection, which is summarized below under **SUPPLEMENTARY INFORMATION.** We published a **Federal Register** Notice with a 60-day public comment period on this information collection on June 2, 2022. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by November 14, 2022.

ADDRESSES: You may submit comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection. All comments should include the Docket number FHWA–2022–0025.

FOR FURTHER INFORMATION CONTACT: Raj Ailaney, (202) 366–6749, Department of Transportation, Federal Highway Administration, Office of Bridges and Structures, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 7 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Peer Exchange on Corrosion Prevention and Mitigation for Highway Bridges.

OMB Control Number: (if applicable).

Summary: The Federal Highway Administration (FHWA) through their stewardship and oversight role provides support to State departments of transportation and other stakeholders in implementing the Federal-aid Highway Program (FAHP). In addition to overseeing the FAHP, FHWA supports State DOTs and other stakeholders in the development and construction of highway projects, including providing technical assistance in the implementation of preservation activities to maintain and improve the condition of their bridges. The FHWA also conducts research to develop tools, methods, and procedures to advance the practice in bridge preservation.

In September 2021, Government Accountability Office (GAO) in their report *Highway Bridges: Federal Highway Administration Could Better Assist States with Information on Corrosion Practices, GA0–21–104249* made a recommendation to FHWA to include activities in ongoing bridge preservation efforts, such as peer exchanges and case studies that focus on addressing the challenges states face with determining the circumstances under which specific corrosion practices and materials are most effective. To implement GAO's recommendation from the report, FHWA plans to conduct two regional peer exchanges. First peer exchange will include 9 States in the mid-west and north-east States which have environments with arid conditions or that experience frequent freeze/thaw cycles and use de-icing chemicals on their highway bridges, and second will include 9 States in the south-east and west States which have environments that experience freeze/thaw cycles and/or have highway bridges that are exposed to saltwater environment. These peer exchanges will focus on States' practices and materials used that mitigate bridge corrosion. Based on these shared experiences and lessons learned, FHWA will publish case studies and/or communicate the findings to States to improve their bridge preservation programs.

Respondents: State Departments of Transportation Agencies responsible for designing and maintaining highway bridges.

Estimated Average Burden per Response: The estimated average reporting burden per response is 16 hours for each State.

Estimated Total Annual Burden: The estimated total burden for 18 State respondents is 288 hours.

Public Comments Invited

You are asked to comment on any aspect of these information collections, including: (1) Whether the proposed collections are 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 burdens could be minimized, including 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 these information collections.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Ch. 35, as amended; and 49 CFR 1.48.

Issued on: October 6, 2022.

Michael Howell,

Information Collection Officer.

[FR Doc. 2022–22183 Filed 10–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Safety Advisories 22–1 Rail Car Passenger Door Inspection and Function Testing and 22–2 Signal System Safety and Train Control

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of safety advisories.

SUMMARY: The Federal Transit Administration (FTA) is issuing Safety Advisory 22–1 (SA 22–1) to recommend that State Safety Oversight Agencies (SSOAs) direct Rail Transit Agencies (RTAs) that operate Rail Fixed Guideway Public Transportation Systems in their jurisdictions to evaluate the sufficiency of rail car passenger door inspection and function testing procedures. FTA is issuing Safety Advisory 22–2 (SA 22–2) to recommend that SSOAs direct RTAs

that operate Rail Fixed Guideway Public Transportation Systems in their jurisdictions to consider signal system safety and train control as part of the RTA's Safety Risk Management (SRM) process. In addition, FTA recommends SSOAs incorporate SA 22–2 into their oversight activities. FTA SA 22–1 ''Rail Car Passenger Door Inspection and Functional Testing'' and SA 22–2 ''Signal System Safety and Train Control'' are available in their entirety on the agency's public website: (*https://www.transit.dot.gov/regulations-and-guidance/safety/fta-safety-advisories*).

DATES: FTA recommends that SSOAs direct RTAs within their jurisdiction to evaluate the sufficiency of rail car passenger door inspection and function testing procedures, and to consider signal system safety and train control as part of the RTA's SRM process on an as-needed basis for SA 22–1 and SA 22–2 by November 14, 2022. In addition, FTA recommends that SSOAs obtain any completed risk assessments and any associated risk mitigations from the RTAs for SA 22–2 by April 11, 2023.

FOR FURTHER INFORMATION CONTACT: Joseph DeLorenzo, Associate Administrator for Transit Safety and Oversight and Chief Safety Officer, FTA, telephone (202) 366–1783 or *Joseph.DeLorenzo@dot.gov*.

Authority: 49 U.S.C. 5329; 49 CFR 1.91 and 670.29.

Nuria I. Fernandez,

Administrator.

[FR Doc. 2022–22278 Filed 10–12–22; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Announcement of Fiscal Year 2022 Low or No Emission Program and Grants for Buses and Bus Facilities Program and Project Selections; Correction

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

ACTION: Notice; correction.

SUMMARY: On August 18, 2022, the Federal Transit Administration (FTA) published a notice in the **Federal Register** announcing project selections for the Fiscal Year 2022 Low or No Emission (Low-No) Vehicle Program. This notice provides a correction to eight project descriptions.

FOR FURTHER INFORMATION CONTACT: For general information about this notice contact Amy Volz, Program Manager, Office of Transit Programs, at *amy.volz@dot.gov,* or (202) 366–7484. Please contact the appropriate FTA Regional Office for any specific requests for information or technical assistance. FTA Regional Office contact information is available at: *https://www.transit.dot.gov/about/regional-offices/regional-offices.*

SUPPLEMENTARY INFORMATION: The Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117–58), requires that 25 percent of the funding made available for the Low or No Emission Program each year be awarded to low-emission projects. In order to help meet this requirement, FTA selected eight projects which applied for a mixture of low-emission and zero-emission components, only funding the low-emission components of the project. The notice, published on August 18, 2022, 87 FR 50916, which included the list of selected projects, did not make this distinction in the project descriptions. The following table contains the corrections to the project descriptions found in Table 1 ''FY 2022 Low or No Emission Project Selections'' in the prior publication.

State	Recipient	Project ID	Project description	Allocation
AL	Birmingham-Jefferson County Transit Authority.	D2022–LWNO–003	Purchase CNG vehicles and associated infrastructure.	$13,654,636
CA	Fresno, City of	D2022–LWNO–013	Replace vehicles with CNG vehicles	17,367,042
IL	Rockford Mass Transit District	D2022–LWNO–039	Replace diesel buses with hybrid electric buses.	6,328,980
MA	Massachusetts Department of Transportation (MassDOT).	D2022–LWNO–049	Replace diesel buses with propane buses.	4,143,750
MS	City of Jackson	D2022–LWNO–062	Purchase hybrid electric buses	8,714,400
NC	City of Fayetteville	D2022–LWNO–068	Purchase propane vehicles	280,500
OH	Stark Area Regional Transit Authority	D2022–LWNO–077	Purchase CNG vehicles	2,393,600
OK	Central Oklahoma Transportation and Parking Authority (COTPA), dba EMBARK.	D2022–LWNO–079	Replace diesel buses with CNG vehicles.	6,745,732

Nuria I. Fernandez,

Administrator.

[FR Doc. 2022–22256 Filed 10–12–22; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket Number PHMSA–2019–0156 (Notice No. 2022–07)]

Hazardous Materials: Safety Device Classification Policy

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice; safety device classification policy.

SUMMARY: PHMSA is publishing this notice setting forth and requesting comments from the public and other interested parties regarding its policy on classification of articles containing hazardous materials used in vehicles, vessels, or aircraft to enhance safety to persons. These articles are described as ''Safety devices, *electrically initiated, 9*'' for purposes of transportation under the U.S. hazardous material regulations.

DATES: Comments must be received by November 14, 2022.

ADDRESSES: You may submit comments identified by the docket number PHMSA–2019–0156 by any of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management System, U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–

30, Ground Floor, Room W12–140 in 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–2019–0156 for this notice at the beginning of the comment. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided. If sent by mail, comments must be submitted in duplicate. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard.

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**.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and 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 notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPRIETARY.'' Submissions containing CBI should be sent to Lad Falat, Sciences and Engineering Division, Office of Hazardous Materials Safety, (202) 366–1655, PHMSA, East Building, PHH10, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary that PHMSA receives, which is not specifically designated as CBI, will be placed in the public docket.

FOR FURTHER INFORMATION CONTACT: Lad Falat, Sciences and Engineering Division, (202) 366–1655, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

PHMSA publishes and seeks comments on this Safety Device Classification Policy (Policy). This Policy outlines the parameters for what PHMSA will approve as Class 9 (UN3268) safety devices under 49 CFR 173.166(b)(1)(iv). Specifically, PHMSA will approve as Class 9 (UN3268) safety devices articles that are complete, assembled components used in transportation by vehicle, vessel, or aircraft and which perform a stand-alone mechanical action enhancing safety to persons. As explained below, because subcomponents of safety devices do not meet the threshold and because they pose a potential risk when transported, they must continue to be transported under existing regulatory authorities. This notice also provides guidance on the types of data and documentation an applicant can provide to support an application to the Associate Administrator for Hazardous Materials Safety for classification of an article as a Class 9 (UN3268) safety device.

II. Background

PHMSA's Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) prescribe requirements for the transportation in commerce of safety devices, including labeling, marking, and shipping paper requirements. The HMR provides that articles containing Class 1 (Explosive) materials must seek classification approval from PHMSA and adhere to important labeling, marking, and shipping paper requirements. The HMR also establishes requirements for assignment of shipping descriptions that incorporate information regarding the classification of materials as Class 1, Class 9, or another hazard class.

Section 173.166 of the HMR defines ''safety devices'' as ''articles which contain pyrotechnic substances or hazardous materials of other classes and are used in vehicles, vessels or aircraft to enhance safety to persons.'' That section identifies three types of proven safety devices (specifically, air bag inflators, air bag modules, and seat-belt pretensioners) that, if certified by a PHMSA-certified explosives testing laboratory as Class 9 materials, do not require PHMSA approval for use of the shipping description ''UN3268, Safety devices, *electrically initiated,* 9.'' Section 173.166, however, contemplates that certain other articles could be eligible for approval by the Associate Administrator for Hazardous Materials Safety for use of the ''UN3268, Safety devices, *electrically initiated,* 9'' shipping description. Articles determined by a PHMSA-certified explosives testing laboratory to have passed the testing criteria established in Special Provision 160 and which are used in vehicles, vessels, or aircraft to enhance the safety of persons, may be submitted to the Associate Administrator for Hazardous Materials Safety for approval as a Class 9 (UN3268) safety device. Other safety devices, which had been deemed ineligible for approval as Class 9 hazardous materials by either the terms of § 173.166, or the Associate Administrator for Hazardous Materials Safety, may apply for approval to use the shipping description ''UN0503, Safety devices, pyrotechnic, 1.4G.'' Division 1.4G explosives are subject to enhanced labeling, marking, and shipping paper requirements that notify transportation workers, emergency responders, and import controllers of the presence of explosives. In addition, division 1.4G explosives are not allowed for bulk transportation, or transport by passenger rail or passenger aircraft.

The above-described § 173.166 construct reflects a 2015 amendment of the HMR [2] to account for a change in the 19th Edition of the United Nations Model Regulations [3] expanding eligibility for use of the ''UN3268, Safety devices, *electrically initiated,* 9'' shipping description to other proven technologies. Historically, the shipping description for UN3268 safety devices in the UN Model Regulations (''UN3268, Safety devices, *air bag inflators, air bag modules, or seat-belt pretensioners*'') had been explicitly limited to the specific safety devices identified in italics. The HMR at § 173.166 had mirrored that limitation. However, the 19th Edition of the UN Model Regulations deleted the historical reference to specific safety devices within a revised shipping description—''UN3268, Safety devices, *electrically initiated,* 9''—to accommodate technological development of new safety devices for vehicles, vessels, and aircraft. PHMSA subsequently revised § 173.166 in its HM–215M rulemaking to incorporate that revised shipping description within UN Model Regulations and introduced the approval process by which stakeholders can seek to use the shipping description ''UN3268, Safety devices, *electrically initiated,* 9.''

Since issuance of HM–215M, PHMSA has received special permit applications to classify Class 1 articles, that had been classified through an EX approval as Division 1.4S explosives and which are not used in vehicle, vessel, or aircraft transportation, as Class 9 (UN3268) safety devices. UN3268 is limited by the

[2] ''Final Rule: International Standards Harmonization (HM–215M),'' 80 FR 1075 (Jan. 8, 2015) (HM–215M).

[3] United Nations Economic Commission for Europe, UN Recommendations on the Transport of Dangerous Goods—Model Regulations, Nineteenth revised edition (2015) (19th Edition of the UN Model Regulations).

HMR for use in transportation, therefore, safety-enhancing articles containing pyrotechnic substances or other hazardous materials that are not used in a vehicle, vessel, or aircraft, such as those for table saws, non-vehicular mining equipment, and life-saving appliances as described in § 173.219 cannot be considered ''UN3268, Safety Devices, *electrically initiated,* 9.'' PHMSA has also received inquiries and requests for interpretations concerning whether subcomponents of vehicle, vessel, or aircraft safety devices could themselves be eligible for use of the shipping description ''UN3268, Safety devices, *electrically initiated,* 9.''

In response to those inquiries about implementation of § 173.166, PHMSA in June 2020 issued a request for information [4] seeking public input on specific questions and issues relevant to the shipping description ''UN3268, Safety devices, *electrically initiated,* 9.'' These questions sought general information and data on the scope and expansion of the safety device application under § 173.166, the testing required for consideration and approval as a Class 9 (UN3268) safety device, and the conditions for transport and carriage aboard aircraft for items classified as Class 9 (UN3268) safety devices under § 173.166. PHMSA received 14 total comments from various stakeholders including safety device manufacturers, explosive testing labs, and trade associations. The input received from these commenters has been considered in formulating this Policy.

PHMSA publishes this Policy set forth below and seeks comments from the public and interested stakeholders thereon.

III. Policy on Classification of Articles Used in Vehicles, Vessels, or Aircraft as Class 9 (UN3268) Safety Devices

In order to provide clarity on what types of articles PHMSA will consider for shipping description ''UN3268, Safety devices, *electrically initiated,* 9'' under 49 CFR 173.166, PHMSA issues this Policy and guidance. This document outlines the types of safety devices PHMSA will consider for approval as Class 9 (UN3268) safety devices, the process to seek such approval, and documentation to support such an application for approval.

Limitation to Transportation Sector

Section 173.166 limits applicability of the shipping description ''UN3268 Safety devices, *electrically initiated,* 9'' to ''articles which . . . are used in vehicles, vessels, or aircraft to enhance safety to persons.'' The phrase ''used in vehicles, vessels, or aircraft'' limits eligibility to articles used in transportation by vehicle, vessel, or aircraft. Therefore, if an article is intended to enhance safety to persons, but is not used in a vehicle, vessel, or aircraft, it cannot be considered an eligible device under § 173.166 at this time.

Subcomponents

PHMSA has received inquiries on whether sub-components of safety devices can themselves be considered Class 9 (UN3268) safety devices under § 173.166. Shipping description ''UN3268, Safety devices, *electrically initiated,* 9'' is applicable to air bag inflators, air bag modules, seat-belt pretensioners, and other pyromechanical devices. Section 173.166 describes pyromechanical safety devices as ''assembled components'' and elsewhere describes some safety devices as being within ''completed components.'' [5] In determining under § 173.166 if an article (other than air bag inflators, air bag modules, or seat-belt pretensioners) can appropriately be described as a Class 9 (UN3268) safety device, PHMSA will consider whether a sub-component to a safety device will have elevated risk over the safety device they will become a part of, which could be due to greater concentration or total amount of explosive hazard. PHMSA will balance the potential safety benefits to persons in vehicles, vessels, or aircraft with the potential danger posed by shipping explosive materials that are not incorporated in a larger component device. Many sub-components such as pyrotechnic micro-gas generators (MGGs), that supply a burst of gas but which itself does not produce a stand-alone safety-enhancing mechanical action, are not expected to meet these criteria—due to the safety burden they pose in shipment. To date, PHMSA has not received requests to approve any subcomponents that would enhance safety to persons in vehicles, vessels, or aircraft sufficient to outweigh the risks presented by transporting those subcomponents as Class 9 (UN3268) safety devices in transportation. This guidance supersedes PHMSA Letters of Interpretation 18–0035 and 18–0113, which are hereby withdrawn. PHMSA has not issued any approvals consistent with those Letters of Interpretation.

Guidance for Applications for Approval as Class 9 (UN3268) Safety Devices

Applicants seeking approval as Class 9 (UN3268) safety devices other than air bag inflators, air bag modules, and seat-belt pretensioners may apply for such approval pursuant to § 173.166(b). Any such articles must be examined and successfully tested by a person or agency who is authorized to perform examination and testing of explosives under § 173.56(b)(1) and submitted to the Associate Administrator for Hazardous Materials Safety for approval and assigned an EX number (see § 173.166(b)(1)(iv)).

In order for PHMSA to assign shipping description ''UN3268, Safety devices, *electrically initiated,* 9'' to an article, an applicant must provide, as part of the approval application, sufficient evidence that the article under consideration has been tested, including records of such tests as outlined in § 173.166(g)(1). Additionally, applicants may provide information that the article is used in vehicles, vessels, or aircraft, and demonstrated to enhance safety to persons. Data on the number of articles in use listed by vehicle type and the resulting effects on enhancement of safety to persons is important supporting information for an application under § 173.166(b)(1)(iv). Additional supporting documentation may include written statements confirming the use of the subject articles to enhance safety to persons by manufacturers or modifiers of vehicles, vessels, or aircraft, and statements of recognition from the insurance industry, other trade associations, and/or government bodies that the subject articles are recognized to enhance the safety to persons when used in vehicles, vessels, or aircraft. This may include data that demonstrates the devices have been used in foreign vehicle, vessels, or aircraft applications to enhance safety to persons. Applicants' claims and supporting documentation will be reviewed and verified by the Associate Administrator during the evaluation and approval process.

An article seeking the shipping description ''UN3268, Safety devices, *electrically initiated,* 9,'' but that has not been tested and demonstrated to enhance safety to persons when used in vehicles, vessels, or aircraft, would not meet the Associate Administrator's policy for shipping description ''UN3268, Safety devices, *electrically initiated,* 9.'' In such a case, if the article

[4] 85 FR 35368 (June 8, 2020).

[5] Section 173.166(d)(1) excepts from the requirements of § 173.166 a safety device classified as Class 9 and which is installed in, or is, a completed component of a vehicle, vessel, aircraft. As for what is considered a ''completed component'' the regulation mentions ''steering columns or door panels'' as examples, which provides further evidence of the limitations intended in § 173.166.

meets the definition of ''explosive'',[6] the applicant must seek approval under § 173.56 to transport the article in accordance with the procedures for the classification and approval of a new Class 1 explosive. If, after such approval is granted, the applicant can demonstrate that the article is used in vehicles, vessels, or aircraft to enhance safety to persons, then they may request that PHMSA apply shipping description ''UN3268, Safety devices, *electrically initiated,* 9'' in accordance with the process described above.

Signed in Washington, DC, on October 6, 2022 under authority delegated in 49 CFR 1.97.

William S. Schoonover,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2022–22200 Filed 10–12–22; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket ID Number: DOT–OST–2010–0054]

Notice of Submission of Proposed Information Collection to OMB; Agency Request for Reinstatement of Previously Approved Collections: Nondiscrimination on the Basis of Disability in Air Travel: Reporting Requirements for Disability-Related Complaints

AGENCY: Office of the Secretary (OST), Department of Transportation (Department or DOT).

ACTION: Notice of submission to the Office of Management and Budget (OMB) and request for comments.

SUMMARY: In accordance with the *Paperwork Reduction Act of 1995,* as amended, the Department is forwarding the Information Collection Request (ICR) described below to OMB for review. DOT published a **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information on May 10, 2022 (87 FR 28101). DOT received two comments on the 60-day notice which are addressed below. DOT considered the comments and concluded that it will not make any changes to the information collections based on the comments before it submits the ICR to OMB for review. This notice is to allow the public an additional 30 days from the date of this notice to submit comments to the recently published application to reinstate OMB Control Number: 2105–0551, ''Reporting Requirements for Disability-Related Complaints.''

DATES: Interested persons are invited to submit comments regarding this proposal. Written comments should be submitted by November 14, 2022.

ADDRESSES: Send comments to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503. Comments may also be sent via email to OMB at the following address: *oira_submissions@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: John Wood, Office of Aviation Consumer Protection, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, Telephone Number (202) 366–9342 (voice), (202) 366–7152 (fax), *john.wood@dot.gov* (email). Arrangements to receive this document in an alternative format may be made by contacting the above-named individual.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105–0551.

Title: Reporting Requirements for Disability-Related Complaints.

Type of Request: Reinstatement of information collections.

Background: The Department requires U.S. and foreign air carriers operating to, from and within the United States that conduct passenger-carrying service with at least one aircraft with a designed seating capacity of more than 60 passengers (large aircraft) to record complaints that they receive alleging inadequate accessibility or discrimination on the basis of disability. The carriers must also categorize these complaints according to the type of disability and nature of complaint, prepare a summary report annually of the complaints received during the preceding calendar year, submit the report to the Department's Office of Aviation Consumer Protection, and retain copies of correspondence and records of action taken on the reported complaints for three years. Carriers are also required to submit their annual report via the World Wide Web except if the carrier can demonstrate an undue burden by doing so and receives permission from the Department to submit it in an alternative manner. The first required report of disability-related complaints was due to the Department on January 31, 2005, and covered disability-related complaints received by carriers during calendar year 2004. Carriers have since submitted subsequent reports to the Department by the last Monday in January for the prior calendar year.

The Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, 5 Code of Federal Regulations (CFR) part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. On May 10, 2022, DOT published a 60-day notice in the **Federal Register** soliciting comment on the ICRs for which the agency seeks OMB approval. *See* 87 FR 28101. DOT received two comments after issuing this notice. One of the comments, filed by a member of the public, addressed modifications of the DOT air service complaint form which is covered under a different OMB control number than is addressed by this notice. The other comment, filed by Paralyzed Veterans of America (PVA), stated that the collection of information on disability-related complaints is necessary for the proper performance of DOT because DOT is responsible for enforcing the requirements of the Air Carrier Access Act. PVA noted that the collection of the information indicates which airlines receive the most complaints and what types of discrimination are occurring during air travel. PVA stated that without the collection and reporting of the complaints, airlines may not be held responsible for improper procedures, discrimination, and unlawful treatment of individuals with disabilities. In addition, PVA stated that the information collected by DOT is too generalized and ambiguous to provide passengers with disabilities information about which airlines provide the best experience for passengers with disabilities and appropriately to determine the issues that such passengers experience. PVA also stated that the current burden on airlines to collect and categorize the complaints can be alleviated by adding more descriptive options in their complaint forms for passengers to categorize the complaint. For example, PVA stated that airlines could use more specific check boxes or indicators for passengers to select and categorize the complaint. In addition, PVA stated that many online complaint forms are difficult for passengers to find, resulting in passengers calling the airline to file

[6] As defined in § 173.50 an *explosive* means any substance or article, including a device, which is designed to function by explosion (*i.e.,* an extremely rapid release of gas and heat) or which, by chemical reaction within itself, is able to function in a similar manner even if not designed to function by explosion, unless the substance or article is otherwise classed under the provisions of the HMR. The term includes a pyrotechnic substance or article, unless the substance or article is otherwise classed under the provisions of the HMR.

their complaint, and more burden on the airline.

DOT will consider the information provided by PVA for the purposes of informing future potential rulemaking activities that would be necessary to modify the requirements that apply to the airlines' collection and submission of disability-related complaint information under 14 CFR part 382. Therefore, DOT has concluded that it will not make any changes to the information collections based on the comments before submitting the ICR to OMB for review. However, DOT encourages reporting carriers to consider PVA's comments on methods to reduce burdens associated with categorizing complaints and to consider adopting burden reducing measures that are consistent with the regulatory requirements. The Department announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and is forwarding to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44,983 (Aug. 29, 1995). Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure their full consideration. 5 CFR 1320.12(c); *see also* 60 FR 44,983 (Aug. 29, 1995).

For each information collection, the title, a description of the respondents, and an estimate of the annual recordkeeping and periodic reporting burden are set forth below.[1]

(1) Requirement to record and categorize complaints received.

Respondents: U.S. air carriers and foreign air carriers operating to and from the United States that conduct passenger-carrying service with at least one large aircraft.

Number of Respondents: 176 (the average of the total number of respondents that reported for Calendar Years (CYs) 2018, 2019, and 2021).

Estimated Annual Burden on Respondents: 0–2,431 hours (145,905 minutes) a year for each respondent (estimated time to record and categorize each complaint (15 minutes) multiplied by the lowest number of complaints and the average of the highest number of complaints received during CYs 2018, 2019, and 2021 (0–9,727)).

Estimated Total Annual Burden: 7,854 hours (471,255 minutes) for all respondents (time to record and categorize each complaint (15 minutes) multiplied by the average total number of complaints received during CYs 2018, 2019, and 2021 (31,417) for all respondents).

Frequency: 0–9,727 complaints (The range of the lowest number of complaints and an average of the highest number of complaints received by any respondent during CYs 2018, 2019, and 2021).

(2) Requirement to prepare and submit annual report.

Respondents: U.S. air carriers and foreign air carriers operating to and from the United States that conduct passenger-carrying service with at least one large aircraft.

Number of Respondents: 176 (the average of the total number of respondents that reported for CYs 2018, 2019, and 2021).

Estimated Annual Burden on Respondents: 30 minutes a year per each respondent.

Estimated Total Annual Burden: 88 hours (5,280 minutes) for all respondents (estimate annual burden [30 minutes] multiplied by the total number of respondents (176)).

Frequency: 1 report to DOT per year for each respondent.

(3) Requirement to retain correspondences and records of action taken on all disability-related complaints.

Respondents: U.S. air carriers and foreign air carriers operating to and from the United States that conduct passenger-carrying service with at least one large aircraft.

Number of Respondents: 176 (the average of the total number of respondents that reported for CYs 2018, 2019, and 2021).

Estimated Annual Burden on Respondents: 0–811 hours (0–48,635 minutes) for each respondent (the estimated time it will take for each respondent to retain or save the correspondences and records of action taken on disability-related complaints (5 minutes) multiplied by the lowest number of complaints and the average of the highest number of complaints received per respondent during CYs 2018, 2019, and 2021 (0–9,727)).

Estimated Total Annual Burden: 2,618 hours (157,085 minutes) for all respondents (time to retain or save the correspondences and records of action taken on disability-related complaints (5 minutes) multiplied by the average total number of complaints received during CYs 2018, 2019, and 2021 (31,417) for all respondents.

Frequency: 0–9,727 complaints per year for each respondent (The range of the lowest number of complaints and an average of the highest number of complaints received by any respondent during CYs 2018, 2019, and 2021).

Comments Invited

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents. All comments will also become a matter of public record on the docket.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 59 CFR 1.48.

Signed in Washington, DC, on this 7th day of October 2022.

Livaughn Chapman Jr.,

Deputy Assistant General Counsel, Office of Aviation Consumer Protection.

[FR Doc. 2022–22282 Filed 10–12–22; 8:45 am]

BILLING CODE 4910–9X–P

[1] DOT did not use calendar year 2020 data for its estimates because airline operations were not representative of a typical year due to the unprecedented impact of COVID–19 on air transportation that year.

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for

Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On October 7, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

Individuals:

1. CHEN, Shih Huan (Chinese Simplified: 陈诗焕), Taiwan; DOB 30 Aug 1968; POB New Taipei City, Taiwan; nationality Taiwan; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; National ID No. F120168465 (Taiwan) (individual) [DPRK4].

   Designated pursuant to section 1(a)(iii) of Executive Order 13810 of September 20, 2017, "Imposing Additional Sanctions With Respect to North Korea," 82 FR 44705, 3 CFR, 2017 Comp., p. 379 (E.O. 13810 or the "Order"), for having engaged in at least one significant importation from or exportation to North Korea of any goods, services, or technology.

2. KWEK, Kee Seng, 637 Choa Chu Kang North 6, #04-243, 680637, Singapore; DOB 19 Nov 1959; POB Singapore; nationality Singapore; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Passport K1437696A (Singapore) issued 20 Aug 2019 expires 25 Mar 2025; Identification Number S1380562H (Singapore) (individual) [DPRK4].

   Designated pursuant to section 1(a)(iii) of E.O. 13810 for having engaged in at least one significant importation from or exportation to North Korea of any goods, services, or technology.

Entities:

1. ANFASAR TRADING S PTE. LTD. (f.k.a. ANFASAR ENTERPRISES S PTE LTD; f.k.a. SWANSEAS SHIPPING S PTE. LTD.), 60 Paya Lebar Road, #09-36, Paya Lebar Square, 409051, Singapore; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Organization Established Date 14 Sep 1993; Company Number 199306026D (Singapore) [DPRK4] (Linked To: KWEK, Kee Seng).

   Designated pursuant to section 1(a)(vi) of E.O. 13810 for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, KEE SENG KWEK, a person whose property and interests in property are blocked pursuant to this Order.

2. NEW EASTERN SHIPPING CO LTD, Marshall Islands; 10 Anson Road, #17-00 International Plaza, 079903, Singapore; Wan Yue City, 1124, Riyuan Erli, Huli Qu, Xiamen, Fujian, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Identification Number IMO 6133570 [DPRK4].

   Designated pursuant to section 1(a)(iii) of E.O. 13810 for having engaged in at least one significant importation from or exportation to North Korea of any goods, services, or technology.

3. SWANSEAS PORT SERVICES PTE. LTD., 60 Paya Lebar Road, #11-03, Paya Lebar Square, 409051, Singapore; 7, Suntec Tower 1, 07, Temasek Boulevard, Singapore; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Organization Established Date 04 May 2018; Company Number 201815139D (Singapore) [DPRK4] (Linked To: KWEK, Kee Seng).

   Designated pursuant to section 1(a)(vi) of E.O. 13810 for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, KEE SENG KWEK, a person whose property and interests in property are blocked pursuant to this Order.

Authority: E.O. 13810, 82 FR 44705, 3 CFR, 2017 Comp., p. 379.

Dated: October 7, 2022.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–22206 Filed 10–12–22; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2510; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On October 6, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. MYINT, Aung Moe (a.k.a. MYINT, Aung; a.k.a. MYINT, Aung Mo), Waizayandar Road, No.15, Ngwe Kyar Yan Quarter, South Okkalapa Township, Yangon Region, Burma; DOB 09 Jun 1971; alt. DOB 28 Sep 1969; nationality Burma; Gender Male; Registration Number 12/YAKANA(N)006981 (Burma) (individual) [BURMA–EO14014].

   Designated pursuant to section 1(a)(i) of Executive Order 14014 of February 10, 2021, ''Blocking Property With Respect to the Situation in Burma'' (''E.O. 14014''), 86 FR 9429, for operating in the defense sector of the Burmese economy or any other sector of the Burmese economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State.

2. MYINT, Hlaing Moe, Burma; DOB 09 Jun 1971; nationality Burma; Gender Male; Registration Number 12/YAKANA(N)006982 (Burma) (individual) [BURMA–EO14014].

   Designated pursuant to section 1(a)(vii) of E.O. 14014 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, DYNASTY INTERNATIONAL COMPANY, a person whose property and interests in property are blocked pursuant to this order.

3. THITSAR, Myo, Burma; DOB 24 Nov 1972; nationality Burma; Gender Female; Registration Number 12/BAHANA(N)002332 (Burma) (individual) [BURMA–EO14014].

   Designated pursuant to section 1(a)(vii) of E.O. 14014 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, DYNASTY INTERNATIONAL COMPANY, a person whose property and interests in property are blocked pursuant to this order.

Entities

1. DYNASTY INTERNATIONAL COMPANY LIMITED (a.k.a. DYNASTY GROUP OF COMPANIES; a.k.a. ''DGC''; a.k.a. ''DYNASTY INTERNATIONAL''),

Waizayandar Road, No.15, Ngwe Kyar Yan Quarter, South Okkalapa Township, Yangon Region, Burma; Registration Number 100720744 (Burma) issued 27 Feb 1997 [BURMA–EO14014].

Designated pursuant to section 1(a)(vii) of E.O. 14014 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, AUNG MOE MYINT, a person whose property and interests in property are blocked pursuant to this order.

Authority: E.O. 14014, 86 FR 9429.

Dated: October 6, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–22207 Filed 10–12–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request on Information Collection for Form 14234, Compliance Assurance Process (CAP) Application and (Sub Forms: 14234–A, 14234–B, 14234–C, 14234–D)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 14234, Compliance Assurance Process (CAP) Application and Sub-forms (A, B, C, D).

DATES: Written comments should be received on or before December 12, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224 or by email to *pra.comments@irs.gov.* Please reference the information collection's ''OMB number 1545–NEW'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to Sara Covington, (202) 317–5744, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *sara.l.covington@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Compliance Assurance Process (CAP) Application and (sub-forms A, B, C, D).

OMB Number: 1545–NEW.

Form Number: 14234 and sub-forms A, B, C and D.

Abstract: Form 14234, Compliance Assurance Process CAP Application is strictly a voluntary program available to Large Business and International Division (LB&I) taxpayers that meet the selection criteria. CAP is a real-time review of completed business transactions during the CAP year with the goal of providing certainty of the tax return within 90 days of the filing. Taxpayers in CAP are required to be cooperative and transparent and report all material issues and items related to completed business transactions to the review team.

Current Actions: There are no changes to the forms at this time. However, the agency is making an administrative change to remove the Form 14234 and associated sub-forms from being approved under OMB Control number 1545–1800; and is requesting a New OMB Control number for these forms.

Type of Review: Request for a new OMB Control Number.

Affected Public: Businesses or other for-profit organizations.

Taxpayer Burden:

Form 14234:

Estimated Number of Respondents: 125.

Estimated Time per Response: 12 hours 40 minutes.

Estimated Total Annual Burden Hours: 1,584.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 6, 2022.

Sara L. Covington,

IRS Tax Analyst.

[FR Doc. 2022–22216 Filed 10–12–22; 8:45 am]

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FEDERAL REGISTER

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Part II

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 734, 736, 740, 742, et al.

Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List Modification; Interim Final Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 734, 736, 740, 742, 744, 762, 772, and 774

[Docket No. 220930–0204]

RIN 0694–AI94

Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List Modification

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to implement necessary controls on advanced computing integrated circuits (ICs), computer commodities that contain such ICs, and certain semiconductor manufacturing items. In addition, BIS is expanding controls on transactions involving items for supercomputer and semiconductor manufacturing end uses, for example, this rule expands the scope of foreign-produced items subject to license requirements for twenty-eight existing entities on the Entity List that are located in China. BIS is also informing the public that specific activities of ''U.S. persons'' that 'support' the ''development'' or ''production'' of certain ICs in the PRC require a license. Lastly, to minimize short term impact on the semiconductor supply chain from this rule, BIS is establishing a Temporary General License to permit specific, limited manufacturing activities in China related to items destined for use outside China and is identifying a model certificate that may be used in compliance programs to assist, along with other measures, in conducting due diligence. '

DATES:

a. Effective on October 7, 2022, are the following instructions: 7 (§ 740.2), 9 (§ 740.10), 11 (§ 742.6), 17 (§ 744.23), and 25 (supplement no. 1 to part 774).

b. Effective on October 12, 2022, is the following instruction: 15 (§ 744.6).

c. Effective on October 21, 2022, are the following instructions: 2 (§ 734.9), 3 (supplement no. 1 to part 734), 5 (supplement no. 1 to part 736), 8 (§ 740.2), 12 (§ 742.6), 14 (§ 744.1), 16 (§ 744.11), 18 (§ 744.23), 19 (supplement no. 4 to part 744), 21 (§ 762.2), 23 (§ 772.1), and 26 (supplement no. 1 to part 774).

d. Comments must be received by BIS no later than December 12, 2022.

ADDRESSES: Comments on this rule may be submitted to the Federal rulemaking portal (*www.regulations.gov*). The regulations.gov ID for this rule is: BIS–2022–0025. Please refer to RIN 0694–AI94 in all comments.

All filers using the portal should use the name of the person or entity submitting the comments as the name of their files, in accordance with the instructions below. Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referring to the specific legal authority claimed, and provide a non-confidential version of the submission.

For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC.'' Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. The corresponding non-confidential version of those comments must be clearly marked ''PUBLIC.'' The file name of the non-confidential version should begin with the character ''P.'' Any submissions with file names that do not begin with either a ''BC'' or a ''P'' will be assumed to be public and will be made publicly available through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on the license requirements in this interim final rule, contact Eileen Albanese, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–0092, Fax: (202) 482–482–3355, Email: *rpd2@bis.doc.gov.* For emails, include ''Advanced computing controls'' or ''Semiconductor manufacturing items control'' as applicable in the subject line.

For questions on the Entity List revisions, contact: Chair, End-User Review Committee, Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

With this interim final rule, the Commerce Department's Bureau of Industry and Security (BIS) makes critical changes to the Export Administration Regulations (EAR) in two areas to address U.S. national security and foreign policy concerns. First, BIS imposes additional export controls on certain advanced computing semiconductor chips (chips, advanced computing chips, integrated circuits, or ICs), transactions for supercomputer end-uses, and transactions involving certain entities on the Entity List. Second, BIS adopts additional controls on certain semiconductor manufacturing items and on transactions for certain IC end use. Additional information about both areas of change is provided in the Overview of New Controls section. Some changes made in this interim final rule to address these two areas involve the same EAR provisions; in those cases, the preamble provides cross references to other areas in the rule that provide relevant additional information. This rule also solicits public comments on the changes included in this rule.

The restrictions implemented in this rule follow extensive United States government consideration of the impact of advanced computing ICs, ''supercomputers,'' and semiconductor manufacturing equipment on enabling military modernization, including the development of weapons of mass destruction (WMD), and human rights abuses. The Government of the People's Republic of China (PRC or China) has mobilized vast resources to support its defense modernization, including the implementation of its military-civil fusion development strategy, in ways that are contrary to U.S. national security and foreign policy interests.

A. Additional Export Controls: Certain Advanced Computing Integrated Circuits (ICs); Supercomputer End-Uses; Entity List Modifications

With this rule, BIS imposes new export controls on certain advanced computing semiconductor chips and computer commodities that contain such chips. Further, this rule implements an end-use control for certain items intended for a ''supercomputer'' located in or destined to the PRC.

Advanced computing items and ''supercomputers'' can be used to enhance data processing and analysis capabilities, including through artificial intelligence (AI) applications. The PRC is rapidly developing exascale supercomputing capabilities and has announced its intent to become the world leader in AI by 2030. These advanced systems are capable of sophisticated data processing and analysis that has multiple uses, and are enabled by advanced ICs. These systems

are being used by the PRC for its military modernization efforts to improve the speed and accuracy of its military decision making, planning, and logistics, as well as of its autonomous military systems, such as those used for cognitive electronic warfare, radar, signals intelligence, and jamming. Furthermore, these advanced computing items and ''supercomputers'' are being used by the PRC to improve calculations in weapons design and testing including for WMD, such as nuclear weapons, hypersonics and other advanced missile systems, and to analyze battlefield effects. In addition, advanced AI surveillance tools, enabled by efficient processing of huge amounts of data, are being used by the PRC without regard for basic human rights to monitor, track, and surveil citizens, among other purposes. With this rule, BIS seeks to protect U.S. national security and foreign policy interests by restricting the PRC's access to advanced computing for its military modernization, including nuclear weapons development, facilitation of advanced intelligence collection and analysis, and for surveillance. BIS intends to impose controls on items subject to the EAR and U.S. person activities to limit the PRC's ability to obtain advanced computing chips or further develop AI and ''supercomputer'' capabilities for uses that are contrary to U.S. national security and foreign policy interests.

These controls are being imposed through this interim final rule to address immediate concerns with the PRC's demonstrated intent and ability to use these items for activities of national security and foreign policy concern to the United States. As such, the advanced computing ICs and computer commodities that contain such ICs identified by this rule have been controlled for Regional Stability (RS) purposes. This rule also expands the scope of licensing requirements for 28 existing entities on the Entity List in supplement no. 4 to part 744 of the EAR that are located in China and were added to the Entity List between 2015 and 2021 to further address the national security and foreign policy concerns described above. BIS is interested in receiving comments regarding whether a broader or different scope of control is warranted for these ICs.

B. Additional Export Controls: Certain Semiconductor Manufacturing Items; Integrated Circuits End Use

Also with this rule, BIS imposes new export controls on certain semiconductor manufacturing items and activities involving the ''development'' or ''production'' of advanced integrated circuits (packaged or unpackaged) in the PRC that meet specified criteria.

Semiconductor manufacturing equipment can be used to produce ICs (packaged or unpackaged) for commercial applications, which has helped to transform the world and holds great commercial promise across a wide variety of industries and applications, including communications, health care, and transportation. However, semiconductor manufacturing equipment can also be used to produce various ICs (packaged or unpackaged) for WMD or other military applications, as well as applications that enable human rights violations or abuses, including but not limited to the advanced systems and ''supercomputers'' described above. Similar to their use in commercial products, the use of semiconductors has become vital in the ''production'' of military systems, particularly for advanced military systems, and may be used for purposes that are contrary to U.S. national security and foreign policy interests. The PRC government expends extensive resources to eliminate barriers between China's civilian research and commercial sectors, and its military and defense industrial sectors. It also is developing and producing advanced integrated circuits (packaged or unpackaged) for use in weapons systems.

Under the Export Control Reform Act of 2018 (ECRA), the United States shall control U.S. person activity related to nuclear explosive devices, missiles chemical or biological weapons, whole plants for chemical weapons precursors, foreign maritime nuclear projects, and foreign military intelligence services; BIS has already imposed some of these controls in § 744.6 of the EAR. But these controls generally only apply when the ''U.S. person'' has knowledge that their activities are contributing to prohibited end uses or end users. China's military-civil fusion effort makes it more difficult to tell which items are made for restricted end uses, thereby diminishing the effect of these existing controls. Accordingly, with this rule the United States is taking additional steps to inform the public that 'support' by ''U.S. persons'' related to the provision of items used to produce the most advanced semiconductors necessary for military programs of concern, such as missile programs or programs related to nuclear explosive devices, requires a license, even when the precise end use of such items cannot be determined by the ''U.S. person.''

BIS has already identified on the Entity List 28 entities in the PRC that are of concern for the national security and foreign policy reasons identified in this rule. For example, four of these entities were determined to be involved with supercomputers in the PRC that are believed to be used in nuclear explosive activities. See 80 FR 8527, Feb. 18, 2015. Five of the other entities were added to the Entity List due to their involvement in exascale high performance computing and ties to military end uses and end users. See 84 FR 29373, June 24, 2019. Finally, seven of the remaining entities were added to the Entity List due to their involvement in activities that support China's military actors, its destabilizing military modernization efforts, and/or its WMD programs. See 86 FR 18438, April 9, 2021.

In addition, BIS notes that according to the April 9, 2021, Annual Threat Assessment of the U.S. Intelligence Community, China ''will continue the most rapid expansion and platform diversification of its nuclear arsenal in its history, intending to at least double the size of its nuclear stockpile during the next decade and to field a nuclear triad'' and ''is building a larger and increasingly capable nuclear missile force that is more survivable, more diverse, and on higher alert than in the past, including nuclear missile systems designed to manage regional escalation and ensure an intercontinental second-strike capability.'' The types of semiconductor manufacturing items controlled in this rule under new item-based and end-use-based controls produce advanced integrated circuits that can be used in the ''development,'' ''production,'' or ''use'' of such military items with WMD application. In particular, the ability to produce indigenously within China these types of advanced ICs (packaged or unpackaged) would be contrary to U.S. national security and foreign policy interests.

As more fully discussed in Section IV.C below, this rule will more comprehensively control ''U.S. persons'' 'support' for the ''development'' or ''production'' of ICs (packaged or unpackaged) that could contribute to WMD applications. Advanced logic, certain NOT AND (NAND), and dynamic random-access memory (DRAM) chips have more significant military, intelligence, and security applications, including missile, nuclear, and conventional weapons applications. Advanced ICs (packaged or unpackaged) with smaller physical dimensions (*e.g.,* produced at more advanced technology nodes) are of national security concern because of the faster and more efficient microelectronic operation, greater data storage capability, and greater

computational efficiencies that these ICs (packaged or unpackaged) possess.

For example, a BIS rule from August 15, 2022 (87 FR 49981), stated that reasons why Gate-All-Around transistor technology are the key to next generation integrated circuits. This architecture allows for higher current capability and lower parasitic capacitances that enable 50 percent faster chip operation compared to bulk technologies. It is also inherently radiation hardened. Chips with these characteristics would advance many commercial as well as military applications, including defense and communication satellites. Because faster and more efficient chip operation enables superior processing and aggregation critical for WMD applications (*e.g.,* data volumes and computational loads necessary to model nuclear explosions, and missile simulations), it is necessary and consistent with the Export Control Reform Act of 2018 (ECRA) to impose this ''U.S. persons'' activity control under the EAR for 'support,' including the provision of services and foreign-produced items not subject to the EAR, but capable of producing such integrated circuits (*e.g.,* advanced logic, NAND, and DRAM integrated circuits).

With this rule, BIS intends to limit the PRC's ability to obtain semiconductor manufacturing capabilities to produce ICs (packaged or unpackaged) for uses that are contrary to U.S. national security and foreign policy interests.

II. Item-Based Controls on Semiconductor Manufacturing Equipment

As of the effective date of this rule on October 7, 2022, the specified semiconductor manufacturing equipment is controlled for RS reasons under the EAR, in order to immediately address concerns with the PRC's demonstrated intent and ability to use the specified items for activities of U.S. national security and foreign policy concern. Due to the urgent need for this rule to counter China's actions, it will not be published as a Section 1758 technology rule, which would include a notice and comment period (50 U.S.C. 4817(a)(2)(C)). However, BIS is interested in hearing from the public about the items in this rule and the scope of the new control.

III. Overview of New Controls for Certain Advanced Computing Integrated Circuits (ICs); Supercomputer End-Uses; Entity List Modifications

This rule addresses U.S. national security and foreign policy concerns by: (1) adding to the Commerce Control List (CCL) (supplement no. 1 to part 774 of the EAR) certain advanced computing chips and the computers, ''electronic assemblies,'' and ''components'' that contain them; (2) establishing a new end-use control for certain CCL items destined for ''supercomputers''; and (3) creating two new Foreign Direct Product (FDP) rules related to advanced computing and ''supercomputers'' and expanding an existing FDP rule for certain entities listed on the Entity List.

A. Addition of Advanced Computing Chips, Computer Commodities That Contain Them, and Associated ''Software'' and ''Technology'' to the Commerce Control List (Supplement no. 1 to Part 774 of the EAR)

In the CCL, this rule adds new Export Control Classification Numbers (ECCNs) 3A090 for specified high-performance ICs and 4A090 (computers, ''electronic assemblies,'' and ''components,'' not elsewhere specified (n.e.s.), containing ICs in ECCN 3A090). Both new ECCNs are controlled for RS reasons for exports or reexports to the PRC, through the addition of a new RS control in § 742.6(a)(6) of the EAR. The two ECCNs are also controlled for anti-terrorism (AT) reasons when destined to a country that has an AT:1 license requirement (Iran § 742.8, Syria § 742.9, or N. Korea § 742.19); see also parts 744 and 746 of the EAR for additional controls on items controlled for AT reasons. Associated ''software'' and ''technology'' controls on the CCL for the items controlled in ECCNs 3A090 and 4A090 are found in ECCNs 3D001, 3E001, 4D090, and 4E001, respectively, this rule controls the ''software'' and ''technology'' for RS reasons when destined to the PRC, in addition to the other reasons described in those ECCN entries.

This rule revises Category 3, Product Group A, Note 3 because controls for wafers (finished or unfinished) are now in multiple ECCNs in Category 3.

As discussed above, to align the new RS license requirements for ECCNs 3A090 and 4A090 in the associated ''technology'' and ''software'' ECCNs, the new RS license requirement has been added to the License Requirement tables within ECCNs 3D001, 3E001, and 4E001 for these items. Additionally, BIS is adding RS license requirements to the License Requirement tables within ECCNs 5A992 and 5D992 to address circumstances when these ECCNs meet or exceed the performance parameters of ECCN 3A090 or 4A090.

New ECCN 4D090 is also created to accommodate the software associated with the items controlled in ECCN 4A090, as such controls could not be readily added to ECCN 4D001.

B. License Requirements for New Advanced Computing Items

This rule establishes a new unilateral RS control and brings the newly identified advanced computing integrated circuits and related computers under the control. If a relevant multilateral export control regime adopts controls for the identified technology, BIS will adopt multilateral controls in place of the unilateral control. This rule also adds a new basis for RS controls to § 742.6 of the EAR. This newly added RS control imposes a license requirement for exports, reexports, and transfers (in-country) of identified items to or within the PRC. The license requirements under this new RS control for advanced computing chips and computer commodities that contain them found in new § 742.6(a)(6). The license requirements in § 742.6(a)(6) do not apply to deemed exports or reexports.

In addition, this RS control imposes a license requirement for the export from the PRC to any destination worldwide of technology for the design, development, or production of advanced computing chips (*i.e.,* 3E001 for 3A090), which has been developed by an entity headquartered in the PRC, is the ''direct product'' of certain software subject to the EAR, and is for the ''production'' of certain advanced computing integrated circuits and computers or assemblies containing them, consistent with § 734.9(h)(1)(i)(B)(*1*) and (h)(2)(ii). BIS is implementing this license requirement given the historical precedent of chips designed by PRC entities being diverted for use in the PRC to support PRC military modernization, and the inherent risk of this occurring with these advanced computing chips. Parties to such transactions should consider obtaining proof of the ultimate end use, such as the Model Certificate described in supplement no. 1 to part 734. Entities outside of the PRC that receive 3E001 for 3A090 technology from China should consider confirming that a license was obtained to export such technology from China. If no such license was obtained, General Prohibition 10 (§ 736.2(b)(10) of the EAR) prohibits any person from taking any further action with respect to such technology that has been exported without a required BIS license.

The license review policy for this new RS control is added to a new § 742.6(b)(10) of the EAR. Most license applications for items controlled under this RS control will be reviewed under a presumption of denial based on the

risk of these items being used contrary to the national security or foreign policy interests of the United States, including the foreign policy interest of promoting the observance of human rights throughout the world. The exception to the presumption of denial is for license applications for semiconductor manufacturing items destined to end users located in China that are headquartered in the United States or in a country in Country Group A:5 or A:6; license applications involving such end users will be considered on a case-by-case basis, taking into account factors including technology level, customers and compliance plans.

C. Anti-Terrorism Controls for Lower-Level Computing ICs and Computer Commodities That Contain Them

In the CCL, this rule also revises ECCN 3A991 by adding a new paragraph 3A991.p (specified high-performance ICs) and revises ECCN 4A994 by adding new paragraph 4A994.l (computers, ''electronic assemblies,'' and ''components,'' not elsewhere specified (n.e.s.), containing ICs in 3A991.p). These ECCNs, including these new paragraphs, are controlled for anti-terrorism (AT Column 1) reasons. Associated ''software'' and ''technology'' controls for ECCNs 3A991.p and 4A994.l are found in ECCNs 3D991, 3E991, 4D994, and 4E992, respectively. The Related Control Notes of ECCNs 3A991 and 4A994 are amended to alert the reader about associated technology and software ECCNs. As noted above, license requirements for AT Column 1 items are identified in parts 742, 744, and 746 of the EAR.

Deemed exports and reexports of technology and software that previously did not require a license, but now require a license because of the controls implemented by this rule, will only require licenses if the technology or software release exceeds the scope of the technology or software that the foreign national already had lawful access to prior to the controls implemented in this rule, *e.g.,* a foreign national who lawfully accessed technology or software specified in new ECCN paragraphs 3A991.p or 4A994.l items prior to the effective date would not need a new license to continue receiving the same technology or software for ECCN paragraphs 3A991.p or 4A994.l items, but would require a license for the release of controlled technology or software different from that previously release, even if the technology or software is classified under the same ECCNs.

This rule makes an editorial revision to the heading of ECCNs 3D001 and 4D994 by replacing the word ''equipment'' with ''commodities.'' This is to ensure that these ECCNs control software for not only equipment, but also parts, components, and assemblies.

D. License Exception Eligibility for New Advanced Computing Items

The only license exceptions available for exports or reexports of items controlled under the new ECCNs (3A090, 4A090, and the associated software and technology in 3D001, 3E001, 4D090, and 4E001) are listed in new § 740.2(a)(9) of the EAR. Similar to existing paragraph (a)(8), this new paragraph contains a list of appropriate license exceptions for the license requirements implemented in this rule. This restriction on the availability of license exceptions also applies to any integrated circuit, computer, or assembly meeting the performance parameters of new ECCNs 3A090 and 4A090 but classified elsewhere on the CCL (*e.g.,* under ECCN 5A002 due to encryption functionality). The only license exceptions available for the foregoing items are: Servicing and replacement of parts and equipment (RPL) under § 740.10; Governments, international organizations, International Inspections Under the Chemical Weapons Convention, and the International Space Station (GOV), restricted to eligibility under the provisions of § 740.11(b)(2)(ii) (exports, reexports, and transfers (in-country) made by or consigned to a department or agency of the United States Government); and Technology and Software Unrestricted (TSU), under the provisions of § 740.13(a) and (c). License Exceptions RPL and TSU require that the equipment or software must have been shipped to their current location in accordance with U.S. law and continue to be legally used, therefore these license exceptions will authorize support, *i.e.,* repairs and software updates, for items that were lawfully exported. These license exceptions will not overcome the new license requirement imposed in this interim final rule under new § 744.23 ''Supercomputer'' and semiconductor manufacturing end use''),'' implemented in this interim final rule, because no license exceptions are available to overcome the license requirement in that provision of the EAR. As discussed further below, new § 744.23 applies restrictions on the use of license exceptions to or within China.

BIS estimates these new license requirements will result in an additional 1,600 license applications being submitted to BIS annually.

E. Revising the Entity List Foreign Direct Product Rule Under § 734.9(e) and Establishing Two New Foreign Direct Product Rules for Advanced Computing and ''Supercomputers'' Under § 734.9(h) and (i)

In § 734.9 (Foreign-Direct Product (FDP) Rules), this rule revises § 734.9(e) (Entity List FDP rule) to add a new product scope and end-user scope for entities on the Entity List identified with a new footnote 4 and adds new paragraphs (h) (Advanced computing FDP rule) and (i) (''Supercomputer'' end-use FDP rule) to the EAR. As with the other FDP rules, these new FDP rules define when certain foreign made items are subject to the EAR. License requirements associated with these foreign direct products are found in § 742.6(a)(6) of the EAR, as well as in new § 744.23, described below. The license requirement for the Entity List entities designated with footnote 4, is found in a new § 744.11(a)(2)(ii) of the EAR and in such entities' entries in supplement no. 4 to part 744, as described below.

1. Revised Entity List FDP Rule

The revised Entity List FDP rule, set forth in § 734.9(e), now identifies two footnotes on the Entity List that indicate application of an Entity List FDP rule. The revision made in this interim final rule does not alter the scope or requirements of the existing Entity List FDP rule that applies to entities designated with footnote 1 on the Entity List, but this revision required BIS to renumber the paragraphs of the existing Entity List FDP rule. This rule also revises the heading of paragraph (e)(1)(i)(B) to reflect alignment with the unchanged scope of the paragraph, as the plant or 'major component' of the plant that must be a ''direct product'' of U.S.-origin ''technology'' or ''software.'' This new Entity List FDP rule states that any foreign-produced item is subject to the EAR if: (1) it meets the product scope in § 734.9(e)(2)(i)—either paragraph (e)(2)(i)(A) or (B); and (2) there is ''knowledge'' that an entity designated with footnote 4 on the Entity List is either involved in any of the activities in paragraph (e)(2)(ii)(A) or is a party to the transaction as described in paragraph (e)(2)(ii)(B).

2. Advanced Computing FDP Rule

The new ''Advanced computing FDP rule'' under paragraph (h) indicates that any foreign-produced item is subject to the EAR if it meets the product scope in § 734.9(h)(1)—either paragraph (h)(1)(i)

or (ii)—and destination scope in paragraph (h)(2). Paragraph (h)(1)(i) (''Direct product'' of ''technology'' or ''software'') specifies that a foreign-produced item meets the product scope of this new advanced computing FDP rule if it meets the conditions identified in (both) paragraphs (h)(1)(i)(A) (*i.e.,* the foreign-produced item is the ''direct product'' of certain specified ''software'' or ''technology'' subject to the EAR) and (B) (the foreign-produced item is specified in new ECCN 3A090 or 4A090 or is an integrated circuit, computer, ''electronic assembly,'' or ''component'' specified elsewhere on the CCL which meets or exceeds the limit in the performance parameters of ECCN 3A090 or 4A090, or is an item used in the ''development,'' ''production,'' ''use,'' operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of any item in the PRC used in the ''development'' or ''production,'' of certain integrated circuits).

The product scope in § 734.9(h) also includes foreign-produced items specified in ECCN 3A090 or 4A090 or other specified items that are products of a complete plant or 'major component' of a plant, whether made in the United States or a foreign country, that itself is a ''direct product'' of certain specified U.S.-origin ''technology'' or ''software.''

Paragraph (h)(2) (Destination scope) specifies that a foreign-produced item meets the destination scope of this paragraph if there is ''knowledge'' that the foreign-produced item is being exported, reexported, or transferred (in-country) to or within the PRC, or being incorporated into any ''part,'' ''component,'' ''computer,'' or ''equipment'' destined to the PRC.

3. Supercomputer End-Use FDP Rule

The new ''Supercomputer end-use FDP rule'' under § 734.9(i) of the EAR makes any foreign-produced item subject to the EAR if it meets the product scope in paragraph (i)(1)—either paragraph (i)(1)(i) or (ii)—and the end-use and country scope in paragraph (i)(2) of § 734.9. Paragraph (i)(1)(i) (''Direct product'' of ''technology'' or ''software'') of this new Supercomputer end-use FDP rule specifies that a foreign-produced item meets the product scope if it meets the conditions identified in paragraph (i)(1)(i), *i.e.,* meaning the foreign-produced item is the ''direct product'' of certain specified ''technology'' or ''software'' subject to the EAR. The product scope also includes foreign-produced items that are the products of a complete plant or 'major component' of a plant, whether made in the United States or a foreign country, that itself is a ''direct product'' of certain specified U.S.-origin ''technology'' or ''software.'' The product scope for this FDP rule generally matches the product scope for the new ''supercomputer'' end use rule in § 744.23 of the EAR.

Paragraph (i)(2) (Country and end-use scope) of § 734.9(i) specifies that a foreign-produced item meets the country and end-use scope if there is ''knowledge'' that the foreign produced items will be 1) used in the design, ''development,'' ''production,'' operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of a ''supercomputer'' located in or destined to the PRC; or 2) incorporated into, or used in the ''development,'' or ''production,'' of any ''part,'' ''component,'' or ''equipment'' that will be used in a ''supercomputer'' located in or destined to the PRC.

The end-use scope for this FDP rule generally matches the end-use requirement for the new ''supercomputer'' end-use control in § 744.23 of the EAR. Because the product scope, end-use scope, and country scope of this FDP rule generally match the license requirements in § 744.23 of the EAR, items that meet the terms of this foreign direct product rule should also require a license under § 744.23 of the EAR.

Relatedly, § 772.1 of the EAR is amended by adding a definition for ''supercomputer,'' as follows: ''A computing ''system'' having a collective maximum theoretical compute capacity of 100 or more double-precision (64-bit) petaflops or 200 or more single-precision (32-bit) petaflops within a 41,600 ft^3 or smaller envelope.''

F. Instituting a New End-Use and End-User Control for ''Supercomputers'' Under § 744.23 of the EAR

In part 744 (End-Use and End-User Controls), this rule adds a new § 744.23 (''Supercomputer'' and semiconductor end use). New § 744.23 imposes an end-use control that is supplemental to CCL-based license requirements and adds two prohibitions under paragraphs (a) and (b). Paragraph (a) specifies that you may not export, reexport, or transfer (in-country) an item meeting the product scope in paragraph (a)(1) when you have ''knowledge'' at the time of export, reexport, or transfer (in-country) that the item will be used, directly or indirectly, in an applicable end use in paragraph (a)(2). In addition, new paragraph (a)(1)(iii) imposes a license requirement on any item subject to the EAR when you have ''knowledge'' at the time of the export, reexport, or transfer (in-country) that the item is destined for a specified end use, *i.e.,* the ''development'' or ''production'' of integrated circuits at a semiconductor fabrication ''facility'' located in China that fabricates certain integrated circuits.

Paragraph (a)(1) sets forth the product scope, which generally aligns with the new Supercomputer FDP rule in § 734.9(i), but this license requirement also applies to U.S.-origin items and other items subject to the EAR—not just the foreign-produced items subject to the EAR under the Supercomputer FDP rule.

Paragraph (a)(2) specifies the end-use scope, which includes the design, ''development,'' ''production,'' operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of a ''supercomputer'' located in or destined to the PRC; incorporation of an item meeting the product scope of paragraph (a)(1) into any ''component'' or ''equipment'' that will be used in a ''supercomputer'' located in or destined to the PRC; the ''development'' or ''production,'' of integrated circuits at a semiconductor fabrication ''facility'' located in the PRC that fabricates integrated circuits with specified parameters or if you do not know whether such semiconductor fabrication ''facility'' can produce such integrated circuits; or the ''development,'' ''production,'' ''use,'' operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of any item in the PRC used in the ''development'' or ''production,'' of integrated circuits.

This rule adds paragraph (b) (Additional prohibition on persons informed by BIS) to new § 744.23 to include an ''is informed'' process similar to other part 744 end-use controls. New paragraph (b) specifies that BIS may inform persons, either individually by specific notice or through amendment to the EAR, that a license is required for certain exports, reexports, or transfers (in-country) of any item subject to the EAR to a certain end user because there is an unacceptable risk of use in, or diversion to, the activities specified in paragraph (a)(1) of § 744.23. Consistent with other ''is informed'' provisions of the EAR, this rule specifies in paragraph (b) that a specific notice may be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. In addition, paragraph (b) specifies that when such notice is provided orally, it will be followed by a written notice within two working

days. This rule also clarifies that the absence of any such notification under paragraph (b) does not excuse persons from compliance with the license requirements of paragraph (a)(1) or (2) of § 744.23 of the EAR.

This rule also adds paragraph (c) to new § 744.23 to specify that no license exceptions are available to overcome the license requirements in § 744.23. As with other end-use controls in part 744 of the EAR, this limitation on license exceptions applies even if the items also require a license under another provision of the EAR that is not so limited. For example, even if an item categorized under ECCN 3A001 is ordinarily eligible for export to China under License Exception RPL (for replacement parts), it would not be eligible for License Exception RPL if it is for a ''supercomputer'' that is located in or destined to the PRC.

Finally, this rule adds paragraph (d) (License Review Standards) to specify that there is a presumption of denial for applications to export, reexport, or transfer (in-country) of items that meet the product scope in paragraph (a)(1) of § 744.23 and the end use scope of paragraph (a)(2) of that section, except for certain end users in China that are headquartered in the United States or in a Country Group A:5 or A:6 country. This license review standard applies even though the items subject to this end-use control may require licenses to the PRC or other destinations for multiple reasons, including for reasons that have a more favorable licensing policy (*e.g.,* 3A001 items require a license for China and would normally be reviewed under the license review policy described in § 742.4(b)(7), but for an end-use described in new § 744.23, BIS will review the license application under the presumption of denial policy described above). The new paragraph also specifies that when an entity listed under supplement no. 4 to part 744 of the EAR (*i.e.,* the Entity List) and designated with a reference to footnote 4 are a party to the transaction, the license review policy for foreign-produced items subject to a license requirement is set forth in such entity's entry in supplement no. 4 to part 744 of the EAR.

BIS estimates new license requirements under § 744.23 will result in an additional five (5) license applications being submitted to BIS annually.

In § 744.1 (General provisions), as a conforming change to addition of § 744.23, this rule adds one sentence to specify that the end use and end-user controls in part 744 also extend to those in new § 744.23.

Provisions of this paragraph regarding the ''development'' or ''production,'' of integrated circuits at certain semiconductor manufacturing ''facilities'' located in China are described below in Section IV.B of this preamble.

G. Revisions to the Entity List Under Supplement No. 4 to Part 744 of the EAR

1. Overview of Entity List

The Entity List (supplement no. 4 to part 744 of the EAR) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States. The EAR imposes additional license requirements on and limits the availability of most license exceptions for exports, reexports, and transfers (in-country) to listed entities.

The license review policy for each listed entity is identified in the ''License Review Policy'' column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** document that added the entity to the Entity List. Any license application for an export, reexport, or transfer (in-country) involving an entity on the Entity List that is subject to an additional EAR license requirement will also be reviewed in accordance with the license review policies in the sections of the EAR applicable to those license requirements. For example, for Russian entities on the Entity List, if the export, reexport, or transfer (in-country) is subject to a license requirement in § 746.6, § 746.8, or § 746.10, the license application will be reviewed in accordance with the license review policies in those sections in addition to the specified license review policy under the Entity List entry.

BIS places entities on the Entity List pursuant to parts 744 (Control Policy: End-User and End-Use Based) and 746 (Embargoes and Other Special Controls) of the EAR. Paragraphs (b)(1) through (5) of § 744.11 include an illustrative list of activities contrary to the national security or foreign policy interests of the United States.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and makes all decisions to remove or modify an entry by unanimous vote.

2. Entity List Decisions: Revisions to the Entity List

This rule expands the scope of licensing requirements for 28 existing entities on the Entity List that are located in the PRC and were added to the Entity List between 2015 and 2021. Certain of the entities are developing supercomputers believed to be used in nuclear explosive activities; these entities have been placed on the Entity List triggering license requirements for items destined to those specific entities. For example, see 80 FR 8527, Feb. 18, 2015 (''National University of Defense Technology (NUDT) has used U.S.-origin multicores, boards, and (co)processors to produce the TianHe-1A and TianHe-2 supercomputers located at the National Supercomputing Centers in Changsha, Guangzhou, and Tianjin. The TianHe-1A and TianHe-2 supercomputers are believed to be used in nuclear explosive activities as described in § 744.2(a) of the EAR.'') Similarly, BIS has added multiple other Chinese entities involved in the ''development'' and ''production'' of integrated circuits to the Entity List based on their involvement with WMD as well as military end uses and end users. For example, on April 9, 2021 (86 FR 18437), BIS added seven Chinese entities to the Entity List ''on the basis of their procurement of U.S.-origin items for activities contrary to the national security and foreign policy interests of the United States. Specifically, these entities are involved in activities that support China's military actors, its destabilizing military modernization efforts, and/or its [WMD] programs.'' The types of computing facilities located at these entities are used for designing stealth technologies, space planes, hypersonic missiles, and other military applications including nuclear weapons design. Most specifically, with the April 9 rule, BIS added chip developer Tianjin Phytium Information Technology (also known as Phytium) to the Entity List.

Even though the license requirement for these entities remains all items subject to the EAR, this rule changes the scope of items subject to the EAR for transactions involving these entities through the revised Entity List FDP rule in § 734.9(e)(2) of the EAR and adds a new license requirement in § 744.11 of the EAR that is specific to foreign produced items for these entities, both discussed elsewhere in this interim final

rule. This rule adds a footnote 4 to the entities, and a reference to the Entity List FDP rule in the license requirements column of the Entity List. With these changes, additional foreign-produced items will now be subject to the EAR and require a license when destined to or for these 28 entities. The agencies represented on the ERC have approved the changes.

The 28 revised entities are:

- Beijing Institute of Technology;
- Beijing Sensetime Technology Development Co., Ltd.;
- Changsha Jingjia Microelectronics Co., Ltd.;
- Chengdu Haiguang Integrated Circuit;
- Chengdu Haiguang Microelectronics Technology;
- China Aerospace Science and Technology Corporation (CASC) 9th Academy 772 Research Institute
- Dahua Technology;
- Harbin institute of technology;
- Higon;
- IFLYTEK;
- Intellifusion;
- Megvii Technology;
- National Supercomputer Center Zhengzhou;
- National Supercomputing Center Changsha (NSCC–CS);
- National Supercomputing Center Guangzhou (NSCC–GZ);
- National Supercomputing Center Jinan;
- National Supercomputing Center Shenzhen;
- National Supercomputing Center Tianjin (NSCC–TJ);
- National Supercomputing Center Wuxi (NSCC–WX);
- National University of Defense Technology;
- New H3C Semiconductor Technologies Co., Ltd.;
- Northwestern Polytechnical University;
- Shanghai High-Performance Integrated Circuit Design Center;
- Sugon;
- Sunway Microelectronics;
- Tianjin Phytium Information Technology;
- Wuxi Jiangnan Institute of Computing Technology; and
- Yitu Technologies.

To assist with clarity, this rule revises § 744.11 by making editorial changes to the paragraph that imposes a license requirement on foreign-produced items for footnote 1 entities. This rule adds double quotes around the term ''direct product'' in the paragraph heading for footnote 1 entities, because that term is defined in part 772, and updates the citation and description of the prohibition for footnote 1 entities in paragraph (e)(1)(i). This rule also adds paragraph (a)(2) to impose a license requirement on foreign-produced items for footnote 4 entities. The new paragraph prohibits, without a license, the reexport, export from abroad, or transfer (in-country) of any foreign-produced item subject to the EAR pursuant to § 734.9(e)(2)(i) of the EAR when an entity designated with footnote 4 on the Entity List in supp. no. 4 to part 744 of the EAR is a party to the transaction. This prohibition on foreign-produced items for these identified Chinese entities is necessary because many supercomputer parts and components based on U.S. technology and software are not produced in the United States, and more conventional export control measures would not effectively limit the U.S. contribution to Chinese advanced computing efforts by these entities.

IV. Overview of New Controls: Certain Semiconductor Manufacturing Items; and Integrated Circuits End Use

This rule further addresses U.S. national security and foreign policy concerns by making three changes related to semiconductor manufacturing equipment. First, BIS adds to the CCL certain advanced semiconductor manufacturing equipment under a new ECCN 3B090, controlled for RS and AT reasons of control with limited license exception availability. It also adds references to the new ECCN 3B090 under the related ''software'' and ''technology'' controls under ECCNs 3D001 and 3E001. Second, this rule establishes a new end-use control for any item subject to the EAR when the exporter, reexporter, or transferor knows the item is for ''development'' or ''production'' of ICs (packaged or unpackaged) at a semiconductor fabrication ''facility'' located in the PRC that fabricates ICs (packaged or unpackaged) that meet certain specified criteria under § 744.23. Finally, this rule informs the public that certain specific ''U.S. persons'' activity to 'support' the ''development'' or ''production'' of ICs (packaged or unpackaged) that meet certain criteria under § 744.6 of the EAR requires a license.

A. Addition of Semiconductor Manufacturing Equipment, and Associated ''Software'' and ''Technology'' to the Commerce Control List (Supplement No. 1 to Part 774 of the EAR)

This rule adds new ECCN 3B090 to the CCL for specified semiconductor manufacturing equipment. The new ECCN is controlled for RS reasons and a license is required when the items it controls are destined to the PRC. This rule imposes this license requirement by adding ECCN 3B090 to an RS control in § 742.6(a)(6) of the EAR. ECCN 3B090 will also be controlled for AT reasons when destined to a country that has AT:1 license requirement (Iran § 742.8, Syria § 742.9, or North Korea § 742.19); see also parts 744 and 746 of the EAR for additional controls on items controlled for AT reasons.

Associated ''software'' and ''technology'' controls in the CCL for items in ECCN 3B090 are found in ECCNs 3D001 and 3E001, respectively; the ''software'' and ''technology'' is also controlled for RS reasons (which this rule adds as a new reason for control) when destined to the PRC, and for other reasons described in the ECCN entries. Specifically, this rule adds the new RS license requirement to the License Requirement tables within ECCNs 3D001 and 3E001.

As described in new § 742.6(b)(10), license applications for semiconductor manufacturing items, such as semiconductor equipment, destined to end users in China that are headquartered in the United States or in a country in Country Group A:5 or A:6 will be considered on a case-by-case basis, taking into account factors including technology level, customers and compliance plans.

License requirements for AT Column 1 items are identified in part 742 of the EAR; the items subject to these requirements are also subject to the end-use and end-user controls in part 744 of the EAR as well as many of the country and sector controls imposed in part 746 of the EAR, including controls that apply to Russia and Belarus under § 746.8(a)(1) of the EAR. If, in the future, a multilateral export control regime adopts controls for the specified items controlled in this interim final rule, BIS will amend the controls implemented in this rule as needed to implement multilateral controls in place of the unilateral control.

The only license exception available for exports or reexports of items controlled under new ECCN 3B090 (and the associated software and technology in ECCNs 3D001 and 3E001) is listed under § 740.2(a)(9) of the EAR, which is an existing paragraph that contains a list of license exceptions that are appropriate for the license requirements implemented in this rule. The only available license exception is License Exception Governments, International organizations, international inspections under the Chemical Weapons Convention, and the International Space Station (GOV), restricted to eligibility under the provision of § 740.11(b)(2)(ii)

(exports, reexports, and transfers (in-country) made by or consigned to a department or agency of the United States Government).

BIS estimates these new license requirements and the restrictions on license exceptions described below will result in an additional fifty (50) license applications being submitted to BIS annually.

B. Instituting a New End-Use Control for Any Item Subject to the EAR for the ''Development'' or ''Production,'' of Integrated Circuits at Certain Semiconductor Manufacturing ''Facilities'' Located in the PRC

In part 744 (End-Use and End-User Controls), this rule adds § 744.23 (''Supercomputers'' and semiconductor manufacturing end use), to impose an end-use control that is supplemental to CCL-based license requirements. BIS imposes the new end-use control by adding prohibitions under paragraphs (a)(1)(iii) through (v). Paragraph (a) specifies that you may not export, reexport, or transfer (in-country) an item meeting the product scope in paragraph (a)(1) when you have ''knowledge'' at the time of export, reexport, or transfer (in-country) that the item will be used, directly or indirectly, in an applicable end use in paragraph (a)(2).

As with all end-use controls under the EAR, exporters, reexporters, and transferors are responsible for reviewing their transactions in accordance with the ''Know Your Customer'' Guidance in supplement no. 3 to part 732 of the EAR. If your customer is a semiconductor manufacturing ''facility'' involved in the end uses set forth in paragraph (a)(2) of § 744.23, in addition to the best practice of obtaining and end-use statement from your customer, you should also evaluate all other available information to determine whether a license is required pursuant to § 744.23. If your customer is a reseller, distributor, or other intermediary transaction party, it is a good compliance practice to attempt to obtain confirmation of the actual end use and end user of your products. If the intermediary party (*e.g.,* reseller, distributor) cannot furnish these details at the time of the proposed export or reexport because it is a prospective order and no specific customer has yet been identified, as a good compliance practice you may attempt to obtain a written statement that the intermediary party understands the license requirements in § 744.23 and will either: (a) inform you of the actual end use and end user, once known, so you may evaluate whether a license is required for any proposed in-country transfer, or (b) evaluate the end use and end user and apply for any required license for any proposed in-country transfer. The new prohibition this rule adds to § 744.23(a)(1)(iii) through (v) and (a)(2)(iii) through (v) is subject to BIS's ''is informed'' process under paragraph (b) (Additional prohibition on persons informed by BIS).

As specified under paragraph (c) to newly added § 744.23, no license exceptions are available to overcome the license requirements in § 744.23.

Paragraph (d) (License Review Standards) specifies that there is a presumption of denial for applications to export, reexport, or transfer (in-country) items subject to the license requirements of § 744.23, which will also apply for the ''development'' or ''production,'' of integrated circuits at a semiconductor fabrication ''facility'' located in the PRC that fabricates certain integrated circuits and the ''development'' or ''production'' in the PRC of any ''parts,'' ''components'' or ''equipment'' specified under certain ECCNs. This license review standard applies even though the items subject to this end-use control may require licenses to the PRC or other destinations for multiple reasons, including for reasons that have a more favorable licensing policy.

BIS estimates new license requirements under § 744.23(a)(1)(iii) through (v) and (a)(2)(iii) through (vi) will result in an additional twenty-five (25) license applications being submitted to BIS annually.

Provisions of this paragraph regarding ''supercomputers'' are described above in Section III.F of this preamble.

C. Providing Public Notice That ''U.S. Person'' 'Support' for ''Development'' or ''Production,'' of Integrated Circuits That Meet Certain Specified Criteria Implicates the General Prohibitions in § 744.6(b) of the EAR

In part 744, this rule revises § 744.6 (Restrictions on specific activities of ''U.S. persons'') to inform ''U.S. persons'' that 'support' for the ''development'' or ''production,'' of integrated circuits that meet certain specified criteria in the PRC implicates the general prohibitions set forth in § 744.6(b) of the EAR and is therefore subject to a BIS license requirement. As authorized in ECRA (50 U.S.C. 4812(a)(2)), § 744.6 specifies that no ''U.S. person'' may without a license from BIS 'support' the WMD- and military-intelligence-related end uses and end users set forth in paragraphs (b)(1) through (5). 'Support' is defined in paragraph (b)(6) to encompass a number of activities, including, but not limited to, shipping, transmitting, or transferring (in-country) items not subject to the EAR; facilitating such shipment, transmission, or transfer (in-country); or servicing items not subject to the EAR.

As described above, semiconductor manufacturing items enable the ''development'' or ''production'' of advanced ICs that may contribute to the WMD-related end uses set forth in § 744.6(b). Section 744.6(c) of the EAR provides that BIS may inform ''U.S. persons'' through amendment to the EAR published in the **Federal Register** that a license is required because an activity could involve the type of 'support' defined in paragraph (b)(6) to the end uses and end users set forth in paragraphs (b)(1) through (5). Accordingly, BIS is amending the EAR in this rule to set forth the current text of § 744.6(c) in new § 744.6(c)(1) and to add a new § 744.6(c)(2) to inform ''U.S. persons'' of activities related to the ''development'' or ''production'' of ICs that could involve 'support' to WMD and missile end uses set forth in paragraph (b) and are therefore subject to a BIS license requirement.

Specifically, new paragraph (c)(2) informs ''U.S. persons'' that the shipment, transmission, or transfer (in-country) to or within the PRC of any item not subject to the EAR; facilitation of such shipment, transmission, or transfer (in-country); or servicing of any item not subject to the EAR to or within the PRC when such activity would assist the ''development'' or ''production'' of ICs meeting certain parameters is subject to a license requirement. Likewise, BIS is informing ''U.S. persons'' that the shipment, transmission, or transfer (in-country) of certain items not subject to the EAR that meet specific technical parameters set forth on the CCL; facilitation of such shipment, transmission, or transfer (in-country); or servicing of such items to or within the PRC when such activity would assist the ''development'' or ''production'' of ICs, but you cannot determine the technical parameters of those ICs requires a license. A license is also required for ''U.S. persons'' activities involving shipping, transmitting, or transferring (in-country) or facilitating the shipment, transmission, or transfer (in-country) to or within the PRC any item not subject to the EAR and meeting the parameters of ECCN 3B090, 3D001 (for 3B090), or 3E001 (for 3B090) regardless of end use or end user; or servicing any item not subject to the EAR located in the PRC and meeting the parameters of ECCN 3B090, 3D001 (for 3B090), or 3E001 (for

3B090), regardless of end use or end user.

This is consistent with the scope of the end-use restriction for items subject to the EAR in new § 744.23(a)(2)(iii).

As specified under paragraph (d)(1) (Exceptions), no license exceptions are available to overcome the license requirements in § 744.6(b)(1) through (4) or (c)(2).

Under paragraph (e)(3) (License Review Standards), there is a presumption of denial for applications to export, reexport, or transfer (in-country) items subject to the license requirements of § 744.6(c)(2) except for license applications for end users in China headquartered in the United States or in a country in Country Group A:5 or A:6, which will be considered on a case-by-case basis taking into account factors including technology level, customers and compliance plans.

BIS estimates new license requirements under § 744.6(c)(2)(i) will result in an additional five (5) license applications being submitted to BIS annually.

V. Measures To Minimize Short Term Impacts on Supply Chains

BIS is imposing the controls described in this rule to protect critical U.S. national security and foreign policy interests. BIS is aware that the new controls being imposed in this rule may result in the disruption of certain companies' activities involving China, in particular in relation to their supply chains. In order to give companies time to become familiar with the new controls being implemented, this rule implements two changes to minimize the short term impact on supply chains in transactions that do not appear to implicate national security or foreign policy concerns.

A. Certification of Compliance With New FDP Rule

In § 734.9(h), this rule adds a new paragraph (h)(3) (*Certification*) to assist exporters, reexporters, and transferors in determining whether the items being exported, reexported, or transferred (in-country) are subject to the EAR based on the advanced computing FDP rule under § 734.9(h). The model certificate provided by BIS in new supplement no. 3 to part 734, is not required under the EAR, but is provided to assist exporters, reexporters, and transferors with the process of resolving potential red flags regarding whether an item is subject to the EAR based on § 734.9(h). The model certificate contemplates inclusion of information described in paragraph (b) of supplement no. 1 to part 734 and the signature by an official or designated employee of the certifying company. If a person in the supply chain is unable to obtain the certification due diligence is suggested and a BIS authorization may be required for the next set of recipients in the supply chain. While BIS expects that this certificate will be useful in facilitating understanding the application of the EAR to an item, BIS does not view use of this certificate alone to be a comprehensive due diligence process.

BIS has determined that use of the certificate will protect U.S. national security and foreign policy interests. BIS expects it will also limit the burden on entities participating in supply chains by allowing them to proceed with transactions within their supply chains.

In § 762.2 this rule revises paragraph (b) to add a reference to the FDP supply chain certification that this rule added under new § 734.9(h). This interim final rule makes this change by redesignating paragraphs (b)(3) through (31) as paragraphs (b)(4) through (32) and adding new paragraph (b)(3). In § 740.10 (Servicing and replacement of parts and equipment (RPL)), this interim final rule makes a conforming change to paragraph (c)(2) in § 762.2 to remove the references to § 762.2(b)(4), (47), and (48) and instead include a reference to § 762.2(b).

B. Temporary General License—Supply Chain

This rule establishes a temporary general license (TGL) in new paragraph (d) of supplement no. 1 to part 736 that allows, from October 21, 2022, through April 7, 2023, exports, reexports, in-country transfers, and exports from abroad destined to or within China by companies not headquartered in Country Groups D:1 or D:5 or E to continue or to engage in integration, assembly (mounting), inspection, testing, quality assurance, and distribution of items covered by ECCN 3A090, 4A090, and associated software and technology in ECCN 3D001, 3E001, 4D090, or 4E001; or any item that is a computer, integrated circuit, ''electronic assembly'' or ''component'' and associated software and technology, specified elsewhere on Commerce Control List (supplement no. 1 to part 774), which meets or exceeds the performance parameters of ECCN 3A090 or 4A090. The purpose of this TGL is to avoid disruption of supply chains for items covered by ECCNs that are ultimately destined to customers outside of China. This TGL does not authorize the export, reexport, in-country transfer, or export from abroad to ''end-users'' or ''ultimate consignees'' in China. This TGL is only for companies that engage in the specific activities authorized under this TGL. The TGL does not overcome any license requirements set forth in the EAR involving an entity on the Entity List or other prohibited end use and end user restrictions (*e.g.,* those applicable to military end uses and end users). Prior to any export, reexport, or transfer (in-country) to China pursuant to this TGL, the exporter, reexporter, or transferor, must retain the name of the entity receiving the item and the complete physical address of where the item is destined in China and the location of that company's headquarters.

In response to this interim final rule, BIS welcomes comments on the temporary general license, including comments on how important the temporary general license is for supply chains to continue functioning, comments on dependency of certain aspects of the supply chain on companies in China, overview of steps taken by companies to reduce dependency on China for those aspects of their supply chains, and if a request to extend the temporary license is made to provide a rationale for why an extension may be warranted. BIS, in consultation with the other agencies, will solely determine whether any extension or modification of the TGL is warranted, but comments from the public are welcome and may help inform any subsequent decisions on the TGL. Upon expiration of the TGL, exporters will need to apply for an individually-validated export license to export such advanced computing chips, assemblies containing them, and related software and technology to the PRC for supply chain-related activities, such as assembly, inspection, quality assurance, and distribution. Such license applications will be reviewed consistent with the licensing policy set forth in new § 742.6(b)(10), as described above in Section III.B.

Savings Clause

Shipments of items removed from license exception eligibility or eligibility for export, reexport or transfer (in-country) without a license as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on October 7, 2022, may continue to the destination under the previous license exception eligibility or without a license so long as they have been exported, reexported or transferred (in-country) before November 7, 2022. Any such items not actually exported, reexported or transferred (in-country) before midnight, on November 7, 2022, require a license

in accordance with this interim final rule.

Deemed exports and reexports of technology and software related to ECCNs 3A991.p and 4A994.l that previously did not require a license, but now require a license because of the controls implemented by this rule, will only require licenses if the technology or software release exceeds the scope of the technology or software that the foreign national already had access to prior to the implementation of controls in this rule.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (codified, as amended, at 50 U.S.C. Sections 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. To the extent it applies to certain activities that are the subject of this rule, the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) (codified, as amended, at 22 U.S.C. Sections 7201–7211) also serves as authority for this rule.

Rulemaking Requirements

1. This interim final rule is not a ''significant regulatory action'' because it ''pertain[s]'' to a ''military or foreign affairs function of the United States'' under sec. 3(d)(2) of Executive Order 12866.

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

This rule involves the following OMB-approved collections of information subject to the PRA:

- 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 29.4 minutes for a manual or electronic submission;
- 0694–0096 ''Five Year Records Retention Period,'' which carries a burden hour estimate of less than 1 minute; and
- 0607–0152 ''Automated Export System (AES) Program,'' which carries a burden hour estimate of 3 minutes per electronic submission.

BIS estimates that these new controls under the EAR imposed by this rule will result in an increase of 1,700 license applications submitted annually to BIS. However, the additional burden falls within the existing estimates currently associated with these control numbers. Additional information regarding these collections of information—including all background materials—can be found at *https://www.reginfo.gov/public/do/PRAMain* by using the search function to enter either the title of the collection or the OMB Control Number.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C. 4821) (ECRA), this action is exempt from the Administrative Procedure Act (APA) (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date. While section 1762 of ECRA provides sufficient authority for such an exemption, this action is also independently exempt from these APA requirements because it involves a military or foreign affairs function of the United States (5 U.S.C. 553(a)(1)).

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

List of Subjects

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research, Science and technology.

15 CFR Parts 736 and 772

Exports.

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 734, 736, 740, 742, 744, 762, 772, and 774 of the Export Administration Regulations (15 CFR parts 730 through 774) are amended as follows:

PART 734—SCOPE OF THE EXPORT ADMINISTRATION REGULATIONS

■ 1. The authority citation for part 734 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of November 10, 2021, 86 FR 62891 (November 12, 2021).

■ 2. Effective on October 21, 2022, § 734.9 is amended by revising paragraph (e) and adding paragraphs (h) and (i) to read as follows:

§ 734.9 Foreign-Direct Product (FDP) Rules.

* * * * *

(e) *Entity List FDP rule.* A foreign-produced item is subject to the EAR if it meets the product scope and end-user scope in either Entity List FDP rule footnote 1 provision in paragraph (e)(1) of this section or the Entity List FDP rule Footnote 4 provision in paragraph (e)(2) of this section.

(1) *Entity List FDP rule: Footnote 1.* A foreign-produced item is subject to the EAR if it meets both the product scope in paragraph (e)(1)(i) of this section and the end-user scope in paragraph (e)(1)(ii) of this section. See § 744.11(a)(2)(i) of the EAR for license requirements, license review policy, and license exceptions applicable to foreign-produced items that are subject to the EAR pursuant to this paragraph (e)(1).

(i) *Product Scope Entity List FDP rule: Footnote 1.* The product scope applies if a foreign-produced item meets the conditions of either paragraph (e)(1)(i)(A) or (B) of this section.

(A) ''*Direct product*'' *of* ''*technology*'' *or* ''*software.*'' A foreign-produced item meets the product scope of this paragraph (e)(1)(i)(A) if the foreign-produced item is a ''direct product'' of ''technology'' or ''software'' subject to the EAR and specified in ECCN 3D001, 3D991, 3E001, 3E002, 3E003, 3E991, 4D001, 4D993, 4D994, 4E001, 4E992,

4E993, 5D001, 5D991, 5E001, or 5E991 of the Commerce Control List (CCL) in supplement no. 1 to part 774 of the EAR; or

(B) *Product of a complete plant or 'major component' of a plant that is a* ''*direct product.*'' A foreign-produced item meets the product scope of this paragraph (e)(1)(i)(B) if the foreign-produced item is produced by any plant or 'major component' of a plant that is located outside the United States, when the plant or 'major component' of a plant, whether made in the U.S. or a foreign country, itself is a ''direct product'' of U.S.-origin ''technology'' or ''software'' that is specified in ECCN 3D001, 3D991, 3E001, 3E002, 3E003, 3E991, 4D001, 4D993, 4D994, 4E001, 4E992, 4E993, 5D001, 5D991, 5E001, or 5E991 of the CCL.

Note 2 to paragraph (e)(1)(i): A foreign-produced item includes any foreign-produced wafer whether finished or unfinished.

(ii) *End-user scope of the Entity List FDP rule: Footnote 1.* A foreign-produced item meets the end-user scope of this paragraph (e)(1)(ii) if there is ''knowledge'' that:

(A) *Activities involving Footnote 1 designated entities.* The foreign-produced item will be incorporated into, or will be used in the ''production'' or ''development'' of any ''part,'' ''component,'' or ''equipment'' produced, purchased, or ordered by any entity with a footnote 1 designation in the license requirement column of the Entity List in supplement no. 4 to part 744 of the EAR; or

(B) *Footnote 1 designated entities as transaction parties.* Any entity with a footnote 1 designation in the license requirement column of the Entity List in supplement no. 4 to part 744 of the EAR is a party to any transaction involving the foreign-produced item, *e.g.,* as a ''purchaser,'' ''intermediate consignee,'' ''ultimate consignee,'' or ''end-user.''

(2) *Entity List FDP rule: Footnote 4.* A foreign-produced item is subject to the EAR if it meets both the product scope in paragraph (e)(2)(i) of this section and the end-user scope in paragraph (e)(2)(ii) of this section. See § 744.11(a)(2)(ii) of the EAR for license requirements, license review policy, and license exceptions applicable to foreign-produced items that are subject to the EAR pursuant to this paragraph (e)(2).

(i) *Product Scope Entity List FDP rule: Footnote 4.* The product scope applies if a foreign-produced item meets the conditions of either paragraph (e)(2)(i)(A) or (B) of this section.

(A) ''*Direct product*'' *of* ''*technology*'' *or* ''*software.*'' The foreign-produced item is a ''direct product'' of ''technology'' or ''software'' subject to the EAR and specified in ECCN 3D001, 3D991, 3E001, 3E002, 3E003, 3E991, 4D001, 4D993, 4D994, 4E001, 4E992, 4E993, 5D001, 5D002, 5D991, 5E001, 5E002, or 5E991 of the CCL; or

(B) *Product of plant or 'major component' that is a* ''*direct product.*'' The foreign-produced item is produced by any plant or 'major component' of a plant when the plant or 'major component' of a plant, whether made in the U.S. or a foreign country, itself is a ''direct product'' of U.S.-origin ''technology'' or ''software'' that is specified in ECCN 3D001, 3D991, 3E001, 3E002, 3E003, 3E991, 4D001, 4D993, 4D994, 4E001, 4E992, 4E993, 5D001, 5D991, 5E001, 5E991, 5D002, or 5E002 of the CCL.

(ii) *End user scope of the Entity List FDP rule: Footnote 4.* A foreign-produced item meets the end-user scope of this paragraph (e)(2)(ii) if there is ''knowledge'' that:

(A) *Activities involving Footnote 4 designated entities.* The foreign-produced item will be incorporated into, or will be used in the ''production'' or ''development'' of any ''part,'' ''component,'' or ''equipment'' produced, purchased, or ordered by any entity with a footnote 4 designation in the license requirement column of the Entity List in supplement no. 4 to part 744 of the EAR; or

(B) *Footnote 4 designated entities as transaction parties.* Any entity with a footnote 4 designation in the license requirement column of the Entity List in supplement no. 4 to part 744 of the EAR is a party to any transaction involving the foreign-produced item, *e.g.,* as a ''purchaser,'' ''intermediate consignee,'' ''ultimate consignee,'' or ''end-user.''

* * * * *

(h) *Advanced computing FDP rule.* A foreign-produced item is subject to the EAR if it meets both the product scope in paragraph (h)(1) of this section and the destination scope in paragraph (h)(2) of this section. See § 742.6(a)(6) of the EAR for license requirements and license exceptions and § 742.6(b)(10) for license review policy applicable to foreign-produced items that are subject to the EAR under this paragraph (h).

(1) *Product scope of advanced computing FDP rule.* The product scope applies if a foreign-produced item meets the conditions of either paragraph (h)(1)(i) or (ii) of this section.

(i) ''*Direct product*'' *of* ''*technology*'' *or* ''*software.*'' A foreign-produced item meets the product scope of this paragraph (h) if it meets both the following conditions:

(A) The foreign-produced item is the ''direct product'' of ''technology'' or ''software'' subject to the EAR and specified in 3D001, 3D991, 3E001, 3E002, 3E003, 3E991, 4D001, 4D090, 4D993, 4D994, 4E001, 4E992, 4E993, 5D001, 5D002, 5D991, 5E001, 5E991, or 5E002 of the CCL; and

(B) The foreign-produced item is:

(*1*) Specified in ECCN 3A090, 3E001 (for 3A090), 4A090, or 4E001 (for 4A090) of the CCL; or

(*2*) An integrated circuit, computer, ''electronic assembly,'' or ''component'' specified elsewhere on the CCL and meets the performance parameters of ECCN 3A090 or 4A090.

(ii) *Product of a complete plant or 'major component' of a plant that is a* ''*direct product.*'' A foreign-produced item meets the product scope of this paragraph (h) if it meets both of the following conditions:

(A) The foreign-produced item is produced by any complete plant or 'major component' of a plant that is located outside the United States, when the plant or 'major component' of a plant, whether made in the United States or a foreign country, itself is a ''direct product'' of U.S.-origin ''technology'' or ''software'' that is specified in ECCN 3D001, 3D991, 3E001, 3E002, 3E003, 3E991, 4D001, 4D090, 4D993, 4D994, 4E001, 4E992, 4E993, 5D001, 5D991, 5E001, 5E991, 5D002, or 5E002 of the CCL; and

(B) The foreign-produced item is:

(*1*) Specified in ECCN 3A090, 3E001 (for 3A090), 4A090, or 4E001 (for 4A090) of the CCL; or

(*2*) An integrated circuit, computer, ''electronic assembly,'' or ''component'' specified elsewhere on the CCL and meets the performance parameters of ECCN 3A090 or 4A090.

(2) *Destination or end use scope of the advanced computing FDP rule.* A foreign-produced item meets the destination scope of this paragraph (h)(2) if there is ''knowledge'' that the foreign-produced item is:

(i) Destined to the PRC or will be incorporated into any ''part,'' ''component,'' ''computer,'' or ''equipment'' not designated EAR99 that is destined to the PRC; or

(ii) Technology developed by an entity headquartered in the PRC for the ''production'' of a mask or an integrated circuit wafer or die.

(3) *Certification.* Exporters, reexporters, and transferors may obtain a written certification from a supplier that asserts an item being provided would be subject to the EAR if future transaction meet the destination scope in paragraph (h)(2)(i) or (ii) of this section. The model certificate provided

by BIS in supplement no. 1 to this part is not required under the EAR, but through its provision, the certificate may assist exporters, reexporters, and transferors with the process of resolving potential red flags regarding whether an item is subject to the EAR based on this paragraph (h). The model certificate provided by BIS contemplates signature by an official or designated employee of the certifying company and inclusion of all the information described in paragraph (b) of supplement no. 1 to this part. If the exporter, reexporter, or transferors has not obtained such a certification, due diligence needs to be conducted to determine if the items meets the scope in this paragraph (h). While this certificate is expected to be useful for a company to understand the application of the EAR to an item, BIS does not view this as the only step to be completed during a company's due diligence process. *See* supplement no. 1 to this part and supplement no. 3 to part 732 of the EAR.

(i) ''*Supercomputer*'' *FDP rule.* A foreign-produced item is subject to the EAR if it meets both the product scope in paragraph (i)(1) of this section and the country and end-use scope in paragraph (i)(2) of this section. See § 744.23 of the EAR for license requirement, license review policy, and license exceptions applicable to foreign-produced items that are subject to the EAR pursuant to this paragraph (i).

(1) *Product scope.* The product scope applies if a foreign-produced item meets the conditions of either paragraph (i)(1)(i) or (ii) of this section.

(i) ''*Direct product*'' *of* ''*technology*'' *or* ''*software.*'' The foreign-produced item meets the product scope of this paragraph (i)(1)(i) if the foreign-produced item is a ''direct product'' of ''technology'' or ''software'' subject to the EAR and specified in ECCN 3D001, 3D991, 3E001, 3E002, 3E003, 3E991, 4D001, 4D993, 4D994, 4E001, 4E992, 4E993, 5D001, 5D991, 5E001, 5E991, 5D002, or 5E002 of the CCL; or

(ii) *Product of a complete plant or 'major component' of a plant that is a* ''*direct product.*'' A foreign-produced item meets the product scope of this paragraph (i)(1)(ii) if the foreign-produced item is produced by any plant or 'major component' of a plant that is located outside the United States, when the plant or 'major component' of a plant, whether made in the United States or a foreign country, itself is a ''direct product'' of U.S.-origin ''technology'' or ''software'' that is specified in ECCN 3D001, 3D991, 3E001, 3E002, 3E003, 3E991, 4D001, 4D994, 4E001, 4E992, 4E993, 5D001, 5D991, 5E001, 5E991, 5D002, or 5E002 of the CCL.

(2) *Country and end-use scope.* A foreign-produced item meets the country and end-use scope of this paragraph (i)(2) if there is ''knowledge'' that the foreign produced item will be:

(i) Used in the design, ''development,'' ''production,'' operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of, a ''supercomputer'' located in or destined to the PRC; or

(ii) Incorporated into, or used in the ''development,'' or ''production,'' of any ''part,'' ''component,'' or ''equipment'' that will be used in a ''supercomputer'' located in or destined to the PRC.

■ 3. Effective on October 21, 2022, add supplement no. 1 to part 734 to read as follows:

Supplement No. 1 to Part 734—Model Certification for Purposes of Advanced Computing FDP Rule

(a) *General.* This supplement is included in the EAR to assist exporters, reexporters, and transferors in determining whether the items being exported, reexported, or transferred (in-country) are subject to the EAR based on the advanced computing FDP rule under § 734.9(h). The model certificate provided by BIS in this supplement is not required under the EAR, but through its provision, the certificate may assist exporters, reexporters, and transferors with the process of resolving potential red flags regarding whether an item is subject to the EAR based on § 734.9(h). The model certificate provided in this supplement by BIS contemplates signature by an official or designated employee of the certifying company and inclusion of all the information described in paragraph (b) of this supplement. Any certification relied on for this part must be retained pursuant to part 762 of the EAR.

Obtaining the certification set forth in this supplement does not relieve exporters, reexporters, and transferors of their obligation to exercise due diligence in determining whether items are subject to the EAR, including by following the ''Know Your Customer'' guidance in supplement no. 3 to part 732 of the EAR.

(b) *Model Criteria.* A certification meets the criteria described in this supplement if it contains at least the following information:

(1) The certification must be signed by an organization official specifically authorized to certify the document as being accurate and complete. The undersigned certifies that the information herein supplied in response to this paragraph is complete and correct to the best of his/her knowledge. By signing the certification below, I attest that:

(2) My organization is aware that the items, [INSERT A DESCRIPTION OF THE ITEMS], provided to this exporter, reexporter, or transferor, [INSERT NAME OF EXPORTER, REEXPORTER, OR TRANSFEROR], could be subject to the U.S. Export Administration Regulations (EAR) (15 CFR 730–774) if future transactions are within the destination scope of § 734.9(h)(2)(i) or (ii) and exported or reexported to or transferred within the People's Republic of China (China);

(3) My organization has reviewed the criteria for the advanced computing Foreign Direct Product (FDP) rule under § 734.9(h) and attests that from my organization's ''knowledge'' of the item, it would be subject to the EAR if the destination criteria are met in § 734.9(h)(2)(i) or (ii); and

(4) My organization affirms its commitment to apply with all applicable requirements under the EAR.

[INSERT NAME(S) OF CONSIGNEE(S)]

[INSERT DATE(S) SIGNED]

Note 1 to paragraph (b): *When multiple consignees who form a network engaged in a production process (or other type of collaborative activity, such as joint development) will be receiving items under the EAR, a single model certification statement for multiple consignees may be used for any export, reexport, or transfer (in-country) under the EAR.*

(c) *Additional Information.* Because this is only a model certification, exporters, reexporters, or transferors may add additional elements to the certification and/or use it for multiple purposes as part of their compliance program. For example, if a company has ten affiliated companies in a multi-step supply chain, instead of obtaining a model certification for each export, reexport, or transfer (in-country), the initial exporter, reexporter, or transferor may get all ten parties to sign the certification, which may further reduce the burden on parties participating in the supply chain.

PART 736—GENERAL PROHIBITIONS

■ 4. The authority citation for part 736 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of November 10, 2021, 86 FR

62891 (November 12, 2021); Notice of May 9, 2022, 87 FR 28749 (May 10, 2022).

■ 5. Effective on October 21, 2022, supplement no. 1 to part 736 is amended by adding paragraph (d) to read as follows:

Supplement No. 1 to Part 736—General Orders

* * * * *

(d) General Order No. 4: The purpose of this General Order is to avoid disruption of supply chains for items specified in paragraph (d)(1) of this supplement that are ultimately destined to customers outside of People's Republic of China (China).

(1) *Temporary General License (TGL).* BIS authorizes, from October 21, 2022, through April 7, 2023, exports, reexports, in-country transfers, and exports from abroad destined to or within China by companies not headquartered in Country Groups D:1 or D:5 or E (see supplement no. 1 to part 740 of the EAR) to continue or engage in integration, assembly (mounting), inspection, testing, quality assurance, and distribution of items covered by ECCN 3A090, 4A090, and associated software and technology in ECCN 3D001, 3E001, 4D090, or 4E001; or any item that is a computer, integrated circuit, ''electronic assembly'' or ''component'' and associated software and technology, specified elsewhere on Commerce Control List (supplement no. 1 to part 774 of the EAR), which meets or exceeds the performance parameters of ECCN 3A090 or 4A090. This does not authorize the export, reexport, in-country transfer, or export from abroad to ''end-users'' or ''ultimate consignees'' in China. This TGL does not overcome the license requirements of § 744.11 or § 744.21 of the EAR when an entity listed in supplements no. 4 or 7 to part 744 is a party to the transaction as described in § 748.5(c) through (f) of the EAR, or when there is knowledge of any other prohibited end use or end user. This TGL is only for companies that engage in the specific activities authorized under this TGL.

(2) *Recordkeeping requirement.* Prior to any export, reexport, or transfer (in-country) to China pursuant to this TGL, the exporter, reexporter, or transferor, must retain the name of the entity receiving the item and the complete physical address of where the item is destined in China and the location of that company's headquarters.

* * * * *

PART 740—LICENSE EXCEPTIONS

■ 6. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 7. Effective on October 7, 2022, § 740.2 is amended by adding paragraph (a)(9) to read as follows:

§ 740.2 Restrictions on all License Exceptions.

* * * * *

(a) * * *

(9) The item is identified in paragraph (a)(9)(i) of this section, being exported, reexported, or transferred (in-country) to or within the People's Republic of China (PRC), and the license exception is other than: RPL (excluding 3B090, 3D001 (for 3B090), and 3E001 (for 3B090)), under the provisions of § 740.10, including § 740.10(a)(3)(v), which prohibits exports and reexports of replacement parts to countries in Country Group E:1 (see supplement no. 1 to this part)); GOV, restricted to eligibility under the provisions of § 740.11(b)(2)(ii); or TSU (excluding 3B090, 3D001 (for 3B090), and 3E001 (for 3B090)), under the provisions of § 740.13(a) and (c). Items restricted to eligibility only for the foregoing license exceptions are:

(i) Controlled under ECCNs 3B090, or associated software and technology in 3D001, or 3E001; or

(ii) [Reserved]

* * * * *

■ 8. Effective on October 21, 2022, § 740.2 is further amended by revising paragraph (a)(9) to read as follows:

§ 740.2 Restrictions on all License Exceptions.

* * * * *

(a) * * *

(9) The item is identified in paragraphs (a)(9)(i) and (ii) of this section, being exported, reexported, or transferred (in-country) to or within the People's Republic of China (PRC), and the license exception is other than: RPL (excluding 3B090, 3D001 (for 3B090), and 3E001 (for 3B090)), under the provisions of § 740.10, including § 740.10(a)(3)(v), which prohibits exports and reexports of replacement parts to countries in Country Group E:1 (see supplement no. 1 to this part)); GOV, restricted to eligibility under the provisions of § 740.11(b)(2)(ii); or TSU (excluding 3B090, 3D001 (for 3B090), and 3E001 (for 3B090)), under the provisions of § 740.13(a) and (c). Items restricted to eligibility only for the foregoing license exceptions are:

(i) Controlled under ECCNs 3A090, 3B090, 4A090, or associated software and technology in 3D001, 3E001, 4D090, and 4E001; or

(ii) A computer, integrated circuit, ''electronic assembly'' or ''component'' specified elsewhere on the CCL which meets or exceeds the performance parameters of ECCN 3A090 or 4A090.

* * * * *

■ 9. Effective on October 7, 2022, § 740.10 is amended by revising paragraph (c)(2) to read as follows:

§ 740.10 License Exception Servicing and replacement of parts and equipment (RPL).

* * * * *

(c) * * *

(2) Records maintained pursuant to this section may be requested at any time by an appropriate BIS official as set forth in § 762.7 of the EAR. Records that must be included in the annual or semi-annual reports of exports and reexports of ''600 Series'' items under the authority of License Exception RPL are described in §§ 743.4 and 762.2(b) of the EAR.

PART 742—CONTROL POLICY—CCL BASED CONTROLS

■ 10. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of November 10, 2021, 86 FR 62891 (November 12, 2021).

■ 11. Effective on October 7, 2022, § 742.6 is amended by adding paragraphs (a)(6) and (b)(10) to read as follows:

§ 742.6 Regional stability.

(a) * * *

(6) *RS requirement that applies to the People's Republic of China (China) for semiconductor manufacturing items*—(i) *Exports, reexports, transfers (in-country).* A license is required for items specified in ECCN 3B090 and associated software and technology in 3D001 (for 3B090), 3E001 (for 3B090)) being exported, reexported, or transferred (in-country) to or within the China.

(ii) *Deemed exports.* The license requirements in this paragraph (a)(6) do not apply to deemed exports or deemed reexports.

* * * * *

(b) * * *

(10) *Semiconductor manufacturing items when destined to China.* There is

a presumption of denial for applications for items specified in paragraph (a)(6) of this section being exported, reexported, or transferred (in-country) to or within the China. See § 744.11(a)(2)(ii) of the EAR for license requirements, license review policy, and license exceptions applicable to specific entities. License applications for semiconductor manufacturing items, such as semiconductor equipment, destined to end users in China that are headquartered in the United States or in a country in Country Group A:5 or A:6 will be considered on a case-by-case basis, taking into account factors including technology level, customers and compliance plans.

* * * * *

■ 12. Effective on October 21, 2022, § 742.6 is further amended by revising paragraphs (a)(6) and (b)(10) to read as follows:

§ 742.6 Regional stability.

(a) * * *

(6) *RS requirement that applies to the People's Republic of China (China) for advanced computing and semiconductor manufacturing items*—(i) *Exports, reexports, transfers (in-country).* A license is required for items specified in ECCNs 3A090, 3B090, 4A090, 5A992 (that meet or exceed the performance parameters of ECCNs 3A090 or 4A090) and associated software and technology in 3D001 (for 3A090 or 3B090), 3E001 (for 3A090 or 3B090), 3B090, or 3D001 (for 3A090 or 3B090), 4D090, 4E001 (for 4A090 and 4D090), and 5D992 (that meet or exceed the performance parameters of ECCNs 3A090 or 4A090) being exported, reexported, or transferred (in-country) to or within the China. A license is also required for the export from the China to any destination worldwide of 3E001 (for 3A090) technology developed by an entity headquartered in the China that is the direct product of software subject to the EAR and is for the ''production'' of commodities identified in ECCNs 3A090, 4A090, or identified elsewhere on the CCL that meet or exceed the performance parameters of ECCNs 3A090 or 4A090, consistent with § 734.9(h)(1)(i)(B)(*1*) and (h)(2)(ii) of the EAR.

(ii) *Deemed exports.* The license requirements in this paragraph (a)(6) do not apply to deemed exports or deemed reexports.

* * * * *

(b) * * *

(10) *Advanced computing and semiconductor manufacturing items when destined to China.* There is a presumption of denial for applications for items specified in paragraph (a)(6) of this section being exported, reexported, or transferred (in-country) to or within the China. See § 744.11(a)(2)(ii) of the EAR for license requirements, license review policy, and license exceptions applicable to specific entities. License applications for semiconductor manufacturing items, such as semiconductor equipment, destined to end users in China that are headquartered in the United States or in a country in Country Group A:5 or A:6 will be considered on a case-by-case basis, taking into account factors including technology level, customers and compliance plans.

* * * * *

PART 744—END–USE AND END–USER CONTROLS

■ 13. The authority citation for part 744 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of November 10, 2021, 86 FR 62891 (November 12, 2021); Notice of September 19, 2022, 87 FR 57569 (September 19, 2022).

■ 14. Effective on October 21, 2022, § 744.1 is amended by adding a sentence at the end of paragraph (a)(1) to read as follows:

§ 744.1 General provisions.

(a)(1) * * * Section 744.23 sets forth restrictions on exports, reexports, and transfers (in-country) for certain ''supercomputer'' and semiconductor manufacturing end use.

* * * * *

■ 15. Effective on October 12, 2022, § 744.6 is amended by revising paragraphs (c) and (d) and adding paragraph (e)(3) to read as follows:

§ 744.6 Restrictions on specific activities of ''U.S. persons.''

* * * * *

(c) *Additional prohibitions on ''U.S. persons'' informed by BIS.* (1) BIS may inform ''U.S. persons,'' either individually by specific notice, through amendment to the EAR published in the **Federal Register**, or through a separate notice published in the **Federal Register**, that a license is required because an activity could involve the types of 'support' (as defined in paragraph (b)(6) of this section) to the end uses or end users described in paragraphs (b)(1) through (5) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse the ''U.S. person'' from compliance with the license requirements of paragraph (b) of this section.

(2) Consistent with paragraph (c)(1) of this section, BIS is hereby informing ''U.S. persons'' that a license is required for the following activities, which could involve 'support' for the weapons of mass destruction-related end uses set forth in paragraph (b) of this section.

(i) Shipping, transmitting, or transferring (in-country) to or within the PRC any item not subject to the EAR that you know will be used in the ''development'' or ''production'' of integrated circuits at a semiconductor fabrication ''facility'' located in the PRC that fabricates integrated circuits meeting any of the following criteria:

(A) Logic integrated circuits using a non-planar architecture or with a ''production'' technology node of 16/14 nanometers or less;

(B) NOT–AND (NAND) memory integrated circuits with 128 layers or more; or

(C) Dynamic random-access memory (DRAM) integrated circuits using a ''production'' technology node of 18 nanometer half-pitch or less; or

(ii) Facilitating the shipment, transmission, or transfer (in-country) of any item not subject to the EAR that you know will be used in the ''development'' or ''production'' of integrated circuits at a semiconductor fabrication ''facility'' located in the PRC that fabricates integrated circuits that meet any of the criteria in paragraphs (c)(2)(i)(A) through (C) of this section;

(iii) Servicing any item not subject to the EAR that you know will be used in the ''development'' or ''production'' of integrated circuits at a semiconductor fabrication ''facility'' located in the PRC that fabricates integrated circuits that meet any of the criteria in paragraphs (c)(2)(i)(A) through (C) of this section;

(iv) Shipping, transmitting, or transferring (in-country) to or within the PRC any item not subject to the EAR and meeting the parameters of any ECCN in Product Groups B, C, D, or E in Category 3 of the CCL that you know will be used in the ''development'' or ''production'' of integrated circuits at

any semiconductor fabrication ''facility'' located in the PRC, but you do not know whether such semiconductor fabrication ''facility'' fabricates integrated circuits that meet any of the criteria in paragraphs (c)(2)(i)(A) through (C) of this section;

(v) Facilitating the shipment, transmission, or transfer (in-country) to or within the PRC of any item not subject to the EAR and meeting the parameters of any ECCN in Product Groups B, C, D, or E in Category 3 of the CCL that you know will be used in the ''development'' or ''production,'' of integrated circuits at any semiconductor fabrication ''facility'' located in the PRC, but you do not know whether such semiconductor fabrication ''facility'' fabricates integrated circuits that meet any of the criteria in paragraphs (c)(2)(i)(A) through (C) of this section;

(vi) Servicing any item not subject to the EAR and meeting the parameters of any ECCN in Product Groups B, C, D, or E in Category 3 of the CCL that you know will be used in the ''development'' or ''production'' of integrated circuits at any semiconductor fabrication ''facility'' located in the PRC, but you do not know whether such semiconductor fabrication ''facility'' fabricates integrated circuits that meet any of the criteria in paragraphs (c)(2)(i)(A) through (C) of this section;

(vii) Shipping, transmitting, or transferring (in-country) to or within the PRC any item not subject to the EAR and meeting the parameters of ECCN 3B090, 3D001 (for 3B090), or 3E001 (for 3B090) regardless of end use or end user;

(viii) Facilitating the shipment, transmission, or transfer (in-country) to or within the PRC of any item not subject to the EAR and meeting the parameters of ECCN 3B090, 3D001 (for 3B090), or 3E001 (for 3B090), regardless of end use or end user; or

(ix) Servicing any item not subject to the EAR located in the PRC and meeting the parameters of ECCN 3B090, 3D001 (for 3B090), or 3E001 (for 3B090), regardless of end use or end user.

(d) *Exceptions.* (1) No License Exceptions apply to the prohibitions described in paragraphs (b)(1) through (4) and (c)(2)(i) through (vi) of this section.

(2) Notwithstanding the prohibitions in paragraphs (b)(5) and (c)(2)(vii) through (ix) of this section, ''U.S. persons'' who are employees of a department or agency of the U.S. Government may 'support' a 'military-intelligence end use' or a 'military-intelligence end user,' as described in paragraph (b)(5) of this section, or engage in the activities described in paragraphs (c)(2)(vii) through (ix) of this section, if the 'support' is provided in the performance of official duties in furtherance of a U.S. Government program that is authorized by law and subject to control by the President by other means. This paragraph (d)(2) does not authorize a department or agency of the U.S. Government to provide 'support' that is otherwise prohibited by other administrative provisions or by statute. 'Contractor support personnel' of a department or agency of the U.S. Government are eligible for this authorization when in the performance of their duties pursuant to the applicable contract or other official duties. 'Contractor support personnel' for the purposes of this paragraph (d)(2) has the same meaning given to that term in § 740.11(b)(2)(ii) of the EAR. This authorization is not available when a department or agency of the U.S. Government acts as an agent on behalf of a non-U.S. Government person.

(e) * * *

(3) Applications for licenses submitted pursuant to the notice of a license requirement set forth in paragraph (c)(2) of this section will be reviewed with a presumption of denial, except for end users in the PRC headquartered in the United States or a country in Country Group A:5 or A:6, which will be considered on a case-by-case basis taking into account factors including technology level, customers, and compliance plans.

■ 16. Effective on October 21, 2022, § 744.11 is amended by revising paragraph (a)(2) to read as follows:

§ 744.11 License requirements that apply to entities acting or at significant risk of acting contrary to the national security or foreign policy interests of the United States.

* * * * *

(a) * * *

(2) *Entity List foreign-''direct product'' (FDP) license requirements, review policy, and license exceptions*—(i) *Footnote 1 entities.* You may not, without a license or license exception, reexport, export from abroad, or transfer (in-country) any foreign-produced item subject to the EAR pursuant to § 734.9(e)(1)(i) of the EAR when an entity designated with footnote 1 on the Entity List in supplement. no. 4 to this part is a party to the transaction. All license exceptions described in part 740 of the EAR are available for foreign-produced items that are subject to this license requirement if all terms and conditions of the applicable license exception are met and the restrictions in § 740.2 of this EAR do not apply. The sophistication and capabilities of technology in items is a factor in license application review; license applications for foreign-produced items subject to a license requirement by this paragraph (a)(2) that are capable of supporting the ''development'' or ''production'' of telecom systems, equipment, and devices below the 5G level (*e.g.,* 4G, 3G) will be reviewed on a case-by-case basis.

(ii) *Footnote 4 entities.* You may not, without a license, reexport, export from abroad, or transfer (in-country) any foreign-produced item subject to the EAR pursuant to § 734.9(e)(2) of the EAR when an entity designated with footnote 4 on the Entity List in supp. no. 4 to this part is a party to the transaction, or that will be used in the ''development'' or ''production'' of any ''part,'' ''component,'' or ''equipment'' produced, purchased, or ordered by any such entity. See § 744.23 for additional license requirements that may apply to these entities. The license review policy for foreign-produced items subject to this license requirement is set forth in the entry in supplement no. 4 to this part for each entity with a footnote 4 designation.

* * * * *

■ 17. Effective on October 7, 2022, add § 744.23 to read as follows:

§ 744.23 Semiconductor manufacturing end use.

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export, reexport, or transfer (in-country) without a license any item subject to the EAR meeting the product scope in paragraph (a)(1) of this section when you have ''knowledge'' at the time of export, reexport, or transfer (in-country) that the item is destined for the end-use described in paragraph (a)(2) of this section.

(1) *Product scope.* Any of the following items meet the product scope of the prohibition in this section:

(i)–(ii) [Reserved]

(iii) Any item subject to the EAR when you know the items will be used in an end use described in paragraphs (a)(2)(iii)(A) through (C) of this section;

(iv) Any item subject to the EAR and classified in an ECCN in Product Groups B, C, D, or E in Category 3 of the CCL when you know the items will be used in an end use described in paragraph (a)(2)(iv) of this section; or

(v) Any item subject to the EAR when you know the item will be used in an end use described in paragraph (a)(2)(v) of this section.

(2) *End-use scope.* The following activities meet the end-use scope of the prohibition in this section:

(i)–(ii) [Reserved]

(iii) The ''development'' or ''production'' of integrated circuits at a semiconductor fabrication ''facility'' located in the PRC that fabricates integrated circuits meeting any of the following criteria:

(A) Logic integrated circuits using a non-planar transistor architecture or with a ''production'' technology node of 16/14 nanometers or less;

(B) NOT AND (NAND) memory integrated circuits with 128 layers or more; or

(C) Dynamic random-access memory (DRAM) integrated circuits using a ''production'' technology node of 18 nanometer half-pitch or less; or

(iv) The ''development'' or ''production'' of integrated circuits at any semiconductor fabrication ''facility'' located in the PRC, but you do not know whether such semiconductor fabrication ''facility'' fabricates integrated circuits that meet any of the criteria in paragraphs (a)(2)(iii)(A) through (C) of this section.

(v) The ''development'' or ''production'' in the PRC of any ''parts,'' ''components'' or ''equipment'' specified under ECCN 3B001, 3B002, 3B090, 3B611, 3B991, or 3B992.

(b) *Additional prohibition on persons informed by BIS.* BIS may inform persons, either individually by specific notice or through amendment to the EAR published in the **Federal Register**, that a license is required for a specific export, reexport, or transfer (in-country) of any item subject to the EAR to a certain end-user, because there is an unacceptable risk of use in, or diversion to, the activities specified in paragraph (a)(1) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration or the Deputy Assistant Secretary's designee. However, the absence of any such notification does not excuse persons from compliance with the license requirements of paragraph (a) of this section.

(c) *License exceptions.* No license exceptions may overcome the prohibition described in paragraph (a) of this section.

(d) *License review standards.* There is a presumption of denial for applications to export, reexport, or transfer (in-country) items described in paragraph (a)(1) of this section that are for end uses described in paragraph (a)(2) of this section, except for items controlled under paragraph (a)(2)(iii) of this section for end users in China that are headquartered in the United States or in a Country Group A:5 or A:6 country, which will be considered on a case-by-case basis taking into account factors including technology level, customers, and compliance plans.

■ 18. Effective on October 21, 2022, revise § 744.23 to read as follows:

§ 744.23 ''Supercomputer'' and semiconductor manufacturing end use.

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export, reexport, or transfer (in-country) without a license any item subject to the EAR meeting the product scope in paragraph (a)(1) of this section when you have ''knowledge'' at the time of export, reexport, or transfer (in-country) that the item is destined for the end-use described in paragraph (a)(2) of this section.

(1) *Product scope.* Any of the following items meet the product scope of the prohibition in this section:

(i) An integrated circuit (IC) subject to the EAR and specified in ECCN 3A001, 3A991, 4A994, 5A002, 5A004, or 5A992 when you know the item will be used in an end use described under paragraph (a)(2)(i) or (ii) of this section;

(ii) A computer, ''electronic assembly,'' or ''component'' subject to the EAR and specified in ECCN 4A003, 4A004, 4A994, 5A002, 5A004, or 5A992 when you know the item will be used in an end use described under paragraph (a)(2)(i) or (ii) of this section;

(iii) Any items subject to the EAR when you know the items will be used in an end use described in paragraphs (a)(2)(iii)(A) through (C) of this section;

(iv) Any items subject to the EAR and classified in an ECCN in Product Groups B, C, D, or E in Category 3 of the CCL when you know the items will be used in an end use described in paragraph (a)(2)(iv) of this section; or

(v) Any item subject to the EAR when you know the item will be used in an end use described in paragraph (a)(2)(v) of this section.

(2) *End-use scope.* The following activities meet the end-use scope of the prohibition in this section:

(i) The ''development,'' ''production,'' ''use,'' operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of a ''supercomputer'' located in or destined to the PRC;

(ii) The incorporation into, or the ''development'' or ''production'' of any ''component'' or ''equipment'' that will be used in a ''supercomputer'' located in or destined to the PRC; or

(iii) The ''development'' or ''production,'' of integrated circuits at a semiconductor fabrication ''facility'' located in the PRC that fabricates integrated circuits meeting any of the following criteria:

(A) Logic integrated circuits using a non-planar transistor architecture or with a ''production'' technology node of 16/14 nanometers or less;

(B) NOT AND (NAND) memory integrated circuits with 128 layers or more; or

(C) Dynamic random-access memory (DRAM) integrated circuits using a ''production'' technology node of 18 nanometer half-pitch or less; or

(iv) The ''development'' or ''production'' of integrated circuits at any semiconductor fabrication ''facility'' located in the PRC, but you do not know whether such semiconductor fabrication ''facility'' fabricates integrated circuits that meet any of the criteria in paragraphs (a)(2)(iii)(A) through (C) of this section; or

(v) The ''development'' or ''production'' in the PRC of any ''parts,'' ''components,'' or ''equipment'' specified under ECCN 3B001, 3B002, 3B090, 3B611, 3B991, or 3B992.

(b) *Additional prohibition on persons informed by BIS.* BIS may inform persons, either individually by specific notice or through amendment to the EAR published in the **Federal Register**, that a license is required for a specific export, reexport, or transfer (in-country) of any item subject to the EAR to a certain end-user, because there is an unacceptable risk of use in, or diversion to, the activities specified in paragraph (a)(2) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration or the Deputy Assistant Secretary's designee. However, the absence of any such notification does not excuse persons from compliance with the license requirements of paragraph (a) of this section.

(c) *License exceptions.* No license exceptions may overcome the prohibition described in paragraph (a) of this section.

(d) *License review standards.* There is a presumption of denial for applications to export, reexport, or transfer (in-country) items described in paragraph (a)(1) of this section that are for end uses described in paragraph (a)(2) of this section, except for items controlled under paragraph (a)(2)(iii) of this section for end users in China that are headquartered in the United States or in a Country Group A:5 or A:6 country,

which will be considered on a case-by-case basis taking into account factors including technology level, customers and compliance plans.

■ 19. Effective on October 21, 2022, supplement no. 4 is amended by:

■ a. Revising Under CHINA the entries for ''Beijing Institute of Technology,'' ''Beijing Sensetime Technology Development Co., Ltd.,'' ''Changsha Jingjia Microelectronics Co., Ltd.,'' ''Chengdu Haiguang Integrated Circuit,'' ''Chengdu Haiguang Microelectronics Technology,'' ''China Aerospace Science and Technology Corporation (CASC) 9th Academy 772 Research Institute,'' ''Dahua Technology,'' ''Harbin institute of Technology,'' ''Higon,'' ''IFLYTEK,'' ''Intellifusion,'' ''Megvii Technology,'' ''National Supercomputing Center Changsha (NSCC–CS),'' ''National Supercomputing Center Guangzhou (NSCC–GZ),'' ''National Supercomputing Center Jinan,'' ''National Supercomputing Center Shenzhen,'' ''National Supercomputing Center Tianjin (NSCC–TJ),'' ''National Supercomputing Center Wuxi,'' ''National Supercomputer Center Zhengzhou,'' ''National University of Defense Technology (NUDT),'' ''New H3C Semiconductor Technologies Co., Ltd.,'' ''Northwestern Polytechnical University,'' ''Shanghai High-Performance Integrated Circuit Design Center,'' ''Sugon,'' ''Sunway Microelectronics,'' ''Tianjin Phytium Information Technology,'' ''Wuxi Jiangnan Institute of Computing Technology,'' and ''Yitu Technologies''; and

■ b. Revising footnote 1 and adding footnote 4.

The revisions and addition read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* * *	*	* *	*
CHINA, PEOPLE'S REPUBLIC OF.	* * *	*	* *	*
	Beijing Institute of Technology, No. 5 South Zhongguancun Street, Haidian District, Beijing, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Presumption of denial	85 FR 83420, 12/22/20. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
	* * *	*	* *	*
	Beijing Sensetime Technology Development Co., Ltd., a.k.a., the following two aliases: —Beijing Shangtang Technology Development Co., Ltd.; *and* —Sense Time. 5F Block B, Science and Technology Building, Tsing-hua Science Park, Haidian District, Beijing, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR 34505, 6/5/20. 85 FR 44159, 7/22/20. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
	* * *	*	* *	*
	Changsha Jingjia Microelectronics Co., Ltd.,902, Building B1, Lugu Science and Technology Innovation Pioneer Park, 1698 Yuelu West Ave., Changsha High-tech Development Zone; *and* Building 3, Changsha Productivity Promotion Center, No. 2, Lujing Rd., Yuelu District, Changsha City, Hunan Province; *and* No. 1, Meixihu Road, Yuelu District, Changsha City, Hunan Province, 410221; *and* Room 1501, Aipu Building, 395 Xinshi North Road, Shijiazhuang City, Hebei Province, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Presumption of denial	86 FR 71560, 12/17/21. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
	* * *	*	* *	*
	Chengdu Haiguang Integrated Circuit, a.k.a., the following two aliases: —Hygon; *and* —Chengdu Haiguang Jincheng Dianlu Sheji. China (Sichuan) Free Trade Zone, No. 22–31, 11th Floor, E5, Tianfu Software Park, No. 1366, Middle Section of Tianfu Avenue, Chengdu High-tech Zone, Chengdu, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Presumption of denial	84 FR 29373, 6/24/19. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.

Country	Entity	License requirement	License review policy	Federal Register citation
	Chengdu Haiguang Microelectronics Technology, a.k.a., the following two aliases: —HMC; *and* —Chengdu Haiguang Wei Dianzi Jishu. China (Sichuan) Free Trade Zone, No. 23–32, 12th Floor, E5, Tianfu Software Park, No. 1366, Middle Section of Tianfu Avenue, Chengdu High-tech Zone, Chengdu, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Presumption of denial	84 FR 29373, 6/24/19. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
	* *	*	* *	*
	China Aerospace Science and Technology Corporation (CASC) 9th Academy 772 Research Institute, a.k.a., the following four aliases: —772 Research Institute; —Beijing Institute of Microelectronics Technology; —Beijing Microelectronics Technology Institute; *and* —BMTI. No. 2, Siyingmen North Road, Donggaodi, Fengtai District, Beijing, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Presumption of denial	87 FR 51877, 8/24/22. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
	* *	*	* *	*
	Dahua Technology, 807, Block A, Meike Building No. 506, Beijing South Road, New City, Urumqi, Xinjiang, China; 1199 Bin'an Road, Binjiang High-tech Zone, Hangzhou, China; *and* 6/F, Block A, Dacheng Erya, Huizhan Avenue, Urumqi, China; *and* No. 1187, Bin'an Road, Binjiang District, Hangzhou City, Zhejiang Province, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Presumption of denial	84 FR 54004, 10/9/19. 85 FR 44159, 7/22/20. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
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	Harbin Institute of Technology, No. 92 Xidazhi Street, Nangang District, Harbin, Heilongjiang, China; *and* No. 92 West Dazhi Street, Nangang District, Harbin, Heilongjiang, China; *and* No. 2 West Wenhua Road, Weihai, Shandong, China; *and* Pingshan 1st Road, Shenzhen, Guangdong, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Presumption of denial	85 FR 34497, 6/5/20. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
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	Higon, a.k.a., the following five aliases: —Higon Information Technology; —Haiguang Xinxi Jishu Youxian Gongsi; —THATIC; —Tianjing Haiguang Advanced Technology Investment; *and* —Tianjing Haiguang Xianjin Jishu Touzi Youxian Gongsi. Industrial Incubation-3–8, North 2–204, 18 Haitai West Road, Huayuan Industrial Zone, Tianjin, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Presumption of denial	84 FR 29373, 6/24/19. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
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Country	Entity	License requirement	License review policy	**Federal Register** citation
	IFLYTEK, National Intelligent Speech High-tech Industrialization Base, No. 666, Wangjiang Road West, Hefei City, Anhui Province, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR 44159, 7/22/20. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
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	Intellifusion, a.k.a., the following two aliases: —Shenzhen Yuntian Lifei Technology Co., Ltd.; —Yuntian Lifei. 1st Floor, Building 17, Shenzhen Dayun Software Town, 8288 Longgang Avenue, Yuanshan District, Longgang District, Shenzhen, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	85 FR 34505, 6/5/20. 85 FR 44159, 7/22/20. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
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	Megvii Technology, 3rd Floor, Block A, Rongke Information Center, No. 2 South Road, Haidian District, Beijing, China; *and* Floor 3rd Unit A Raycom Infotech Park, No 2 Kexueyuan, Beijing, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR 44159, 7/22/20. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
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	National Supercomputing Center Changsha (NSCC–CS), Changsha City, Hunan Province, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Presumption of denial	80 FR 8527, 2/18/15. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
	National Supercomputing Center Guangzhou (NSCC–GZ), Sun Yat-Sen University, University City, Guangzhou, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Presumption of denial	80 FR 8527, 2/18/15. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
	National Supercomputing Center Jinan, a.k.a., the following two aliases: —Shandong Computing Center; *and* —NSCC–JN. No. 1768, Xinluo Street, High-tech Development Zone, Jinan City, Shandong Province, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Presumption of denial	86 FR 18438, 4/9/21. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.

Country	Entity	License requirement	License review policy	Federal Register citation
	National Supercomputing Center Shenzhen, a.k.a., the following three aliases: —The National Supercomputing Shenzhen Center; —Shenzhen Cloud Computing Center; *and* —NSCC–SZ. No. 9 Duxue Road, University Town Community, Taoyuan Street, Nanshan District, Shenzhen, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Presumption of denial	86 FR 18438, 4/9/21. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
	National Supercomputing Center Tianjin (NSCC–TJ), 7th Street, Binhai New Area, Tianjin, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Presumption of denial	80 FR 8527, 2/18/15. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
	National Supercomputing Center Wuxi, a.k.a., the following one alias: —NSCC–WX. No. 1, Yinbai Road, Binhu District, Wuxi City, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Presumption of denial	86 FR 18438, 4/9/21. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
	National Supercomputer Center Zhengzhou, a.k.a., the following one alias: —NSCC–ZZ. Southeast of the intersection of Fengyang Street and Changchun Road, Zhongyuan District, Zhengzhou City, China; *and* 1st Floor, Building 18, Zhengzhou University (South Campus), Zhengzhou City, China; *and* Room 213, Institute of Drug Research, Zhengzhou University, Changchun Road, High-tech Zone, Zhengzhou City, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Presumption of denial	86 FR 18438, 4/9/21. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
	National University of Defense Technology (NUDT), a.k.a., the following three aliases: —Central South CAD Center; —CSCC; *and* —Hunan Guofang Keji University. Garden Road (Metro West), Changsha City, Kaifu District, Hunan Province, China; *and* 109 Deya Road, Kaifu District, Changsha City, Hunan Province, China; *and* 47 Deya Road, Kaifu District, Changsha City, Hunan Province, China; *and* 147 Deya Road, Kaifu District, Changsha City, Hunan Province, China; *and* 47 Yanwachi, Kaifu District, Changsha, Hunan, China; *and* Wonderful Plaza, Sanyi Avenue, Kaifu District, Changsha, China; *and* No. 54 Beiya Road, Changsha, China; *and* No. 54 Deya Road, Changsha, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Presumption of denial	80 FR 8527, 2/18/15. 84 FR 29373, 6/24/19, 87 FR 38925, 6/30/22. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
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	New H3C Semiconductor Technologies Co., Ltd., No. 1, Floor 1, Unit 1, Building 4, No. 219, Tianhua 2nd Rd., Chengdu High-Tech Zone, China (Sichuan) Pilot Free Trade Zone, China; *and* Beijing Branch—Room 401, 4th Floor, Building 1, No. 8 Yard, Yongjia North Road, Haidian District, Beijing, China; *and* Shanghai Branch—No. 666 Shengxia Rd., 122 Yindong Rd., China (Shanghai) Pilot Free Trade Zone, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Presumption of denial	86 FR 67319. 11/26/21. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
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Country	Entity	License requirement	License review policy	**Federal Register** citation
	Northwestern Polytechnical University, a.k.a., the following three aliases: —Northwestern Polytechnic University; —Northwest Polytechnic University; *and* —Northwest Polytechnical University. 127 Yonyi Xilu, Xi'an 71002 Shaanxi, China; *and* Youyi Xi Lu, Xi'an, Shaanxi, China; *and* No. 1 Bianjia Cun, Xi'an; *and* West Friendship Rd. 59, Xi'an; *and* 3 10 W Apt 3, Xi'an.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Presumption of denial	66 FR 24266, 5/14/01. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12. 81 FR 64696, 9/20/16. 84 FR 40241, 8/14/19. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
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	Shanghai High-Performance Integrated Circuit Design Center, a.k.a., the following two aliases: —Shenwei Micro; *and* —Shanghai High-Performance IC Design Center. No. 399, Bi sheng Road, Zhangjiang Hi-Tech Park, Pudong New Area, Shanghai, China; *and* 428 Zhanghen Rd, Zhangjiang High Tech Park, Pudong District, Shanghai, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Presumption of denial	86 FR 18438, 4/9/21. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
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	Sugon, a.k.a., the following nine aliases: —Dawning; —Dawning Information Industry; —Sugon Information Industry; —Shuguang; —Shuguang Information Industry; —Zhongke Dawn; —Zhongke Shuguang; —Dawning Company; *and* —Tianjin Shuguang Computer Industry. Sugon Building, No. 36 Zhongguancun Software Park, No. 8 Dongbeiwang West Road, Haidian District, Beijing; *and* No. 15, Haitai Huake Street, Huayuan Industrial Zone, Tianjin; *and* Sugon Science and Technology Park, No. 64 Shuimo West Street, Haidian District, Beijing, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Presumption of denial	84 FR 29373, 6/24/19. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
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	Sunway Microelectronics, a.k.a., the following two aliases: —Chengdu Shenwei Technology; *and* —Chengdu Sunway Technology. Building D22, Electronic Science and Technology Park, Section 4, Huafu Avenue, Chengdu, China; *and* Shuangxing Avenue, Gongxing Street, Southwest Airport Economic Development Zone, Shuangliu District, Chengdu, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Presumption of denial	86 FR 18438, 4/9/21. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
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Country	Entity	License requirement	License review policy	Federal Register citation
	Tianjin Phytium Information Technology, a.k.a., the following three aliases: —Phytium; —Phytium Technology; *and* —Tianjin Feiteng Information Technology. Bldg 5 Xin'an Venture Plaza 1 Haiyuan M Rd Binhai New Area Tianjin, 300450 China; *and* Building 5, Xin'an Chuangye Plaza, No. 1, Haiyuan Middle Road, Binhai New District, Tianjin, China; *and* 8th Floor, Quantum Core Tower, No.27 Zhichun Road, Haidian District, Beijing, China; *and* 10th Floor, Office Building, Wangdefu Kaiyue International Building, No.526 Sanyi Avenue, Kaifu District, Changsha City, Hunan Province; China; *and* Room 101, No. 1012, Hulin Road, Huangpu District, Guangzhou, China; *and* 100 Waihuanxi Rd, 3F–326 Science Pavilion, Panyu District, Guangdong, Guangzhou, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Presumption of denial	86 FR 18438, 4/9/21. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
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	Wuxi Jiangnan Institute of Computing Technology, a.k.a., the following two aliases: —Jiangnan Institute of Computing Technology; *and* —JICT. No. 699, Shanshui East Road, Binhu District, Wuxi City, China, *and* No. 188, Shanshui East Road, Binhu District, Wuxi City, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Presumption of denial	84 FR 29373, 6/24/19. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
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	Yitu Technologies, 23F, Shanghai Arch Tower I, 523 Loushanguan Rd, Changning District, Shanghai, China.	For all items subject to the EAR. (See §§ 734.9(e) and 744.11 of the EAR) [4].	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR 44159, 7/22/20. 87 FR [INSERT FR PAGE NUMBER, 10/13/22.
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[1] For this entity, "items subject to the EAR" includes foreign-produced items that are subject to the EAR under § 734.9(e)(1) of the EAR. See § 744.11(a)(2)(i) for related license requirements and license review policy for these items.

* * * * * * *

[4] For this entity, "items subject to the EAR" includes foreign-produced items that are subject to the EAR under § 734.9(e)(2) of the EAR. See § 744.11(a)(2)(ii) for related license requirements and license review policy.

PART 762—RECORDKEEPING

■ 20. The authority citation for part 762 continues to read as follows:

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

■ 21. Effective on October 21, 2022, § 762.2 is amended by redesignating paragraphs (b)(3) through (31) as paragraphs (b)(4) through (32) and adding new paragraph (b)(3) to read as follows:

§ 762.2 Records to be retained.

* * * * *

(b) * * *

(3) Section 734.9(h), Foreign Direct Product (FDP) supply chain certification;

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PART 772—DEFINITIONS OF TERMS

■ 22. The authority citation for part 772 continues to read as follows:

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

■ 23. Effective on October 21, 2022, § 772.1 is amended by adding a definition for ''Supercomputer'' in alphabetical order to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Supercomputer. (734, 744) A computing ''system'' having a collective maximum theoretical compute capacity of 100 or more double-precision (64-bit) petaflops or 200 or more single-precision (32-bit) petaflops within a 41,600 ft^3 or smaller envelope.

Note 1 to ''Supercomputer'': The 41,600 ft^3 envelope corresponds, for example, to a 4x4x6.5 ft rack size and therefore 6,400 ft^2 of floor space. The envelope may include empty floor space between racks as well as adjacent floors for multi-floor systems.

Note 2 to ''Supercomputer'': Typically, a 'supercomputer' is a high-performance multi-rack system having thousands of closely coupled compute cores connected in parallel with networking technology and having a high peak power capacity requiring cooling elements. They are used for computationally intensive tasks including scientific and engineering work. Supercomputers may include shared memory, distributed memory, or a combination of both.

* * * * *

PART 774—THE COMMERCE CONTROL LIST

■ 24. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 8720; 10 U.S.C. 8730(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 25. Effective on October 7, 2022, supplement no. 1 to part 774 is amended by adding ECCN 3B090 after ECCN 3B002 and revising ECCNs 3B991, 3D001, and 3E001 to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

3B090 Semiconductor manufacturing equipment, not Controlled by 3B001, as follows (see List of Items Controlled) and ''specially designed'' ''parts,'' ''components,'' and ''accessories'' therefor.

License Requirements

Reason for Control: RS, AT

Control(s)	*Country chart (See Supp. No. 1 to part 738)*
RS applies to entire entry.	China (see § 742.6(a)(6))
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A
GBS: N/A

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A *Items:*

a. Semiconductor manufacturing deposition equipment, as follows:

a.1. Equipment for depositing cobalt through electroplating processes.

a.2. Chemical vapor deposition equipment capable of deposition of cobalt or tungsten fill metal having a void/seam having a largest dimension less than or equal to 3 nm in the fill metal using a bottom-up fill process.

a.3 Equipment capable of fabricating a metal contact within one processing chamber by:

a.3.a. Depositing a layer using an organometallic tungsten compound while maintaining the wafer substrate temperature between 100 °C and 500 °C; and

a.3.b. Conducting a plasma process where the chemistries include hydrogen, including H_2+N_2 and NH_3.

a.4. Equipment capable of fabricating a metal contact in a vacuum environment by:

a.4.a. Using a surface treatment during a plasma process where the chemistries include hydrogen, including H_2, H_2+N_2, and NH_3, while maintaining the wafer substrate temperature between 100 °C and 500 °C;

a.4.b. Using a surface treatment consisting of a plasma process where the chemistries include oxygen (including O_2 and O_3) while maintaining the wafer substrate temperature between 40 °C and 500 °C; and

a.4.c. Depositing a tungsten layer while maintaining the wafer substrate temperature between 100 °C and 500 °C.

a.5. Equipment capable of depositing a cobalt metal layer selectively in a vacuum environment where the first step uses a remote plasma generator and an ion filter, and the second step is the deposition of the cobalt layer using an organometallic compound.

Note: *This control does not apply to equipment that is non-selective.*

a.6. Physical vapor deposition equipment capable of depositing a cobalt layer with a thickness of 10 nm or less on a top surface of a copper or cobalt metal interconnect.

a.7. Atomic layer deposition equipment capable of depositing a 'work function metal' for the purpose of adjusting transistor electrical parameters by delivering an organometallic aluminum compound and a titanium halide compound onto a wafer substrate.

Technical note: *'Work function metal' is a material that controls the threshold voltage of a transistor.*

a.8. Equipment capable of fabricating a metal contact in a vacuum environment by depositing all of the following:

a.8.a. A titanium nitride (TiN) or tungsten carbide (WC) layer using an organometallic compound while maintaining the wafer substrate temperature between 20 °C and 500 °C;

a.8.b. A cobalt layer using a physical sputter deposition technique where the process pressure is 1–100 mTorr while maintaining the wafer substrate temperature below 500 °C; and

a.8.c. A cobalt layer using an organometallic compound, where the process pressure is 1–100 Torr, and the wafer substrate temperature is maintained between 20 °C and 500 °C.

a.9. Equipment capable of fabricating copper metal interconnects in a vacuum environment that deposits all of the following:

a.9.a. A cobalt or ruthenium layer using organometallic compound where the process pressure is 1–100 Torr, and the wafer substrate temperature is maintained between 20 °C and 500 °C; and

a.9.b. A copper layer using a physical vapor deposition technique where the process pressure is 1–100m Torr and the wafer substrate temperature is maintained below 500 °C.

a.10. Equipment capable of area selective deposition of a barrier or liner using an organometallic compound.

Note: *3B090.a.10 includes equipment capable of area selective deposition of a barrier layer to enable fill metal contact to an underlying electrical conductor without a barrier layer at the fill metal via interface to an underlying electrical conductor.*

a.11. Atomic layer deposition equipment capable of producing a void/seam free fill of tungsten or cobalt in a structure having an aspect ratio greater than 5:1, with openings smaller than 40 nm, and at temperatures less than 500 °C.

* * * * *

3B991 Equipment, not controlled by 3B001 or 3B090, for the manufacture of electronic ''parts,'' ''components'' and materials, and ''specially designed'' ''parts,'' ''components'' and ''accessories'' therefor.

License Requirements

Reason for Control: AT

Control(s)	*Country chart (See Supp. No. 1 to part 738)*
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A
GBS: N/A

List of Items Controlled

Related Controls: N/A

Related Definitions: 'Sputtering' is an overlay coating process wherein positively charged ions are accelerated by an electric field towards the surface of a target (coating material). The kinetic energy of the impacting ions is sufficient to cause target surface atoms to be released and deposited on the substrate. (Note: Triode, magnetron or radio frequency sputtering to increase adhesion of coating and rate of deposition are ordinary modifications of the process.)

Items:

a. Equipment ''specially designed'' for the manufacture of electron tubes, optical elements and ''specially designed'' ''parts'' and ''components'' therefor controlled by 3A001 or 3A991;

b. Equipment ''specially designed'' for the manufacture of semiconductor devices, integrated circuits and ''electronic assemblies'', as follows, and systems incorporating or having the characteristics of such equipment:

Note: *3B991.b also controls equipment used or modified for use in the manufacture of other devices, such as imaging devices, electro-optical devices, acoustic-wave devices.*

b.1. Equipment for the processing of materials for the manufacture of devices, ''parts'' and ''components'' as specified in the heading of 3B991.b, as follows:

Note: *3B991 does not control quartz furnace tubes, furnace liners, paddles, boats (except ''specially designed'' caged boats), bubblers, cassettes or crucibles ''specially designed'' for the processing equipment controlled by 3B991.b.1.*

b.1.a. Equipment for producing polycrystalline silicon and materials controlled by 3C001;

b.1.b. Equipment ''specially designed'' for purifying or processing III/V and II/VI semiconductor materials controlled by 3C001, 3C002, 3C003, 3C004, or 3C005 except crystal pullers, for which see 3B991.b.1.c below;

b.1.c. Crystal pullers and furnaces, as follows:

Note: *3B991.b.1.c does not control diffusion and oxidation furnaces.*

b.1.c.1. Annealing or recrystallizing equipment other than constant temperature furnaces employing high rates of energy transfer capable of processing wafers at a rate exceeding 0.005 m^2 per minute;

b.1.c.2. ''Stored program controlled'' crystal pullers having any of the following characteristics:

b.1.c.2.a. Rechargeable without replacing the crucible container;

b.1.c.2.b. Capable of operation at pressures above 2.5×10^5 Pa; *or*

b.1.c.2.c. Capable of pulling crystals of a diameter exceeding 100 mm;

b.1.d. ''Stored program controlled'' equipment for epitaxial growth having any of the following characteristics:

b.1.d.1. Capable of producing silicon layer with a thickness uniform to less than ±2.5% across a distance of 200 mm or more;

b.1.d.2. Capable of producing a layer of any material other than silicon with a thickness uniformity across the wafer of equal to or better than ± 3.5%; *or*

b.1.d.3. Rotation of individual wafers during processing;

b.1.e. Molecular beam epitaxial growth equipment;

b.1.f. Magnetically enhanced 'sputtering' equipment with ''specially designed'' integral load locks capable of transferring wafers in an isolated vacuum environment;

b.1.g. Equipment ''specially designed'' for ion implantation, ion-enhanced or photo-enhanced diffusion, having any of the following characteristics:

b.1.g.1. Patterning capability;

b.1.g.2. Beam energy (accelerating voltage) exceeding 200 keV;

b.1.g.3 Optimized to operate at a beam energy (accelerating voltage) of less than 10 keV; *or*

b.1.g.4. Capable of high energy oxygen implant into a heated ''substrate'';

b.1.h. ''Stored program controlled'' equipment for the selective removal (etching) by means of anisotropic dry methods (*e.g.,* plasma), as follows:

b.1.h.1. Batch types having either of the following:

b.1.h.1.a. End-point detection, other than optical emission spectroscopy types; *or*

b.1.h.1.b. Reactor operational (etching) pressure of 26.66 Pa or less;

b.1.h.2. Single wafer types having any of the following:

b.1.h.2.a. End-point detection, other than optical emission spectroscopy types;

b.1.h.2.b. Reactor operational (etching) pressure of 26.66 Pa or less; *or*

b.1.h.2.c. Cassette-to-cassette and load locks wafer handling;

Notes: *1. ''Batch types'' refers to machines not ''specially designed'' for production processing of single wafers. Such machines can process two or more wafers simultaneously with common process parameters, e.g., RF power, temperature, etch gas species, flow rates.*

2. ''Single wafer types'' refers to machines ''specially designed'' for production processing of single wafers. These machines may use automatic wafer handling techniques to load a single wafer into the equipment for processing. The definition includes equipment that can load and process several wafers but where the etching parameters, e.g., RF power or end point, can be independently determined for each individual wafer.

b.1.i. ''Chemical vapor deposition'' (CVD) equipment, *e.g.,* plasma-enhanced CVD (PECVD) or photo-enhanced CVD, for semiconductor device manufacturing, having either of the following capabilities, for deposition of oxides, nitrides, metals or polysilicon:

b.1.i.1. ''Chemical vapor deposition'' equipment operating below 10^5 Pa; *or*

b.1.i.2. PECVD equipment operating either below 60 Pa (450 millitorr) or having automatic cassette-to-cassette and load lock wafer handling;

Note: *3B991.b.1.i does not control low pressure ''chemical vapor deposition'' (LPCVD) systems or reactive ''sputtering'' equipment.*

b.1.j. Electron beam systems ''specially designed'' or modified for mask making or semiconductor device processing having any of the following characteristics:

b.1.j.1. Electrostatic beam deflection;

b.1.j.2. Shaped, non-Gaussian beam profile;

b.1.j.3. Digital-to-analog conversion rate exceeding 3 MHz;

b.1.j.4. Digital-to-analog conversion accuracy exceeding 12 bit; *or*

b.1.j.5. Target-to-beam position feedback control precision of 1 micrometer or finer;

Note: *3B991.b.1.j does not control electron beam deposition systems or general purpose scanning electron microscopes.*

b.1.k. Surface finishing equipment for the processing of semiconductor wafers as follows:

b.1.k.1. ''Specially designed'' equipment for backside processing of wafers thinner than 100 micrometer and the subsequent separation thereof; *or*

b.1.k.2. ''Specially designed'' equipment for achieving a surface roughness of the active surface of a processed wafer with a two-sigma value of 2 micrometer or less, total indicator reading (TIR);

Note: *3B991.b.1.k does not control single-side lapping and polishing equipment for wafer surface finishing.*

b.1.l. Interconnection equipment which includes common single or multiple vacuum chambers ''specially designed'' to permit the integration of any equipment controlled by 3B991 into a complete system;

b.1.m. ''Stored program controlled'' equipment using ''lasers'' for the repair or trimming of ''monolithic integrated circuits'' with either of the following characteristics:

b.1.m.1. Positioning accuracy less than ± 1 micrometer; *or*

b.1.m.2. Spot size (kerf width) less than 3 micrometer.

b.2. Masks, mask ''substrates,'' mask-making equipment and image transfer equipment for the manufacture of devices, ''parts'' and ''components'' as specified in the heading of 3B991, as follows:

Note: *The term ''masks'' refers to those used in electron beam lithography, X-ray lithography, and ultraviolet lithography, as well as the usual ultraviolet and visible photo-lithography.*

b.2.a. Finished masks, reticles and designs therefor, except:

b.2.a.1. Finished masks or reticles for the production of unembargoed integrated circuits; *or*

b.2.a.2. Masks or reticles, having both of the following characteristics:

b.2.a.2.a. Their design is based on geometries of 2.5 micrometer or more; *and*

b.2.a.2.b. The design does not include special features to alter the intended use by means of production equipment or ''software'';

b.2.b. Mask ''substrates'' as follows:

b.2.b.1. Hard surface (*e.g.,* chromium, silicon, molybdenum) coated ''substrates'' (*e.g.,* glass, quartz, sapphire) for the preparation of masks having dimensions exceeding 125 mm x 125 mm; *or*

b.2.b.2. ''Substrates'' ''specially designed'' for X-ray masks;

b.2.c. Equipment, other than general purpose computers, ''specially designed'' for computer aided design (CAD) of semiconductor devices or integrated circuits;

b.2.d. Equipment or machines, as follows, for mask or reticle fabrication:

b.2.d.1. Photo-optical step and repeat cameras capable of producing arrays larger than 100 mm x 100 mm, or capable of producing a single exposure larger than 6 mm x 6 mm in the image (*i.e.,* focal) plane, or capable of producing line widths of less than 2.5 micrometer in the photoresist on the ''substrate'';

b.2.d.2. Mask or reticle fabrication equipment using ion or ''laser'' beam lithography capable of producing line widths of less than 2.5 micrometer; *or*

b.2.d.3. Equipment or holders for altering masks or reticles or adding pellicles to remove defects;

Note: *3B991.b.2.d.1 and b.2.d.2 do not control mask fabrication equipment using photo-optical methods which was either commercially available before the 1st January, 1980, or has a performance no better than such equipment.*

b.2.e. ''Stored program controlled'' equipment for the inspection of masks, reticles or pellicles with:

b.2.e.1. A resolution of 0.25 micrometer or finer; *and*

b.2.e.2. A precision of 0.75 micrometer or finer over a distance in one or two coordinates of 63.5 mm or more;

Note: *3B991.b.2.e does not control general purpose scanning electron microscopes except when ''specially designed'' and instrumented for automatic pattern inspection.*

b.2.f. Align and expose equipment for wafer production using photo-optical or X-ray methods, *e.g.,* lithography equipment, including both projection image transfer equipment and step and repeat (direct step on wafer) or step and scan (scanner) equipment, capable of performing any of the following functions:

Note: *3B991.b.2.f does not control photo-optical contact and proximity mask align and expose equipment or contact image transfer equipment.*

b.2.f.1. Production of a pattern size of less than 2.5 micrometer;

b.2.f.2. Alignment with a precision finer than ± 0.25 micrometer (3 sigma);

b.2.f.3. Machine-to-machine overlay no better than ± 0.3 micrometer; *or*

b.2.f.4. A light source wavelength shorter than 400 nm;

b.2.g. Electron beam, ion beam or X-ray equipment for projection image transfer capable of producing patterns less than 2.5 micrometer;

Note: *For focused, deflected-beam systems(direct write systems), see 3B991.b.1.j or b.10.*

b.2.h. Equipment using ''lasers'' for direct write on wafers capable of producing patterns less than 2.5 micrometer.

b.3. Equipment for the assembly of integrated circuits, as follows:

b.3.a. ''Stored program controlled'' die bonders having all of the following characteristics:

b.3.a.1. ''Specially designed'' for ''hybrid integrated circuits'';

b.3.a.2. X–Y stage positioning travel exceeding 37.5 x 37.5 mm; *and*

b.3.a.3. Placement accuracy in the X–Y plane of finer than ± 10 micrometer;

b.3.b. ''Stored program controlled'' equipment for producing multiple bonds in a single operation (*e.g.,* beam lead bonders, chip carrier bonders, tape bonders);

b.3.c. Semi-automatic or automatic hot cap sealers, in which the cap is heated locally to a higher temperature than the body of the package, ''specially designed'' for ceramic microcircuit packages controlled by 3A001 and that have a throughput equal to or more than one package per minute.

Note: *3B991.b.3 does not control general purpose resistance type spot welders.*

b.4. Filters for clean rooms capable of providing an air environment of 10 or less particles of 0.3 micrometer or smaller per 0.02832 m^3 and filter materials therefor.

* * * * *

3D001 ''Software'' ''specially designed'' for the ''development'' or ''production'' of commodities controlled by 3A001.b to 3A002.h, or 3B (except 3B991 and 3B992).

License Requirements

Reason for Control: NS, RS, AT

Control(s)	*Country chart (See Supp. No. 1 to part 738)*
NS applies to "software" for commodities controlled by 3A001.b to 3A001.h, 3A002, and 3B.	NS Column 1
RS applies to "software" for commodities controlled by 3B090.	China (see § 742.6(a)(6))
AT applies to entire entry.	AT Column 1

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, Special Comprehensive Licenses, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a description of all license exceptions)

TSR: Yes, except for ''software'' ''specially designed'' for the ''development'' or ''production'' of Traveling Wave Tube Amplifiers described in 3A001.b.8 having operating frequencies exceeding 18 GHz.

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit ''software'' ''specially designed'' for the ''development'' or ''production'' of equipment specified by 3A002.g.1 or 3B001.a.2 to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR).

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

* * * * *

3E001 ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of commodities controlled by 3A (except 3A980, 3A981, 3A991, 3A992, or 3A999), 3B (except 3B991 or 3B992) or 3C (except 3C992).

License Requirements

Reason for Control: NS, MT, NP, RS, AT

Control(s)	*Country chart (See Supp. No. 1 to part 738)*
NS applies to "technology" for commodities controlled by 3A001, 3A002, 3A003, 3B001, 3B002, or 3C001 to 3C006..	NS Column 1
MT applies to "technology" for commodities controlled by. 3A001 or 3A101 for MT reasons.	MT Column 1
NP applies to "technology" for commodities controlled by. 3A001, 3A201, or 3A225 to 3A234 for NP reasons.	NP Column 1
RS applies to "technology" for commodities controlled by 3B090 or "software" specified by 3D001 (for 3B090 commodities)..	China (See § 742.6(a)(6)).
AT applies to entire entry.	AT Column 1

License Requirements Note: *See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.*

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, Special Comprehensive Licenses, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a description of all license exceptions)

TSR: Yes, except N/A for MT, and ''technology'' for the ''development'' or ''production'' of: (a) vacuum electronic device amplifiers described in 3A001.b.8, having operating frequencies exceeding 19 GHz; (b) solar cells, coverglass-interconnect-cells or covered-interconnect-cells (CIC) ''assemblies'', solar arrays and/or solar panels described in 3A001.e.4; (c) ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers in 3A001.b.2; and (d) discrete microwave transistors in 3A001.b.3.

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit ''technology''

according to the General Technology Note for the ''development'' or ''production'' of equipment specified by ECCNs 3A002.g.1 or 3B001.a.2 to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR). License Exception STA may not be used to ship or transmit ''technology'' according to the General Technology Note for the ''development'' or ''production'' of components specified by ECCN 3A001.b.2 or b.3 to any of the destinations listed in Country Group A:5 or A:6 (See Supplement No.1 to part 740 of the EAR).

List of Items Controlled

Related Controls: (1)''Technology'' according to the General Technology Note for the ''development'' or ''production'' of certain ''space-qualified'' atomic frequency standards described in Category XV(e)(9), MMICs described in Category XV(e)(14), and oscillators described in Category XV(e)(15) of the USML are ''subject to the ITAR'' (see 22 CFR parts 120 through 130). See also 3E101, 3E201 and 9E515. (2) ''Technology'' for ''development'' or ''production'' of ''Microwave Monolithic Integrated Circuits'' (''MMIC'') amplifiers in 3A001.b.2 is controlled in this ECCN 3E001; 5E001.d refers only to that additional ''technology'' ''required'' for telecommunications.

Related Definition: N/A

Items:

The list of items controlled is contained in the ECCN heading.

Note 1: 3E001 does not control ''technology'' for equipment or ''components'' controlled by 3A003.

Note 2: 3E001 does not control ''technology'' for integrated circuits controlled by 3A001.a.3 to a.14, having all of the following:

(a) Using ''technology'' at or above 0.130 μm; and

(b) Incorporating multi-layer structures with three or fewer metal layers.

Note 3: 3E001 does not apply to 'Process Design Kits' ('PDKs') unless they include libraries implementing functions or technologies for items specified by 3A001.

Technical Note: A 'Process Design Kit' ('PDK') is a software tool provided by a semiconductor manufacturer to ensure that the required design practices and rules are taken into account in order to successfully produce a specific integrated circuit design in a specific semiconductor process, in accordance with technological and manufacturing constraints (each semiconductor manufacturing process has its particular 'PDK').

■ 26. Effective on October 21, 2022, supplement no. 1 to part 774 is further amended by:

■ a. Under Category 3, Product Group A, revising Note 3;

■ b. Adding ECCN 3A090 after ECCN 3A003;

■ c. Revising ECCNs 3A991, 3D001, and 3E001;

■ d. Adding ECCN 4A090 after ECCN 4A005;

■ e. Revising ECCN 4A994;

■ f. Adding ECCN 4D090 after ECCN 4D004; and

■ g. Revising ECCNs 4D994, 4E001, 5A992, and 5D992.

The additions and revisions read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 3—Electronics A. ''**End Items,**'' ''**Equipment,**'' ''**Accessories,**'' ''**Attachments,**'' ''**Parts,**'' ''**Components,**'' **and** ''**Systems**''

* * * * *

Note 3: *The status of wafers (finished or unfinished), in which the function has been determined, is to be evaluated against the parameters of items in 3A.*

* * * * *

3A090 Integrated circuits as follows (see List of Items Controlled).

License Requirements

Reason for Control: RS, AT

Control(s)	*Country chart (See Supp. No. 1 to part 738)*
RS applies to entire entry.	China (See § 742.6(a)(6))
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A

GBS N/A

List of Items Controlled

Related Controls: See ECCNs 3D001 and 3E001 for associated technology and software controls.

Related Definitions: N/A

Items:

a. Integrated circuits that have or are programmable to have an aggregate bidirectional transfer rate over all inputs and outputs of 600 Gbyte/s or more to or from integrated circuits other than volatile memories, and any of the following:

a.1. One or more digital processor units executing machine instructions having a bit length per operation multiplied by processing performance measured in TOPS, aggregated over all processor units, of 4800 or more;

a.2. One or more digital 'primitive computational units,' excluding those units contributing to the execution of machine instructions relevant to the calculation of TOPS for 3A090.a.1, having a bit length per operation multiplied by processing performance measured in TOPS, aggregated over all computational units, of 4800 or more;

a.3. One or more analog, multi-value, or multi-level 'primitive computational units' having a processing performance measured in TOPS multiplied by 8, aggregated over all computational units, of 4800 or more; or

a.4. Any combination of digital processor units and 'primitive computational units' whose calculations according to 3A090.a.1, 3A090.a.2, and 3A090.a.3 sum to 4800 or more.

Note: *Integrated circuits specified by 3A090.a include graphical processing units (GPUs), tensor processing units (TPUs), neural processors, in-memory processors, vision processors, text processors, co-processors/accelerators, adaptive processors, field-programmable logic devices (FPLDs), and application-specific integrated circuits (ASICs). Examples of integrated circuits are in the Note to 3A001.a.*

Technical Notes:

1. A 'primitive computational unit' is defined as containing zero or more modifiable weights, receiving one or more inputs, and producing one or more outputs. A computational unit is said to perform 2N–1 operations whenever an output is updated based on N inputs, where each modifiable weight contained in the processing element counts as an input. Each input, weight, and output might be an analog signal level or a scalar digital value represented using one or more bits. Such units include:

—*Artificial neurons*
— *Multiply accumulate (MAC) units*
—*Floating-point units (FPUs)*
—*Analog multiplier units*
—*Processing units using memristors, spintronics, or magnonics*
—*Processing units using photonics or non-linear optics*
—*Processing units using analog or multi-level nonvolatile weights*
—*Processing units using multi-level memory or analog memory*
— *Multi-value units*
—*Spiking units*

2. Operations relevant to the calculation of TOPS for 3A090.a include both scalar operations and the scalar constituents of composite operations such as vector operations, matrix operations, and tensor operations. Scalar operations include integer operations, floating-point operations (often measured by FLOPS), fixed-point operations, bit-manipulation operations, and/or bitwise operations.

3. TOPS is Tera Operations Per Second or 10^{12} Operations per Second.

4. The rate of TOPS is to be calculated at its maximum value theoretically possible when all processing elements are operating simultaneously. The rate of TOPS and aggregate bidirectional transfer rate is assumed to be the highest value the manufacturer claims in a manual or brochure for the integrated circuit. For example, the threshold of 4800 bits x TOPS can be met with 600 tera integer operations at 8 bits or 300 tera FLOPS at 16 bits. The bit length of an operation is equal to the highest bit length of any input or output of that operation. Additionally, if an item specified by this entry is designed for operations that achieve different bits x TOPS value, the highest bits x TOPS value should be used for the purposes of 3A090.a.

5. For integrated circuits specified by 3A090.a that provide processing of both sparse and dense matrices, the TOPS values are the values for processing of dense matrices (*e.g.,* without sparsity).

b. [Reserved]

* * * * *

3A991 Electronic devices and ''components,'' not controlled by 3A001.

License Requirements

Reason for Control: AT

Control(s)	*Country chart (See Supp. No. 1 to part 738)*
AT applies to entire entry.	AT Column 1

License Requirements Note: *See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.*

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A
GBS: N/A

List of Items Controlled

Related Controls: For associated ''software'' for commodities in this ECCN, see 3D991 and for associated ''technology for commodities in this ECCN, see 3E991.
Related Definitions: N/A
Items:

a. ''Microprocessor microcircuits'', ''microcomputer microcircuits'', and microcontroller microcircuits having any of the following:

a.1. A performance speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more;

a.2. A clock frequency rate exceeding 25 MHz; *or*

a.3. More than one data or instruction bus or serial communication port that provides a direct external interconnection between parallel ''microprocessor microcircuits'' with a transfer rate of 2.5 Mbyte/s;

b. Storage integrated circuits, as follows:

b.1. Electrical erasable programmable read-only memories (EEPROMs) with a storage capacity;

b.1.a. Exceeding 16 Mbits per package for flash memory types; *or*

b.1.b. Exceeding either of the following limits for all other EEPROM types:

b.1.b.1. Exceeding 1 Mbit per package; *or*

b.1.b.2. Exceeding 256 kbit per package and a maximum access time of less than 80 ns;

b.2. Static random access memories (SRAMs) with a storage capacity:

b.2.a. Exceeding 1 Mbit per package; *or*

b.2.b. Exceeding 256 kbit per package and a maximum access time of less than 25 ns;

c. Analog-to-digital converters having any of the following:

c.1. A resolution of 8 bit or more, but less than 12 bit, with an output rate greater than 200 million words per second;

c.2. A resolution of 12 bit with an output rate greater than 105 million words per second;

c.3. A resolution of more than 12 bit but equal to or less than 14 bit with an output rate greater than 10 million words per second; *or*

c.4. A resolution of more than 14 bit with an output rate greater than 2.5 million words per second;

d. Field programmable logic devices having a maximum number of single-ended digital input/outputs between 200 and 700;

e. Fast Fourier Transform (FFT) processors having a rated execution time for a 1,024 point complex FFT of less than 1 ms;

f. Custom integrated circuits for which either the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

f.1. More than 144 terminals; *or*

f.2. A typical ''basic propagation delay time'' of less than 0.4 ns;

g. Traveling-wave ''vacuum electronic devices,'' pulsed or continuous wave, as follows:

g.1. Coupled cavity devices, or derivatives thereof;

g.2. Helix devices based on helix, folded waveguide, or serpentine waveguide circuits, *or* derivatives thereof, with any of the following:

g.2.a. An ''instantaneous bandwidth'' of half an octave or more; *and*

g.2.b. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.2;

g.2.c. An ''instantaneous bandwidth'' of less than half an octave; *and*

g.2.d. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.4;

h. Flexible waveguides designed for use at frequencies exceeding 40 GHz;

i. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.,* ''signal processing'' devices employing elastic waves in materials), having either of the following:

i.1. A carrier frequency exceeding 1 GHz; *or*

i.2. A carrier frequency of 1 GHz or less; *and*

i.2.a. A frequency side-lobe rejection exceeding 55 Db;

i.2.b. A product of the maximum delay time and bandwidth (time in microseconds and bandwidth in MHz) of more than 100; *or*

i.2.c. A dispersive delay of more than 10 microseconds;

j. Cells as follows:

j.1. Primary cells having an energy density of 550 Wh/kg or less at 293 K (20°C);

j.2. Secondary cells having an energy density of 350 Wh/kg or less at 293 K (20°C);

Note: 3A991.j does not control batteries, including single cell batteries.

Technical Notes:

1. For the purpose of 3A991.j energy density (Wh/kg) is calculated from the nominal voltage multiplied by the nominal capacity in ampere-hours divided by the mass in kilograms. If the nominal capacity is not stated, energy density is calculated from the nominal voltage squared then multiplied by the discharge duration in hours divided by the discharge load in Ohms and the mass in kilograms.

2. For the purpose of 3A991.j, a 'cell' is defined as an electrochemical device, which has positive and negative electrodes, and electrolyte, and is a source of electrical energy. It is the basic building block of a battery.

3. For the purpose of 3A991.j.1, a 'primary cell' is a 'cell' that is not designed to be charged by any other source.

4. For the purpose of 3A991.j.2, a 'secondary cell' is a 'cell' that is designed to be charged by an external electrical source.

k. ''Superconductive'' electromagnets or solenoids ''specially designed'' to be fully charged or discharged in less than one minute, having all of the following:

Note: 3A991.k does not control ''superconductive'' electromagnets or solenoids designed for Magnetic Resonance Imaging (MRI) medical equipment.

k.1. Maximum energy delivered during the discharge divided by the duration of the discharge of more than 500 kJ per minute;

k.2. Inner diameter of the current carrying windings of more than 250 mm; *and*

k.3. Rated for a magnetic induction of more than 8T or ''overall current density'' in the winding of more than 300 A/mm^2;

l. Circuits or systems for electromagnetic energy storage, containing ''components'' manufactured from ''superconductive'' materials ''specially designed'' for operation at temperatures below the ''critical temperature'' of at least one of their ''superconductive'' constituents, having all of the following:

l.1. Resonant operating frequencies exceeding 1 MHz;

l.2. A stored energy density of 1 MJ/M^3 or more; *and*

l.3. A discharge time of less than 1 ms;

m. Hydrogen/hydrogen-isotope thyratrons of ceramic-metal construction and rate for a peak current of 500 A or more;

n. Digital integrated circuits based on any compound semiconductor having an equivalent gate count of more than 300 (2 input gates);

o. Solar cells, cell-interconnect-coverglass (CIC) assemblies, solar panels, and solar arrays, which are ''space qualified'' and not controlled by 3A001.e.4.

p. Integrated circuits, n.e.s., having any of the following:

p.1. A processing performance of 8 TOPS or more; or

p.2. An aggregate bidirectional transfer rate over all inputs and outputs of 150 Gbyte/s or more to or from integrated circuits other than volatile memories.

Technical Notes: *For the purposes of 3A991.p:*

1. This ECCN includes but is not limited to central processing units (CPU), graphics processing units (GPU), tensor processing units (TPU), neural processors, in-memory processors, vision processors, text processors, co-processors/accelerators, adaptive processors, and field-programmable logic devices (FPLDs).

2. TOPS is Tera Operations Per Second or 10^{12} Operations per Second.

3. The rate of TOPS is to be calculated at its maximum value theoretically possible

when all processing elements are operating simultaneously. The rate of TOPS and aggregate bidirectional transfer rate is assumed to be the highest value the manufacturer claims in a manual or brochure for the integrated circuit. Operations include both scalar operations and the scalar constituents of composite operations such as vector operations, matrix operations, and tensor operations. Scalar operations include integer operations, floating-point operations (often measured by FLOPS), fixed-point operations, bit-manipulation operations, and/or bitwise operations.

* * * * *

3D001 ''Software''''specially designed'' for the ''development'' or ''production'' of commodities controlled by 3A001.b to 3A002.h, 3A090, or 3B (except 3B991 and 3B992).

License Requirements

Reason for Control: NS, RS, AT

Control(s)	*Country chart (See Supp. No. 1 to part 738)*
NS applies to ''software'' for commodities controlled by 3A001.b to 3A001.h, 3A002, and 3B.	NS Column 1
RS applies to ''software'' for commodities controlled by 3A090 or 3B090..	China (see § 742.6(a)(6))
AT applies to entire entry.	AT Column 1

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, Special Comprehensive Licenses, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a description of all license exceptions)

TSR: Yes, except for ''software'' ''specially designed'' for the ''development'' or ''production'' of Traveling Wave Tube Amplifiers described in 3A001.b.8 having operating frequencies exceeding 18 GHz.

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit ''software'' ''specially designed'' for the ''development'' or ''production'' of equipment specified by 3A002.g.1 or 3B001.a.2 to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR).

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

* * * * *

3E001 ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of commodities controlled by 3A (except 3A980, 3A981, 3A991, 3A992, or 3A999), 3B (except 3B991 or 3B992) or 3C (except 3C992).

License Requirements

Reason for Control: NS, MT, NP, RS, AT

Control(s)	*Country chart (See Supp. No. 1 to part 738)*
NS applies to ''technology'' for commodities controlled by 3A001, 3A002, 3A003, 3B001, 3B002, or 3C001 to 3C006.	NS Column 1.
MT applies to ''technology'' for commodities controlled by 3A001 or 3A101 for MT reasons.	MT Column 1.
NP applies to ''technology'' for commodities controlled by 3A001, 3A201, or 3A225 to 3A234 for NP reasons.	NP Column 1.
RS applies to ''technology'' for commodities controlled by 3A090 or 3B090 or ''software'' specified by 3D001 (for 3A090 or 3B090 commodities).	China (See § 742.6(a)(6)).
RS applies to ''technology'' for commodities controlled in 3A090, when exported from China.	Worldwide (See § 742.6(a)(6))
AT applies to entire entry.	AT Column 1

License Requirements Note: *See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.*

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, Special Comprehensive Licenses, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a description of all license exceptions)

TSR: Yes, except N/A for MT, and ''technology'' for the ''development'' or ''production'' of: (a) vacuum electronic device amplifiers described in 3A001.b.8, having operating frequencies exceeding 19 GHz; (b) solar cells, coverglass-interconnect-cells or covered-interconnect-cells (CIC) ''assemblies'', solar arrays and/or solar panels described in 3A001.e.4; (c) ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers in 3A001.b.2; and (d) discrete microwave transistors in 3A001.b.3.

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit ''technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment specified by ECCNs 3A002.g.1 or 3B001.a.2 to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR). License Exception STA may not be used to ship or transmit ''technology'' according to the General Technology Note for the ''development'' or ''production'' of components specified by ECCN 3A001.b.2 or b.3 to any of the destinations listed in Country Group A:5 or A:6 (See Supplement No.1 to part 740 of the EAR).

List of Items Controlled

Related Controls: (1) ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of certain ''space-qualified'' atomic frequency standards described in Category XV(e)(9), MMICs described in Category XV(e)(14), and oscillators described in Category XV(e)(15) of the USML are ''subject to the ITAR'' (see 22 CFR parts 120 through 130). See also 3E101, 3E201 and 9E515. (2) ''Technology'' for ''development'' or ''production'' of ''Microwave Monolithic Integrated Circuits'' (''MMIC'') amplifiers in 3A001.b.2 is controlled in this ECCN 3E001; 5E001.d refers only to that additional ''technology'' ''required'' for telecommunications.
Related Definition: N/A
Items:

The list of items controlled is contained in the ECCN heading.

Note 1: *3E001 does not control ''technology'' for equipment or ''components'' controlled by 3A003.*

Note 2: *3E001 does not control ''technology'' for integrated circuits controlled by 3A001.a.3 to a.14, having all of the following:*

(a) Using ''technology'' at or above 0.130 μm; and

(b) Incorporating multi-layer structures with three or fewer metal layers.

Note 3: *3E001 does not apply to 'Process Design Kits' ('PDKs') unless they include libraries implementing functions or technologies for items specified by 3A001.*

Technical Note: *A 'Process Design Kit' ('PDK') is a software tool provided by a semiconductor manufacturer to ensure that the required design practices and rules are taken into account in order to successfully produce a specific integrated circuit design in a specific semiconductor process, in accordance with technological and manufacturing constraints (each semiconductor manufacturing process has its particular 'PDK').*

* * * * *

4A090 Computers as follows (see List of Items Controlled) and related equipment, ''electronic assemblies,'' and ''components'' therefor.

License Requirements

Reason for Control: RS, AT

Control(s)	*Country chart (See Supp. No. 1 to part 738)*
RS applies to entire entry.	China (see § 742.6(a)(6))
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A
GBS: N/A

List of Items Controlled

Related Controls: For associated ''software'' for commodities in this ECCN, see 4D090 and for associated ''technology'' for commodities in this ECCN, see 4E001.
Related Definitions: N/A
Items:

a. Computers, ''electronic assemblies,'' and ''components'' containing integrated circuits, any of which exceeds the limit in 3A090.a.

Technical Note: *Computers include ''digital computers,'' ''hybrid computers,'' and analog computers.*

b. Reserved

* * * * *

4A994 Computers, ''electronic assemblies'' and related equipment, not controlled by 4A001 or 4A003, and ''specially designed'' ''parts'' and ''components'' therefor (see List of Items Controlled).

License Requirements

Reason for Control: AT

Control(s)	*Country chart (See Supp. No. 1 to part 738)*
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A
GBS: N/A

List of Items Controlled

Related Controls: For associated ''software'' for commodities in this ECCN, see 4D994 and for associated ''technology'' for commodities in this ECCN, see 4E992.
Related Definitions: N/A
Items:

Note 1: *The control status of the ''digital computers'' and related equipment described in 4A994 is determined by the control status of other equipment or systems provided:*

a. The ''digital computers'' or related equipment are essential for the operation of the other equipment or systems;

b. The ''digital computers'' or related equipment are not a ''principal element'' of the other equipment or systems; and

N.B. 1: *The control status of ''signal processing'' or ''image enhancement'' equipment ''specially designed'' for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the ''principal element'' criterion.*

N.B. 2: *For the control status of ''digital computers'' or related equipment for telecommunications equipment, see Category 5, Part 1 (Telecommunications).*

c. The ''technology'' for the ''digital computers'' and related equipment is determined by 4E.

a. Electronic computers and related equipment, and ''electronic assemblies'' and ''specially designed'' ''parts'' and ''components'' therefor, rated for operation at an ambient temperature above 343 K (70 °C);

b. ''Digital computers'', including equipment of ''signal processing'' or image enhancement'', having an ''Adjusted Peak Performance'' (''APP'') equal to or greater than 0.0128 Weighted TeraFLOPS (WT);

c. ''Electronic assemblies'' that are ''specially designed'' or modified to enhance performance by aggregation of processors, as follows:

c.1. Designed to be capable of aggregation in configurations of 16 or more processors;

c.2. [Reserved];

Note 1: *4A994.c applies only to ''electronic assemblies'' and programmable interconnections with a ''APP'' not exceeding the limits in 4A994.b, when shipped as unintegrated ''electronic assemblies''. It does not apply to ''electronic assemblies'' inherently limited by nature of their design for use as related equipment controlled by 4A994.k.*

Note 2: *4A994.c does not control any ''electronic assembly'' ''specially designed'' for a product or family of products whose maximum configuration does not exceed the limits of 4A994.b.*

d. [Reserved];

e. [Reserved];

f. Equipment for ''signal processing'' or ''image enhancement'' having an ''Adjusted Peak Performance'' (''APP'') equal to or greater than 0.0128 Weighted TeraFLOPS WT;

g. [Reserved];

h. [Reserved];

i. Equipment containing ''terminal interface equipment'' exceeding the limits in 5A991;

j. Equipment ''specially designed'' to provide external interconnection of ''digital computers'' or associated equipment that allows communications at data rates exceeding 80 Mbyte/s.

Note: *4A994.j does not control internal interconnection equipment (e.g., backplanes, buses) passive interconnection equipment, ''network access controllers'' or ''communication channel controllers''.*

k. ''Hybrid computers'' and ''electronic assemblies'' and ''specially designed'' ''parts'' and ''components'' therefor containing analog-to-digital converters having all of the following characteristics:

k.1. 32 channels or more; and

k.2. A resolution of 14 bit (plus sign bit) or more with a conversion rate of 200,000 conversions/s or more.

l. Computers, ''electronic assemblies,'' and ''components,'' n.e.s., containing integrated circuits, any of which exceeds the limit of ECCN 3A991.p.

Technical Note: *For the purposes of 4A994.l, computers include ''digital computers,'' ''hybrid computers,'' and analog computers.*

* * * * *

4D090 ''Software'' ''specially designed'' or modified for the ''development'' or ''production,'' of computers and related equipment, ''electronic assemblies,'' and ''components'' therefor specified in ECCN 4A090.

License Requirements

Reason for Control: RS, AT

Control(s)	*Country chart (See Supp. No. 1 to part 738)*
RS applies to entire entry.	China (See § 742.6(a)(6)).
AT applies to entire entry.	AT Column 1.

List Based License Exceptions (See Part 740 for a description of all license exceptions)

TSR: N/A

List of Items Controlled

Related Controls: For associated ''technology'' for software in this ECCN, see 4E001.
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

* * * * *

4D994 ''Software'' other than that controlled in 4D001 ''specially designed'' or modified for the ''development,'' ''production,'' or ''use'' of commodities controlled by 4A101 or 4A994.

License Requirements

Reason for Control: AT

Control(s)	*Country chart (See Supp. No. 1 to part 738)*
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a description of all license Exceptions)

TSR: N/A

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

* * * * *

4E001 ''Technology'' as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, MT, RS, CC, AT

Control(s)	*Country chart (See Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 1.

Control(s)	Country chart (See Supp. No. 1 to part 738)
MT applies to ''technology'' for items controlled by 4A001.a and 4A101 for MT reasons.	MT Column 1.
RS applies to ''technology'' for commodities controlled by 4A090 or ''software'' specified by 4D090.	China (See § 742.6(a)(6)).
CC applies to ''software'' for computerized finger-print equipment controlled by 4A003 for CC reasons.	CC Column 1.
AT applies to entire entry.	AT Column 1.

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a description of all license exceptions)

TSR: Yes, except for the following:

(1) ''Technology'' for the ''development'' or ''production'' of commodities with an ''Adjusted Peak Performance'' (''APP'') exceeding 29 WT or for the ''development'' or ''production'' of commodities controlled by 4A005 or ''software'' controlled by 4D004; or

(2) ''Technology'' for the ''development'' of ''intrusion software''.

APP: Yes to specific countries (see § 740.7 of the EAR for eligibility criteria).

ACE: Yes for 4E001.a (for the ''development'', ''production'' or ''use'' of equipment or ''software'' specified in ECCN 4A005 or 4D004) and for 4E001.c, except to Country Group E:1 or E:2. See § 740.22 of the EAR for eligibility criteria.

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit ''technology'' according to the General Technology Note for the ''development'' or ''production'' of any of the following equipment or ''software'': a. Equipment specified by ECCN 4A001.a.2; b. ''Digital computers'' having an 'Adjusted Peak Performance' ('APP') exceeding 29 Weighted TeraFLOPS (WT); or c. ''software'' specified in the License Exception STA paragraph found in the License Exception section of ECCN 4D001 to any of the destinations listed in Country Group A:6 (See Supplement No. 1 to part 740 of the EAR); and may not be used to ship or transmit ''software'' specified in 4E001.a (for the ''development'', ''production'' or ''use'' of equipment or ''software'' specified in ECCN 4A005 or 4D004) and 4E001.c to any of the destinations listed in Country Group A:5 or A:6.

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:

a. ''Technology'' according to the General Technology Note, for the ''development'', ''production'', or ''use'' of equipment or ''software'' controlled by 4A (except 4A980 or 4A994) or 4D (except 4D980, 4D993, 4D994).

b. ''Technology'' according to the General Technology Note, other than that controlled by 4E001.a, for the ''development'' or ''production'' of equipment as follows:

b.1. ''Digital computers'' having an ''Adjusted Peak Performance'' (''APP'') exceeding 15 Weighted TeraFLOPS (WT);

b.2. ''Electronic assemblies'' ''specially designed'' or modified for enhancing performance by aggregation of processors so that the ''APP'' of the aggregation exceeds the limit in 4E001.b.1.

c. ''Technology'' for the ''development'' of ''intrusion software.''

Note 1: *4E001.a and 4E001.c do not apply to ''vulnerability disclosure'' or ''cyber incident response''.*

Note 2: *Note 1 does not diminish national authorities' rights to ascertain compliance with 4E001.a and 4E001.c.*

* * * * *

5A992 Equipment not controlled by 5A002 (see List of Items Controlled)

License Requirements

Reason for Control: RS, AT

Control(s)	Country chart (See Supp. No. 1 to part 738)
RS applies to items controlled by 5A992.c that meet or exceed the performance parameters of ECCN 3A090 or 4A090.	RS (see § 742.6(a)(6))
AT applies to entire entry.	AT Column 1

License Requirements Note: *See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.*

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A
GBS: N/A

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:

a. [Reserved]

b. [Reserved]

c. Commodities classified as mass market encryption commodities in accordance with § 740.17(b) of the EAR.

* * * * *

5D992 ''Information Security'' ''software,'' not controlled by 5D002, as follows (see List of Items Controlled).

License Requirements

Reason for Control: RS, AT

Control(s)	Country chart (See Supp. No. 1 to part 738)
RS applies to items controlled by 5D992.c that meet or exceed the performance parameters of ECCN 3A090 or 4A090.	RS (see § 742.6(a)(6)).
AT applies to entire entry.	AT Column 1.

License Requirements Note: *See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.*

List Based License Exceptions (See Part 740 for a description of all license exceptions)

TSR: N/A

List of Items Controlled

Related Controls: This entry does not control ''software'' designed or modified to protect against malicious computer damage, *e.g.,* viruses, where the use of ''cryptography'' is limited to authentication, digital signature and/or the decryption of data or files.
Related Definitions: N/A
Items:

a. [Reserved]

b. [Reserved]

c. ''Software'' classified as mass market encryption software in accordance with § 740.17(b) of the EAR.

* * * * *

Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

[FR Doc. 2022–21658 Filed 10–7–22; 11:15 am]

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Part III

Department of Labor

Wage and Hour Division

29 CFR Parts 780, 788 and 795

Employee or Independent Contractor Classification Under the Fair Labor Standards Act; Proposed Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 780, 788, and 795

RIN 1235–AA43

Employee or Independent Contractor Classification Under the Fair Labor Standards Act

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Labor (the Department) is proposing to modify Wage and Hour Division regulations to revise its analysis for determining employee or independent contractor classification under the Fair Labor Standards Act (FLSA or Act) to be more consistent with judicial precedent and the Act's text and purpose.

DATES: Submit written comments on or before November 28, 2022.

ADDRESSES: You may submit comments, identified by Regulation Identifier Number (RIN) 1235–AA43, by either of the following methods:

- *Electronic Comments:* Submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Address written submissions to Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: Please submit only one copy of your comments by only one method. Of the two methods, the Department strongly recommends that commenters submit their comments electronically via *https://www.regulations.gov* to ensure timely receipt prior to the close of the comment period, as the Department continues to experience delays in the receipt of mail. All comments must be received by 11:59 p.m. ET on November 28, 2022, for consideration in this rulemaking; comments received after the comment period closes will not be considered.

Commenters submitting file attachments on *https://www.regulations.gov* are advised that uploading text-recognized documents—*i.e.,* documents in a native file format or documents which have undergone optical character recognition (OCR)—enable staff at the Department to more easily search and retrieve specific content included in your comment for consideration. This recommendation applies particularly to mass comment submissions, when a single sponsoring individual or organization submits multiple comments on behalf of members or other affiliated third parties. The Wage and Hour Division (WHD) posts such comments as a group under a single document ID number on *https://www.regulations.gov.*

Anyone who submits a comment (including duplicate comments) should understand and expect that the comment will become a matter of public record and will be posted without change to *https://www.regulations.gov,* including any personal information provided. Accordingly, the Department requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this notice of proposed rulemaking (NPRM).

Docket: For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division (WHD), U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Alternative formats are available upon request by calling 1–866–487–9243. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

Questions of interpretation and/or enforcement of the agency's regulations may be directed to the nearest WHD district office. Locate the nearest office by calling WHD's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or logging onto WHD's website for a nationwide listing of WHD district and area offices at *https://www.dol.gov/whd/america2.htm.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Congress enacted the FLSA in 1938 to eliminate ''labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers.'' [1] To this end, the FLSA generally requires covered employers to pay nonexempt employees at least the Federal minimum wage for all hours worked and at least one and one-half times the employee's regular rate of pay for every hour worked over 40 in a workweek. The Act also requires covered employers to maintain certain records regarding employees and prohibits retaliation against employees who are discharged or discriminated against after, for example, inquiring about their pay or filing a complaint with the U.S. Department of Labor. However, the FLSA's minimum wage and overtime pay protections do not apply to independent contractors. As explained below, as used in this proposal, the term ''independent contractor'' refers to workers who, as a matter of economic reality, are not economically dependent on their employer for work and are in business for themselves. Such workers play an important role in the economy and are commonly referred to by different names, including independent contractor, self-employed, and freelancer. Regardless of the name or title used, the test for whether the worker is an employee or independent contractor under the FLSA remains the same. This proposed rulemaking is not intended to disrupt the businesses of independent contractors who are, as a matter of economic reality, in business for themselves.

Determining whether an employment relationship exists under the FLSA begins with the Act's definitions. Although the FLSA does not define the term ''independent contractor,'' it contains expansive definitions of ''employer,'' ''employee,'' and ''employ.'' ''Employer'' is defined to ''include[ ] any person acting directly or indirectly in the interest of an employer in relation to an employee,'' ''employee'' is defined as ''any individual employed by an employer,'' and ''employ'' is defined to ''include[] to suffer or permit to work.'' [2]

For more than 7 decades, the Department and courts have applied an economic reality test to determine whether a worker is an employee or an independent contractor under the FLSA. The ultimate inquiry is whether, as a matter of economic reality, the worker is either economically dependent on the employer for work (and is thus an employee) or is in business for themself (and is thus an independent contractor). To answer this ultimate inquiry of economic dependence, the courts and the Department have historically conducted a totality-of-the-circumstances analysis, considering multiple factors to determine whether a worker is an employee or an independent contractor under the FLSA. There is significant and widespread uniformity among the circuit courts in

[1] 29 U.S.C. 202(a).

[2] 29 U.S.C. 203(d), (e)(1), (g).

the application of the economic reality test, although there is slight variation as to the number of factors considered or how the factors are framed. These factors generally include the opportunity for profit or loss, investment, permanency, the degree of control by the employer over the worker, whether the work is an integral part of the employer's business, and skill and initiative.

In January 2021, the Department published a rule titled ''Independent Contractor Status Under the Fair Labor Standards Act'' (2021 IC Rule), providing guidance on the classification of independent contractors under the FLSA applicable to workers and businesses in any industry.[3] The 2021 IC Rule identified five economic reality factors to guide the inquiry into a worker's status as an employee or independent contractor.[4] Two of the five identified factors—the nature and degree of control over the work and the worker's opportunity for profit or loss—were designated as ''core factors'' that are the most probative and carry greater weight in the analysis. The 2021 IC Rule stated that if these two core factors point towards the same classification, there is a substantial likelihood that it is the worker's accurate classification.[5] The 2021 IC Rule also identified three less probative non-core factors: the amount of skill required for the work, the degree of permanence of the working relationship between the worker and the employer, and whether the work is part of an integrated unit of production.[6] The 2021 IC Rule stated that it is ''highly unlikely'' that these three non-core factors can outweigh the combined probative value of the two core factors.[7] The 2021 IC Rule also limited consideration of investment and initiative to the opportunity for profit or loss factor in a way that narrows in at least some circumstances the extent to which investment and initiative are considered. The facts to be considered under other factors (such as control) were also narrowed, and the factor that considers whether the work is integral to the employer's business was limited to whether the work is part of an integrated unit of production.[8] Finally, the 2021 IC Rule provided that the actual practice of the parties involved is more relevant than what may be contractually or theoretically possible and provided illustrative examples demonstrating how the analysis would apply in particular factual circumstances.[9]

The effective date of the 2021 IC Rule was March 8, 2021. On March 4, 2021, the Department published a rule delaying the effective date of the 2021 IC Rule (Delay Rule) and on May 6, 2021, it published a rule withdrawing the 2021 IC Rule (Withdrawal Rule). On March 14, 2022, in a lawsuit challenging the Department's delay and withdrawal of the 2021 IC Rule, a Federal district court in the Eastern District of Texas issued a decision vacating the Delay and Withdrawal Rules.[10] The district court concluded that the 2021 IC Rule became effective on the original effective date of March 8, 2021.

After further consideration, the Department believes that the 2021 IC Rule does not fully comport with the FLSA's text and purpose as interpreted by courts and departs from decades of case law applying the economic reality test. The 2021 IC Rule included provisions that are in tension with this case law—such as designating two factors as most probative and predetermining that they carry greater weight in the analysis, considering investment and initiative only in the opportunity for profit or loss factor, and excluding consideration of whether the work performed is central or important to the employer's business. These provisions narrow the economic reality test by limiting the facts that may be considered as part of the test, facts which the Department believes are relevant in determining whether a worker is economically dependent on the employer for work or in business for themself.

While the Department considered waiting for a longer period of time in order to monitor the effects of the 2021 IC Rule, after careful consideration, it has decided it is appropriate to move forward with this proposed regulation. The Department believes that retaining the 2021 IC Rule would have a confusing and disruptive effect on workers and businesses alike due to its departure from case law describing and applying the multifactor economic reality test as a totality-of-the-circumstances test. Because the 2021 IC Rule departed from legal precedent, it is not clear whether courts will adopt its analysis—a question that could take years of appellate litigation in different Federal circuits to sort out and will result in more uncertainty as to the applicable test. The Department also believes that departing from the longstanding test applied by the courts may result in greater confusion among employers in applying the new analysis, which could in some situations place workers at greater risk of misclassification as independent contractors due to the new analysis being applied improperly, and thus may negatively affect both the workers and competing businesses that correctly classify their employees.

Therefore, the Department believes it is appropriate to rescind the 2021 IC Rule and set forth an analysis for determining employee or independent contractor status under the Act that is more consistent with existing judicial precedent and the Department's longstanding guidance prior to the 2021 IC Rule. While prior to the 2021 IC Rule the Department primarily issued subregulatory guidance in this area under the FLSA, it believes that its proposal to both rescind the 2021 IC Rule and replace it with detailed regulations addressing the multifactor economic reality test—in a way that more fully reflects the case law and provides the flexibility needed for application to the entire economy—would be helpful for both workers and employers. And as the 2021 IC Rule explained, workers and employers should benefit from affirmative regulatory guidance from the Department further developing the concept of economic dependence.

Accordingly, the Department is now proposing, in addition to rescinding the 2021 IC Rule, to again add part 795. Specifically, the Department proposes to modify the text of part 795 as published on January 7, 2021, at 86 FR 1246 through 1248, addressing whether workers are employees or independent contractors under the FLSA. As discussed below, the Department is not proposing the use of ''core factors'' but instead proposes to return to a totality-of-the-circumstances analysis of the economic reality test in which the factors do not have a predetermined weight and are considered in view of the economic reality of the whole activity. The Department is further proposing to return the consideration of investment to a standalone factor, provide additional analysis of the control factor (including detailed

[3] 86 FR 1168. The Office of the Federal Register did not amend the Code of Federal Regulations (CFR) to include the regulations from the 2021 IC Rule because, as explained elsewhere in this section, the Department first delayed and then withdrew the 2021 IC Rule before it became effective. A district court decision later vacated the Department's rules to delay and withdraw the 2021 IC Rule, and the Department has (since that decision) conducted enforcement in accordance with that decision.

[4] *Id.* at 1246–47 (§ 795.105(d)).

[5] *Id.* at 1246 (§ 795.105(c)).

[6] *Id.* at 1247 (§ 795.105(d)(2)).

[7] *Id.* at 1246 (§ 795.105(c)).

[8] *Id.* at 1246–47 (§ 795.105(d)(1) and (d)(2)(iii)).

[9] *Id.* at 1247–48 (§§ 795.110, 795.115).

[10] *See Coalition for Workforce Innovation* v. *Walsh,* No. 1:21–CV–130, 2022 WL 1073346 (E.D. Tex. Mar. 14, 2022).

discussions of how scheduling, supervision, price-setting, and the ability to work for others should be considered), and return to the longstanding interpretation of the integral factor, which considers whether the work is integral to the employer's business.

The Department recognizes that this return to a totality-of-the-circumstances analysis in which the economic reality factors are not assigned a predetermined weight and each factor is given full consideration represents a change from the 2021 IC Rule. As discussed below, however, it believes that this approach is the option that would be most beneficial for stakeholders because this proposal provides guidance that is aligned with the Department's decades-long approach (prior to the 2021 IC Rule) as well as circuit case law. The Department believes that this proposal, if finalized, will provide more consistent guidance to employers as they determine whether workers are economically dependent on the employer for work or are in business for themselves, as well as useful guidance to workers on whether they are correctly classified as employees or independent contractors. Accordingly, the Department believes this proposal will help protect workers from misclassification while at the same time recognizing that independent contractors serve an important role in our economy and providing a consistent approach for those businesses that engage (or wish to engage) independent contractors.

II. Background

A. Relevant FLSA Definitions

Enacted in 1938, the FLSA generally requires that covered employers pay nonexempt employees at least the Federal minimum wage (presently $7.25 per hour) for every hour worked,[11] and at least one and one-half times the employee's regular rate of pay for all hours worked beyond 40 in a workweek.[12] The FLSA also requires covered employers to ''make, keep, and preserve'' certain records regarding employees.[13]

The FLSA's wage and hour protections apply to employees. In relevant part, section 3(e) of the Act defines the term ''employee'' as ''any individual employed by an employer.'' [14] Section 3(d) defines the term ''employer'' to ''includ[e] any person acting directly or indirectly in the interest of an employer in relation to an employee.'' [15] Finally, section 3(g) provides that the term '' '[e]mploy' includes to suffer or permit to work.'' [16]

Interpreting these provisions, the U.S. Supreme Court has stated that ''[a] broader or more comprehensive coverage of employees within the stated categories would be difficult to frame,'' and that ''the term 'employee' had been given 'the broadest definition that has ever been included in any one act.' '' [17] In particular, the Court has noted the ''striking breadth'' of section 3(g)'s ''suffer or permit'' language, observing that it ''stretches the meaning of 'employee' to cover some parties who might not qualify as such under a strict application of traditional agency law principles.'' [18] Thus, the Court has repeatedly observed that the FLSA's scope of employment is broader than the common law standard often applied to determine employment status under other Federal laws.[19]

At the same time, the Supreme Court has recognized that the Act was ''not intended to stamp all persons as employees.'' [20] Among other categories of workers excluded from FLSA coverage, the Court has recognized that ''independent contractors'' fall outside the Act's broad understanding of employment.[21] Accordingly, the FLSA does not require covered employers to pay an independent contractor the minimum wage or overtime pay under sections 6(a) and 7(a) of the Act, or to keep records regarding an independent contractor's work under section 11(c). However, merely ''putting on an 'independent contractor' label does not take [a] worker from the protection of the [FLSA].'' [22] Courts have thus recognized a need to delineate between employees, who fall under the protections of the FLSA, and independent contractors, who do not.

The FLSA does not define the term ''independent contractor.'' While it is clear that section 3(g)'s ''suffer or permit'' language contemplates a broader coverage of workers compared to what exists under the common law, ''there is in the [FLSA] no definition that solves problems as to the limits of the employer-employee relationship under the Act.'' [23] Therefore, in articulating the distinction between FLSA-covered employees and independent contractors, courts rely on a broad, multifactor ''economic reality'' analysis derived from judicial precedent.[24] Unlike the control-focused analysis for independent contractors applied under the common law,[25] the economic reality test focuses more broadly on a worker's economic dependence on an employer, considering the totality of the circumstances.

B. Judicial Development of the Economic Reality Test

1. Supreme Court Development of the Economic Reality Test

In a series of cases from 1944 to 1947, the U.S. Supreme Court considered employee or independent contractor status under three different Federal statutes that were enacted during the 1930s New Deal Era—the FLSA, the National Labor Relations Act (NLRA), and the Social Security Act (SSA)—and applied an economic reality test under all three laws.

In the first of these cases, *NLRB* v. *Hearst Publications, Inc.,* 322 U.S. 111 (1944), the Court considered the meaning of ''employee'' under the NLRA, which defined the term to

[11] 29 U.S.C. 206(a).

[12] 29 U.S.C. 207(a).

[13] 29 U.S.C. 211(c).

[14] 29 U.S.C. 203(e)(1).

[15] 29 U.S.C. 203(d).

[16] 29 U.S.C. 203(g).

[17] *United States* v. *Rosenwasser,* 323 U.S. 360, 362, 363 n.3 (1945) (quoting 81 Cong. Rec. 7657 (statement of Senator Hugo Black)).

[18] *Nationwide Mut. Ins.* v. *Darden,* 503 U.S. 318, 326 (1992).

[19] *Id.* at 326; *see also, e.g., Walling* v. *Portland Terminal Co.,* 330 U.S. 148, 150–51 (1947) (''[I]n determining who are 'employees' under the Act, common law employee categories or employer-employee classifications under other statutes are not of controlling significance. This Act contains its own definitions, comprehensive enough to require its application to many persons and working relationships, which prior to this Act, were not deemed to fall within an employer-employee category.'') (citation omitted).

[20] *Portland Terminal,* 330 U.S. at 152.

[21] *See, e.g., Rutherford Food Corp.* v. *McComb,* 331 U.S. 722, 729 (1947) (noting that ''[t]here may be independent contractors who take part in production or distribution who would alone be responsible for the wages and hours of their own employees'').

[22] *Id.*

[23] *Id.* at 728.

[24] Courts invoke the concept of ''economic reality'' in FLSA employment contexts beyond independent contractor status. However, as in prior rulemakings, this NPRM refers to the ''economic reality'' analysis or test for independent contractors as a shorthand reference to the independent contractor analysis used by courts for FLSA purposes.

[25] In distinguishing between employees and independent contractors under the common law, courts evaluate ''the hiring party's right to control the manner and means by which the product is accomplished.'' *Community for Creative Non-Violence* v. *Reid,* 490 U. S. 730, 751 (1989). ''Among the other factors relevant to this inquiry are the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.'' *Id.* (footnotes omitted).

''include any employee.'' [26] In relevant part, the *Hearst* Court rejected application of the common law standard,[27] noting that ''the broad language of the [NLRA's] definitions . . . leaves no doubt that its applicability is to be determined broadly, in doubtful situations, by underlying economic facts rather than technically and exclusively by previously established legal classifications.'' [28]

On June 16, 1947, the Supreme Court decided *United States* v. *Silk,* 331 U.S. 704 (1947), addressing the distinction between employees and independent contractors under the SSA. In that case, the Court favorably summarized *Hearst* as setting forth ''economic reality,'' as opposed to ''technical concepts'' of the common law standard alone, as the framework for determining workers' classification.[29] But it also acknowledged that not ''all who render service to an industry are employees.'' [30] Although the Court found it to be ''quite impossible to extract from the [SSA] a rule of thumb to define the limits of the employer-employe[e] relationship,'' the Court identified five factors as ''important for decision'': ''degrees of control, opportunities for profit or loss, investment in facilities, permanency of relation[,] and skill required in the claimed independent operation.'' [31] The Court added that ''[n]o one [factor] is controlling nor is the list complete.'' [32] The Court went on to note that the workers in that case were ''from one standpoint an integral part of the businesses'' of the employer, supporting a conclusion that some of the workers in that case were employees.[33]

The same day that the Supreme Court issued its decision in *Silk,* it also issued *Rutherford Food Corp.* v. *McComb,* 331 U.S. 722, in which it affirmed a circuit court decision that analyzed an FLSA employment relationship based on its economic realities.[34] Describing the FLSA as ''a part of the social legislation of the 1930s of the same general character as the [NLRA] and the [SSA],'' the Court opined that ''[d]ecisions that define the coverage of the employer-Employee relationship under the Labor and Social Security acts are persuasive in the consideration of a similar coverage under the [FLSA].'' [35] Accordingly, the Court rejected an approach based on ''isolated factors'' and again considered ''the circumstances of the whole activity.'' [36] The Court considered several of the factors that it listed in *Silk* as they related to meat boners on a slaughterhouse's production line, ultimately determining that the boners were employees.[37] The Court noted, among other things, that the boners did a specialty job on the production line, had no business organization that could shift to a different slaughter-house, and were best characterized as ''part of the integrated unit of production under such circumstances that the workers performing the task were employees of the establishment.'' [38]

On June 23, 1947, one week after the *Silk* and *Rutherford* decisions, the Court decided *Bartels* v. *Birmingham,* 332 U.S. 126 (1947), another case involving employee or independent contractor status under the SSA. Here again, the Court rejected application of the common law control test, explaining that, under the SSA, employee status ''was not to be determined solely by the idea of control which an alleged employer may or could exercise over the details of the service rendered to his business by the worker.'' [39] Rather, employees under ''social legislation'' such as the SSA are ''those who as a matter of economic reality are dependent upon the business to which they render service.'' [40] Thus, in addition to control, ''permanency of the relation, the skill required, the investment [in] the facilities for work and opportunities for profit or loss from the activities were also factors'' to consider.[41] Although the Court identified these specific factors as relevant to the analysis, it explained that ''[i]t is the total situation that controls'' the worker's classification under the SSA.[42]

Following these Supreme Court decisions, Congress responded with separate legislation to amend the NLRA and SSA's employment definitions. First, in 1947, Congress amended the NLRA's definition of ''employee'' to clarify that the term ''shall not include any individual having the status of an independent contractor.'' [43] The following year, Congress similarly amended the SSA to exclude from employment ''any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an independent contractor.'' [44] The Supreme Court interpreted the amendments to the NLRA as having the same effect as the explicit definition included in the SSA, which was to ensure that employment status would be determined by common law agency principles, rather than an economic reality test.[45]

Despite its amendments to the NLRA and SSA in response to *Hearst* and *Silk,* Congress did not similarly amend the FLSA following the *Rutherford* decision. Thus, when the Supreme Court revisited independent contractor status under the FLSA several years later in *Goldberg* v. *Whitaker House Co-op., Inc.,* 366 U.S. 28 (1961), the Court affirmed that '' 'economic reality' rather than 'technical concepts' '' remained ''the test of employment'' under the FLSA,[46] quoting from its earlier decisions in *Silk* and *Rutherford.* The Court in *Whitaker House* found that certain homeworkers were ''not self-employed . . . [or] independent, selling their products on the market for whatever price they can command,'' but instead were ''regimented under one organization, manufacturing what the organization desires and receiving the compensation the organization dictates.'' [47] Such facts, among others, established that the homeworkers at issue were FLSA-covered employees.[48]

Most recently, in *Nationwide Mutual Insurance Co.* v. *Darden,* 503 U.S. 318 (1992), the Court again endorsed application of the economic reality test to evaluate independent contractor status under the FLSA, citing to *Rutherford* and emphasizing the broad ''suffer or permit'' language codified in section 3(g) of the Act.[49]

2. Application of the Economic Reality Test by Federal Courts of Appeals

Since *Rutherford,* Federal courts of appeals have applied the economic

[26] 322 U.S. at 118–20; 29 U.S.C. 152(3).
[27] 322 U.S. at 123–25.
[28] *Id.* at 129.
[29] 331 U.S. at 712–14.
[30] *Id.* at 712.
[31] *Id.* at 716.
[32] *Id.*
[33] *Id.*
[34] 331 U.S. at 727.
[35] *Id.* at 723–24.
[36] *Id.* at 730.
[37] *See id.*
[38] *Id.* at 729–30.
[39] 332 U.S. at 130.
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] Labor Management Relations (Taft-Hartley) Act, 1947, Public Law 80–101, sec. 101, 61 Stat. 136, 137–38 (1947) (codified as amended at 29 U.S.C. 152(3)).
[44] Social Security Act of 1948, Public Law 80–642, sec. 2(a), 62 Stat. 438 (1948) (codified as amended at 26 U.S.C. 3121(d)).
[45] *See NLRB* v. *United Ins. Co. of Am.,* 390 U.S. 254, 256 (1968) (noting that ''[t]he obvious purpose of'' the amendment to the definition of employee under the NLRA ''was to have the Board and the courts apply general agency principles in distinguishing between employees and independent contractors under the Act'').
[46] 366 U.S. at 33 (quoting from *Silk,* 331 U.S. at 713, and *Rutherford,* 331 U.S. at 729).
[47] *Id.* at 32.
[48] *Id.* at 33.
[49] *Darden,* 503 U.S. at 325–26.

reality test to distinguish independent contractors from employees who are entitled to the FLSA's protections. Recognizing that the common law concept of ''employee'' had been rejected for FLSA purposes, courts of appeals followed the Supreme Court's instruction that '' 'employees are those who as a matter of economic realities are dependent upon the business to which they render service.' '' [50]

When determining whether a worker is an employee under the FLSA or an independent contractor, Federal circuit courts of appeals apply an economic reality test using the factors identified in *Silk.*[51] No court of appeals considers any one factor or combination of factors to predominate over the others in every case.[52] For example, the Eleventh Circuit has explained that some of the factors ''which many courts have used as guides in applying the economic reality test'' are: (1) the degree of the alleged employer's right to control the manner in which the work is to be performed; (2) the worker's opportunity for profit or loss depending upon their managerial skill; (3) the worker's investment in equipment or materials required for their task, or their employment of helpers; (4) whether the service rendered requires a special skill; (5) the degree of permanence of the working relationship; and (6) the extent to which the service rendered is an integral part of the alleged employer's business.[53] Like other circuits, the Eleventh Circuit repeats the Supreme Court's explanation from *Silk* that no one factor is controlling, nor is the list exhaustive.[54]

Some courts of appeals have applied the factors with some variations. For example, the Fifth Circuit typically does not list the ''integral part'' factor as one of the considerations that guides the analysis.[55] Nevertheless, the Fifth Circuit, recognizing that the listed factors are not exhaustive, has considered the extent to which a worker's function is integral to a business as part of its economic realities analysis.[56] The Second and D.C. Circuits vary in that they treat the employee's opportunity for profit or loss and the employee's investment as a single factor, but they still use the same considerations as the other circuits to inform their economic realities analysis.[57]

In sum, since the 1940s, Federal courts have analyzed the question of employee or independent contractor status under the FLSA by examining the economic realities of the employment relationship to determine whether the worker is economically dependent on the employer for work or is in business for themself, even if they have varied slightly in their articulations of the factors. Nevertheless, all courts have looked to the factors first articulated in *Silk* as useful guideposts while acknowledging that those factors are not exhaustive and should not be applied mechanically.[58]

C. The Department's Application of the Economic Reality Test

The Department has applied a multifactor economic reality test since the Supreme Court's opinions in *Rutherford* and *Silk.* For example, on June 23, 1949, the Wage and Hour Division (WHD) issued an opinion letter distilling six ''primary factors which the Court considered significant'' in *Rutherford* and *Silk:* ''(1) the extent to which the services in question are an integral part of the 'employer[']s' business; (2) the amount of the so-called 'contractor's' investment in facilities and equipment; (3) the nature and degree of control by the principal; (4) opportunities for profit and loss; . . . (5) the amount of initiative judgment or foresight required for the success of the claimed independent enterprise[;] and [(6)] permanency of the relation.'' [59] The guidance cautioned that no single factor is controlling, and ''[o]rdinarily a definite decision as to whether one is an employee or an independent contractor under the [FLSA] cannot be made in the absence of evidence as to his actual day-to-day working relationship with his principal. Clearly a written contract does not always reflect the true situation.'' [60]

Subsequent WHD opinion letters addressing employee or independent contractor status under the FLSA have provided similar recitations of the *Silk* factors, sometimes omitting one or more of the six factors described in the 1949 opinion letter,[61] and sometimes adding (or substituting) a seventh factor: the worker's ''degree of independent business organization and operation.'' [62] Numerous opinion letters have emphasized that employment status is ''not determined by the common law standards relating to master and servant,'' [63] and that ''[t]he degree of control retained by the principal has been rejected as the sole criterion to be applied.'' [64]

In 1962, the Department revised the regulations in 29 CFR part 788,[65] which generally provides interpretive guidance on the FLSA's exemption for employees in small forestry or lumbering operations, and added a provision addressing the distinction between employees and independent contractors.[66] Citing to *Silk, Rutherford,* and *Bartels,* the regulation advised that ''an employee, as distinguished from a person who is engaged in a business of his own, is one who 'follows the usual path of an employee' and is dependent on the business which he serves.'' [67] To ''aid in assessing the total situation,'' the regulation then identified a partial list of ''characteristics of the two classifications which should be considered,'' including ''the extent to

[50] *Usery* v. *Pilgrim Equip. Co.,* 527 F.2d 1308, 1311 (5th Cir. 1976) (quoting *Bartels,* 332 U.S. at 130).

[51] *See Brock* v. *Superior Care, Inc.,* 840 F.2d 1054, 1058–59 (2d Cir. 1988); *Donovan* v. *DialAmerica Mktg., Inc.,* 757 F.2d 1376, 1382–83 (3d Cir. 1985); *McFeeley* v. *Jackson Street Ent., LLC,* 825 F.3d 235, 241 (4th Cir. 2016); *Pilgrim Equip.,* 527 F.2d at 1311; *Acosta* v. *Off Duty Police Servs., Inc.,* 915 F.3d 1050, 1055 (6th Cir. 2019); *Sec'y of Labor, U.S. Dep't of Labor* v. *Lauritzen,* 835 F.2d 1529, 1534–35 (7th Cir. 1987); *Walsh* v. *Alpha & Omega USA, Inc.,* 39 F.4th 1078, 1082 (8th Cir. 2022); *Real* v. *Driscoll Strawberry Assocs., Inc.,* 603 F.2d 748, 754 (9th Cir. 1979); *Acosta* v. *Paragon Contractors Corp.,* 884 F.3d 1225, 1235 (10th Cir. 2018); *Scantland* v. *Jeffry Knight, Inc.,* 721 F.3d 1308, 1311–12 (11th Cir. 2013); *Morrison* v. *Int'l Programs Consortium, Inc.,* 253 F.3d 5, 11 (DC Cir. 2001).

[52] *See, e.g., Parrish* v. *Premier Directional Drilling, L.P.,* 917 F.3d 369, 380 (5th Cir. 2019) (stating that it ''is impossible to assign to each of these factors a specific and invariably applied weight'') (quoting *Hickey* v. *Arkla Indus., Inc.,* 699 F.2d 748, 752 (5th Cir. 1983) (applying economic realities test in Age Discrimination in Employment Act case)); *Martin* v. *Selker Bros.,* 949 F.2d 1286, 1293 (3d Cir. 1991) (''It is a well-established principle that the determination of the employment relationship does not depend on isolated factors . . . neither the presence nor the absence of any particular factor is dispositive.''); *Scantland,* 721 F.3d at 1312 n.2 (the relative weight of each factor ''depends on the facts of the case'') (quoting *Santelices* v. *Cable Wiring,* 147 F. Supp. 2d 1313, 1319 (S.D. Fla. 2001)).

[53] *Scantland,* 721 F.3d at 1311–12.

[54] *Id.* at 1312 n.2.

[55] *See Pilgrim Equip.,* 527 F.2d at 1311.

[56] *See Hobbs* v. *Petroplex Pipe & Constr., Inc.,* 946 F.3d 824, 836 (5th Cir. 2020).

[57] *See, e.g., Franze* v. *Bimbo Bakeries USA, Inc.,* 826 F. App'x 74, 76 (2d Cir. 2020); *Superior Care,* 840 F.2d at 1058–59. The D.C. Circuit has adopted the Second Circuit's articulation of the factors, including treating opportunity for profit or loss and investment as one factor. *See Morrison,* 253 F.3d at 11 (citing *Superior Care,* 840 F.2d at 1058–59).

[58] *See, e.g., Superior Care,* 840 F.2d at 1059.

[59] WHD Op. Ltr. (June 23, 1949).

[60] *Id.*

[61] *See, e.g.,* WHD Op. Ltr. FLSA–314 (Dec. 21, 1982) (discussing three of the *Silk* factors); WHD Op. Ltr. FLSA–164 (Jan. 18, 1990) (discussing four of the *Silk* factors).

[62] *See* WHD Op. Ltr. (Oct. 12, 1965); WHD Op. Ltr. (Feb. 18, 1969).

[63] *See, e.g.,* WHD Op. Ltr. (Feb. 18, 1969); WHD Op. Ltr. (Sept. 1, 1967); WHD Op. Ltr. FLSA–31 (Aug. 10, 1981); WHD Op. Ltr. (June 5, 1995).

[64] *See, e.g.,* WHD Op. Ltr. FLSA–106 (Feb. 8, 1956); WHD Op. Ltr. (July 20, 1965); WHD Op. Ltr. FLSA–31 (Aug. 10, 1981).

[65] *See* 27 FR 8032.

[66] *See* 29 U.S.C. 213(b)(28) (previously codified at 29 U.S.C. 213(a)(15)).

[67] 27 FR 8033 (29 CFR 788.16(a)).

which the services rendered are an integral part of the principal's business; the permanency of the relationship; the opportunities for profit or loss; the initiative, judgment or foresight exercised by the one who performs the services; the amount of investment; and the degree of control which the principal has in the situation.'' [68] Implicitly referring to the *Bartels* decision, the regulation advised that ''[t]he Court specifically rejected the degree of control retained by the principal as the sole criterion to be applied.'' [69]

In 1972, the Department added similar guidance on independent contractor status at 29 CFR 780.330(b), in a provision addressing the employment status of sharecroppers and tenant farmers.[70] This regulation was nearly identical to the independent contractor guidance for the logging and forestry industry previously codified at 29 CFR 788.16(a), including an identical description of the same six economic reality factors.[71] Both provisions—29 CFR 780.330(b) and 788.16(a)—remained unchanged until 2021.

In 1997, the Department promulgated a regulation applying a multifactor economic reality analysis for distinguishing between employees and independent contractors under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA),[72] which notably incorporates the FLSA's ''suffer or permit'' definition of employment by reference.[73] The regulation (which has not since been amended) advises that ''[i]n determining if the farm labor contractor or worker is an employee or an independent contractor, the ultimate question is the economic reality of the relationship—whether there is economic dependence upon the agricultural employer/association or farm labor contractor, as appropriate.'' [74] The regulation elaborates that ''[t]his determination is based upon an evaluation of all of the circumstances, including the following: (i) The nature and degree of the putative employer's control as to the manner in which the work is performed; (ii) The putative employee's opportunity for profit or loss depending upon his/her managerial skill; (iii) The putative employee's investment in equipment or materials required for the task, or the putative employee's employment of other workers; (iv) Whether the services rendered by the putative employee require special skill; (v) The degree of permanency and duration of the working relationship; (vi) The extent to which the services rendered by the putative employee are an integral part of the putative employer's business.'' [75] This description of six economic reality factors was very similar to the earlier description of six economic reality factors provided in 29 CFR 780.330(b) and 788.16(a).

Also in 1997, WHD issued Fact Sheet #13, ''Employment Relationship Under the Fair Labor Standards Act (FLSA).'' [76] Like WHD opinion letters, Fact Sheet #13 advises that ''an employee, as distinguished from a person who is engaged in a business of his or her own, is one who, as a matter of economic reality, follows the usual path of an employee and is dependent on the business which he or she serves.'' [77] The fact sheet identifies the six familiar economic realities factors, as well as consideration of the worker's ''degree of independent business organization and operation.'' [78]

On July 15, 2015, WHD issued additional subregulatory guidance, Administrator's Interpretation No. 2015–1, ''The Application of the Fair Labor Standards Act's 'Suffer or Permit' Standard in the Identification of Employees Who Are Misclassified as Independent Contractors'' (AI 2015–1).[79] AI 2015–1 reiterated that the economic realities of the relationship are determinative and that the ultimate inquiry is whether the worker is economically dependent on the employer or truly in business for him or herself. It identified six economic realities factors that followed the six factors used by most Federal courts of appeals: (1) the extent to which the work performed is an integral part of the employer's business; (2) the worker's opportunity for profit or loss depending on his or her managerial skill; (3) the extent of the relative investments of the employer and the worker; (4) whether the work performed requires special skills and initiative; (5) the permanency of the relationship; and (6) the degree of control exercised or retained by the employer. AI 2015–1 further emphasized that the factors should not be applied in a mechanical fashion and that no one factor was determinative. AI 2015–1 was withdrawn on June 7, 2017.[80]

In 2019, WHD issued an opinion letter, FLSA2019–6, regarding whether workers who worked for companies operating self-described ''virtual marketplaces'' were employees covered under the FLSA or independent contractors.[81] Like the Department's prior guidance, the letter stated that the determination depended on the economic realities of the relationship and that the ultimate inquiry was whether the workers depend on someone else's business or are in business for themselves.[82] The letter identified six economic realities factors that differed slightly from the factors typically articulated by the Department previously: (1) the nature and degree of the employer's control; (2) the permanency of the worker's relationship with the employer; (3) the amount of the worker's investment in facilities, equipment, or helpers; (4) the amount of skill, initiative, judgment, and foresight required for the worker's services; (5) the worker's opportunities for profit or loss; and (6) the extent of the integration of the worker's services into the employer's business.[83] Opinion Letter FLSA2019–6 was withdrawn on February 19, 2021.[84]

D. The Department's 2021 Independent Contractor Rule

On January 7, 2021, the Department published a final rule titled ''Independent Contractor Status Under the Fair Labor Standards Act,'' with an effective date of March 8, 2021 (2021 IC

[68] *Id.*

[69] 27 FR 8033–34 (29 CFR 788.16(a)).

[70] *See* 37 FR 12084, 12102 (introducing 29 CFR 780.330(b)).

[71] *Id.*

[72] *See* 62 FR 11734 (amending 29 CFR 500.20(h)(4)); *see also* 29 U.S.C. 1861 (explicitly providing that ''[t]he Secretary may issue such rules and regulations as are necessary to carry out this chapter'').

[73] *See* 29 U.S.C. 1802(5) (''The term 'employ' has the meaning given such term under section 3(g) of the [FLSA]'').

[74] 29 CFR 500.20(h)(4).

[75] *Id.*

[76] *See* WHD Fact Sheet #13 (1997) *https://web.archive.org/web/19970112162517/http:/www.dol.gov/dol/esa/public/regs/compliance/whd/whdfs13.htm*). WHD made minor revisions to Fact Sheet #13 in 2002 and 2008, before a more substantial revision in 2014. In 2018, WHD reverted back to the 2008 version of Fact Sheet #13, which remains the current version (available at *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs13.pdf*).

[77] *Id.*

[78] *Id.*

[79] AI 2015–1 is available at 2015 WL 4449086.

[80] *See* News Release 17–0807–NAT, ''US Secretary of Labor Withdraws Joint Employment, Independent Contractor Informal Guidance'' (June 7, 2017), *https://www.dol.gov/newsroom/releases/opa/opa20170607* (last visited June 30, 2022).

[81] *See* WHD Op. Ltr. FLSA2019–6, 2019 WL 1977301 (Apr. 29, 2019) (withdrawn Feb. 19, 2021).

[82] *See id.* at *3.

[83] *See id.* at *4. Opinion Letter FLSA2019–6's ''extent of the integration'' factor was a notable recharacterization of the factor traditionally considered by courts and the Department regarding the extent to which work is ''an integral part'' of an employer's business.

[84] *See note at https://www.dol.gov/agencies/whd/opinion-letters/search?FLSA* (last visited June 30, 2022).

Rule).[85] The 2021 IC Rule set forth regulations to be added to a new part (part 795) in title 29 of the Code of Federal Regulations titled ''Employee or Independent Contractor Classification under the Fair Labor Standards Act,'' providing guidance on the classification of independent contractors under the FLSA applicable to workers and businesses in any industry.[86] The 2021 IC Rule also addressed the Department's prior interpretations of independent contractor status in 29 CFR 780.330(b) and 788.16(a)—both of which applied to specific industries—by cross-referencing part 795.[87]

The Department explained that the purpose of the 2021 IC Rule was to establish a ''streamlined'' economic reality test that improved on prior articulations described as ''unclear and unwieldy.'' [88] It stated that the existing economic reality test applied by the Department and courts suffered from confusion regarding the meaning of ''economic dependence'' because the concept is ''underdeveloped,'' a lack of focus in the multifactor balancing test, and confusion and inefficiency caused by overlap between the factors.[89] The 2021 IC Rule asserted that shortcomings and misconceptions associated with the economic reality test were more apparent in the modern economy and that additional clarity would promote innovation in work arrangements.[90]

The 2021 IC Rule explained that independent contractors are not employees under the FLSA and are therefore not subject to the Act's minimum wage, overtime pay, or recordkeeping requirements.[91] It adopted an economic reality test under which a worker is an employee of an employer if that worker is economically dependent on the employer for work.[92] By contrast, the worker is an independent contractor if the worker is in business for themself.

The 2021 IC Rule identified five economic realities factors to guide the inquiry into a worker's status as an employee or independent contractor,[93] while acknowledging that the factors are not exhaustive, no one factor is dispositive, and additional factors may be considered if they ''in some way indicate whether the [worker] is in business for him- or herself, as opposed to being economically dependent on the potential employer for work.'' [94] But in contrast to prior guidance and contrary to case law, the 2021 IC Rule designated two of the five factors—the nature and degree of control over the work and the worker's opportunity for profit or loss—as ''core factors'' that should carry greater weight in the analysis. Citing the need for greater certainty and predictability in the economic reality test, and in an effort to sharpen the concept of economic dependence, the 2021 IC Rule determined that these two factors were more probative of economic dependence than the other economic realities factors. If both of those core factors indicate the same classification, as either an employee or an independent contractor, the 2021 IC Rule stated that there is a ''substantial likelihood'' that the indicated classification is the worker's correct classification.[95]

The 2021 IC Rule's first core factor is the nature and degree of control over the work, which indicates independent contractor status to the extent that the worker exercised substantial control over key aspects of the performance of the work, such as by setting their own schedule, by selecting their projects, and/or through the ability to work for others, which might include the potential employer's competitors.[96] The 2021 IC Rule provides that requiring the worker to comply with specific legal obligations, satisfy health and safety standards, carry insurance, meet contractually agreed upon deadlines or quality control standards, or satisfy other similar terms that are typical of contractual relationships between businesses (as opposed to employment relationships) does not constitute control.[97]

The 2021 IC Rule's second core factor is the worker's opportunity for profit or loss.[98] The Rule states that this factor indicates independent contractor status to the extent the worker has an opportunity to earn profits or incur losses based on either (1) their exercise of initiative (such as managerial skill or business acumen or judgment) or (2) their management of investment in or capital expenditure on, for example, helpers or equipment or material to further the work.[99] While the effects of the worker's exercise of initiative and management of investment are both considered under this factor, the worker does not need to have an opportunity for profit or loss based on both initiative and management of investment for this factor to weigh towards the worker being an independent contractor.[100] This factor indicates employment status to the extent that the worker is unable to affect his or her earnings or is only able to do so by working more hours or faster.[101]

The 2021 IC Rule also identified three other non-core factors: the amount of skill required for the work, the degree of permanence of the working relationship between the worker and the employer, and whether the work is part of an integrated unit of production (which it cautioned is ''different from the concept of the importance or centrality of the individual's work to the potential employer's business'').[102] The 2021 IC Rule provided that these other factors are ''less probative and, in some cases, may not be probative at all'' of economic dependence and are ''highly unlikely, either individually or collectively, to outweigh the combined probative value of the two core factors.'' [103]

The 2021 IC Rule also stated that the actual practice of the parties involved is more relevant than what may be contractually or theoretically possible,[104] and provided five ''illustrative examples'' demonstrating how the analysis would apply in particular factual circumstances.[105] Finally, the 2021 IC Rule rescinded any ''prior administrative rulings, interpretations, practices, or enforcement policies relating to classification as an employee or independent contractor under the FLSA'' to the extent that such items ''are inconsistent or in conflict with the interpretations stated in this part,'' [106] and explained that the 2021 IC Rule would guide WHD's enforcement of the FLSA.[107]

On January 19, 2021, WHD issued Opinion Letters FLSA2021–8 and FLSA2021–9 applying the Rule's analysis to specific factual scenarios. WHD subsequently withdrew those opinion letters on January 26, 2021, explaining that the letters were issued

[85] *See* 86 FR 1168. The Department initially published a notice of proposed rulemaking (NPRM) soliciting public comment on September 25, 2020. *See* 85 FR 60600. The final rule adopted ''the interpretive guidance set forth in the [NPRM] largely as proposed.'' 86 FR 1168.

[86] 86 FR 1246–48.

[87] *Id.* at 1246.

[88] *Id.* at 1172, 1240.

[89] *Id.* at 1172–75.

[90] *Id.* at 1175.

[91] *Id.* at 1246 (§ 795.105(a)).

[92] *Id.* at 1168, 1246 (§ 795.105(b)).

[93] *Id.* at 1246 (§ 795.105(c)).

[94] *Id.* at 1246–47 (§ 795.105(c) and (d)(2)(iv)).

[95] *Id.* at 1246 (§ 795.105(c)).

[96] *Id.* at 1246–47 (§ 795.105(d)(1)(i)).

[97] *Id.* at 1247 (§ 795.105(d)(i)).

[98] *Id.* (§ 795.105(d)(1)(ii)).

[99] *Id.*

[100] *Id.*

[101] *Id.*

[102] *Id.* (§ 795.105(d)(2)).

[103] *Id.* at 1246 (§ 795.105(c)).

[104] *Id.* at 1247 (§ 795.110).

[105] *Id. at* 1247–48 (§ 795.115).

[106] *Id.* at 1246 (§ 795.100).

[107] *Id.*

prematurely because they were based on a rule that had yet to take effect.[108]

E. Delay and Withdrawal of the 2021 Independent Contractor Rule

On February 5, 2021, the Department published a proposal to delay the 2021 IC Rule's effective date until May 7, 2021—60 days after the Rule's original March 8, 2001, effective date.[109] On March 4, 2021, after considering the approximately 1,500 comments received in response to that proposal, the Department published a final rule delaying the effective date of the 2021 IC Rule as proposed (''Delay Rule'').[110]

On March 12, 2021, the Department published a notice of proposed rulemaking (NPRM) proposing to withdraw the 2021 IC Rule.[111] On May 5, 2021, after reviewing approximately 1,000 comments submitted in response to the NPRM, the Department announced a final rule withdrawing the 2021 IC Rule (''Withdrawal Rule'').[112] In explaining its decision to withdraw the 2021 IC Rule, the Department stated that the Rule was inconsistent with the FLSA's text and purpose and would have had a confusing and disruptive effect on workers and businesses alike due to its departure from longstanding judicial precedent.[113] The Withdrawal Rule stated that it took effect immediately upon its publication in the **Federal Register** on May 6, 2021.[114]

F. Litigation Over the 2021 Independent Contractor Rule

On March 14, 2022, in a lawsuit challenging the Department's Delay and Withdrawal Rules under the Administrative Procedure Act (APA), a district court in the Eastern District of Texas issued a decision vacating the Department's Delay and Withdrawal Rules.[115] While acknowledging that the Department engaged in separate notice-and-comment rulemakings in promulgating both of these rules, the district court concluded that the Department ''failed to provide a meaningful opportunity for comment in promulgating the Delay Rule,'' [116] failed to show ''good cause for making the [Delay Rule] effective immediately upon publication,'' [117] and acted in an arbitrary and capricious manner in its Withdrawal Rule by ''fail[ing] to consider potential alternatives to rescinding the Independent Contractor Rule.'' [118] Accordingly, the district court vacated the Delay and Withdrawal Rules and concluded that the 2021 IC Rule ''became effective as of March 8, 2021, the rule's original effective date, and remains in effect.'' [119] The district court's ruling did not address the validity of the 2021 IC Rule; rather, the case was focused solely on the validity of the Delay and Withdrawal Rules.

The Department filed a notice of appeal of the district court's decision.[120] In response to a request by the Department informing the court of this rulemaking, the Fifth Circuit Court of Appeals entered an order staying the appeal until December 7, 2022 (subject to considering a further stay at that time).

III. Need for Rulemaking

The Department recognizes that independent contractors and small businesses play an important role in our economy. It is fundamental to the Department's obligation to administer and enforce the FLSA, however, that workers who should be covered under the Act are able to receive its protections, as the misclassification of employees as independent contractors remains one of the most serious problems facing workers, businesses, and the broader economy. In the FLSA context, misclassified workers are denied basic workplace protections including rights to minimum wage and overtime pay.[121] Meanwhile, employers that comply with the law are placed at a competitive disadvantage compared to other businesses that misclassify employees, contravening the FLSA's goal of eliminating ''unfair method[s] of competition in commerce.'' [122]

After further consideration, the Department believes that the 2021 IC Rule does not fully comport with the FLSA's text and purpose as interpreted by the courts. The Department believes that retaining the 2021 IC Rule would have a confusing and disruptive effect on workers and businesses alike due to its departure from decades of case law describing and applying the multifactor economic reality test as a totality-of-the-circumstances test. While the 2021 IC Rule recognized the need to further develop the concept of economic dependence, the rule includes provisions that are in tension with this longstanding case law—such as designating two factors as most probative and predetermining that they carry greater weight in the analysis, considering investment and initiative only in the opportunity for profit or loss factor, and excluding consideration of whether the work performed is central or important to the employer's business. These provisions narrow the economic reality test by limiting the facts that may be considered as part of the test, facts which the Department believes are relevant in determining whether a worker is economically dependent on the employer for work or in business for themself.

The 2021 IC Rule's elevation of certain factors and its preclusion of consideration of relevant facts under several factors may result in misapplication of the economic reality test and may have conveyed to employers that it might be easier than it used to be to classify certain workers as independent contractors rather than FLSA-covered employees. Elevating certain factors and precluding consideration of relevant facts may increase the risk of misclassification of employees as independent contractors. The 2021 IC Rule did not address the potential risks to workers of such misclassification.

Therefore, in light of the vacatur of the Withdrawal Rule, the Department believes it is appropriate to rescind the 2021 IC Rule and set forth an analysis for determining employee or independent contractor status under the Act that is more consistent with existing judicial precedent and the Department's longstanding guidance prior to the 2021 IC Rule. While prior to the 2021 IC Rule the Department primarily issued subregulatory guidance in this area, as explained in greater detail below, it believes that rescinding the 2021 IC

[108] *See https://www.dol.gov/agencies/whd/opinion-letters/search?FLSA* (last visited June 30, 2022), noting the withdrawal of Opinion Letters FLSA2021–8 and FLSA2021–9.

[109] 86 FR 8326.

[110] *Id.* at 12535.

[111] *Id.* at 14027.

[112] *Id.* at 24303.

[113] *Id.* at 24307.

[114] *Id.* at 24320.

[115] *Coalition for Workforce Innovation,* 2022 WL 1073346.

[116] *Id.* at *9. The court specifically faulted the Department's use of a shortened 19-day comment period in its proposal to delay of the 2021 IC Rule's original effective date (instead of 30 days), and for failing to consider comments beyond its proposal to delay the 2021 IC Rule's effective date. *Id.* at *7–10.

[117] *Id.* at *11.

[118] *Id.* at *13.

[119] *Id.* at *20.

[120] *See* Fifth Circuit No. 22–40316 (appeal filed, May 13, 2022).

[121] Workers who are employees under the FLSA but are misclassified as independent contractors remain legally entitled to the Act's wage and hour protections and are protected from retaliation for attempting to assert their rights under the Act. *See* 29 U.S.C. 215(a)(3). However, many misclassified employees may not be aware that such rights and protections apply to them or face obstacles when asserting those rights.

[122] 29 U.S.C. 202(a)(3); *see also Tony & Susan Alamo Found.* v. *Sec'y of Labor,* 471 U.S. 290, 302 (1985) (noting that the misclassification of employees ''affect[s] many more people than those workers directly at issue . . . [because it] exert[s] a general downward pressure on wages in competing businesses'').

Rule and replacing it with detailed regulations addressing the multifactor economic reality test—in a way that both more fully reflects the case law and continues to be relevant to the evolving economy—would be helpful for both workers and employers. The Department further believes that this proposal will protect workers from misclassification while at the same time providing a consistent approach for those businesses that engage (or wish to engage) with properly classified independent contractors, who the Department recognizes play an important role in the economy.

As noted in the 2021 IC Rule, the Department ''without question has relevant expertise in the area of what constitutes an employment relationship under the FLSA, given its responsibility for administering and enforcing the Act and its decades of experience doing so.'' [123] The Department continues to believe, as it stated in the 2021 IC Rule, that ''a clear explanation of the test for whether a worker is an employee under the FLSA or an independent contractor not entitled to the protections of the Act in easily accessible regulatory text is valuable to potential employers, to workers, and to other stakeholders.'' [124] Upon further consideration, however, the Department believes that the most valuable approach for stakeholders would be an accessible regulation that is more consistent with case law. As the 2021 IC Rule noted, rulemaking regarding employee or independent contractor status can have ''great value regardless of what deference courts ultimately give to it.'' [125] The Department also believes, however, that this proposal is more likely to have such value because it is better aligned with judicial precedent and longstanding principles used by circuit courts and the Department.

The Department acknowledges that it is changing the approach taken in the 2021 IC Rule, and that this warrants further discussion of the rationale used in that rule and why the Department has carefully reconsidered that reasoning and determined that modifications are necessary.[126] As noted above, the Department identified in the 2021 IC Rule four reasons underlying the need to promulgate the rule: (1) confusion regarding the meaning of ''economic dependence'' because the concept is ''underdeveloped''; (2) lack of focus in the multifactor balancing test; (3) confusion and inefficiency due to overlapping factors; and (4) the shortcomings of the economic reality test that are more apparent in the modern economy.[127] Moreover, the Department suggested as a fifth reason for the 2021 IC Rule that legal uncertainty based on the concerns identified with the economic reality test hindered innovation in work arrangements.[128] The Department believes that this proposed rule's approach offers a better framework for understanding and applying the concept of economic dependence by explaining how the touchstone of whether an individual is in business for themself is analyzed within each of the six economic realities factors. The proposal's discussion of how courts and the Department's previous guidance apply the factors brings the multifactor test into focus, reduces confusion as to the overlapping factors, and provides a better basis for understanding how the test has the flexibility to be applied to changes in the modern economy, such that the Department no longer views the concerns articulated in the 2021 IC Rule as impediments to using the economic reality test formulated by the courts and the Department's longstanding guidance.

The Department continues to believe that the concept of economic dependence is underdeveloped in the case law. As noted in the 2021 IC Rule, a minority of courts have applied a ''dependence-for-income'' approach that considers whether the worker has other sources of income or wealth or is financially dependent on the employer instead of a ''dependence-for-work'' approach used by the majority of courts and the Department that appropriately considers whether the worker is dependent on the employer for work or depends on the worker's own business for work.[129] The Department is therefore proposing to continue to include its interpretation, as it did in the 2021 IC Rule, that economic dependence is the ultimate inquiry, and that an employee is someone who, as a matter of economic reality, is economically dependent on an employer for work—not for income.[130]

Rather than give primacy to only two factors as indicators of economic dependence, upon further consideration, the Department believes that developing the concept of economic dependence is better accomplished by, in addition to elaborating on the general meaning of economic dependence, sharpening the focus of each of the six factors' probative value as to the distinction between economic dependence on the employer for work and being in business for oneself. By focusing on that distinction in its discussion of each factor, this proposal would provide the further development of the concept of economic dependence that the 2021 IC Rule indicated would be welcomed by workers and employers, but would do so in a way that is generally consistent with case law and the Department's prior guidance.

To address what the Department viewed as a ''lack of focus in the multifactor balancing test'' that led to uncertainty as to how a court would balance the factors and which would be deemed more probative, the 2021 IC Rule identified two factors as more probative than the others.[131] The Department now finds that giving extra weight to two factors cannot be harmonized with decades of case law and guidance from the Department explaining that the economic reality test is a multifactor test in which no one factor or set of factors automatically carries more weight and that all relevant factors must be considered. Regardless of the rationale for elevating two factors, there is no legal support for doing so.[132] Moreover, elevating certain factors in such a predetermined fashion overlooks that each factor can be probative of the distinction between a worker who is economically dependent on the employer for work and a worker who is in business for themself. Thus, the Department believes that refining the factors with this distinction in mind and consistent with case law is a better approach to giving the multifactor test more focus than the novel approach of elevating two factors.

The Department believes upon further consideration that any purported ''confusion and inefficiency due to overlapping factors'' was overstated in the 2021 IC Rule and that, in any event, when each factor is viewed under the framework of whether the worker is economically dependent or in business

[123] 86 FR 1176 (internal citations omitted).

[124] *Id.*

[125] *Id.*

[126] *See FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009).

[127] 86 FR 1172–75.

[128] *Id.* at 1175.

[129] *See id.* at 1172–73.

[130] *See id.* at 1246 (§ 795.105(b) (''An employer suffers or permits an individual to work as an employee if, as a matter of economic reality, the individual is economically dependent on that employer for work.'')); *see also infra* section V.B.; proposed § 795.105(b) (''An 'employee' under the Act is an individual whom an employer suffers, permits, or otherwise employs to work. . . . [This is] meant to encompass as employees all workers who, as a matter of economic reality, are economically dependent on an employer for work. . . . Economic dependence does not focus on the amount of income earned, or whether the worker has other income streams.'').

[131] 86 FR 1173.

[132] *See infra* section III.A.

for themself, the rationale for considering facts under more than one factor is clearer. The Department explains in more detail below why considering certain facts under more than one factor is consistent with the totality-of-the-circumstances approach of the economic realities analysis used by courts. And the Department provides guidance below regarding how to consider certain facts, such as the ability to work for others and whether the working relationship is exclusive, under more than one factor. The Department believes that this flexible approach is supported by the case law and preferable to rigidly and artificially limiting facts to only one factor, as the 2021 IC Rule did. Finally, in the 2021 IC Rule, the Department stated that ''technological and social changes have made shortcomings of the economic realities test more apparent in the modern economy,'' thus justifying the 2021 IC Rule's characterization of the integral, investment, and permanence factors as less important in determining a worker's classification.[133] However, upon further consideration, the Department believes that the multifactor economic reality test relied on by courts where no one factor or set of factors is presumed to carry more weight remains a helpful tool when evaluating modern work arrangements. The test's vitality is confirmed by its application over seven decades that have seen monumental shifts in the economy. Modern work arrangements utilizing applications or other technology must be addressed, but the underlying economic reality test, which considers the totality of the circumstances in each working arrangement, offers the most flexible, comprehensive, and appropriately nuanced approach which can be adapted to disparate industries and occupations. It can also encompass continued social changes because it does not presume which aspects of the work relationship are most probative or relevant and leaves open the possibility that changed circumstances may make certain factors more important in certain cases or future scenarios.

A. The 2021 IC Rule's Test Is Not Supported by Judicial Precedent or the Department's Historical Position and Is Not Fully Aligned With the Act's Text as Interpreted by the Courts

Among other reasons the Department is proposing to rescind and replace the 2021 IC Rule, the Department does not believe that the Rule is fully aligned with the FLSA's text as interpreted by the courts or the Department's longstanding analysis, as well as decades of case law describing and applying the multifactor economic reality test.

1. The 2021 IC Rule's Elevation of Control and Opportunity for Profit or Loss as the ''Most Probative'' Factors in Determining Employee Status Under the FLSA

The 2021 IC Rule set forth a new articulation of the economic reality test, elevating two factors (control and opportunity for profit or loss) as ''core'' factors above other factors, asserting that the two core factors have ''greater probative value'' in determining a worker's economic dependence.[134] Notably, the 2021 IC Rule further provides that if both core factors point towards the same classification—either employee or independent contractor—then there is a ''substantial likelihood'' that this is the worker's correct classification.[135] Although it identifies three other factors as additional guideposts and acknowledges that additional factors may be considered, it makes clear that non-core factors ''are less probative and, in some cases, may not be probative at all, and thus are highly unlikely, either individually or collectively, to outweigh the combined probative value of the two core factors.'' [136] In justifying this stratified analysis, the 2021 IC Rule disagreed that, as a general matter, the economic reality test ''requires factors to be unweighted or weighted equally,'' [137] asserting that ''[t]he Department's review of case law indicates that courts of appeals have effectively been affording the control and opportunity factors greater weight, even if they did not always explicitly acknowledge doing so.'' [138]

Upon further review of judicial precedent, the Department is not aware of any court that has, as a general and fixed rule, elevated any one economic reality factor or subset of factors above others, and there is no statutory basis for such a predetermined weighting of the factors. To the contrary, the Supreme Court has emphasized that employment status under the economic reality test turns upon ''the circumstances of the whole activity,'' rather than ''isolated factors.'' [139] Federal appellate courts have repeatedly cautioned against a mechanical or formulaic application of the economic reality test,[140] and specifically warn that it '' 'is impossible to assign to each of these factors a specific and invariably applied weight.' '' [141] The 2021 IC Rule's elevation of two ''core factors'' is also in tension with the position, expressed by the Supreme Court and Federal courts of appeals, that no single factor in the analysis is dispositive.[142] Thus, the Department recognizes that the 2021 IC Rule's predetermined and mechanical weighting of factors is not consistent with how courts have, for decades, applied the economic reality analysis.[143]

As explained in the Withdrawal Rule, the Department believes that the review of appellate cases [144] relied on to support the 2021 IC Rule's creation of ''core factors'' is not complete and makes assumptions about the reasoning behind the courts' decisions that are not clear from the decisions themselves.[145] For example, the 2021 IC Rule's discussion of the case law review did not provide full documentation or citations, did not make clear what the scope of the review entailed (*e.g.,*

[133] 86 FR 1175.

[134] 86 FR 1246 (§ 795.105(c) and (d)).

[135] *Id.* (§ 795.105(c)); *see also id.* at 1201 (advising that other factors would only outweigh the two core factors ''in rare cases'').

[136] *Id.* at 1246 (§ 795.105(c)).

[137] *Id.* at 1197.

[138] *Id.* at 1198.

[139] *Rutherford,* 331 U.S. at 730; *see also Silk,* 331 U.S. at 716, 719 (denying the existence of ''a rule of thumb to define the limits of the employer-employee relationship'' and determining employment status based on ''the total situation'').

[140] *See, e.g., Superior Care,* 840 F.2d at 1059 (''Since the test concerns the totality of the circumstances, any relevant evidence may be considered, and mechanical application of the test is to be avoided.'').

[141] *Parrish,* 917 F.3d at 380 (quoting *Hickey,* 699 F.2d at 752); *see also Scantland,* 721 F.3d at 1312 n.2 (the relative weight of each factor ''depends on the facts of the case'' (quoting *Santelices,* 147 F. Supp. 2d at 1319)).

[142] *See, e.g., Silk,* 331 U.S. at 716 (explaining that ''[n]o one [factor] is controlling'' in the economic realities test); *Selker Bros.,* 949 F.2d at 1293 (''It is a well-established principle that the determination of the employment relationship does not depend on isolated factors . . . neither the presence nor the absence of any particular factor is dispositive.''); *Morrison,* 253 F.3d at 11 (''No one factor standing alone is dispositive and courts are directed to look at the totality of the circumstances and consider any relevant evidence.''); *Dole* v. *Snell,* 875 F.2d 802, 805 (10th Cir. 1989) (''It is well established that no one of these factors in isolation is dispositive; rather, the test is based upon a totality of the circumstances.''); *Lauritzen,* 835 F.2d at 1534 (''Certain criteria have been developed to assist in determining the true nature of the relationship, but no criterion is by itself, or by its absence, dispositive or controlling.'').

[143] *See McFeele*y, 825 F.3d at 241 (''While a six-factor test may lack the virtue of providing definitive guidance to those affected, it allows for flexible application to the myriad different working relationships that exist in the national economy. In other words, the court must adapt its analysis to the particular working relationship, the particular workplace, and the particular industry in each FLSA case.'').

[144] The 2021 IC Rule references on several occasions a review of appellate case law since 1975 to justify its elevation of two ''core'' factors. 86 FR 1196, 1198, 1202, 1240.

[145] *See* 86 FR 24309–10.

whether it included only published circuit court decisions or all cases, whether it included cases that were simply remanded to the district court for any reason, etc.), and oversimplified the analysis provided by the courts because court decisions regarding classification under the FLSA generally emphasize the fact-specific nature of the totality-of-circumstances analysis. Mechanically deconstructing court decisions and considering what courts have said about only two factors—even when courts did present their analyses in this manner—ignores the broader approach that most courts have taken in determining worker classification.

In fact, many decisions explicitly deny assigning any predetermined weight to these factors, but instead state that they considered the factors as part of an analysis of the whole activity.[146] While there are many cases in which the classification decision made by the court aligns with the classification indicated by the control and opportunity for profit or loss factors, the 2021 IC Rule did not identify any cases stating that those two factors are ''more probative'' of a worker's classification than other factors. Moreover, the 2021 IC Rule concedes that there are cases in which the classification suggested by the control factor did not align with the worker's classification as determined by the courts.[147] It is necessarily the case that if any two factors of a multifactor balancing test point toward the same outcome, then that outcome becomes increasingly likely to be the ultimate outcome. However, the 2021 IC Rule did not address whether a different combination of factors would yield similar results. Particularly when viewed in the context of repeated statements from the courts that no one factor in the economic reality test is dispositive, the selective reading of an undefined set of cases to support the opposite conclusion is not persuasive.

In any event, the 2021 IC Rule significantly altered both these factors, changing what may be considered for each. For example, contrary to the approach taken by most courts, the 2021 IC Rule downplays the employer's right to control the work and recasts the opportunity for profit or loss factor as indicating independent contractor status based on the worker's initiative or investment. Thus, irrespective of whether control and opportunity for profit or loss were more frequently aligned with the ultimate result in prior appellate cases, the new framing of these factors, as redefined in the 2021 IC Rule, sets forth a new standard for analysis without precedent.

Finally, the Department has concerns that prioritizing two ''core factors'' over other factors may not fully account for the Act's broad definition of ''employ,'' as interpreted by the courts. For example, if facts relevant to the control and opportunity for profit or loss factors both point to independent contractor status for a particular worker but weakly so, those factors should not be presumed to carry more weight than stronger factual findings under other factors (*e.g.,* the existence of a lengthy working relationship under the ''permanence'' factor and the performance of work that does not require specialized skills). Courts and the Department may focus on some relevant factors more than others when analyzing a particular set of facts and circumstances, but that does not mean that it is possible or permissible to derive from these fact-driven decisions universal rules regarding which factors deserve more weight than the others when the courts themselves have not set forth any such universal rules despite decades of opportunity. Numerous commenters responding to the Department's proposed withdrawal of the 2021 IC Rule voiced similar concerns.[148]

In sum, the Department believes that the 2021 IC Rule's elevation of the control and opportunity for profit or loss factors is in tension with the language of the Act as well as the position, expressed by the Supreme Court and in appellate cases from across the circuits, that no single factor is determinative in the analysis of whether a worker is an employee or an independent contractor and does not better determine who is in fact economically dependent on their employer for work as opposed to being in business for themself.

2. The Role of Control in the 2021 IC Rule's Analysis

As explained above, the 2021 IC Rule identifies ''the nature and degree of control over the work'' as one of two core factors given ''greater weight'' in the independent contractor analysis.[149] The 2021 IC Rule addressed and rejected comments which opined that focusing the analysis on two core factors—one of which would be control—would narrow the analysis to a common law control test.[150]

Although the 2021 IC Rule's standard for determining who is an employee and who is an independent contractor is not the same as the common law control analysis, the Department continues to believe, as expressed in the Withdrawal Rule, that elevating the importance of control in every FLSA employee or independent contractor analysis brings the Rule closer to the common law control test that courts have rejected when interpreting the Act. As previously noted, section 3(g) of the FLSA expansively defines the term ''employ'' to include ''to suffer or permit to work.'' [151] The Supreme Court has repeatedly stated that this provision establishes a broader scope of employment for FLSA purposes than under a common law (*i.e.,* agency) analysis focused on control.[152] In light of this directive, the Department remains concerned that the outsized role of control under the 2021 IC Rule's analysis is contrary to the Act's text and case law interpreting the Act's definitions of employment.

3. The 2021 IC Rule Improperly Altered Several Factors by Precluding the Consideration of Relevant Facts

As previously discussed in the Withdrawal Rule, the Department remains concerned that the 2021 IC Rule's preclusion of certain facts from being considered under the factors improperly narrows the economic reality test and does not allow for a full consideration of all facts which might be relevant to determining whether a worker is economically dependent upon an employer for work or in business for themself. Examples include: (1) advising that ''control'' indicative of an employment relationship must involve an employer's ''substantial control over key aspects of the performance of the work,'' excluding requirements ''to comply with specific legal obligations, satisfy health and safety standards, carry insurance, meet contractually agreed-upon deadlines or quality control standards, or satisfy other similar terms;'' [153] (2) making the ''opportunity for profit or loss'' factor indicate independent contractor status based on the worker's initiative or investment (not both); [154] (3) disregarding the employer's investments; [155] (4) disregarding the importance or

[146] *See supra* nn.139–142.

[147] *See* 86 FR 1197 n.45.

[148] *Id.* at 24307–11.

[149] *Id.* at 1246–47 (§ 795.105(c), (d)).

[150] *Id.* at 1200–01.

[151] 29 U.S.C. 203(g).

[152] *See Darden,* 503 U.S. at 324–26; *Portland Terminal,* 330 U.S. at 150–51; and *Rutherford,* 331 U.S. at 728.

[153] 86 FR 1246–47 (§ 795.105(d)(1)(i)).

[154] *Id.* at 1247 (§ 795.105(d)(1)(ii)).

[155] *Id.; see also id.* at 1188 (''[T]he Department reaffirms its position that comparing the individual worker's investment to the potential employer's investment should not be part of the analysis of investment.'').

centrality of a worker's work to the employer's business; [156] and (5) downplaying the employer's reserved right or authority to control the worker.[157] In each of these ways—as explained in greater detail below—the 2021 IC Rule limits the scope of facts and considerations comprising the analysis of whether the worker is an employee or independent contractor.

As further explained below, the 2021 IC Rule's narrowing of certain economic realities factors by precluding consideration of certain facts provides another justification for the Rule's rescission and replacement.

B. Confusion and Uncertainty Introduced by the 2021 IC Rule

One of the 2021 IC Rule's primary goals was to ''significantly clarify to stakeholders how to distinguish between employees and independent contractors under the Act.'' [158] Although the stated intent was to provide clarity, it has introduced several concepts to the analysis that neither courts nor the Department have previously applied, as discussed above.[159] This rulemaking arises in part from a concern that these changes will not provide clarity because of the inconsistency with circuit court case law, and that the conflict between the 2021 IC Rule's analysis and circuit precedent will inevitably lead to greater uncertainty as well as lead to inconsistent outcomes, rather than increase clarity or certainty.

As a threshold matter, because the 2021 IC Rule departed from courts' longstanding precedent, if left in place, it is not clear whether courts would adopt its analysis—a question that could take years of appellate litigation in different Federal circuits to sort out. If some courts try to reconcile the 2021 IC Rule's analysis with their precedent and the statute and some courts do not, it will create conflicts among courts and between courts and the Department, resulting in more uncertainty as to the applicable economic reality test. Businesses operating nationwide will have had to familiarize themselves with multiple standards for determining who is an employee under the FLSA across different jurisdictions.[160]

In addition to uncertainty resulting from the 2021 IC Rule's reception by courts, the Rule introduces several ambiguous terms and concepts into the analysis for determining whether a worker is an employee under the FLSA or an independent contractor. For example, courts and regulated parties now must grapple with what it means in practice for two factors to be ''core'' factors and entitled to greater weight. In addition, they must determine, in cases where the two ''core'' factors point to the same classification, how ''substantial'' the likelihood is that they point toward the correct classification if the additional factors point toward the other classification. Additionally, the 2021 IC Rule cautions that its list of factors is ''not exhaustive,'' [161] but does not specify whether the ''additional factors'' referenced in § 795.105(d)(2)(iv) have less probative value (or weight) than the three ''other factors'' listed in § 795.105(d)(2)(i) through (iii).[162] Assuming that they do, the 2021 IC Rule has essentially transformed the analysis that courts and the Department have previously applied into a three-tiered multifactor balancing test, with ''core'' factors given more weight than enumerated ''other'' factors, and enumerated ''other'' factors given more weight than unspecified ''additional'' factors. Rather than weighing all factors against each other depending on the facts of a particular work arrangement, courts and the regulated community must evaluate factors within and across groups in a new hierarchical structure, which will likely cause confusion and inconsistency. Adding to the confusion, the Rule improperly collapses some factors into each other, so that investment and initiative are only considered as a part of the opportunity for profit or loss factor, requiring courts and the regulated community to reconsider how they have long applied those factors.[163]

The Department believes that the 2021 IC Rule has complicated rather than simplified the analysis for determining whether a worker is an employee or independent contractor under the FLSA and does not provide clarity behind the meaning of economic dependence or reduce confusion.[164] For the reasons explained above, the Department believes that the 2021 IC Rule has introduced substantial confusion and uncertainty on the topic of independent contractor status, to the detriment of workers and businesses alike.

C. Risks to Workers From the 2021 IC Rule

As part of its regulatory impact analysis, the 2021 IC Rule quantified some possible costs (regulatory familiarization) and some possible cost savings (increased clarity and reduced litigation).[165] It identified and discussed—but did not quantify—numerous other costs, transfers, and benefits possibly resulting from the 2021 IC Rule, including ''possible transfers among workers and between workers and businesses.'' [166] The 2021 IC Rule ''acknowledge[d] that there may be transfers between employers and employees, and some of those transfers may come about as a result of changes in earnings,'' but determined that these transfers cannot ''be quantified with a reasonable degree of certainty for purposes of [the Rule].'' [167] The 2021 IC Rule concluded that ''workers as a whole will benefit from [the Rule], both from increased labor force participation as a result of the enhanced certainty provided by [the Rule], and from the substantial other benefits detailed [in the Rule].'' [168]

The preliminary regulatory impact analysis for this proposed rule is provided below in section VII. As a general matter, the Department notes here that it does not believe that the 2021 IC Rule fully considered the likely costs, transfers, and benefits that could result from the Rule. This concern is premised in part on WHD's role as the agency responsible for enforcing the FLSA and its experience with cases involving the misclassification of employees as independent contractors.

[156] *Id.* at 1247 (§ 795.105(d)(2)(iii)); *see also id.* at 1248 (noting through an example in § 795.115(b)(6)(ii) that ''[i]t is not relevant . . . that the writing of articles is an important part of producing newspapers''); *accord id.* at 1195 (responding to commenters regarding the Department's decision to shift to an ''integrated unit of production'' analysis).

[157] *See id.* at 1246–47 (advising, in § 795.105(d)(1)(i), that the control factor indicates employment status if a potential employer ''*exercises* substantial control over key aspects of the performance of the work'') (emphasis added); *id.* at 1247 (advising, in § 795.110, that ''a business' contractual authority to supervise or discipline an individual may be of little relevance if in practice the business never exercises such authority''); *see also id.* at 1203–04 (same in response to commenters).

[158] *Id.* at 1168.

[159] *See supra* section III.A.

[160] *See, e.g.,* 86 FR 1241 n.255 (noting, while rejecting the ''ABC'' test for worker classification, that companies operating ''nationwide businesses[ ] are likely to comply with the most demanding standard if they wish to make consistent classification determinations'').

[161] *Id.* at 1246 (§ 795.105(c)).

[162] *Id.* at 1247.

[163] *Id.* (§ 795.105(d)(1)(ii)).

[164] The 2021 IC Rule includes several important principles from the case law, such as that economic dependence is the ultimate inquiry, that the list of economic reality factors is not exhaustive and that no single factor is determinative—principles that the Department continues to agree with and has included in this NPRM. The 2021 IC Rule, however, also incorporates provisions that are in tension with these well-established judicial principles, such as the predetermined elevating of two factors. The Department is also concerned with this internal inconsistency in the 2021 IC Rule.

[165] 86 FR 1211.

[166] *Id.* at 1214–16.

[167] *Id.* at 1223.

[168] *Id.*

The consequence for a worker of being misclassified as an independent contractor is that the worker is excluded from the protections of the FLSA to which they are entitled. These protections include being paid at least the Federal minimum wage for all hours worked, overtime compensation for hours worked over 40 in a workweek, and protection against retaliation for complaining about, for example, a violation of the FLSA. The Department concludes that, to the extent the 2021 IC Rule results in the reclassification or misclassification of employees as independent contractors, the resulting denial of FLSA protections would harm the affected workers. To the extent that women and people of color are overrepresented in low-wage positions where misclassification as independent contractors is more likely, this result could have a disproportionate impact on these workers. In comments on the Withdrawal Rule, several commenters cited a study finding that seven of the eight occupations with the highest rate of misclassification were held disproportionately by women and/or workers of color, asserting that ''misclassification is rampant in low-wage, labor-intensive industries where women and people of color, including Black, Latinx, and AAPI workers, are overrepresented.'' [169] These workers already experience multiple types of economic inequities in the labor force, including gender and racial wage gaps and occupational segregation. When comparing the median wages of women who worked full-time, year-round to the wages of men who worked full-time, year-round, women were paid 83 cents to every dollar paid to men.[170] For women of color, this wage gap is even greater—Black women were paid 64%, and Hispanic women (of any race) were paid 57% of what white non-Hispanic men were paid. The misclassification of these workers as independent contractors deprives them of the minimum wage and overtime protections that could help alleviate some of this inequality.

In sum, the Department's proposal to rescind and replace the 2021 IC Rule is motivated, in part, by an assessment that doing so will benefit workers as a whole, including those workers at risk of being misclassified as independent contractors as well as those who are appropriately classified as independent contractors.

D. The Benefits of Replacing the Part 795 Regulations on Employee or Independent Contractor Status

In its rulemaking last year to withdraw the 2021 IC Rule, the Department declined to propose alternative regulations.[171] The Department had not previously promulgated generally applicable regulations on independent contractor classification in the FLSA's 83 years of existence.[172] Particularly in light of the consistency of the economic reality test as adopted by the circuits, the Department had for decades relied on subregulatory documents to provide generally applicable guidance for the Department and the regulated community on determining employee or independent contractor status under the FLSA.[173]

In its decision invalidating the Withdrawal Rule, the Eastern District of Texas faulted the Department for failing to consider ''less disruptive alternatives'' to withdrawal, such as ''promulgat[ing] a regulation that enumerated six factors instead of five'' or ''adopting the seven factors that the Department previously set forth in Fact Sheet #13 as the applicable economic realities test.'' [174] While the Department believes that its subregulatory guidance provided appropriate guidance to the regulated community, upon further consideration, it recognizes that publishing regulatory guidance on the distinction between FLSA-covered employees and independent contractors is beneficial for stakeholders, particularly because the Department published a regulation in 2021. In addition, detailed Federal regulations would be easier to locate and read for interested stakeholders than applicable circuit caselaw, potentially helping workers and businesses better understand the Department's interpretation of their rights and responsibilities under the law. In contrast to WHD's earlier opinion letters on independent contractor status and its prior regulations on the topic located in parts 780 and 788, new part 795 would also provide guidance to workers and businesses in any industry.

Adopting detailed regulations aligned with existing precedent that help workers and businesses to better understand their rights and responsibilities under the law could also better protect workers, who have been placed at a greater risk of misclassification as a consequence of the 2021 IC Rule. As described in sections III.A. and B., the 2021 IC Rule's elevation of certain factors and its preclusion of consideration of relevant facts under several factors may result in misapplication of the economic reality test and may have conveyed to employers that it might be easier than it used to be to classify certain workers as independent contractors rather than FLSA-covered employees. Elevating certain factors and precluding consideration of relevant facts may increase the risk of misclassification of employees as independent contractors. Because the Department has serious concerns about the 2021 IC Rule, it is proposing to rescind and replace it with regulations that are fully aligned with the text of the FLSA as interpreted by the courts, the Department's longstanding subregulatory guidance, and decades of court cases interpreting the Act while still providing additional clarity to workers and employers on the concept of economic dependence.

IV. Alternatives Considered

The Department assessed four regulatory alternatives to this proposed rule below in section VII.F. of the regulatory impact analysis. The Department previously considered and rejected, on legal viability grounds, the first two alternatives—codifying either a common law or ABC test for determining employee or independent contractor status—in the 2021 IC Rule.[175] The Department continues to believe that legal limitations prevent the Department from adopting either of those alternatives.

For the first alternative, the Department considered codifying the common law control test, which is used to distinguish between employees and independent contractors under other Federal laws, such as the Internal Revenue Code.[176] The focus of the

[169] *Id.* at 24312.

[170] U.S. Department of Labor, Women's Bureau. *Connecting the Dots: ''Women's Work'' and the Wage Gap* (2022) *https://blog.dol.gov/2022/03/15/connecting-the-dots-womens-work-and-the-wage-gap?_ga=2.244962629.155756293.1655992165-662785877.1655992165.*

[171] *See* 86 FR 24307.

[172] The FLSA was enacted in 1938. 29 U.S.C. 201. Until 2021, the Department had not promulgated generally applicable regulations regarding the classification of workers as employees or independent contractors.

[173] *See, e.g.,* 86 FR 24318–20.

[174] *Coalition for Workforce Innovation,* 2022 WL 1073346, at *18.

[175] *See* 86 FR 1238.

[176] *See* 26 U.S.C. 3121(d)(2) (generally defining the term ''employee'' under the Internal Revenue Code as ''any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee''). The Supreme Court has advised that the common law control test applies by default under Federal law unless a statute specifies an alternative standard. *See Darden,* 503 U.S. at 322–23 (''[W]hen Congress has used the term 'employee' without defining it, we have concluded that Congress intended to describe the conventional

common law control test is ''the hiring party's right to control the manner and means by which [work] is accomplished,'' [177] but the Supreme Court has explained that ''other factors relevant to the inquiry [include] the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.'' [178]

Although the common law control test considers some of the same factors as those identified in the proposed rule's ''economic reality'' test (*e.g.,* skill, length of the working relationship, the source of equipment and materials, etc.), courts generally recognize that, because of its focus on control, the common law test is more permissive of independent contracting arrangements than the economic reality test, which examines the economic dependence of the worker.[179]

Codifying a common law control test for the FLSA could create a more uniform legal framework among Federal statutes, in the sense that entities would not, for example, have to understand and apply one employment classification standard for tax purposes and a different employment classification standard for FLSA purposes. However, the Department does not believe that adopting a common law control test for determining employee or independent contractor status under the FLSA would, in fact, simplify the analysis for the regulated community because courts and enforcement agencies applying a common law test for independent contractors have considered a greater number and different variation of factors than the six or so factors commonly considered under the economic reality test.[180]

Regardless, applying the common law test would be contrary to the ''suffer or permit'' language in section 3(g) of the FLSA, which the Supreme Court has interpreted as demanding a broader definition of employment than that which exists under the common law.[181] Accordingly, the Department believes it is legally constrained from adopting the common law control test and that the common law test is not sufficiently protective in assessing worker classification under the FLSA.

For the second alternative, the Department considered codifying an ABC test to determine independent contractor status under the FLSA, similar to the ABC test recently adopted under California's state wage and hour law.[182] As described by the California Supreme Court in *Dynamex Operations W., Inc.* v. *Superior Court,* ''[t]he ABC test presumptively considers all workers to be employees, and permits workers to be classified as independent contractors only if the hiring business demonstrates that the worker in question satisfies *each* of three conditions: (a) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of the work and in fact; *and* (b) that the worker performs work that is outside the usual course of the hiring entity's business; *and* (c) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.'' [183]

Codifying an ABC test could establish a simpler and clearer standard for determining whether workers are employees or independent contractors. The ABC test only has three criteria, and no balancing of the criteria is required; all three prongs must be satisfied for a worker to qualify as an independent contractor. However, the Department believes it is legally constrained from adopting an ABC test because the Supreme Court has held that the economic reality test is the applicable standard for determining workers' classification under the FLSA as an employee or independent contractor.[184] Moreover, the Supreme Court has stated that the existence of employment relationships under the FLSA ''does not depend on such isolated factors'' as the three independently determinative factors in the ABC test, ''but rather upon the circumstances of the whole activity.'' [185] Because the ABC test is inconsistent with Supreme Court precedent interpreting the FLSA, the Department believes that it could only implement an ABC test if the Supreme Court revisits its precedent or if Congress passes legislation that alters the applicable analysis under the FLSA.

For the third alternative, the Department considered a proposed rule that would not fully rescind the 2021 IC Rule and instead retain some aspects of that rule. As the Department has noted throughout this proposal, there are multiple instances in which this NPRM is consistent or in agreement with the 2021 IC Rule. Specifically, the Department has noted its agreement with the following aspects of the 2021 IC Rule: a totality of the circumstances test should be applied to appropriately determine classification as an employee or independent contractor; the concept of economic dependence needs further

master-servant relationship as understood by common-law agency doctrine.' '') (quoting *Reid,* 490 U. S. at 739–40).

[177] *Reid,* 490 U.S. at 751.

[178] *Id.* at 751–52.

[179] *See, e.g., Baker* v. *Flint Eng'g & Const. Co.,* 137 F.3d 1436, 1440 (10th Cir. 1998) (recognizing that the ''economic realities'' test is a more expansive standard for determining employee status than the common law test).

[180] *See* RESTATEMENT (THIRD) OF AGENCY sec. 7.07, Comment (f) (2006) (identifying 10 factors); IRS Tax Topic No. 762 Independent Contractor vs. Employee (May 19, 2022), *https://www.irs.gov/taxtopics/tc762* (explaining the common law analysis through three main categories: behavioral control, financial control, and the relationship of the parties); *Reid,* 490 U.S. at 751–52 (identifying 13 factors).

[181] *See, e.g., Darden,* 503 U.S. at 326; *Portland Terminal,* 330 at 150–51.

[182] *See Dynamex Operations W., Inc.* v. *Superior Court,* 416 P.3d 1 (Cal. 2018); Assembly Bill (''A.B.'') 5, Ch. 296, 2019–2020 Reg. Sess. (Cal. 2019) (codifying the ABC test articulated in *Dynamex*); A.B. 2257, Ch. 38, 2019–2020 Reg. Sess. (Cal. 2020) (retroactively exempting certain professions, occupations, and industries from the ABC test that A.B. 5 had codified). The ABC test originated in state unemployment insurance statutes, but some state courts and legislatures have recently extended the test to govern employee/independent contractor disputes under state wage and hour laws. *See* Keith Cunningham-Parmeter, *Gig-Dependence: Finding the Real Independent Contractors of Platform Work,* 39 N. Ill. U. L. Rev. 379, 408–11 (2019) (discussing the origins and recent expansion of the ABC test).

[183] 416 P.3d at 34 (emphasis in original). California's ABC test is slightly different than versions of the ABC test adopted (or presently under consideration) in other states. For example, New Jersey provides that a hiring entity may satisfy the ABC test's ''B'' prong by establishing either: (1) that the work provided is outside the usual course of the business for which the work is performed, or (2) that the work performed is outside all the places of business of the hiring entity. N.J. Stat. Ann. sec. 43:21–19(i)(6)(A–C). The Department has chosen to analyze California's ABC test as a regulatory alternative because businesses subject to multiple standards, including nationwide businesses, are likely to comply with the most demanding standard if they wish to make consistent classification determinations.

[184] *See Tony & Susan Alamo,* 471 U.S. at 301 (''The test of employment under the Act is one of 'economic reality.' ''); *Whitaker House,* 366 U.S. at 33 (''economic reality' rather than 'technical concepts' is . . . the test of employment'' under the FLSA) (citing *Silk,* 331 U.S. at 713; *Rutherford,* 331 U.S. at 729). ABC tests are not the same as the FLSA economic realities test. For example, the ABC test does not consider the totality of the circumstances of the working relationship between the employer and the worker; instead, it considers three specific circumstances. In addition, the ABC test does not weigh or balance the various considerations; instead, the test results in a finding of employee status if any one factor is not met regardless how close the facts are on that factor and regardless what the other two factors indicate.

[185] *Rutherford,* 331 U.S. at 730.

development; and a clear explanation of the test for whether a worker is an employee or independent contractor in easily accessible regulatory text is valuable. This proposal also includes several other important principles from the case law that were included in the 2021 IC Rule: economic dependence is the ultimate inquiry; the list of economic reality factors is not exhaustive; and no single factor is determinative. Further, with respect to specific factors, this proposal reinforces certain aspects addressed in the 2021 IC Rule such as that an exclusivity requirement imposed by the employer is a strong indicator of control, and that issues related to scheduling and supervision over the performance of the work (including the ability to assign work) are relevant considerations under the control factor.

Despite these areas of agreement, the governing principle of the 2021 IC Rule is that two of the economic reality factors are predetermined to be more probative and therefore carry more weight, which may obviate the need to meaningfully consider the remaining factors. Upon further consideration, as discussed in this proposal, the Department believes that this departure from decades of case law and the Department's own longstanding position that no one factor or subset of factors should carry more or less weight would have a confusing and disruptive effect on employers and workers alike. The Department considered simply removing the problematic ''core factors'' analysis from the 2021 IC Rule and retaining the five factors as described in the rule. However, the Department rejected this approach because other aspects of the rule such as considering investment and initiative only in the opportunity for profit or loss factor and excluding consideration of whether the work performed is central or important to the employer's business are also in tension with judicial precedent and longstanding Department guidance. These provisions narrow the economic reality test by limiting the facts that may be considered as part of the test, facts which the Department believes are relevant in determining whether a worker is economically dependent on the employer for work or in business for themself. Therefore, after considering all of the common aspects of the 2021 IC Rule and whether to retain some portions of that rule, the Department has concluded that in order to provide clear, affirmative regulatory guidance that aligns with case law and is consistent with the text and purpose of the Act as interpreted by courts, a complete rescission and replacement of the 2021 IC Rule is needed. For these reasons, the Department is not proposing a partial rescission of the 2021 IC Rule.

For the fourth alternative, the Department considered rescinding the 2021 IC Rule and providing guidance on employee or independent contractor classification through subregulatory guidance instead of through new regulations. To begin with, for the reasons set forth in this NPRM, the Department believes that rescission of the 2021 IC Rule is appropriate, regardless of the new content proposed for its replacement. Specifically, the Department believes that the 2021 IC Rule does not fully comport with the FLSA's text as interpreted by the courts, and that retaining the 2021 IC Rule would have a confusing and disruptive effect on workers and businesses alike due to its departure from decades of case law describing and applying the multifactor economic reality test as a totality-of-the-circumstances test. The 2021 IC Rule's provisions—such as designating two factors as most probative and predetermining that they carry greater weight in the analysis, considering investment and initiative only in the opportunity for profit or loss factor, and excluding consideration of whether the work performed is central or important to the employer's business—are in tension with this longstanding case law.

The Department recognizes that the 2021 IC Rule sought to ''clarify and sharpen the contours of the economic reality test used to determine independent contractor classification under the FLSA.'' [186] However, as noted above, although the stated intent was to provide clarity, the 2021 IC Rule introduced several concepts to the analysis that neither courts nor the Department have previously applied.[187] The Department believes that these changes will not provide clarity because of the inconsistency with circuit court case law, and that the conflict between the 2021 IC Rule's analysis and circuit precedent will inevitably lead to greater uncertainty as well as lead to inconsistent outcomes, rather than increase clarity or certainty.

Given the substantial uniformity among the circuit courts in the application of the economic reality test prior to the 2021 IC Rule, the Department believes that rescinding the 2021 IC Rule would provide greater clarity than retaining the 2021 IC Rule. For more than 80 years prior to the 2021 IC Rule, the Department primarily issued subregulatory guidance in this area and did not have generally applicable regulations on the classification of workers as employees or independent contractors. This subregulatory guidance was informed by the case law and set forth a multifactor economic reality test to answer the ultimate question of economic dependence. However, as explained in section III above, the Department believes that replacing the 2021 IC Rule with regulations addressing the multifactor economic reality test that more fully reflect the case law and continue to be relevant to the modern economy will be helpful for both workers and employers in understanding how to apply the law in this area. Specifically, issuing regulations allows the Department to provide in-depth guidance that is more closely aligned with circuit case law, rather than the regulations set forth in the 2021 IC Rule which have created a dissonance between the Department's regulations and judicial precedent. Additionally, issuing regulations allows the Department to formally collect and consider a wide range of views from stakeholders by electing to use the notice-and-comment process. Finally, because courts are accustomed to considering relevant agency regulations, providing guidance in this format may further improve consistency among courts regarding this issue. Therefore, the Department has decided not to rescind the 2021 IC Rule and provide only subregulatory guidance, but to instead propose these regulations.

V. Discussion of Proposed Rule

In view of the foregoing concerns and considerations, the Department is proposing modifications to title 29 of the Code of Federal Regulations addressing whether workers are employees or independent contractors under the FLSA. In relevant part, and as discussed in greater detail below, the Department proposes:

- Not using ''core factors'' and instead returning to a totality-of-the-circumstances analysis of the economic reality test that has a refined focus on whether each factor shows the worker is economically dependent upon the employer for work versus being in business for themself, does not use predetermined weighting of factors, and that considers the factors comprehensively instead of as discrete and unrelated.
- Returning the consideration of investment to a standalone factor, focusing on whether the worker's investment is capital or entrepreneurial in nature, and considering the worker's

[186] 86 FR 1172.

[187] *See supra* sections III.A, B.

investments on a relative basis with the employer's investment.

- Providing additional analysis of the control factor, including detailed discussions of how scheduling, supervision, price-setting, and the ability to work for others should be considered when analyzing the degree of control over a worker, and not limiting control to control that is actually exerted.
- Returning to the longstanding Departmental interpretation of the integral factor, which considers whether the work is integral to the employer's business rather than whether it is exclusively part of an ''integrated unit of production.''

As in the 2021 IC Rule, the Department is proposing to include cross-references to the interpretations set forth in this proposed rule in 29 CFR 780.330(b) and 788.16(a); these provisions contain industry-specific guidance. Additionally, in the 2021 IC Rule, the Department declined to revise its regulation addressing employee or independent contractor status under MSPA in 29 CFR 500.20(h)(4), stating, in part, that the MSPA regulation and the 2021 IC Rule both applied an economic reality test in which the ultimate inquiry was economic dependence.[188] Although the Department has again considered revising the MSPA regulation, it proposes the same approach that it took in 2021—which is to not make any revisions at this time. The Department continues to recognize that MSPA adopts by reference the FLSA's definition of ''employ,'' [189] and that 29 CFR 500.20(h)(4) considers ''whether or not an independent contractor or employment relationship exists under the Fair Labor Standards Act'' to interpret employee or independent contractor status under MSPA.[190] The test contained in the MSPA regulation is substantially similar to the proposed test here, so the Department believes that there is not a need to revise the MSPA regulation at this time. The Department, however, welcomes comments regarding whether 29 CFR 500.20(h)(4) should be revised to more fully reflect the interpretation of employee or independent contractor status set forth in this proposed rule.

Finally, the Department is also proposing to formally rescind the 2021 IC Rule and to add a new part 795. In the Department's view, the operative effects of proposing to rescind the 2021 IC Rule follow. If finalized, the proposed rule would formally rescind the 2021 IC Rule. That rescission would operate independently of the new content in any new final rule, as the Department intends it to be severable from the substantive proposal for adding a new part 795. For the reasons set forth in this NPRM, the Department believes that rescission of the 2021 IC Rule is appropriate, regardless of the new content proposed in this rulemaking. Thus, even if the substantive provisions of a new final rule were invalidated, enjoined, or otherwise not put into effect, the Department would not intend that the 2021 IC Rule become operative.

Since the passage of the FLSA until the 2021 IC Rule, the Department primarily issued subregulatory guidance in this area and did not have generally applicable regulations addressing the classification of workers as employees or independent contractors. The Department's subregulatory guidance was informed by the case law and set forth a multifactor economic reality test to answer the ultimate question of economic dependence that is consistent with the analysis set forth in this proposal. Should the 2021 IC Rule be rescinded without any replacement regulations, the Department would rely on circuit case law and provide subregulatory guidance for stakeholders through existing documents (such as Fact Sheet #13) and new documents (for example, a Field Assistance Bulletin). As explained below, there is widespread uniformity among the circuit courts in the application of the economic reality test, with slight variation as to the number of factors considered or how the factors are framed.[191] The well-known multifactor, totality-of-the-circumstances analysis that had been in place prior to the 2021 IC Rule has been reflected in the Department's subregulatory guidance for many years and accurately represents this case law. Thus, the Department believes reliance on this case law and subregulatory guidance, rather than the 2021 IC Rule, would be preferable due to the 2021 IC Rule's divergence from well-established precedent and potential effects on workers, as previously discussed. In sum, should a new final rule adding a new part 795 not go into effect for any reason, reverting to reliance on circuit case law and subregulatory guidance consistent with that case law for determining whether a worker is an employee or independent contractor would accurately reflect the Act's text and purpose as interpreted by the courts and offer a standard familiar to most stakeholders.

The Department welcomes comments on all aspects of its proposal.

A. Introductory Statement (Proposed § 795.100)

Section 795.100 of the 2021 IC Rule generally explains that the interpretations in part 795 will guide WHD's enforcement of the FLSA and are intended to be used by employers, employees, workers, and courts to assess employment status under the Act.[192] The Department is proposing only clarifying edits to this section.

B. Economic Reality Test (Proposed § 795.105)

Section 795.105(a) of the 2021 IC Rule states that independent contractors are not employees under the FLSA. Section 795.105(b) explains that economic dependence is the ultimate inquiry in determining whether a worker is an independent contractor or employee under the Act, and § 795.105(c) addresses how to determine economic dependence, including the elevation of two ''core'' economic reality factors.[193] Section 795.105(d) discusses the economic reality factors.[194]

The Department is proposing to simplify paragraph (a) and make additional clarifying edits to paragraph (b). Proposed § 795.105(a) would continue to make clear that independent contractors are not ''employees'' under the Act. Proposed § 795.105(b) would affirm that economic dependence is the ultimate inquiry for determining whether a worker is an independent contractor or an employee and makes clear that the plain language of the statute is relevant to the analysis. This section focuses the analysis on whether the worker is in business for themself and clarifies that economic dependence does not focus on the amount the worker earns or whether the worker has other sources of income. The Department is proposing to delete § 795.105(c) because it believes, as previously discussed in section III.A.1. of this preamble, that the factors of the economic reality test should not be given a predetermined weight. The Department is also proposing to delete § 795.105(d) and move discussion of the economic reality test and the individual factors to § 795.110.

[188] *See* 86 FR 1177.

[189] 29 U.S.C. 1802(5).

[190] The MSPA regulations consider, for example, whether a worker is economically dependent upon an agricultural association or farm labor contractor. *See* 29 CFR 500.20(h)(4).

[191] *See generally infra* section V.C.

[192] 86 FR 1246.

[193] *Id.*

[194] *Id.* at 1246–47.

C. Economic Reality Test and Economic Reality Test Factors (Proposed § 795.110)

The Department is proposing to replace § 795.110 of the 2021 IC Rule (Primacy of actual practice) with a provision discussing the economic reality test and the economic reality factors. Proposed § 795.110(a) introduces the economic reality test, emphasizing that the economic reality factors are guides to be used to conduct a totality-of-the-circumstances analysis. It also explains that the factors are not exhaustive, and no single factor is dispositive. The Department is proposing to address the economic reality factors in § 795.110(b). Before addressing the specific changes proposed, the Department believes that it is helpful to discuss the overarching framework of the economic reality test and how it should be considered.

Determining whether an employment relationship exists under the FLSA begins with the Act's definitions. The Act's text is expansive, defining ''employer'' to ''include[ ] any person acting directly or indirectly in the interest of an employer in relation to an employee,'' ''employee'' as ''any individual employed by an employer,'' and ''employ'' to ''include[ ] to suffer or permit to work.'' [195] In its 1947 brief before the Supreme Court in *Rutherford,* the Department explained that the Act '' 'contains its own definitions, comprehensive enough to require its application to many persons and working relationships, which prior to this Act, were not deemed to fall within an employer-employee category.' '' [196] The Department continued, stating that ''[t]he purposes of this Act require a practical, realistic construction of the employment relationship . . . and the broad language of the statutory definitions is more than adequate to support such a construction.'' [197] The Supreme Court agreed, reiterating the breadth and reach of the Act's definitions to work relationships that were not previously considered to constitute employment relationships, and emphasizing that the determination of an employment relationship under the FLSA depends not on ''isolated factors but rather upon the circumstances of the whole activity.'' [198] The same need for a practical, realistic construction of the employment relationship under the FLSA exists today. As explained below, the long-standing economic reality test, applied in view of the statutory language of the Act, is nimble enough to continue to provide a useful analysis for the broad range of potential employment relationships that exist today.

Prior to the FLSA's enactment, the phrasing ''suffer or permit'' was commonly used in state laws regulating child labor. As the Eleventh Circuit explained in *Antenor* v. *D & S Farms,* ''[t]he 'suffer or permit to work' standard derives from state child-labor laws designed to reach businesses that used middlemen to illegally hire and supervise children.'' [199] In other words, the standard was designed to ensure that an employer could be covered under the labor law even if they did not directly control a worker or used an agent to provide supervision. The Supreme Court has explicitly and repeatedly recognized that this ''suffer or permit'' language demonstrates Congress's intent for the FLSA to apply broadly and more inclusively than the common law standard.[200] This textual breadth reflects Congress's stated intent. Section 2 of the Act, Congress's ''declaration of policy,'' states that the Act is intended to eliminate ''labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers.'' [201] Particularly relevant to misclassification, section 2 identifies ''unfair method[s] of competition in commerce'' as an additional condition ''to correct and as rapidly as practicable . . . eliminate.'' [202]

For decades, the Department and courts have applied an economic reality test to determine whether a worker is an employee or an independent contractor under the Act. The test was developed by the Supreme Court in interpreting and applying the social legislation of the 1930s, including the Fair Labor Standards Act, which defines the employment relationship in broad and comprehensive terms.[203] In 1947, the Supreme Court issued two decisions, *Silk* and *Rutherford,* that used an economic reality test to determine employment status.[204] As explained in *Rutherford,* the ''economic reality'' test is designed to bring within such legislation ''persons and working relationships which, prior to this Act, were not deemed to fall within an employer-employee category.'' [205] In applying this economic reality test, it is essential to consider the Act's statutory language. The determination of whether a worker is covered under the FLSA must be made in the context of the Act's own definitions and the courts' expansive reading of its scope.[206] The

[195] 29 U.S.C. 203(d), (e)(1), (g).

[196] Brief for the Administrator at 10, *Rutherford Food Corp.* v. *McComb,* 331 U.S. 722 (1947) (No. 562), 1947 WL 43939, at *10 (quoting *Portland Terminal,* 330 U.S. at 152).

[197] *Id.*

[198] *Rutherford,* 331 U.S. at 728–30.

[199] 88 F.3d 925, 929 n.5 (11th Cir. 1996).

[200] *See, e.g., Darden,* 503 U.S. at 326 (noting that ''employ'' is defined with ''striking breadth'' (citing *Rutherford,* 331 U.S. at 728)); *Rosenwasser,* 323 U.S. at 362 (''A broader or more comprehensive coverage of employees . . . would be difficult to frame.''); *Robicheaux* v. *Radcliff Material, Inc.,* 697 F.2d 662, 665 (5th Cir. 1983) (''The term 'employee' is thus used 'in the broadest sense 'ever . . . included in any act.' '' (quoting *Donovan* v. *Am. Airlines, Inc.,* 686 F.2d 267, 271 (5th Cir. 1982))).

[201] 29 U.S.C. 202(a).

[202] *See id.* at sec. 202(a), (b); *see also Rosenwasser,* 323 U.S. at 361–62; *Pilgrim Equip.,* 527 F.2d at 1311 (''Given the remedial purposes of the legislation, an expansive definition of 'employee' has been adopted by the courts.'').

[203] *Rosenwasser,* 323 U.S. at 362.

[204] *See Silk,* 331 U.S. at 716–18 (applying the test under the Social Security Act); *Rutherford,* 331 U.S. at 730 (same under the FLSA).

[205] *Rutherford,* 331 U.S. at 729; *see also Whitaker House,* 366 U.S. at 31–32 (describing the same as it relates to homeworkers).

[206] The line of cases in which the Supreme Court has repeatedly recognized that the definitions of ''employ,'' ''employee,'' and ''employer'' that establish who is entitled to the FLSA's protections were written broadly and have appropriately been interpreted broadly are premised on the statutory text itself, not on any principle of how to interpret remedial legislation. Because these cases addressing the Act's definitions do not address exemptions from the Act's pay requirements, they have not been called into question by *Encino Motorcars* v. *Navarro,* 138 S. Ct. 1134 (2018), which overturned a rule of interpretation based on the FLSA's remedial purpose that applied to the Act's exemptions. In *Encino,* the Supreme Court addressed an exemption from the FLSA's overtime pay requirements and ruled that the ''narrow construction'' principle—that FLSA exemptions should be narrowly construed in favor of employee status—should no longer be used. The Court explained that instead, such exemptions should be given a fair reading, stating ''[b]ecause the FLSA gives no textual indication that its exemptions should be construed narrowly, there is no reason to give [them] anything other than a fair (rather than a narrow) interpretation.'' *Encino,* 138 S. Ct. at 1142 (internal quotations and citation omitted). This decision did not apply to the Act's definitions, and, crucially, there is no need to rely on such an interpretive principle here because there is a clear textual indication in the Act's definitions, by the inclusion of the ''suffer or permit'' language, that broad coverage under the Act was intended. *See* 29 U.S.C. 203(g). Thus, the broad scope of who is an employee under the FLSA comes from the statutory text itself and not any ''narrow-construction'' principle. Moreover, *Encino* did not hold that the FLSA's remedial purpose may never be considered, it simply noted that it is a ''flawed premise that the FLSA 'pursues' its remedial purpose '*at all costs.*' '' *Id.* at 1142 (quoting *American Express Co.* v. *Italian Colors Restaurant,* 570 U.S. 228, 234 (2013)) (emphasis added). To the extent that the language in the 2021 IC Rule preamble implied that the Act's remedial purpose can never be considered, including when determining whether an individual is an employee or an independent contractor under the FLSA, the Department clarifies that it believes that this would be an unwarranted extension of the Supreme Court's decision. *See, e.g.,* 86 FR 1207–08 (discussing *Encino*'s application in response to commenters' concerns that the 2021 IC Rule conflicted with the FLSA's remedial purpose). Finally, courts have not changed their application

FLSA's ''particularly broad'' definition of ''employee'' encompasses all workers who are, ''as a matter of economic reality, . . . economically dependent upon the alleged employer.'' [207] Only a worker who ''is instead in business for himself'' is an independent contractor not covered by the Act.[208] The ''focus'' and ''ultimate concept'' of the determination of whether a worker is an employee or an independent contractor, then, is ''the *economic dependence* of the alleged employee.'' [209] The statutory language thus frames the central question that the economic reality test asks—whether the worker is economically dependent on an employer who suffers or permits the work or whether the worker is in business for themself.

To aid in answering this ultimate inquiry of economic dependence, several factors have been considered by courts and the Department as particularly probative when conducting a totality-of-the-circumstances analysis of whether a worker is an employee or an independent contractor under the FLSA.[210] In *Silk,* the Supreme Court suggested that ''degrees of control, opportunities for profit or loss, investment in facilities, permanency of relation and skill required in the claimed independent operation are important for decision.'' [211] The Court cautioned that no single factor is controlling and that the list is not exhaustive.[212] In *Rutherford,* the Court used a similar analysis considering ''the circumstances of the whole activity,'' and relied on the fact that the workers' work was ''a part of the integrated unit of production.'' [213] Since *Silk* and *Rutherford,* Federal courts of appeals have applied the economic reality test to distinguish independent contractors from employees who are entitled to the FLSA's protections. Federal appellate courts considering employee or independent contractor status under the FLSA generally analyze the economic realities of the work relationship using the factors identified in *Silk* and *Rutherford.*[214] There is significant and widespread uniformity among the circuit courts in the application of the economic reality test, although there is slight variation as to the number of factors considered or how the factors are framed (for example, whether relative investment is considered within the investment factor, or whether skill must be used with business-like initiative).[215] As the 2021 IC Rule explained, ''[m]ost courts of appeals articulate a similar test,'' and these courts consistently caution against the ''mechanical application'' of the economic reality factors, view the factors as tools to ''gauge . . . economic dependence,'' and ''make clear that the analysis should draw from the totality of circumstances, with no single factor being determinative by itself.'' [216] All of the circuit courts that have addressed employee or independent contractor status consider five of the same factors.[217] Briefly, these factors include the degree of control exercised by the employer over the worker, skill, permanency, opportunity for profit or loss, and investment, although the Second Circuit and the D.C. Circuit treat the worker's opportunity for profit or loss and the worker's investment as a single factor.[218] Nearly all circuit courts expressly consider a sixth factor, whether the work is an integral part of the employer's business. The Fifth Circuit has not adopted the integral factor but has at times assessed integrality as an additional relevant factor.[219]

Because the 2021 IC Rule focused on these slight variations among some of the factors or how to apply certain factors, it overlooked both the broader fact that the ultimate inquiry has remained unchanged as well as the extent of the consistency in use of the economic reality test among the courts of appeals. The economic reality test, the case law, and the Department's position have remained remarkably consistent since the 1940's—the test's focus has remained on whether the worker is in business for themself, with the inquiry directed toward the question of economic dependence. It is not surprising that some courts and the Department may have used slightly different iterations of the factors over the last several decades, as the factors ''are aids—tools to be used to gauge the degree of dependence of alleged employees on the business with which they are connected.'' [220] These factors are only guideposts, and ''[i]t is dependence that indicates employee status. Each [factor] must be applied with that ultimate notion in mind.'' [221] This is why most courts, and the Department, have long made clear that additional factors may be relevant when applying the test to a particular case. It is also expected that outcomes may vary somewhat among workers in the same profession, for example, because the test demands a fact-specific analysis and facts like job titles may not be probative of the economic realities of the relationship. In undertaking this analysis, each factor is examined and analyzed in relation to one another and to the Act's definitions. The test should not be approached in a formulaic manner, neglecting to consider the statutory framework upon which the test is based. Importantly, ''[n]one of these factors is determinative on its own, and each must be considered with an eye toward the ultimate question—the worker's economic dependence on or independence from the alleged employer.'' [222]

With this proposed rulemaking, the Department describes the economic reality factors that reflect the totality-of-the-circumstances approach that courts have taken for decades, and provides an analysis as to how the Department considers each factor in today's workplaces, based on case law and the Department's enforcement expertise in this area. For example, the proposed investment factor is returned to being a standalone factor, considers facts such as whether the investment is capital or entrepreneurial in nature, and considers the worker's investments relative to the employer's investments. Significant additional guidance is provided for the

of the economic reality test to determine employee status based on *Encino.*

[207] *Hopkins* v. *Cornerstone Am.,* 545 F.3d 338, 343 (5th Cir. 2008) (citing *Darden,* 503 U.S. at 326; *Herman* v. *Express Sixty-Minutes Delivery Serv., Inc.,* 161 F.3d 299, 303 (5th Cir. 1998)).

[208] *Id.* (citing *Express Sixty-Minutes,* 161 F.3d at 303).

[209] *Id.* (emphasis in the original); *see also Pilgrim Equip.,* 527 F.2d at 1311–12 (''[T]he final and determinative question must be whether the total of the testing establishes the personnel are so dependent upon the business with which they are connected that they come within the protection of [the] FLSA or are sufficiently independent to lie outside its ambit.'').

[210] *See, e.g., Flint Eng'g,* 137 F.3d at 1441 (explaining that ''[n]one of the factors alone is dispositive; instead, the court must employ a totality-of-the-circumstances approach'').

[211] 331 U.S. at 716.

[212] *See id.*

[213] *Rutherford,* 331 U.S. at 729–30.

[214] *See generally supra* nn. 51–52.

[215] *See, e.g., Cornerstone Am.,* 545 F.3d at 344 (discussing relative investments); *Superior Care,* 840 F.2d at 1060 (discussing the use of skill as it relates to business-like initiative).

[216] 86 FR 1170; *see also Saleem* v. *Corporate Transp. Grp., Ltd.,* 854 F.3d 131,139–40 (2d Cir. 2020); *Cornerstone Am.,* 545 F.3d at 343; *Keller* v. *Miri Microsystems LLC,* 781 F.3d 799, 807 (6th Cir. 2015); *Flint Eng'g,* 137 F.3d at 1440–41.

[217] *Superior Care, Inc.,* 840 F.2d at 1058–59; *DialAmerica,* 757 F.2d at 1382–83; *McFeeley,* 825 F.3d at 241; *Off Duty Police,* 915 F.3d at 1055; *Lauritzen,* 835 F.2d at 1534–35; *Alpha & Omega,* 39 F.4th at 1082; *Driscoll,* 603 F.2d at 754–55; *Paragon,* 884 F.3d at 1235; *Scantland,* 721 F.3d at 1311–12; *Morrison,* 253 F.3d at 11.

[218] *See, e.g., Superior Care,* 840 F.2d at 1058–59; *Morrison,* 253 F.3d at 11 (citing *Superior Care,* 840 F.2d at 1058–59).

[219] *See, e.g., Hobbs,* 946 F.3d at 836.

[220] *Pilgrim Equip.,* 527 F.2d at 1311.

[221] *Id.*

[222] *Off Duty Police,* 915 F.3d at 1055 (alterations and internal quotations omitted).

proposed control factor, including detailed discussions of how scheduling, supervision, price-setting, and the ability to work for others should be considered when analyzing the degree of control exerted over a worker. And the proposed integral factor is returned to its longstanding Departmental and judicial interpretation, rather than the ''integrated unit of production'' approach that was included in the 2021 IC Rule.

This totality-of-the-circumstances analysis considers all factors that may be relevant and, in accordance with the case law, does not assign any of the factors a predetermined weight. While the 2021 IC Rule aspired to provide a clearer test, the Department believes, upon further consideration, that the weighted analysis in the 2021 IC Rule, which could have the effect of winnowing the test to two ''core'' factors—control and opportunity for profit or loss—sits in tension with decades of instruction from the Supreme Court and the circuit courts of appeals, as well as the Department's own longstanding position that no factor or subset of factors should carry more or less weight in all cases. The 2021 IC Rule also errs in bringing the test closer to the common law test, which is inconsistent with the plain text of the Act and the case law interpreting it.[223] Limiting and weighting the factors in such a predetermined manner undermines the very purpose of the test, which is to consider—based on the economic realities—whether a worker is economically dependent on the employer for work or is in business for themself.[224] Importantly, each factor, considered in isolation, does not determine whether a worker is economically dependent on an employer for work or in business for themself. Rather, the factors are merely tools or indicators and must be analyzed together in order to answer this ultimate inquiry.[225]

This is not to say that in a particular case one factor may not be more or less probative than others—this is to be expected in each fact-specific analysis. One or more factors may be more probative than the other factors depending on the facts and circumstances of a case; the analysis, however, cannot be conducted like a scorecard or a checklist. For example, two factors that strongly indicate employment status in a particular case could possibly outweigh other factors that indicate independent contractor status. But to assign a predetermined and immutable weight to certain factors ignores the totality-of-the-circumstances, fact-specific nature of the inquiry that is intended to reach a multitude of employment relationships across occupations and industries and over time. Similarly, it is possible that not every factor will be particularly relevant in each case and that is also to be expected.[226]

Thus, the economic reality factors help determine whether a worker is in business for themself or is instead economically dependent on the employer for work.[227] ''Ultimately, in considering economic dependence, the court focuses on whether an individual is 'in business for himself' or is 'dependent upon finding employment in the business of others.' '' [228] Economic dependence, however, ''does not concern whether the workers at issue depend on the money they earn for obtaining the necessities of life . . . . Rather, it examines whether the workers are dependent on a particular business or organization for their continued employment.'' [229] Additionally, consistent with the 2021 IC Rule, economic dependence does not mean that a worker who works for other employers, earns a very limited income from a particular employer, or is independently wealthy, cannot nevertheless be economically dependent on that employer for purposes of the FLSA.[230] As the Fifth Circuit has explained, ''it is not dependence in the sense that one could not survive without the income from the job that we examine, but dependence for continued employment.'' [231]

The 2021 IC Rule stated that one of the reasons for that rulemaking was to reduce ''overlap'' between factors.[232] In the effort to eliminate redundancy, the 2021 IC Rule limits full consideration of how the factors may interrelate or be more relevant in certain factual scenarios than others. Upon further consideration, the Department believes that emphasizing the discrete nature of each particular factor and evaluating each factor in a vacuum fails to analyze potential employment relationships in the manner demanded by the Act's text and accompanying case law. The Act's definitions envision a broad range of potential employment relationships—defining ''employer'' as including ''any person acting directly or indirectly in the interest of an employer in relation to an employee'' and using the ''suffer or permit'' standard—and the test needs to be applicable to all of those potential relationships.[233] The Department recognizes that there are a variety of bona fide independent contractor relationships that need to be adequately addressed by the test as well.[234]

Applying a formulaic or rote analysis that isolates each factor is contrary to decades of case law, decreases the utility of the economic reality test, and makes it harder to analyze the ultimate inquiry of economic dependence. Rather, the analysis needs to be flexible enough to work for all kinds of jobs, all kinds of workers, from traditional economy jobs to jobs in emerging business models. A multifactor, totality-of-the-circumstances test provides that flexibility, which is why it has been used for more than 75 years to determine which workers receive the Act's basic labor protections. Making the test facially simpler by, for example, limiting consideration of the employment relationship to only two ''core'' factors (as the 2021 IC Rule in

[223] *See supra* section III.A.2.

[224] *See, e.g., Scantland,* 721 F.3d at 1312 (quoting *Mednick* v. *Albert Enters., Inc.,* 508 F.2d 297, 301–02 (5th Cir. 1975)); *see also Saleem,* 854 F.3d at 139–140; *Brock* v. *Mr. W Fireworks, Inc.,* 814 F.2d 1042, 1054–55 (5th Cir. 1987).

[225] *See, e.g., Scantland,* 721 F.3d at 1312 (the economic reality factors ''serve as guides, [and] the overarching focus of the inquiry is economic dependence''); *Pilgrim Equip.,* 527 F.2d at 1311 (The economic reality factors ''are aids—tools to be used to gauge the degree of dependence of alleged employees on the business with which they are connected. It is dependence that indicates employee status. Each test must be applied with that ultimate notion in mind.'').

[226] *See, e.g., Lauritzen,* 835 F.2d at 1534 (referring to the economic reality factors and stating that ''[c]ertain criteria have been developed to assist in determining the true nature of the relationship, but no criterion is by itself, or by its absence, dispositive or controlling.'').

[227] *See, e.g., Cornerstone Am.,* 545 F.3d at 343 (''To determine if a worker qualifies as an employee, we focus on whether, as a matter of economic reality, the worker is economically dependent upon the alleged employer or is instead in business for himself.''); *Flint Eng'g,* 137 F.3d at 1440 (noting that the economic realities of the relationship govern, and the focal point is whether the individual is economically dependent on the business to which he renders service or is, as a matter of economic fact, in business for himself); *Superior Care,* 840 F.2d at 1059 (''The ultimate concern is whether, as a matter of economic reality, the workers depend upon someone else's business . . . or are in business for themselves.'').

[228] *Scantland,* 721 F.3d at 1312 (quoting *Mednick,* 508 F.2d at 301–02).

[229] *DialAmerica,* 757 F.2d at 1385.

[230] *See* 86 FR 1173; *see also McLaughlin* v. *Seafood, Inc.,* 861 F.2d 450, 452–53 (5th Cir. 1988) (reasoning that ''[l]aborers who work for two different employers on alternate days are no less economically dependent than laborers who work for a single employer''); *Halferty* v. *Pulse Drug Co.,* 821 F.2d 261, 267–68 (5th Cir. 1987) (rejecting the employer's argument that the worker's wages were too little to constitute dependence).

[231] *See Halferty,* 821 F.2d at 268.

[232] 86 FR 1202.

[233] *See* 29 U.S.C. 203(d), (g).

[234] Independent contractors are not ''employees'' for purposes of the FLSA. *See generally Portland Terminal,* 330 U.S. at 152 (stating that the ''definition 'suffer or permit to work' was obviously not intended to stamp all persons as employees'').

effect does in some cases), ranking all of the factors, or creating a checklist, is unfaithful to the text of the Act and decades of case law. It also ignores what the test is required to do, which is to provide a totality-of-the-circumstances analysis to determine, in a wide variety of settings, which workers are economically dependent on their employers for work and should receive the basic labor protections of the Act. The FLSA applies to an extremely broad scope of employment relationships, and only workers who are in business for themselves are excluded from its coverage as independent contractors. The economic reality test, applied in view of the Act's definitions and with a focus on economic dependence, is able to assess that scope of potential employment relationships.

The Department is providing a detailed analysis about the application of each factor in this NPRM based on case law and the Department's enforcement experience as a guide for employers and workers in determining whether a worker is an employee or an independent contractor. Each factor is reviewed with the ultimate inquiry in mind: whether the worker is economically dependent on the employer for work or in business for themself. The following discussion addresses each of the economic reality factors, including proposed revisions made to each to better reflect the weight of legal authority throughout the country.

1. Opportunity for Profit or Loss Depending on Managerial Skill (Proposed § 795.110(b)(1))

Section 795.105(d)(1)(ii) of the 2021 IC Rule states that the opportunity for profit or loss factor ''weighs towards the individual being an independent contractor to the extent the individual has an opportunity to earn profits or incur losses based on his or her exercise of initiative (such as managerial skill or business acumen or judgment) or management of his or her investment in or capital expenditure on, for example, helpers or equipment or material to further his or her work.'' [235] The provision also states that, ''[w]hile the effects of the individual's exercise of initiative and management of investment are both considered under this factor, the individual does not need to have an opportunity for profit or loss based on both for this factor to weigh towards the individual being an independent contractor.'' [236] Finally, the provision provides that ''[t]his factor weighs towards the individual being an employee to the extent the individual is unable to affect his or her earnings or is only able to do so by working more hours or faster.'' [237]

Proposed § 795.110(b)(1) focuses the opportunity for profit or loss factor on whether the worker exercises managerial skill that affects the worker's economic success or failure in performing the work. The 2021 IC Rule similarly considered managerial skill, as noted above. As discussed below, however, the Department is proposing to consider investment as a separate factor in the analysis, unlike the approach in the 2021 IC Rule. The proposed provision provides guidance on the application of this factor, including a non-exhaustive list of relevant facts to consider. And the proposed provision states that if a worker has no opportunity for a profit or loss, then that fact suggests that the worker is an employee. Similar to the 2021 IC Rule, the proposal states that some decisions by a worker that can affect the amount of pay that a worker receives, such as the decision to work more hours or take more jobs, generally do not reflect the exercise of managerial skill indicating independent contractor status under this factor. Compared to the 2021 IC Rule, proposed § 795.110(b)(1) more accurately reflects the consideration of the profit or loss factor in the case law and reflects the ultimate inquiry into the worker's economic dependence or independence.

Many circuit courts of appeals apply this factor with an eye to whether the worker is using managerial skill to affect the worker's opportunity for profit or loss. For example, the Third Circuit describes the factor as the opportunity for profit or loss depending on managerial skill.[238] In *Razak* v. *Uber Technologies, Inc.,* the Third Circuit reversed the district court's ruling that this factor indicated independent contractor status, holding that, because the employer ''decides (1) the fare[,] (2) which driver receives a trip request[,] (3) whether to refund or cancel a passenger's fare[,] and (4) a driver's territory,'' ''a reasonable fact-finder'' could ''rule in favor of'' employee status on this factor.[239] In *Verma* v. *3001 Castor, Inc.,* the Third Circuit acknowledged that each exotic dancer ''had some degree of control over her profits and losses'' by attracting followers to the club, but explained that managerial skill is ''the relevant factor here.'' [240] After cataloguing the numerous ways in which the employer determined and managed the dancers' opportunity for profit or loss (such as determining the hours of operation, deciding whether to charge an admission fee, setting the length and price of dances on stage and in private rooms, and managing the club's atmosphere, operations, and advertising), the court ultimately found that any managerial skills exercised by the dancers had ''minimal influence,'' and ruled that this factor weighed in favor of employee status.[241]

Other courts likewise consider whether the workers' opportunities for profit or loss depend on their managerial skill.[242] In *McFeeley* v. *Jackson Street Entertainment, LLC,* the Fourth Circuit found that the dancers' ''opportunities for profit or loss depended far more on [the employer's] management and decision-making than on their own'' because the employer controlled the client base, handled all advertising, managed the club's atmosphere, and determined pricing.[243] And in *Schultz* v. *Capital International Security, Inc.,* the court concluded that ''[t]here is no evidence the agents could exercise or hone their managerial skill to increase their pay.'' [244] The Sixth Circuit likewise assesses whether the workers' opportunities for profit or loss depend on their managerial skill.[245] For example, in *Acosta* v. *Off Duty Police Services, Inc.,* the Sixth Circuit ruled that this factor favored employee status because the workers ''earned a set hourly wage regardless of'' the managerial skill they exercised, and the employer required them to work fixed hourly shifts ''regardless of what skills they exercised, so workers could not complete jobs more or less efficiently than their counterparts.'' [246] The Seventh, Ninth, and Eleventh Circuits also describe this factor as the worker's

[235] 86 FR 1247.

[236] *Id.*

[237] *Id.*

[238] *See, e.g., Razak* v. *Uber Techs., Inc.,* 951 F.3d 137, 146 (3d Cir.), *amended,* 979 F.3d 192 (3d Cir. 2020), *and cert. denied,* 141 S. Ct. 2629 (2021); *Verma* v. *3001 Castor, Inc.,* 937 F.3d 221, 229 (3d Cir. 2019) (citing *Selker Bros.,* 949 F.2d at 1293).

[239] 951 F.3d at 146–47.

[240] 937 F.3d at 230–31.

[241] *Id.* at 231.

[242] *See, e.g., McFeeley,* 825 F.3d at 241 (citing *Schultz* v. *Capital Int'l Sec., Inc.,* 466 F.3d 298, 304–05 (4th Cir. 2006)).

[243] 825 F.3d at 243.

[244] 466 F.3d at 308.

[245] *See, e.g., Off Duty Police,* 915 F.3d at 1059; *Keller,* 781 F.3d at 812 (describing this factor as whether the worker ''had an opportunity for greater profits based on his management and technical skills'').

[246] 915 F.3d at 1059. In response to the employer's argument that the workers could accept or reject shifts, the court explained that ''[w]hile the decision to accept or reject work is a type of managerial *action,* the relevant question is whether workers could increase profits through managerial *skill.*'' *Id.* (emphases in original).

opportunity for profit or loss depending on the worker's managerial skill.[247]

Other circuits do not articulate this factor by expressly using the words ''managerial skill,'' but they nonetheless apply the factor in a very similar way by focusing on whether the worker has an opportunity to use ''initiative'' or ''judgment'' to affect profits or losses. For example, the Tenth Circuit has found that this factor favored employee status because the workers' ''earnings did not depend upon their judgment or initiative, but on the [employer's] need for their work.'' [248] And when affirming a ruling that this factor indicated employee status in another case, the Tenth Circuit explained that the workers ''exercise independent initiative only in locating new work assignments,'' and ''[w]hile working on a particular assignment, there is little or no room for initiative (certainly none related to profit or loss).'' [249] The Second Circuit, although it considers the workers' opportunities for profit or loss along with their investment as one factor,[250] similarly evaluates the extent to which the workers' business judgment or acumen affects their opportunity for profit or loss. In *Franze* v. *Bimbo Bakeries USA, Inc.,* the Second Circuit found this factor to favor independent contractor status because the workers purchased delivery territories that could ultimately be sold again and the overall value of their territories ''primarily depended on their own business judgment and foresight in modifying their territories and managing day-to-day costs, suggesting that they bore the risks of their decisions.'' [251] And in *Saleem* v. *Corporate Transportation Group, Ltd.,* the Second Circuit found that the workers ''possessed considerable independence in maximizing their income through a variety of means'' and their profits increased through their initiative, judgment, and foresight—indicating independent contractor status.[252]

By concentrating on the degree to which the worker's opportunity for profit or loss is determined by the employer,[253] the Fifth Circuit focuses on whether the worker exercises judgment or initiative vis-a-vis the employer to affect profit or loss and thus takes a related approach to this factor. In *Hobbs* v. *Petroplex Pipe & Construction, Inc.,* for example, the Fifth Circuit relied on the facts that the workers never negotiated their rates of pay (the employer set a fixed hourly rate) and ''the work schedule imposed by [the employer] severely limited the [workers'] opportunity for profit or loss'' (meaning that ''it would have been unrealistic for them to have worked for other companies'') to affirm a finding that this factor indicated employee status.[254] In *Hopkins* v. *Cornerstone America,* the Fifth Circuit found that this factor weighed in favor of employee status because ''[t]he major determinants of the Sales Leaders' profit or loss were controlled almost exclusively by [the employer],'' including ''the hiring, firing, and assignment of subordinate agents,'' the ''overwrite commissions,'' the ''distribution of sales leads,'' which products they could sell, and their territories.[255] In *Parrish* v. *Premier Directional Drilling, L.P.,* the Fifth Circuit found that the workers had ''enough control over their profits and losses to have this factor support [independent contractor] status,'' including by making ''decisions affecting their expenses.'' [256] And in *Herman* v. *Express Sixty-Minutes Delivery Service, Inc.,* the Fifth Circuit affirmed the district court's finding that this factor favored independent contractor status because ''a driver's profit or loss is determined largely on his or her skill, initiative, ability to cut costs, and understanding of the courier business.'' [257]

In AI 2015–1, the Department described this factor as whether the worker's managerial skill affects the worker's opportunity for profit or loss and explained that this factor focuses ''on whether the worker has the ability to make decisions and use his or her managerial skill and initiative to affect opportunity for profit or loss.'' [258] Section 795.105(d)(1)(ii) of the 2021 IC Rule similarly considers the impact of the worker's initiative and managerial skill on the opportunity for profits or losses, discussing the worker's ''exercise of initiative (such as managerial skill or business acumen or judgment).'' [259] It also considers the impact of the worker's ''management of his or her investment in or capital expenditure on, for example, helpers or equipment or material to further his or her work'' on the worker's opportunity for profit or loss.[260] For the reasons explained below, however, the Department is proposing that investment be a separate, standalone factor in the analysis.[261]

Focusing on managerial skill, proposed § 795.110(b)(1) sets forth the following facts, which among others, can be relevant to assessing the degree to which the worker's managerial skill affects the worker's economic success or failure in performing the work: whether the worker determines the charge or pay for the work provided (or at least can meaningfully negotiate it); whether the worker accepts or declines jobs or chooses or can meaningfully negotiate the order and/or time in which the jobs are performed; whether the worker engages in marketing, advertising, or other efforts to expand their business or secure more work; and whether the worker makes decisions to hire others, purchase materials and equipment, and/or rent space (as opposed to the amount and nature of the worker's investment).

In addition to those facts, whether the worker actually has an opportunity for a loss should be considered. Consistent with the overall inquiry of determining whether a worker is economically dependent on the employer or in business for themself, the fact that a worker has no opportunity for a loss indicates employee status. On the other hand, workers who are in business for themselves face the possibility of experiencing a loss, and the risk of a loss as a possible result of the worker's managerial decisions indicates independent contractor status. Workers who incur little or no costs or expenses, simply provide their labor, and/or are paid an hourly or flat rate are unlikely to possibly experience a loss, and this factor may suggest employee status in those circumstances. The fact that workers may earn more or less at times (and their earnings may decline)

[247] *See, e.g., Lauritzen,* 835 F.2d at 1535; *Iontchev* v. *AAA Cab Serv., Inc.,* 685 F. App'x 548, 550 (9th Cir. 2017) (finding that the workers' ''opportunity for profit or loss depended upon their managerial skill''); *Driscoll,* 603 F.2d at 754–55; *Scantland,* 721 F.3d at 1312. And the Eighth Circuit recently described this factor as ''whether workers had control over profits and losses depending on their 'managerial skill.' '' *Alpha & Omega,* 39 F.4th at 1084.

[248] *Snell,* 875 F.2d at 810.

[249] *Flint Eng'g,* 137 F.3d at 1441.

[250] *See, e.g., Franze,* 826 F. App'x at 76; *Superior Care,* 840 F.2d at 1058–59.

[251] 826 F. App'x at 77–78 (internal quotations omitted).

[252] 854 F.3d at 143–44.

[253] *See, e.g., Hobbs,* 946 F.3d at 832–34; *Parrish.,* 917 F.3d at 384–85.

[254] 946 F.3d at 833–34.

[255] 545 F.3d 338, 344–45 (5th Cir. 2008).

[256] 917 F.3d at 384–85. The workers could also turn down work and negotiate their pay. *See id.* at 376.

[257] 161 F.3d at 304.

[258] AI 2015–1, 2015 WL 4449086, at *6 & n.7 (withdrawn June 7, 2017).

[259] 86 FR 1247.

[260] *Id.*

[261] *See infra,* section V.C.2. In addition to the explanation set forth *infra,* the Department is concerned by situations where workers are required to make a significant upfront payment in order to be allowed to perform work as non-employees but they exercise little, if any, managerial skill. In those situations, application of the opportunity for profit or loss factor should indicate employee status because of the lack of managerial skills affecting the opportunity for profit or loss.

depending on how much they work is not the equivalent of experiencing a financial loss.

For example, the Third Circuit has explained that certain workers whose earnings ''derived primarily from their fixed commission'' from the employer and ''were not tied to price levels and resale profit margins'' had ''no meaningful opportunities for profit *nor any significant risk of financial loss,*'' indicating employee status.[262] Yet, a finding that workers ''risked financial loss'' indicates independent contractor status.[263] The Tenth Circuit has explained, in a case finding that this factor favored employee status, that the workers ''did not undertake the risks usually associated with an independent business,'' ''there was no way that [they] could experience a business loss,'' and ''[a] reduction in money earned by the [workers] is not a 'loss' sufficient to satisfy the criteria for independent contractor status.'' [264] The Seventh Circuit has explained, in a case involving migrant farm workers, that they had no possibility of a loss and that ''[a]ny reduction in earnings due to a poor pickle crop is a loss of wages, and not of an investment.'' [265] And the Sixth Circuit has explained in a case involving workers paid by the hour that they did not ''appear to have been at risk of a loss based on their decision to work or not'' and that ''[d]ecreased pay from working fewer hours does not qualify as a loss.'' [266] Relatedly, the fact that an employer may impose fines, penalties, or chargebacks on a worker for faulty performance does not mean that the worker may experience a loss. The Eleventh Circuit has explained that the ''argument that plaintiffs could control losses by avoiding chargebacks is unpersuasive,'' elaborating that ''[c]hargebacks relate to the quality of a technician's skill, not his managerial or entrepreneurial prowess.'' [267]

Some decisions by a worker that may affect the worker's earnings do not necessarily reflect managerial skill. Accordingly, proposed § 795.110(b)(1) explains that a worker's decision to work more hours (when paid hourly) or work more jobs (when paid a flat fee per job) where the employer controls assignment of hours or jobs is similar to decisions that employees routinely make and does not reflect managerial skill.

The Eleventh Circuit explained in a case involving cable installers that their ''opportunity for profit was largely limited to their ability to complete more jobs than assigned, which is analogous to an employee's ability to take on overtime work or an efficient piece-rate worker's ability to produce more pieces.'' [268] The court further explained that a worker's ''ability to earn more by being more technically proficient is unrelated to [the worker's] ability to earn or lose profit via his managerial skill, and it does not indicate that he operates his own business.'' [269] The Fourth Circuit similarly explained in a case involving security guards that the guards could not ''exercise or hone their managerial skill to increase their pay'' because the employer ''paid [them] a set rate for each shift worked'' and the customer's ''schedule and security needs dictated the number of shifts available and the hours worked.'' [270] And the Sixth Circuit explained in a case involving workers paid by the hour that they ''earned a set hourly wage regardless of the skill they exercised.'' [271] By comparison, the Eighth Circuit found in a case involving a process server that, because the worker decided where and how often to work and ''decided which assignments he was willing to accept'' based on the worker's own decisions regarding which jobs were more or less profitable and without any negative consequences imposed by the employer, this factor indicated independent contractor status.[272] Thus, where a worker is paid by the job, the worker's decision to work more jobs and the worker's technical proficiency in completing each job are not the type of managerial skill that would indicate independent contractor status under this factor.

Proposed § 795.110(b)(1) is consistent on this point with 2021 IC Rule § 795.105(d)(1)(ii), which states that the opportunity for profit or loss factor ''weighs towards the individual being an employee to the extent the individual is unable to affect his or her earnings or is only able to do so by working more hours or faster.'' [273] The Department likewise stated in AI 2015–1 that a ''worker's ability to work more hours and the amount of work available from the employer have nothing to do with the worker's managerial skill and do little to separate employees from independent contractors—both of whom are likely to earn more if they work more and if there is more work available.'' [274] Thus, the Department's proposed regulation on this point is consistent with its prior guidance in addition to being supported by case law.[275]

The Department welcomes comments on all aspects of this factor.

Example: Opportunity for Profit or Loss Depending on Managerial Skill [276]

A worker for a landscaping company performs assignments only as determined by the company for its corporate clients. The worker does not independently choose assignments, solicit additional work from other clients, advertise their services, or endeavor to reduce costs. The worker regularly agrees to work additional hours in order to earn more. In this scenario, the worker does not exercise managerial skill that affects their profit or loss. Rather, their earnings may fluctuate based on the work available and their willingness to work more.

[262] *Selker Bros.,* 949 F.2d at 1294 (emphasis added).

[263] *DialAmerica,* 757 F.2d at 1386.

[264] *Snell,* 875 F.2d at 810. *See also Flint Eng'g,* 137 F.3d at 1441 (''[P]laintiffs are hired on a per-hour basis rather than on a flat-rate-per-job basis. There is no incentive for plaintiffs to work faster or more efficiently in order to increase their opportunity for profit. Moreover, there is absolutely no risk of loss on plaintiffs' part.'').

[265] *Lauritzen,* 835 F.2d at 1536.

[266] *Off Duty Police,* 915 F.3d at 1059.

[267] *Scantland,* 721 F.3d at 1317.

[268] *Id.* at 1316–17.

[269] *Id.* at 1317.

[270] *Capital Int'l,* 466 F.3d at 308.

[271] *Off Duty Police,* 915 F.3d at 1059. *See also Snell,* 875 F.2d at 810 (cake decorators' ''earnings did not depend upon their judgment or initiative, but on the [employer's] need for their work''); *Collinge* v. *IntelliQuick Delivery, Inc.,* No. 2:12-cv-00824 JWS, 2015 WL 1299369, at *4–5 (D. Ariz. Mar. 23, 2015) (workers could not increase profit by taking on more work, noting that ''a worker's ability to simply work more is irrelevant'' because ''[m]ore work may lead to more revenue, but not necessarily more profit''); *Solis* v. *Kansas City Transp. Grp.,* No. 10–0887–CV–W–REL, 2012 WL 3753736, at *9 (W.D. Mo. Aug. 28, 2012) (''The driver's ability to make more money by driving additional routes is akin to a waiter making more money by taking another shift.''); *Solis* v. *Cascom,* No. 3:09-cv-257, 2011 WL 10501391, at *6 (S.D. Ohio Sept. 21, 2011) (explaining that there was no opportunity for increased profit based on the workers' managerial skills; although they could work additional hours to increase their income, they made no decisions regarding routes, acquisition of materials, ''or any facet normally associated with operating an independent business'').

[272] *See Karlson* v. *Action Process Serv. & Priv. Investigation, LLC,* 860 F.3d 1089, 1095 (8th Cir. 2017). *See also Express Sixty-Minutes,* 161 F.3d at 304 (opportunity for profit or loss factor indicated independent contractor status because the drivers could choose among ''which jobs were most profitable'').

[273] 86 FR 1247.

[274] 2015 WL 4449086, at *6 (withdrawn June 7, 2017).

[275] The Department notes, as it explains elsewhere in this proposal, that the fact that a worker has a business in an industry separate from the business in which the worker is working for the employer has little relevance when applying this factor.

[276] The Department is providing examples at the end of the discussion of each factor for the benefit of the public, and the addition or alteration of any of the facts in any of the examples may change the resulting analysis. Additionally, while the examples help illustrate the application of particular factors of the economic reality test, no one factor is determinative of whether a worker is an employee or independent contractor.

Because of this lack of managerial skill affecting opportunity for profit or loss, this factor indicates employee status.

In contrast, a worker provides landscaping services directly to corporate clients, including Company A. The worker produces their own advertising, negotiates contracts, decides which jobs to perform and when to perform them, and decides when and whether to hire helpers to assist with the work. This worker exercises managerial skill that affects their opportunity for profit or loss, indicating independent contractor status.

2. Investments by the Worker and the Employer (Proposed § 795.110(b)(2))

The Department is proposing to treat investment as a standalone factor in the economic reality analysis (consistent with the Department's approach prior to the 2021 IC Rule and with the approach of most courts) instead of considering investment within the opportunity for profit or loss factor (as § 795.105(d)(1)(ii) in the 2021 IC Rule does). Proposed § 795.110(b)(2) states that an investment borne by the worker must be capital or entrepreneurial in nature to indicate independent contractor status. Such investments, for example, generally support an independent business and serve a business-like function, such as increasing the worker's ability to do different types of or more work, reducing costs, or extending market reach, thus suggesting that the worker is in business for themself. Proposed § 795.110(b)(2) further notes that costs borne by the worker simply to perform their job (*e.g.,* tools and equipment to perform a specific job and the worker's labor) are not evidence of capital or entrepreneurial investment. Finally, proposed § 795.110(b)(2) provides that the worker's investments should be evaluated on a relative basis with the employer's investments, a position taken by many circuit courts of appeals.

From its earliest applications of the economic reality analysis until the 2021 IC Rule, the Department consistently identified the worker's investment as a separate factor in the analysis.[277] Beginning with the Supreme Court's decision in *Silk,*[278] courts with the exception of the Second and D.C. Circuits have almost universally identified the worker's investment as a separate factor.[279] Breaking from this longstanding approach, the 2021 IC Rule stated that investment is considered as part of the opportunity for profit or loss factor: ''[T]he Department adopts its proposal, consistent with Second Circuit caselaw, to consider investment as part of the opportunity factor.'' [280] The Department further stated in the 2021 IC Rule that courts consider opportunity for profit or loss and investment to be related and combining them into one factor eliminates duplicative analyses.[281]

The Department believes that the 2021 IC Rule's approach of considering investment ''as part of'' the opportunity for profit or loss factor is flawed. Section 795.105(d)(1)(ii) of the 2021 IC Rule states that the opportunity for profit or loss factor indicates independent contractor status if the worker exercises initiative *or* if the worker manages their investment in the business.[282] Under the provision, the worker ''does not need to have an opportunity for profit or loss based on both for this factor to weigh towards the individual being an independent contractor.'' [283] Thus, if either initiative or investment suggests independent contractor status, the other cannot change that outcome even if it suggests employee status. For example, under the 2021 IC Rule, if the worker makes no investment in the work but exercises initiative, then the opportunity for profit or loss factor indicates independent contractor status. In effect, that the worker makes no capital or entrepreneurial investment (a fact that indicates employee status) is eliminated from the analysis under that rule. Put another way, if a worker has an opportunity for profit or loss based on initiative, the opportunity for profit or loss factor under the 2021 IC Rule indicates independent contractor status, and the investment factor cannot reverse or weigh against that finding even if it indicates employee status as a matter of economic reality because, for example, the worker makes no investment. The Department believes that the way in which 2021 IC Rule § 795.105(d)(1)(ii) considers investment as part of the opportunity for profit or loss factor may incorrectly tilt the analysis in favor of independent contractor outcomes. Moreover, although the 2021 IC Rule purported to adopt the Second Circuit's approach of considering investment as part of opportunity for profit or loss, Second Circuit case law does not support the Rule's position that this factor indicates independent contractor status if either investment or initiative indicates an opportunity for profit or loss even if the other indicates employee status.[284]

There is little basis for an approach that always considers the worker's investment within the worker's opportunity for profit or loss factor, which can have the effect in some cases of preventing investment from affecting the analysis. The worker's investment may be relevant to whether the worker is economically dependent on the employer separate and apart from the worker's opportunity for profit or loss. This is consistent with various circuit court decisions which have found both opportunity for profit or loss and investment to be independently probative. For example, the Fifth Circuit found in *Parrish* that the investment factor favored employee status (although it merited ''little weight'' given the nature of the work) and that the opportunity for profit or loss factor favored independent contractor status.[285] In *Cromwell* v. *Driftwood Electrical Contractors, Inc.,* the Fifth Circuit conversely found that the investment factor indicated independent contractor status because the workers ''invested a relatively substantial amount in their trucks, equipment, and tools'' but that their opportunity for profit or loss was ''severely limit[ed].'' [286] In *Nieman* v. *National Claims Adjusters, Inc.,* the Eleventh Circuit found that the

[277] *See, e.g.,* WHD Op. Ltr. (Aug. 13, 1954); WHD Op. Ltr. FLSA–795 (Sept. 30, 1964); WHD Op. Ltr. (Oct. 12, 1965); WHD Op. Ltr. (Sept. 12, 1969); WHD Op. Ltr. WH–476, 1978 WL 51437, at *1 (Oct. 19, 1978); WHD Op. Ltr., 1986 WL 1171083, at *1 (Jan. 14, 1986); WHD Op. Ltr., 1986 WL 740454, at *1 (June 23, 1986); WHD Op. Ltr., 1995 WL 1032469, at *1 (Mar. 2, 1995); WHD Op. Ltr., 1995 WL 1032489, at *1 (June 5, 1995); WHD Op. Ltr., 1999 WL 1788137, at *1 (July 12, 1999); WHD Op. Ltr., 2000 WL 34444352, at *1 (July 5, 2000); WHD Op. Ltr., 2000 WL 34444342, at *3 (Dec. 7, 2000); WHD Op. Ltr., 2002 WL 32406602, at *2 (Sept. 5, 2002); WHD Fact Sheet #13, ''Employment Relationship Under the Fair Labor Standards Act (FLSA)'' (July 2008); AI 2015–1 (available at 2015 WL 4449086) (withdrawn June 7, 2017).

[278] 331 U.S. 704 (1947).

[279] *See, e.g., DialAmerica,* 757 F.2d at 1382; *McFeeley,* 825 F.3d at 241; *Hobbs,* 946 F.3d at 829; *Off Duty Police,* 915 F.3d at 1055; *Lauritzen,* 835 F.2d at 1534–35; *Alpha & Omega,* 39 F.4th at 1082; *Driscoll,* 603 F.2d at 754; *Paragon,* 884 F.3d at 1235; *Scantland,*721 F.3d at 1311. The Second Circuit and the D.C. Circuit are alone among the circuit courts of appeals in treating the worker's opportunity for profit or loss and the worker's investment as a single factor. *See, e.g., Franze,* 826 F. App'x at 76; *Superior Care,* 840 F.2d at 1058–59; *Morrison,* 253 F.3d at 11 (citing *Superior Care,* 840 F.2d at 1058–59).

[280] 86 FR 1186.

[281] *Id.* The 2021 IC Rule also cited *Silk. Id.* (citing *Silk,* 331 U.S. at 719). However, the Court in *Silk* merely decided that case based on its facts, 331 U.S. at 716–19, and in no way indicated that ''opportunities for profit or loss'' and ''investment in facilities'' must be combined into one factor when reciting each of the relevant factors separately, *id.* at 716.

[282] 86 FR 1247.

[283] *Id.*

[284] *See generally Saleem,* 854 F.3d at 141–46.

[285] 917 F.3d at 382–85.

[286] 348 F. App'x 57, 60–61 (5th Cir. 2009).

investment factor weighed in favor of independent contractor status while the opportunity for profit or loss factor did ''not weigh in favor of either'' independent contractor or employee status.[287] And in *Scantland* v. *Jeffry Knight, Inc.,* the Eleventh Circuit found that the opportunity for profit or loss factor ''point[ed] strongly toward employee status'' although the investment factor weighed slightly in favor of independent contractor status.[288] Thus, investment is relevant to the ultimate economic dependence inquiry separate and apart from opportunity for profit or loss.

For these reasons, the Department is proposing to return to treating the worker's investment as a separate factor from the opportunity for profit or loss factor.

The Department is also proposing, in addition to considering the amount and value of the worker's investment, that the nature of and reason for the investment should be considered. Specifically, proposed § 795.110(b)(2) states that for a worker's investment to indicate independent contractor status, the investment must be capital or entrepreneurial in nature. The Department believes that the worker's investment should generally support an independent business or serve a business-like function, such as increasing the worker's ability to do different types of or more work, reducing costs, or extending market reach, to indicate independent contractor status.[289] On the other hand, as proposed § 795.110(b)(2) notes, costs borne by a worker to perform a particular job are not the type of capital/entrepreneurial investments that suggest independent contractor status. The Department believes that considering the investment factor in this manner is consistent with the overall inquiry of determining whether the worker is economically dependent on the employer for work or is in business for themself. The nature of the worker's investment illuminates that distinction: an investment that is capital in nature indicates that the worker is operating as an independent business. Yet, an investment that is expedient to perform a particular job (such as tools or equipment purchased to perform the job and that have no broader use for the worker) does not indicate independence. The Department understands that independent contractors make both capital investments to generally support their business and investments to perform particular jobs; therefore, the existence of expenses to perform jobs will not prevent this factor from indicating independent contractor status so long as there are also investments that are capital in nature indicating an independent business.

Consistent with the proposed approach, many appellate court decisions have emphasized how the worker's investment must be capital in nature for it to indicate independent contractor status. For example, in *Secretary of Labor* v. *Lauritzen,* the Seventh Circuit found that migrant farm workers were not independent contractors, but employees, due in part to the lack of capital investments made by the workers.[290] As the court noted, investments that establish a worker's status as an independent contractor should ''be large expenditures, such as risk capital, capital investments, and not negligible items or labor itself. . . . The workers here are responsible only for providing their own gloves [which] do not constitute a capital investment.'' [291] In *Acosta* v. *Paragon Contractors Corp.,* the Tenth Circuit explained that ''[t]he mere fact that workers supply their own tools or equipment does not establish status as independent contractors; rather, the relevant 'investment' is 'the amount of large capital expenditures, such as risk capital and capital investments, not negligible items, or labor itself.' '' [292]

Relatedly, the use of a personal vehicle that the worker already owns to perform work—or that the worker leases as required by the employer to perform work—is generally not an investment that is capital or entrepreneurial in nature. For example, in *Scantland,* the Eleventh Circuit explained that the ''fact that most technicians will already own a vehicle suitable for the work'' suggests that there is ''little need for significant independent capital.'' [293] In *Off Duty Police,* the Sixth Circuit found that, because the workers' vehicles ''could be used for any purpose, not just on the job,'' they did not indicate independent contractor status.[294] The Fifth Circuit likewise considers the purpose of the vehicle and how the worker uses it. For example, in *Express Sixty-Minutes,* it explained that, ''[a]lthough the driver's investment of a vehicle is no small matter, that investment is somewhat diluted when one considers that the vehicle is also used by most drivers for personal purposes.'' [295] And in *Brock* v. *Mr. W Fireworks,* it noted that most of the workers in that case purchased vehicles for personal and family reasons, not business reasons.[296] This approach to considering a worker's use of a personal vehicle that the worker already owns to perform work is consistent with the overarching inquiry of examining the economic realities of the worker's relationship with the employer.

Proposed § 795.110(b)(2) additionally provides that the worker's investment be evaluated in relation to the employer's investment in its business. This approach is not only consistent with the totality-of-the-circumstances analysis that is at the heart of the economic reality test, but it would also provide factfinders with an additional tool to differentiate between a worker's economic dependence and independence based on the particular

[287] 775 F. App'x 622, 624–25 (11th Cir. 2019).

[288] 721 F.3d at 1316–18.

[289] The 2021 IC Rule suggested that a shift to a ''knowledge-based economy'' reduced the probative value of the investment factor because these types of workers can be in business for themselves ''with minimal physical capital'' investment. 86 FR 1175. That rule's suggestion would be addressed by this proposal's approach to the investment factor. By focusing on the capital or entrepreneurial nature of the worker's investment, the proposed investment factor would not be limited to considering investments in physical capital but would also consider entrepreneurial investments by a worker to develop marketable knowledge.

[290] *See* 835 F.2d at 1537.

[291] *Id.*

[292] 884 F.3d at 1236 (quoting *Snell,* 875 F.2d at 810). *See also, e.g., Off Duty Police,* 915 F.3d at 1056 (''The capital investment factor is most significant if it reveals that the worker performs a specialized service that requires a tool or application which he has mastered.' '') (quoting *Donovan* v. *Brandel,* 736 F.2d 1114, 1118–19 (6th Cir. 1984)); *Mr. W Fireworks,* 814 F.2d at 1052 (''The fact that a few [workers] engage in minimal investments has little legal relevance, when the overwhelming majority of the risk capital is supplied by [the employer].''); *Pilgrim Equip.,* 527 F.2d at 1314 (The employer's provision of ''[a]ll investment or risk capital'' and ''all costly necessities'' that the workers need to operate confirms the workers' ''total dependency'' on the employer.); *cf. Nieman,* 775 F. App'x at 625 (investment factor indicated independent contractor status because the worker ''had his own home office, a laptop, and iPad for field work and was equipped with a vehicle, ladder, measuring tools, digital voice and photographic equipment, and 'other similar tools of the trade.' '').

[293] 781 F.2d at 1318.

[294] 915 F.3d at 1056. *See also Keller,* 781 F.3d at 810–11 (fact that equipment could be used ''for both personal and professional tasks'' weakens the indication of independent contractor status).

[295] 161 F.3d at 304.

[296] 814 F.2d at 1052; *see also Sigui* v. *M + M Commc'ns, Inc.,* 484 F. Supp. 3d 29, 39 (D.R.I. 2020) (discounting relevance of workers' investment in vehicles because they could be used for other purposes), *jury verdict for plaintiffs,* 1:14–CV–00442, Dckt. No. 172 (June 13, 2022); *Roeder* v. *DirecTV, Inc.,* No. C14–4091–LTS, 2017 WL 151401, at *17 (N.D. Iowa Jan. 13, 2017) (rejecting argument that ''plaintiffs' purchase and/or use of personal vehicles [weighs] in favor of finding plaintiffs were independent contractors'' because the ''vehicles had been purchased prior to taking DIRECTV work orders'' and the record does not indicate that the vehicles were purchased for any business purpose).

facts of the case. Comparing the worker's investment to the employer's investment can be a gauge of the worker's independence or dependence. If the worker's investment compares favorably to the employer's investment, then that fact suggests independence on the worker's part and the existence of a business-to-business relationship between the worker and the employer. If the worker's investment does not compare favorably to the employer's investment, then that fact suggests that the worker is economically dependent and an employee of the employer. The Department understands that a worker's investment need not be (and rarely ever is) of the same magnitude and scope as the employer's investment to indicate that the worker is an independent contractor. Thus, although a worker's investment need not be on par with the employer's investment, it should support an independent business for this factor to indicate independent contractor status.

The Department has previously, but not consistently, explained that a worker's investment should be considered in relation to the employer's investment in its business. For example, in the Withdrawal Rule, the Department questioned the 2021 IC Rule's preclusion of consideration of the employer's investment.[297] In AI 2015–1, the Department explained that a worker's investment ''should not be considered in isolation'' because ''it is the relative investments that matter.'' [298] AI 2015–1 further explained that, in addition to ''the nature of the investment,'' ''comparing the worker's investment to the employer's investment helps determine whether the worker is an independent business.'' [299] The Department also compared the worker's and the employer's relative investments in opinion letters issued by the Wage and Hour Division.[300] However, in the 2021 IC Rule, the Department rejected any comparison of the worker's investment to the employer's investment in its business.[301] Because of the Department's inconsistency on this point, it is important for the Department to address this point in this rulemaking.

Numerous circuit courts of appeals consider the worker's investment in the work in comparison to the employer's investment in its business. For example, the Fifth Circuit has explained that it ''consider[s] the relative investments'' and that, ''[i]n considering this factor, 'we compare each worker's *individual* investment to that of the alleged employer.''' [302] The Tenth Circuit has similarly explained that, ''[t]o analyze this factor, we compare the investments of the worker and the alleged employer.'' [303] The Sixth Circuit has explained that ''[t]his factor requires comparison of the worker's total investment to the 'company's total investment, including office rental space, advertising, software, phone systems, or insurance.' '' [304] And the Fourth Circuit has compared the employers' payment of rent, bills, insurance, and advertising expenses to the workers' ''limited'' investment in their work.[305]

A few circuits do not compare the worker's investment in the work to the employer's investment in its business. For example, the Second Circuit has recently focused on whether the worker has made a significant investment, irrespective of the employer's investment. In *Saleem,* the Second Circuit stated (like many other courts) that under ''the economic reality test, 'large capital expenditures'—as opposed to 'negligible items, or labor itself'—are highly relevant to determining whether an individual is an employee or an independent contractor.'' [306] The Second Circuit elaborated that the key is whether the worker's financial investment was made in order to generate a return on the investment.[307] The Eleventh Circuit has likewise focused on the nature of the worker's investment without comparing it to the employer's investment.[308] Neither the Second Circuit nor the Eleventh Circuit have expressly rejected comparing the investments, and as explained herein, the Department believes that comparing investments is consistent with the totality-of-the-circumstances analysis and is helpful in distinguishing between a worker's economic dependence and independence.

The usefulness of comparing the worker's investment to the employer's investment is not undermined because certain decisions from the Fifth and Eighth Circuits gave little weight to the comparison based on the facts and circumstances of the particular cases before them.[309] The Fifth Circuit decisions (*Parrish* and *Cornerstone America*) compared the relative investments as part of their analyses.[310] Although the *Parrish* decision accorded the relative investment factor ''little weight in the light of the other summary-judgment-record evidence supporting IC-status,'' [311] this does not support the conclusion that this factor is not useful. Instead, it simply reflects the Fifth Circuit's faithful application in that case of a totality-of-the-

[297] *See* 86 FR 24313–24314 (as explained in section II.E. *supra,* the Withdrawal Rule was vacated by a district court decision that is currently on appeal before the Fifth Circuit).

[298] 2015 WL 4449086, at *8 (withdrawn June 7, 2017).

[299] *Id.*

[300] *See* WHD Op. Ltr., 2002 WL 32406602, at *1–2 (Sept. 5, 2002) (workers' ''hand tools, which can cost between $5,000 and $10,000,'' were ''small in comparison to [the employer's] investment,'' but the ''amount is none the less substantial'' and ''thus indicative of an independent contractor relationship''); WHD Op. Ltr., 2000 WL 34444342, at *4 (Dec. 7, 2000) (comparing ''the relative investments'' of the worker and the employer is the correct approach).

[301] *See* 86 FR 1188 (''comparing the individual worker's investment to the potential employer's investment should not be part of the analysis of investment''). *See also* WHD Fact Sheet #13 (July 2008) (describing the factor as ''[t]he amount of the [worker's] investment in facilities and equipment'' without any further discussion).

[302] *Hobbs,* 946 F.3d at 831–32 (quoting *Cornerstone Am.,* 545 F.3d at 344) (emphasis in quoted language).

[303] *Paragon,* 884 F.3d at 1236; *see also Flint Eng'g,* 137 F.3d at 1442 (''In making a finding on this factor, it is appropriate to compare the worker's individual investment to the employer's investment in the overall operation.'').

[304] *Off Duty Police,* 915 F.3d at 1056 (quoting *Keller,* 781 F.3d at 810).

[305] *McFeeley,* 825 F.3d at 243. *See also Verma,* 937 F.3d at 231 (summarizing how courts have viewed this factor in cases examining the employment status of exotic dancers: ''all concluded that 'a dancer's investment is minor when compared to the club's investment' '') (quoting the district court's decision); *Lauritzen,* 835 F.2d at 1537 (disagreeing that ''the overall size of the investment by the employer relative to that by the worker is irrelevant'' and finding that ''that the migrant workers' disproportionately small stake in the pickle-farming operation is an indication that their work is not independent of the defendants''); *Driscoll,* 603 F.2d at 755 (strawberry growers' investment in light equipment, including hoes, shovels, and picking carts was ''minimal in comparison'' with employer's total investment in land and heavy machinery); *see also Iontchev,* 685 F. App'x at 550 (noting that the drivers ''invested in equipment or materials and employed helpers to perform their work'' but concluding that the investment factor was ''neutral'' because the cab company ''leased taxicabs and credit card machines to most of the [drivers]'').

[306] 854 F.3d at 144 (quoting *Snell,* 875 F.2d at 810).

[307] *Id.* at 144–46; *see also Franze,* 826 F. App'x at 77–78 (purchasing delivery routes ''without any financial assistance from Bimbo'' constitutes a substantial financial outlay that weighs in favor of independent contractor status).

[308] *Scantland,* 721 F.3d at 1317–18; *see also Nieman,* 775 F. App'x at 625.

[309] The 2021 IC Rule cited these decisions from the Fifth and Eighth Circuits in rejecting the relative investments approach. *See* 86 FR 1188.

[310] *See Parrish,* 917 F.3d at 382–83 (explaining that ''[o]ur court uses a side-by-side comparison method in evaluating this factor'' and determining that the relative investments factor favors employee status); *Cornerstone Am.,* 545 F.3d at 344 (explaining that ''we compare each worker's *individual* investment to that of the alleged employer'' and determining that the employer's ''greater overall investment in the business scheme convinces us that the relative-investment factor weighs in favor of employee status'') (emphasis in original).

[311] 917 F.3d at 383.

circumstances approach considering many factors—no one of which was dispositive. Moreover, that the *Cornerstone America* decision ''did not even mention the [employer's] larger investment'' when ''summing up the entirety of the facts and analyzing whether the workers were economically dependent on the [employer] as a matter of economic reality'' as stated in the 2021 IC Rule,[312] likewise does not support the conclusion that the relative investment factor is not useful, but instead simply reflects the overwhelming evidence of employee status in that case. Indeed, the Fifth Circuit's recent decisions reflect a continued commitment to considering the worker's investment in relation to the employer's investment.[313]

In *Karlson* v. *Action Process Service & Private Investigations, LLC,* the Eighth Circuit affirmed the district court's decision to allow evidence of the worker's and the employer's relative investments but not allow the worker to ask the employer about the dollar amount of its investment because ''allowing [the worker] to 'billboard large numbers' . . . would create the danger of unfair prejudice.'' [314] Thus, the Eighth Circuit simply affirmed a nuanced district court decision regarding how much evidence of the employer's investment to allow but did not preclude consideration of the worker's and the employer's relative investments. Moreover, the Eighth Circuit recently issued a decision articulating, as the jury instruction in *Karlson* had, the investment factor as ''the relative investments of the alleged employer and the employee.'' [315]

For all of these reasons, the Department believes that the proposal to consider the worker's investment in relation to the employer's investment in its business is supported by prior WHD guidance and many appellate court decisions, is consistent with the overall totality-of-the-circumstances inquiry whether the worker is economically dependent on the employer or operating as an independent business and would aid factfinders' analyses when applying that inquiry.

The Department welcomes comments on all aspects of this factor.

Example: Investments by the Worker and the Employer

A graphic designer provides design services for a commercial design firm. The firm provides software, a computer, office space, and all the equipment and supplies for the worker. The company invests in marketing and finding clients and maintains a central office from which to manage services. The worker occasionally uses their own preferred drafting tools for certain jobs. In this scenario, the worker's relatively minor investment in supplies is not capital in nature and does little to further a business beyond completing certain jobs. Thus, this factor indicates employee status.

A graphic designer occasionally completes design projects for a local design firm. The graphic designer purchases their own design software, computer, drafting tools, and rents an office in a shared workspace. The worker also spends money to market their services. These types of investments support an independent business and are capital in nature (*e.g.,* they allow the worker to do more work and extend their market reach). Thus, these facts indicate that the worker is in business for themself and may be a freelance graphic designer (*i.e.,* an independent contractor), not an employee of the local design firm.

3. Degree of Permanence of the Work Relationship (§ 795.110(b)(3))

The Department is proposing to modify § 795.105(d)(2)(ii) of the 2021 IC Rule, which describes the ''degree of permanence of the working relationship between the individual and the potential employer,'' and address the permanency factor in proposed § 795.110(b)(3). This provision in the 2021 IC Rule states that this factor weighs in favor of the worker being an independent contractor where the work relationship is ''by design definite in duration or sporadic'' and that it weighs in favor of the worker being an employee where the work relationship is ''by design indefinite in duration or continuous.'' [316] The 2021 IC Rule provision also recognizes that ''the seasonal nature of work by itself would not necessarily indicate independent contractor classification.'' [317]

As the Department noted in the 2021 IC Rule, ''courts and the Department routinely consider this factor when applying the economic reality analysis under the FLSA to determine employee or independent contractor status.'' [318] Consistent with case law analyzing this factor, the Department is proposing to provide further specificity by noting that an indefinite or continuous relationship is consistent with an employment relationship, but that a worker's lack of a permanent or indefinite relationship with an employer is not necessarily indicative of independent contractor status if it does not result from the worker's own independent business initiative.[319] The Department is also proposing to continue to recognize that a lack of permanence may be inherent in certain jobs—such as temporary and seasonal work—and that this is not necessarily an indicator of independent contractor status because a lack of permanence does not necessarily mean that the worker is in business for themself instead of being economically dependent on the employer for work.

Courts typically describe this factor's relevance as follows: '' 'Independent contractors' often have fixed employment periods and transfer from place to place as particular work is offered to them, whereas 'employees' usually work for only one employer and such relationship is continuous and of indefinite duration.'' [320] For example, a typical employee often has an at-will work relationship with the employer and works indefinitely until either party decides to end that work relationship. Conversely, an independent contractor does not seek such a permanent or indefinite engagement with one entity. Because of these general characteristics of work relationships, the length of time or duration of the work relationship has long been considered under the ''permanence'' factor as an indicator of employee or independent contractor status.[321]

[312] 86 FR 1188 (citing *Cornerstone Am.,* 545 F.3d at 346).

[313] *See, e.g., Sanchez Oil & Gas Corp.* v. *Crescent Drilling & Prod., Inc.,* 7 F.4th 301, 313 n.17 (5th Cir. 2021); *Hobbs,* 946 F.3d at 829 (describing the investment factor as '''the extent of the relative investments of the worker and the alleged employer''') (quoting *Cornerstone Am.,* 545 F.3d at 343). Thus, the Fifth Circuit routinely considers the relative investments of the worker and the employer even if the factor may ultimately be accorded less weight in some cases depending on the facts and circumstances of the case.

[314] 860 F.3d at 1096.

[315] *Alpha & Omega,* 39 F.4th at 1082 (citing *Karlson,* 860 F.3d at 1093).

[316] 86 FR 1247.

[317] *Id.*

[318] 86 FR 1192 (citing a variety of circuit case law: *Razak,* 951 F.3d at 142; *Hobbs,* 946 F.3d at 829; *Karlson,* 860 F.3d at 1092–93; *McFeeley,* 825 F.3d at 241; *Keller,* 781 F.3d at 807; *Scantland,* 721 F.3d at 1312).

[319] *See, e.g., Superior Care,* 840 F.2d at 1060–61.

[320] *Snell,* 875 F.2d at 811 (citing *Donovan* v. *Sureway Cleaners,* 656 F.2d 1368, 1372 (9th Cir. 1981)); *see also Keller,* 781 F.3d at 807 (same); WHD Op. Ltr., 2002 WL 32406602, at *3 (Sept. 5, 2002) (same).

[321] *See, e.g., Parrish.,* 917 F.3d at 386–87 (noting that one of the relevant considerations under the permanency factor is the total length of the working relationship between the parties); *Capital Int'l,* 466 F.3d at 308–09 (in analyzing the degree of permanency of the working relationship, the ''more permanent the relationship, the more likely the worker is to be an employee''); *DialAmerica,* 757 F.2d at 1385 (finding that ''the permanence-of-

Continued

However, the analysis under the ''permanence'' factor is not limited solely to the length or definiteness of the work relationship. Courts have also recognized that the temporary or seasonal nature of some jobs may result in a ''lack of permanence . . . due to operational characteristics intrinsic to the industry rather than to the workers' own business initiative.'' [322] In such instances, a lack of permanence alone is not an indicator of independent contractor status. One industry where courts have recognized that the lack of permanence or indefiniteness in the work relationship does not preclude employee status is seasonal agricultural work, where workers often work solely for the duration of a harvest season and may return the following year.[323] Another seasonal example is the Fifth Circuit's analysis of the working relationship between a fireworks business that operated during specific periods of the year and the fireworks stand operators who sold the company's goods, where the district court found the relationship to be impermanent due to the 80 percent turnover rate between seasons.[324] The Fifth Circuit noted that ''in applying the *Silk* factors courts must make allowances for those operational characteristics that are unique or intrinsic to the particular business or industry, and to the workers they employ.'' [325] The Fifth Circuit held that the ''proper test for determining the permanency of the relationship'' in such a seasonal industry is ''not whether the alleged employees returned from season to season, but whether the alleged employees worked for the entire operative period of a particular season.'' [326]

Courts have also recognized that non-seasonal temporary work is common in some industries, and that a lack of permanence in these work relationships is also not indicative of independent contractor status. For example, in *Brock* v. *Superior Care, Inc.,* the Second Circuit found that nurses who were referred by a temporary health-care staffing agency to work for patients, hospitals, and nursing homes on a short-term basis were ''transient'' workers who did not have continuous or permanent work relationships with the staffing agency.[327] Citing the discussion in *Mr. W Fireworks* regarding operational characteristics that may be unique to certain industries and the workers they employ, the Second Circuit determined that the lack of permanence did not preclude the nurses from being employees because this reflected ''the nature of their profession and not their success in marketing their skills independently.'' [328] Similarly, in *Baker* v. *Flint Engineering & Construction Co.,* the Tenth Circuit determined that temporary rig welders who worked no more than two months at a time for a gas pipeline contractor exhibited sufficient permanency in their work relationship to indicate employee status because such temporary work was intrinsic in the industry rather than a ''choice or decision'' by the workers.[329] Therefore, consistent with the applicable case law, the Department is proposing to revise the 2021 IC Rule provision's acknowledgement that the seasonal nature of work alone would not necessarily indicate independent contractor status to acknowledge more broadly that a lack of permanence may be due to operational characteristics that are unique or intrinsic to particular businesses or industries and the workers they employ rather than the workers' business initiative, in which case this factor would not weigh in favor of independent contractor classification.[330]

Case law discussing the permanence factor also commonly addresses whether the work relationship is exclusive and the extent to which the workers work for others.[331] The Department believes this analytical approach is appropriate, because working exclusively for a particular employer speaks to the permanence of the work relationship.[332] However, although an exclusive relationship is often associated with an employment relationship and a sporadic or project-based non-exclusive relationship is more frequently associated with independent contractor classification,[333] courts have explained that simply having more than one job or working irregularly does not remove a worker from employee status and the protections of the FLSA. For example, in *Silk,* the ''unloaders'' came to the coal yard ''when and as they please[d] . . . work[ing] when they wish and work[ing] for others at will.'' [334] The Court determined that the unloaders were employees even though they had the ability to work for others: ''That the unloaders did not work regularly is not significant. They did work in the course of the employer's trade or business. This brings them under the coverage of the Act.'' [335] Similarly, as the Second Circuit explained in *Superior Care,* the fact that the temporary nurses ''typically work for several employers,'' was ''not dispositive of independent contractor status'' as ''employees may work for more than one employer without losing their benefits under the FLSA.'' [336]

working-relationship factor indicates that the home researchers were 'employees' '' because they ''worked continuously for the defendant, and many did so for long periods of time''); *Pilgrim Equip.,* 527 F.2d at 1314 (''the permanent nature of the relations between [the employer] and these operators indicates dependence''); *see also Reyes* v. *Remington Hybrid Seed Co.,* 495 F.3d 403, 408 (7th Cir. 2007) (describing an independent contractor as an individual who ''appears, does a discrete job, and leaves again''); *Reich* v. *Circle C. Invs., Inc.,* 998 F.2d 324, 328 (5th Cir. 1993) (''[a]lthough not determinative, the impermanent relationship between the dancers and the [employer] indicates non-employee status'').

[322] *Superior Care,* 840 F.2d at 1061 (citing *Mr. W Fireworks,* 814 F.2d at 1053–54); *see also Flint Eng'g,* 137 F.3d at 1442 (finding short duration of work relationships in oil and gas pipeline construction work to be intrinsic to the industry rather than a ''choice or decision'' on the part of the workers).

[323] *See Paragon,* 884 F.3d at 1235 (permanence factor favored employee status because the worker was hired temporarily for the harvest season ''[b]ut his employment was permanent for the duration of each harvest season''); *Lauritzen,* 835 F.2d at 1537 (agricultural harvesters' relationship with employer was ''permanent and exclusive for the duration of that harvest season'' and permanency was also indicated by the fact that many of the same migrant workers returned for the harvest each year; the court noted that ''[m]any seasonal businesses necessarily hire only seasonal employees, but that fact alone does not convert seasonal employees into seasonal independent contractors'').

[324] *Mr. W Fireworks,* 814 F.2d at 1053.

[325] *Id.* at 1054.

[326] *Id.*

[327] *Superior Care,* 840 F.2d at 1060.

[328] *Id.* at 1061.

[329] *Flint Eng'g,* 137 F.3d at 1442.

[330] The 2021 IC Rule suggested that a trend in the modern economy that reduces the probative value of the permanence factor is that workers have shorter job tenures. *See* 86 FR 1175. However, as explained above, courts have developed ways to consider permanency that take into account the fact that some jobs and industries have shorter job tenures, yet can evidence the regularity consistent with an employment relationship.

[331] *See, e.g., Parrish,* 917 F.3d at 386–87 (noting that one of the relevant considerations under the permanency factor is whether any plaintiff worked exclusively for the potential employer); *Keller,* 781 F.3d at 807 (noting that ''even short, exclusive relationships between the worker and the company may be indicative of an employee-employer relationship''); *Scantland,* 721 F.3d at 1319 (noting that ''[e]xclusivity is relevant'' to the permanency of the work relationship).

[332] *See, e.g.,* WHD Op. Ltr., 2002 WL 32406602, at *3 (Sept. 5, 2002) (considering exclusivity under permanence factor); WHD Op. Ltr., 2000 WL 34444342, at *5 (Dec. 7, 2000) (same).

[333] *See, e.g., Carrell* v. *Sunland Constr., Inc.,* 998 F.2d 330, 332 (5th Cir. 1993) (finding welders to be independent contractors where they worked for multiple employers on a project-by-project basis rather than exclusively for one employer).

[334] 331 U.S. at 706.

[335] *Id.* at 718.

[336] *Superior Care,* 814 F.2d at 1060; *see also Saleem,* 854 F.3d at 142 n.24 (''It is certainly not unheard of for an individual to maintain two jobs at the same time, and to be an 'employee' in each capacity.''); *Keller,* 781 F.3d at 808 (agreeing with the Second Circuit that ''employees may work for more than one employer without losing their benefits under the FLSA''); *Circle C Invs.,* 998 F.2d at 328–29 (noting that ''[t]he transient nature of the work force is not enough here to remove the dancers from the protections of the FLSA''); *Seafood Inc.,* 867 F.2d at 877 (''The only question,

Relatedly, courts have also determined that the fact that a worker does not rely on the employer as their exclusive or primary source of income is not indicative of whether an employment relationship exists.[337] For example, the Sixth Circuit explained: ''[W]hether a worker has more than one source of income says little about that worker's employment status. Many workers in the modern economy, including employees and independent contractors alike, must routinely seek out more than one source of income to make ends meet.'' [338]

Thus, the Department is proposing in § 795.110(b)(3) to include exclusivity as an additional consideration under the permanency factor while noting that working for others and having multiple jobs in which workers are economically dependent on each employer for work—as compared to a worker who is in business for themself and chooses to market their independent services or labor to multiple entities—does not weigh in favor of independent contractor status. While the 2021 IC Rule did not include exclusivity as part of the permanence analysis, this was not based on a view that exclusivity was inconsistent with circuit case law but, rather, was primarily based on the view that concepts should not apply to more than one factor. Including consideration of exclusivity under permanence is consistent with the case law, as the 2021 IC Rule acknowledged.[339] Because the 2021 IC Rule sought to avoid duplicating consideration of certain facts or concepts under more than one factor, however, it confined exclusivity and the ability to work for others under the control factor and excluded it from the permanence factor.[340]

The Department continues to believe that an exclusivity requirement imposed by the employer is a strong indicator of control, as discussed under the control factor. However, in this proposed rulemaking, the Department is prioritizing consideration of all facts that may be relevant to a particular factor, consistent with a totality-of-the-circumstances approach and the way courts analyze the factors. While some courts have focused on exclusivity (or the lack thereof) under the control factor rather than the permanence factor,[341] others have considered whether workers were able to work for other employers under both the control and permanency factors.[342] However, the weight of circuit authority appears to consider exclusivity and ability to work for others primarily under permanence, though it is certainly not the only relevant consideration under this factor.[343] As such, the Department believes it is appropriate to include exclusivity under this factor as well as the control factor.[344]

Finally, the Department notes that where workers provide services under a contract that is routinely or automatically renewed, courts have determined that this indicates permanence and an indefinite working arrangement associated with employment.[345] The proposed regulation noting that work relationships that are indefinite in duration or continuous favor employee status is consistent with that case law.

The Department welcomes comments on all aspects of this factor.

Example: Degree of Permanence of the Work Relationship

A cook has prepared meals for an entertainment venue continuously for several years. The cook prepares meals as directed by the venue, depending on the size and specifics of the event. The cook only prepares food for the entertainment venue, which has regularly scheduled events each week. The relationship between the cook and the venue is characterized by a high degree of permanence and exclusivity. The permanence factor indicates employee status.

A cook has prepared specialty meals intermittently for an entertainment venue over the past 3 years for certain events. The cook markets their meal preparation services to multiple venues and private individuals and turns down

therefore, is whether the fact that the workers moved frequently from plant to plant and from employer to employer removed them from the protections of the FLSA. We hold that it did not.''); *Hart* v. *Rick's Cabaret Int'l, Inc.,* 967 F. Supp. 2d 901, 921 (S.D.N.Y. 2013) (noting that ''countless workers . . . who are undeniably employees under the FLSA—for example, waiters, ushers, and bartenders''—work for multiple employers).

[337] *Superior Care,* 814 F.2d at 1060; *see also Halferty,* 821 F.2d at 267–68 (''it is not dependence in the sense that one could not survive without the income from the job that we examine, but dependence for continued employment''); *DialAmerica,* 757 F.2d at 1385 (noting that ''[t]here is no legal basis'' to say that work that constitutes a second source of income indicates a worker's lack of economic dependence on a job because the proper analysis is ''whether the workers are dependent on a particular business or organization for their continued employment'').

[338] *Off Duty Police,* 915 F.3d at 1058. The 2021 IC Rule correctly noted that a handful of cases improperly conflate having multiple sources of income with a lack of economic dependence on the potential employer. *See* 86 FR 1173, 1178. The 2021 IC Rule characterized such a ''dependence-for-income'' analysis as incorrect and a ''dependence-for-work'' analysis as correct. *Id.* at 1173. This critique continues to be valid, as is the observation that ''[i]t is possible for a worker to be an employee in one line of business and an independent contractor in another.'' *Id.* at 1178 n.19.

[339] The 2021 IC Rule recognized that courts often analyze the exclusivity of the work relationship as part of the permanence factor, and the Department considered in its NPRM for that rule to include exclusivity under the permanence factor ''to be more accurate.'' 85 FR 60616.

[340] 86 FR 1192–93.

[341] *See, e.g., Saleem,* 854 F.3d at 141.

[342] *See, e.g.,* 86 FR 1192 (noting the analysis in *Freund* v. *Hi-Tech Satellite, Inc.,* 185 F. App'x 782, 783–84 (11th Cir. 2006), where the court found that ''Hi-Tech exerted very little control over Mr. Freund,'' in part, because ''Freund was free to perform installations for other companies'' and that ''Freund's relationship with Hi-Tech was not one with a significant degree of permanence . . . [because] Freund was able to take jobs from other installation brokers.'').

[343] *See, e.g., Parrish,* 917 F.3d at 386–87 (noting that one of the relevant considerations under the permanency factor is whether any plaintiff worked exclusively for the potential employer); *Keller,* 781 F.3d at 808 (noting under permanency whether satellite-dish installer could work for other companies but that working for more than one employer does not necessarily result in independent contractor status); *Scantland,* 721 F.3d at 1319 (length of relationship and exclusivity was relevant insofar as workers' schedules and inability to refuse work prohibited them from actually working for other companies); *Cornerstone Am.,* 545 F.3d at 346 (permanency factor weighed in favor of employee status because sales leaders worked exclusively for the potential employer, often for significant periods of time); *Superior Care,* 840 F.2d at 1060–61 (noting under permanency that nurses typically worked for several employers but that this did not weigh in favor of independent contractor status because it was inherent in the profession); *Lauritzen,* 835 F.2d at 1537 (''however temporary the relationship may be it is permanent and exclusive for the duration of that harvest season''); *DialAmerica,* 757 F.2d at 1384 (noting under permanency that home researchers generally did not perform services for other organizations and therefore did not ''transfer their services from place to place, as do independent contractors'').

[344] The 2021 IC Rule also supported its decision to reject consideration of exclusivity under permanence by referring to a dictionary definition of ''permanent'' that does not include exclusivity. 86 FR 1193 n.39. However, a dictionary definition should not override the longstanding case law applying exclusivity to the permanence factor. Additionally, the 2021 IC Rule viewed such case law as inconsistent with the Supreme Court's *Silk* decision. 86 FR 1192–93. However, upon further consideration, the decision does not clearly identify which factor the Court associated with the truck drivers' ability to work for others (leading to a decision that they were independent contractors, among other reasons), nor does it clearly identify which factor the Court associated with the coal unloaders' ability to work for others (leading to a decision that they were employees, among other reasons). *See Silk,* 331 U.S. at 717–19. Therefore, reliance on *Silk* for this proposition is not warranted.

[345] *See, e.g., Scantland,* 721 F.3d at 1318 (finding one-year contracts that were automatically renewed to ''suggest substantial permanence of relationship''); *Pilgrim Equip.,* 527 F.2d at 1314 (finding laundry operators' one-year contracts that were routinely renewed indicated employee status); *Acosta* v. *Senvoy, LLC,* No. 3:16–CV–2293–PK, 2018 WL 3722210, at *9 (D. Or. July 31, 2018) (noting that one-year contracts that automatically renew are ''evidence that a worker is an employee''); *Solis* v. *Velocity Exp., Inc.,* No. CV 09–864–MO, 2010 WL 3259917, at *9 (D. Or. Aug. 12, 2010) (the fact that package delivery drivers understood their contracts to be of indefinite duration and that contracts were routinely renewed without renegotiation indicated employee status).

work for any reason, including because the cook is too busy with other meal preparation jobs. The cook has a sporadic or project-based non-exclusive relationship with the entertainment venue. These facts indicate independent contractor status.

4. Nature and Degree of Control (Proposed § 795.110(b)(4))

The Department is proposing to modify 2021 IC Rule § 795.105(d)(1)(i), which considers control as a ''core'' factor in the economic reality test. This provision in the 2021 IC Rule assesses the employer's and the worker's ''substantial control over key aspects of the performance of the work,'' which include setting schedules, selecting projects, controlling workloads, and affecting the worker's ability to work for others.[346] This 2021 IC Rule provision also states that ''[r]equiring the individual to comply with specific legal obligations, satisfy health and safety standards, carry insurance, meet contractually agreed-upon deadlines or quality control standards, or satisfy other similar terms that are typical of contractual relationships between businesses . . . does not constitute control'' for purposes of the economic reality test.[347]

As reflected in proposed § 795.110(b)(4), the Department continues to believe that issues related to scheduling, supervision over the performance of the work (including the ability to assign work), and the worker's ability to work for others are relevant considerations. The Department's proposal would also consider additional aspects of control in the workplace that have been identified in the case law or through the Department's enforcement experience—such as control mediated by technology or control over the economic aspects of the work relationship. However, as noted above, the Department's proposal would not elevate control as a ''core'' factor in the analysis.[348] For decades, courts and the Department have taken the view that the control factor represents one facet of the economic reality test.[349] As such, control should be analyzed in the same manner as every other factor, rather than take an outsized role when analyzing whether a worker is an employee or independent contractor. As the Fifth Circuit noted in 2019, it ''is impossible to assign to each of these factors a specific and invariably applied weight.'' [350]

In addition, as described in more detail below, and after taking relevant case law into account, an employer's compliance with legal obligations, safety or health standards, or requirements to meet contractual or quality control obligations, for example, may in some cases indicate that the employer is exerting control, suggesting that the worker is economically dependent on the employer. What follows is an overview of the Department's proposal regarding control as well as detailed descriptions of certain aspects of control such as scheduling, supervision, price setting, and the ability to work for others.

a. Overview of Control Factor

When analyzing this factor for purposes of applying the economic reality test, the control factor is one of several factors used to reach the ultimate determination of whether a worker is economically dependent on an employer or is in business for themself.[351] Control can be exerted directly in the workplace by an employer, such as when it sets a worker's schedule, compels attendance, or directs or supervises the work.[352] However, the absence of these more apparent forms of control does not invariably lead to the conclusion that the factor weighs in favor of independent contractor status.[353] Employers may also exercise control in other ways, such as by relying on technology to supervise a workforce, setting prices for services, or restricting a worker's ability to work for others—actions that can exert control without the traditional use of direct supervision, assignment, or scheduling.

The analysis focuses on whether the employer still retains control over meaningful economic aspects of the work relationship such that the control indicates that the worker does not stand apart as their own business, not simply whether the employer lacks control over discrete working conditions (*e.g.,* scheduling) or whether the employer failed to exercise physical control over the workplace.[354] For example, even though dancers had some scheduling flexibility, the Third Circuit concluded that the control factor weighed in favor of employee status because the employer, and not the workers, controlled the economic aspects of the dancers' work, such as the price of services, the clientele to be served, and the operations of the club in which they worked.[355]

This analytical approach was applied by the Fifth Circuit in a case where an insurance sales firm not only ''controlled the hiring, firing, assignment, and promotion of the [workers' subordinates],'' but also

[346] *See* 86 FR 1246–47.

[347] *Id.* at 1247.

[348] *See supra* section V.B.

[349] *See, e.g.,* WHD Op. Ltr. (Aug. 13, 1954) (applying six factors, of which control was one, that are very similar to the six economic reality factors currently used by almost all courts of appeals); *Shultz* v. *Hinojosa,* 432 F.2d 259, 265 (5th Cir. 1970) (affirming judgment in favor of Secretary of Labor that slaughterhouse worker was an employee under the FLSA under a multifactor economic reality test of which control was one of the factors).

[350] *Parrish,* 917 F.3d at 380 (internal citation omitted). The circuit courts have taken this position for decades. *See also, e.g., Scantland,* 721 F.3d at 1312 n.2 (the relative weight of each factor ''depends on the facts of the case'') (citation omitted); *Selker Bros.,* 949 F.2d at 1293 (''It is a well-established principle that the determination of the employment relationship does not depend on isolated factors . . . [, and] neither the presence nor the absence of any particular factor is dispositive.'').

[351] The control factor has its roots in the common law, where the inquiry was whether the ''employer'' had the ''right to control the manner and means by which [work] is accomplished.'' *Reid,* 490 U.S. at 751. Employers that exercise such control could be held responsible for (or be in the best position to prevent) negligent actions affecting their workers. *See Lauritzen,* 835 F.2d at 1544 (describing how common law notions of control relate to findings of vicarious liability). Yet, the scope of employment under the FLSA is broader than the common law and is not concerned with assigning responsibility for negligent acts imputed to the employer. Rather, employment under the FLSA is determined by applying an economic reality analysis, which ''does not depend on the common-law understanding of employment, which was based on limiting concepts of control.'' *Antenor* v. *D & S Farms,* 88 F.3d 925, 933 (11th Cir. 1996) (drawing this conclusion, in the context of evaluating possible joint employment, by relying on the FLSA's broad definition of employ which uses the term ''suffer or permit to work'').

[352] *See, e.g., Scantland,* 721 F.3d at 1314 (finding workers to be employees, in part, because they ''were subject to meaningful supervision and monitoring by'' their employer).

[353] *See, e.g., Mr. W Fireworks,* 814 F.2d at 1049 (''[T]he lack of supervision over minor regular tasks cannot be bootstrapped into an appearance of real independence.'') (citation omitted); *Antenor,* 88 F.3d at 934 (noting in FLSA joint employment case that the Act reaches even those employers who ''[do] *not* directly supervise the activities of putative employees'') (emphasis in original). Indeed, this has been the perspective of the Department for almost six decades. *See* WHD Op. Ltr., FLSA–795, at 3 (Sept. 30, 1964) (determining that professional divers were employees of a diving corporation, despite the lack of control over their work, by noting ''that persons may be employees within the meaning of the Act even though they are unsupervised in their work, are not required to devote any particular amount of time to their work, [and] are under no restriction not to work for competitors of the employer'').

[354] *See, e.g., Cornerstone Am.,* 545 F.3d at 343–44 (finding that control weighs in favor of employee status even where the employer disclaims control over ''day-to-day affairs'' of the workers because the employer controlled the meaningful economic aspects of the work). Other elements may also be included in this examination of control, such as those identified by the Supreme Court in *Whitaker House.* They include whether the worker could sell their products or services ''on the market for whatever price they can command;'' whether the worker's compensation was dictated by the employer; and whether management could fire the worker for failure to obey its regulations. 366 U.S. at 32–33.

[355] *Verma,* 937 F.3d at 230.

controlled how the workers priced the insurance products, received leads for sales, and defined the territory in which the agents could sell products.[356] These actions made it clear that the employer, and not the workers, retained meaningful control over the ''economic aspects of the business,'' suggesting that the workers were employees.[357]

Finally, 2021 IC Rule § 795.105(d)(1)(i) states that an employer requiring a worker to ''comply with specific legal obligations, satisfy health and safety standards, carry insurance, meet contractually agreed-upon deadlines or quality control standards, or satisfy other similar terms . . . does not constitute control that makes the [worker] more or less likely to be an employee.'' [358] In the 2021 IC Rule, however, the Department acknowledged ''that some courts have found requirements that workers comply with specific legal obligations or meet quality control standards to be indicative of employee status.'' [359] Upon further consideration and a thorough review of relevant case law, the Department believes, as reflected in proposed § 795.110(b)(4), that certain instances of control should not be excluded as irrelevant to the economic reality analysis only because they are required by business needs, contractual requirements, quality control standards, or legal obligations. As the Eleventh Circuit explained in *Scantland:*

The economic reality inquiry requires us to examine the nature and degree of the alleged employer's control, *not why* the alleged employer exercised such control. . . . If the nature of a business requires a company to exert control over workers . . . then that company must hire employees, not independent contractors.[360]

The Department believes that the nature and degree of the employer's control should be fully assessed, and this assessment may, in some cases, include consideration of control that is due to an employer's compliance with legal, safety, or quality control obligations. As with all the economic reality factors, this control should be examined in view of the ultimate inquiry: is it probative of whether the worker is in business for themself or economically dependent on the employer for work. For example, when an employer, rather than a worker, controls compliance with legal, safety, or other obligations, it may be evidence that the worker is not in fact in business for themself because they are not doing the entrepreneurial tasks that suggest that they are responsible for understanding and adhering to the legal and other requirements that apply to the work or services they are performing such that they are assuming the risk of noncompliance.[361]

While the case law is not uniform on this issue, the Department finds cases such as *Scantland* and others—which recognize that compliance with legal obligations or quality control may be relevant evidence of control—more persuasive and consistent with the totality-of-the-circumstances, economic reality analysis than the 2021 IC Rule's approach. For example, in *Badon* v. *Berry's Reliable Resources, LLC,* a district court, in granting the worker's summary judgment motion, rejected a home healthcare employer's argument that a state's plan of care for each consumer dictated the work performed by the workers.[362] In finding that the control factor weighed in favor of employee status, the court credited testimony that the employer had, in fact, hired, trained, supervised, and directed the work of the caregivers to ensure compliance with the state's requirements.[363] After taking these facts into consideration, the court found that the control factor weighed in favor of employee status.[364] Similarly, in *Molina* v. *South Florida Express Bankserv, Inc.,* a district court rejected the employer's argument that its monitoring of workers was at customers' behest and therefore was not relevant to control, explaining that ''[t]he Defendant's reasoning is circular'' since ''[a]ny employer's business is, in essence, directed by the needs of its customers.'' [365]

Among the FLSA cases cited by the 2021 IC Rule to support the provision excluding facts about compliance with specific legal, contractual, or quality control obligations from consideration—such as *Parrish, Iontchev* v. *AAA Cab Service, Inc., Mr. W Fireworks,* and *Chao* v. *Mid-Atlantic Installation Services, Inc.*[366]—none support the conclusion drawn by the 2021 IC Rule that the requirement to comply with, for example, legal obligations is never probative of employee status. In *Parrish,* for example, the Fifth Circuit concluded that ''[a]lthough requiring safety training and drug testing is an exercise of control in the most basic sense of the word,'' the safety training and drug testing in this particular case was not dispositive of control ''because of the nature of the employment'' at an oil-drilling site.[367] There, the employer was responsible for providing a place of employment free from certain recognized hazards and ensuring that all people working at an oil-drilling site comply with relatively minimal safety training and drug testing as ''required for safe operations,'' generally.[368] Thus, workers were not made more economically dependent on the employer because of these safety

[356] *Cornerstone Am.,* 545 F.3d at 343–44.

[357] *Id.* at 343.

[358] 86 FR 1247.

[359] 86 FR 1183.

[360] 721 F.3d at 1316 (emphasis added); *see also Schultz* v. *Mistletoe Express Serv., Inc.,* 434 F.2d 1267, 1271 (10th Cir. 1970) (noting that ''arguments that an independent contractor relationship is shown by . . . the need to comply with the regulations of federal and state agencies do not persuade us'' before affirming the conclusion that workers were employees under the FLSA).

[361] Case law further demonstrates that legal obligations imposed by the government can provide evidence of control. For example, in *Chao* v. *First National Lending Corp.,* loan officers were prohibited by state licensing requirements from working for more than one mortgage company at a time. 516 F. Supp. 2d 895, 900 (N.D. Ohio 2006), *aff'd,* 249 F. App'x 441 (6th Cir. 2007). This inability to work for others—albeit in compliance with state requirements—was determined to be further evidence that the loan officers ''were economically dependent on [the employer] and, therefore, were employees and not independent contractors for purposes of the FLSA.'' *Id.* The Fifth Circuit reached a similar conclusion when it rejected an insurance sales company's argument that it ''exerted little control beyond what insurance-industry regulations required.'' *Hopkins,* 545 F.3d at 343. Instead, the court found that the employer exerted significant control over the economics of the insurance sales work performed by the workers, which was dispositive on this factor. *Id.*

[362] Civil Action Nos. 19–12317 c/w 20–584 & 21–596, 2022 WL 2111341, at *3–4 (E.D. La. June 10, 2022).

[363] *Id.*

[364] *Id.* at *4.

[365] 420 F. Supp. 2d 1276, 1284 n.24 (M.D. Fla. 2006); *see also Amponsah* v. *DirecTV, LLC,* 278 F. Supp. 3d 1352, 1360 (N.D. Ga. 2017) (applying *Scantland* and finding genuine issues of material fact regarding control despite defendant's argument that ''strict installation standards and quality metrics'' were not indicative of control because such requirements ''were aimed at customer satisfaction, not control of Plaintiffs''); *Crouch* v. *Guardian Angel Nursing, Inc.,* Civil Action No. 3:07-cv-00541, 2009 WL 3737887, at *18–20 (M.D. Tenn. Nov. 4, 2009) (finding a state law that required licensed practical nurses to work under the supervision and direction of doctors or registered nurses was strong evidence of control by the employer under the FLSA and rejecting defendants' argument ''that because a certain amount of supervision is mandated by the state or by the home health agencies with which they contract, it . . . does not count toward the quantification of the degree of control exercised''); *Flores* v. *Velocity Express, LLC,* 250 F. Supp. 3d 468, 484 (N.D. Cal. 2017) (''undisputed indicia of control'' included completing a Department of Transportation–required road rest; obtaining certain insurance or enrolling in employer's insurance program and undergoing a criminal history background check); *see also Ruiz* v. *Affinity Logistics Corp.,* 754 F.3d 1093, 1101–02 (9th Cir. 2014) (evaluating control for the purpose of applying state wage and hour laws and rejecting the employer's assertion that control that is ''driven by a need to comply with federal regulations or [customer] requirements'').

[366] *See* 86 FR 1183.

[367] 917 F.3d at 382.

[368] *Id.*

requirements.[369] Moreover, in *Iontchev,* the Ninth Circuit determined that the employer had ''relatively little control over the manner in which'' the work was performed in part because ''its disciplinary policy primarily enforced the Airport's rules and regulations'' governing drivers; it did not say that the fact that government regulations applied to the work was not relevant at all to control.[370]

These cases are thus not inconsistent with the Department's proposed regulation that compliance with safety standards, for example, may be relevant in assessing the control factor, depending on the facts of the individual case, and that a complete bar to considering such facts is inappropriate under the economic reality test. The facts and circumstances of each case must be assessed, and the manner in which the employer chooses to implement such obligations will be highly relevant to the analysis. For example, if an employer requires all individuals to wear hard hats at a construction site for safety reasons, that is less probative of control; if an employer chooses a specific time and location for weekly safety briefings and requires all workers to attend, that is more probative of control. Similarly, if an employer requires workers to provide proof of insurance required by state law, that is less probative of control; if an employer mandates what insurance carrier workers must use, that is more probative of control.

Control exerted by the employer to achieve these ends therefore may be relevant to the underlying analysis of whether the worker is economically dependent on the employer, particularly where the employer dictates and enforces the manner and circumstances of compliance. Of course, such control may not be determinative of the worker's employee or independent contractor status (given the other factors included in the economic reality test) or probative of whether the control factor itself weighs in favor of employee status. This is merely one aspect of a multifactor test. Even if compliance with specific legal obligations or safety requirements is indicative of control in a specific case, this does not compel a particular conclusion as to that worker's status under the Act.[371] Thus, the Department's proposal would not preclude a finding that a worker is an independent contractor where an employer obligates workers, for example, to comply with safety standards, after also considering other relevant factors in the economic reality analysis.

With these general principles in mind, the next sections address the Department's proposals regarding several aspects of control to be considered in determining whether the nature and degree of control indicates that the worker is an employee or an independent contractor. This discussion is intended to be an aid in assessing common aspects of control—including scheduling, supervision, price setting, and ability to work for others—but should not be considered an exhaustive list, given the various ways in which an employer may control a worker or the economic aspects of the work relationship.

b. Scheduling

As noted above, an employer's direct control over a worker's schedule can be evidence of employee status. For example, the Fifth Circuit, in *Cromwell,* concluded that workers were employees even though the workers ''controlled the details of how they performed their work [and] were not closely supervised'' because, in part, the employer had ''complete control over [workers'] schedule[s].'' [372] Yet the absence of direct scheduling control is not necessarily strong evidence that the employer lacks control for purposes of the economic reality test, particularly where other evidence demonstrates control.[373]

Independent contractor arrangements can include the ability to work at any time the contractor decides it is appropriate to begin and end work. Some courts have found such scheduling control by the worker to be indicative of an independent contractor relationship.[374] For example, the Eighth Circuit affirmed a jury verdict finding a process server to be an independent contractor, in part, because the worker ''was not required to report for work[,] . . . did not punch a time clock,'' and did not have a set schedule, report a daily schedule to the employer, or face discipline for not working.[375] Section 795.105(d)(1)(i) of the 2021 IC Rule suggests as much, noting that the ability to set their own schedule is evidence that weighs towards a worker being an independent contractor.[376]

However, after further consideration and review of the case law, the Department considers this framing to be too narrow because it does not take into account actions the employer may take that would limit the significance of the worker setting their own schedule. In fact, courts have concluded that the ability to set one's own schedule provides only minimal evidence that the worker is an independent contractor when considered in relation to other forms of control by the employer in the workplace.[377] If the ability to pick one's shift is offset by the limited hours provided by the employer,[378] or the employer purports to allow a worker an accommodating schedule, but arranges the work in a way that makes finding other clients impossible,[379] then meaningful scheduling flexibility may not exist. Moreover, employers may also exert so much control over the amount or pace of the work as to negate any meaningful scheduling flexibility.[380]

[369] *See id.* at 376.

[370] *See* 685 F. App'x at 550. Additionally, in *Mr. W Fireworks,* the Fifth Circuit found that a defendant company's requirement that plaintiffs work after ordinary business hours favored plaintiffs' employee status notwithstanding the company's attempt to link plaintiffs' work schedules to state regulatory requirements (finding, however, that state regulations did not require such after-hours work). *See* 814 F.2d at 1048.

[371] Additionally, even in cases in which a court did not consider control exerted over workers to comply with safety obligations as indicative of control, the court nevertheless concluded that such workers were employees under the FLSA. *See, e.g., Rick's Cabaret,* 967 F. Supp. 2d at 916, 922.

[372] 348 F. App'x 57, 61 (5th Cir. 2009); *see also Mr. W Fireworks,* 814 F.2d at 1048 (noting that compelled work schedules were evidence of control and thus employee status).

[373] *See, e.g., Pilgrim Equip.,* 527 F.2d at 1312 (''In the total context of the relationship neither the [worker's] right to hire employees *nor the right to set hours* indicates such lack of control by [the employer] as would show these operators are independent from it.'') (emphasis added).

[374] *See, e.g., Franze,* 826 F. App'x at 77 (emphasizing that schedule flexibility ''weigh[s] in favor of independent contractor status''); *Express Sixty-Minutes,* 161 F.3d at 303 (determining that the employer ''had minimal control'' over the delivery drivers in part because the drivers ''set their own hours and days of work'' which was evidence that the worker was an independent contractor).

[375] *Karlson,* 860 F.3d at 1095–96.

[376] 86 FR 1246–47.

[377] *See, e.g., Verma,* 937 F.3d at 230 (finding the ability to set hours, select shifts, stay beyond a shift, and accept or reject work to be, in truth, ''narrow choices'' when evaluated against other types of control exerted by the employer); *DialAmerica,* 757 F.2d at 1384–86 (finding telephone survey workers who set their own hours and were free from supervision to be employees); *Sureway,* 656 F.2d at 1371 (''circumstances of the whole activity'' show that laundry company ''exercises control over the meaningful aspects of the cleaning [work]'' despite the fact that workers could set their own hours).

[378] *Doty* v. *Elias,* 733 F.2d 720, 723 (10th Cir. 1984) (''Since plaintiffs could wait tables only during the restaurant's business hours, [the employer] essentially established plaintiffs' work schedules.'').

[379] *See, e.g., Keller,* 781 F.3d at 814 (''[A] reasonable jury could find that the way that [the employer] scheduled [the worker's] installation appointments made it impossible for [the worker] to provide installation services for other companies.'').

[380] *See, e.g., Flint Eng'g,* 137 F.3d at 1441 (''The record indicates rig welders cannot perform their work on their own schedule; rather, pipeline work has assembly line qualities in that it requires orderly and sequential coordination of various crafts and workers to construct a pipeline.'').

As the Tenth Circuit observed in *Dole* v. *Snell,* ''flexibility in work schedules is common to many businesses and is not significant in and of itself.'' [381] Thus, scheduling flexibility should not supplant a full evaluation of the control factor, with the ultimate question of economic dependence guiding the analysis. For example, the Third Circuit reversed summary judgment in favor of the employer and found disputed issues of material fact about drivers' classification even where it was undisputed that drivers were free to choose their work schedules.[382] The Fifth Circuit has also found that the employer had ''significant control'' indicating employee status over dancers even though they had ''input . . . as to the days that they wish to work.'' [383]

In fact, circuit courts have often evaluated scheduling flexibility relative to other forms of control by the employer; where the employer has more control in other ways, scheduling flexibility becomes less relevant. In *Verma,* the Third Circuit found the ability to set hours, select shifts, stay beyond a shift, and accept or reject work to be ''narrow choices'' when evaluated against other types of control by the employer, such as setting the price for services.[384] And multiple district courts have concluded that scheduling flexibility—including picking when to work or having the freedom to decline work—was not necessarily indicative of the overall control by an employer nor dispositive of a worker's independent contractor status.[385] Conversely, as the Second Circuit noted, where workers have greater scheduling flexibility and can use that flexibility to further their independent business, then that flexibility may be probative of their independent contractor status.[386]

Flexibility may also be an inherent component of a business model, which allows some workers the freedom to use time between tasks or jobs in any fashion, providing some evidence of the employer's lack of control. But flexible work arrangements that allow workers to, among other things, work for others, are not exclusive to independent contractors [387] and do not preclude a finding that an employer has sufficient control over a worker in other ways such that this factor weighs in favor of employee status.[388] Moreover, the power to decline work, and thus maintain a flexible schedule, is not alone persuasive evidence of independent contractor status when the employer can discipline a worker for doing so.[389]

In sum, case law on this issue demonstrates that scheduling control must be assessed in view of the total amount of control exerted by an employer. This is consistent with the economic realities, totality-of-the-circumstances approach. Thus, scheduling flexibility is not necessarily indicative of independent contractor status where other aspects of control are present, such as where an employer asserts that workers can work when and where they want but retains authority to discipline workers for declining work or imposes other methods of control that limit flexibility.

c. Supervision

Like the presence of a pre-defined work schedule, an employer's close supervision of a worker on the job may be evidence of employee status.[390] Conversely, the ability to work independently without close supervision may be evidence that a worker is an independent contractor.[391] However, traditional forms of in-person, continuous supervision are not required for a court to determine that this factor weighs in favor of employee status.[392] The form supervision takes can vary by type and method, and this should be part of any consideration of supervision under the control factor.

While it may be indicative of independent contractor status if a worker is free to work without close supervision, the lack of supervision is not alone indicative of independent contractor status.[393] For instance, the nature of an employer's business or the nature of the work may make direct supervision unnecessary. A lack of supervision in those circumstances, without further inquiry, does not compel a finding that the control factor

[381] 875 F.2d at 806; *see also Doty,* 733 F.2d at 723 (''A relatively flexible work schedule alone, however, does not make an individual an independent contractor rather than an employee.''); *Lilley* v. *BTM Corp.,* 958 F.2d 746, 750 (6th Cir. 1992) (noting that even though a worker could ''set [their] own hours and vacation schedule, such flexibility is not sufficient to negate control''); *Walling* v. *Twyeffort, Inc.,* 158 F.2d 944, 947 (2d Cir. 1946) (holding that workers who ''are at liberty to work or not as they choose'' were employees under FLSA)

[382] *Razak,* 951 F.3d at 146.

[383] *Circle C. Invs.,* 998 F.2d at 327.

[384] 937 F.3d at 230; *see also Paragon,* 884 F.3d at 1235–38 (finding that even though a worker could set his own schedule, he was an employee, in part, because his flat rate of pay did not allow him profit based on his performance).

[385] *See, e.g., Hill* v. *Cobb,* No. 3:13–CV–045–SA–SAA, 2014 WL 3810226, at *4–8 (N.D. Miss. Aug. 1, 2014) (holding that workers were employees even though they had no specific hours or schedule and could ''come and go as [they] pleased''); *Wilson* v. *Guardian Angel Nursing, Inc.,* No. 3:07–0069, 2008 WL 2944661, at *12–17 (M.D. Tenn. July 31, 2008) (holding that nurses were employees, even though they could accept or reject shifts).

[386] *See Saleem,* 854 F.3d at 146 (finding drivers that were able to set schedules that ''were entirely of their making'' were properly found to be independent contractors where, among other factors, drivers could select routes, turn down jobs without penalty, and exercise business-like initiative); *see also Alpha & Omega,* 39 F.4th at 1083–84 (finding genuine disputes of fact under control regarding whether drivers could set their own hours and whether drivers were allowed to decline trips without penalization).

[387] Employers continue to offer even more flexibility in work arrangements while retaining workers as employees. *See, e.g.,* Andrè Dua et al., *Americans are Embracing Flexible Work—and They Want More of It,* McKinsey & Company (June 23, 2022), *https://www.mckinsey.com/industries/real-estate/our-insights/americans-are-embracing-flexible-work-and-they-want-more-of-it* (finding, for example, that 58 percent of surveyed workers have the option to work remotely, either on a full-time or part-time basis; a flexibility that spans industries and occupations); Alicia Adamczyk, *Say Goodbye To 9-To-5: More and More, Corporate America is Letting People Work Whenever They Want,* Fortune (March 21, 2022, 10:36 a.m.), *https://fortune.com/2022/03/21/9-to-5-dead-flexible-schedules-more-popular/* (noting the shift in corporate culture that is allowing more workers to remain employees while also obtaining flexible working schedules).

[388] For example, in *Collinge,* the employer contended that the on-demand drivers were properly independent contractors because of the flexible nature of their work despite exercising significant control including training the drivers, disciplining them for violations of procedure, dispatching pick-ups, and setting schedules. 2015 WL 1299369, at *2–4. Importantly, the fact that on-demand ''[d]rivers are free to wait at home for their first delivery of the day, and . . . are free to 'kill time' on a computer or run personal errands'' in between jobs was ''unavailing because they merely show that [the employer] is unable to control its drivers when they are not working, an irrelevant point.'' *Id.* at *4 (footnotes omitted).

[389] *Off Duty Police,* 915 F.3d at 1060 (''Although workers could accept or reject assignments, multiple workers testified that [the employer] would discipline them if they declined a job,'' which was evidence of the employer's ultimate control.).

[390] *See, e.g., Scantland,* 721 F.3d at 1314 (finding ''meaningful supervision and monitoring'' in part because the employer required cable installers to log in and out of a service on their cell phones to record when they arrived on a job and when they completed a job).

[391] *See, e.g., Chao* v. *Mid-Atlantic Installation Servs., Inc.,* 16 F. App'x 104, 106–08 (4th Cir. 2001) (agreeing with the district court's analysis that the ability to complete jobs in any order, conduct personal affairs, and work independently is evidence that leans toward identifying a worker as an independent contractor).

[392] *See, e.g., Superior Care,* 840 F.2d at 1060 (''An employer does not need to look over his workers' shoulders every day in order to exercise control.''); *Driscoll,* 603 F.2d at 756 (farmworkers could be employees of a strawberry farming company even where the employer exercised little direct supervision over them); *Twyeffort,* 158 F.2d at 947 (rejecting an employer's contentions that its tailors are independent contractors because they are ''free from supervision, are at liberty to work or not as they choose, and may work for other employers if they wish'').

[393] The legislative history of the FLSA also supports this point directly, since the definition of ''employ'' was explicitly intended to cover as employment relationships those relationships where the employer turned a blind eye to labor performed for its benefit. *Antenor,* 88 F.3d at 934; *see supra* section V.C.4.a.

weighs in favor of independent contractor status. For example, the Sixth Circuit found that security officers were employees although they were ''rarely if ever supervised'' on the job, noting that ''the actual exercise of control requires only such supervision as the nature of the work requires.'' [394] More directly, ''the level of supervision necessary in a given case is in part a function of the skills required to complete the work at issue,'' and the officers in that case ''had far more experience and training than necessary to perform the work assigned.'' [395] Moreover, an employer may develop training and hiring systems that make direct supervision unnecessary. This was the case in *Keller* v. *Miri Microsystems LLC,* where an employer relied on pre-hire certification programs and installation instructions when hiring their satellite dish installers.[396] The employer argued that it had little day-to-day control over the workers and did not supervise the performance of their work. Yet the court noted that a factfinder could ''find that [the employer] controlled [the installer's] job performance through its initial training and hiring practices'' in a way that would suggest that the workers were employees.[397] Conversely, the Eleventh Circuit affirmed a district court's conclusion that an insurance claims investigator was properly classified as an independent contractor, in part, because the investigator worked largely without supervision when setting up appointments, deciding where to work, and how and when to complete his assignments.[398]

In addition, the right of the employer to supervise at its discretion is evidence of control, even if the employer rarely exerts supervision.[399] The Second Circuit, for example, affirmed a district court's rejection of a nursing referral company's argument that they did not supervise the nursing staff directly where the employer, in the court's judgment, ''unequivocally expressed *the right* to supervise the nurses' work,'' even though the supervision ''occurred only once or twice a month.'' [400]

Finally, the Department notes that supervision can also come in many different forms, which may not be immediately apparent. For example, supervision can be maintained remotely through technology instead of, or in addition to, being performed in person. For instance, employers may implement monitoring systems that can track a worker's location and productivity, and even generate automated reminders to check in with supervisors.[401] Additionally, an employer can remotely supervise its workforce, for instance, by using electronic systems to verify attendance, manage tasks, or assess performance.[402]

Simply put, consistent with a totality-of-the-circumstances analysis, the ways in which supervision can be accomplished without traditional in-person techniques requires thorough consideration. As the Fifth Circuit recently reiterated, the '' 'lack of supervision [of the individual] over minor regular tasks cannot be bootstrapped into an appearance of real independence.' '' [403] Control may be exercised through nontraditional means such as automated systems that monitor performance, but it can be found to be control nonetheless. Employers may also eliminate the need for close supervision because the structure of the job or the fact that little skill or discretion is envisioned or allowed. Thus, the lack of apparent in-person supervision (or even the lack of any in-person supervision) is not necessarily indicative of independent contractor status and additional consideration must be given to the ways in which an employer can implement supervision over a worker.

d. Setting a Price or Rate for Goods or Services

The ability to set a price or rate for the goods or services provided by the worker, or influence the price or rate, is relevant when examining the control factor under the economic realities analysis. This fact relates directly to whether the worker is economically dependent on the employer for work and helps answer the question whether the worker is in business for themself.

There is substantial case law supporting the relevance of price setting to the economic realities analysis under the FLSA, and workers in business for themselves are generally able to set (or at least negotiate) their own prices for services rendered. As the Supreme Court explained in *Whitaker House,* in concluding that workers for a cooperative were employees under the Act, such workers ''are not self-employed; nor are they independent, selling their products on the market for whatever price they can command. They are regimented under one organization, manufacturing what the organization desires and receiving the compensation the organization dictates.'' [404] Circuit courts have similarly made clear that the employer's setting a price for goods or services provided by the worker is a form of

[394] *Off Duty Police,* 915 F.3d at 1061–62 (citation omitted). This dynamic is also present in cases where the work can be performed away from a single work site and without supervision. This was the precise situation faced by the Third Circuit in *DialAmerica.* There, the fact that the workers could control the hours during which they worked and that they were subject to little direct supervision was unsurprising given that such facts are typical of homeworkers and thus largely insignificant in determining their status. 757 F.2d at 1383–84; *see also McComb* v. *Homeworkers' Handicraft Coop.,* 176 F.2d 633, 636 (4th Cir. 1949) (''It is true that there is no supervision of [homeworkers'] work; but it is so simple that it requires no supervision.'').

[395] *Off Duty Police,* 915 F.3d at 1061–62; *see also Antenor* 88 F.3d at 933 n.10 (explaining in an FLSA joint employment case that ''courts have found economic dependence under a multitude of circumstances where the alleged employer exercised little or no control or supervision over the putative employees''); *Superior Care,* 840 F.2d at 1060 (''An employer does not need to look over his workers' shoulders every day in order to exercise control.'').

[396] 781 F.3d at 814.

[397] *Id.*

[398] *Nieman,* 775 F. App'x at 624–25.

[399] *See infra* section V.D. (discussing this proposed rule's approach to the primacy of actual practice); *see also Herman* v. *RSR Security Servs.,* 172 F.3d 132, 139 (2d Cir. 1999) (noting, in a joint employment case, that supervisory control ''may be restricted, or exercised only occasionally, without removing the employment relationship from the protections of the FLSA'').

[400] *Superior Care,* 840 F.2d at 1060 (emphasis added); *see also Off Duty Police,* 915 F.3d at 1060 (describing the control analysis as an inquiry into ''whether the company *retains the right* to dictate the manner of the worker's performance'') (emphasis added and internal quotations omitted).

[401] *See, e.g., Ruiz,* 754 F.3d at 1102–03 (finding in a state wage-and-hour case that direct monitoring techniques used by an employer to monitor its furniture delivery drivers were a form of supervision that made it more likely that the worker was an employee; as the court noted, the employer supervised the drivers by ''conducting 'follow-alongs;' requiring that drivers call their . . . supervisor after every two or three stops; monitoring the progress of each driver on the 'route monitoring screen'; and contacting drivers if . . . [they] were running late or off course''—all of which supported the conclusion that the workers were employees under state law). For a general discussion of trends regarding remote supervision accomplished via technological means, *see* Matthew Finnegan, *Rise in Employee Monitoring Prompts Calls for New Rules to Protect Workers,* Computerworld (Nov. 30, 2021, 3:01 a.m.), *https://www.computerworld.com/article/3642712/rise-in-employee-monitoring-prompts-calls-for-new-rules-to-protect-workers.html; and* Rakeen Mabud, *When the Real Threat Is Worker Surveillance—Not The Robot Apocalypse,* Forbes (Jan. 22, 2019, 9:28 a.m.), *https://www.forbes.com/sites/rakeenmabud/2019/01/22/when-the-real-threat-is-worker-surveillance-not-the-robot-apocalypse/?sh=11fdfe046a2f.*

[402] The Department's enforcement experience in this area is informative. An employer's use of electronic visitor verification (''EVV'') systems can be evidence of an employment relationship, especially in those instances where the employer uses the systems to set schedules, discipline staff, or run payroll systems, for example. *See Domestic Service Final Rule Frequently Asked Questions (FAQs),* U.S. Department of Labor (May 24, 2022, 10:30 a.m.), *https://www.dol.gov/agencies/whd/direct-care/faq#g11* (discussing EVV systems at question #10 in relation to an FLSA joint employment analysis).

[403] *Parrish,* 917 F.3d at 381 (quoting *Pilgrim Equip.,* 527 F.2d at 1312) (alteration in original).

[404] 366 U.S. at 32.

control indicative of an employment relationship. For example, in *Martin* v. *Selker Bros.,* the court noted that, among other things, the fact that the employer set the price of cash sales of gasoline reflected the employer's ''pervasive control'' over the workers.[405] In *Off Duty Police,* the Sixth Circuit concluded that certain security guards were employees, in part, because ''[the employer] set the rate at which the workers were paid.'' [406] The Fourth Circuit in *McFeeley,* affirmed that a nightclub owner was exercising significant control because, among other things, they set the fees for private dances.[407] And in *Verma,* the court identified, among other things, the employer's setting the price and duration of private dances as indicative of ''overwhelming control'' over the performance of the work.[408] Consistently, when a worker negotiates or sets prices, those facts weigh in favor of independent contractor status. For example, in *Eberline* v. *Media Net, LLC,* the court found that a jury had sufficient evidence to conclude that a worker exerted independent control over meaningful aspects of his business in part due to ''testimony that installers could negotiate prices for custom work directly with the customer and keep that money without consequence.'' [409] The price of goods and services may sometimes be included in contracts between a business and an independent contractor.[410] Such a contract, however, does not automatically alleviate the need for a full analysis of this factor in order to consider whether and if the employer has control over the economic realities of the job; for example, whether the worker had the opportunity to negotiate and alter the terms of the contract. As with the other economic reality factors, the particular facts and circumstances of each case must be examined and considered in the context of the totality of the circumstances. Accordingly, setting a price or rate for goods provided or services rendered is a form of control that must be carefully considered when undertaking an economic realities analysis. It is evidence of employee status when an entity other than the worker sets a price or rate for the goods or services offered by the worker, or where the worker simply accepts a predetermined price or rate without meaningfully being able to negotiate it.[411]

e. Ability To Work for Others

Another aspect of the control factor is the ability to work for others, which is reflected in 2021 IC Rule § 795.105(d)(1)(i). This provision states that the control factor weighs in favor of independent contractor status when the worker, as opposed to the employer, exercises substantial control, such as ''through the ability to work for others, which might include the potential employer's competitors.'' The provision also states that the control factor weighs in favor of employee status where the employer, as opposed to the worker, exercises substantial control, such as ''by directly or indirectly requiring the individual to work exclusively for the potential employer.''

The Department continues to believe that where a worker has an exclusive work relationship with one employer and does not have the ability to work for others, this indicates employee status. Where the employer exercises control over a worker's ability to work for others—either by directly prohibiting other work, for example, through a contractual provision,[412] or indirectly by, for example, making demands on workers' time such that they are not able to work for other employers [413]—this is indicative of the type of control over economic aspects of the work associated with an employment relationship. For example, in *Scantland,* the Eleventh Circuit determined that even if the workers were not prohibited from working for others, the workers essentially had an exclusive work relationship with the employer because they were required to work five to seven days a week and could not decline work.[414] Thus, the employer controlled whether they could work for others, which suggested that they were economically dependent on the employer.[415]

The Department also recognizes that some courts find that less control is exercised by an employer where the worker can work for others, particularly competitors, and that this is indicative of an independent contractor relationship.[416] For example, in *Saleem,*

[405] 949 F.2d at 1294.

[406] 915 F.3d at 1060.

[407] 825 F.3d at 241–42.

[408] 937 F.3d at 230. Similarly, the Second Circuit in *Agerbrink* v. *Model Service, LLC,* 787 F. App'x 22, 25 (2d Cir. 2019), determined that there were material facts in dispute regarding the worker's ''ability to negotiate her pay rate,'' which related to the degree of control exerted by the employer. The court also rejected the employer's contention that the worker had control over her pay rate simply because she could either work for the amount offered or not work for that amount, stating that this ''says nothing of the power to negotiate a rate of pay.'' *Id.* at 26. *See also Cornerstone Am.,* 545 F.3d at 343–44 (finding employment where employer controlled ''meaningful'' aspects of the work, including pricing); *Karnes* v. *Happy Trails RV Park, LLC,* 361 F. Supp. 3d 921, 929 (W.D. Mo. 2019) (finding park managers to be employees in part because the park owners ''set all the prices''); *Hurst* v. *Youngelson,* 354 F. Supp. 3d 1362, 1370 (N.D. Ga. 2019) (finding relevant to the control analysis that the plaintiff was not free to set the prices she charged customers and had no ability to waive or alter cover charges for her customers).

[409] 636 F. App'x 225, 227 (5th Cir. 2016); *see also Nelson* v. *Texas Sugars, Inc.,* 838 F. App'x 39, 42 (5th Cir. 2020) (concluding that because the dancers set their own schedule, worked for other clubs, chose their costume and routine, decided where to perform (onstage or offstage), kept all the money that they earned, and *even chose how much to charge customers for dances,* a reasonable jury could conclude that the Club did not exercise significant control over them'') (emphasis added).

[410] *McFeeley,* 825 F.3d at 242–43 (observing that a worker doesn't ''automatically become[] an employee covered by the FLSA the moment a company exercises any control over him. After all, a company that engages an independent contractor seeks to exert some control, whether expressed orally or in writing, over the performance of the contractor's duties . . . .'').

[411] *See, e.g., Scantland,* 721 F.3d at 1315 (reversing summary judgment for the employer based in part on evidence that the workers ''could not bid for jobs or negotiate the prices for jobs'').

[412] *See Parrish,* 917 F.3d at 382 (noting that the non-disclosure agreement did not require exclusive employment, and was therefore not an element of control that indicated employee status); *Off Duty Police,* 915 F.3d at 1060–61 (non-compete clause preventing workers from working for employer's customers for two years after leaving employment was among evidence supporting finding that control factor indicated employee status); *Express Sixty-Minutes,* 161 F.3d at 303 (''Independent Contractor Agreement'' did not contain a ''covenant-not-to-compete'' and drivers could work for other courier delivery providers, which indicated independent contractor status); *see also* WHD Op. Ltr., 2000 WL 34444342, at *1, 4 (Dec. 7, 2000) (workers were required to sign an agreement that prohibited them from working for other companies while driving for the employer, which suggested employee status).

[413] *See, e.g., Keller,* 781 F.3d at 813–14 (although worker was not prohibited from working for other companies, ''a reasonable jury could find that the way that [the employer] scheduled [the worker's] installation appointments made it impossible for [the worker] to provide installation services for other companies''); *Scantland,* 721 F.3d at 1313–15 (finding even if workers were not prohibited from working for other installation contractors their long hours and inability to turn down work suggested that the employer controlled whether they could work for others, which was in part why the control factor favored employee status); *Cromwell* v. *Driftwood Elec. Contractors, Inc.,* 348 F. App'x 57, 61 (5th Cir. 2009) (''Although it does not appear that [the workers] were actually prohibited from taking other jobs while working for [the employers], as a practical matter the work schedule established by [the employers] precluded significant extra work.''); *Flint Eng'g,* 137 F.3d at 1441–42 (finding the hours the company required of the workers, coupled with driving time between home and remote work sites every day, made it ''practically impossible for them to offer services to other employers'').

[414] 721 F.3d at 1314–15.

[415] *Id.* at 1315.

[416] *See, e.g., Razak,* 951 F.3d at 145–46 (discussing disputed facts regarding the control factor, including whether drivers could drive for other services); *Paragon,* 884 F.3d at 1235 (finding control factor favored independent contractor status in part because worker could and did work for other employers); *Saleem,* 854 F.3d at 141–43 (drivers' ability to work for business rivals and transport

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the Second Circuit determined that black car drivers' ability to work for business rivals and transport personal clients showed less control by and economic dependence on the employer.[417] The Second Circuit distinguished the black car drivers' ability to shift their business operations from one entity to another in order to maximize their profits through the exercise of ''initiative, judgment, or foresight'' from the nurses in *Superior Care* who were dependent on the employer for referrals to job assignments with multiple health care entities.[418] The Second Circuit also noted that the black car drivers were able to seek out multiple sources of income by building their own long-term business relationships, creating business cards, and advertising their services.[419]

Consistent with the case law, the Department is proposing to address the ability to work for others in the control factor. The proposed regulation explains that where an employer either explicitly limits a worker's ability to work for others or places demands on a worker's time that effectively preclude them from working for others, these facts are relevant to the employer's control over the worker. The proposed regulation also states that more indicia of employer control favors employee status and more indicia of worker control favors independent contractor status. However, the regulation does not state that the ability to work for others is a form of control exercised by the worker. The Department is concerned that this framing, as reflected in the 2021 IC Rule, fails to distinguish between work relationships where a worker has multiple jobs in which they are dependent on each employer and do not exercise the control associated with being in business for oneself, and relationships where the worker has sought out multiple clients in furtherance of their business. For example, if one worker holds multiple lower-paying jobs for which they are dependent on each employer for work in order to earn a living, and a different worker services multiple clients due to their business acumen and entrepreneurial skills, there are qualitative and legally significant differences in how these two scenarios should be evaluated under the economic reality test. Thus, the mere fact that an employer allows workers to work for others does not transform an employee into an independent contractor. As the Fifth Circuit stated, ''[the] purposes [of the FLSA] are not defeated merely because essentially fungible piece workers work from time to time for neighboring competitors.'' [420]

Ultimately, ''the question [a] court must resolve is whether a [worker's] freedom to work when she wants and for whomever she wants reflects economic independence, or whether those freedoms merely mask the economic reality of dependence.'' [421] For example, in *McLaughlin* v. *Seafood, Inc.,* the Fifth Circuit examined whether piece-rate workers who peeled and picked crabmeat and crawfish for a seafood processor, and who were allowed ''to come and go as they please . . . and even to work for competitors on a regular basis'' were, as a matter of economic reality, dependent on their employers and therefore employees under the Act.[422] The court determined that the workers' ability to work for others was not dispositive, and that ''[l]aborers who work for two different employers on alternate days are no less economically dependent on their employers than laborers who work for a single employer'' because ''that freedom is hardly the same as true economic independence.'' [423]

Finally, the Department notes that courts frequently consider the exclusivity of the work relationship and workers' ability to work for others under the permanence factor as well, as discussed above in section V.C.3. The 2021 IC Rule elected to consider exclusivity and ability to work for others only under the control factor.[424] Upon further consideration, however, the Department is proposing to retain consideration of these issues under the control factor as well as considering exclusivity under the permanency factor. The Department does not believe that this leads to confusion, however, because courts often analyze workers' ability to work for others under both the control and permanence factors, demonstrating that these facts are relevant to both factors and aid factfinders' analyses when determining whether the worker is economically dependent on the employer or operating as an independent business as part of the overall economic realities inquiry. Specifically, the case law reflects and the Department believes that exclusivity can be considered as it relates to the degree of control exercised by the employer—such as what an employer's actions allow a worker to do vis-à-vis other employers— and that it speaks to the permanency of the work relationship. While permanency is often associated with an exclusive work relationship, it may or may not be due to the employer's control.[425]

The Department welcomes comments on all aspects of this factor.

Example: Nature and Degree of Control

A registered nurse provides nursing care for Alpha House, a nursing home. The nursing home sets the work schedule with input from staff regarding their preferences and determines where in the nursing home each nurse will work. Alpha House's internal policies prohibit nurses from working for other nursing homes while employed with Alpha House in order to protect its residents. In addition, the nursing staff are supervised by regular check-ins with managers, but nurses generally perform their work without direct supervision. While nurses at Alpha House work without close supervision and can express preferences for their schedule, Alpha House maintains control over when and where a nurse can work and whether a nurse can work for another nursing home. These facts related to the control factor indicate employee status.

Another registered nurse provides specialty movement therapy to residents at Beta House. The nurse maintains a website and was contacted by Beta House to assist its residents. The nurse provides the movement therapy for residents on a schedule agreed upon between the nurse and the resident, without direction or supervision from Beta House, and sets the price for services on the website. In addition, the nurse simultaneously provides therapy sessions to residents at Beta House as well as other nursing homes in the community. The facts related to the control factor—that the nurse markets their specialized services to obtain work for multiple clients, is not supervised by

personal clients showed less control by and economic dependence on the employer); *Express Sixty-Minutes,* 161 F.3d at 303 (control factor ''point[ed] toward independent contractor status'' in part because of drivers' ability to work for other courier delivery providers).

[417] 854 F.3d at 141–43.

[418] *Id.* at 143–44 (citing *Superior Care,* 840 F.2d at 1060 and *Keller,* 781 F.3d at 809) (internal quotation marks omitted).

[419] *Id.* at 143.

[420] *McLaughlin* v. *Seafood, Inc.,* 867 F.2d 875, 877 (5th Cir. 1989) (per curiam).

[421] *Reich* v. *Priba Corp.,* 890 F. Supp. 586, 592 (N.D. Tex. 1995) (citing *Mednick,* 508 F.2d at 300, 301–02).

[422] 861 F.2d 450, 451–53 (5th Cir. 1988), *modified on reh'g,* 867 F.2d 875 (5th Cir. 1989).

[423] *Seafood Inc.,* 867 F.2d at 877.

[424] 86 FR 1192–93.

[425] The Department noted in the 2021 IC Rule that it ''disagree[d] with the interpretation suggested by various business commenters that only worker practices which are affirmatively coerced by a potential employer may indicate employee status.'' *Id.* at 1205. As noted, ''[s]uch a reading conflicts with the definition of 'employ' in section 3(g) of the Act, which makes clear that the FLSA was intended to cover employers who passively 'suffer or permit' work from individuals.'' *Id.*

Beta House, sets their own prices, and has the flexibility to select a work schedule—indicate independent contractor status.

5. Extent to Which the Work Performed is an Integral Part of the Employer's Business (Proposed § 795.110(b)(5))

Section 795.105(d)(2)(iii) of the 2021 IC Rule addresses whether the worker's work ''is part of an integrated unit of production'' of the employer's business.[426] The 2021 IC Rule explained that ''the relevant facts are the integration of the worker into the potential employer's production processes'' because ''[w]hat matters is the extent of such integration rather than the importance or centrality of the functions performed'' by the worker.[427] Thus, § 795.105(d)(2)(iii) expressly rejects as irrelevant to this factor whether the work is important or central to the employer's business, and § 795.115(b)(6)(ii) similarly advises in an illustrative example involving a freelance journalist that ''[i]t is not relevant . . . that the writing of articles is an important part of producing newspapers.[428]

In proposed § 795.110(b)(5), the Department returns to the framing of this factor as whether the worker's work is an ''integral part'' of the employer's business. The Department believes that this return to considering whether the work is critical, necessary, or central to the employer's business better reflects the economic reality case law and is more consistent with the totality-of-the-circumstances approach to determining whether a worker is an employee or an independent contractor.[429] For decades, courts have repeatedly found a worker's performance of work that is integral to the employer's business to be an indicator of employee status.[430] This judicial treatment reflects the understanding that a worker who performs work that is integral to an employer's business is more likely to be employed by the business, whereas a worker who performs work that is more peripheral to the employer's business is more likely to be independent from the employer.[431]

The 2021 IC Rule suggested that, in the modern economy, this assumption ''may not always be valid,'' because lower transaction costs make it easier for companies to contract for products and services.[432] Yet, a firm's economic decision to contract for more essential functions is not synonymous with their workers' proper classification as employees or independent contractors. Practices that lead to efficiency or cost savings for the employer do not diminish the role of a factor in the economic reality test. Of course, it is not always true that workers whose work is integral are employees.[433] The integral factor is just one part of the analysis. However, courts continue to find the factor useful for evaluating economic dependence or independence because of the insight it provides into whether a worker is in business for themself or is a part of the employer's business.[434]

Most courts adopt a common-sense approach to whether the work or service performed by the worker is an integral part of the employer's business. For example, if the employer could not function without the service performed by the workers, then the service they provide is integral.[435] Such workers are more likely to be economically dependent on the employer because their work depends on the existence of the employer's principal business, rather than their having an independent business that would exist with or without the employer.[436] Courts also look at whether the work is important, critical, primary, or necessary to the employer's business.[437] In most cases, if an employer's primary business is to make a product or provide a service, then the workers who are involved in making the product or providing the service are integral.[438]

The focus of the integral factor is on the work performed, not the individual worker.[439] This approach evaluates

[426] 86 FR 1247.

[427] 86 FR 1195.

[428] 86 FR 1247–48.

[429] In addition, the common law test considers ''whether the work is part of the regular business of the hiring party'' in distinguishing between employees and independent contractors. *Reid,* 490 U.S. at 752.

[430] *See Silk,* 331 U.S. at 716 (unloaders were ''an integral part of the business[] of retailing coal''); *see also Off Duty Police,* 915 F.3d at 1055; *McFeeley,* 825 F.3d at 244; *Scantland,* 721 F.3d at 1319; *Flint Eng'g,* 137 F.3d at 1443; *Superior Care,* 840 F.2d at 1060–61; *Lauritzen,* 835 F.2d at 1537–38; *DialAmerica,* 757 F.2d at 1385; *Driscoll,* 603 F.2d at 755.

[431] *See, e.g., Keller,* 781 F.3d 799 at 815 (''The more integral the worker's services are to the business, then the more likely it is that the parties have an employer-employee relationship.''); *DialAmerica,* 757 F.2d at 1385 (''workers are more likely to be 'employees' under the FLSA if they perform the primary work of the alleged employer'').

[432] 86 FR 1194. The 2021 IC Rule's rejection of the ''integral'' factor relied in part on a criticism articulated by Judge Easterbrook in a concurring opinion. *Id.* (citing *Lauritzen,* 835 F.2d at 1541 (Easterbrook, J., concurring)). Judge Easterbrook argued that the factor was not useful, because ''[e]verything the employer does is ''integral'' to its business-why else do it?'' *Id.* He argued that the cucumber-pickers in *Lauritzen* may be crucial to the employer's pickle business, but so would architects be to a building firm, or tires to Chrysler—but that does not imply the firms employ the architects or Chrysler employs tire makers. 835 F.2d at 1541. The Department believes, however, that although other factors may indicate that workers who provide important or central services are independent contractors, it is nevertheless the case that such workers are more likely to be employees. Like any other factor, the integral factor provides only part of the analysis.

[433] *See, e.g., Meyer* v. *U.S. Tennis Ass'n,* 607 F. App'x 121, 123 (2d Cir. 2015) (''Although tennis umpires are an integral part of the U.S. Open,'' other factors supported determination that umpires were independent contractors); *Perdomo* v. *Ask 4 Realty & Mgmt., Inc.,* No. 07–20089, 2007 WL 9706364, at *4 (S.D. Fla. Dec. 19, 2007) (construction worker's work was integral to remodeling business, but economic reality factors as a whole indicated independent contractor status).

[434] *See, e.g., Sigui,* 484 F. Supp. 3d at 41 (finding that this factor indicated employee status for cable installers after acknowledging that not all courts consider this factor but rejecting employer's argument that the factor ''is not particularly important in the analysis'' because, in this case, it ''gives a complete picture of the business relationship'') (quoting *Pizzarelli* v. *Cadillac Lounge, LLC,* No. 15–254, 2018 WL 2971114, at *6 (D.R.I. Apr. 13, 2018)).

[435] *See, e.g., Off Duty Police,* 915 F.3d at 1055 (rejecting employer's argument that it was merely an agent between its customers and the officers because the company ''could not function without the services its workers provide''); *McFeeley,* 825 F.3d at 244 (''[E]ven the clubs had to concede the point that an 'exotic dance club could [not] function, much less be profitable, without exotic dancers.' '') (quoting Secretary of Labor's Amicus Br. in Supp. of Appellees at 24); *Capital Int'l,* 466 F.3d at 309 (finding security guards were integral to a business where company ''was formed specifically for the purpose of supplying'' private security); *cf. Johnson* v. *Unified Gov't of Wyandotte Cnty./Kansas City,* 371 F.3d 723, 730 (10th Cir. 2004) (upholding jury verdict finding independent contractor status for security guards working for government housing authority and noting, with regard to integral factor, that the housing authority ''had functioned for years before and after the program'' under which security guards were hired).

[436] *See, e.g., Brock* v. *Lauritzen,* 624 F. Supp. 966, 969 (E.D. Wis. 1985), *aff'd,* 835 F.2d 1529 (7th Cir. 1987) (finding that cucumber harvesters were integral to cucumber farmer's business and were ''economically dependent upon Lauritzen's business for their work during the cucumber harvest season'').

[437] *See, e.g., Alpha & Omega,* 39 F.4th at 1085 (noting that this factor ''turns 'on whether workers' services are a necessary component of the business' '') (quoting *Paragon,* 884 F.3d at 1237); *Flint Eng'g,* 137 F.3d at 1443 (finding rig welders' work to be ''an important, and indeed integral, component of oil and gas pipeline construction work'' because their work is a critical step on every transmission system construction project); *Lauritzen,* 835 F.2d at 1537–38 (''It does not take much of a record to demonstrate that picking the pickles is a necessary and integral part of the pickle business[.]''); *cf. Paragon,* 884 F.3d at 1237 (''Because [the worker]'s management of the pecan grove was not integral to the bulk of Paragon's [construction] business, this factor supports consideration of [the worker] as an independent contractor'').

[438] *See, e.g., Superior Care,* 840 F.2d at 1059 (for business that provided on-demand health care personnel, the nurses provided were themselves integral to the business).

[439] *See, e.g., Montoya* v. *S.C.C.P. Painting Contractors, Inc.,* 589 F. Supp. 2d 569, 581 (D. Md. 2008) (explaining that ''this factor does not turn on whether the individual worker was integral to the business; rather, it depends on whether the service

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whether the worker performs work that is central to the employer's business, not whether the worker possesses some unique qualities that render them indispensable as an individual. An individual worker who performs the work that an employer is in business to provide but is just one of hundreds or thousands who perform the work (such as one operator among many at a call center) is nonetheless an integral part of the employer's business even if that one worker makes a minimal contribution to the business when considered among the workers as a whole.

As with the other components of the economic reality test, the integral part factor is just one area of inquiry and must be considered in relation to the other factors and to the extent that it contributes to the determination of economic dependence or independence. As such, it is unsurprising that, as noted in the 2021 IC Rule, there will be instances in which this factor ''misaligns'' with the ultimate result.[440] It is to be expected that not every factor will ''align'' with the ultimate result in many cases. With a multifactor analysis, it is common that some factors will indicate one result while others will indicate another. This difference shows that courts correctly weigh the factors against each other. A factor pointing in a different direction from other factors in any one case is not evidence that a factor is not useful in the run of situations.

In support of its rejection of the integral factor in favor of an ''integrated unit'' factor, the 2021 IC Rule relied on a rigid reading of *Rutherford* (which noted that the work was ''part of an integrated unit of production'' of the employer).[441] Upon further consideration, the Department finds that this rigid approach to the specific phrasing of *Rutherford* does not reflect Supreme Court or circuit court precedent. As the 2021 IC Rule acknowledged, the Supreme Court's contemporaneous decision in *Silk* determined that coal ''unloaders'' were employees of a retail coal company as a matter of economic reality in part because they were ''*an integral part* of the business[] of retailing coal.''[442] This language was interpreted in the 2021 IC Rule as being part of the overall inquiry rather than a factor that is useful to guide the inquiry.[443] The Supreme Court's list of factors in *Silk* was not intended to be exhaustive, but instead consisted of factors the Court believed would be useful to courts and agencies applying the economic reality test in the future.[444] The Court noted that the workers were an ''integral part'' of the business, and later courts have likewise found this to be useful to the economic reality analysis—so much so that most circuit courts routinely list it as an enumerated factor, but no court uses ''integrated unit'' for this factor.[445]

For these reasons, the Department is proposing to eliminate the ''integrated unit'' factor as an enumerated factor and instead to restore the integral factor, understood by courts as being focused on whether the work is critical, necessary, or central to the employer's business.[446] The Department used this approach for decades prior to the 2021 IC Rule and found it a useful factor in the economic reality analysis.[447] No court has applied the ''integrated unit'' approach adopted by the 2021 IC Rule. Restoring the integral factor would avoid confusion and provide greater consistency with existing case law—the overwhelming majority of which includes an analysis of the integral factor as set forth in this proposed rule.

The Department welcomes comments on all aspects of this factor.

Example: Extent To Which the Work Performed Is An Integral Part of the Employer's Business

A large farm grows tomatoes that it sells to distributors. The farm pays workers to pick the tomatoes during the harvest season. Because picking tomatoes is an integral part of farming tomatoes, and the company is in the business of farming tomatoes, the tomato pickers are integral to the company's business. The integral factor indicates employee status.

Alternatively, the same farm pays an accountant to provide non-payroll accounting support, including filing its annual tax return. This accounting support is not critical, necessary, or central to the principal business of the farm, thus the accountant is not integral to the business. Therefore, the integral factor indicates independent contractor status.

6. Skill and Initiative (Proposed § 795.110(b)(6))

The 2021 IC Rule includes an ''amount of skill required for the work'' factor and § 795.105(d)(2)(i) states that this factor ''weighs in favor of the individual being an independent contractor to the extent the work at issue requires specialized training or skill that the potential employer does not provide.''[448] That regulation further states that this factor ''weighs in favor of the individual being an employee to the extent the work at issue requires no specialized training or skill and/or the individual is dependent upon the potential employer to equip him or her with any skills or training necessary to perform the job.''[449]

The Department is proposing that this factor be described as the ''skill and initiative'' factor and consider whether a worker uses specialized skills to perform the work and whether those skills contribute to business-like initiative that is consistent with the worker being in business for themself instead of being economically dependent on the employer. The Department is proposing to reaffirm the longstanding principle that this factor indicates employee status where the worker lacks specialized skills. Proposed § 795.110(b)(6) states that where the worker brings specialized skills to the work relationship, it is the worker's use of those specialized skills in connection with business-like initiative that indicates that the worker is an independent contractor instead of an employee. The Department believes that the application of initiative in connection with specialized skills is useful in answering the overarching inquiry of whether the worker is economically dependent on the employer for work or is in business for themself, and is therefore proposing to reintegrate initiative into this factor and no longer exclude consideration of initiative when applying this factor, as provided in the 2021 IC Rule.

When applying this factor, many courts have recognized that a worker's lack of specialized skills to perform the work indicates that the worker is an employee. For example, courts have

the worker performed was integral to the business'').

[440] 86 FR 1194. Although it asserted a ''higher rate of misalignment'' when the ultimate classification was independent contractor status, the 2021 IC Rule did not identify any cases where the ''integral part'' factor led to a result that was contrary to the totality of the evidence. *See id.*

[441] 86 FR 1193–94 (citing *Rutherford,* 331 U.S. at 729).

[442] 331 U.S. at 716 (emphasis added).

[443] 86 FR 1194.

[444] 331 U.S. at 716.

[445] *Id.; see supra* n. 430.

[446] Of course, if it is somehow relevant to the question of economic dependence or independence, the extent to which a worker is integrated into a business's production processes may be considered under any relevant factor or as an additional factor. For example, indicators that a worker is integrated into an employer's main production processes, such as whether the worker is required to work at the employer's main workplace or wear the employer's uniform, may be indicators of an employer's control over the work.

[447] *See, e.g.,* WHD Fact Sheet #13 (July 2008) (listing ''[t]he extent to which the services rendered are an integral part of the principal's business'' as a factor).

[448] 86 FR 1247.

[449] *Id.*

found that where the work of security guards and traffic control officers requires little skill, this lack of specialized skills indicates that the workers are employees instead of independent contractors.[450] Numerous courts have found that driving is not a specialized skill, indicating employee status.[451] Other courts have found that the skill factor favors employee status where janitorial work does not require specialized skills.[452] Courts have reached similar conclusions in cases involving landscape workers and call center workers, among other workers.[453]

As these cases make clear, the worker's lack of specialized skills when performing the work generally indicates employee status.[454] This is consistent with 2021 IC Rule § 795.105(d)(2)(i),[455] as noted above. It is also consistent with the position taken in an opinion letter issued by WHD in 2000, which stated that the fact that ''the drivers appear to perform routine work that requires no prior experience'' indicates employee status.[456]

That the work does not require prior experience, that the worker is dependent on training from the employer to perform the work, or that the work requires no training are indicators that the worker lacks specialized skills. Even if the worker possesses specialized skills, this factor may indicate employee status if the work does not require those skills. The Sixth Circuit explained that the skill factor favored employee status in a case because, although a subset of the workers possessed skill and prior experience, the work did not require skill and prior experience and the ''workers [we]re required to attend only a four-hour training session before they begin work.'' [457] The Tenth Circuit has similarly explained in a case that, even if some workers had prior experience and training, the workers were not required ''to have any specialized skills or prior experience when they start to work,'' indicating employee status.[458]

Consistent with the principle that no one factor is dispositive, however, workers who lack specialized skills may be independent contractors even if this factor is very unlikely to point in that direction in their circumstances. A landscaper, for example, may perform work that does not require specialized skills, but application of the other factors may demonstrate that the landscaper is an independent contractor (for example, the landscaper may have a meaningful role in determining the price charged for the work, make decisions affecting opportunity for profit or loss, determine the extent of capital investment, work for many clients, and/or perform work for clients for which landscaping is not integral).

Where a worker brings specialized skills to the work relationship, further analysis will determine whether this factor indicates employee or independent contractor status. Consistent with the approach of evaluating each factor in the context of the ultimate inquiry of whether the worker is economically dependent on the employer or in business for themself, proposed § 795.110(b)(6) states that the worker should use the specialized skills in connection with business-like initiative for this factor to suggest independent contractor status. Many circuit courts of appeals have expressly recognized that business-like initiative is at least part of the inquiry. For example, the Second Circuit has explained that ''the fact that workers are skilled is not itself indicative of independent contractor status.'' [459] Although the workers in that case ''possess[ed] technical skills,'' the court noted that ''nothing in the record reveal[ed] that they used these skills in any independent way,'' which indicated that the workers' skill did not ''weigh significantly in favor of independent contractor status.'' [460] The Third Circuit agreed that ''the use of special skills is not itself indicative of independent contractor status, especially if the workers do not use those skills in any independent way.'' [461] The Third Circuit has further explained that if the workers use their skills in connection with ''business-like initiative,'' the factor indicates independent contractor status: ''Some distributors benefitted from their skill in persuading others to become distributees, and they certainly exercised business-like initiative in this regard.'' [462]

The Fifth Circuit describes this factor as evaluating the skill and initiative required in performing the work and considers initiative along with skill.[463] The Fifth Circuit has explained that, generally, ''we look for some unique skill set, or some ability to exercise significant initiative within the business.'' [464] It has noted that ''[g]reater skill and more demonstrated initiative counsel in favor of [independent contractor] status.'' [465] When the

[450] *See, e.g., Off Duty Police,* 915 F.3d at 1055–56 (noting that ''[t]he skills required to work for ODPS are far more limited than those of a typical independent contractor'' in finding that the skill factor weighed in favor of employee status for security guards and traffic control workers); *Walsh* v. *EM Protective Servs. LLC,* No. 3:19–cv–00700, 2021 WL 3490040, at *7 (M.D. Tenn. Aug. 9, 2021) (traffic control officers require ''relatively little skill'' and security guards require ''minimal skill,'' indicating employee status); *Solis* v. *Int'l Detective & Protective Serv., Ltd.,* 819 F. Supp. 2d 740, 752 (N.D. Ill. 2011) (finding that the ''vast majority of the Guards' work . . . did not require any special skills'').

[451] *See, e.g., Razak,* 951 F.3d at 147 (noting that it ''is generally accepted that 'driving' is not itself a 'special skill' '' in determining that the skill factor weighs in favor of employee status); *Iontchev,* 685 F. App'x at 550 (''The service rendered by the [taxi drivers] did not require a special skill.''); *Campos* v. *Zopounidis,* No. 3:09–cv–1138 (VLB), 2011 WL 2971298, at *7 (D. Conn. July 20, 2011) (''There is no evidence that Campos's job as a delivery person required him to possess any particular degree of skill. Campos did not need education or experience to perform his job. Although he needed a driver's license in order to legally drive his vehicle for deliveries, the possession of a driver's license and the ability to drive an automobile is properly characterized as a 'routine life skill' that other courts have found to be indicative of employment status rather than independent contractor status.'').

[452] *See, e.g., Perez* v. *Super Maid, LLC,* 55 F. Supp. 3d 1065, 1077–78 (N.D. Ill. 2014) (noting, in finding that skill factor favored employee status, that ''[m]aintenance work, such as cleaning, sweeping floors, mowing grass, unclogging toilets, changing light fixtures, and cleaning gutters, does not necessarily involve such specialized skills as would support independent contractor status,'' and that ''cleaning services, although difficult and demanding, were even less complex than those maintenance services'') (internal quotation marks omitted); *Harris* v. *Skokie Maid & Cleaning Serv., Ltd.,* No. 11 C 8688, 2013 WL 3506149, at *8 (N.D. Ill. July 11, 2013) (''The maids' work may be difficult and demanding, but it does not require special skill,'' indicating employee status.).

[453] *See, e.g., Acosta* v. *New Image Landscaping, LLC,* No. 1:18–cv–429, 2019 WL 6463512, at *6 (W.D. Mich. Dec. 2, 2019) (facts that ''little or no skill was required'' and ''prior landscaping experience'' was not required meant that skill factor favored employee status for landscapers); *Acosta* v. *Wellfleet Commc'ns, LLC,* No. 2:16–cv–02353–GMN–GWF, 2018 WL 4682316, at *7 (D. Nev. Sept. 29, 2018) (explaining that skill factor favored employee status for call center workers because ''all that Defendants required was the ability to communicate well and read a script''), *aff'd sub nom. Walsh* v. *Wellfleet Commc'ns,* No. 20–16385, 2021 WL 4796537 (9th Cir. Oct. 14, 2021).

[454] As the Tenth Circuit, for example, has explained, ''the lack of the requirement of specialized skills is indicative of employee status.'' *Flint Eng'g,* 137 F.3d at 1443 (quoting *Snell,* 875 F.2d at 811) (alteration omitted).

[455] 86 FR 1247.

[456] WHD Op. Ltr., 2000 WL 34444342, at *5 (Dec. 7, 2000).

[457] *Off Duty Police,* 915 F.3d at 1056 (citing *Keller,* 781 F.3d at 807, 809).

[458] *Snell,* 875 F.2d at 811; *see also McFeeley,* 825 F.3d at 244 (''As to the degree of skill required, the clubs conceded that they did not require dancers to have prior dancing experience.'').

[459] *Superior Care,* 840 F.2d at 1060.

[460] *Id.*

[461] *Selker Bros.,* 949 F.2d at 1295.

[462] *DialAmerica,* 757 F.2d at 1387.

[463] *See, e.g., Hobbs,* 946 F.3d at 834; *Parrish,* 917 F.3d at 385.

[464] *Cornerstone Am.,* 545 F.3d at 345 (citations omitted).

[465] *Parrish,* 917 F.3d at 385; *see also, e.g., Express Sixty-Minutes,* 161 F.3d at 305 (''The district court did not discuss initiative during its evaluation of this factor. We agree with the Secretary that the skill and initiative factor points toward employee status.''); *Circle C. Invs.,* 998 F.2d at 328 (''The

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worker's specialized skills are coupled with initiative, the Fifth Circuit has found that this factor indicates independent contractor status.[466]

Similarly, in a case involving workers on a pickle farm, the Seventh Circuit explained that employees are skilled workers too, noting that although the workers in that case had ''develop[ed] some specialized skill,'' ''this development of occupational skills is no different from what any good employee in any line of work must do,'' and concluding that ''[s]kills are not the monopoly of independent contractors.'' [467] The Tenth Circuit has explained that although the lack of specialized skills indicates employee status, ''the use of special skills is not itself indicative of independent contractor status, especially if the workers do not use those skills in any independent way.'' [468] And the Eleventh Circuit has explained in a case where the workers were ''clearly skilled workers'' that ''[t]he meaningfulness of this skill as indicating that plaintiffs were in business for themselves or economically independent, however, is undermined by the fact that [the employer] provided most technicians with their skills.'' [469]

The Department has previously stated in guidance that specialized skills should be coupled with business-like initiative for this factor to indicate independent contractor status. In AI 2015–1, the Department explained that ''specialized skills do not indicate that workers are in business for themselves, especially if those skills are technical and used to perform the work.'' [470] For that reason, application of this factor should not ''overlook[] whether the worker is exercising business skills, judgment, or initiative.'' [471] The July 2008 version of WHD Fact Sheet #13 describes the factor as ''[t]he amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor.'' [472] The Department's May 2014 version of Fact Sheet #13 explained:

Both employees and independent contractors may be skilled workers. To indicate possible independent contractor status, the worker's skills should demonstrate that he or she exercises independent business judgment. Further, the fact that a worker is in open market competition with others would suggest independent contractor status. For example, specialized skills possessed by carpenters, construction workers, and electricians are not themselves indicative of independent contractor status; rather, it is whether these workers take initiative to operate as independent businesses, as opposed to being economically dependent, that suggests independent contractor status.

For all these reasons, there is strong support in the case law and the Department's prior guidance for not limiting this factor to an evaluation of whether the worker has specialized skills and for also considering whether the worker is exercising business-like initiative in relation to any specialized skills. Moreover, considering initiative in this manner would be consistent with evaluating each factor in the context of the ultimate inquiry of whether the worker is economically dependent on the employer or is an independent business. Considering only whether the worker has technical or specialized skills is not necessarily probative of the ultimate inquiry of economic dependence or independence because, as explained above, employees and independent contractors often both have specialized skills, and thus evaluating those skills is not particularly distinguishing. Whether a worker uses those specialized skills to exercise business-like initiative or in some other way that suggests that the worker is operating as an independent business is more probative, as a matter of economic reality, of that distinction between economic dependence and independence.[473]

The 2021 IC Rule does not consider initiative in the context of this factor.[474] The 2021 IC Rule limited this factor to ''focus solely on skill'' to ''clarif[y] the analysis''; the 2021 IC Rule acknowledged that initiative is an important consideration, but it confined consideration of initiative to the control and opportunity for profit or loss factors because, for purposes of that rule, those factors are the more probative factors.[475]

Upon further consideration, the Department believes that it is appropriate to consider initiative under the skill factor to the extent that workers exercise business-like initiative in the use of their specialized skills. For the reasons explained above, the worker's use of initiative in connection with any specialized skills is more probative of the ultimate inquiry of whether the worker is economically dependent on the employer or is an independent business. Both employees and independent contractors can be highly skilled,[476] so consideration of the worker's specialized skills alone can be less probative of that inquiry. On the other hand, consideration of the worker's initiative in connection with any specialized skills better assesses the economic realities of the work relationship and is more helpful in distinguishing between employees and independent contractors.

As explained above in this NPRM, types of initiative by a worker may also

dancers do not exhibit the skill or initiative indicative of persons in business for themselves.'').

[466] *See, e.g., Thibault* v. *Bellsouth Telecommc'ns, Inc.,* 612 F.3d 843, 847 (5th Cir. 2010) (noting when considering this factor that ''the splicers' success depended on their ability to find consistent work by moving from job-to-job''); *Carrell,* 998 F.2d at 333 (welders' work ''requires specialized skills'' and, although they exercised ''limited'' initiative ''once on a job,'' a welder's ''success depended on his ability to find consistent work by moving from job to job and from company to company''); *cf. Hobbs,* 946 F.3d at 834 (agreeing with the district court's finding that this factor was neutral because, although the workers ''were highly skilled workers'' and their work ''required specialized skills,'' their work ''did not require them to demonstrate significant initiative''); *but see Parrish,* 917 F.3d at 386 (although the employer's evidence that the workers showed initiative was not very compelling, the workers' ''specialized skill weighs heavily in our analysis and persuades us to hold this factor leans in favor of [independent contractor] status'').

[467] *Lauritzen,* 835 F.2d at 1537; *see also Super Maid,* 55 F. Supp. 3d at 1077 (noting that ''all jobs require some modicum of skill'') (citing *Lauritzen,* 835 F.2d at 1537); *Keller,* 781 F.3d at 809 (noting that, ''[t]o a certain extent, . . . every worker has and uses relevant skills to perform his or her job, but not everyone is an independent contractor'').

[468] *Flint Eng'g,* 137 F.3d at 1443 (quoting *Selker Bros.,* 949 F.2d at 1295).

[469] *Scantland,* 721 F.3d at 1318.

[470] 2015 WL 4449086, at *9 (citing *Superior Care,* 840 F.2d at 1060) (withdrawn June 7, 2017).

[471] *Id.*

[472] WHD Fact Sheet #13 (July 2008). This language from the July 2008 version of Fact Sheet #13 comes from *Rutherford,* which noted that the workers in that case did not exercise ''the initiative, judgment or foresight of the typical independent contractor.'' 331 U.S. at 730.

[473] Some circuit court decisions have not considered the worker's initiative when evaluating the skill factor. *See, e.g., Keller,* 781 F.3d at 809–10 (focusing on the workers' skill and how they acquired it and contrasting carpenters, who have ''unique skill, craftsmanship, and artistic flourish,'' with cable technicians, who do not need ''unique skills'' but rather are selected on the basis of availability and location); *Mid-Atlantic Installation,* 16 F. App'x at 107 (affirming district court's conclusion that the skills of installing cable are indicative of independent contractor status because the skills are ''akin to those of carpenters, construction workers, and electricians, who are usually considered independent contractors''). For the reasons explained above, however, whether workers use those specialized skills to exercise business-like initiative is what makes this factor probative of the ultimate inquiry of whether the workers are in business for themselves. Thus, the skills of cable installers, carpenters, construction workers, and electricians, for example, even assuming that they are specialized, are not themselves indicative of independent contractor status. Carpenters, construction workers, electricians, and other workers who operate as independent businesses, instead of being economically dependent on their employer, are independent contractors. *See generally* AI 2015–1, 2015 WL 4449086, at *9–10.

[474] *See* 86 FR 1247 (§ 795.105(d)(2)(i)).

[475] 86 FR 1191.

[476] *See, e.g., supra* n. 467 and accompanying text.

be relevant when applying the control factor or the opportunity for profit or loss factor.[477] When evaluating the skill factor, the focus should be whether the worker uses any specialized skills to exercise business-like initiative. When applying the opportunity for profit or loss factor, for example, the focus is whether the worker uses managerial skill—a type of initiative—to affect the worker's opportunity for profit or loss. Thus, the focus of each factor is different, but some facts showing an exercise of initiative can nonetheless be relevant under the skill factor and another factor. Considering facts showing an exercise of initiative under more than one factor to the extent appropriate depending on the facts of a case is consistent with and furthers the totality-of-the-circumstances approach to assessing the economic realities of the work relationship.[478]

The Department welcomes comments on all aspects of this factor.

Example: Skill and Initiative

A highly skilled welder provides welding services for a construction firm. The welder does not make any independent judgments at the job site beyond the decisions necessary to do the work assigned. The welder does not determine the sequence of work, order additional materials, think about bidding the next job, or use those skills to obtain additional jobs, and is told what work to perform and where to do it. In this scenario, the welder, although highly skilled technically, is not using those skills in a manner that evidences business-like initiative. The skill and initiative factor indicates employee status.

A highly skilled welder provides a specialty welding service, such as custom aluminum welding, for a variety of area construction companies. The welder uses these skills for marketing purposes, to generate new business, and to obtain work from multiple companies. The welder is not only technically skilled, but also uses and markets those skills in a manner that evidences business-like initiative. The skill and initiative factor indicates independent contractor status.

7. Additional Factors (Proposed § 795.110(b)(7))

Section 795.105(d)(2)(iv) of the 2021 IC Rule states that additional factors may be considered if they are relevant to the ultimate question of whether the workers are economically dependent on the employer for work or in business for themselves.[479] This reflects the necessity of considering all facts that are relevant to the question of economic dependence or independence, regardless of whether those facts fit within one of the enumerated factors. This approach is consistent with the Supreme Court's guidance in *Silk,* where it cautioned that its suggested factors are not intended to be exhaustive.[480] It is also consistent with the approach that courts and the Department have used in the decades since to determine whether workers are employees or independent contractors under the FLSA. The Department is proposing to move this provision to proposed § 795.110(b)(7) with minor editorial changes.

The 2021 IC Rule states that its list of factors is ''not exhaustive.'' [481] In order to emphasize that point, the Department included an explicit provision recognizing that other potentially relevant factors may exist in some circumstances.[482] The 2021 IC Rule thus states that ''[a]dditional factors may be relevant in determining whether an individual is an employee or independent contractor for purposes of the FLSA[.]'' [483] The regulation further cautions that such additional factors are only relevant ''if the factors in some way indicate whether the individual is in business for him- or herself, as opposed to being economically dependent on the potential employer for work.'' [484] The preamble to the Rule explained that ''[f]actors that do not bear on this question, such as whether an individual has alternate sources of wealth or income and the size of the hiring company, are not relevant.'' [485]

The Department is proposing to retain § 795.105(d)(2)(iv) with only minor editorial changes. Retaining this provision reiterates that the enumerated factors are not to be applied mechanically but should be viewed along with any other relevant facts in light of whether they indicate economic dependence or independence. Retaining the provision also preserves the caution that only factors that are relevant to the overall question of economic dependence or independence should be considered. This language stresses that the economic reality is what matters, and not labels or formalities.

The Department is not proposing to identify any particular additional factors that may be relevant. The Department previously identified the ''degree of independent business organization and operation'' as a seventh factor that it considered in its analysis.[486] However, given the Department's focus in this proposed rulemaking on reflecting the economic reality factors commonly used by the circuit courts of appeals, the Department is not proposing to include the worker's ''degree of independent business organization and operation'' as a seventh factor. The Department is not aware of any court that has used this as a standalone factor. Moreover, the Department is concerned that facts that may relate to whether a worker has an independent business organization—such as whether the worker has incorporated or receives an Internal Revenue Service (IRS) Form 1099 from an employer—reflect mere labels rather than the economic realities and are thus not relevant. To the extent facts such as the worker having a business license or being incorporated may suggest that the worker is in business for themself, they may be considered either as an additional factor or under any enumerated factor to which they are relevant. However, consistent with an economic reality analysis, it is important to inquire into whether the worker's license or incorporation are reflective of the worker being in business for themselves as a matter of economic reality. For example, if an employer requires a worker to obtain a certain license or adopt a certain form of business in order to perform work for it, this may be evidence of the employer's control, rather than a worker who is independently operating a business. Indeed, even where ''the parties structure[] the relationship as an independent contractor, . . . the caselaw counsels that, for purposes of the worker's rights under the FLSA, we must look beyond the structure to the economic realities.'' [487]

The Department welcomes comments on this provision.

D. Primacy of Actual Practice (2021 IC Rule § 795.110)

The Department is proposing to delete 2021 IC Rule § 795.110 and use this section for the discussion of the economic reality factors.

Section 795.110 of the 2021 IC Rule provides that in determining economic dependence ''the actual practice of the parties involved is more relevant than

[477] *See supra* sections V.C.1. and 4., discussions of opportunity for profit or loss and control.

[478] *See supra* section V.C., discussion of economic reality test.

[479] 86 FR 1247.

[480] *Silk,* 331 U.S. at 716 (''No one [factor] is controlling nor is the list complete.'').

[481] 86 FR 1246 (§ 795.105(c)).

[482] 86 FR 1196.

[483] 86 FR 1247 (§ 795.105(d)(2)(iv)).

[484] *Id.*

[485] 86 FR 1196.

[486] WHD Fact Sheet #13 (July 2008).

[487] *Safarian* v. *American DG Energy Inc.,* 622 F. App'x 149, 151 (3d Cir. 2015).

what may be contractually or theoretically possible.'' [488] This absolute rule, elevating actual practice over contractual authority that the employer may have reserved for exercise in the future, is overly mechanical and does not allow for appropriate weight to be given to contractual provisions in situations in which they are crucial to understanding the economic realities of a relationship. Instead, the Department believes that a less prescriptive approach is more faithful to the totality-of-circumstances economic reality analysis, such that contractual or other reserved rights should be considered like any other fact under each factor to the extent they indicate economic dependence.

The 2021 IC Rule stressed that ''unexercised powers, rights, and freedoms'' are ''*less* relevant'' than those that are actually exercised.[489] Section 795.110 of the 2021 IC Rule states that a worker's theoretical ability to control aspects of the work are less meaningful if the worker is prevented from exercising those rights, and that a business' contractual authority to exercise control may be of little relevance if it is never exercised.[490] Though it is true that contractual authority may in some instances be less relevant, the 2021 IC Rule's blanket statement that actual practice is always more relevant is incompatible with an approach that does not apply the factors mechanically but looks to the totality of the circumstances in evaluating the economic realities.[491] The focus is always on the economic realities rather than mere labels,[492] but contractual provisions are not always mere labels. They sometimes reflect and influence the economic realities of the relationship.

Every fact that is relevant to economic dependence should be considered in the analysis. Because the entirety of the economic reality must be considered, both the actual practices of the parties and the contractual possibilities must be considered. Within each factor of the test, there may be actual practices that are relevant, and there may also be contractual provisions that are relevant. The significance of each in the overall analysis should be informed by their relevance to the economic realities. This examination will be specific to the facts of each economic relationship and cannot be predetermined.

It is often the case that the actual practice of the parties is more relevant to the economic dependence inquiry than contractual or theoretical possibilities. For example, where an employer theoretically permits its workers to decline work assignments, but in practice disciplines workers who decline assignments, the actual practice of the parties outweighs the theoretical rights of the workers.[493] However, in other cases the contractual possibilities may reveal more about the economic reality than the parties' practices. For example, a company may reserve the right to supervise workers despite rarely making supervisory visits.[494] Such reserved rights to control the worker may strongly influence the behavior of the worker in their performance of the work even without the company exercising its contractual rights. As a result, this contractual possibility may be more indicative of the reality of the economic relationship between the worker and the company than the company's apparent hands-off practice. That courts often refer to the control factor as the ''right to control'' the work suggests that even rarely exercised or unexercised rights can be informative in evaluating economic dependence.[495]

In response to comments asserting that prioritizing actual practice would make the economic reality test impermissibly narrower than the common law control test, the 2021 IC Rule asserted that ''the common law control test does not establish an irreducible baseline of worker coverage for the broader economic reality test applied under the FLSA.'' [496] This understanding of the FLSA's scope of employment is inconsistent with the Supreme Court's observations that ''[a] broader or more comprehensive coverage of employees'' than that contemplated under the FLSA ''would be difficult to frame,'' [497] and that the FLSA ''stretches the meaning of 'employee' to cover some parties who might not qualify as such under a strict application of traditional agency law principles.'' [498] The 2021 IC Rule's blanket diminishment of the relevance of the right to control is inconsistent with the Supreme Court's observations that the FLSA's scope of employee coverage is exceedingly broad and broader than what exists under the common law. That the employer's right to control is part of the common law test shows that it is a useful indicator of employee status.[499] The 2021 IC Rule's dismissal of contractual rights as always less relevant than actual practice is inconsistent with the need to consider all facts relevant to the economic realities.[500]

In sum, the declaration in 2021 IC Rule § 795.110 that the parties' actual practices are invariably more relevant is inconsistent with how courts have evaluated employment relationships. It lacks the flexibility required by the economic reality test and is inconsistent with the FLSA's broad definition of employment. For these reasons, the Department is proposing to strike § 795.110, so that all facts relevant to the economic realities of a potential employment relationship may be evaluated according to their relevance to the question of economic dependence.

[488] 86 FR 1247.

[489] *Id.* at 1204.

[490] *Id.* at 1247.

[491] *See Flint Eng'g,* 137 F.3d at 1441 (''None of the factors alone is dispositive; instead, the court must employ a totality-of-the-circumstances approach.''); *Superior Care,* 840 F.2d at 1059 (''Since the test concerns the totality of the circumstances, any relevant evidence may be considered, and mechanical application of the test is to be avoided.'').

[492] *Rutherford,* 331 U.S. at 729 (''Where the work done, in its essence, follows the usual path of an employee, putting on an 'independent contractor' label does not take the worker from the protection of the Act.'').

[493] *See Off Duty Police,* 915 F.3d at 1060–61 (finding that, among other things, officers' testimony that they were disciplined for turning down assignments, despite having the right to do so, supported employee status).

[494] *See Superior Care,* 840 F.2d at 1060 (''Though visits to the job sites occurred only once or twice a month, Superior Care unequivocally expressed the right to supervise the nurses' work, and the nurses were well aware that they were subject to such checks as well as to regular review of their nursing notes. An employer does not need to look over his workers' shoulders every day in order to exercise control.'').

[495] *See, e.g., Off Duty Police,* 915 F.3d at 1060; *DialAmerica,* 757 F.2d at 1386; *Driscoll,* 603 F.2d at 754.

[496] 86 FR 1205.

[497] *Rosenwasser,* 323 U.S. at 362–63.

[498] *Darden,* 503 U.S. at 326.

[499] *Id.* at 323 (common-law employment test considers ''the hiring party's right to control the manner and means by which the product is accomplished'') (quoting *Reid,* 490 U.S. at 751–52); Restatement (Third) of Agency, sec. 7.07, Comment (f) (2006) (''For purposes of respondeat superior, an agent is an employee only when the principal controls or has the right to control the manner and means through which the agent performs work.'').

[500] Though the economic reality test requires consideration of all relevant facts, and upon further consideration, the Department does not believe it is appropriate to maintain a regulatory provision that dismisses consideration of reserved rights that are not exercised where relevant to economic dependence, the Department does not intend to minimize or disregard the longstanding case law that looks to the actual behavior of the parties. *See, e.g., Parrish,* 917 F.3d at 387 (''[T]he analysis is focused on economic reality, not economic hypotheticals.''); *Saleem,* 854 F.3d at 142 (''[P]ursuant to the economic reality test, it is not what [workers] *could* have done that counts, but as a matter of economic reality what they actually *do* that is dispositive.'') (internal quotation marks and citation omitted); *Sureway,* 656 F.2d at 1371 (''[T]he fact that Sureway's 'agents' possess, in theory, the power to set prices, determine their own hours, and advertise to a limited extent on their own is overshadowed by the fact that in reality the 'agents' work the same hours, charge the same prices, and rely in the main on Sureway for advertising.'').

The Department welcomes comments on the removal of this provision.

E. Examples of Analyzing Economic Reality Factors (2021 IC Rule § 795.115)

Section 795.115 of the 2021 IC Rule provides examples of factors in the economic reality test. The Department is proposing to delete this section and instead include examples in the preamble. Real-world examples provide valuable information to the general public and regulated parties and help succinctly explain relevant issues in the analysis. The Department believes, however, that the examples best serve this explanatory function in preamble text, particularly considering how fact-dependent the analysis of each economic reality factor is. The preamble contains the most detailed description of each factor along with the case law and rationale for each interpretation proposed by the Department. Providing the examples after the discussion of each factor in the economic reality test thus provides an immediate application of the relevant interpretation.

The Department cautions that the examples are specific to the included facts and the addition or alteration of any of the facts in any of the examples may change the resulting analysis. Additionally, while the examples help illustrate the application of particular factors of the economic reality test, no one factor is determinative of whether a worker is an employee or an independent contractor.

F. Severability (Proposed § 795.115)

Section 795.120 of the 2021 IC Rule contains a severability provision. The Department is proposing to move this provision to § 795.115 and is not proposing any edits to this section.

VI. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and its attendant regulations, 5 CFR part 1320, require the Department to consider the agency's need for its information collections, their practical utility, as well as the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. The PRA typically requires an agency to provide notice and seek public comments on any proposed collection of information contained in a proposed rule. *See* 44 U.S.C. 3506(c)(2)(B); 5 CFR 1320.8. This NPRM does not contain a collection of information subject to OMB approval under the Paperwork Reduction Act. The Department welcomes comments on this determination.

VII. Executive Order 12866, Regulatory Planning and Review; Executive Order 13563, Improved Regulation and Regulatory Review

Under Executive Order 12866, the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive Order and OMB review.[501] Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as a 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 a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as economically significant); (2) create 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, the President's priorities, or the principles set forth in the Executive Order. OIRA has determined that this proposed rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and is economically significant.

Executive Order 13563 directs agencies to, among other things, propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; that it is tailored to impose the least burden on society, consistent with obtaining the regulatory objectives; and that, in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits.[502] Executive Order 13563 recognizes that some costs and benefits are difficult to quantify and provides that, when appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. The analysis below outlines the impacts that the Department anticipates may result from this proposed rule and was prepared pursuant to the above-mentioned executive orders.

[501] *See* 58 FR 51735, 51741 (Oct. 4, 1993).

[502] *See* 76 FR 3821 (Jan. 21, 2011).

A. Introduction

In this NPRM, the Department is proposing to modify the regulations addressing the classification of workers as employees or independent contractors under the Fair Labor Standards Act (FLSA or Act) to be more consistent with judicial precedent and the Act's text and purpose as interpreted by the courts. For decades, the Department and courts have applied an economic reality test to determine whether a worker is an employee or an independent contractor under the FLSA. The ultimate inquiry is whether, as a matter of economic reality, the worker is economically dependent on the employer for work (and is thus an employee) or is in business for themself (and is thus an independent contractor). To answer this ultimate inquiry of economic dependence, the courts and the Department have historically conducted a totality-of-the-circumstances analysis, considering multiple factors to determine whether a worker is an employee or an independent contractor under the FLSA.

In January 2021, the Department published a rule titled ''Independent Contractor Status Under the Fair Labor Standards Act'' (2021 IC Rule) that provided guidance on the classification of independent contractors under the FLSA.[503] As explained in sections III, IV, and V above, the Department believes that the 2021 IC Rule does not fully comport with the FLSA's text and purpose as interpreted by the courts and will have a confusing and disruptive effect on workers and businesses alike due to its departure from decades of case law describing and applying the multifactor economic reality test as a totality-of-the-circumstances test. The 2021 IC Rule included provisions that are in tension with this longstanding case law—such as designating two factors as most probative and predetermining that they carry greater weight in the analysis, considering investment and initiative only in the opportunity for profit or loss factor, and excluding consideration of whether the work performed is central or important to the employer's business. These and other provisions in the 2021 IC Rule narrow the application of the economic reality test by limiting the facts that may be considered as part of the test, facts which the Department believes are relevant in determining whether a worker is economically dependent on the employer for work or in business for themself. The Department believes that retaining the 2021 IC Rule would have

[503] *See* 86 FR 1168.

a confusing and disruptive effect on workers and businesses alike due to its departure from case law describing and applying the multifactor economic reality test as a totality-of-the-circumstances test. Departing from the longstanding test applied by the courts also increases the risk of misapplication of the economic reality test, which the Department believes may result in increased misclassification of workers as independent contractors.

Therefore, the Department is proposing to rescind the 2021 IC Rule and replace it with an analysis for determining employee or independent contractor status under the Act that is more consistent with existing judicial precedent and the Department's longstanding guidance prior to the 2021 IC Rule. Specifically, the Department is not proposing the use of ''core factors'' and instead proposes to return to a totality-of-the-circumstances analysis of the economic reality test in which the factors do not have a predetermined weight and are considered in view of the economic reality of the whole activity. The Department is further proposing to return the consideration of investment to a standalone factor, provide additional analysis of the control factor (including detailed discussions of how scheduling, remote supervision, price-setting, and the ability to work for others should be considered), and return to the longstanding interpretation of the integral factor, which considers whether the work is integral to the employer's business. The Department believes this proposed rule is more grounded in the ultimate inquiry of whether a worker is in business for themself or is economically dependent on the employer for work. Workers, employers, and independent businesses should benefit from affirmative regulatory guidance from the Department further developing the concept of economic dependence and how each economic reality factor is probative of whether the worker is economically dependent on the employer for work or is in business for themself.

When evaluating the economic impact of this proposed rule, the Department has considered the appropriate baseline with which to compare changes. As discussed in section II.E., on March 14, 2022, in a lawsuit challenging the Department's delay and withdrawal of the 2021 IC Rule, a Federal district court in the Eastern District of Texas issued a decision vacating the delay and withdrawal of the 2021 IC Rule and concluded that the 2021 IC Rule became effective on March 8, 2021.[504] Because the 2021 IC Rule is currently in effect, is being enforced and would continue to be in effect in the absence of this proposed rule, the Department believes that the 2021 IC Rule is the official baseline to compare against when estimating the economic impact of this proposed rule.[505] Compared to the 2021 IC Rule, the Department anticipates that this proposed rule would reduce misclassification of employees as independent contractors, because this rule is more consistent with existing judicial precedent and the Department's longstanding guidance. The 2021 IC Rule could increase misclassification because its elevation of certain factors and its preclusion of consideration of relevant facts under several factors may result in misapplication of the economic reality test and may have conveyed to employers that it might be easier than it used to be to classify certain workers as independent contractors rather than FLSA-covered employees. The issuance of this proposed rule could reduce or prevent this misclassification from occurring.

Because the Department does not have data on the number of misclassified workers and because there are inherent challenges in determining the extent to which the rule would reduce this misclassification, much of the analysis is presented qualitatively, aside from rule familiarization costs, which are quantified.[506] The Department has therefore provided a qualitative analysis of the transfers and benefits that could occur because of this reduced misclassification.

As discussed above, the 2021 IC Rule is the appropriate baseline to represent what the world could look like going forward in the absence of this proposed rule. However, this baseline may not reflect what the world looked like prior to this NPRM. Until March of 2022, the Department had not been using the framework for analysis from that rule when assessing independent contractor status in its enforcement and compliance assistance activities. The 2021 IC Rule baseline also may not reflect the current economic landscape, because the Department is not aware of any Federal district or appellate court that has relied on the substance of the 2021 IC Rule so far to resolve a dispute regarding the proper classification of a worker as an employee or independent contractor. Therefore, if the Department were to instead compare the proposed rule to the current economic and legal landscape, the economic impact would be much smaller, because this proposed rule is consistent with the longstanding judicial precedent and guidance that the Department was relying on prior to March of 2022. The Department still believes that the 2021 IC Rule is the appropriate baseline, but notes that the current economic landscape may not be the same as a future situation without this proposed rule.

The Department does not believe, as reflected in this analysis, that this proposed rule would result in widespread reclassification of workers. That is, for workers who are properly classified as independent contractors, the Department does not, for the most part, anticipate that this rule would result in these workers being reclassified as employees. Especially compared to the guidance that was in effect before the 2021 IC Rule, the test proposed in this NPRM would not make independent contractor status significantly less likely. Rather, impacts resulting from this rule would mainly be due to a reduction in misclassification. If the 2021 IC Rule is retained, the risk of misclassification could be increased. As noted previously, the 2021 IC Rule's elevation of certain factors and its preclusion of consideration of relevant facts under several factors, which is a departure from judicial precedent applying the economic reality test, may result in misapplication of the economic reality test and may have conveyed to employers that it might be easier than it used to be to classify certain workers as independent contractors rather than FLSA-covered employees. This NPRM could therefore help prevent this misclassification by providing employers with guidance that is more consistent with longstanding precedent. The Department welcomes comments and data on all of the analysis presented here.

B. Estimated Number of Independent Contractors

To provide some context on the prevalence of independent contracting, the Department first estimated the number of independent contractors. There are a variety of estimates of the

[504] *See Coalition for Workforce Innovation,* 2022 WL 1073346.

[505] OMB Circular A–4 notes that when agencies are developing a baseline, ''[it] should be the best assessment of the way the world would look absent the proposed action.''

[506] The Department uses the term ''misclassification'' throughout this analysis to refer to workers who have been classified as independent contractors but who, as a matter of economic reality, are economically dependent on their employer for work. These workers' legal status would not change under the 2021 IC Rule or this proposed rule—they would properly be classified as employees under both rules. The Department notes that sources cited in this in this analysis may use other misclassification standards which may not align fully with the Department's use of the term.

number of independent contractors spanning a wide range depending on methodologies and how the population is defined.[507] There is no data source on independent contractors that perfectly mirrors the definition of independent contractor in the Department's regulations. There is also no regularly published data source on the number of independent contractors and data from the current year does not exist, making it difficult to examine trends in independent contracting or to measure how regulatory changes impact the number of independent contractors.

The Department believes that the Current Population Survey (CPS) Contingent Worker Supplement (CWS) offers an appropriate lower bound for the number of independent contractors; however, there are potential biases in these data that will be noted. This is the estimation method used in the 2021 IC Rule, and the Department has not found any new data or analyses to indicate a need for any changes. Some recent data sources provide an indication of how COVID–19 may have impacted the number of independent contractors, but this is inconclusive. Additionally, estimates from other sources will be presented to demonstrate the potential range.

The U.S. Census Bureau conducts the CPS, and it is published monthly by the Bureau of Labor Statistics (BLS). The sample includes approximately 60,000 households and is nationally representative. Periodically since 1995, and most recently in 2017, the CPS included a supplement to the May survey to collect data on contingent and alternative employment arrangements. Based on the CWS, there were 10.6 million independent contractors in 2017, amounting to 6.9 percent of workers.[508] The CWS measures those who say that their independent contractor job is their primary job and that they worked at the independent contractor job in the survey's reference week.

The BLS's estimate of independent contractors includes ''[w]orkers who are identified as independent contractors, independent consultants, or freelance workers, regardless of whether they are self-employed or wage and salary workers.'' BLS asks two questions to identify independent contractors: [509]

- Workers reporting that they are self-employed are asked: ''Are you self-employed as an independent contractor, independent consultant, freelance worker, or something else (such as a shop or restaurant owner)?'' (9.0 million independent contractors.) We refer to these workers as ''self-employed independent contractors'' in the remainder of the analysis.
- Workers reporting that they are wage and salary workers are asked: ''Last week, were you working as an independent contractor, an independent consultant, or a freelance worker? That is, someone who obtains customers on their own to provide a product or service.'' (1.6 million independent contractors.) We refer to these workers as ''other independent contractors'' in the remainder of the analysis.

It is important to note that independent contractors are identified in the CWS in the context of the respondent's ''main'' job (*i.e.,* the job with the most hours).[510] Therefore, the estimate of independent contractors does not include those who may be an employee for their primary job, but may also work as an independent contractor.[511] For example, Lim et al. (2019) estimate that independent contracting work is the primary source of income for 48 percent of independent contractors.[512] Applying this estimate to the 10.6 million independent contractors estimated from the CWS, results in 22.1 million independent contractors (10.6 million ÷ 0.48). Alternatively, a survey of independent contractors in Washington found that 68 percent of respondents reported that independent contract work was their primary source of income.[513] However, because this survey only includes independent contractors in one state, the Department has not used this data to adjust its estimate of independent contractors.

The CWS's large sample size results in small sampling error. However, the questionnaire's design may result in some non-sampling error. For example, one potential source of bias is that the CWS only considers independent contractors during a single point in time—the survey week (generally the week prior to the interview).

These numbers will thus underestimate the prevalence of independent contracting over a longer timeframe, which may better capture the size of the population.[514] For example, Farrell and Greig (2016) used a randomized sample of 1 million Chase customers to estimate prevalence of the Online Platform Economy.[515] They found that ''[a]lthough 1 percent of adults earned income from the Online

[507] The Department uses the term ''independent contractor'' throughout this analysis to refer to workers who, as a matter of economic reality, are not economically dependent on their employer for work and are in business for themselves. The Department notes that sources cited in this analysis may use other definitions of independent contractors that may not align fully with the Department's use of the term.

[508] Bureau of Labor Statistics, ''Contingent and Alternative Employment Arrangements—May 2017,'' USDL–18–0942 (June 7, 2018), *https://www.bls.gov/news.release/pdf/conemp.pdf.*

[509] The variables used are PES8IC=1 for self-employed and PES7=1 for other workers.

[510] While self-employed independent contractors are identified by the worker's main job, other independent contractors answered yes to the CWS question about working as an independent contractor last week. Although the survey question does not ask explicitly about the respondent's main job, it follows questions asked in reference to the respondent's main job.

[511] Even among independent contractors, failure to report multiple jobs in response to survey questions is common. For example, Katz and Krueger (2019) asked Amazon Mechanical Turk participants the CPS-style question ''Last week did you have more than one job or business, including part time, evening, or weekend work?'' In total, 39 percent of respondents responded affirmatively. However, these participants were asked the follow-up question ''Did you work on any gigs, HITs or other small paid jobs last week that you did not include in your response to the previous question?'' After this question, which differs from the CPS, 61 percent of those who indicated that they did not hold multiple jobs on the CPS-style question acknowledged that they failed to report other work in the previous week. As Katz and Krueger write, ''If these workers are added to the multiple job holders, the percent of workers who are multiple job holders would almost double from 39 percent to 77 percent.'' *See* L. Katz and A. Krueger, ''Understanding Trends in Alternative Work Arrangements in the United States,'' RSF: The Russell Sage Foundation Journal of the Social Sciences 5(5), p. 132–46 (2019).

[512] K. Lim, A. Miller, M. Risch, and E. Wilking, ''Independent Contractors in the U.S.: New Trends from 15 years of Administrative Tax Data,'' Department of Treasury, p. 61 (Jul. 2019), *https://www.irs.gov/pub/irs-soi/19rpindcontractorinus.pdf.* From table 5, the total number of independent contractors across all categories is 13.81 million. The number of independent contractors in the categories where these workers earn the majority of their labor income from independent contractor earnings is 6.63 million. 6.63 million ÷ 13.81 million = 0.48.

[513] Washington Department of Commerce, ''Independent Contractor Study,'' p. 21 (Jul. 2019), *https://deptofcommerce.app.box.com/v/independent-contractor-study.*

[514] In any given week, the total number of independent contractors would have been roughly the same, but the identity of the individuals who do it for less than the full year would likely vary. Thus, the number of unique individuals who work at some point in a year as independent contractors would exceed the number of independent contractors who work within any one-week period as independent contractors.

[515] D. Farrell and F. Greig, ''Paychecks, Paydays, and the Online Platform,'' JPMorgan Chase Institute (2016), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2911293.* The authors define the Online Platform Economy as ''economic activities involving online intermediaries.'' This includes ''labor platforms'' that ''connect customers with freelance or contingent workers'' and ''capital platforms'' that ''connect customers with individuals who rent assets or sell goods peer-to-peer.'' As such, this study encompasses data on income sources that the Department acknowledges might not be a one-to-one match with independent contracting and could also include work that is part of an employment relationship. However, the Department believes that including data on income earned through online platforms is useful when discussing the potential magnitude of independent contracting.

Platform Economy in a given month, more than 4 percent participated over the three-year period.'' Additionally, Collins et al. (2019) examined tax data from 2000 through 2016 and found that the number of workers who filed a form 1099 grew substantially over that period, and that fewer than half of these workers earned more than $2,500 from 1099 work in 2016. The prevalence of lower annual earnings implies that most workers who received a 1099 did not work as an independent contractor every week.[516]

The CWS also uses proxy responses, which may underestimate the number of independent contractors. The RAND American Life Panel (ALP) survey conducted a supplement in 2015 to mimic the CWS questionnaire but used self-responses only. The results of the survey were summarized by Katz and Krueger (2018).[517] This survey found that independent contractors comprise 7.2 percent of workers.[518] Katz and Krueger identified that the 0.5 percentage point difference in magnitude between the CWS and the ALP was due to both cyclical conditions, and the lack of proxy responses in the ALP.[519] Therefore, the Department believes a reasonable upper-bound on the potential bias due to the use of proxy responses in the CWS is 0.5 percentage points (7.2 versus 6.7).[520] [521]

Another potential source of bias in the CWS is that some respondents may not self-identify as independent contractors. For example, Abraham et al. (2020) estimated that 6.6 percent of workers in their study initially respond that they are employees but were then determined (by the researcher) to be independent contractors based on their answers to follow-up questions.[522] Additionally, individuals who do what some researchers refer to as ''informal work'' may in fact be independent contractors though they may not characterize themselves as such.[523] This population could be substantial. Abraham and Houseman (2019) confirmed this in their examination of the Survey of Household Economics and Decision-making. They found that 28 percent of respondents reported doing ''informal work'' for money over the past month.[524]

Conversely, another source of bias in the CWS is that some workers who self-identify as independent contractors may misunderstand their status or may be misclassified by their employer. These workers may answer the survey in the affirmative, despite not truly being independent contractors. While precise and representative estimates of nationwide misclassification are unavailable, multiple studies suggest its prevalence in numerous sectors in the economy.[525] See section VII.D.2. for a more thorough discussion of the prevalence of misclassification.

Because reliable data on the potential magnitude of the biases discussed above are unavailable, and so the net direction of the biases is unknown, the Department has not attempted to calculate how these biases may impact the estimated number of independent contractors.

Because the CWS estimate represents only the number of workers who worked as independent contractors on their primary job during the survey reference week, the Department applied the research literature and adjusted this measure to include workers who are independent contractors in a secondary job or who were excluded from the CWS estimate due to other factors. As noted above, integrating the estimated proportions of workers who are independent contractors on secondary or otherwise excluded jobs produces an estimate of 22.1 million, representing the total number of workers working as independent contractors in any job at a given time. Given the prevalence of independent contractors who work sporadically and earn minimal income, adjusting the estimate according to these sources captures some of this population. It is likely that this figure is still an underestimate of the true independent contractor pool.

1. COVID–19 Adjustment to the Estimated Number of Independent Contractors

The Department's estimate of the number of independent contractors, 22.1 million, is based primarily on 2017 data. Because COVID–19 has had a substantial impact on the labor market, it is possible that this estimate is not currently appropriate. The Department conducted a search for more recent data to indicate any trends in the number of independent contractors since 2017. The findings are inconclusive but generally do not indicate an increase.

The Federal Reserve Board's annual Survey of Household Economics and Decisionmaking (SHED) provides measures of the economic well-being of U.S. households. The Federal Reserve Board publishes a report ''Economic Well-Being of U.S. Households'' summarizing the findings of each survey.[526] One subsection of the Employment section describes the results of the questions related to ''The Gig Economy.'' While the survey questions about work in the ''gig economy'' include more types of work

[516] B. Collins, A. Garin, E. Jackson, D. Koustas, and M. Payne, ''Is Gig Work Replacing Traditional Employment? Evidence from Two Decades of Tax Returns,'' IRS SOI Joint Statistical Research Program (2019) (unpublished paper), *https://www.irs.gov/pub/irs-soi/19rpgigworkreplacingtraditionalemployment.pdf.*

[517] *See* L. Katz and A. Krueger, ''The Rise and Nature of Alternative Work Arrangements in the United States, 1995–2015,'' (2018).

[518] *Id.* at 49. The estimate is 9.6 percent without correcting for overrepresentation of self-employed workers or multiple job holders. *Id.* at 31.

[519] *Id.* at Addendum (''Reconciling the 2017 BLS Contingent Worker Survey'').

[520] Note that they estimate 6.7 percent of employed workers are independent contractors using the CWS, as opposed to 6.9 percent as estimated by the BLS. This difference is attributable to changes to the sample to create consistency.

[521] In addition to the use of proxy responses, this difference is also due to cyclical conditions. The impacts of these two are not disaggregated for independent contractors, but if we applied the relative sizes reported for all alternative work arrangements, we would get 0.36 percentage point difference due to proxy responses. Additionally, it should be noted that this may not entirely be a bias. It stems from differences in independent contracting reported by proxy respondents and actual respondents. As Katz and Krueger explain, this difference may be due to a ''mode'' bias or proxy respondents may be less likely to be independent contractors. *Id.* at Addendum p. 4.

[522] K. Abraham, B. Hershbein, and S. Houseman, ''Contract Work at Older Ages,'' NBER Working Paper 26612 (2020), *http://www.nber.org/papers/w26612.*

[523] The Department believes that including data on what is referred to in some studies as ''informal work'' is useful when discussing the magnitude of independent contracting, although not all informal work is done by independent contractors. The Survey of Household Economics and Decision-making asked respondents whether they engaged in informal work sometime in the prior month. It categorized informal work into three broad categories: personal services, on-line activities, and off-line sales and other activities, which is broader than the scope of independent contractors. These categories include activities like house sitting, selling goods online through sites like eBay or craigslist, or selling goods at a garage sale. The Department acknowledges that the data discussed in this study might not be a one-to-one match with independent contracting and could also include work that is part of an employment relationship, but it nonetheless provides some useful data for this purpose.

[524] K. Abraham, and S. Houseman, ''Making Ends Meet: The Role of Informal Work in Supplementing Americans' Income,'' RSF: The Russell Sage Foundation Journal of the Social Sciences 5(5): 110–31 (2019), *https://www.aeaweb.org/conference/2019/preliminary/paper/QreAaS2h.*

[525] *See, e.g.,* U.S. Gov't Accountability Off., GAO–09–717, *Employee Misclassification: Improved Coordination, Outreach, and Targeting Could Better Ensure Detection and Prevention* 10 (2008) (''Although the national extent of employee misclassification is unknown, earlier national studies and more recent, though not comprehensive, studies suggest that employee misclassification could be a significant problem with adverse consequences.'').

[526] Consumer and Community Research Section of the Federal Reserve Board's Division of Consumer and Community Affairs, ''Economic Well-Being of U.S. Households in 2021,'' Board of Governors of the Federal Reserve System (2022). Reports from all years available at *https://www.federalreserve.gov/publications/report-economic-well-being-us-households.htm.*

scenarios than just independent contracting, a decrease from 30 percent to 20 percent of adults answering ''yes'' from 2017 to 2020 may indicate that the number of independent contractors in this industry also decreased during that time period.[527] The report summarizing the 2021 data is available, but unfortunately the gig economy questions were revised substantially, so a comparable value is not available for 2021. Moreover, trends of potential independent contractors in one industry are not necessarily indicative of trends across the economy.

MBO Partners, a company with the goal of connecting enterprise organizations and top independent professionals, also conducts an annual survey and prepares a research report of the findings.[528] In all groups of ''independent workers,'' MBO Partners similarly found a decrease in the number from 2017 to 2020. Conversely, in total, the 2021 report shows a large increase from 2020, enough that the number of independent workers in 2021 is larger than the 2017 number. However, this increase occurs only in the ''occasional independent'' workers category, described as those who work part-time and regularly, but without set hours. Comparing the number of part-time and full-time independent workers yields similar values in 2017 and 2021, so the Department believes that no adjustments are needed to the 2017 estimate of 22.1 million independent contractors.

2. Range of Estimates in the Literature

To further consider the range of estimates available, the Department conducted a literature review, the findings of which are presented in Table 1. Other studies were also considered but are excluded from this table because the study populations were broader than just independent contractors, limited to one state, or include workers outside of the United States.[529] The RAND ALP,[530] the Gallup Survey,[531] and the General Social Survey's (GSS's) Quality of Worklife (QWL) [532] supplement are widely cited alternative estimates. However, the Department chose to use sources with significantly larger sample sizes and/or more recent data for the primary estimate.

Jackson et al. (2017) [533] and Lim et al. (2019) [534] use tax information to estimate the prevalence of independent contracting. In general, studies using tax data tend to show an increase in prevalence of independent contracting over time. The use of tax data has some advantages and disadvantages over survey data. Advantages include large sample sizes, the ability to link information reported on different records, the reduction in certain biases such as reporting bias, records of all activity throughout the calendar year (the CWS only references one week), and inclusion of both primary and secondary independent contractors. Disadvantages are that independent contractor status needs to be inferred; there is likely an underreporting bias (*i.e.,* some workers do not file taxes); researchers are generally trying to match the IRS definition of independent contractor, which does not mirror the scope of independent contractors under the FLSA; and the estimates include misclassified independent contractors.[535] A major disadvantage of using tax data for this analysis is that the detailed source data are not publicly available and thus the analyses cannot be directly verified or adjusted as necessary (*e.g.,* to describe characteristics of independent contractors, etc.).

TABLE 1—SUMMARY OF ESTIMATES OF INDEPENDENT CONTRACTING

Source	Method [a]	Definition [b]	Percent of workers	Sample size	Year
CPS CWS	Survey	Independent contractor, consultant or freelance worker (main only).	6.9%	50,392	2017
ALP	Survey	Independent contractor, consultant or freelance worker (main only).	7.2%	6,028	2015
Gallup	Survey	Independent contractor	14.7%	5,025	2017
GSS QWL	Survey	Independent contractor, consultant or freelancer (main only)	14.1%	2,538	2014
Jackson et al.	Tax data	Independent contractor, household worker	6.1% [c]	~5.9 million [d].	2014

[527] The report defines gig work as including ''three types of non-traditional activities: offline service activities, such as child care or house cleaning; offline sales, such as selling items at flea markets or thrift stores; and online services or sales, such as driving using a ride-sharing app or selling items online.'' Consumer and Community Research Section of the Federal Reserve Board's Division of Consumer and Community Affairs, ''Economic Well-Being of U.S. Households in 2017,'' Board of Governors of the Federal Reserve System (May 2018).

[528] MBO partners, ''The Great Realization: 11th Annual State of Independence,'' (2021). Annual reports are available at *https://www.mbopartners.com/state-of-independence/previous-reports/.*

[529] Including, but not limited to: McKinsey Global Institute, ''Independent Work: Choice, Necessity, and the Gig Economy'' (2016), *https://www.mckinsey.com/featured-insights/employment-and-growth/independent-work-choice-necessity-and-the-gig-economy;* Kelly Services, ''Agents of Change'' (2015), *https://www.kellyservices.com/global/siteassets/3-kelly-global-services/uploadedfiles/3-kelly_global_services/content/sectionless_pages/kocg1047720freeagent20whitepaper20210x21020final2.pdf;* Robles and McGee, ''Exploring Online and Offline Informal Work: Findings from the Enterprising and Informal Work Activities (EIWA) Survey'' (2016); Upwork, ''Freelancing in America'' (2019); Washington Department of Commerce, *supra* n. 513; Farrell and Greig, *supra* n. 515; MBO Partners, ''State of Independence in America'' (2016); Abraham et al., ''Measuring the Gig Economy: Current Knowledge and Open Issues'' (2018), *https://www.nber.org/papers/w24950;* Collins et al. (2019), *supra* n. 516; Gitis et al., ''The Gig Economy: Research and Policy Implications of Regional, Economic, and Demographic Trends,'' American Action Forum (2017), *https://www.americanactionforum.org/research/gig-economy-research-policy-implications-regional-economic-demographic-trends/#ixzz5IpbJp79a;* Dourado and Koopman, ''Evaluating the Growth of the 1099 Workforce,'' Mercatus Center (2015), *https://www.mercatus.org/publication/evaluating-growth-1099-workforce.*

[530] *See* Katz and Krueger (2018), *supra* n. 517.

[531] ''Gallup's Perspective on The Gig Economy and Alternative Work Arrangements,'' Gallup (2018), *https://www.gallup.com/workplace/240878/gig-economy-paper-2018.aspx.*

[532] *See* Abraham et al. (2018), *supra* n. 529, Table 4.

[533] E. Jackson, A. Looney, and S. Ramnath, ''The Rise of Alternative Work Arrangements: Evidence and Implications for Tax Filing and Benefit Coverage,'' OTA Working Paper 114 (2017), *https://www.treasury.gov/resource-center/tax-policy/tax-analysis/Documents/WP-114.pdf.*

[534] Lim et al., *supra* n. 512.

[535] In comparison to household survey data, tax data may reduce certain types of biases (such as recall bias) while increasing other types (such as underreporting bias). Because the Department is unable to quantify this tradeoff, it could not determine whether, on balance, survey or tax data are more reliable.

TABLE 1—SUMMARY OF ESTIMATES OF INDEPENDENT CONTRACTING—Continued

Source	Method [a]	Definition [b]	Percent of workers	Sample size	Year
Lim et al.	Tax data	Independent contractor	8.1%	1% of 1099–MISC and 5% of 1099–K.	2016

[a] The CPS CWS and the GSS QWL are nationally representative, and the ALP CWS is approximately nationally representative. The Gallup poll is demographically representative but does not explicitly claim to be nationally representative. Lastly, the two tax data sets are very large random samples and consequently are likely to be nationally representative, although the authors do not explicitly claim so.

[b] The survey data only identify independent contractors on their main job. Jackson et al. include independent contractors as long as at least 15 percent of their earnings were from self-employment income; thus, this population is broader. If Jackson et al.'s estimate is adjusted to exclude those who are primary wage earners, the rate is 4.0 percent. Lim et al. include independent contractors on all jobs. If Lim et al.'s estimate is adjusted to only those who receive a majority of their labor income from independent contracting, the rate is 3.9 percent.

[c] Summation of (1) 2,132,800 filers with earnings from both wages and sole proprietorships and expenses less than $5,000, (2) 4,125,200 primarily sole proprietorships and with less than $5,000 in expenses, and (3) 3,416,300 primarily wage earners.

[d] Estimate based on a 10 percent sample of self-employed workers and a 1 percent sample of W–2 recipients.

3. Demographics of Independent Contractors

The Department reviewed demographic information on independent contractors using the CWS, which, as stated above, only measures those who say that their independent contractor job is their primary job and that they worked at the independent contractor job in the survey's reference week. According to the CWS, these primary independent contractors are most prevalent in the construction and professional and business services industries. These two industries comprise 44 percent of primary independent contractors. Independent contractors tend to be older and predominately male (64 percent). Millennials (defined as those born 1981–1996) have a significantly lower prevalence of primary independent contracting than older generations: 4.2 percent for Millennials compared to 7.2 percent for Generation X (defined as those born 1965–1980) and 10.2 percent for Baby Boomers and Matures (defined as individuals born before 1965).[536] However, other surveys that capture secondary independent contractors, or those who did informal work as independent contractors show that the prevalence of informal work is lower among older workers. Abraham and Houseman (2019), find that among 18- to 24-year-olds, 41.3 percent did informal work over the past month. The rate fell to 25.7 percent for 45- to 54-year-olds, and 13.4 percent for those 75 years and older.[537] According to MBO partners, the COVID–19 pandemic may have accelerated this trend; when accounting for both primary and secondary independent work, 2021 marked the first year that Millennials and members of Generation Z (34 percent and 17 percent of independent workers respectively) outnumbered members of Generation X and Baby Boomers (23 percent and 26 percent respectively) as part of the independent workforce.[538]

According to the CWS, 64 percent of primary independent contractors are men. Additionally, Garin and Koustas (2021) find that men comprise both a larger share of independent contractors who perform work through traditional contracting arrangements and those who secure work through online platforms.[539] This study also found that a greater share of men than women who earn income in this way are primarily self-employed; women who perform online platform work are more likely to use that work to supplement other income.[540]

According to the CWS, white workers are somewhat overrepresented among primary independent contractors; they comprise 85 percent of this population but only 79 percent of the population of workers. Conversely, Black workers are somewhat underrepresented (comprising 8 percent and 13 percent, respectively).[541] The opposite trends emerge when evaluating the broader category of ''informal work'', where racial minorities participate at a higher rate than white workers.[542] Primary independent contractors are spread across the educational spectrum, with no group especially overrepresented. The same trend in education attainment holds for workers who participate in informal work.[543]

[536] The Department used the generational breakdown used in the MBO Partners 2017 report, ''The State of Independence in America.'' ''Millennials'' were defined as individuals born 1981–1996, ''Generation X'' were defined as individuals born 1965–1980, and ''Baby Boomers and Matures'' were defined as individuals born before 1965.

[537] Abraham and Houseman (2019), *supra* n. 524. Note that this informal work may be broader than what would be considered independent contracting and includes activities like babysitting/housesitting and selling goods online through sites like eBay and Craigslist. *See also* Upwork (2019), *supra* n. 529.

[538] This data comes from the 2021 edition of the MBO Partners report, ''The State of Independence in America.'' While maintaining the generational breakdown used in the 2017 edition, ''Generation Z'' was additionally defined as individuals born 1997–2012. *https://info.mbopartners.com/rs/mbo/images/MBO_2021_State_of_Independence_Research_Report.pdf.*

[539] Garin, A. and Koustas, D., ''The Distribution of Independent Contractor Activity in the United States: Evidence from Tax Filings,'' (2021).

[540] *Id.*

[541] These numbers are calculated by the Department and based on the CWS respondents who state that their race is ''white only'' or ''black only'' as opposed to identifying as multi-racial.

[542] Abraham and Houseman (2019), *supra* n. 524.

[543] *Id.*

TABLE 2—CHARACTERISTICS OF WORKERS, ALL WORKERS AND INDEPENDENT CONTRACTORS

Demographic	Number of workers (millions)	Percent of workers	Number of independent contractors (primary job) (millions)	Percent of independent contractors
Total	158.9	100	10.6	100
By Age				
16–20 (Generation Z)	8.2	5.1	0.1	0.7
21–37 (Millennials)	59.2	37.3	2.5	23.4
38–52 (Generation X)	49.8	31.3	3.6	33.8
53+ (Baby Boomers and Matures)	43.6	27.5	4.5	42.1
By Sex				
Female	75.4	47.4	3.8	35.7
Male	85.4	53.7	6.8	64.3
By Race				
White only	125.6	79.1	9.0	84.6
Black only	20.3	12.8	0.9	8.3
All other races	14.9	9.4	0.8	7.1
By Ethnicity				
Hispanic	27.0	17.0	1.6	14.8
Not Hispanic	133.8	84.2	9.0	85.2
By Industry				
Agr, forestry, fishing, and hunting	2.6	1.6	0.2	2.0
Mining	0.8	0.5	0.0	0.1
Construction	11.0	6.9	2.0	19.3
Manufacturing	16.5	10.4	0.2	2.2
Wholesale and retail trade	20.5	12.9	0.8	7.9
Transportation and utilities	8.0	5.1	0.6	5.7
Information	3.0	1.9	0.2	2.2
Financial activities	10.9	6.9	1.0	9.6
Professional and business services	19.3	12.2	2.7	25.1
Educational and health services	36.2	22.8	1.0	9.6
Leisure and hospitality	15.1	9.5	0.7	6.2
Other services	7.8	4.9	1.0	9.7
Public administration	7.2	4.6	0.0	0.4
By Education				
Less than high school diploma	14.3	9.0	1.0	9.3
High school diploma or equivalent	41.9	26.4	2.6	24.4
Less than Bachelor's degree	45.3	28.5	2.8	26.5
Bachelor's degree	37.3	23.5	2.7	25.5
Master's degree or higher	21.9	13.8	1.5	14.5

Note: Estimates based on the 2017 CPS Contingent Worker Survey.

C. Costs

1. Rule Familiarization Costs

Regulatory familiarization costs represent direct costs to businesses and current independent contractors associated with reviewing the new regulation. To estimate the total regulatory familiarization costs, the Department used (1) the number of establishments and government entities using independent contractors, and the current number of independent contractors; (2) the wage rates for the employees and for the independent contractors reviewing the rule; and (3) the number of hours that it estimates employers and independent contractors will spend reviewing the rule. This section presents the calculation for establishments first and then the calculation for independent contractors.

Regulatory familiarization costs may be a function of the number of establishments or the number of firms.[544] Presumably, the headquarters of a firm will conduct the regulatory review for businesses with multiple locations and may require some locations to familiarize themselves with the regulation at the establishment level. Other firms may either review the rule to consolidate key takeaways for their affiliates or they may rely entirely on

[544] An establishment is commonly understood as a single economic unit, such as a farm, a mine, a factory, or a store, that produces goods or services. Establishments are typically at one physical location and engaged in one, or predominantly one, type of economic activity for which a single industrial classification may be applied. An establishment contrasts with a firm, or a company, which is a business and may consist of one or more establishments. *See* BLS, ''Quarterly Census of Employment and Wages: Concepts,'' *https://www.bls.gov/opub/hom/cew/concepts.htm.*

outside experts to evaluate the rule and relay the relevant information to their organization (*e.g.,* a chamber of commerce). The Department used the number of establishments to estimate the fundamental pool of regulated entities—which is larger than the number of firms. This assumes that regulatory familiarization occurs at both the headquarters and establishment levels.

To estimate the number of establishments incurring regulatory familiarization costs, the Department began by using the Statistics of U.S. Businesses (SUSB) to define the total pool of establishments in the United States.[545] In 2019, the most recent year available, there were 7.96 million establishments. These data were supplemented with the 2017 Census of Government that reports 90,075 local government entities, and 51 state and Federal government entities.[546] The total number of establishments and governments in the universe used for this analysis is 8,049,229.

This universe is then restricted to the subset of establishments that engage independent contractors. In 2019, Lim et al. used extensive IRS data to model the independent contractor market and found that 34.7 percent of firms hire independent contractors.[547] These data are based on annual tax filings, so the dataset includes firms that may contract for only parts of a year. Multiplying the universe of establishments and governments by 35 percent results in 2.8 million entities.

The Department assumes that a Compensation, Benefits, and Job Analysis Specialist (SOC 13–1141) (or a staff member in a similar position) will review the rule.[548] According to the Occupational Employment and Wage Statistics (OEWS), these workers had a median wage of $30.83 per hour in 2021 (most recent data available).[549] Assuming benefits are paid at a rate of 45 percent of the base wage,[550] and overhead costs are 17 percent of the base wage, the reviewer's effective hourly rate is $49.94. The Department assumes that it will take on average about 30 minutes to review the rule as proposed. The Department believes that 30 minutes, on average, is appropriate, because while some establishments will spend longer to review the rule, many establishments may rely on third-party summaries of the changes or spend little or no time reviewing the rule. Furthermore, the analysis outlined in this rule aligns with existing judicial precedent and previous guidance released by the Department, with which much of the regulated community is already familiar. Total regulatory familiarization costs to businesses in Year 1 are estimated to be $70.3 million ($49.94 × 0.5 hour × 2,817,230) in 2021 dollars.

For regulatory familiarization costs for independent contractors, the Department used its estimate of 22.1 million independent contractors and assumed each independent contractor will spend 15 minutes to review the regulation. The average time spent by independent contractors is estimated to be smaller than for establishments and governments. This difference is in part because the Department believes independent contractors are likely to rely on summaries of the key elements of the rule change published by the Department, worker advocacy groups, media outlets, and accountancy and consultancy firms, as has occurred with other rulemakings. This time is valued at $21.35, which is the median hourly wage rate for independent contractors in the CWS of $19.45 updated to 2021 dollars using the gross domestic product (GDP) deflator.[551] [552] Therefore, regulatory familiarization costs to independent contractors in Year 1 are estimated to be $118 million ($21.35 × 0.25 hour × 22.1 million).

The total one-time regulatory familiarization costs for establishments, governments, and independent contractors are estimated to be $188.3 million. Regulatory familiarization costs in future years are assumed to be de minimis. Employers and independent contractors would continue to familiarize themselves with the applicable legal framework in the absence of the rule, so this rulemaking is not expected to impose costs after the first year. This amounts to a 10-year annualized cost of $26.0 million at a discount rate of 3 percent or $25.1 million at a discount rate of 7 percent.

D. Benefits

1. Increased Consistency

This proposed rule presents a detailed analysis for determining employee or independent contractor status under the Act that is more consistent with existing judicial precedent and the Department's longstanding guidance prior to the 2021 IC Rule. This analysis will provide more consistent guidance to employers in properly classifying workers as employees or independent contractors, as well as useful guidance to workers on whether they are correctly classified as employees or independent contractors. The analysis will provide a consistent approach for those businesses that engage (or wish to engage) independent contractors, who the Department recognizes play an important role in the economy. The proposed rule's consistency with judicial precedent could also help to reduce legal disputes.

2. Reduced Misclassification

This proposed rule would provide consistent guidance to employers in properly classifying workers as employees or independent contractors, as well as useful guidance to workers on whether they are correctly classified as employees or independent contractors. This clear guidance could help reduce the occurrence of misclassification.

The prevalence of misclassification of employees as independent contractors is unclear, but the literature indicates it is substantial. A 2020 National Employment Law Project (NELP) report, for example, reviewed state audits and concluded that ''these state reports show that 10 to 30 percent of employers (or more) misclassify their employees as independent contractors.'' [553] Similarly,

[545] U.S. Census Bureau, 2019 SUSB Annual Datasets by Establishment Industry. *https://www.census.gov/data/datasets/2019/econ/susb/2019-susb.html.*

[546] U.S. Census Bureau, 2017 Census of Governments. *https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html.*

[547] Lim et al., *supra* n. 512, Table 10: Firm sample summary statistics by year (2001–2015), *https://www.irs.gov/pub/irs-soi/19rpindcontractorinus.pdf.*

[548] A Compensation/Benefits Specialist ensures company compliance with Federal and state laws, including reporting requirements; evaluates job positions, determining classification, exempt or non-exempt status, and salary; plans, develops, evaluates, improves, and communicates methods and techniques for selecting, promoting, compensating, evaluating, and training workers. *See* BLS, ''13–1141 Compensation, Benefits, and Job Analysis Specialists,'' *https://www.bls.gov/oes/current/oes131141.htm.*

[549] The 2021 IC Rule used the mean wage rate to calculate rule familiarization costs, but the Department has used the median wage rate here, because it is more consistent with cost analyses in other Wage and Hour Division rulemakings. The Department used the median wage rate in the Withdrawal Rule. Generally, the Department uses median wage rates to calculate costs, because the mean wage rate has the potential to be biased upward by high-earning outlier wage observations.

[550] Employer Costs for Employee Compensation, 2021 Annual Averages. *https://www.bls.gov/ncs/data.htm.*

[551] Based on Department calculations using the individual level data. The Department also calculated the mean hourly wage for independent contractors using the CWS data and found that the mean wage in 2017 was $27.29, which would be $29.97 updated to 2021 dollars using the GDP deflator.

[552] In the 2021 IC Rule the Department included an additional 45 percent for benefits and 17 percent for overhead. These adjustments have been removed here, because independent contractors do not usually receive employer provided benefits and generally have overhead costs built into their hourly rate.

[553] NELP, *Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries,* (Oct. 2020),

a 2000 Department of Labor study also found that ''between 10 percent and 30 percent of employers audited in 9 states misclassified workers as independent contractors.'' [554] This same report found that depending on the state, between 1 percent and 9 percent of workers are misclassified as independent contractors.

Misclassification disproportionately affects Black, indigenous, and people of color (BIPOC) because of the disparity in occupations affected by misclassification.[555] High incidence of misclassification of employees as independent contractors has been documented in agriculture, construction, trucking, housecleaning, in-home care, stagecraft, and 'sharing economy' companies.[556]

Misclassification violates one of the purposes of the FLSA: eliminating ''unfair method[s] of competition in commerce.'' [557] When employers misclassify employees as independent contractors, they illegally cut labor costs, undermining law-abiding competitors.[558] While the services offered may be comparable at face value, the employer engaging in misclassification is able to offer lower estimates and employers following the rules are left at a disadvantage.

E. Transfers

1. Employer-Provided Fringe Benefits

Misclassification of independent contractors culminates in a reduced social safety net starting with the individual and cascading out through the local, state, and Federal programs. Employees who are misclassified as independent contractors generally do not receive employer-sponsored health and retirement benefits, potentially resulting in or contributing to long-term financial insecurity.

Employees are more likely than independent contractors to have health insurance. According to the CWS, 75.4 percent of independent contractors have health insurance, compared to 84.0 percent of employees. This gap between independent contractors and employees is also true for low-income workers. Using CWS data, the Department compared health insurance rates for workers earning less than $15 per hour and found that 71.0 percent of independent contractors have health insurance compared with 78.5 percent of employees. Lastly, the Department considered whether this gap could be larger for traditionally underserved groups or minorities. Considering the subsets of independent contractors who are female, Hispanic, or Black, only the Hispanic independent contractors have a statistically significant difference in the percentage of workers with health insurance (estimated to be about 18 percentage points lower).[559]

Additionally, a major source of retirement savings is employer-sponsored retirement accounts. According to the CWS, 55.5 percent of employees have a retirement account with their current employer; in addition, the BLS Employer Costs for Employee Compensation (ECEC) found that in 2021 employers pay 5.1 percent of employees' total compensation in retirement benefits on average ($2.03/$39.46). A 2017 Treasury study found that in 2014, while forty two percent of wage earners made contributions to an individual retirement account (IRA) or employer plan, only eight percent of self-employed individuals made any retirement contribution.[560] Smaller retirement savings could result in a long-term tax burden to all Americans due to increased reliance upon social assistance programs.

To the extent that this proposed rule would reduce misclassification, it could result in transfers to workers in the form of employer-provided benefits like health care and retirement benefits. As shown in Table 3 below, using from BLS Employer Costs for Employee Compensation, the Department has calculated the average cost to employers for various benefits as a percentage of the average cost to employers for wages and salaries. This share was then applied to the median weekly wage of both full-time and part-time independent contractors to estimate the value of these benefits to an average independent contractor if they were to begin receiving these benefits. The Department estimated that the value of these benefits could average more than $15,000 annually for full-time independent contractors and almost $6,000 annually for part-time independent contractors. This example transfer estimate could be reduced if there is a downward adjustment in the worker's wage rate to offset a portion of the employer's cost associated with these new benefits.

TABLE 3—POTENTIAL TRANSFERS ASSOCIATED WITH EMPLOYER-PROVIDED FRINGE BENEFITS

Employer-provided fringe benefit	Employer cost for benefit as a share of employer cost for wages and salaries (Q1 2022) [a]	Value of benefit for the median weekly wage of a full-time independent contractor ($980) [d]	Value of benefit for the median weekly Wage of a part-time independent contractor ($383) [d]
Health Insurance	11.5%	$112.70	$44.05
Retirement [b]	7.5%	73.50	28.73
Paid Leave [c]	10.8%	105.84	41.36

https://www.nelp.org/publication/independent-contractor-misclassification-imposes-huge-costs-workers-federal-state-treasuries-update-october-2020.

[554] Lalith de Silva, Adrian Millett, Dominic Rotondi, and William F. Sullivan, ''Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs'' Report of Planmatics, Inc., for U.S. Department of Labor Employment and Training Administration (2000), *https://wdr.doleta.gov/owsdrr/00-5/00-5.pdf.*

[555] *See* NELP, *supra* n. 553.

[556] Carré, F. (2015). *(In)dependent contractor misclassification.* Economic Policy Institute. Briefing Paper #403, *https://www.epi.org/publication/independent-contractor-misclassification/.*

[557] 29 U.S.C. 202(a), (b).

[558] *Id.*

[559] To measure if the difference between these proportions is statistically significant, the Department used the replicate weights for the CWS. At a 0.05 significance level, the proportion of Hispanic independent contractors with any health insurance is lower than the proportion for all independent contractors.

[560] Jackson, E., Looney, A., & Ramnath, S., Department of Treasury, *The Rise of Alternative Work Arrangements: Evidence and Implications for Tax Filing and Benefit Coverage,* Working Paper #114 (Jan. 2017), *https://home.treasury.gov/system/files/131/WP-114.pdf.* As discussed in the 2021 IC Rule, this study defines retirement accounts as ''employer-sponsored plans,'' which may not encompass all of the possible long-term saving methods.

TABLE 3—POTENTIAL TRANSFERS ASSOCIATED WITH EMPLOYER-PROVIDED FRINGE BENEFITS—Continued

Employer-provided fringe benefit	Employer cost for benefit as a share of employer cost for wages and salaries (Q1 2022) [a]	Value of benefit for the median weekly wage of a full-time independent contractor ($980) [d]	Value of benefit for the median weekly Wage of a part-time independent contractor ($383) [d]
Total Annual Value of Fringe Benefits	.....	15,186.08	5,934.97

[a] The share for each benefit is calculated as the cost per hour for civilian workers divided by the wages and salaries cost per hour for civilian workers. Series IDs CMU1150000000000D, CMU1180000000000D, and CMU1040000000000D divided by Series ID 1020000000000D
[b] Includes defined benefit and defined contribution retirement plans
[c] Includes vacation, holiday, sick and personal leave
[d] Earnings data from the 2017 CWS (*https://www.bls.gov/news.release/conemp.t13.htm*) were inflated to Q1 2022 using GDP Deflator

2. Tax Liabilities

As self-employed workers, independent contractors are legally obligated to pay both the employee and employer shares of the Federal Insurance Contributions Act (FICA) taxes. Thus, if workers' classifications change from independent contractors to employees, there could be a transfer in Federal tax liabilities from workers to employers.[561] Although this proposed rule only addresses whether a worker is an employee or an independent contractor under the FLSA, the Department assumes in this analysis that employers are likely to keep the status of most workers the same across all benefits and requirements, including for tax purposes.[562] These payroll taxes include the 6.2 percent employer component of the Social Security tax and the 1.45 percent employer component of the Medicare tax.[563] In sum, independent contractors are legally responsible for an additional 7.65 percent of their earnings in FICA taxes (less the applicable tax deduction for this additional payment). Some of this increased tax liability may be partially or wholly paid for by the individuals and companies that engage independent contractors, to the extent that the compensation paid to independent contractors accounts for this added tax liability. However, changes in compensation are discussed separately below. Changes in benefits, tax liability, and earnings must be considered in tandem to identify how the standard of living may change.

In addition to affecting tax liabilities for workers, this proposed rule could have an impact on state tax revenue and budgets. Misclassification results in lost revenue and increased costs for states, because states receive less tax revenue than they otherwise would from payroll taxes, and they have reduced funds to unemployment insurance, workers' compensation, and paid leave programs.[564] Although it has not been updated more recently, the IRS conducted a comprehensive worker misclassification estimate in 1984. At the time, the IRS found misclassification resulted in an estimated total tax loss of $1.6 billion in Social Security taxes, Medicare taxes, Federal unemployment taxes, and Federal income taxes (for Tax Year 1984).[565] To the extent workers were incorrectly classified due to misapplication of the 2021 IC Rule, that could lead to reduced tax revenues.

Generally, employers are only required to contribute to unemployment insurance, disability insurance, or worker's compensation on behalf of employees therefore independent contractors do not have access to those benefits. Reduced unemployment insurance, disability insurance, and worker's compensation contributions result in reduced disbursement capabilities. Misclassification of employees as independent contractors thus impacts the funds paid into such state programs. Even if the misclassified worker is unaffected and needs no assistance, the state has diminished funds for those who require the benefits. In Tennessee, from September 2017 to October 2018, the Uninsured Employers Fund unit ''assessed 234 penalties against employers for not maintaining workers' compensation insurance, for a total assessment amount of $2,730,269.60.'' [566] This amount represents only what was discovered by the taskforce in thirteen months and in just one state. By rescinding the 2021 IC Rule, this proposed rule could prevent this increased burden on government entities.

3. FLSA-Protections

When workers are properly classified as independent contractors, the minimum wage, overtime pay, and other requirements of the FLSA no longer apply. The 2017 CWS data indicate that independent contractors are more likely than employees to report earning less than the FLSA minimum wage of $7.25 per hour (8 percent for self-employed independent contractors, 5 percent for other independent contractors, and 2 percent for employees). Concerning overtime pay, not only do independent contractors not receive the overtime pay premium, but the number of overtime hours worked by independent contractors is also higher. Analysis of the CWS data indicated that, before conditioning on covariates, primary self-employed independent contractors are more likely to work overtime (more than 40 hours in a workweek) at their main job than employees, as 29 percent of self-employed independent contractors reported working overtime versus just 17 percent for employees.[567]

[561] *See* 86 FR 1218.

[562] Courts have noted that the FLSA has the broadest conception of employment under Federal law. *See, e.g., Darden,* 503 U.S. at 326. To the extent that businesses making employment status determinations base their decisions on the most demanding Federal standard, a rulemaking addressing the standard for determining classification of worker as an employee or an independent contractor under the FLSA may affect the businesses' classification decisions for purposes of benefits and legal requirements under other Federal laws.

[563] Internal Revenue Service, ''Publication 15, (Circular E), Employer's Tax Guide'' (Dec 16, 2021), *https://www.irs.gov/pub/irs-pdf/p15.pdf.* The social security tax has a wage base limit of $137,700 in 2020. An additional Medicare Tax of 0.9 percent applies to wages paid in excess of $200,000 in a calendar year for individual filers.

[564] See, *e.g.,* Lisa Xu and Mark Erlich, Economic Consequence of Misclassification in the State of Washington, Harvard Labor and Worklife Program, 2 (2019), *https://lwp.law.harvard.edu/files/lwp/files/wa_study_dec_2019_final.pdf;* Karl A. Racine, Issue Brief and Economic Report, Illegal Worker Misclassification: Payroll Fraud in the District's Construction Industry, 13 (September 2019), *https://oag.dc.gov/sites/default/files/2019-09/OAG-Illegal-Worker-Misclassification-Report.pdf.*

[565] Treasury Inspector General for Tax Inspection 2013, Employers Do Not Always Follow Internal Revenue Service Worker Determination Rulings, *https://www.treasury.gov/tigta/auditreports/2013reports/201330058fr.pdf.*

[566] NELP, *supra* n. 553.

[567] The Department based this calculation on the percentage of workers in the CWS data who

Additionally, independent contractors who work overtime tend to work more hours of overtime than employees. According to the Department's analysis of CWS data, among those who usually work overtime, the mean usual number of overtime hours for independent contractors is 15.4 and the mean for employees is 11.8 hours. Independent contractors are also not protected by other provisions in the FLSA that are centered on ensuring that women are treated fairly at work, including employer-provided accommodations for breastfeeding workers and protections against pay discrimination.

As discussed above, compared to the 2021 IC Rule, this proposed rule could result in reduced misclassification of employees as independent contractors. Any reduction in misclassification that occurs as a result of this proposed rule would lead to an increase in the applicability of these FLSA protections for workers and subsequently may result in transfers relating to minimum wage and overtime. Specifically, to the extent misclassified workers were not earning the minimum wage, reduced misclassification would increase hourly wages for these workers to the Federal minimum wage. Similarly, to the extent misclassified workers were not receiving the applicable overtime pay, reduced misclassification would increase overtime pay for any overtime hours they continued to work. However, compared to the economic landscape prior to the Department's enforcement of the 2021 IC Rule in March 2022, these transfers would be less likely to occur.

4. Hourly Wages, Bonuses, and Related Compensation

In addition to increased compliance with minimum wage and overtime requirements, potential transfers may also result from this rulemaking as a consequence of differences in earnings between employees and independent contractors.[568] Independent contractors are generally expected to earn a wage premium relative to employees who perform similar work to compensate for their reduced access to benefits and increased tax liability. However, this may not always be the case in practice. The Department compared the average hourly wages of current employees and independent contractors to provide some indication of the impact on wages of a worker who is reclassified from an independent contractor to an employee.

The Department used an approach similar to Katz and Krueger (2018).[569] Both regressed hourly wages on independent contractor status [570] and observable differences between independent contractors and employees (*e.g.,* occupation, sex, potential experience, education, race, and ethnicity) to help isolate the impact of independent contractor status on hourly wages. Katz and Krueger used the 2005 CWS and the 2015 RAND American Life Panel (ALP) (the 2017 CWS was not available at the time of their analysis). The Department used the 2017 CWS.[571]

Both analyses found similar results. A simple comparison of mean hourly wages showed that independent contractors tend to earn more per hour than employees (*e.g.,* $27.29 per hour for all independent contractors versus $24.07 per hour for employees using the 2017 CWS). However, when controlling for observable differences between workers, Katz and Krueger found no statistically significant difference between independent contractors' and employees' hourly wages in the 2005 CWS data. Although their analysis of the 2015 ALP data found that primary independent contractors earned more per hour than traditional employees, they recommended caution in interpreting these results due to the imprecision of the estimates.[572] The Department found no statistically significant difference between independent contractors' and employees' hourly wages in the 2017 CWS data.

Based on these inconclusive results, the Department believes it is inappropriate to conclude independent contractors generally earn a higher hourly wage than employees. The Department ran another hourly wage rate regression including additional variables to determine if independent contractors in underserved groups are impacted differently by including interaction terms for female independent contractors, Hispanic independent contractors, and Black independent contractors. The results indicate that in addition to the lower wages earned by Black workers in general, Black independent contractors also earn less per hour than independent contractors of other races; however, this is not statistically significant at the most commonly used significance level.[573]

In addition to the potential transfers discussed above, the Department welcomes comments on how the interaction of these transfer dynamics may be realized by workers and businesses.

F. Analysis of Regulatory Alternatives

Pursuant to its obligations under Executive Order 12866,[574] the Department assessed four regulatory alternatives to this proposed rule. The Department welcomes comments on these regulatory alternatives, as well as suggestions regarding any other potential alternatives.

The Department previously considered and rejected the first two alternatives described below—codifying either a common law or ABC test for determining employee or independent contractor status—in the 2021 IC Rule.[575] Although the Department continues to believe that legal limitations prevent the Department from adopting either of those alternatives, the Department nonetheless presents them as regulatory alternatives, which is permissible under OMB guidance.[576]

For the first alternative, the Department considered codifying the common law control test, which is used to distinguish between employees and independent contractors under other Federal laws, such as the Internal

respond to the PEHRUSL1 variable (''How many hours per week do you usually work at your main job?'') with hours greater than 40. Workers who answer that hours vary were excluded from the calculation. The Department also applied the exclusion criteria used by Katz and Krueger (exclude workers reporting weekly earnings less than $50 and workers whose calculated hourly rate (weekly earnings divided by usual hours worked per week) is either less than $1 or more than $1,000).

[568] The discussion of data on the differences in earnings between employees and independent contractors in the 2021 IC Rule was potentially confusing and included some evidence that was not statistically significant, so the findings and methodology are discussed again here.

[569] Katz and Krueger (2018), *supra* n. 517.

[570] On-call workers, temporary help agency workers, and workers provided by contract firms are excluded from the base group of ''traditional'' employees.

[571] In both Katz and Krueger's regression results and the Department's calculations, the following outlying values were removed: workers reporting earning less than $50 per week, less than $1 per hour, or more than $1,000 per hour. Choice of exclusionary criteria from Katz and Krueger (2018), *supra* n. 517.

[572] See top of page 20, ''Given the imprecision of the estimates, we recommend caution in interpreting the estimates from the [ALP].'' The standard error on the estimated coefficient on the independent contractor variable in Katz and Kreuger's regression based on the 2015 ALP is more than 2.5 times larger than the standard error of the coefficient using the 2017 CWS.

[573] The coefficient for Black independent contractors was negative and statistically significant at a 0.10 level (with a p-value of 0.067). However, a significance level of 0.05 is more commonly used.

[574] E.O. 12866, section 6(a)(3)(C)(iii), 58 FR 51741.

[575] *See* 86 FR 1238.

[576] OMB Circular A–4 advises that agencies ''should discuss the statutory requirements that affect the selection of regulatory Approach. If legal constraints prevent the selection of a regulatory action that best satisfies the philosophy and principles of Executive Order 12866, [agencies] should identify these constraints and estimate their opportunity cost. Such information may be useful to Congress under the Regulatory Right-to-Know Act.''

Revenue Code.[577] The focus of the common law control test is ''the hiring party's right to control the manner and means by which [work] is accomplished,'' [578] but the Supreme Court has explained that ''other factors relevant to the inquiry [include] the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.'' [579]

Although the common law control test considers some of the same factors as those identified in the proposed rule's ''economic reality'' test (*e.g.,* skill, length of the working relationship, the source of equipment and materials, etc.), courts generally recognize that, because of its focus on control, the common law test is more permissive of independent contracting arrangements than the economic reality test, which examines the economic dependence of the worker.[580]

Codifying a common law control test for the FLSA may create a more uniform legal framework among Federal statutes, in the sense that entities would not, for example, have to understand and apply one employment classification standard for tax purposes and a different employment classification standard for FLSA purposes. However, the Department does not believe that adopting a common law control test for determining employee or independent contractor status under the FLSA would otherwise simplify the analysis for the regulated community because courts and enforcement agencies applying a common law test for independent contractors have considered a greater number and different variation of factors than the six or so factors commonly considered under the economic reality test.[581] And as with the economic reality test, the Supreme Court has cautioned that ''the common-law test contains 'no shorthand formula or magic phrase that can be applied to find the answer, [as] all of the incidents of the relationship must be assessed and weighed with no one factor being decisive.' '' [582]

With respect to workers, replacing the FLSA's economic reality test with a common law control test would jeopardize the employment status of some economically dependent workers who have traditionally qualified as FLSA-covered employees. The Department believes that depriving economically dependent workers of the FLSA's wage and hour protections would be detrimental to such workers, for reasons explained earlier. Moreover, applying the common law test would be contrary to the ''suffer or permit'' language in section 3(g) of the FLSA, which the Supreme Court has interpreted as demanding a broader definition of employment than that which exists under the common law.[583] Accordingly, the Department believes it is legally constrained from adopting the common law control test absent Congressional legislation to amend the FLSA.

For the second alternative, the Department considered codifying an ''ABC'' test to determine independent contractor status under the FLSA, similar to the ABC test recently adopted under California's state wage and hour law.[584] As described by the California Supreme Court in *Dynamex,* ''[t]he ABC test presumptively considers all workers to be employees, and permits workers to be classified as independent contractors only if the hiring business demonstrates that the worker in question satisfies *each* of three conditions: (a) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of the work and in fact; *and* (b) that the worker performs work that is outside the usual course of the hiring entity's business; *and* (c) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.'' [585] In justifying the adoption of this test for independent contractors, the *Dynamex* court noted the existence of an ''exceptionally broad suffer or permit to work standard'' in California's wage and hour statute,[586] as well as ''the more general principle that wage orders are the type of remedial legislation that must be liberally construed in a manner that serves its remedial purposes.'' [587]

Compared to either the common law or economic reality tests, codifying an ABC test would establish a far simpler and clearer standard for determining whether workers are employees or independent contractors. The ABC test only has three criteria, and no balancing of the criteria is required; all three prongs must be satisfied for a worker to

[577] *See* 26 U.S.C. 3121(d)(2) (generally defining the term ''employee'' under the Internal Revenue Code as ''any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee''); 42 U.S.C. 410(j)(2) (similarly defining ''employee'' under the Social Security Act); *see also, e.g., Darden,* 503 U.S. 318 (holding that ''a common-law test'' should resolve employee/independent contractor disputes under ERISA); *Reid,* 490 U.S. at 751 (applying ''principles of general common law of agency'' to determine ''whether . . . work was prepared by an employee or an independent contractor'' under the Copyright Act of 1976). The Supreme Court has advised that the common law control test applies by default under Federal law unless a statute specifies an alternative standard. *See Darden,* 503 U.S. at 322–23 ('''[W]hen Congress has used the term 'employee' without defining it, we have concluded that Congress intended to describe the conventional master-servant relationship as understood by common-law agency doctrine.' '') (quoting *Reid,* 490 U.S. at 739–40).

[578] *Reid,* 490 U.S. at 751.

[579] *Id.* at 751–52.

[580] *See, e.g., Flint Eng'g,* 137 F.3d at 1440 (recognizing that the ''economic realities'' test is a more expansive standard for determining employee status than the common law test).

[581] *See* RESTATEMENT (THIRD) OF AGENCY sec. 7.07, Comment (f) (2006) (identifying 10 factors); IRS Tax Topic No. 762 Independent Contractor vs. Employee (May 19, 2022), *https://www.irs.gov/taxtopics/tc762* (explaining the common law analysis through three main categories: behavioral control, financial control, and the relationship of the parties); *Reid,* 490 U.S. at 751–52 (identifying 13 factors).

[582] *Darden,* 503 U.S. at 324 (quoting *United Ins. Co. of America,* 390 U.S. at 258).

[583] *See, e.g., Darden,* 503 U.S. at 326; *Portland Terminal,* 330 at 150–51.

[584] *See Dynamex,* 416 P.3d 1; Assembly Bill (''A.B.'') 5, Ch. 296, 2019–2020 Reg. Sess. (Cal. 2019) (codifying the ABC test articulated in *Dynamex*); A.B. 2257, Ch. 38, 2019–2020 Reg. Sess. (Cal. 2020) (retroactively exempting certain professions, occupations, and industries from the ABC test that A.B. 5 had codified). The ABC test originated in state unemployment insurance statutes, but some state courts and legislatures have recently extended the test to govern employee/independent contractor disputes under state wage and hour laws. *See* Keith Cunningham-Parmeter, *Gig-Dependence: Finding the Real Independent Contractors of Platform Work,* 39 N. Ill. U. L. Rev. 379, 408–11 (2019) (discussing the origins and recent expansion of the ABC test).

[585] 416 P.3d at 34 (emphasis in original). California's ABC test is slightly different than versions of the ABC test adopted (or presently under consideration) in other states. For example, New Jersey provides that a hiring entity may satisfy the ABC test's ''B'' prong by establishing either: (1) that the work provided is outside the usual course of the business for which the work is performed, or (2) that the work performed is outside all the places of business of the hiring entity. N.J. Stat. Ann. sec. 43:21–19(i)(6)(A–C). The Department has chosen to analyze California's ABC test as a regulatory alternative because businesses subject to multiple standards, including nationwide businesses, are likely to comply with the most demanding standard if they wish to make consistent classification determinations.

[586] 416 P.3d at 31; *see also* Cal. Code Regs., tit. 8, sec. 11090, subd. 2(D) (''Employ' means to engage, suffer, or permit to work.''). The *Dynamex* court noted that California's adoption of the ''suffer or permit to work'' standard predated the enactment of the FLSA and was therefore ''not intended to embrace the federal economic reality test'' that subsequently developed. 416 P.3d at 35.

[587] *Id.* at 32.

qualify as an independent contractor. For this reason, adopting an ABC test may eliminate some of the uncertainty related to independent contracting under laws which apply different standards, and substantially reduce the risk of worker misclassification.[588] Though an ABC test would be clear and simple to use for regulated entities who use (or wish to use) independent contractors, it would also be more restrictive of independent contracting arrangements compared to the proposed rule.

In any event, the Department believes it is legally constrained from adopting an ABC test because the Supreme Court has held that the economic reality test is the applicable standard for determining workers' classification under the FLSA as an employee or independent contractor.[589] Moreover, the Supreme Court has stated that the existence of employment relationships under the FLSA ''does not depend on such isolated factors'' as the three independently determinative factors in the ABC test, ''but rather upon the circumstances of the whole activity.'' [590] Because the ABC test is inconsistent with Supreme Court precedent interpreting the FLSA, the Department believes that it could only implement an ABC test if the Supreme Court revisits its precedent or if Congress passes legislation to amend the FLSA.

For the third alternative, the Department considered a proposed rule that would not fully rescind the 2021 IC Rule and instead retain some aspects of that rule. As the Department has noted throughout this proposal, there are multiple instances in which this NPRM is consistent or in agreement with the 2021 IC Rule. Specifically, the Department has noted its agreement with the following aspects of the 2021 IC Rule: a totality of the circumstances test should be applied to appropriately determine classification as an employee or independent contractor; the concept of economic dependence needs further development; and a clear explanation of the test for whether a worker is an employee or independent contractor in easily accessible regulatory text is valuable. This proposal also includes several other important principles from the case law that were included in the 2021 IC Rule: economic dependence is the ultimate inquiry; the list of economic reality factors is not exhaustive; and no single factor is determinative. Further, with respect to specific factors, this proposal reinforces certain aspects addressed in the 2021 IC Rule such as that an exclusivity requirement imposed by the employer is a strong indicator of control, and that issues related to scheduling and supervision over the performance of the work (including the ability to assign work) are relevant considerations under the control factor.

Despite these areas of agreement, the governing principle of the 2021 IC Rule is that two of the economic reality factors are predetermined to be more probative and therefore carry more weight, which may obviate the need to meaningfully consider the remaining factors. Upon further consideration, as discussed in this proposal, the Department believes that this departure from decades of case law and the Department's own longstanding position that no one factor or subset of factors should carry more or less weight would have a confusing and disruptive effect on employers and workers alike. The Department considered simply removing the problematic ''core factors'' analysis from the 2021 IC Rule and retaining the five factors as described in the rule. However, the Department rejected this approach because other aspects of the rule such as considering investment and initiative only in the opportunity for profit or loss factor and excluding consideration of whether the work performed is central or important to the employer's business are also in tension with judicial precedent and longstanding Department guidance. These provisions narrow the economic reality test by limiting the facts that may be considered as part of the test, facts which the Department believes are relevant in determining whether a worker is economically dependent on the employer for work or in business for themself. Therefore, after considering all of the common aspects of the 2021 IC Rule and whether to retain some portions of that rule, the Department has concluded that in order to provide clear, affirmative regulatory guidance that aligns with case law and is consistent with the text and purpose of the Act as interpreted by courts, a complete rescission and replacement of the 2021 IC Rule is needed. For these reasons, the Department is not proposing a partial rescission of the 2021 IC Rule.

For the fourth alternative, the Department considered rescinding the 2021 IC Rule and providing guidance on employee or independent contractor classification through subregulatory guidance. For more than 80 years prior to the 2021 IC Rule, the Department primarily issued subregulatory guidance in this area and did not have generally applicable regulations on the classification of workers as employees or independent contractors. This subregulatory guidance was informed by the case law and set forth a multifactor economic reality test to answer the ultimate question of economic dependence. The Department considered rescinding the 2021 IC Rule and continuing to provide subregulatory guidance for stakeholders through existing documents (such as Fact Sheet #13) and new documents (for example a Field Assistance Bulletin). Rescinding the 2021 IC Rule without issuing a new regulation would lower the regulatory familiarity costs associated with the proposal. As explained in sections III, IV, and V above, however, the Department believes that replacing the 2021 IC Rule with regulations addressing the multifactor economic reality test that more fully reflects the case law and continues to be relevant to the modern economy will be helpful for both workers and employers. Specifically, issuing regulations allows the Department to provide in-depth guidance that is more closely aligned with circuit case law, rather than the regulations set forth in the 2021 IC Rule which have created a dissonance between the Department's regulations and judicial precedent. Additionally, issuing regulations allows the Department to formally collect and consider a wide range of views from stakeholders by electing to use the notice-and-comment process. Finally, because courts are accustomed to considering relevant agency regulations, providing guidance in this format may further improve consistency among courts regarding this issue Therefore, the Department is not proposing to rescind the 2021 IC Rule and provide only subregulatory guidance but welcomes comments on the costs and benefits of this alternative.

VIII. Initial Regulatory Flexibility Act (IRFA) Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996), requires Federal agencies engaged in rulemaking to consider the impact of their proposals on small entities,

[588] *See id.* at 48 (observing that the ABC test ''will provide greater clarity and consistency, and less opportunity for manipulation, than a test or standard that invariably requires the consideration and weighing of a significant number of disparate factors on a case-by-case basis'').

[589] *See Tony & Susan Alamo,* 471 U.S. at 301 (''The test of employment under the Act is one of 'economic reality.'''); *Whitaker House,* 366 U.S. at 33 ('''economic reality' rather than 'technical concepts' is . . . the test of employment'' under the FLSA) (citing *Silk,* 331 U.S. at 713; *Rutherford,* 331 U.S. at 729).

[590] *Rutherford,* 331 U.S. at 730.

consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities.

A. Why the Department Is Considering Action

As discussed in section II.E., on March 14, 2022, a district court in the Eastern District of Texas issued a decision vacating the Department's delay and withdrawal of the 2021 IC Rule and concluding that the 2021 IC Rule became effective on March 8, 2021.[591] The Department believes that the 2021 IC Rule does not fully comport with the FLSA's text and purpose as interpreted by the courts and will have a confusing and disruptive effect on workers and businesses alike due to its departure from decades of case law describing and applying the multifactor economic reality test. Therefore, the Department believes it is appropriate to rescind the 2021 IC Rule and set forth an analysis for determining employee or independent contractor status under the Act that is more consistent with existing judicial precedent and the Department's longstanding guidance prior to the 2021 IC Rule.

B. Objectives of and the Legal Basis for the Proposed Rule

The Department is proposing to modify the regulations addressing whether workers are employees or independent contractors under the FLSA. Specifically, the Department is proposing to discontinue the use of ''core factors'' and instead proposing to return to a totality-of-the-circumstances analysis of the economic reality test in which the factors do not have a predetermined weight and are considered in view of the economic reality of the whole activity. The Department is further proposing to return the consideration of investment to a standalone factor, provide additional analysis of the control factor (including detailed discussions of how scheduling, remote supervision, price-setting, and the ability to work for others should be considered), and return to the longstanding interpretation of the integral factor, which considers whether the work is integral to the employer's business. The Department is also proposing to formally rescind the 2021 IC Rule.

The Department believes that rescinding the 2021 IC Rule and replacing it with regulations addressing the multifactor economic reality test—in a way that both more fully reflects the case law and continues to be relevant to the evolving economy—would be helpful for both workers and employers. The Department believes this proposal will help protect workers from misclassification while at the same time providing a consistent approach for those businesses that engage (or wish to engage) independent contractors.

The Department's authority to interpret the Act comes with its authority to administer and enforce the Act. *See Herman* v. *Fabri-Centers of Am., Inc.,* 308 F.3d 580, 592–93 & n.8 (6th Cir. 2002) (noting that ''[t]he Wage and Hour Division of the Department of Labor was created to administer the Act'' while agreeing with the Department's interpretation of one of the Act's provisions); *Dufrene* v. *Browning-Ferris, Inc.,* 207 F.3d 264, 267 (5th Cir. 2000) (''By granting the Secretary of Labor the power to administer the FLSA, Congress implicitly granted him the power to interpret.''); *Condo* v. *Sysco Corp.,* 1 F.3d 599, 603 (7th Cir. 1993) (same).

C. Estimating the Number of Small Businesses Affected by the Rulemaking

The Department used the Small Business Administration (SBA) size standards, which determine whether a business qualifies for small-business status, to estimate the number of small entities.[592] [593] The Department then applied these thresholds to the U.S. Census Bureau's 2017 Economic Census to obtain the number of establishments with employment or sales/receipts below the small business threshold in the industry.[594] These ratios of small to large establishments were then applied to the more recent 2019 Statistics of United States Businesses (SUSB) data on number of establishments.[595] Next, the Department estimated the number of small governments, defined as having population less than 50,000, from the 2017 Census of Governments.[596] In total, the Department estimated there are 6.5 million small establishments or governments who could potentially have independent contractors, and who could be affected by this rulemaking. However, not all of these establishments will have independent contractors, and so only a share of this number will actually be affected. The impact of this rule could also differ by industry. As shown in Table 2 of the regulatory impact analysis, the industries with the highest number of independent contractors are the professional and business services and construction industries.

Additionally, as discussed in section VII.B., the Department estimates that there are 22.1 million independent contractors. Some of these independent contractors may be considered small businesses and may also be impacted by this rule.

The Department welcomes comments and data on any costs to small businesses.

D. Compliance Requirements of the Proposed Rule, Including Reporting and Recordkeeping

This proposed rule lays out the framework for assessing employee or independent contractor status under the FLSA. It does not create any new reporting or recordkeeping requirements for businesses.

In the Regulatory Impact Analysis, the Department estimated regulatory familiarization to be one hour per entity and one-quarter hour per independent contractor. The per-entity cost for small business employers is the regulatory familiarization cost of $24.97, or the fully loaded median hourly wage of a Compensation, Benefits, and Job Analysis Specialist multiplied by 0.5 hour. The per-entity rule familiarization cost for independent contractors, some of whom would be small businesses, is $5.34, or the median hourly wage of independent contractors in the CWS multiplied by 0.25 hour. The Department welcomes comments and data on any costs to small businesses.

E. Relevant Federal Rules Duplicating, Overlapping, or Conflicting With the Proposed Rule

The Department is not aware of any relevant Federal rules that conflict with this NPRM.

[591] *See Coalition for Workforce Innovation,* 2022 WL 1073346.

[592] SBA, Summary of Size Standards by Industry Sector, 2017, *https://www.sba.gov/sites/default/files/2018-05/Size_Standards_Table_2017.xlsx.*

[593] The most recent size standards were issued in 2022. However, the Department used the 2017 standards for consistency with the older Economic Census data.

[594] The 2017 data are the most recently available with revenue data.

[595] For this analysis, the Department excluded independent contractors who are not registered as small businesses, and who are generally not captured in the Economic Census, from the calculation of small establishments.

[596] 2017 Census of Governments. *https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html.*

F. Alternatives to the Proposed Rule

The RFA requires agencies to discuss ''any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.'' [597] As discussed earlier in section VII.F., the Department does not believe that it has the legal authority to adopt either a common law or ''ABC'' test to determine employee or independent contractor status under the FLSA, foreclosing the consideration of these alternatives for purposes of the RFA.

As explained in section VII.F., the Department considered two other regulatory alternatives: proposing a rule that would not fully rescind the 2021 IC Rule and instead retain some aspects of that rule in the new proposal; and completely rescinding the 2021 IC Rule and providing guidance on employee or independent contractor classification through subregulatory guidance, as the Department had done for over 80 years prior to the 2021 IC Rule. The Department believes that the overall economic impact of retaining some portions of the 2021 IC Rule while issuing a proposed rule to revise other portions of the rule would not minimize the economic impact on small entitles as they would incur costs to familiarize themselves with the new regulation. Similarly, the Department believes that the overall economic impact of fully rescinding the 2021 IC Rule and providing subregulatory guidance, would not necessarily minimize the economic impact on small entities as they would incur some costs to familiarize themselves with any subregulatory guidance. Moreover, as explained in sections III, IV, and V above, the Department believes that replacing the 2021 IC Rule with regulations addressing the multifactor economic reality test that more fully reflect the case law and continue to be relevant to the modern economy will be helpful for both workers and employers, particularly over the long term.

In addition to the alternatives discussed above, Section 603(c) of the RFA describes four categories of regulatory alternatives that might be appropriate for consideration in an IRFA analysis The Department does not believe that the FLSA is best interpreted to encompass these categories of regulatory alternatives or that they are necessarily applicable to this proposal.

1. Differing Compliance or Reporting Requirements That Take Into Account the Resources Available to Small Entities

Nothing in the FLSA or the decades of court decisions interpreting it suggest that a worker's status as an employee or independent contractor should turn on the size of the entity that benefits from their labor. As described earlier, one of the primary goals of the FLSA is to curtail ''unfair method[s] of competition in commerce'' by establishing minimum labor standards that all covered employers must observe.[598] Providing differing compliance or reporting requirements for small businesses would undermine this important purpose of the FLSA. The Department makes available a variety of resources to employers for understanding their obligations and achieving compliance and, if this proposed rule is finalized, will prepare a small entity compliance guide, as required by the Small Business Regulatory Enforcement Fairness Act (SBREFA).[599] Therefore, the Department has not proposed differing compliance or reporting requirements for small businesses.

2. The Clarification, Consolidation, or Simplification of Compliance and Reporting Requirements for Small Entities

This proposed rule does not impose any new reporting requirements, and the Department makes available a variety of resources to employers for understanding their obligations and achieving compliance.

3. The Use of Performance Rather Than Design Standards

This proposed rule provides guidance regarding the factors that should be considered regarding a worker's employment status under the FLSA where no one factor is, in a pre-determined manner, given more weight than the others and the weight given to the various factors may depend on the particular circumstances of the case.

4. An Exemption From Coverage of the Rule, or Any Part Thereof, for Such Small Entities

Creating an exemption from coverage of this proposed rule for businesses with as many as 500 employees, those defined as small businesses under SBA's size standards, would be inconsistent with the FLSA, which applies to all employers that satisfy the enterprise coverage threshold or employ individually covered employees, regardless of the employer's number of employees. Further, as described above, case law interpreting the distinction between employees and independent contractors under the FLSA does not support such an exemption.

The Department welcomes comments on this IRFA's analysis of regulatory alternatives.

IX. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires agencies to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing any unfunded Federal mandate that may result in excess of $100 million (adjusted annually for inflation) in expenditures in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Adjusting the threshold for inflation using the GDP deflator, using the most recent annual result (2021), yields a threshold of $165 million. Therefore, this rulemaking is expected to create unfunded mandates that exceed that threshold. *See* section VII for an assessment of anticipated costs and benefits.

X. Executive Order 13132, Federalism

The Department has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism and determined that it does not have federalism implications. The proposed rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

XI. Executive Order 13175, Indian Tribal Governments

This proposed rule would not have tribal implications under Executive Order 13175 that would require a tribal summary impact statement. The proposed rule would not 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.

List of Subjects

29 CFR Part 780

Agriculture, Child labor, Wages.

29 CFR Part 788

Forests and forest products, Wages.

[597] 5 U.S.C. 603(c).

[598] 29 U.S.C. 202(a)(3).

[599] Small Business Regulatory Enforcement Fairness Act, Public Law 104–121, sec. 212.

29 CFR Part 795

Employment, Wages.

For the reasons set out in the preamble, the Department of Labor proposes to amend 29 CFR chapter V as follows:

PART 780—EXEMPTIONS APPLICABLE TO AGRICULTURE, PROCESSING OF AGRICULTURAL COMMODITIES, AND RELATED SUBJECTS UNDER THE FAIR LABOR STANDARDS ACT

■ 1. The authority citation for part 780 continues to read as follows:

Authority: Secs. 1–19, 52 Stat. 1060, as amended; 75 Stat. 65; 29 U.S.C. 201–219. Pub. L. 105–78, 111 Stat. 1467.

■ 2. Amend § 780.330 by revising paragraph (b) to read as follows:

§ 780.330 Sharecroppers and tenant farmers.

* * * * *

(b) In determining whether such individuals are employees or independent contractors, the criteria set forth in §§ 795.100 through 795.110 of this chapter are used.

* * * * *

PART 788—FORESTRY OR LOGGING OPERATIONS IN WHICH NOT MORE THAN EIGHT EMPLOYEES ARE EMPLOYED

■ 3. The authority citation for part 788 continues to read as follows:

Authority: Secs. 1–19, 52 Stat. 1060, as amended; 29 U.S.C. 201–219.

■ 4. Amend § 788.16 by revising paragraph (a) to read as follows:

§ 788.16 Employment relationship.

(a) In determining whether individuals are employees or independent contractors, the criteria set forth in §§ 795.100 through 795.110 of this chapter are used.

* * * * *

■ 5. Add part 795 to read as follows:

PART 795—EMPLOYEE OR INDEPENDENT CONTRACTOR CLASSIFICATION UNDER THE FAIR LABOR STANDARDS ACT.

Sec.

Authority: 29 U.S.C. 201–219.

§ 795.100 Introductory statement.

This part contains the Department of Labor's (the Department) general interpretations for determining whether workers are employees or independent contractors under the Fair Labor Standards Act (FLSA or Act). *See* 29 U.S.C. 201–19. These interpretations are intended to serve as a ''practical guide to employers and employees'' as to how the Department will seek to apply the Act. *Skidmore* v. *Swift & Co.,* 323 U.S. 134, 138 (1944). The Administrator of the Department's Wage and Hour Division will use these interpretations to guide the performance of their duties under the Act, unless and until the Administrator is otherwise directed by authoritative decisions of the courts or the Administrator concludes upon reexamination of an interpretation that it is incorrect. To the extent that prior administrative rulings, interpretations, practices, or enforcement policies relating to determining who is an employee or independent contractor under the Act are inconsistent or in conflict with the interpretations stated in this part, they are hereby rescinded. The interpretations stated in this part may be relied upon in accordance with section 10 of the Portal-to-Portal Act, 29 U.S.C. 251–262, notwithstanding that after any act or omission in the course of such reliance, the interpretation is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect. 29 U.S.C. 259.

§ 795.105 Determining employee or independent contractor classification under the FLSA.

(a) *Relevance of independent contractor or employee status under the Act.* The Act's minimum wage, overtime pay, and recordkeeping obligations apply only to workers who are covered employees. Workers who are independent contractors are not covered by these protections. Labeling employees as ''independent contractors'' does not make these protections inapplicable. A determination of whether workers are employees or independent contractors under the Act focuses on the economic realities of the workers' relationship with the employer and whether the workers are either economically dependent on the employer for work or in business for themselves.

(b) *Economic dependence as the ultimate inquiry.* An ''employee'' under the Act is an individual whom an employer suffers, permits, or otherwise employs to work. 29 U.S.C. 203(e)(1), (g). The Act's definitions are meant to encompass as employees all workers who, as a matter of economic reality, are economically dependent on an employer for work. A worker is an independent contractor, as distinguished from an ''employee'' under the Act, if the worker is, as a matter of economic reality, in business for themself. Economic dependence does not focus on the amount of income earned, or whether the worker has other income streams.

§ 795.110 Economic reality test to determine economic dependence.

(a) *Economic reality test.* (1) In order to determine economic dependence, multiple factors assessing the economic realities of the working relationship are used. These factors are tools or guides to conduct a totality-of-the-circumstances analysis. This means that the outcome of the analysis does not depend on isolated factors but rather upon the circumstances of the whole activity to answer the question of whether the worker is economically dependent on the employer for work or is in business for themself.

(2) The six factors described in paragraphs (b)(1) through (6) of this section should guide an assessment of the economic realities of the working relationship and the question of economic dependence. Consistent with a totality-of-the-circumstances analysis, no one factor or subset of factors is necessarily dispositive, and the weight to give each factor may depend on the facts and circumstances of the particular case. Moreover, these six factors are not exhaustive. As explained in paragraph (b)(7) of this section, additional factors may be considered.

(b) *Economic reality factors*—(1) *Opportunity for profit or loss depending on managerial skill.* This factor considers whether the worker exercises managerial skill that affects the worker's economic success or failure in performing the work. The following facts, among others, can be relevant: whether the worker determines or can meaningfully negotiate the charge or pay for the work provided; whether the worker accepts or declines jobs or chooses the order and/or time in which the jobs are performed; whether the worker engages in marketing, advertising, or other efforts to expand their business or secure more work; and whether the worker makes decisions to hire others, purchase materials and equipment, and/or rent space. If a worker has no opportunity for a profit or loss, then this factor suggests that the worker is an employee. Some decisions by a worker that can affect the amount of pay that a worker receives, such as the decision to work more hours or take more jobs, generally do not reflect the

exercise of managerial skill indicating independent contractor status under this factor.

(2) *Investments by the worker and the employer.* This factor considers whether any investments by a worker are capital or entrepreneurial in nature. Costs borne by a worker to perform their job (*e.g.,* tools and equipment to perform specific jobs and the workers' labor) are not evidence of capital or entrepreneurial investment and indicate employee status. Investments that are capital or entrepreneurial in nature and thus indicate independent contractor status generally support an independent business and serve a business-like function, such as increasing the worker's ability to do different types of or more work, reducing costs, or extending market reach. Additionally, the worker's investments should be considered on a relative basis with the employer's investments in its overall business. The worker's investments need not be equal to the employer's investments, but the worker's investments should support an independent business or serve a business-like function for this factor to indicate independent contractor status.

(3) *Degree of permanence of the work relationship.* This factor weighs in favor of the worker being an employee when the work relationship is indefinite in duration or continuous, which is often the case in exclusive working relationships. This factor weighs in favor of the worker being an independent contractor when the work relationship is definite in duration, non-exclusive, project-based, or sporadic based on the worker being in business for themself and marketing their services or labor to multiple entities. This may include regularly occurring fixed periods of work, although the seasonal or temporary nature of work by itself would not necessarily indicate independent contractor classification. Where a lack of permanence is due to operational characteristics that are unique or intrinsic to particular businesses or industries and the workers they employ, rather than the workers' own independent business initiative, this factor is not indicative of independent contractor status.

(4) *Nature and degree of control.* This factor considers the employer's control, including reserved control, over the performance of the work and the economic aspects of the working relationship. Facts relevant to the employer's control over the worker include whether the employer sets the worker's schedule, supervises the performance of the work, or explicitly limits the worker's ability to work for others. Additionally, facts relevant to the employer's control over the worker include whether the employer uses technological means of supervision (such as by means of a device or electronically), reserves the right to supervise or discipline workers, or places demands on workers' time that do not allow them to work for others or work when they choose. Whether the employer controls economic aspects of the working relationship should also be considered, including control over prices or rates for services and the marketing of the services or products provided by the worker. Control implemented by the employer for purposes of complying with legal obligations, safety standards, or contractual or customer service standards may be indicative of control. More indicia of control by the employer favors employee status; more indicia of control by the worker favors independent contractor status.

(5) *Extent to which the work performed is an integral part of the employer's business.* This factor considers whether the work performed is an integral part of the employer's business. This factor does not depend on whether any individual worker in particular is an integral part of the business, but rather whether the function they perform is an integral part. This factor weighs in favor of the worker being an employee when the work they perform is critical, necessary, or central to the employer's principal business. This factor weighs in favor of the worker being an independent contractor when the work they perform is not critical, necessary, or central to the employer's principal business.

(6) *Skill and initiative.* This factor considers whether the worker uses specialized skills to perform the work and whether those skills contribute to business-like initiative. This factor indicates employee status where the worker does not use specialized skills in performing the work or where the worker is dependent on training from the employer to perform the work. Where the worker brings specialized skills to the work relationship, it is the worker's use of those specialized skills in connection with business-like initiative that indicates that the worker is an independent contractor.

(7) *Additional factors.* Additional factors may be relevant in determining whether the worker is an employee or independent contractor for purposes of the FLSA, if the factors in some way indicate whether the worker is in business for themself, as opposed to being economically dependent on the employer for work.

§ 795.115 Severability.

If any provision of this part is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from this part and shall not affect the remainder thereof.

Martin J. Walsh,

Secretary of Labor.

[FR Doc. 2022–21454 Filed 10–11–22; 8:45 am]

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FEDERAL REGISTER

Vol. 87 Thursday,
No. 197 October 13, 2022

Part IV

The President

Federal Register
Vol. 87, No. 197
Thursday, October 13, 2022

Presidential Documents

Title 3—

The President

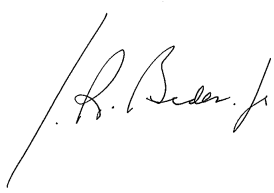
Notice of October 12, 2022

Continuation of the National Emergency With Respect to Significant Narcotics Traffickers Centered in Colombia

On October 21, 1995, by Executive Order 12978, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of significant narcotics traffickers centered in Colombia and the extreme level of violence, corruption, and harm such actions cause in the United States and abroad.

The actions of significant narcotics traffickers centered in Colombia continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States and cause an extreme level of violence, corruption, and harm in the United States and abroad. For this reason, the national emergency declared in Executive Order 12978 of October 21, 1995, must continue in effect beyond October 21, 2022. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to significant narcotics traffickers centered in Colombia declared in Executive Order 12978.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
October 12, 2022.

[FR Doc. 2022–22471
Filed 10–12–22; 11:15 am]
Billing code 3395–F3–P

Presidential Documents

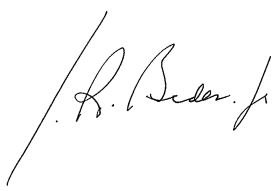
Notice of October 12, 2022

Continuation of the National Emergency With Respect to the Situation in and in Relation to Syria

On October 14, 2019, by Executive Order 13894, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in and in relation to Syria.

The situation in and in relation to Syria, and in particular the actions by the Government of Turkey to conduct a military offensive into northeast Syria, undermines the campaign to defeat the Islamic State of Iraq and Syria, or ISIS, endangers civilians, and further threatens to undermine the peace, security, and stability in the region, and continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13894 of October 14, 2019, must continue in effect beyond October 14, 2022. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13894 with respect to the situation in and in relation to Syria.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
October 12, 2022.

[FR Doc. 2022–22472
Filed 10–12–22; 11:15 am]
Billing code 3395–F3–P

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text is available at *https://www.govinfo.gov/app/collection/plaw*. Some laws may not yet be available.

H.R. 91/P.L. 117–193

To designate the facility of the United States Postal Service located at 810 South Pendleton Street in Easley, South Carolina, as the ''Private First Class Barrett Lyle Austin Post Office Building''. (Oct. 11, 2022; 136 Stat. 2211)

H.R. 92/P.L. 117–194

To designate the facility of the United States Postal Service located at 110 Johnson Street in Pickens, South Carolina, as the ''Specialist Four Charles Johnson Post Office''. (Oct. 11, 2022; 136 Stat. 2212)

H.R. 2142/P.L. 117–195

To designate the facility of the United States Postal Service located at 170 Manhattan Avenue in Buffalo, New York, as the ''Indiana Hunt-Martin Post Office Building''. (Oct. 11, 2022; 136 Stat. 2213)

H.R. 3508/P.L. 117–196

To designate the facility of the United States Postal Service located at 39 West Main Street, in Honeoye Falls, New York, as the ''CW4 Christian J. Koch Memorial Post Office''. (Oct. 11, 2022; 136 Stat. 2214)

H.R. 3539/P.L. 117–197

To designate the facility of the United States Postal Service located at 223 West Chalan Santo Papa in Hagatna, Guam, as the ''Atanasio Taitano Perez Post Office''. (Oct. 11, 2022; 136 Stat. 2215)

H.R. 5809/P.L. 117–198

To designate the facility of the United States Postal Service located at 1801 Town and Country Drive in Norco, California, as the ''Lance Corporal Kareem Nikoui Memorial Post Office Building''. (Oct. 11, 2022; 136 Stat. 2216)

H.R. 7698/P.L. 117–199

To designate the outpatient clinic of the Department of Veterans Affairs in Ventura, California, as the ''Captain Rosemary Bryant Mariner Outpatient Clinic''. (Oct. 11, 2022; 136 Stat. 2217)

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